

11

C. S. DARROW



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July 18-19-20-22-23-24-25-26-27-28-29-30, 1907.

Argument of Mr. Hawley

Argument of Mr. Richardson

Argument of Mr. Darrow

Argument of Mr. Borah

Instructions, requested and given

Verdict of Jury

Archives  
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(11)



Boise, Idaho, Thursday, July 19, 1907.

9:30 o'clock A. M.

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Court convened pursuant to a journalment.

THE COURT: Do you want the jury this morning, gentlemen?

MR. DARROW: I don't care one way or another.

THE COURT: Have you any evidence?

MR. DARROW: No, we have no evidence, your Honor.

THE COURT: I understand the defense rests?

MR. DARROW: The defense rests, yes sir.

THE COURT: Are your instructions ready?

MR. RICHARDSON: We went over them together last night and we had to make a few corrections and Mr. Nugent is numbering them and getting them in their order, and I think they will be here in about five or ten minutes.

MR. BORAH: Did your Honor get the instructions which we sent up?

THE COURT: Yes sir, I have those.

MR. BORAH: There are some further instructions covering some of the same subject matter as those of yesterday, and also five or six instructions with reference to this question that your Honor said he would like to hear us on this morning. They are not completed but I can inform the court as to what we



will ask the court to instruct in this matter, and the others I think we can have them in an hour or such a matter.

MR. DARROW: We may want to add an instruction or two on this subject, but we have practically everything ready.

THE COURT: There will be no objection to that, although the statute requires that you present them at this time.

MR. DARROW: Does your Honor want to hear argument now?

THE COURT: I would prefer to,-- at least during the day I want to dispose of this matter and I want to hear whatever you have to suggest.

MR. DARROW: Shall we proceed now or wait until we get the instructions?

THE COURT: You can do as you like on that. I have notified Mr. Hawley that we will have the argument to-morrow morning. You may proceed.

MR. DARROW: There was a matter referred to in reference to the testimony of Orchard with reference to his conversation with Pettibone as to Steve Adams.

THE COURT: As to whether or not that was binding upon the man on trial.

MR. DARROW: That testimony, if we understand the remark correctly, is found upon pages 272, 273, 274 and possibly some on 275. It is the testimony of Orchard wherein he states that he had a conversation with Pettibone in reference to Adams' trip up into northern Idaho. Insofar as that conversation was between



3

Orchard and Pettibone alone, we will not resist an instruction on that that it was not properly connected. There is a conversation however, immediately preceding and succeeding that in which the same subject matter is discussed between Orchard and Haywood, and insofar as the testimony relates alone to the conversation between Pettibone and Orchard and that subject matter, I think it has not been properly connected, and I don't think, in view of the fact it is in the nature of a narration of a past event, it would only be binding upon the man who made it.

THE COURT: That was the point in the mind of the court.

MR. DARROW: Of course we objected to this when it went in.

THE COURT: Yes sir, and it went in with the understanding that proper connection must be made to make it material.

MR. DARROW: I don't think that striking it out now would cure any harm done by it, but of course we want to save our rights in it. We saved our rights when it went in, and if it is cured, it is cured. Now, as to the character of the instructions as governing the point which your Honor called our attention to, to the evictions.

THE COURT: The court will say that the question involved was in reference to the employment of the detectives. I suggested that matter to you yesterday afternoon in the same connection.

MR. DARROW: Yes, and then we may argue them both together and I suppose the question presented is as to what



instruction the court shall give the jury on that testimony as to how it may be used, and for what purpose, and all that. Now, this is a matter I have thought of before it went in and since, and have endeavored to find some authorities in reference to it, and think I have found some which are very much in point with reference to this testimony.

First, let us see how it gets into this case. The defendant here is indicted for the murder of ex-governor Steunenberg in Idaho. If that matter had been confined to the sole question of whether the defendant or the ones jointly indicted with him had sent some one into Idaho to kill ex-governor Steunenberg, then this question would never have arisen and the testimony offered would never have been offered in this court. I am not criticizing at this time the latitude the court gave to the State. There is nothing so far in what the court has indicated to show that he intends to limit in any way any of the evidence offered by the state in support of that a grand, general conspiracy by somebody -- Lord knows who all -- to accomplish unlawful acts, and the killing of Steunenberg was one of the objects of those unlawful acts.

To sustain the allegation in this case it must be shown that Steunenberg was murdered in pursuance of a general conspiracy. The court had admitted evidence showing that this defendant was the secretary-treasurer of the Western Federation of Miners. The court has admitted evidence tending to show that the organization of it, the first president of it, the first



secretary of it, the articles published in their magazines eight or ten years before this defendant ever became connected with it, or for a number of years at least before the declarations of parties, before they ever became connected with it, long before, and anything that would tend to prove this organization and prove what Mr. Hawley stated in his opening, that this was a criminal organization, or organized for criminal purposes.

The theory of this case has been that in 1899 there was some troubles in the Coeur d'Alenes, and at that time Steunenberg was governor of this state, and at that time he had a controversy, not with these defendants, but with the Western Federation of Miners and that this Western Federation, through its officers, through the people connected with it, through the local men in the Coeur d'Alenes and the local officers in the Coeur d'Alenes, at that time conceived a hatred of the deceased which caused his murder six or seven years later. At that time, as I say this defendant was not connected with it except with the local lodge over in Silver City. Not one of the defendants who are indicted and apprehended was connected with it in any other way whatever, so that what was done by the organization in general was done by somebody else. Whatever was printed by the organization was printed by somebody else and written by somebody else. This evidence has gone in here upon the theory that there was a general conspiracy before these men got into it and since, to commit unlawful acts, and that this defendant is partially or fully responsible for it.



As a part of that general conspiracy the court permitted the state to introduce evidence that somebody killed Beck and McCormick at the Vindicator mine, a specific crime which could have no bearing whatever in this case unless the jury was to infer that because these men killed Beck and McCormick that therefore they killed Steunenberg, or that it was a part of the general conspiracy and whatever was done in Colorado in the fall of 1903 was in some way connected with this act in Idaho in the winter of 1905. In order to make that testimony of any avail it must appear that somebody murdered Beck and McCormick, and that that somebody who did it, did it at the instigation of these defendants; otherwise it has no competency in this case and could not be introduced for a moment.

Next they attempt to prove that a depot was blown up on the 6th day of June, 1904, whereby twelve or fourteen men were killed. This was an act of wholesale murder which is introduced in this case to show that whoever was guilty of that act was acting in the same conspiracy that later caused the death of Steunenberg, and to make that act competent in this case it must appear that this defendant was connected with that act, that he was present in some way in the blowing up of the Independence depot.

Again, evidence has been introduced in this case tending to show that an attempt was made upon the life of Bradley in California in the fall of 1904, two years, or a year, rather,



before this act. In order to connect that act with this case it must appear, or at least there must be evidence which can be submitted to the jury from which they might infer that this defendant was engaged in California in the fall of 1904 in an attempt to assassinate Bradley.

That this case -- that this evidence from beginning to end has been marshalled and arranged and procured by the Pinkerton office, the Pinkerton detectives, that the prosecuting or the chief witness in this case fell into the hands of a Pinkerton detective, and first gave his confession to him, is not disputed in this case. The connection of the Pinkerton office is so woven up with this whole case that it could not be said for a moment that nothing the Pinkertons have done are not competent in this case but as to how far they may be used, that is another question.

Now, let us see. First, as to deportations, that the court wishes to hear about. It is claimed upon the part of the defense that they had nothing whatever to do with the Vinlicator explosion, that they had nothing whatever to do with the blowing up of the Independence depot, that they had nothing whatever to do with Bradley, that they had nothing whatever to do with the killing of Lyte Gregory. Take the Bradley instance, which first furnishes a clear and plain basis for arriving at a practical rule of law as governing this case for in the case of Bradley, Bradley was injured by an accident caused by the explosion of gas. I take it nobody could say it was not competent for us to show it. In



order to make the Bradley case proper evidence in this case against this defendant, it must appear that the defendants were attempting to injure Bradley or permit a homicide upon him. If we can show that nobody attempted it, and that the injury to the house in which he was living was caused by a pure accident, an explosion of gas, clearly that is competent, and as I apprehend the state of the resort, no one attempts to claim it is not competent to prove it. Secondly, we are charged with having murdered two men in the Vindicator mine. It is clearly competent for us to show, not only that we did not do it, but also to show that that was a pure accident. We have offered evidence in this case to show, -- whatever the evidence may show, -- we have offered evidence tending to show it was an accident pure and simple. Is there any question about its competency? If there was then the law would be that one side could be heard and the other side could simply tender the statement, and that would end it, -- that every fact and detail and circumstance that could be marshalled here in any way to prove a man guilty could be offered, and that any fact and circumstance to prove an accident or prove somebody else guilty could not be offered, -- that they could pile up facts and circumstances to corroborate the guilt of the accused, and he could meet that with the simple denial and nothing else, and he could not offer a fact or circumstance tending to prove the crime charged was not a crime but an accident, or that the crime charged was committed by some one else.

Again, before they bring before this jury -- not we --



and they bring this evidence that somebody attempted to wreck a train upon the Florence and Cripple Creek railroad, and of course that somebody was these defendants.

Is there any question about our right to show that nobody attempted to wreck a train on the Florence and Cripple Creek railroad? That Haywood, under indictment with his evidence, this evidence offered, must simply say, no, I did not say this to Orchard,-- I did not make this statement to that man or cannot he introduce any fact or circumstances which would tend to show that what is charged as a crime was in fact an accident or that what is charged as a crime against him was in fact committed by some one else?

Take the Florence and Cripple Creek railroad matter. They directly charged in that case that certain men connected with this Western Federation of Miners instigated it and attempted it. We offer evidence in this case which tends to show, and it is not for the court to say whether it shows if it is legal competent evidence,-- the weight of that evidence is for the jury to determine. We offer evidence in this case mainly given by the engineer of the train, the man who would have been the first man to have met his death if these charges were true, and this evidence tends to show that there never was any such crime committed or contemplated; that the special agent, or in other words, a detective of the railroad company, and the detective of the mine owners' association, both of whom are admitted to have been de-



testives and in their employ,-- Starling the chief special agent of the mine owners' association, and Scott the representative of the railroad, -- that these two men acting together conspired to produce circumstances that would tend to make people believe that an attempt was made to wreck that train, and that they did it and injured this organization.

It seems to me, your Honor, under the evidence in this case there can be no question but what we showed it, that there can be no question but what a jury in Idaho, as to that question, would say what a jury in Colorado has already said, that these men attempted to wreck, or claimed to do some things which would leave an inference that their train was wrecked or attempted to be wrecked in order to charge it upon the Western Federation of Miners.

Can it be said for a moment that the accusers may come here and swear that Haywood, that Moyer, that Pettibone, that Davis, that Parker, sought to employ them to wreck this train and we cannot show facts and circumstances which tend to prove that no train was ever wrecked, and that the men interested in this affair put up a job without any effort or design to wreck a train, but to create an impression or inference that the Western Federation had been attempting to do it? I don't see how it could be claimed for a single moment that we have not that right. And if we have that right then everything follows from it. Let us see what may be made to a defense like this. A man is charged with murder.



He may prove that he was some where else at the time,-- he may prove an alibi; he may also prove that some one else committed the crime. A man is charged with murdering John Smith. He may swear he did not do it; he may bring his neighbors and friends to prove where he was at the time John Smith was murdered, he may also show that some one else, not he, killed John Smith, and he is not bound to show it conclusively; that is not the province of the court to say whether he shows it conclusively. He may introduce any fact or any circumstance which may tend to show that some one else and not he was responsible for that act.

Now, I take it that the authorities are well settled upon that proposition, and they are numerous. I want to read first from Wigmore on Evidence, volume 1, from page 139,-- from page 200, at the bottom, and paragraph 139.

"If X is charged with homicide, committed by himself alone, and it is shown in disproof that Y did the killing, X is clearly exonerated; for the fact that Y has done it is inconsistent with and exclusive of X's guilt:

Gaston J., in State vs. May, 4 Dev. 332, 333, the court say 'the criminal act imputed to the prisoner might as readily be committed by many as by one. . . . Both (W. M. and the defendant) might be guilty, or both might be innocent; and a common guilt or a common innocence was as prebable as the guilt of one only, . . . But proof that certain acts constituting a part of the criminal transaction itself were done by W. M. might have been of high importance to the prisoner by removing so much of the inference as



would be raised were these acts brought home to him. . . . Proof that the taking was by other than the prisoner perhaps might repel this inference (of guilt), — not because the guilt of one shows the innocence of the other, but because proof that specific acts were done by one weakens or removes the presumption that the same acts were done by another.\*

There are, of course (as the preceding passage shows), cases in which X is by hypothesis in some way an accomplice of Y either at a distance or as a personal sharer; and there is even the rare case of independent and double felonious acts upon the same object. To such cases the argument cannot apply. Apart from them, it is as cogent as an alibi. If the Man with the Iron Mask was the duc de Vermandois, he could not have been the general de Babouville; and if the Tichborne claimant was Arthur Orton, he could not have been Roger Tichborne.

The question that arises, from the point of view of the rules of evidence, is whether, in evidencing this doing by a third person as a fact of disproof, any unusual requirements should be made as to the strength of the evidence before it can be admitted."

That it is competent that you may show that somebody else did it, that it was a question in all these things to prove the defendant did not do it, is competent. The question is as to whether a certain strength is required, and such proof may be admissible. To return to the book:



"Thus, to prove A guilty of murder, evidence of his threats ( i. e. a design) to commit it are always admissible; now, if the fact to be proved is that B committed the murder (as inconsistent with A's guilt), why should not B's threats be admitted, without further restrictions as A's are? It is true that evidence of B's threats alone could not go far towards proving B's commission; but it is not a question of absolute proof nor even of strong probability, but only of raising a reasonable doubt as to A's commission; and for this purpose the slightest likelihood of B's commission may suffice or at least assist. The evidence of these threats, to be sure, may, in a given instance, be too slight to be worth considering; but it seems unsound as a general rule to hold that mere threats, or mere evidentiary facts of any one other sort are to be rejected if unaccompanied by additional facts pointing towards B as the doer. Nevertheless, most courts have shown an inclination to make some such restriction, and to insist that two or more kinds of evidentiary facts pointing towards B must be offered, and that one kind alone will not be received. It is difficult to see the object of this restriction, because if the evidence is really of no appreciable value, no harm is done in admitting it; while if it is in truth calculated to cause the jury to doubt, the court should not attempt to decide for the jury that this doubt is purely speculative and fantastic, but should afford the accused every opportunity to create that doubt. A contrary rule is cruel to a really innocent



accused.

Threats are perhaps the commonest kind of evidence offered for this purpose. The rulings differ widely in their effect; but in general a wholly unnecessary strictness is shown, and the illiberal attitude of some courts in this respect towards accused persons is in singular contrast with the maudlin tenderness otherwise often exhibited.

A motive as evidence is perhaps not of such value as a threat; yet courts seem more inclined to receive it. There is no reason for requiring that it be coupled with other evidence in order to be admissible.

Of the other kinds of evidence, it can only be said that the inclination should always be to admit any one of them, unless totally without probative suggestion. In particular, the conviction of another person for the same crime (assuming that it is predicated as the deed of one person, not of joint actors) should be received; no technicality of the law of judgments should stand in the way; indeed it is difficult to see why such a judgment should not be pleaded in bar. Certainly, the law must in some manner avoid the absurdity of convicting two persons for the same crime committable by one only. This same singular and inexcusable attitude of the courts is seen also in the exclusion of a third person's confession of guilt under the exception to the Hearsay rule, and of a suicide's declaration.

The general principle is applicable, it may be noted,



equally to civil cases, such as the trespasses of animals. Moreover, on the principal notice already for the argument of opportunity, the prosecution may in advance negative the argument, by showing that other possible persons did not do the act. The fact of mistaken identity seems also to be relevant in this connection; the argument is that a third person, not the one charged was really involved, and the fact of the existence of a third person capable of being mistaken for the one charged is some evidence that he possibly or probably did the things attributed to the person charged."

There are a number of notes to it illustrating the text. Now, this question has frequently arisen in the courts of this country, and I have a number of authorities from which excerpts have been made, but I have not been able to get the books. They will all be found in the state library, I suppose, but I guess nothing but the supreme court can break into the state library as I understand the rule up here.

MR. BORAH: They can break in, but cannot break out.

MR. BARNES: I don't want to get in if I cannot get out. In the case of Morgan against Commonwealth, 14 Ky. reports, 113, reading from the opinion of the court, it says:

"As the Commonwealth was trying to establish the appellant's guilt, not only by evidence of his acts and conduct at the time the deceased received the fatal wound, but also by his previous threats and conduct, the object of which being to show



a motive for the killing, it seems to us that the prisoner should have been permitted to show that Conn, who was present when the homicide took place, armed with a pistol, was a deadly enemy of the deceased, and had threatened to take his life.

In other words, as the Commonwealth had the undoubted right to prove the acts and conduct of the prisoner at the time of the commission of the offense charged, and also to show a motive for its commission by evidence of previous threats made against the deceased, had the prisoner not the right to show that there was another man present when the crime charged was committed, and that he was armed and had equal opportunity with the prisoner to have done the deed? And when the proof was conflicting as to which of the two did it, could the prisoner not show not only the acts and conduct of this other man toward the deceased during the conflict which resulted in his death, but also show further that he was an enemy of the deceased, and had threatened his life, so as not only to show the acts and conduct of this other man, but also the motive that may have actuated him to attempt the life of the deceased? We think he could. If there was no evidence connecting Conn with the offense charged, then his motives could not be inquired into.

It is stated by Wills on Circumstantial Evidence, page 41 that 'It is always a satisfactory circumstance of corroboration when, in connection with the convincing facts of conduct, an apparent motive can be assigned for the deed.'

Stephens in his late Philosophical Digest of the Law



of Evidence, after discussing the fact of its relevancy, says, 'that any fact is relevant which supplies a motive for an act, or which constitutes preparation for it, and that facts are always relevant to each other when one probably may have been the cause of the other.'

We therefore are of opinion that when, on the trial of a man for the commission of a crime, the proof is conflicting as to whether he or another person perpetrated the offense, the prisoner has the same right to show the conduct, acts and motives of the other that the conduct has to show the conduct, acts and motive of the prisoner, and that the evidence of the feelings of Conn toward the deceased, as evidenced by previous threats and personal conflicts should have been permitted to go to the jury." That is, the motive of the third person shown by his threats and his conduct toward him.

In the case of *Hollmann v. State*, 99 Ga. 633, the court said:

"It appears that one, Hall, the manager of the corporation was actively pressing the prosecution, and that the conviction was largely based upon his testimony as a witness. The accused insisted that Hall has mismanaged the affairs of the corporation, had engaged in speculation with the company's funds; and that considerable losses had thereby been sustained. Evidence tending to prove the existence of this alleged fact was offered by the accused, for the purpose of showing a motive on the part of Hall



for destroying the books. We see no good reason why this evidence should not have been received. Without expressing or intimating any opinion as to its probative value, we think it was the undoubted right of the accused to prove, if he could, that the crime in question had been committed by one other than himself; and it was certainly a step in this direction to show a motive on the part of that other person for destroying evidence tending to show his own unsuccessful or improper management of the company's business. The testimony of the witness Hancock was pertinent in this connection, as was also that of Tucker mentioned above. This evidence was also relevant and admissible with reference to the credibility of Hall as a witness, as it had some bearing upon his interest in the case, and could have been used, whether successfully or not, we do not undertake to say, as manifesting a disposition on his part to shield himself from the consequences of his own alleged misconduct."

In the case of Crawford vs. the State, 12 Ca. 145, the court says:

"The first ground of error assigned in this case is, the rejection of that portion of the testimony of John Tennill drawn out by cross examination, in which he said, that, 'just after dinner the evening Moore was killed, Levi G. Bright, Daniel J. King and the deceased had a quarrel at witness's grocery, at the wagon yard, about a dollar; witness told them to hush up and they did so.' In view of the facts of this case, we think this evidence was competent to show that there had been



cause of a quarrel between the deceased and other persons on the evening of the same day deceased was killed; Here especially, as it appears that the deceased and the prisoner were on friendly terms but a short time before he received the fatal blow, and it being somewhat doubtful from the evidence who struck that blow, that it was a circumstance of which the jury were entitled to consider, in favor of the defendant."

THE COURT: It seems to me that that is the very question that is involved in this case.

MR. DARROW: There are plenty of authorities on both sides, and I will argue that in a moment. It is not motives or threats, but facts -- facts, and if we have not shown that then we have not shown facts enough. In Commonwealth vs. Abbott, 130 Mass. 473, the court said:

"It was clearly pertinent for the defendant to prove that he did not commit the murder, by showing that some other person did, and, as one step toward that end he had a right to prove such a state of ill feeling on the part of the husband existed at the time of the homicide as would furnish him with a motive for the commission of the crime,--

The existence of ill feeling as a motive for the commission of a crime will not alone justify submitting to a jury the question of a person entertaining such feeling, it becomes material only when offered in connection with other evidence proper to be submitted, showing that the person charged with such ill feeling was in fact



implicated in the commission of the crime.

In practice it is not necessary that the relevancy of the testimony should appear when it is offered for it is usual for the judge to receive it at any step of the trial upon its being made to appear that it will be rendered material by other evidence."

In the case of Logan vs. Steels, 3 Ky. 332, the court said:

"At the trial of this case in the court below the plaintiff proved the defendants were enemies and had threatened to injure his property. The defendants then produced witnesses to prove that the plaintiff had other enemies in the neighborhood who had also threatened to injure his property. The admission of this evidence was opposed by the plaintiff, but the objection was overruled and the evidence admitted.

We can perceive no error in the court receiving the evidence. It was calculated to repel the presumption which might otherwise arise against the defendant from the evidence of a like description used against him."

Now, in the 13th California, in the case of People vs. Williams, reading from page 193, from the opinion of the court:

"The second point, in reference to the omission to prove the billing to have been done in the county laid, we are inclined to think not well taken. But it is not necessary to pass upon it, for the reason that the alleged defect of proof will not probably



occur again. It is easy to prove the *onus*," that is not it.

Heading from page 190:

"The defendant was convicted of murder in the first degree, and appeals from the judgment. The errors assigned are: 1st, that the court erred in refusing to permit certain questions to be put, on cross examination to one Blake, a participator in the crime, who was examined as a witness on the trial. It seems that the testimony, apart from the evidence of Blake, was mostly circumstantial. The testimony of ~~Blake~~ Blake connected the defendant by direct proof with the homicide. In order to understand the point made and our decision upon it, it will be necessary to state some parts of the testimony of Blake. We extract from the record: 'I went out with Williams the night of the death of Blanchard and I know about the killing of Blanchard. I was with Williams the night when the murder was committed; it was a pickhandle the murder was committed with. We started from Williams house. We went across Williams' pasture, near the blacksmith shop. We went down across the field to Mahon's fence, and waited there awhile, until he, Blanchard, came up, when Williams jumped out from the fence and struck him three or four times. Williams then stepped back from the body. We stepped in the ditch, and stepped there one half or three quarters of an hour. The first fence we stepped by was a board fence. These are the boots -- have worn them since June. Williams had on a pair of boots with brands in them; these look like the boots; the boots



Williams had on he put in the well the next day, as he told me. Williams asked me three or four times to go with him and I refused him, and finally consented. He said he wanted to go and thrash Blanchard. I believe the cause was about property. At the time of starting, I did not know he intended to kill Blanchard. The pickaxe had been in the cellar since I lived at Williams'.

After this testimony the witness was asked, 'did you see old man Blanchard at Buckner's in the presence of Putney and Marion Samples a few days before he was killed?' To which the witness answered affirmatively. The next question, and on which the main error assigned is based was, 'Did you not then and there state that you intended to kill Blanchard?' This question was objected to: 1st, because it was on cross examination; and 2nd, that it was irrelevant. The objection was sustained. We presume that the last ground was the one on which the learned judge below placed his ruling; for it is too clear for argument that if the question was admissible at all, the defendant had a right to illicit the answer on cross examination as explanatory of the relations of the witness to the matter as to which he was testifying.

It has been observed that this witness occupied a very equivocal and suspicious position. He had already announced his own infamy, and that he was guilty of one of the darkest offenses in the catalogue of human crime. It is not unreasonable to suppose, from his occupying the witness stand, that strong motives actuated him to prove the defendant to be guilty of this



offense, and to palliate as much as possible his own guilt. The law to prevent immunity for crimes permits such men to be witnesses but with the same solicitude for the protection of the citizen watches with jealous scrutiny their testimony. It will not permit any citizen to be convicted solely by the testimony of the accomplice, but requires corroboration of his statements from independent sources. The utmost latitude of cross examination justified by the law in any case should be extended to the testimony of such a witness. The court should permit him to be thoroughly sifted. His connection with the parties, his conduct, his leanings, his prejudices, his recollection, his means of knowledge, his disposition to tell the truth, his motives to commit perjury, his whole conduct, in short, in relation to the facts he professes to reveal and the parties, should be suffered to be fully exposed to the jury. To do this is the general office of a cross examination, and this is more especially important in respect to such a witness. Such an examination could do no possible harm if the witness could stand the ordeal, and it might do a great deal of good if he could not.

It has been noticed that Blake conveyed, by his testimony in chief, the idea that he was a reluctant and unwilling abettor in this crime. It will also be noticed that he charges Williams with the actual execution of the murder; and that he exonerates himself from any further criminality than going with Williams to whip or chastise Blanchard. The theory of the defense



was, that Blake himself did the murder; that there was a sufficient motive in Blake to do it; that Blake could as well have done it alone, or in conjunction with some other person than Williams, as in conspiracy with him. Anything, therefore, which contradicted Blake's statements, or had a legal tendency to show that they were false, was admissible evidence in rebuttal on the part of Williams. The evidence sought to be elicited was directly of this nature, and tended to this result. It tended to show, if believed, malice on the part of Blake; and a motive on his part to make the assault, and it tended to contradict and discredit his statement, that he went to the scene and assisted in the act of the murder, merely by the instigation and through the persuasion of Williams. Whatever in such a condition of proofs could be shown to detract from the credit of this witness-- to bring his statements into suspicion or to show their falsity in any material particular, would therefore be admissible; and the force and effect of the whole, and of every portion of his narrative, would or might be diminished in the judgment of the jury by the falseness of any part. It is argued by the attorney general that this proof of personal hostility or threats evidencing it, on the part of the witness toward the deceased, was wholly unimportant, for he had confessed in his testimony in chief his own guilty participation in the crime, and such testimony would only tend to prove it, and it tended to prove as well the commission of the murder by both Blake and Williams, as by Williams alone. But this answer does not meet the objection.



One object of the testimony was to show that Blake's account of this matter was false; that whereas he had stated that Williams persuaded him to go with him to the place of the murder, and to assist in its perpetration, he had in fact a motive of personal malice, and had himself threatened and formed a purpose to kill the deceased. Whether this were conclusive proof of a contradiction, virtual or literal, it is needless to inquire, for the question here merely touches the admissibility of this proof, not the effect of it. Nor is it material whether this proffered proof of contradiction related to the more material portions of the testimony of the witness; for the defendant had a right to disprove the whole and every part of the statement which connected him with the murder; and this proof of procurement to go, and to assist in committing the deed, was, or might have been considered of great weight, as showing defendant guilty of a preconcerted and deliberate crime."

And in the 10th California, the case of People vs. Mitchell, page 333, -- there is a still later case than this that I have not got here this morning, that I will try to hand your Honor this noon. This is reported on page 338, but I am reading --

MR. BOEHL: What is this last citation?

MR. DARROW: That was 18th California, People vs. Williams, and I read, beginning at page 190. In this case of People vs. Mitchell, I read from page 333:

"The testimony tending to show that one Long was the



guilty party was admissible. It is always proper to show that some other person, and not the defendant committed the crime with which he is charged, and the fact that Long had been tried and acquitted did not alter the case. The argument of respondent that if defendant could try to prove Long's guilt, the people could show the judgment of acquittal is not sound, for the simple reason that a judgment as between the people and Long is not evidence in a case."

Now, your Honor, as to how the facts of this testimony are related to the law, let me say a few words. There are some very shadowy lines in this case upon the part of the State, as well as of the defendant. There are some places where it is easier to connect than other places, and that, I think, belongs more to the state than to the defense, and I submit, your Honor, that if there is any question upon the relevancy of any of this testimony the doubt should rather be resolved in favor of the defense than in favor of the state, both as to the admission of the testimony and the governing of testimony by the instructions, in relation to the defense and to the state. For instance, the last witness placed upon the stand by the state is an old man named Stewart, who swore he was beaten up in the fall of 1903, before any troops were called into the district. Nobody pretends to connect him with a single one of these deeds; if they did, his testimony would not have been competent, for it would have been testimony in chief, but he is called primarily and purely to show the reason why the militia were ordered into that district, and it



could not have been competent, and could not have stood alone excepting first that the theory of the state, that a general conspiracy in Colorado reached into Idaho, and second, whatever was done in Colorado was done with the intention of getting rid of the Western Federation of Miners.

Take the testimony offered by the state as to Telluride: The testimony of the sheriff, the mine boss, as to facts and incidents in reference to the Tomboy mine which could not have been in this case; it had no bearing in this case upon any other theory whatsoever. In the opening of this case by the state they offered independent, isolated statements as to acts of violence, the declarations of almost anybody connected with this union,-- they offered to bunch it all into one general conspiracy and say that these men were responsible for the whole, but it could not be said, I like it, for a moment that this sort of evidence which constitutes ninety-nine one-hundredths of all of it, outside of Croherd's, and his testimony outside of these matters constitutes ninety-nine one-hundredths of all of it,-- it could not be said that that evidence was competent nor if we produce the same character of evidence which tends to charge these crimes to some one else, that such evidence can be competent.

Now, take the simplest case we can get; take the incident of the attempted wrecking of the train on the Florence and Cripple Creek railroad; how would a court govern the evidence of that case? Can it be said to the jury that they can consider any



evidence of detectives? Can it be said that they can take the naked statement of Orchard impeached and impossible as it is, ~~impossible~~ impossible to a mind that is not warped and prejudiced beyond hope? That they can take his evidence and that you cannot contradict it, that you cannot <sup>take the</sup> statement of this engineer who swears that he met Scott and Sterling, and that they asked him where would be a good place to wreck a train and that he told them a good place and he took them up on his train and left them there and then when he came back he found Scott and Sterling there and they stopped his train and they had removed ten or eleven spikes out of forty in one rail? And that is a train wreck, and the courts of Colorado, upon the question being submitted to a jury there as to the same, discharged some of these defendants and the jury discharged the rest.

Now, could it be said that up here in Idaho where a man is on trial for his life and where it is charged that William D. Haywood was guilty of wrecking this train, that we cannot show by the engineer, who would be the first man to be killed by it, that it was not a wreck -- that it was a fake and a fraud conceived for the purpose of hanging somebody and destroying the Western Federation of Miners in the Cripple Creek district? And if, your Honor, -- if that is admissible, and I take it that no court could deny its admissibility, and no lawyer could secretly ask to have it denied, then can the court say that the conduct and the acts and the connection of these men employed by the mine owners' association are not woven into this



case and a part of it from beginning to end?

Take the next instance, the destruction of a portion of the Independence depot. Here was Harry Orchard, an engine of destruction, and he comes into this court and swears that Meyer, Haywood and Pettibone are responsible for it, and they say no, and that ends it. If so, your Honor, then it will be very difficult for a man to defend his life. Every fact and every circumstance which they could prove to sustain Harry Orchard was offered in this case. Every act of malice, by every one in the district,-- the beating up of the justice of the peace, the beating up of Stewart, going after powder and stealing,-- all of these things are dealt in to this jury that Harry Orchard's statement may have some corroboration and some credence to this jury. The defense have denied it. Haywood says he had nothing to do with it and knew nothing of it. Meyer says he had nothing to do with it and he knew nothing of it. We claim in this case that somebody else did it, and that the men who were engaged in the laudible ambition of driving every Western Federation of miner and sympathiser of that organization xxx out of the Cripple Creek district in violation of law, who would raise their hands against miners, against sheriffs, against judges, and who had declared themselves to be the only judges and the only supreme arbiters of the disposition of these men, that they were responsible for it.

Let us see the evidence. Your Honor, under the record



of this case today it stands confessed that the Mine Owners' Association were responsible for that deed. If anything has been proven in this case upon either side, it is the responsibility of Sterling and the men behind him for that act, and I want to call the attention of this court --

THE COURT: Which act?

MR. DARROW: The Independence depot; and I want to call the attention of this court to what is in evidence in this case. Mr. Sterling was accused. Mr. Sterling came a thousand miles at their behest; Mr. Sterling sat in this court room day after day; Mr. Sterling was called yesterday forenoon, in a weak bluffing manner by Mr. Hawley, and he was not present; and he came back in the afternoon and they rested their case without him. They confess in that every single allegation we have made in this case --

MR. BORAH: What are the allegations made against Sterling?

MR. DARROW: That he was the man who knew it, who was responsible for it. Let me call your attention to it, your Honor, -- first, Mr. Sterling had secret meetings with Harry Orchard at least fifteen or twenty times; Mr. Sterling the detective in charge for the Mine Owners' Association met him repeatedly at his room by night and had a conference with him, some of which were long, and which were witnessed at least fifteen or twenty times. Three witnesses have come here who have not yet



been arrested for perjury upon the statement of the most perjured villain who ever came into a court -- Harry Orchard, -- three have come here, Mrs. King and her daughter and the lady who kept the boarding house, Mrs. Fitzhugh. This man occupied the front room in the boarding house. He had a back entrance and a front entrance. Our proof covered three months by these three women, undisputed by any testimony in this case, and together they cover as much as fifteen or twenty visits of this man to that house in the nights preceding the 6th day of June. They did not see it all. This man came in unheralded; he went up the back stairs to Mr. Sterling's room, and they only saw him when they happened to see him, but at least fifteen or twenty times this man was tracked to that room.

Again, Mr. Scott admits that he had at least six or seven conferences with him. One witness puts Scott and Sterling in a room together with Orchard for two hours, two or three weeks before this happened. Other witnesses place them together. The clear inference in this case is that Harry Orchard was in constant consultation -- almost daily -- with some of these detectives connected with the Mine Owners' Association, presumably Sterling, -- certainly Scott and Sterling too. It was not casual, your Honor. There was no dispute of this evidence, and Mr. Sterling was here to dispute it if he could, and no jury could doubt it or will doubt it in this case.

But let us see what connects it so completely that



there cannot be any dispute about it. Harry Orchard swears that he put a keg of powder under this depot, or a box under it, on Sunday evening; and he went back from where he was camping about ten miles down the canon, and he and Steve Adams met and blew it up. Now let us see. He went from there about a mile down the road toward Colorado Springs and he there took his horse and rode away and has never been back since; and that Sunday afternoon he had seen Sterling,-- there is no direct evidence that he saw him on Sunday, but he had seen him at least twenty times that he had shown, and the last woman who testified swears she never saw him after the 6th but she had seen him recently, and at that time they were on most intimate terms; and the first time in the world that Harry Orchard ever saw Moyer, Haywood or Pettibone, according to his own story, he was given money by Scott and a ticket to go there, according to his own statement.

He was closely connected with Sterling, of the Mine Owners Association; it is a fair inference that he had only to -- that he had seen him only recently before he put the powder under the depot. Then what happened? He says that he blew up the depot. Who told him to do it? He had seen Scott and Sterling unquestionably more than six times. According to his own testimony he had reported the Florence and Cripple Creek derauling case to Scott and Sterling. According to his own testimony he had received their money, and the first time he saw these defendants he went with a pass procured by Scott. Dags are placed upon the



track. This question is undisputed: Some of them first followed the scene to the home of Benore, and Benore was a deputy in the pay and employ of the mine owners and the county, and that is undisputed. Another dog is placed on their track, and this dog follows directly down toward Colorado City, the track of Harry Orchard, and Ira Blizzard follows the dog down, and he gets down a mile or thereabouts to the pumping station, and the night is coming on, and he calls up Sterling and telephones him that he wantshim to send him some money and a rig because the dogs are on the right trail; and Sterling says, "No, call them off, we know who did it," -- "Call them off, for we know who did it." And they called them off and he met --

THE COURT: He stated who did it, did he not?

MR. DARROW: Yes, your Honor, I am getting to that. But that is what shows this beyond any sort of question, and he called them off, and the next day he met Sterling and he says, "Why did you call off the dogs?" He says, "Because we know who did it; it was Steve Adams."

Now, let us see what is left of Mr. Sterling and where the conspiracy is in this case. Steve Adams had left Altman in the afternoon on Monday. This statement was made on Tuesday. The dogs were called off on Monday night about dark, and Steve Adams had gone. There is not a syllable of evidence in this case to show that any human being ever knew that Steve Adams had anything to do with it excepting one, and that was Harry Orchard, --



nobody else. If Mr. Sterling had any evidence on earth to connect Steve Adams with this affair outside of Harry Orchard, it was for Mr. Sterling and the men he served, who came here and went away with their lips sealed, it was for them to tell this court and this jury what that evidence was, but they did not do it. Steve Adams was not there when the dogs were called off. There is nothing anywhere in this case to show that anybody knew it excepting the friend and the consort and the agent of Sterling, which was Harry Orchard, -- he knew it. How did Sterling know it? Is there any question how he knew it? There is just one place where he could have found it out, and that was from the lips of Harry Orchard. Can a court or jury draw any other inference from it? If there was any place, when a man is on trial for his life, and when another man is accused, it is up to that other man to tell the facts. Under the evidence in this case it must be plain that Sterling knew it on Sunday -- perhaps on Saturday, and that he knew it from Harry Orchard; that he knew Orchard was going away; that he knew the dogs were following him and he deliberately called them off. For what purpose? Because they had done more than they intended, and at least that there original plan to wipe out the Western Federation of Miners violated the law and defied every man charged with maintaining the law in that district that this plan might be carried out. He must have known it from Orchard, and the fair inference is that he did know it from Orchard, and he never could have heard it from Orchard excepting before it



happened, because Orchard went away, and Sterling had not seen him after it happened. Orchard was off on his way to Colorado City, and whatever information he got he got before he left. Now, I take it, it could not be thought of for a moment that this evidence is not competent, and I don't know that the court ever intimated that that evidence should be excluded, but if not, it is so woven up with the rest of this evidence, and it all bears so closely upon this theory that I think none of it could. The defendants being in complicity in blowing up this depot, they have got their witnesses upon the subject who they introduced and have shown all the circumstances to this jury which it seems to me unexplained are strong enough; nobody connected with it which would affect Sterling beyond a question if the case was submitted to a jury, and he went away without testifying as a witness in this case which proves conclusively; and then it would be intimated that they might deny it, but they cannot be permitted to prove facts and circumstances which clearly show that their denial is true.

And what followed after that -- the program straight on after that? These men, in the employ of the Mine Owners' Association -- there were all kinds of men, men who the mine owners would never dare take up and hang, -- thugs and gun men and the off-scouring of creation, as Captain Wallace said that one officer told him he had been sent to Denver to get the worst men there were and he got them and they were there, and immediately after,



in pursuance of their program, they commenced to drive out, in violation of law, every man who had ever shown any sympathy with the Western Federation of Miners.

Now, the acts afterward are as competent as the acts before. Let us see, your Honor. Of course I know that the court would give at least the same latitude to the defense that he would to the state. Under all the rules of law and the rules of humanity the latitude should be wider for a man to defend his life than for the state to take it away. What did they do as to acts afterward? Governor Steunenberg was assassinated on the 30th day of December. Immediately after, the first day of January, a lawyer was sent down to defend him; immediately after that Hoyer and Haywood took up the question of his defense and the conduct and acts of ~~these~~ these men which seem to me simply as natural as the day; they were seeking to defend Orchard in what they said and what they did after the crime was committed. These are perjured to the court and jury as incriminating facts and incidents to prove that they were connected with it -- with the death of Steunenberg. Whether it was before the fact cuts no figure; the only question is whether these acts tend to prove certain allegations and claims, -- that is all. If it is competent for them to show every act after Governor Steunenberg's death to cast discredit upon these defendants it is equally competent for us to show any act or circumstance which took place after any one of these alleged crimes, to charge the responsibility where we believe the responsibility should rest.



Now, what took place, your Honor? From the highest to the lowest,-- from the president of the Mine Owners' Association down to the most despicable kind of man who was taking his gold, there was a scene of lawlessness in the Cripple Creek district which I take it has shocked the world and shocked the civilized world. Inexcusable, which counsel not defend, and which no one can defend, in pursuance of their plain policy and plain purpose to get rid of this organization which was interested in getting more wages for men, they began sending men out, beating them, boycotting them, refusing them the right to live, forbidding the merchants to sell food and clothing to their wives and their children that were left behind. Are these incriminating facts which tend to show the general conspiracy in this case, and that what was done at the Independence depot, and what was done from the beginning to the end was done for the deliberate purpose of getting rid of the Western Federation of Miners,-- that our clients did not do it, but that their clients did? When you show that the mine owners, the citizens' alliance, and the militia having their headquarters in one building, all of them engaged in these illegal acts, all of them deporting men and maiming men and starving women and children, I wonder whether these are facts or suspicions. There could not be any bigger facts than these. They have introduced facts and beatings to charge up against us. Under what theory could we be prevented from showing facts of isolated beatings, to show the true cause of all this violation of law?



Now, as to the detectives. That is inter-woven with all the rest. Your Honor could not draw any line across this evidence and cut out this and leave in that. If so we would have to go over it from beginning to end and cut theirs more than ours. But is it competent? We have shown that from the very time Creherd was arrested it has been a detectives' case. We have shown that from Colorado to California everybody called into this court has been called by them,-- that there hand has been on it from the beginning. More than that, that before any of these acts of violence began they had their secret agents in every union in Colorado -- they had them in Telluride, they had them in Cripple Creek, they had them in Colorado City, they had them in Denver,-- they had them there for the purpose of fomenting trouble, and for the purpose of appealing to men upon the basis of brothers in a common cause, and urging them to commit violence and crime.

Now, what have we got as to that? Over there at Telluride they had a sweet-scented individual who has been made an officer of Idaho to guard this court of justice, and he became an officer in the Telluride union. He has been here in court day after day. He could have denied it if he would have dared, or anybody dared to have him. He was sent there as a Pinkerton detective; he was the chief man around the Tenboy mine where trouble originated and he was in charge of the books at the time.

THE COURT: Is there any evidence of that, Mr. Darrow?



MR. BARRON: Yes sir, Mr. Barnes testified to it. I will get the exact words if your Honor wants it. The evidence is that he asked Mr. Barnes to go into a scheme to blow up the mine,-- to go into a scheme to burn down the town,-- to go into all sorts of unlawful schemes with a view against the peace of the community. They did not want peace; they wanted war. And when Harry Orchard went down to Ouray, he and Harry Orchard met and had an hours conference, and that Barnes was introduced to Harry Orchard by him.

Over at Colorado City,-- or Globeville, they had another man named Gratias who was administering relief under the direction of the Pinkerton agency, conducting this strike, deliberately creating the impression over there that Bill Haywood was starving the children and starving the women and the people on strike. Talking violence -- the strike in Globeville conducted from Pinkerton headquarters -- an officer holding several positions -- chairman of the strike committee -- the whole affair conducted from Pinkerton headquarters. I want to know whether there is any rule on earth that would say this union could be responsible for that miserable Pinkerton detective who was conducting this strike, and that a jury could not know who he was and how he was acting. I take it that if there is any law for it, there is no justice for it. Even we are not made responsible for him. Is not every act in Colorado City chargeable as much to that miserable reptile as to anybody else? And you are going to charge him to us when you tell him what to do and



how to act, and when he was working for you and getting your cash? I take it that the proposition is absurd, that we haven't the right to show it as we have shown it and that it should be eliminated in this case excepting to show that the jury may consider that to show who was responsible for the acts and utterances at that time.

And then we come back to Cripple Creek and who do we find? A man named Bakeman who together with Harry Orchard reported the attempted wrecking of the Florence and Cripple Creek train -- a detective who incited to acts of violence. Mr. Davis explicitly testifies that after the explosion in the Vindicator Bakeman says to him, "Let us go down and blow up the whole mine." He was their man. Whatever was done was at least partially due to Bakeman, and can your Honor say that Haywood should be charged with the acts of Bakeman when Bakeman was on the payroll of the Pinkertons? I take it that it could not be thought of.

And another -- Floyd Thompson, put in the bull pen, says that Riddell was put in the bull pen. These miserable agents of Pinkertons, not invaded these unions and made incendiary speeches and directed the conduct of the strike, but were deported with the men -- sent away to be confined with the rest of the men so that they could carry their poison and their slime to the bull pen with the rest of the lice and the vermin that congregate in such places; and Mr. Thompson was in the bull pen, and when he

got out he was secretary of the Mine Owners' Association; and while they were there Thompson said, "As soon as we get out we ought to kill all of these S. L.'s who sent us here." Maybe somebody did it on Thompson's account. But is your Honor going to charge it up to Haywood? Haven't we got the right to show who Thompson was, who he was working for, that he was on your payroll, and that the strike was conducted by you? I don't see how there can be any question about that.

We have a right to show that somebody else did every one of these acts. They have no right to charge us with what was done by themselves. We have a right to show where each individual was, as well as we could, and we have proven in this case that, scattered all through these men, were the agents of the Pinkerton detectives. We have proved the character of their utterances, and we have a right to argue not only the utterances we have proved but the probability of many more we could not prove, and the work of many more who have not invaded this court house and there to go upon the witness stand as our witnesses. In this case from beginning to end -- from beginning to end it has been a Pinkerton case, and to not show their connection with this case would be not to show this case, your Honor.

Now, I take it that this jury should have a right to fix the full responsibility where it is; that they should have a right to say who was guilty of these acts. We did not introduce that, -- they did. We objected to going to Colorado to prove a



case in Idaho; we objected to going back to '99 when our men were obscure miners, to fasten guilt upon them for something that occurred six years later; but, your Honor, without criticising, for there is plenty of law to justify, although it is dangerous, there has been scarcely a fact or a circumstance, however isolated that could tend in any way to connect these defendants, that has not gone into this record.

It has been said that Steve Adams away down here at Ogden in 1903 received a paltry \$75. when he was in jail, and that is a fact and circumstance for this jury to consider to show that Haywood was guilty of the murder of Steunenberg.

It has been shown that the blowing up of the Lunker Hill and Sullivan mill six years before was a fact and circumstance.

Now, your Honor, I say that it is impossible for one side to pick out the facts and circumstances which they believe incriminate us and that we could not prove those facts and those circumstances which we believe, and which by a fair inference, show that our men are not guilty of what is charged against them,-- that we cannot show that was the purpose of blowing up the Independence depot. Clearly that is an issue in this case, the most serious one in this case. They claim that the purpose was to assist Meyer and Haywood in some alleged attempt. They could have proven the fact that transpired afterwards just as well as before in pursuance of that purpose. We claim that it was a purpose to destroy the union and get rid of them forever, and we have a right to prove every fact and circumstance which in any

way tends to prove that issue, and let the jury decide it.

Your Honor, all this evidence is here. We believe that some of it conclusively shows that these defendants were not responsible, but at least that it has that tendency, that there are facts of large size, and most of it having that bearing, and we think it is for the jury to pass upon that and give it such weight as the jury sees fit -- we believe that is the right of this defendant who is charged here with murder and his fate is resting in the hands of a jury.

MR. BORAH: May it please the court --

THE COURT: How much time do you require, Mr. Borah?

MR. BORAH: I cannot say precisely. There is some little territory to travel over.

THE COURT: If you prefer, we will suspend here and come in at half past one.

MR. BORAH: I can proceed now, or I can come in later, -- which ever is satisfactory to the court.

THE COURT: I think we will suspend here then until half past one.

Thereupon a recess was taken until 1:30 o'clock P. M.

R E C E S S.



Boise, Idaho, Thursday, July 13, 1907

1:30 o'clock P. M.

Parties not pursuant to adjournment.

(The jury not present).

MR. BORAH:

May it please the court, the counsel for the Defense in the opening of this case to the jury stated that it was the purpose of the Defense to prove what they chose to call a counter-conspiracy and to establish to the satisfaction of the court and the jury that the crimes, none of which had been alleged to have been committed by other parties in the state of Colorado, were committed by members of that conspiracy. At the time of the opening upon the part of the Defense it was not clear to the State just the scope and the object and the purpose of that conspiracy. It was perhaps due to our lack of knowledge of the situation; but, as I take it now, it is the contention of the Defense that there has been evidence introduced sufficient to establish the existence of a counter conspiracy composed of the mine owners, the Pinkertons and the Citizens' Alliance, and that this conspiracy had for its object and purpose the driving out of the Western Federation of Miners from certain mining districts in the state of Colorado; and that these crimes, none of which are alleged to have been committed by the parties, were in fact committed by this conspiracy or members thereof as an incident to the work of driving out the members of the Western Federation of Miners. Now it must be admitted, I presume, in the inception of the argument, that this conspiracy does not cover in its scope

nor has it covered in its connection the Vindicator explosion. I do not understand either that they claim that the conspiracy had anything to do with the accomplishing of the death of Lyte Gregory. If I understand their contention correctly, they don't claim that this conspiracy has anything to do with the attempt to kill Gabbert the result of which was the accidental killing of Walley, or that it had anything to do with the attempt upon the life of Goddard or the attempt upon the life of Bradley, or anything to do with the attempt upon Feabody, or the killing of Governor Stansenberg. In other words, they claim, as I understand, that the Vindicator explosion was the result of an accident, that it was not the result of premeditation upon the part of anyone, that it was not an agreement at all; that these two men met their deaths by reason of an accident due perhaps to their own carelessness. I understand also that the contention is that Lyte Gregory was killed by reason of the personal difficulty between himself and other parties; that the men, in other words, who had the motive and the reason for taking the life of Gregory were not members of this alleged conspiracy and that his death was the result of an affray or a difficulty between himself and certain members of another organization, which organization was in no wise connected with their alleged conspiracy. I do not understand either that there is anything claimed with reference to it as to Gregory or Gabbert or Goddard. I understand also that the contention is that the Bradley matter was purely an accident, that perhaps the milk poisoning may never have happened, at least it was in no wise connected with the conspiracy, and so far as the explosion at the house of Mr. Bradley was concerned



that it was a pure accident, that is a gas explosion. We have to start out with the proposition then, as we understand the scope and object of this conspiracy and its work, with the proposition that it had to do alone, so far as the crimes charged here against the defendant and his associates are concerned, with the Independence depot. It is the only offense in which, as I understand, they have undertaken to connect directly to is a conspiracy or rather to connect the conspiracy and its work to the offense. Now, if your Honor please, I submit the proposition that when "A" is charged with killing "B" that it is perfectly competent for "A" to show that "C" in fact killed "B" and not himself, and I take it was upon that rule well established that the court admitted this testimony upon the theory that it would be at the proper time properly connected by competent evidence so that the court could permit it to remain for the consideration of the jury. In other words, it was stated in the opening address and stated during the time that the evidence was being introduced upon questions coming from the court that the connections would be made which would disclose the existence of a conspiracy and the work of the conspiracy after its existence was shown to be. In view of those statements the counsel were permitted to introduce a certain line of testimony which in my humble judgment was competent to prove the existence of a counter conspiracy. I haven't any doubt at all but that they had the right if they could do so by competent evidence to show the existence of a conspiracy upon the part of the Mine Owners, the Pinkertons and the Citizens' Alliance and to show that that conspiracy did in fact commit these crimes. But I want the court to understand that our

contention is that they have never shown that fact by any competent evidence or any evidence known to the rules of law. We are not going to argue the case against the position taken by Mr. Barrow that they hadn't the right to do these things, that they are not permitted to do these things. The position which we take is that they have not done so by any evidence which the courts have held to be competent for that purpose. Take, for instance, the proof of the conspiracy in the first instance: The court permitted them to introduce the declaration of Sterling, the declaration of Scott, the acts of the Citizens' Alliance in GrippleCrack, the acts of the Citizens' Alliance in Melluride, and so forth. For what purpose? For the purpose of showing the existence of a conspiracy and for no other purpose. But ~~there was another thing they had to do after they brought into existence that conspiracy, and that was to show by competent evidence that the conspiracy committed the crime. In other words, the declaration of Sterling and the declaration of Scott and the declaration of any member of that conspiracy would be admissible as against the other members of the conspiracy for the purpose of proving its existence, but that is not admissible as against the State of Idaho for the purpose of showing that they further committed that crime. They must show that by other kind of evidence. For instance, suppose that "A" is charged, if your Honor please, with the killing of "B". Now the law is, as I say, that "A" may proceed to show that "C" killed "B" but how must he show it? He can show that fact, not by bringing into court "P", who testifies that "C" said that he killed "B", because it is hearsay pure and simple. And they cannot bring~~



Blizard here who testifies that Sterling said that so and so did so or that they killed those men or had anything to do with it. Why? Because it is hearsay pure and simple. It is an extrajudicial statement which the state is not permitted in any way to meet, and it is that class of evidence which we claim has universally been excluded in this kind of a matter. To illustrate again: If they have shown the existence of this conspiracy, which we are assuming for the sake of the argument now only, they could put Scott upon the stand, they could put Sterling upon the stand or any other member of that conspiracy and prove what they did. But they cannot bring Blizard, whom they do not claim to have been a member of it, they cannot bring some outside party whom they don't claim to have been a party to the conspiracy, and show that someone else said that they did thus and so. Why? Because the declaration of a co-conspirator is never binding except as against his co-conspirator. It is not binding as against a third party. It is hearsay as to every one else on earth except his associates and co-conspirators in crime.

I desire, if your Honor please, to call attention in this connection with the rule which we claim to be well established in this respect. Now the counsel cited this morning from Wigmore on Evidence, from the text in which the professor has some views in regard to the matter, and cites fourteen authorities, two of which support him and twelve of which do not. And from the authorities which support him the counsel have read the 18th California and one other which was read to the court, there being also another authority from the United States Supreme Court

to which I call your attention. Now Wigmore says:

"If 'X' is charged with homicide committed by himself alone and it is shown in disproof that 'Y' did the killing, 'X' is clearly exonerated, for the fact that 'Y' has done it is insulated with and exclusive of 'X's' guilt.

With that we are in consonance. With that we find no fault. Threats are perhaps the commonest kind of evidence offered for this purpose. The rulings differ widely in their effect; but in general a wholly unnecessary strictness is shown, and the liberal attitude of some courts in this respect toward accused persons is in singular contrast with the usual tenderness otherwise often exhibited.

A motive as evidence is perhaps not of such value as a threat; yet courts seem more inclined to receive it. There is no reason for requiring that it be coupled with other evidence in order to be admissible."

That is a statement from which counsel read this morning, and I desire to call attention to the authorities there cited to see if they bear out that proposition.

THE COURT: That is proof of motive alone.

MR. BORAH: Yes, proof of motive or proof of threats or proof of any acts and declarations which are in the nature of hearsay.

MR. DAWSON: No, motive or threats standing without anything else, isn't it?

MR. BORAH: That is your contention but I was simply



stating my position. Our position, if your Honor please, that it is hearsay; that you may show, for instance, to take as an illustration here -- it is perfectly competent for them to show the circumstances surrounding the blowing up of the Independence depot. They may show what the conditions were there at the time by parties who would come upon the witness stand and testify to them. They might show the presence of parties who saw the others, as they did in the Kentucky case where the evidence was admitted; but what I maintain is, if your Honor please, that they could not bring a party here who would testify to what somebody said about the matter, as they did in their effort to connect Sterling and the Mine Owners' Association in this matter.

MR. DARRON: May I just ask you a question about that? I don't like to interrupt you, but --

MR. BONNEY: Yes sir. You don't interrupt me at all.

MR. DARRON: To prove the conspiracy on the part of the defendants there is no question but what you could introduce a third party to testify that any one particular man had made a statement. That is, anybody may come in here and say that they heard Mr. Pettibone or heard Mr. Haywood say certain things that tend to prove a conspiracy; but you can't get anybody else to come in and prove by him that he heard that certain persons alleged to be in a counter conspiracy made those statements. That is your position, isn't it?

MR. BONNEY: No, that is not my position. I wouldn't want to invoke that rule of law upon the defendants in this case. You couldn't bring in here a third party and prove what Mr. Pettibone said to prove the existence of a conspiracy between Mr. Haywood and Mr. Pettibone.

MR. DARRON: Suppose you had a third party to prove what Mr. Heywood said?

MR. DONAH: Yes, because Heywood is upon trial and that is not proving the declaration of a co-conspirator.

MR. DARRON: Suppose the conspiracy -- you introduce proof of a general conspiracy <sup>then</sup> ~~and~~ you may prove the declarations of a co-conspirator, can't you?

MR. DONAH: No sir. You can only prove the declarations of a co-conspirator when they are made in pursuance of the conspiracy and carrying out the object and purpose of the conspiracy.

MR. DARRON: That is right, of course.

MR. DONAH: And you cannot bring into a court room a third party and introduce the declaration of Mr. Moyer or Mr. Heywood or Mr. Pettibone or Mr. Simpkins or anyone else against this defendant.

MR. RICHARDSON: After it is completed.

MR. DONAH: You can't do it at any time so far as the declaration is concerned, as was ruled out this morning in the Steve Adams matter. You may prove the acts and declarations of the parties while they are in pursuance of the object and purpose of the conspiracy, but you could not prove that Mr. Pettibone said, for instance, that he did commit certain crimes, that we did blow up the Independence depot. It would only be a declaration against Mr. Pettibone when he was on trial, and that is the reason why I presume the court ruled out the declaration this morning that Mr. Pettibone made to Mr. Orchari.

MR. RICHARDSON: Wouldn't that be because it is the



recital of a past event, completed event? Isn't that the reason he rules it out?

MR. BORAH: I don't understand so. I don't understand that Mr. Haywood would be bound here by what one of his parties said or did as to having accomplished a certain crime unless it is shown that that is in pursuance of the commission of that crime or carrying out the object and purpose of the conspiracy. Now when Mr. Sterling -- we will say that he was a member of that organization. If any member or any accomplice or co-conspirator of Mr. Sterling's was upon trial, any act or declaration of his made in pursuance of that conspiracy would undoubtedly be competent evidence; but in a contest between the state of Idaho and this defendant they put upon the witness stand Mr. Blizard who says that this man down in the state of Colorado in an extra-judicial way, stated that they did do certain things. Now how could there be any more complete evidence within the rule of hearsay than that proposition. Just as is said in the authorities which I cite here, they might put upon the stand a member of that conspiracy who may testify to what they did. They may put upon the stand the man who committed the crime or they may put upon the stand the man who saw the other man commit the crime and prove it, but they cannot put him upon the stand and prove what another man said that he did with reference to committing the crime and that is where they have failed to connect their case in this particular transaction. We will admit, for the sake of the argument, that they have proven the existence of that conspiracy that is a matter we will argue to the jury, if we have to go there -- we will admit that the Mine Owners and these parties

were an entity in the state of Colorado bound together by criminal purposes. But after that is proven that any declaration upon their part is not binding upon the state unless you get it as first evidence and not as hearsay. I don't know that I make myself plain to the court, but perhaps if I read some cases here that I may be able to do so. Now in the case cited by counsel --

THE COURT: I understand you, but I would like to hear the authorities.

MR. BONAH: In a Georgia case the court said:

"Another ground in the motion for a new trial was the court refused to permit the witness for the accused to testify to the fact that on the night of the homicide Tom Hunter told him that he, Hunter, had killed the deceased in self defense and that Robinson was not implicated in the killing. Such testimony was not admissible. The exact question was decided in Lyons vs State, 22 George, 299. There two persons were jointly indicted. Upon the trial of \_\_\_\_\_ he sought to prove that his co-defendant had knowledge that he alone committed the crime, the offense. The trial judge excluded the testimony and this court sustains this ruling."

Of course Tom Hunter would have been a competent witness himself on behalf of Robinson upon the trial. But the declarations of Hunter, merely hearsay, to have admitted them to acquit Robinson would have been, as said in this other case recognizing a principle which would tend to defeat the ends of justice.

Now, suppose, if your Honor please, that we admit, as I



have said, that the conspiracy is in existence. It then became an individual. It became an entity of itself just the same as an individual. And suppose instead of trying to show that a conspiracy committed this crime they had been trying to show that Mr. Carlton, the president of the Mine Owners' Association, committed it, or that Mr. Sterling committed it. Suppose they had been trying to show in this case that the individual committed this crime. Could they have brought here Mr. Ellard who said that Sterling said he committed the crime? The point at which they failed to prove the case and make the legal connection with they were under obligations to do was after they had shown the existence of the criminal person, to show by competent evidence what that criminal person did. Now the declarations of Mr. Sterling were admitted for a certain purpose and the evidence was admitted for the purpose of showing the existence of the conspiracy which they had to build up. But it was not evidence against the state of Idaho because it was pure hearsay and the only way that they could do was to bring a man upon the witness stand who knew what they did, who would testify to it and give the state an opportunity to cross examine, to prosecute him for perjury if he was guilty of it, and to take any other steps that litigants have to protect themselves against false testimony. And there is where in my judgment the counsel has failed to meet the rule in this case either in the argument or in the putting in of the evidence before the court. He complains that we did not put Sterling upon the witness stand. Well, now, when he got this criminal conspiracy in existence he did not need to put Sterling on the stand, but it would have been the legal

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and proper thing for him to do, or Scott, or some member thereof, because what any of them said as against us would have been mere hearsay.

A case which is cited by Mr. Wigmore and criticized by him, I desire to read. It was a case in which a party was tried for murder and it was shown that another party threatened to kill the party who was killed, his feeling toward him, is illwill, and so forth, showing the relationship, as explained by counsel, which they had a right to show, of this conspiracy toward these particular parties.

"The only plausible ground for the admission is that as the accused may exculpate himself by showing that another was the guilty party, so any item of evidence which would have been admissible had such other person been on trial, should have been received in his favor. We concede the premises but not the conclusion, for under the rules of evidence it makes a vast difference whether the declarations offered in evidence come from the party on trial or not. In the one case they are universally admitted unless irrelevant or self-serving; in the other they are by general rule excluded subject to a few well marked exceptions."



This is from the 7th American Criminal Reports, page  
57:

"In 2 Best on Evidence, section 508, under the head of 'Res Inter Alios Acta', it is said: 'No person is to be affected by the words or acts of others, unless he is connected with them, either personally or by those whom he represents, or by whom he is represented.' Were this a civil suit in favor of Dr. Zink against the same defendant, for the same assault, would it occur to anyone to offer the declarations of Dougherty that he intended to do the act, or even that he had done it? Is it any less a matter inter alios when the state is a party? In either case it would be a legitimate defense that another person had committed the deed; but in neither would his threats alone be admissible.

Now, to illustrate some of the reasons for such distinction we will add that where the threats of the one on trial are adduced against him, he is always present in court to deny or qualify them. To show that the witness misunderstood, misheard or was false, or to explain how the threats were in a transient fit of anger, or from mere bravado, or for intimidation; but where the threat of a third person is introduced he may be far away, and no one can explain its real meaning; and besides, the very introduction of such collateral issue serves greatly to confuse and mislead the triers, and justice may thereby be defeated. And if the jury were to pass on the collateral issue, it would have no

other effect than to acquit the one on trial. The third person could know he in no wise legally affected. If he should afterwards be indicted and put on trial for the same offense, he would still be at full liberty to show his innocence, notwithstanding the fact that the former finding of his guilt caused another's acquittal. And so, if he had previously been tried and acquitted, that fact could in no wise affect the admissibility of his declarations when afterwards another person is on trial for the same offense, for the latter would be no party to the verdict. It is therefore going far enough in favor of the accused to allow him to exculpate himself by showing the fact of another's guilt, by some appropriate evidence directly connecting that person with the corpus delicti. The crime of a third person is no defense, and by itself, it cannot prove the ultimate fact which is a defense. Even as to the threats of the person on trial, Wharton, in his *Criminal Evidence* (8th Ed.), section 756, says: 'They' are admissible in evidence, not because they give rise to a presumption of law as to guilt, which they do not, but because from them, in connection with other circumstances and on proof of the corpus delicti, guilt may be logically inferred.' Then follows a list of informative suppositions, designed to show that because one threatens to commit a crime it does not follow that such intention really existed in his mind; much less does it show the actual commission of the crime.



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Nearly all treatises on evidence contain similar cautions. In 3 Benth. Rep. Jud. Ev., 78, it is said that 'declarations of an intention to commit a crime are no less susceptible of being false than declarations of the opposite cast, namely, declarations of an intention to abstain from the commission of that or a similar crime.'

We insist, therefore, that it is reasonable to exclude the mere disconnected threats and declarations of third persons. If they are parts of the res gestae, or form links in a chain of evidence connecting with the crime itself, they may doubtless be received. If the threats were to commit a crime in a particular mode, and it was in fact so committed, perhaps they would then be admissible. But in the case under consideration there is nothing at all to show that the thing threatened had any sort of resemblance to the thing done, either in kind or in mode.

But if we suspend our discussion of the principles which ought to be applied to the questions, and pass to the consideration of the decided cases as found in other jurisdictions, we shall find the ruling of the court vindicated, not simply by the preponderance of judicial authority, but by absolute unanimity, save in one case in Louisiana, which, for reasons to be suggested hereafter, can have little weight in the opposing scale. We will first cite cases precisely analogous to the case at bar, in that threats of third

persons, prior to the commission of the crime, were offered in evidence by the accused and excluded; but the threats, instead of being vague and indefinite, as in the case at bar, were generally very specific and significant.

The case of *State vs. Davis*, 77 H.C., 433, was an indictment for murder. On the trial the prisoner proposed to prove by one Peak that 'George Nicks has malice towards the deceased, and had a motive to take his life, and had opportunity to do so, and had threatened to do so before the court.' (2) he further offered to prove by one Nise 'that one Peak took a gun, and went in the direction of the house of the deceased some time before the deceased was killed'. The court says:

'Both exceptions are untenable, and have been repeatedly so held by this court, -- the first because they are declarations of a third party and are res inter alios acta, and have no legal tendency to establish the innocence of the person; and the second for the same and additional reason that the time is too vaguely and indefinitely set forth. Such evidence is inadmissible, because it does not tend to establish the corpus delicti. Unquestionably it would have been competent to prove that a third party killed the deceased, and not the prisoner. But this could only have been done by proof connecting Peak with the fact; that is, with the perpetration of some deed entering into the



crime itself. Direct evidence connecting Beck with the corpus delicti would have been admissible. After proof of the res gestae constituting Beck's alleged guilt had been given, it might be that the evidence which was offered and excluded in this case would have been competent in confirmation of the direct testimony connecting him with the fact of killing. No such direct testimony was offered here. It is unnecessary to elaborate, as the questions of evidence here made have been fully discussed and decided by this court in many cases. \* \* \*

Now, if your Honor please, what is the evidence in reference to Sterling? The evidence with reference to Sterling, and that is the line of connection which I understand the counsel claim to exist here, is that he had certain meetings with Mr. Orchard -- the only evidence in regard to that is that Orchard and Sterling met. The next evidence with reference to Sterling is the fact that after the Independence depot had blown up and the crime had been accomplished that they put some bloodhounds or supposed bloodhounds upon the track of these parties and that Mr. Sterling said that they should be called off because he knew who had committed the crime and finished it by saying that Steve Adams did so. Now the first act is an act which is in no way in the world by any evidence in this case connected with the Independence depot. There isn't a scintilla of proof that Orchard and Mr. Sterling ever mentioned the Independence depot or any-

thing relative to it. They simply prove the naked bald fact that two men, one of them Orchard and the other Sterling, met. What they said is not proven, no connection made with the Independence depot at all, but a single act of a third party. Then they proved that after the crime had been committed that Mr. Sterling made a declaration with reference to -- not even so much as the nature of a threat, not so much as the nature of a confession, not so much as the nature of an admission, but he knew who did it and that Steve Adams accomplished the crime, and so continuing with Sterling's testimony, it is composed entirely of hearsay statements and declarations to a party with reference to the matter and does not even reach to the measure of proof of connecting him directly with the offense. Now they could undoubtedly prove, as I said a moment ago, what Sterling did. They could either put Sterling upon the stand or they could put Orchard upon the stand, or "A", "B", "C", upon the stand, and show that Sterling did something in the way of committing that crime, that he was there at the time, that he had to do with carrying powder to it or anything of that kind. They could show his legs. But what we contend is that they have shown but one thing in this case in regard to this matter, and that is the declaration of a man who they say was a member of a conspiracy, and ~~show~~<sup>who</sup> for the purpose of the argument we admit was a member of the conspiracy.

This case, if your Honor please, refers to some ten or fifteen cases.

HIS COURT: What case is that?

MR. MORAN: This is the case of the State vs. Beaudet,



but reported in the 7th American Criminal Reports. I am not going to read it all. It consists of some fifteen or twenty pages, referring to all of these cases practically ~~and~~ except the cases which have been decided since that time.

THE COURT: What is the page of that?

MR. BORAH: Beginning at 84, and the result of that holding is, the result of the decision is, after reviewing these authorities, they say, the only competent evidence of another person having committed the crime is some proof of the act of the party, not by hearsay testimony but by someone who saw the act or someone who states in the presence of the court that he committed the act.

MR. RICHARDSON: That was not a conspiracy case, was it?

MR. BORAH: No, it was not a conspiracy case, but I take the position and will explain myself again for the benefit of counsel that when the conspiracy was proven to be in existence and its existence was shown that then the acts and declarations of these co-conspirators as against the state of Idaho would be entirely hearsay just the same as if it was an individual instead of a conspiracy, and that the only purpose for which the declarations of these parties could be proven was to build up the conspiracy and that their acts thereafter were hearsay, and the only way they could prove it was by some member of the conspiracy or by some other party who saw some member of the conspiracy in the act of committing the crime.

"The admission of a third person that he committed the offense with which the accused was charged, not made under oath, though on his death bed, is mere hearsay,

and is not admissible as evidence for the accused."

West vs. State, 76 Alabama, 88.

"No rule is better established than that the extrajudicial statements of third persons with reference to their being implicated in the crime are inadmissible. Defendant was charged with murder and offered to prove that another person had threatened to kill the deceased, and after the death of the latter admitted that he had committed the crime. It was held that the evidence was hearsay, and rejected."

Now, if the conspiracy, if your Honor please, which they state so to have been in existence of the mine owners and the Pinkertons and all the other people on that part of the country apparently at that time, had passed a resolution in their assembly that they were the party that committed that crime it would not be admissible here as against the state of Idaho until they had brought some party here who was there to testify to that fact. In other words, they could not bring Mr. Blizzard here and prove that they had passed that resolution, because that would be hearsay.

MR. DARROW: Suppose Meyer, Haywood and Pettibone had passed that resolution: Couldn't you prove it?

MR. BORAH: We could not prove that by the third party, no sir. We could produce it against Mr. Haywood, the man upon trial, and that is all.

MR. DARROW: There is nobody else to prove it against.

MR. BORAH: It is admissible on the ground that Mr. Haywood is upon trial and not because it is the declaration of a



co-conspirator or the declaration of the conspiracy, but it is admissible upon the ground as an admission upon the part of the defendant and not under the rule which I am seeking to invoke in this case, and we could not prove it as a declaration of the conspiracy nor as the act of the conspiracy. We could only prove it against the defendant in that case because it was against the defendant and binding upon him. We could not prove that Pettibone had said they had passed the resolution, we could not prove that Hoyer had passed the resolution, nor we could not prove that Jack Simpkins acted there, as counsel states, unless we bring it home to the defendant in this case, as we did Jack Simpkins' telegram, and that is the way these things are admissible, not because they are declarations of a co-conspirator but because we have brought home to the defendant in this case that he is the man that received this telegram and acted upon that and is not a co-conspirator, and it is in the nature of a commission of crime and not in the nature of a co-conspirator in any sense at all. The rules are distinct and separate and they are entirely different subject matters in this discussion.

Now, if your Honor please, they introduced another line of evidence to connect Sterling. They put Blizzard upon the stand and one or two other witnesses to show some dogs down there and for the purpose of showing that Sterling, a member of this conspiracy, or some other member of this conspiracy, Al Emore, a deputy sheriff, had something to do with it. They put those dogs upon the trail and sent them after the criminals and they went to Emore's cabin, and then they brought them back and started them upon the trail and they went down the road the way

Orchard went. Although Orchard went a horseback it was no trouble for these dogs to follow his trail.

MR. DARROW: Orchard left his horse a mile away -- I don't want you to go wrong, that is, he says he did.

MR. BOWEN: The dogs didn't seem to know just where he left his horse, so they continued on down for eight miles.

MR. DARROW: He said the dogs put it about the same, so probably Orchard told the truth.

MR. RICHARDSON: The jury have to judge of the dogs and their ability.

MR. BOWEN: No, that is where I am going to make a remark or two. Now there was a time in the civilization of America when bloodhounds were supposed to be competent witnesses. That was largely before Abraham Lincoln signed the Declaration of Independence.

(Here someone suggested the Emancipation Proclamation.)

MR. BOWEN: I mean the Emancipation. Well, it was the declaration of independence for the negro. That theory has been largely abrogated, if not completely so, by the courts since that time. And in the first place I desire to call your Honor's attention to the rule which prevailed in that southern clime where the dogs were supposed to be competent witnesses. Now the counsel stated when they introduced these dogs that the time had to come when they would show that they were complete and that they were trained and that they could pick out a scent of a certain man who had been upon the ground at two o'clock in the morning after a thousand people had been upon the ground at seven o'clock in the morning. That is the situation, that is the fact



in this case. Some men went there at two or three o'clock in the morning, pulled the wire which touched off the explosion, and the next morning some thousand people were upon the ground, going over the ground, toward noon the dogs arrived and it was no trouble for them to select the man who had been at that particular spot, although it appears that the entire ground had been gone over and those parties present had been searching in every nook and corner for some evidence as to who committed the crime.

MR. DARROW: Haven't you got your facts mixed there?

MR. BORAH: If I have, I will be awful glad to have you straighten me out.

MR. DARROW: I don't do it for any other purpose than good will.

MR. BORAH: I understand that, and that is the reason I turn you loose.

MR. DARROW: Really the fact is they ran a wire or rope around it and guarded the chair rung and everything in that connection early in the morning and guarded it until the blood-hounds got there.

THE COURT: Who testified to that, Mr. Darrow?

MR. DARROW: I won't say at once, but I will show you the sheriff, Robertson, guarded it, stretched a rope around it and guarded it all day. I will tell you who testified to it, Collins, the boy Collins, who lived right close by. I will tell you how he testified to it, if your Honor please, if you will permit me to get the testimony.

MR. BORAH: There is no evidence to show that it was

guarded in the sense that the situation was protected from other parties.

THE COURT: As I understand, the boy that lived right close to the depot went up at seven or eight o'clock in the morning?

MR. DARROW: Yes.

MR. BORAH: And went home and stayed there.

MR. DARROW: The boy was one, but there was one other whose name I cannot recall this moment.

THE COURT: My recollection is that it was someone who went met Mr. Besore some time late in the day or late in the morning.

MR. DARROW: There were two, one got there early, as I recall it, and there was a rope stretched around and they were kept away from it for a considerable space.

MR. RICHARDSON: If there is any evidence on it at all I do not see how it could be a matter for the court, if there is any evidence on that subject.

MR. BORAH: There isn't any evidence.

MR. RICHARDSON: That is where we differ, of course.

MR. DARROW: I will get the record, if your Honor wants it, and bring it in the morning or go after it now.

THE COURT: If I think it becomes material I will either look for it or notify you.

MR. BORAH: I desire to read a few paragraphs from the case of *Trudigo vs. Commonwealth*, cited in the 42nd L.R.A. "The defense relied on was an alibi. The two women, Fannie Hogan and Pearl Crumpton, testified that appellant and his co-defendant,



Wilson, were in their company all the evening until the time of the fire, and there was other corroborative testimony to the same effect. Upon cross examination the witness Hogan was asked, " -- that goes off on another matter.

"From the statement of facts it is evident that the most important question is whether the testimony in regard to the dog and his actions was competent. On behalf of the Commonwealth, it was urged that this testimony was admissible for what it was worth, as one of the circumstances pointing to the guilt of Appellant. On the other hand, it is insisted with great earnestness that, while evidence concerning the tracking of human beings by dogs has been sometimes acted upon by juries, it has never been admitted as competent in the courts of any state except one, and in that one under conditions which did not exist in this case. That, if admissible at all, it is admissible solely upon the ground that it is expert testimony; and that no evidence was offered or admitted that the dog in question was qualified or had been trained to track human beings, or that he was in fact a bloodhound. The only cases upon this subject to which we have been referred, or which we have been able to find, arose in Alabama. In the case of Hodge vs. State, 98 Alabama, 10, upon a trial for murder, it appeared that on the night of the killing, just after it was done, several witnesses went to the place, and discovered in close proximity to the house man tracks. The tracks were

sufficiently marked to be easily followed, and were followed by several of the witnesses up to or very near to, the house of defendant. One of the witnesses, while on the stand, was asked the following question: 'If he had, at the time he was searching for tracks, a trained dog for tracking a man?' Against objection, the witness was permitted to state that he did own such a dog; that, when the tracks were discovered near the house of deceased, he got his dog, and put him on the tracks; and that the dog, after taking the trail, followed the tracks, and went to defendant's house, being followed by the witness. Said the court in that case: 'It is common knowledge that dogs may be trained to follow the tracks of a human being with considerable certainty and accuracy. The evidence in this case showed that a dog thus trained was, within a very short time after the homicide, put on the tracks of the person towards whom all the circumstances strongly pointed as the guilty agent, and that the dog, as if following these tracks, or 'trailing', went to the house of the defendant.' There was other evidence showing that measurements were made of the tracks at various points along the route, and they were identified at each point as having been made by the same shoes as were the tracks at the place of the murder; and it was held that 'the fact that the dog, trained to track men, as shown in the testimony, was put on the tracks at the scene of the homicide, and 'taking the trail',



so to speak, went thence to defendant's house, where he (the defendant) is shown to have been that night after the killing, was competent to go to the jury for consideration by them, in connection with all the other evidence, as a circumstance tending to connect the defendant with the crime.' In a subsequent case in the same court (Simpson vs. State, 111 Alabama, 6) upon a trial for arson, there was evidence introduced tending to show that the defendant was tracked by bloodhounds which had been put upon his track a short time after the building was burned. The owner of the dogs, (which were known as bloodhounds) testified that he had trained them to track human beings, and that they would not leave the track of a person, after they had once been put upon it, to follow another track. On cross examination an attempt was made to weaken the effect of this testimony, by asking the trainer and owner of the dogs if he had not trained certain bloodhounds kept at another place, of the same stock and breed as the dogs concerning which he had testified, close onto two years old, and if he did not know that they had recently been put on a human track, and had quit the track, and had gone off and killed sheep. In this case the court held: 'The court properly excluded from the jury the proposed evidence as to two blood hounds of the same breed as those employed to track the supposed criminal in this case, and trained by the same man, being put upon the trail of a human

being, and leaving it to trail sheep, which they overhauled and killed. The test by comparison was not sufficiently certain to determine the reliability of the dogs employed here by reference to the qualities of the other dogs.'

It is difficult to lay down a general rule as to the introduction of testimony of this kind. It is matter of common knowledge of which courts are authorized to take notice, that dogs of some varieties (as the bloodhound, fox hound, pointer, and setter) are remarkable for the acuteness of their sense of smell, and for their power of discrimination between the track they are first laid on and others which may cross it; but it is also a matter of common knowledge that all dogs do not possess this power in the same degree, and that some dogs of purest pedigree prove worthless upon trial. It is stated in the *Encyclopaedia Britannica* (Title "Dog") that 'the blood hound, regarded by many as the original stock from which all the other varieties of British hounds have been derived, is now rarely to be met with in entire purity. Its distinguishing features are long, smooth, and pendulous ears from eight to nine inches in length, full muscle, broad breast, muscular limbs, and a deep sonorous voice. The prevailing color is a reddish tan, darkening towards the upper part, and often varied with large black spots. It stands about twenty-eight inches high.' It is stated in Webster that the bloodhound was formerly



used for pursuing runaway slaves, and that 'other varieties of dogs are often used for the same purpose, and go by the same name. The Cuban bloodhound is said to be a variety of the mastiff'.

After a careful consideration of this case by the whole court, we think it may safely be laid down that, in order to make such testimony competent, even when it is shown that the dog is of pure blood and of a stock characterized by acuteness of scent and power of discrimination, it must also be established that the dog in question is possessed of these qualities, and has been trained or tested in their exercise in the tracking of human beings, and that these facts must appear from the testimony of some person who has personal knowledge thereof. We think it must also appear that the dogs so trained and tested was laid on the trail, whether visible or not, concerning which testimony has been admitted, at a point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicate to have been made by him. When so indicated, testimony as to trailing by a bloodhound may be permitted to go to the jury for what it is worth, as one of the circumstances which may tend to connect the defendant with the crime of which he is accused."

Now that is the rule with reference to qualifying the dogs even in courts where it is admitted at all. But I submit, if

your Honor please, that an examination of the evidence will fall utterly to disclose any qualification of these dogs under the rules laid down in these courts.

MR. DANBOW: May I make a suggestion there?

MR. BREAN: Yes sir, it will give me a chance to rest.

MR. DANBOW: Now I don't want you to think I am taking too much time, but I want to say this much about it, so that you can refer to it. I stated to the court and counsel at the time when I introduced the first witness on this that the man who had charge of these dogs and who trained them, King, who lived at Canon City, had promised to come here, and we telegraphed for him; and I don't know whether it was the telegram, but something or other, killed him, and we couldn't get him. I also stated to the court and I will state again that there is another man there who was familiar with them and whom we could get and whom we can get if this is not sufficient. When the first witness testified an objection was made to that testimony on the ground that it wasn't enough, that we hadn't proven enough to make the dogs competent. We then brought George Breen, a rancher and railroad man who had seen these dogs at the penitentiary and knew that they were kept in the penitentiary for that purpose and had seen them training them, and we also brought a man by the name of Collins who knew where they came from and what they were and that they were following the trail, and no further objection was made to the testimony and has not been made until this time. Now if the Senator asks to strike that out and the court thinks it is not sufficient, I am going to get my witness here. I do not think it is fair to strike it out at this period and not have the time



to supply it, because it was stated in advance -- but I think there is enough of it, but if there wasn't I would ask to be permitted to get this witness.

MR. RICHARDSON: And that wouldn't affect the question of what Sterling said in any way, of course, so far as Sterling is concerned it has no bearing. But so far as Al Bezore is concerned it is competent.

MR. BOWMAN: Who is Al Bezore? He is a deputy sheriff. There isn't a particle of evidence in this case, not a scintilla of proof in this case as to who Al Bezore is with reference to any conspiracy. How they can't say to a court, I apprehend they may say it before the jury, but they can't say before a court that because a man is a county official or that he is a deputy sheriff that he is a member of a criminal conspiracy, even if it is in Colorado. There must be some proof here that this dog tracked somebody's meadows that was a member of this conspiracy before it can become relevant for any purpose. I assumed that they were to connect these dogs in some way by the tracking of some party who was a member of a conspiracy and thereafter Mr. Sterling in a round about way. But if counsel thinks that his evidence is insufficient, which he seems to, why of course he has the privilege of asking to reopen his case.

MR. BOWMAN: I don't think it is, but I think it is not very strong, and all I say is if the court thinks so I shall ask for it.

MR. BOWMAN: To go back to that proposition, there isn't a particle of evidence here, if your Honor please, as to whether these dogs were blood hounds or not by anyone who knew anything

about them or professed to know anything about them. They simply knew that the dogs were at the penitentiary, which is certainly no recommendation as to the breed of the dog, and they simply show that they had seen them out training at a certain time. They have not shown that they ever tracked a person in the world. They have not shown that they had a particle of capacity for that kind of work. They have not disclosed their competency or their qualification under this rule by a single witness, and they certainly did show by their actions down there at that time that they were not competent to trail anything. But the rule which has been announced in the other case, I am not going to read it but I ask your Honor to refer to the case of Brock vs. The State of Nebraska.

THE COURT: What is that in?

MR. BORAH: That is in the 63rd L.R.A. at page 789. Now in this case they reviewed this question of whether these dogs and their acts are admissible in evidence at all or not, whether it is competent testimony upon any theory even after the competency is established, and lay down the rule that it is not competent evidence or admissible for any purpose.

THE COURT: Your original objection to this testimony, Mr. Borah, was only on the ground of the qualification.

MR. BORAH: The competency of the dogs.

THE COURT: Yes.

MR. BORAH: Yes, and I never thought they got by that.

THE COURT: After that you made no objection.

MR. BORAH: No sir, for the simple reason I never thought they had qualified their dogs.



MR. DARROW: You made no objection to the witness who testified.

MR. BURNH: I made an objection to the evidence as being incompetent, irrelevant and immaterial, and for the further reason that the dogs had not been qualified.

MR. DARROW: On the first witness only.

MR. BURNH: I don't know that you have to object to the competency, materiality and relevancy every time the witness goes on the stand, but only for the qualification and that only. Have you got the dog story there?

MR. DARROW: Yes, I haven't been all over but I will give it to you right here, all of it.

MR. BURNH: This witness that you have here, Mr. Darrow, is not the witness that you undertook to qualify the dogs with.

MR. DARROW: You will find something on Breen and something on Collins.

MR. BURNH: What I was seeking to find, if your Honor please, was the objection which I made at the time; and your Honor will find that I objected to it as incompetent, irrelevant and immaterial, and that they were not qualified, and ~~therefore~~ the court said they might proceed to qualify them if they could.

MR. DARROW: Is that in Breen?

MR. BURNH: Yes, in Breen.

MR. DARROW: I think, Senator, you first offered those objections when Bizard came on the stand.

MR. BURNH: Well, we will not take up the time of the court until Mr. Stone finds it.

MR. DONAH: Now another member of the conspiracy which the parties referred to in discussing this matter is the Pinkertons, and I don't care to discuss that to any great length for the reason that I apprehend that the attitude of the Pinkertons in this case is a matter which goes alone to the competency of any testimony in which they had a part. The mere fact that they subpoenaed witnesses here or brought testimony here is not a subject matter for discussion before a court or possibly not before a jury. Of course if a Pinkerton was upon the witness stand, or anybody else, and been shown to have an interest in securing evidence in the case that fact would be competent for the purpose of showing his interest, his feeling or his bias, and that evidence is competent, if your Honor please, in so far as they have introduced it here, for that purpose and that purpose only. But it does not prove nor tend to prove any conspiracy here. Now you remember that Mr. Friedman who was upon the witness stand testified positively that the Mine Owners' Association were not clients of the Pinkertons in 1902, 3 and 4 at all; that they did some work for independent mine owners but that they were not clients of the Pinkertons, and the testimony that was introduced by Mr. Friedman, the letters which he had taken from the archives of the Pinkerton office, were introduced, and there isn't a single line in those letters which discloses that the Mine Owners' Association was in any sense the client of the Pinkertons during those years, and there is not a line in those letters which discloses that there was any effort upon the part of the Pinkertons to put any crime upon these defendants or to commit any crime or anything of that kind. The only thing which they refer to



in their argument today and the only thing which could be the subject of criticism was the matter of their attempting to show that Mr. Heywood was responsible for not dealing out more benefits than the parties thought they were entitled to. But it is wholly disconnected with any offense which is charged here. It is wholly disconnected with any crime in Crispie Creek which has been charged, and it is no answer to any crime which has been charged against them at all. Now Mr. Misdell, it is said, has been an officer of this court, and in that way I presume it was suggested that he might still in some way be connected with the State. I think that was a flight of fancy upon the part of Mr. Darrow. I didn't know that he was a member of this court, I had never heard of it. I don't immediately understand that he is.

THE COURT: That is the court's first intimation of it.

MR. BONAH: He is not an officer of the court. He is not connected with the state in any way, shape or form.

MR. DARROW: He swore to that downstairs, that he was a detective for the State of Idaho.

MR. BONAH: He may be a detective, but he is not an officer of this court.

MR. DARROW: He has been around here with the witnesses and taking care of them.

MR. BONAH: Yes, he has been around here with the witnesses and taking care of them, and there has been a number of people here on the Defense taking care of some of the defendant's witnesses, but we are not holding Mr. Misdell responsible for it.

MR. JARROW: He is responsible for it and we are responsible for not taking care of our witnesses, just as you are responsible for those who are herding Charley Neville.

MR. BORAH: Yes, you are somewhat worried about Charles being herded.

THE COURT: Those facts are not in evidence and not going before the jury.

MR. BORAH: Mr. Riddell, it seems, went down to Telluride and he went into Telluride after Mr. Collins had been killed, he went into Telluride after Mr. Smith and Mr. Barney had disappeared --

MR. RICHARDSON: There is no evidence of that fact.

MR. BORAH: There is evidence of that fact.

MR. RICHARDSON: All right.

MR. BORAH: There is evidence of that fact that these men were killed and that they had disappeared and then they proved that Mr. Riddell went in there, which was about a year thereafter or about six months thereafter, and that is in evidence in this case. There isn't any doubt about that. Now Mr. Riddell went down there. They say he went to talking anarchy and murder and so forth, and the more he talked the higher he climbed in the union. Now Mr. Riddell was there for the purpose of getting into the secrets of this situation and he believed in doing as the Romans were doing, and he engaged in these matters. But where is there any evidence that Mr. Riddell had anything to do with any crime which is being investigated in this case, or connected with it in any way, shape or form? Where is there any evidence that he intimated the commission of any crime which we



charge to these defendants? Or that he had anything to do either in declaration or acts or anything else with any offense which we are seeking here to investigate? He was there for a purpose, whatever that purpose was does not appear here, but he was a member of the union and made certain declarations which declarations are not binding upon anyone so far as the state of Idaho and the defendant Mr. Haywood are concerned. Mr. Darrow says, shall they be held responsible for the acts of this man? We didn't put in evidence anything that Mr. Riddell was doing. They put in evidence that he went there and made certain declarations, and those declarations had nothing to do with any offense which is being investigated here, but they seek to reason from that notwithstanding he was a member in Talluride that there was something -- had had something to do with the building up of the conspiracy in Cripple Creek, without a particle of evidence connecting the two events. I want to call your Honor's attention to another fact, too, that before Mr. Riddell went into Talluride Mr. St. John had signed an agreement for a certain length of time. To do what? Why, that the organization of which this man was a member should refrain from violence during a certain length of time. The representative of the organization of which Mr. Riddell was a member, the president of the organization entered into an agreement to the effect that for a certain limited length of time that union would refrain from violence; but that only. Now the fact that a Pinkerton was down there and was a member of that organization -- the reason for it is apparent upon its face -- but whether he was there properly or not, whether such work is to be condemned or upheld, is not for the state of Idaho to determine

nor not for anyone who is connected with this case to determine, because we haven't been connected up with it, and we don't connect up with it, neither do they connect it with any offense which is under investigation here. They complain now the real object of this argument, if your Honor please, is to get at the question of these deportations, the looting of the stores, and so forth, and parties were introduced for the purpose of showing acts, and so forth, of the conspiracy. Now what have they shown in reference to that matter in so far as they have disclosed anything at all? They have shown that it is true in a nebulous way that there was a Mine Owners' Association and that there was a Citizens' Alliance and of course that the Pinkertons existed; but these deportations which were shown to have taken place are, any amount of them which they have disclosed, not deportations by the Alliance or by the Mine Owners' Association, but they seem to have taken place after this explosion on the 6th of June as a result of the notions of the entire community. Everybody was there. Some few members of the Mine Owners were there. I don't know that it is known that a single Pinkerton was there at that time. There might have been one. Some few members of the Citizens' Alliance were there, but in that street participating in that manner, assisting in the deportation was the entire community -- not the act of a conspiracy, but the entire community was there, and the evidence discloses that fact beyond a question. Now Mr. Ingley says very plainly that he was deported by his neighbors with whom he had been living and for some time after he had been deported once by what he called the militia he came home and the Citizens around town got together and seen



to have departed General Hagle and he declares in his testimony there that a large part of this was upon the part of parties who are not shown to have been of these organizations or members of this conspiracy or connected with it in any way, shape or form. Now we certainly contend, if your Honor please, that unless they show these acts to be the acts of some member of the conspiracy that the court should instruct them that they are not to be considered in the consideration of the question of the guilt or innocence in this case.

Passing from that I want to call your Honor's attention now to the Lytle Gregory matter. Now upon what theory can the Lytle Gregory evidence in this case be considered in any way in this controversy? They do not claim that he was the victim of a conspiracy. They have introduced in evidence here what all the ~~authorities~~ claim they cannot do, what all of the authorities with one exception which the counsel read claim is not admissible-- they have shown that Mr. Gregory had a personal encounter with certain individuals belonging to another organization entirely. They have shown an act for the purpose of showing alone the naked fact that there was trouble between himself and some other individuals. They have shown that he was engaged as a detective against certain other people and then leave that naked fact there without any connection at all to show as a justification -- or rather a proposition from which they can argue that these other people committed the crime. Now I submit that the counsel have not cited your Honor to a single authority which supports the proposition that that evidence can remain in this case. There is no contention that it was a part of the conspiracy. There is

no contention that there was anything else, as it appears, but threats, or possibly a motive. There is no contention that anything has been shown in the way of a direct connection with the offense of killing Lyte Gregory, and it is in here for the single purpose of course to argue before the jury, and we say there is no connection whatever between that fact and the issues which are being tried.

Now we do not contend, if your Honor please, that the evidence in this case with reference to the Vindicator should be taken out at all. We think the evidence with reference to the Vindicator is legally and properly here. We think the evidence with reference to Mr. Bradley, that being an accident as they contend, is legally and properly here. We think the evidence with reference to these matters was put in here by direct evidence and competent evidence and not hearsay evidence and should be permitted to remain here for what they are worth. But we say that the evidence which undertakes to ~~make~~ <sup>connect</sup> by hearsay entirely ~~of~~ the Mine Owners' Association with any offense here breaks down for the reason it is incompetent evidence and not the way in which they can make the connection. For instance, they could not put upon the stand Mr. Bradley and have him testify that Mr. Linforth said his building was blown up, any more than they could put upon the stand Mr. Blizzard and have him testify that Mr. Sterling said that they did so and so and make certain assertions -- the distinction as between direct evidence or evidence which is competent and not hearsay, and evidence which is purely hearsay and incompetent.



MR. RICHARDSON:

If your Honor please, in such consideration as I shall give to the matter which your Honor has in hand it seems to me that we shall strike the key to the situation if we first analyze the position which has been taken by Senator Borah in his argument with respect to the admissibility of this evidence or the right of this evidence to remain in the record in this case. If I understand his contention properly, it is this, that if "A" is put on trial for the murder of "B" it is competent for "A" to prove that "C" committed the murder of "B" by showing as a matter of fact that "C" actually did commit that murder, and that that exonerates "A". Now that is not the condition of this case, if your Honor please, as I understand the law and facts applicable to it. If "A" is put on trial for the murder of "B" and the question is whether or not "C" or "D" instigated "A" to commit that murder what evidence may be adduced in support of that condition? Now the sole proposition which is here for final consideration and determination is whether or not the defendant in this case as a third party is responsible for the killing of one Frank Steunenberg. It is true that in the course of the trial we have seldom heard Mr. Steunenberg's name mentioned, and we have had very little evidence that was applicable to that state of affairs. We have taken up the time largely with collateral issues. Orchard is the self-confessed murderer of Steunenberg. He stands in the position of "A"; Steunenberg occupies the position of "B". He has been murdered. And Orchard comes upon the stand and says that "C" is responsible for the killing of "B", and not that "C" himself is directly responsible

for the killing of "B". "C" comes here to defend against that charge, and he says that I never employed "A", you attempt to connect me with "A" by a set of circumstances. I will show you that "D" had a set of circumstances which were more implicating to him than the set of circumstances which implicate me, "C". Now that is the condition of affairs which presents itself for your Honor's consideration. This argument assumes that Haywood is the man who killed Steunenberg and then says that he can show that he did not kill Steunenberg by showing that somebody else killed Steunenberg. Well, that is already shown, if your Honor please. Orchard is the man who killed Steunenberg. Now what is the position of the state with respect to it? Never in the opening statement that was made by Mr. Hawley, never in the argument which was made by Mr. Borah upon the motion for an instructed verdict was it claimed that they expected to prove the connection of Haywood with the Steunenberg murder by reason of any specific evidence, because they knew they had no specific evidence which corroborated the story of Orchard, which stands in a court of law under a taint which makes it insufficient to establish Mr. Haywood's guilt upon that question. And so they were compelled to resort to this statement in order to maintain this case within the four walls of this court at all, that they would show a general conspiracy which existed to do murder, as an incident of that conspiracy. The conspiracy was to control the politics of the country. It was to do certain acts with respect to those who were connected with it which would be beneficial to them, and as an incident to accomplishing those purposes,



which were lawful and beneficial in themselves, there would be shown a condition of putting people out of the way and of a destruction of property, not as the main object of the confederation and agreement between them, but because they were incidents which in the administration of their affairs became necessary to be done in order to accomplish the ulterior objects and purposes of the association of which they were members. Over and over again it was said that the killing of Steunenberg was an incident in the progress of this organization toward the goal which it had set itself to attain. Now, if your Honor please, that proof of a general conspiracy is not sought or attempted to be made by any showing that at a specific time and a specific place a certain number of people got together and agreed that they would do these things. It is sought to be shown inferentially. A detached circumstance exists here, a crime is committed there, a piece of property is destroyed yonder, and so on down the line of the very great series of transactions, and it is said at the end of this case that from all of these transactions this jury is bound to infer, if it takes the State's view of the case, that a conspiracy did exist to accomplish these objects, and that as an incident in the accomplishment of the objects Steunenberg was brushed aside. If there was proof, specific proof of the general conspiracy, and that the Steunenberg killing was one of the objects of that conspiracy, we would never have heard of any of this evidence from Colorado, if your Honor please. The proof of the conspiracy and the carrying of it out would alone have been sufficient. Now Orchard was never a member of that general conspiracy except as he incidentally became connected with it for

specific purposes. He don't testify that at a specific time and a specific place such an agreement was made. He claims that he was the instrument by which certain phases of the conspiracy were carried out; and so, on that theory of the case, they are allowed to prove the incidents with which Orchard was connected as proof going or tending to show that this general conspiracy existed, and that is the way by which Haywood is sought to be connected, if your Honor please, with the killing of Stansberg. Now what does Haywood say about it? Haywood says that it is true, probably, that Orchard committed the crimes or some of the crimes which he says that he did commit. He says, in the first place, it is not true that I rendered him any aid and assistance; that there is no conspiracy of the kind or character that he testifies to. But a conspiracy does exist against our organization and we will prove to you a set of facts and circumstances that this self-confessed criminal was not our tool but was the tool of another conspiracy; and we will prove that other conspiracy by a series of independent facts and circumstances from which the jury are bound to infer, if they take our view of this case, that such a conspiracy did exist. Now that is my understanding of the legal proposition which confronts this court for its consideration. And if I am correct about that, I shall proceed to analyze this evidence to a limited extent for the purpose of convincing your Honor that all of this evidence must go to the jury or none of it must go at all except the bare evidence which relates to the killing of ex-governor Stansberg. It is not a question of "A" being on trial here at all, under the illustration made by the Senator. It is the question of "C" being on



trial for a crime committed by "A" which "A" says was aided and abetted and suggested by "C", when "C" has a series of independent facts and circumstances from which the just and proper inference may be drawn that "A" was aided, abetted, assisted, advised and encouraged by "D" instead of by "C", if your Honor please. Now let us see with respect to that, whether I am correct about it or not. The first incident that is complained of in point of time, and probably it will be as logical to handle it that way as any way we could handle it, is the spike pulling case, if your Honor please. Now it is not pretended --

THE COURT: Do you understand that that is relied upon as one of the overt acts introduced by the State to establish the conspiracy?

MR. RICHARDSON: Well, I don't know. I know that the State introduced it.

THE COURT: I intended to ask Senator Borah that question.

MR. RICHARDSON: I know that the State proved it and therefore I thought it was competent and proper for me to answer it, but I was going to dismiss it with the mere suggestion that there is not a particle of evidence that connects Mr. Haywood, Mr. Moyer, Mr. Pettibone or the Western Federation of Miners with that offense, if it was an offense, in any particular at all, or in saying that they had any knowledge of it unless it be this, that there can be inferred a general and long continuing conspiracy which this man came into unknowingly and unwittingly and became a part of at that period of time, in that he claimed that he had some talk with Sherman Parker and Bill Davis in regard

to it wherein he complained that he had not been detailed to do the work. That is the only possible connection, if your Honor please, and it is an inferential connection. We off-set that by showing a direct connection of whom? A man who is the employe and in charge of the secret work of the Mine Owners' Association. What has a Mine Owners' Association to do with secret work? What is the obligation which is imposed upon them to maintain a secret service bureau? Why are they connected with transactions of that kind? If they are conducting their business openly and above board and in the light of day and in the full sunshine of everybody's knowledge, if any crime is committed against them the law and the officers of the law are able to take care of it. It is a circumstance in itself that they have such a man, and it is a circumstance against them which the jury may infer against them when that man so in their employ for such a purpose does an overt act, if your Honor please, in connection with or in aid of anybody else, and it is a thing to go to the jury upon the question of the establishment of the counter conspiracy which connects ~~the counter conspiracy~~ "D" with the crime of killing "B" instead of connecting "C" with the crime of killing "B" as alleged by "A", the self-confessed slayer.

THE COURT: What is the overt act which you say was committed by one of these detectives in this counter conspiracy?

MR. BORAH: Your Honor inquired about the spike pulling proposition; It has never been contended in our opening statement or any other time nor there hasn't been any evidence introduced for the purpose of showing that that was one of the acts of which this conspiracy was guilty. The only reference that was made to



the matter at all was in bringing up Orchard's history and there was no attempt to connect it in any way or show what was done or anything of the kind until Mr. Richardson got hold of Mr. Orchard on cross examination.

MR. RICHARDSON: We are charged with the overt act and your Honor asks what evidence there is of an overt act on the other side. There is a very complete answer to that. Orchard's act is the overt act. Shall it be assumed that the only overt act in this case is our act? I say, if your Honor please, that the overt act of Orchard is the overt act of the man who stands behind him, and because the allegation and the assertion is that it is Haywood,<sup>it</sup> does not prevent us from showing that this overt act is the overt act of somebody else.

THE COURT: Now what evidence have you as to anybody standing behind Orchard in this?

MR. RICHARDSON: Let us see. Orchard makes, according to his own testimony, the acquaintance of Sterling and Scott and he details to them that there is an overt act to be committed by somebody else, and it is this Western Federation of Miners or a local of it, and we introduce the evidence of Mr. Rush, the engineer, showing a set of circumstances from which any reasonable man is bound to infer that Sterling and Scott themselves committed the overt act with respect to the spike pulling on that railroad. Now, bear in mind, if your Honor please, that when you talk about an overt act you will find that all of the overt acts that are complained of here are Orchard's acts. There is no overt act of this man. Where is he connected with any overt act except by the testimony, if your Honor please, of Mr.

Orchard and that alone, if your Honor please, in respect to an overt act or any other kind of act is not sufficient standing alone unless there are circumstances which tend to connect Mr. Haywood with the commission of the offense without connection with his testimony. Now on the first act that is complained of that is inquired about in evidence we find that Sterling and Scott are connected with the overt act, at least the jury have a right to so infer from the evidence, with the commission of that act themselves. Now let us take the second one, the Vindicator explosion, if your Honor please. There is no independent evidence with respect to it that Orchard was in the employ of anybody, nothing except his own say-so, and I will say with respect to the Vindicator explosion that there is no testimony which connected the Mine Owners' Association with that. The overt act and the only overt act that is testified to is by Orchard himself, which is discredited testimony. Then we prove a set of facts and circumstances from which this jury is at liberty to infer, if they believe it, that the thing which occurred in the Vindicator was an accident pure and simple, and they have disposed of that.

THE COURT: That is not involved here.

MR. RICHARDSON: Very well, that is not involved here. Then we come to the next overt act, and that is all that these are for, you cannot convict this man on what happened in Colorado. Your Honor will agree with me on that it is only for one purpose that these acts are alleged, and that is to infer whether or not this thing which is being inquired about here is a part of the same conspiracy which is said to have existed in Colorado and



9

which resulted disastrously there, as it is claimed. You go to that act, and what do you find? The overt act was committed by Mr. Orchard -- that is the Lyte Gregory matter. This man (the defendant) did not commit the overt act, not at all. It is not claimed that he did. It is not claimed that he had any part in it. Now shall it be said that when they prove the overt act to have been committed by Mr. Orchard, and that he, the committer of the act, says that we are connected with it that we cannot show that the facts and circumstances are such that in addition to our denial of it somebody else has more reason to be connected with it than we have. Now Senator Borah says we cannot do that because we have no evidence of the overt act. Well, it is because the overt act is the overt act of Orchard. That is the reason of it. Now he says you have got to prove that if "A" is charged with the offense of killing "B", and "A" is on trial, that in order to prove that "C" was connected with him you must show not only that "C" had a motive, that that is not sufficient standing alone, but that you must show that "C" actually did commit the act.

MR. BORAH: Do you claim that Orchard's act is the overt act in killing Gregory? A.

MR. RICHARDSON: I claim that that is the only overt act that is testified to by anybody with respect to the actual killing of Gregory.

MR. BORAH: Well, then, whose overt act was it?

MR. RICHARDSON: It was Orchard's overt act, and you say through Orchard's mouth that Haywood was connected with that

overt act in this, that after it was done he said it was a good job.

MR. BORAH: Now they don't introduce any proof against that, but they say that somebody else did it.

MR. RICHARDSON: Against what?

MR. BORAH: Why, against the fact that Mr. Orchard committed the crime or that Mr. Haywood was connected with it, but they say that someone else not connected with Orchard and his outfit committed overt acts, but somebody else did it.

MR. RICHARDSON: Now the Senator's position would be absolutely true if Mr. Orchard were on trial and Mr. Orchard was disclaiming that he had committed the act and was trying to prove that somebody else did it, because Mr. Orchard was the man who has been proven to have committed the act. Haywood has not been proven to have committed the act. The fact of the matter is that so far as that individual act is concerned, as your Honor will remember, that neither Haywood nor Moyer knew anything whatsoever about it, and it is sought to maintain that act upon the part of the State in here by showing that Gregory was some time previous to that a detective in Idaho Springs where some trouble occurred with regard to the blowing up of a transformer house on the Sun and Moon mine.

Now we come, if your Honor please, to main bone of contention so far as this argument is concerned, and that is the blowing up of the Independence depot on the morning of June 6th of 1904. For the purpose of the argument, because we cannot discuss that now, everybody has got to admit that Orchard was the man at least who participated in the blowing up of that depot



that he was the one, whether Steve Adams assisted him or not, who was guilty of the overt act. No pretense that Haywood was there, no pretense, if Your Honor please, that he had decided the terms or the means upon which it should be done, although Orchard said there was some discussion with respect to it. Now, what do we show? We show, first, our denial of having any connection with it. And we show, second, a connection of other people with it both directly and inferentially.. I say directly-- not that they were there but that they had absolute knowledge of the existence of that transaction. Now look at the surrounding circumstances for a minute. Sterling knew on the next day who did it, and so made his statement with respect to it. Sterling was connected with the Mine Owners' Association. The mine owners were trying to work their mines with non union labor. The mine owners were opposed to the Western Federation of Miners, a battle was being waged between the Western Federation of Miners and the mine owners in that district. The Western Federation of Miners were out on a strike. They were picketing the mines. They were trying to induce others, if ~~you~~ your Honor please, to refrain from working whom the Mine Owners had imported there. That was the condition and situation. Moyer had been arrested for a violation of a statute of the state of Colorado which declared that the flag of the <sup>United</sup> states should not be desecrated by having any advertising matter printed upon its folds -- not that a picture of it should not, but that the flag itself should not be desecrated in that way. He had been taken into an adjoining county and had been held under military rule in that county. He was under military rule at that time. He had been there for a hundred days,

more or less -- a little less than that. The Supreme Court had listened to argument upon it. It had announced, according to this record, that its decision would be rendered upon June 6. A peace committee of the Western Federation of Miners in convention assembled had been appointed to go to Cripple Creek and look into the situation, and if there ever was a time and there ever was a set of circumstances that would sound the death knell of the Western Federation of Miners in the Cripple Creek district it was the situation which surrounded that district on the morning of that day. The happening of that event was the unwiseest, the most foolish, the most absurd thing that any member of the Western Federation of Miners could do to bring about the destruction of that organization. It was the happiest thought and the most perfect thing in its execution to accomplish the wishes of the mine owners and rid themselves <sup>of</sup> those who were opposed to their manner and method of running the mines in that neighborhood. It was a most felicitous thing for the Mine Owners' Association. It was a thing that they swailed themselves of, and when Senator Borah says, if your Honor please, that the people rose en masse and expelled and deported these miners on account of the conditions that existed there, I want to say to him that he better look into the Cripple Creek situation. The Western Federation of Miners, those who were connected with it and in sympathy with it, formed the bulk of the population of that county. It took the Mine Owners, it took the Citizens' Alliance who were dependent upon the mine owners, and it took the Colorado state militia, hired out to them and paid by them virtually, according to the testimony of one of the witnesses who went upon



the stand here, one of the miners, to accomplish the thing which was only beneficial to the mine owners and which was destructive of the miners. These are the circumstances, taken in consideration with this testimony, that K. C. Sterling was the first man to fire the first shot on the afternoon of the 6th day of June of 1904, representing the Mine Owners' Association, working in conjunction with the Citizens' Alliance, in conjunction with the State Militia, to accomplish a thing which was suicidal to the Western Federation of Miners and which rebounded to the benefit of the Mine Owners' Association of that district. Can't those things be shown where there is any connection at all established between the Mine Owners' Association or anyone purporting to act for it and this man Orchard? If your Honor please, it seems to me to strike out that evidence is to say this, the state is entitled to take the uncorroborated statement of Mr. Orchard alone upon that matter and all of the circumstances which they see fit to introduce as establishing Haywood's connection with it and that Haywood cannot show the balance of those circumstances for the purpose of showing whether anybody else was connected with the transaction or not. Now what is said, if your Honor please, with respect to that is true of the Telluride situation. They show in their evidence a condition existing in the Telluride district which they say calls for the troops in that district. We show, if your Honor please, that practically the only lawlessness or the great lawlessness in that district at that time was lawlessness which was brought about by the officers of the law, the Mine Owners' Association and those who

called themselves the Citizens' Alliance in the city of Telluride. If those things are to be eliminated from this case, then we say that everything should be eliminated from the case, if your Honor please, with the exception of the Steunenberg incident itself. Now if you do that, of course, the State recognizes at once that it has no case. If they are entitled to any part of that situation we are entitled to all of it. If they introduce any ~~piece~~ piece of a conversation, we are entitled to the rest of the conversation. If they say through the mouth of Orchard that we were connected with him, who was the doer of the act, we then can show somebody else was connected with him, that there are facts and circumstances from which the jury have the right to draw that inference.

Now, if your Honor please, Senator Borah says that that may be done if that is connected up. Where has he connected up the evidence introduced in support of the statement of Harry Orchard that he was working for the Western Federation of Miners? Where is there a single particle of evidence, except Orchard's, that the Western Federation of Miners was connected with the spike pulling case? With the Independence depot explosion? With the Moyer incarceration in Telluride or the conditions which brought it about? With any of those things which they have charged, with the Goddard matter, with the Peabody matter, with the Walley matter, with the Sherman Bell matter in the city of Denver, or a single particle of evidence connected with those offenses, if they were offenses against the law, except the naked and bald statement of Mr. Orchard himself? Now, if your Honor please, of



course I am willing to concede that the Goddard incident, if it can go to the jury at all; the Gabbert incident, if it can go to the jury at all; the Peabody incident, if it can go to the jury at all, was not the result of a conspiracy of the Mine Owners' Association as specifically carried out by Harry Orchard. Why? Because the circumstances appear that those men were all favorable to the Mine Owners' Association. But, if your Honor please, if there were attempts made upon those men which were not carried out, and there is no reason why they should not have been carried out, those are things which could in addition be urged as a reason why the Western Federation of Miners was responsible when they had connection with them at all. They could be used to inflame public sentiment. They could be spread broadcast over the country, if anything should ensue in regard to it, and I say, if your Honor please, that there is no more to connect Mr. Haywood with those transactions than there is to connect your Honor with those transactions if you had been living in the city of Denver at that time. Mr. Orchard might just as well have mentioned you or anybody else for all or any independent proof in this case that these men were connected with any one of those transactions. So with regard to the Bradley incident, if your Honor please. There is evidence there the same as there is in the Vindicator case that that is a pure accident, and I suppose it would have to go to the jury upon that theory, in this, that the Bradley incident varies slightly from the others in that there is some connection of Mr. Pettibone independent of the evidence of Mr. Orchard, but not of any other one of these defendants.

Now there is one other matter, if your Honor please,

that Senator Borah urges and that is the matter of the education of these dogs. I hate to follow a trail of that kind myself. It emanates from the penitentiary and it returns to it. But if your Honor will read this record you will find that Senator Borah objected to the qualification of those dogs.

MR. BORAH: Let me read that testimony.

MR. RICHARDSON: And thereupon we proceeded to qualify them and introduced the balance of the evidence without objection, as I think the record will show, but in any event, if your Honor please --

MR. BORAH: Just a moment, Mr. Richardson.

MR. RICHARDSON: All right.

MR. BORAH: Now we objected to this evidence as incompetent, immaterial and irrelevant, and no foundation has been laid for it; and, further, that this kind of evidence is incompetent and immaterial in any view of the case because you cannot introduce that kind of evidence in a case of this character.

MR. RICHARDSON: Very well. Then we went on and made the proof, didn't we?

MR. DARROW: That is when Blizard was testifying, wasn't it?

MR. RICHARDSON: That is when Ira Blizard was testifying wasn't it?

MR. BORAH: Yes.

MR. RICHARDSON: Then we went on and made proof by two other witnesses, if your Honor please, and they gave the testimony with respect to the dogs without any objection whatsoever. But there would be another reason why, --



MR. DARROW: The objection of accomplice might be good.

MR. BORAH: I objected to it because it was not admissible in the case for any purpose.

MR. RICHARDSON: You did not object to it then on the ground of the disqualification of the dogs?

MR. BORAH: Yes, I objected for that and for the other, too.

MR. RICHARDSON: Suppose a case; An expert is put upon the stand who testifies to his experience, and we object to his competency. Your Honor rules upon the objection at the time that he cannot testify because he has not shown himself competent, and thereupon they resume their examination of this expert to show additional facts and circumstances which tend to make him competent. Again the objection is urged and again the examination continues until finally the defense, or whoever is on the other side, failed to make any further objection to the competency of that witness as an expert, and his testimony goes in. Can they experiment with that testimony and then move to strike it out afterward upon the ground that they made an objection while he was attempting to be qualified? I think not, if your Honor please.

MR. DARROW: And then suppose you put another on?

MR. RICHARDSON: Yes, and suppose, as Mr. Darrow suggests, that we put two more on after that to show not only that he was a competent man but to show that they were competent and who agree with him upon his testimony. Now we introduced a witness after that objection who showed that he had seen these identical dogs experimented with by running a convict around through the woods in the forenoon of the day and putting the dogs

on the trail in the afternoon of the same day and seeing them take the same trail and come around and come back to the penitentiary.

MR. DARROW: They were there in that penitentiary for that purpose and sent by special guard for that purpose.

MR. RICHARDSON: Furthermore, if your Honor please, while a penitentiary don't qualify men for some things and while it directly disqualifies a witness if the fact of his conviction be shown, it is the very best school for dogs that you could possibly have, because it is a place where convicts are kept and where they become acquainted with those who have been convicted of crime, if your Honor please, and they are kept there -- the fact that they are kept there in and of itself is some evidence of their competency as bloodhounds especially when it is followed by shewing their training.. So, if your Honor please, when you have an expert witness it is not a question of his breeding, & it is not a question of the blood that flows through his veins, it is not a question of the amount of training he has had, it ~~is~~ is a question of some training, and if he ~~gives evidence~~ gets to a point where the other side are willing that his testimony should go in, then he has had training enough to qualify him as an expert, and the weight of his testimony, the strength which shall be given to it is a question for the determination of the jury and not one for the determination of the court.

Now about these Pinkertons: I want to say a word about them, because no one is ever justified in talking upon any branch of this case unless he has something to say about the Pinkertons.



We showed in the city of Telluride, if your Honor please, which was one of the places that we were charged with the pursuit of unlawful acts, that for a period of more than two years a prominent member of the Western Federation of Miners and in the fullest extent within its councils had full knowledge of everything which was done in that city. It is the strongest piece of evidence upon the law abiding character of the Western Federation of Miners that you could possibly have. Here was a Pinkerton presumably making the regular daily Pinkerton report to his agency, and in all the time that he was connected with that local at the city of Telluride there wasn't a crime complained of, there was not a complaint sworn out, there was not a particle of testimony that this Pinkerton was ever called upon to give to show that we had committed any crime of any kind or character whatsoever, and he was there for the purpose, if your Honor please, if he could, of fastening some unlawful act upon the Western Federation of Miners, to the end that the same Mine Owners' Association might accomplish their will with respect to that situation as they had accomplished it in Cripple Creek. Furthermore, we found in this case one Pinkerton, if your Honor please, who in making a report to his agency upon the Cripple Creek situation said that every member of the Western Federation of Miners seemed to constitute himself a committee of one for the preservation of law and order, which was directly in line with the speech which had been made by both Mr. Moyer and Mr. Haywood in Pinnacle Park on August 15th of 1903.

MR. BORAH: Do you claim that that tends to show conspiracy?

MR. RICHARDSON: I claim that the fact that these Pinkertons were there in the employ of the Mine Owners, who composed the Mine Owners' Association, is some evidence of the fact that the Mine Owners' Association were anxious to fasten some crime upon the Western Federation of Miners. I say it is a circumstance to go to this jury for its consideration. Wherever we find a Pinkerton, with that one exception, we find him to be the man who is aiding, advising and encouraging, if your Honor please, the commission of unlawful acts, and we find it followed by no unlawful act upon the part of our people -- at least, they have not proven any, if your Honor please, except through testimony, unsupported, of this man Orchard who comes upon the stand, if your Honor please. Now you take this man Grattias: Grattias is the man who introduced Orchard to Max Malich and to Joe Mahalich -- a Pinkerton spending our money, if your Honor please, with those who were on strike at Globeville, furnishing reports to his agency that he had done as he had been directed by Mr. McParland and had made the distribution large in order to deplete the funds of the Western Federation, and then finding that he could not do that he had cut off the expenditure of funds or the distribution of funds almost completely in order that he might make these men dissatisfied with Mr. Haywood's administration and throw the blame on him. Those conditions arising out of what the Pinkertons or of what the detectives of the Mine Owners' Association as an association, and of what was done by those who were controlled by them are all circumstances which tend to show the commission of these offenses so far as they were committed and are complained of here by someone else.



So I think, if your Honor please, that it is not the law that when a "A" admits the commission of a crime by himself and seeks to say that "C" is responsible for it by showing facts and circumstances, that "C" may not show some similar facts and circumstances upon the part of "D", because there is no overt act upon the part of this man any more than there is any overt act upon the part of "D". Admit all that Senator Borah says, he has not produced a single conspiracy case and he has not produced a case where anybody was on trial, if your Honor please, except "A" himself -- if "A" were on trial and he was seeking, if your Honor please, to avoid the force and effect of this testimony which would be introduced against him, we may for the purposes of this case concede, although it is not true universally, that then an overt act would have to be connected with somebody else.

There is one thing that Mr. Darrow calls my attention to that I will speak upon briefly and then I am done, and that is with reference to these dogs following a conspirator. It don't make any difference whether Al Bemore was a part of a conspiracy or not. If they followed anyone, any other person whomsoever, it would have a tendency to show, if your Honor please, that at least the man who was on trial, if he was not proven to have been connected with that man, had nothing to do with the offense charged and the weight of it would be a matter which should be given to the jury. If Al Bemore was not connected with the Mine Owners' conspiracy, which Senator Borah said for the purposes of the argument he admits existed, if he had nothing to do with them in any way, shape or form, if the dogs went to his house,

it has a tendency to throw discredit, if your Honor please, upon the story of Harry Orchard, the self-confessed criminal, with respect to that matter.

So I say, if your Honor please, that all of these matters should either be submitted to the jury under proper instructions or none of them should be submitted at all, and either horn of the dilemma is satisfactory to us.

THE COURT: Gentlemen, I think I will be prepared to decide this matter in the morning, although I may not as to the entire questions involved.

Thereupon the court took an adjournment until 9:30 A. M., Friday, July 19, 1907.

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A D J O U R N M E N T.



Boise, Idaho, July 19, 1907.

10 o'clock A. M.

Court convened pursuant to adjournment.

The Clerk read the record of the court for Thursday, July 18, 1907, and the same was signed by the Court.

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

The COURT: In relation to the matters argued yesterday the court will submit its conclusions this afternoon at two o'clock. I presume hence you prefer to have that matter settled before you commence with your arguments.

Mr. HAWLEY: Yes, I presume it should be settled first.

The COURT: You may be prepared to commence your argument at two o'clock.

Mr. RICHARDSON: Then I will understand that the defense will not be required to commence their arguments until Monday morning?

The COURT: No sir, I will sit tomorrow until Mr. Hawley concludes his argument and the defense will be ready on Monday morning.

Mr. RICHARDSON: Now, if your Honor please, in the absence of the jury, I desire to renew our motion for an instructed verdict at the close of the evidence so that the motion which was made at the time that the prosecution closed

its case may be considered as now renewed. I have requested an instruction on it also, but I prefer that the record show that we have renewed the motion.

The COURT: The court will pass upon this matter at two o'clock with the other matter.

Mr. RICHARD SMY: I will make the motion for record purposes though at this time that we be allowed to renew our motion and that the court advise the jury to return a verdict in favor of the defendant, and I understand that your Honor overrules the motion, and I desire to take an exception to that ruling.

The COURT: I will pass upon that with the other questions at two o'clock. Any other matters this morning, gentlemen? If not the court will take a recess until two o'clock.

Thereupon the defendant was remanded to custody, and a recess was taken until two o'clock, P.M.

R E C E S S .



Boise, Idaho, Friday, July 19, 1907.

2 o'clock P. M.

Parties met pursuant to adjournment.

(The jury not present).

THE COURT: At the conclusion of the evidence in this case the Court suggested to counsel a desire to hear arguments from them upon questions which would involve certain instructions by the Court.

The first question submitted involved the withdrawal from the jury of statements testified to by the witness Orchard, involving the conversation which he had with the defendant Pettibone about a trip which Steve Adams had made into northern Idaho, and further statements made by Pettibone as to crimes alleged to have been committed by Adams at that time. All of this testimony was objected to by the defense but was admitted by the Court upon the promise of counsel for the State that the evidence would be directly connected with the defendant Haywood, and that it was a part of the general conspiracy which ultimately resulted in the death of ex-Governor Steunenberg.

Counsel for the state now concede that this testimony has not been properly connected and should be stricken out. The declarations made by Pettibone were not such as would be binding upon the defendant ~~Haywood~~ Haywood even though a conspiracy were clearly established and by proof showing that defendants Pettibone and Haywood were parties thereto. For that reason all of this testimony will be withdrawn from the jury and the jury

will be instructed to totally disregard the same.

The next question suggested by the court and urged by counsel involves the materiality of evidence introduced by the defense showing a long series of deportations of miners and other persons and other acts of violence involving the destruction of property belonging to the Western Federation of Miners, or certain local unions thereof; also as to the materiality of other evidence introduced by the defense showing that the Pinkerton Detective Agency had placed its detectives in various local unions of said Federation of Miners. The Court suggested the immateriality of this evidence before the conclusion of the State's rebuttal and advised counsel that argument would be invited thereon before the instructions of the Court were settled. This testimony was all admitted upon the promise and assurance of counsel that the proper connection would be made showing that some at least of the various acts of violence testified to by the witness Orchard were either not committed by Orchard, or, if committed by him, that some other person or persons procured him to commit such acts of violence, either of which defenses were proper and legitimate defenses if any evidence could be secured tending to establish such defense. In the opinion of the court, however, no evidence was introduced by the defense even pointing to or indicating that the acts of violence testified to by Orchard, if actually committed by anyone, were committed by any other person or persons than as testified to by the last named witness. Neither is there any evidence tending to point to, or from which it might be inferentially inferred that any individual, association or other combination of persons procured any other



person to commit said acts of violence, if they were committed, than as testified to by said witness. At the farthest the testimony introduced would only furnish a motive perhaps for someone else to commit or procure the commission of the various acts of violence involved which were testified to in behalf of the State. But it is clear that the motive alone in a third person to commit an offense for which a party is being tried, is not admissible in the absence of other testimony in some way connecting or pointing to such third person as the guilty party. The witness Orchard has testified minutely and in detail to the circumstances involving the Vindicator explosion, the explosion at the Independence depot and other acts and attempted acts of violence in the city of Denver. The testimony introduced by the defense in relation to the deportations, the destruction of property belonging to the local unions of the Western Federation of Miners, and the various conflicts between the Union miners and their sympathizers and the Mine Owners' Association and the military and the various Citizens' Alliances, does not point to anyone, or even indicate that any particular person either committed the acts of violence complained of, or procured Orchard to commit such acts of violence. And in the absence of such connecting evidence the court feels compelled to take this evidence from the jury and instruct them to totally disregard it in arriving at their verdict. The action of the court in this matter is perhaps an unpleasant duty, but it is a responsibility that the court has no right to shift from itself to the jury when called upon for a final consideration of this case.

Counsel for the defense urges that if this testimony

is withdrawn from the jury, all evidence involving the Vindicator explosion, the Independence depot explosion and other acts of violence and attempted acts of violence in the State of Colorado testified to by the witness Orchard, should be withdrawn from the jury. This evidence the court has no power to withdraw from the jury unless upon the theory that the witness Orchard, being an accomplice and a co-conspirator, his testimony in relation thereto might be found to be entirely without corroboration. He has testified, although an accomplice and a co-conspirator, to all of these acts of violence and has either before or after connected this defendant therewith. The court is clearly of the opinion that there is sufficient corroboration to necessitate the submission of this evidence to the jury, and that the same reasons for withdrawing this evidence do not exist as to the evidence of deportations and other acts of violence in the Cripple Creek and Telluride country. The testimony of the state, for whatever it may be worth, with the jury, connects the defendant on trial directly with the various acts of violence involved in the evidence of the state, so far as they apply to the state of Colorado, while the testimony of the defense which will be withdrawn from the jury does not point to or indicate that any other person or persons either committed such acts of violence, or procured the commission thereof. For these reasons the court will instruct the jury when arriving at its verdict to disregard all evidence introduced by the defense, and upon rebuttal, relating to deportations of miners and other persons from Cripple Creek and the vicinity of Telluride and all



evidence in relation to the conflicts in the same localities between the Western Federation of Miners and their sympathizers on the one side, and the military organizations, detective associations and Mine Owners' Associations, and individuals in the same locality on the other.

Counsel for the defense have renewed their motion as made at the conclusion of the case first made by the State, that the court advise the jury to return a verdict in favor of the defendant for reasons given in said motion, and this motion will be denied.

MR. RICHARDSON: We desire to reserve an exception to so much of the ruling as against our contention.

MR. HAWLEY: I was not here and did have the benefit of the argument yesterday, except so far as I have understood it from the other counsel. This matter struck out does not relate to the attempted railroad wreck?

THE COURT: No sir.

MR. HAWLEY: I want to be certain, because I expected to say a few words in regard to that.

THE COURT: This ruling will be made a matter of record, so your exception I presume will be to the instructions that will be given.

MR. DARROW: I suppose it will come up in the instructions to the jury?

THE COURT: Yes sir, and the instructions on these matters will be prepared in accordance with the suggestions herein contained.

MR. RICHARDSON: We will preserve an exception to it both ways so that if there is any question about it it will be covered in any event.

THE COURT: The court will file this decision so that it may be a matter of record, and your exception to it will be noted.

MR. RICHARDSON: Very well.

(Hereupon the jury were brought into court, and the clerk called the names of the jurors and announced all present).

THE COURT: Mr. Hawley, can you indicate to the court how long a time will be required in your argument after the elimination of these matters?

MR. HAWLEY: I cannot, your Honor; but of course the matter which has been struck out by the court will naturally limit the argument to a very great extent, but of course I have not had the time to thoroughly look into the matter.

THE COURT: The court indicated to counsel for the defense this morning that they might commence their argument on Monday morning. So you will be permitted to divide up the afternoon and tomorrow as will best suit your convenience.

MR. HAWLEY: I hope, if your Honor please, that I will be able to continue during the afternoon, and get to feeling better than I am now. I have been almost incapacitated from being in court for the last two or three days.

THE COURT: I make this suggestion, of course, in the hope that you may be able to go on with your presentation.



MR. HAWLEY: Shall I proceed, your Honor?

THE COURT: Yes.

MR. HAWLEY:

May it please the court, and you gentlemen of the jury: It is a time honored custom for the counsel who opens the argument in a case that has lasted as many days as has this to always congratulate the jury on the fact that they are reaching the beginning of the end. I probably would do so in any event in this case, and I say it feelingly and from the bottom of my heart at the present time. I think it is a cause for congratulation not only to the jury, <sup>but</sup> the court and counsel upon each side that we are so near the end and that in a week from today we will be able to make a final submission of this case to the jury. We have for ten weeks, gentlemen of the jury, been in continuous session in this court giving our attention to this question. It is probably the most important criminal case that was ever given to a jury for its attention and consideration in these United States. It is important not only to the people of this section but to the entire state of Idaho, and the entire country at large; and since its commencement the eyes of the world have been turned upon Boise City and the conduct and the management of this proceeding in this court. The great public interest displayed everywhere is shown by the fact that some of the most noted correspondents of the greatest newspapers of this country have been here continuously noting the proceedings and sending the news to other places. It is an important duty, gentlemen, that devolves upon all of us. We have been engaged here in making history, I might say. This case will be looked upon as one of the most important in the criminal annals

of the country. It is important, therefore, that we do our duty fully and come to a correct conclusion. For the past day and a half, gentlemen of the jury, we have been engaged in determining the law that bears upon the case and it is fortunate both for counsel and the jury that the law has settled in advance and we know exactly what issues will finally be presented for your consideration when the case is finally submitted to you. Now it is simply a question as far as counsel is concerned of doing their full and entire duty. As one of the counsel for the prosecution, gentlemen, whose duty it is to appeal to you in behalf of the prosecution at this time in the case, I will say in behalf of the prosecution that we simply desire that equal and exact justice be done. We are not here to urge the conviction, gentlemen, of a man whom you believe is innocent or think under any circumstances can be innocent. We are not here, gentlemen, representing anyone except the state of Idaho. It has been intimated in the remarks made by counsel for the defense that the authorities in whose charge this case is given by law have not taken that feeling or interest in the case that they would be expected to. I would say that both Senator Borah and myself, representing as we do the state of Idaho, and no individuals and no associations of any kind than purely the state, and that is all, are simply here trying this case and take the lead perhaps in this case at the request and by the command of the prosecuting attorney of Canyon county, <sup>who</sup> ~~has~~ in all cases is our superior officer and whose word has been dominant in this matter.

Gentlemen, I do not expect that much that can be said by counsel will have great influence with you. I consider it is



the province especially of counsel for the prosecution to assist the jury in arriving at a righteous verdict and not by any extraordinary methods attempt to extort a verdict from you, and I will, so far as I am concerned, so endeavor to assist you. You must remember, however, gentlemen of the jury, that this cause has not only taken a long time to try but there has been a great multitude of witnesses examined -- more than are generally brought before the court in an entire term and in all the cases before the court. We have had, if I remember correctly, the evidence of about one hundred and fifty witnesses taken, and it may be necessary that a reference to the testimony of all these witnesses, more or less extensive, will be required to be made. We have the law which is to be applied to the evidence, to which we will call your attention, and therefore, gentlemen, I bespeak your best attention and your careful consideration to all that may be said not only by myself but the other counsel, and if at times we appear unnecessarily lengthy in our remarks, if these remarks become tedious to you, bear in mind, gentlemen, the importance of the case and attribute it to a desire upon the part of counsel to elucidate the problems involved and not a desire simply to occupy your time or to cause you any annoyance or inconvenience. So far as I am concerned, gentlemen, as I have said, I will simply attempt to call your attention to the various points that strike me as being worthy of consideration as shown by the evidence of the different witnesses. I have none of those elements or qualifications that constitute the orator, and therefore I will be compelled in a plain, blunt way to give you my ideas in regard to these matters and let you

form your own conclusion in regard to the matter after listening not only to what I have to say in regard to them but the remarks of counsel upon the other side as well.

Gentlemen of the jury, this is an extraordinary case in many respects, and it is extraordinary in particular in regard to the main witness who has been brought forward on the part of the prosecution. We have brought here, gentlemen, as the main witness for the prosecution, Mr. Harry Orchard who stands confessed before you as not only the man whose hands struck down Governor Steunenberg for whose death this defendant is being tried but who has admitted himself to be the perpetrator of a score of other murders at the instigation and at the request of this defendant and of others who have been associated with him. His story, as I have said, has been most extraordinary. It has been told to you without any effort at concealment, calmly, without passion, without any endeavor to conceal. He has told his awful story in regard to these terrible crimes and he has done it in a way, gentlemen, that impresses us with its truth. There has been no effort upon his part to boast of his misdeeds. Many, gentlemen, we know have heretofore stated, in order to carry out their own objects or to attain a fame which although it may be infamous still is dear to them, have boasted of crimes that they have never committed and have taken upon themselves the onus of crimes that have been done by others. There is nothing of that sort in this case. Everything that he has stated, gentlemen, has impressed both jury, attorneys and spectators with the idea that it is the equal and the exact truth. His story, gentlemen,



has carried conviction. Generally we take the statement of a man who is an informer with many grains of allowance. We do not believe it all. We are afraid that fear prevents him making a full statement. It may be that boastfulness and desire to make himself notorious will impel him to tell more than ~~has~~ really happened and sometimes, gentlemen, an effort to work an injury upon an enemy will cause him to pervert the truth. But in this case, gentlemen of the jury, I appeal to you that all of the circumstances surrounding the statement of Mr. Orchard not only in his direct examination, which lasted for the better part of two days but for that six days of strenuous cross examination to which he was subjected, that all of it impressed us with the idea that he has told the truth, the whole truth and nothing but the truth in giving his evidence before us. Gentlemen, I think it is apparent from that evidence and from these circumstances that this statement that he has made was not done with the idea of escaping punishment. I do not believe, ~~gentlemen~~ gentlemen, that Mr. Orchard has any more hope for the future than he has pride in his past. He is simply, gentlemen, impelled by what he considered his duty occasioned by his awakened conscience, made these statements and told you what he believed to be the truth without a desire to shield himself or any other person. It is apparent I think, gentlemen of the jury, after listening to the cross examination for six days, unparalleled ~~in~~ in its fierceness as well as in its length, I think it is evident to you that he could not have told an untruth in regard to an important matter. In fact, gentlemen, that cross examination started with the

assumption that Orchard was lying, that he was concealing part of the truth in any event. But I will tell you, gentlemen, that any man, be he who he may, the sin stained criminal as Orchard undoubtedly is, or the ordinary citizen, cannot upon cross examination be brought to contradict his statements if upon his direct examination he confines himself to the equal and to the exact truth. And great as are the abilities of my learned friend who conducted this cross examination, undoubted as are those abilities in the line of cross examination, I appeal to you, gentlemen, whether upon any point that had been established by the direct examination of Mr. Orchard he impinged in the least degree upon its truthfulness. This evidence will show, gentlemen, that Mr. Orchard when he sat before you upon the stand, when he gave his testimony here, was not making statements that had been driven into him. It must have been apparent that when he stated to you that he had not even been examined and re-examined by counsel, as witnesses usually are, that he was telling the equal and exact truth. That we refrained from doing, gentlemen. If those statements that he had informed us with reference to that he was about to give to the jury was that equal and exact truth which evidence is supposed to be, it needed no drilling, it needed no rehearsal upon the part of counsel. We preferred to have it come in his own way so the jury could then determine in regard to its accuracy. Of course, gentlemen, in the evidence of any witness we must expect some discrepancies. The infirmities of human memory are such that it is impossible often to recollect dates with any degree of certainty, unless some other and important events fix those dates by reference to the important



event. Conversations cannot be remembered with any degree of accuracy unless they are written down and a memorandum made of them, unless some event has happened that will impress <sup>it</sup> upon the memory, will burn it into the memory. But the important matter, great crimes such as has been testified to by Mr. Orchard, undoubtedly would be retained in the memory of anyone engaged in them and we will expect to find when testifying in regard to such crimes, even after a lapse of a considerable length of time, that he would be able to tell the truth, and that I believe has been the case on the part of this all-important witness for the prosecution. Gentlemen, other evidence has been brought forward on the part of both sides in regard to these matters; we have gone farther than we were called upon by the law, and I believe they corroborate Orchard's statement in every material point that was made by him upon the stand. Most of his statements, gentlemen, have been corroborated as well by the evidence for the defense. But what I desire to call to your attention, gentlemen of the jury, here and now is this fact, that wherever there has been a contradiction of any statement that he has made of any importance so far as the consideration of this case is concerned it has been a statement made by a party in interest, one who is involved in this controversy, or it has been made by a man who has been proved to be a perjurer by the evidence that has been introduced by other witnesses in rebuttal. Gentlemen of the jury, this man will be attacked, his evidence will be attacked undoubtedly in the most strenuous way by my friends upon the other side. The reasons that have prompted him to make this confession will

be commented upon. It is proper for them so to do. It is proper for us upon our side to refer to it. Now I am not one of those that believe in death bed conversions, nor do I believe, gentlemen, that the evidence of a confessed criminal is to be taken without many grains of allowance. Gentlemen, the conviction has been forced upon me in this case, as I believe it has been forced upon every man that heard the testimony of Harry Orchard that some cause has impelled him to tell the entire truth. I think I understand what that cause is. I believe it is the religious training of his early youth awakened by those references that were made to him in the loneliness of his cell by the gentleman who approached him and obtained his confession. I believe that the teachings of a pious mother, of a God-fearing father, although seemingly obliterated by years of criminal life, but at last when his conscience, awakened, came to the front, showed him what his duty was and impelled him to make this statement. That he was born of Christian parents and was well raised, we can see by his appearance and action on the stand that that statement is correct, and I believe that we are warranted in coming to the conclusion that it was the saving power of Divine Grace, gentlemen of the jury, working upon the conscience of this man that finally impelled him to make this confession that in all probability will bring to the bar of justice the worst set of conspirators that have ever infested any section of the United States. Mind you, gentlemen of the jury, that this fact that he is now a Christian or his professing to believe in the doctrines of the Savior has not been brought forward by this prosecution.



I call your particular attention to the fact that we did not parade him before you while upon the witness stand as a man that had experienced a change of heart or should be believed upon that account. We studiously refrained from calling those things to your attention. But it was the cross examination of my learned friend upon the other side that brought out all of these matters. In accordance with his usual custom, he was building up ~~his~~ a house of cards again to blow it over with his breath and he brought out these matters in order to base an argument upon them before the jury and seek to impress your minds by these things that this man was absolutely unworthy of belief. What do we find, gentlemen? We find that he answers without hesitancy, ~~he~~ goes into these matters with pain perhaps, but <sup>as</sup> in all matters, answers without hesitation in regard to his attitude upon those matters. In fact he almost becomes eloquent with a rude eloquence, gentlemen, that shows that he not only realizes the crimes that he has committed but that he is more than anxious to expiate those crimes in any manner that may be just and lawful. He answers these questions that are put to him by the learned counsel for the defense. When he asks him in conclusion, gentlemen, what has been the reason that has actuated him, he raises his voice although it is quivering with emotion, and the repressed tears are scarcely kept from his cheeks <sup>when he says</sup> that he considered it a duty he owed to himself, to God and to the country. A better answer never was made and, gentlemen, I believe it explains the attitude of this witness and I believe that that very statement in connection with the other matters that he has testified to, in connection with the fact, gentlemen, that he never endeavored

to conceal from you any of those matters which would make his name more infamous than it already was, will convince you beyond a doubt of the entire accuracy of his statement. One question, and I may imagine perhaps, gentlemen, the main question that is before us is to determine whether or not Orchard has been telling the truth in regard to these recitals. I have tried to impress upon you, gentlemen of the jury, that his own statement with reference to it would indicate that he was telling the actual and exact truth. But the law, gentlemen of the jury, requires something further. It requires that the evidence of an accomplice should be corroborated, that there should be other evidence tending to show not only the commission of the crime but the connection of the party accused of the crime therewith. It is not enough that one man has testified with reference to those matters if that one man is connected with the crime, is a party to it. The theory, gentlemen, of this prosecution, as I endeavored to explain to you in the opening statement, is that there was a conspiracy formed by the leaders or some of the leaders of the Western Federation of Miners to do certain unlawful acts for certain purposes; and that for the past eight years at least those leaders have been engaged in such unlawful purposes and committed many crimes in pursuance of those purposes. This brings us, before we go into this evidence, gentlemen, to a consideration of the law of conspiracy. And I will say in passing that the court will instruct you that it is not necessary in order to prove a conspiracy between two or more persons to do an unlawful act or to accomplish a lawful act in an unlawful way that it be shown that there is a specific meeting of minds, to be



shown that these men ever actually got together and come to an agreement, because that agreement, that conspiracy is shown by the acts themselves that were committed, the attendant circumstances of those acts. Nor is it necessary, gentlemen, for a person accused of being a part of this conspiracy at all of the times during its existence to have been engaged in it, ~~xxx~~ when as in a case such as we charge this to be a number of persons necessarily have been brought into the unlawful combination. It makes no difference whether in 1899 they were parties to it, or whether they became parties in 1890 or 1900 or 1905 or 1906, as the case may be, and the court will say to you gentlemen that men ~~may~~ have been members of this combination, may have been responsible for the acts of all of these parties criminal and otherwise in the year 1899 or the year 1900 and still in no wise be connected with the death of Steunenberg, because it is one of the principles of the law of conspiracy that when a person withdraws from it, although responsible for all of its past acts, he is not for those that are done after such withdrawal. And so it is, gentlemen, others may come in, they may take the places of those who formerly were members of the combination or united with the combination in such a way as to make them principals in the eyes of the law and while they were not responsible perhaps for the original acts still they become responsible for all that were committed after they ~~xxx~~ did join the combination. And so you see, gentlemen, a combination such as we have urged becomes a continuing matter and it varies so far as the personality of the members of it are concerned and we must look to the various acts

in order to fix the responsibility of any of those acts upon a given person. But still, gentlemen, if the combination existed for those purposes every man is responsible for every act done by any party engaged in it during the time that he was actually a member of it. So here, gentlemen, if it is true that there was a combination formed by the leaders of the Western Federation, by men that were associated with ~~the~~ these leaders, if that is established as a truth or if you inevitably conclude from all of the circumstances related in evidence that such must be the fact, that I say, gentlemen, that every man who is connected with them is responsible for the act of every other man. Every act done in pursuance of that conspiracy or to further its objects, every word said by any member of it calculated the further the objects of that conspiracy makes every other man who is a member responsible for those acts and for those words although he may know nothing of the commission or of the occurrence. This may seem a harsh law, gentlemen, a harsh theory of the law, but I think reason and a little common sense will teach you that it is right. Otherwise, gentlemen, a man might be allowed to teach the most abominable doctrines that would necessarily permit those who depended upon his teaching to commit. He might be permitted to teach them and then fall back upon the theory after those who followed the theory had committed the crimes that his hands were clear of any complicity. Gentlemen, the man that urges, the man that advises, that assists, that is responsible for the commission of a crime, whether he has actually committed it, in the eye of the law is the man that commits the act and it is right that he should be, and society can be protected in no other manner.



And this brings us to the consideration, gentlemen, if I may be pardoned to bring to your attention to a few of these points of law before entering into a discussion of the facts, and I think it is necessary so to do in order that you may thoroughly understand the argument that will be made hereafter -- brings us, as I say, to the consideration of another principle of law, and that is the statutes of this state with reference to the commission of crimes by persons who were not present but have simply aided, advised, encouraged or assisted in that commission. Under the common law, gentlemen, a man who was not present at the time of the commission of the offense, but had advised or encouraged its commission, had done any acts in furtherance of the plan to commit the crime, was an accessory and he had to be tried and convicted as an accessory. But under the statutes of this state, as his Honor will instruct you, all ~~the~~ distinctions between an accessory before the fact and of a principal are abolished, and any man who aids, advises, or assists or encourages in the commission of a felony, although not personally present, is in the eye of the law the man that commits that felony and he must be prosecuted and tried as a principal. So the indictment here, you will perceive, charges, and rightfully and legally charges that the defendant at bar and these others who are jointly indicted with him were personally present on the 30th day of December, 1905, in the town of Caldwell, and personally threw upon and against the body of ex-governor Steunenberg this bomb the explosion of which resulted in his death. We have seen on one or two occasions in the course of

argument in this trial, or references made to it especially in the opening statement of the learned counsel who addressed you in behalf of the defendant before they commenced taking the defendant's testimony, that something wrong was done, that some wrong was committed by reason of certain acts in bringing this defendant to the bar of justice, and I presume that he will go on and urge upon you gentlemen in his argument that which he urged in his statement, that the county attorney did some wrong by reason of certain affidavits made at the time of the arrest of these parties. I say to you here and now, gentlemen, that my intimation of that kind would simply be an effort to distract your attention from the real issues involved in this controversy and to excite your ill will toward some one connected with the prosecution. So far as all these proceedings are concerned, gentlemen, they have been passed upon by all the tribunals of the land and the course of procedure adopted was the only one that could be, despite anything that was said.

MR. DARROW: I object to that statement.

MR. HAWLEY: Why did you make that in your opening statement, sir, if you didn't want it brought out?

MR. DARROW: It was simply a fact.

THE COURT: The objection is overruled.

MR. HAWLEY: When you make a solemn opening statement with reference to a matter what you do not call attention to by evidence I presume we have a right to comment upon it, and we have noticed references, gentlemen; here to matters with reference to that arrest and the taking of these defendants from the state of Colorado which were absolutely outside of the case and can cut



no figure here, which were introduced and must have been introduced not for the sake of proving the innocence of these parties but simply to enable counsel to build up some theory that would excite your ill will against the prosecution or make you believe they had been unjustly treated even if guilty of the offense charged. Excuse me for referring to this matter here, gentlemen, but I know of no better occasion to do it than right here.

Another principle of law, gentlemen, which you have to consider -- I have briefly referred to it before -- and that is the law with reference to accomplices. Any man that engages in an unlawful enterprise with another is an accomplice, is regarded as an accomplice. Now the evidence of that accomplice, as I stated before, will be taken in a court of law but there must be something more than the evidence of such accomplice. He must be corroborated in some regard, in some particular. And I desire to call your attention, gentlemen, to what constitutes a corroboration or that which must be considered as constituting corroboration. It might look, gentlemen of the jury, as if it was absolutely necessary that all matters should be corroborated, that all material points should be corroborated by the evidence of some other person than the accomplice. But such is not the law. If it was so required the evidence of the accomplice would be valueless, because we would have proof on all material points without that evidence. But the court I apprehend will instruct you gentlemen that this corroboration that is required of the evidence of an accomplice simply must be corroboration that goes to some of the material facts, something in regard to some of

those material facts that shows not only the commission of the crime but tends to connect the defendant with it, and be that corroboration ever so slight still it is sufficient if with that corroboration and the evidence of the accomplice and all the testimony in the case you believe beyond a reasonable doubt that the party charged is guilty of the act.

Now, gentlemen, another matter to which I call your attention which which was touched upon in the opening, and that is the theory of the prosecution with reference to the death of ex-governor Steunenberg. I told you when reciting the facts upon which we would depend that we would show that an unlawful combination existed commencing a number of years back. I mentioned I believe the first incident, the troubles of 1899, in the Coeur d'Alenes, that a combination existed upon the part of the leaders of the Western Federation of Miners or some of those leaders for the commission of crimes in order thereby to perpetuate their own power, to carry out their own objects and purposes in the Federation itself and in other matters in the sections wherein the Federation existed, notably, in political matters. And I told you gentlemen that this conspiracy or combination<sup>or</sup> coalition or by whatever name you may call it, was not formed for the purpose of committing any particular crime. It was not the object and intent and the purpose of that conspiracy to cause the death of Governor Steunenberg any more than it was to cause the death of any other prominent man who had rendered himself obnoxious to that organization. In other words, Gentlemen, that the different matters which have since been testified to, that the blowing up of



the Bunker Hill & Sullivan mill, that the Vindicator explosion, the killing of Lyte Gregory, the explosion at the Independence depot, the attempt upon the life of Judge Gabbart and of Judge Goddard and of Governor Peabody, the death of Frank Steunenberg, were all mere incidents of this general conspiracy, and such being the case, gentlemen, that being the theory, we were permitted to introduce in evidence these different matters and put our proof before the jury with reference to them, upon the theory, gentlemen, that if the death of Governor Steunenberg was simply an incident of a combination that proof of other incidents of like nature were properly admissible and that all of those matters could be taken together with all of the evidence to prove the existence of the conspiracy itself and fasten the crime upon the guilty parties whoever they might be. I think then, gentlemen, that to proceed in an orderly way, to bring these matters which have been testified to upon the part of the prosecution and have been refuted by evidence upon the part of the defense before you in a proper shape we should commence at the beginning and go into these different incidents and see whether or not the theory of the prosecution with reference to them has been borne out to ascertain whether these men who are responsible for the Western Federation of Miners, who have been in control of this organization, whom we have charged with being parties to this conspiracy were responsible for these acts. The first of these matters, and it was the first thing that we charge against the Western Federation of Miners and I believe the first outrage that was testified to on the part of the prosecution was the blowing up of the Bunker Hill & Sullivan mill in April,

1899, in Shoshone county in this state. You will remember the evidence with reference to the situation up there at that time and the condition of affairs. The Bunker Hill & Sullivan Mining Company, which owned this mill, it seems had rendered itself obnoxious to the members of the Western Federation who had control in many sections of the Coeur d'Alenes, because they would not subject themselves to the domination of the union. There was not at that time, if I understand the evidence correctly, any strike on or any dispute about wages or hours of labor or anything of that sort, but it seems to have been the resolve upon the leaders of the Federation to learn this company a lesson, to teach all of those who opposed them in every section of the mining country of the United States that they dare not run counter to the wishes of the Federation without taking desperate chances upon their property or upon their lives. So an agreement was come to under which it was understood that upon the 29th day of April, 1899, a display of force should be made and the different miners' unions of that section of the country should be taken to the town of Wardner or of Wardner Junction or of Kellog Junction, as it is variously called, and there they would teach a lesson to this obnoxious corporation. And what do we find, gentlemen? We find from the evidence of Mr. Orchard, and it is corroborated as I take it by the evidence of Mr. Dewey as well, and if it was untrue in any particular a hundred witnesses could have been summoned here to have shown wherein it was inaccurate, we find that on the morning of the 29th of April, 1899, before the shifts had gone to their day's work a meeting was called in the Miner's Union hall at the town of Burke and there Mr. Paul Corcoran,



probably the most influential member of that organization in that town, the secretary, gentlemen, the financial secretary of that miners' union, in the absence of the president, who does not seem to have been notified of the meeting at all, addressed these members and told them the objects of the meeting, that they were to go down in force to the town of Wardner. And what resulted then? We find that although there was opposition that a vote was taken and a majority were in favor of it and all work was ordered stopped in the mines in that vicinity and they unlawfully took possession of the railroad train that was there with force and arms, they compelled the railroad employees to run their train under their own directions and they travelled on that train down to the town of Gen, a few miles below there, they stopped it and there the miners' union of the town of Gen got aboard of the train and they backed the train up to Burke and they took aboard some three thousand pounds of dynamite, proceeded down to Wallace and there the Mullan union, who had come down on foot, got them and accompanied by that union and their friends there in Wallace they proceeded to Wardner Junction, and when they got there those who were armed with guns, those who had the guns distributed to them in their union as well as they were distributed in Gen, these men with long guns, who were also masked, showing that they were trying to conceal their identity and they appreciated the fact that they were there on an unlawful errand, formed themselves into line with military precision and marched down to that mill, killing upon the road there and back two fellow mortals, took possession of that mill and the others

men upon the outside who had no arms, carried that powder from the train and they placed it by experienced hands under that mill and then set the fuse, exploded it, and in a few moments two hundred and fifty thousand dollars' worth of property was simply a shapeless mass of ruins, and then they took their train and went to their various homes up the canon. Gentlemen, that is a recital in brief terms of that outrage as shown by the evidence that has been detailed to you in this case. A more abominable action was never formulated in the mind of a human being than the wanton destruction of that property and the wilful taking of those lives upon that occasion. From its inception until its ending not one move upon the part of any man connected with that entire proceeding, be he leader or be he member, but what was a crime in itself and of itself -- stealing the railroad train, taking possession of that train, destruction of property, murder committed upon those who were killed -- why, gentlemen, all the crimes in the criminal calendar were included there in their actions there that day, and every man of that assemblage of a thousand or twelve hundred was equally guilty with those who had planned its execution, and still we have heard evidence given upon the stand that has been brought here for the purpose of extenuating the infamous actions of these people on that occasion. We find, gentlemen, that there never has been upon the part of the Miners' Union, as shown by their official organ, the Miners' Magazine, a single word that could be construed as a reflection upon those men who were engaged in this enterprise.

MR. BARROW: I object to that statement.

MR. HANLEY: No wonder you object, after the statement



you made in your opening.

MR. DARROW: It is not true.

MR. HAWLEY: Mr. Darrow says, gentlemen of the jury, in his opening, he solemnly stated here in his opening when he was supposed to be making a statement of equal and exact truth--

MR. DARROW: Wait a minute. We object. Mr. Hawley says we find by the Miners' Magazine that there never was one word in the Miners' Magazine in any way condemning the action of the miners who went down there a thousand strong. Now I say there is no evidence of that and I want to save an exception to the statement and ask the court to so instruct the jury.

THE COURT: An exception will be noted.

MR. HAWLEY: We have the evidence, gentlemen, and we have these magazines.

MR. DARROW: They have not been read to the jury.

MR. HAWLEY: I ~~think~~ say they are in evidence and if there is anything therethat did condemn the matter, in the production of evidence on your side of this question you would very promptly have had them in.

MR. RICHARDSON: You can't argue a case upon what might have been in the record.

MR. HAWLEY: It is in accord with my rights as an attorney and I am not going outside of the record.

MR. RICHARDSON: We are saving our exception in accordance with our right, and whenever he goes outside of the record we are going to do it, if your Honor please; we have got to do it.

MR. HAWLEY: You will do exactly what the court will give you the privilege of doing, nothing more nor less.

MR. RICHARDSON: We will do what the law gives us the privilege of doing.

MR. HAWLEY: The court gives the law and you will do what the court gives you the privilege, no more, no less.

Now, gentlemen of the jury I said that Mr. Darrow in his opening called the attention of the jury to this condition of affairs and this state of facts that existed in 1899 in the Coeur d'Alenes, and what was the language? I do not desire to misquote him. He said, gentlemen, in trying to explain this awful offense that had been committed, and in which almost every man belonging to these unions was implicated, in effect that it was not a union matter, it was an outpouring of the citizens and of the people took possession of this train and they went down, a crowd composed of miners and merchants and of lawyers and even he thought of preachers that went down there upon that occasion, and if he will take the trouble to read his own utterances, and we have not heard any explanation or apology for them as yet, he will find that is what he said, and it was simply an attempt to impress upon your minds, gentlemen of the jury, that in this affair the unions should not be held responsible but it was simply an outpouring of the people of that entire section that were trying to wreak the vengeance of a community upon an obnoxious mining company. I say, gentlemen, that this proof -- this proof of Harry Orchard, sustained as it is by the evidence of Dewey, uncontradicted as it is by the evidence of any person, shows conclusively that these men that were engaged in this were



the leaders of this organization, that they planned it, they carried it out and they were responsible; and still we hear, gentlemen, and we will hear a great deal more about the enormity of the offenses that were committed against these people because, forsooth, a bull pen was established after martial law was proclaimed, some of them were incarcerated there without a trial for two or three months and were guarded by negro soldiers they said, and it was an outrage upon these people, they contend, and you have heard from them and you will hear from them again and you will hear from both of the learned counsel and they will enlarge upon this matter and try to excite your ill will, your hatred towards this prosecution and those who represent it on account of these acts. And I say to you, gentlemen, that the man that was at the head of the state at that time, that Frank Steunenberg, who lost his life on account of that very transaction, did but equal and exact justice when he proclaimed martial law in that community where the officers were powerless, and if they had not been powerless were part of this dominant force that controlled the destinies of the county and belonged to those various societies that were responsible for these outrages there, he did his duty, no more no less, there, gentlemen, in establishing this bull pen and simply incarcerating these men who had been engaged in these unlawful enterprises, in this awful crime -- allowing them to go without one-tenth of the punishment that should have been administered. And it does not lie in the mouth of counsel or of any of these parties to now attempt to excuse the acts of any individual because forsooth he had been in the bull pen without trial, although men who had taken possession of that

train, although men, gentlemen, all equally guilty on the perpetration of these fiendish crimes, including the murder of Shyne and of Smith and then complaining because suggested to a slight imprisonment of two or three months in the bull pen, even if colored soldiers wearing the uniform of the United States were their custodians. Gentlemen, I tell you that each and every man that was engaged in these fiendish acts was fortunate indeed that he did not spend a long term in the penitentiary or ascend the scaffold and forfeit his life by reason of these acts. But, gentlemen, for some unexplained reason counsel upon the other side have seen fit to intimate to you that the statements of Orchard with reference to this affair are not true. Why, I don't know. But they seem to think it is necessary for the purposes of the defense to disprove the fact that he was at Wardner at all upon that occasion. And they bring up here, gentlemen, the evidence of Dr. McGee and of Dominick Flynn and of a saloon keeper named McHale to show that Orchard was playing Poker at the town of Millan on that day.



Now, they seem to totally overlook the fact, gentlemen, that it would have been greatly to the advantage of Harry Orchard to have been playing poker in the town of Mallan on that occasion instead of being mixed up with this mob who were committing all these unlawful acts. They seem to overlook the fact that Harry Orchard had never been a member of the union until about three weeks before and his name could never have been mixed in these outrages unless he had been present, and if he had been pursuing a lawful pursuit on that occasion he would have had no occasion for leaving; but in their anxiety to contradict him they bring this evidence; Dr. McGee, reckless as he is, does not say he was not playing poker on that occasion; but he merely gives it as his recollection that he thought he saw him; but Flynn and McHale swear that on the 29th of April he was engaged in a poker game in that town, and Mr. Flynn gives you his reasons for that. He speaks of his having worked in the timber there with him and having been engaged in that business, and as I take it from his evidence he would seek to imply that he had been engaged in that business up to within a short time before this in that locality.

Now, gentlemen, we meet that evidence upon rebuttal. Although we did not consider it material, still in a matter of that kind this witness was disputed immediately, rendering him unworthy of credence in the minds of the jury upon some matters that were of importance, and we showed, gentlemen of the jury, that this statement of Flynn could not be true. We showed by the circumstances that it could not be true. We have shown by the time book of the -- or, we have shown by the statement of Orchard himself, gentlemen, that he had been working for three weeks at

the Tiger and Poorman mine, and we show, gentlemen, by the evidence of the man who had formerly worked with him, and in the timber near Mullan, Dan Gainey, that he had left there some weeks before; that he had not been there again to his knowledge, that they had lived together while they worked together in the woods in that vicinity, and furthermore that he came into the town of Mullan some three days after the explosion, that he was anxious to know what had become of his old partner, Orchard, and he went to this man Flynn, the man who swears that he was playing poker on that day, and asked in regard to him, and Flynn told him he had not seen him since he left there except that he had seen him a few days before in the town of Burke and he was playing poker on that occasion and he had talked to him. A more complete refutation could not be made because the circumstances show it was impossible. How could it be -- how could it be that this man who was working a shift could be travelling over that high mountain or along the road away around it and at the same time play poker on these occasions, and Flynn speaks of him as having been there often. He is simply, gentlemen of the jury, mixed up in some of his dates; he has simply transferred events that happened months before to the 29th of April and the evidence of Orchard in that respect stands unimpeached so far as Flynn and McHale are concerned. If ~~him~~ he was there, gentlemen, I ask in all seriousness, if Orchard was in Mullan on that occasion why was it that he left the country? We need not have introduced the evidence of Gainey at all to contradict this point, because the question would naturally suggest itself to every reasonable



man, what earthly object was there that Harry Orchard could have had in leaving the Coeur d'Alene country if he had not been implicated in the blowing up of the Bunker Hill & Sullivan mill? He was undoubtedly in a position that galled him, was working for good wages, and still we find not only from his own evidence but the evidence of others that as soon as the troops came into that section of the country he hid himself -- that he started for Montana. We find by the evidence of Mr. Paulson that on the 4th, before the troops got there upon the evening of the 3rd, upon the 4th of May he was at the Hercules mine early in the morning before any of them had got up beside Paulson himself, on the road to Montana. Why would he be taking that trip over that high mountain covered with snow at that time of the year, and he afoot, unless there was some urgent reason for his so doing? It could not be said there was any danger of a man being imprisoned for any length of time unless he had done something. Paulson had not been in this affair. It was the guilty conscience that impelled him to leave, and that fact itself would show the statements of Flynn and McHale to be simply a falsehood manufactured out of whole cloth, or an honest recollection of some event changed to another and a different date. Men will often do that. Men will often, after the lapse of years or even months, believe a matter that happened in April really happened in July or August, and they will swear to it and believe they are swearing to the truth, and they will tell the circumstances of the act correctly; ~~but~~ the only thing they are mistaken in is the date, and all the circumstances attending these statements of Flynn and McHale would indicate that he is swearing to an occurrence

that happened at some time, but is simply mistaken in the date by a number of months or possibly a year.

But there is another matter connected with this that I desire to call your attention to at the present time. Mr. Orchard says that W. F. Davis, sometimes known as Big Bill Davis, was the leader of the armed force on that occasion; that he had control of those who went down there and perpetrated this outrage, or at least those who were instrumental in causing the death of the ones that lost their lives upon that occasion. Mr. Davis figures to a very great extent in the evidence in this case. In fact, gentlemen, in the years 1903 and 1904, in the troubles of Cripple Creek, he seems to have been one of the most energetic of all those engaged in outrages in that vicinity, responsible to a very great extent for the outrages at the Vindicator, for the death of the parties at the Independence depot, and of many others of those matters. He was president of the union, it seems, at that time known as Altman Union No. 19. He has been brought here upon the stand to contradict Orchard so far as the criminal acts alleged by Orchard against himself and others are concerned. Now, gentlemen, we expected that all those people who by Orchard had been implicated in the commission of those acts, the Bill Davises, Bill Alkmans, Bill Easterlys and others who were identified by him as the leaders of the union, and who were engaged in those outrages, -- we expected these men would come here upon the witness stand and swear absolutely that they had nothing to do with it, and we expected Copley and Marion Moor and these other men who were responsible to a great extent for



the operations of the Western Federation would also take the stand and do the same thing. Why, it was to be expected. I don't blame, gentlemen, in my heart, any man who has been proved by the evidence of another man upon the witness stand to have been guilty of grave crimes as these men have had charged upon them for taking the stand and even perjuring themselves in regard to those crimes. It is human to expect that a man will lie when he is charged with the murder that he knows he has been guilty of, and I don't blame them for doing so. But Mr. Davis, when he takes the stand, gentlemen of the jury, tells an absolutely unnecessary falsehood from my point of view. He says he was not the man in command of that armed force, and he denies that he was on Wardner on that occasion at all. Well, now, gentlemen, I think I could safely say that that statement was a very ridiculous assertion; that any man who had never seen Davis ~~know~~ before and saw his attitude upon the stand, could observe the man and know he had been a leading member of the union, would feel certain in his heart that no act of violence of that kind could have been committed by a union with which he was associated unless he had been an active participant in it, because he is not the kind of man that stands back and lets others go to the front. It went without saying that Bill Davis, if the rest of the union men went down to Wardner on that occasion, he also was engaged in it, because the nature of the man would not have permitted him to stay at home and allow those whom he calls his brothers in those societies to have gone forward and taken the chances of the acts. He is bound to have gone with them, because we can readily see

there was no restraining influence that kept him back. But he denies it all. I don't know as it was hardly worth while to introduce evidence to dispute that. I hardly imagine, gentlemen, that anyone seriously believed that statement of Mr. Davis, but we did think it worth while to seriously consider it and we brought Mr. Paulson down here, a gentleman whose word cannot be disputed even by counsel upon the other side, and Paulson tells you, gentlemen, that immediately after this trouble, and when the troops were expected in, that Davis came up to his cabin, up to his place on the Hercules, and he stayed there in hiding for a space of two weeks. He was not working as Davis says, -- he says he was working at the Hercules. Paulson says, no he was simply stopping there, that he occasionally did go out into the tunnel and do a little work, helping as he would in a kitchen, in cooking meals and those things, but he was not working at all, he was not on the pay roll, and he was left there and went to some unknown section of the country at the end of two weeks.

Why, I ask you, gentlemen of the jury, would Mr. Davis have left that section of the country -- why would he have left the town of Gen if on the day of the explosion of the Barker Hill & Sullivan mine -- why would he, with all the people around there who would have seen him, if he was the only one that stayed at home? Do you believe in that town that he would not have gone and seen the proprietor of a saloon that was open on that day, or been around somewhere where Hale and Cartwright were in that town, who were occupying the premises where he was at work? They say they saw nothing of him. But if he had not been away --



MR. RICHARDSON: Cartwright was not even a witness, if your Honor please.

MR. HAWLEY: I meant that other --

MR. DARROW: You are probably talking about someone whom you saw in your office.

MR. RICHARDSON: Hale was on the stand.

MR. HAWLEY: I made a mistake in Cartwright, but they would have seen him, gentlemen, and without a doubt. These two men did not see him on that occasion. There would have been no need of his going if they had seen him. The very fact of his going and leaving the country was proof positive. You remember Dr. Aldwell took the stand, and he says that that evening on the train into Burke W. F. Davis was on the train. You will remember that Gen is only three miles below Burke, and the Hercules mine is still further on, and he went there, and we find Mr. Davis on that evening going up on that train carrying these men to the town of Burke. Then we bring on Dewey and what does he state in regard to it? He was at that time a member of the union. He was a man engaged in this enterprise, -- Dewey, who knew Davis well because he was a member of 19 with him also, and he says Davis was there on that occasion and that he was the leader of the armed force.

Now, gentlemen of the jury, could any proof be more positive than this? Is it not patent to you, gentlemen, and to everyone that heard it, that these men who were making these statements in regard to these matters were simply here attempting to contradict Orchard in order to impeach his testimony and cause you to disbelieve those important matters that were fixing the

guilt of this defendant upon him? It seems to me it must be apparent and it became necessary then perhaps for us to make these contradictions and show the utter and entire absurdity of these statements, to show that they were either unintentional falsehoods or absolute mistakes upon the part of these people, but there could certainly have been no ~~such~~ unintentional mistake on the part of Davis when he made the statement that he was not at the Bunker Hill & Sullivan mill upon the 29th day of April.

Another thing, gentlemen, I desire to call to your attention in this thing, and it seems to me that it is important, that they have disclaimed the responsibility on the part of the Federation or the Federation leaders for blowing up and destroying this property, for the death of these men who were killed upon that occasion. I ask you in all seriousness, gentlemen, who it was else that had any motive in a proceeding of this kind and to who else could this crime be charged? Do you believe, gentlemen, that the rank and file of an organization of that kind would without the request of their leaders form themselves into a mob and commit an outrage of that nature? No, it does not stand to reason. The very facts of it, the very statement of the facts show conclusively, gentlemen of the jury, that this was an effort formulated into action by the leaders of the Western Federation, and for which that body alone was responsible. Certainly it could not be said, gentlemen, that there was any desire upon the part of Harry Orchard or any of those others who were not active leaders in this organization, in destroying this property or taking the lives of these persons. But again,



gentlemen, in going along in this matter and bringing to your attention these different crimes we charge that are brought home to this Federation and to the leaders of it, including this defendant, they are all incidents of this general conspiracy.

We, omitting the smaller matters, finally come to those things affecting the Cripple Creek country in 1903. We find them in that strike, gentlemen. There was no grievance against the owners of the mines. The arrogance of the Western Federation leaders never was more plainly shown than in that trouble that existed there on that occasion. There was no question about wages there, no question about hours of labor, no question about the recognition of the union, every man in the camp at that time, or every mine in the camp was working union men, -- they were working union hours. They were paying the highest wages, but some trouble arose in regard to a smelter away down below there, and they called what they call a ~~map~~ sympathetic strike. They threwed thousands of men out of employment, they impeded the business relations of a vast section of the country simply to show their power, simply to force people in another section of the country engaged in another branch of business to do their bidding. But we find these men who owned these mines, or at least some of them, were made of sterner stuff than the owners of mines in some sections of the country who seem to be willing to obey the beck and call of these leaders. We find the Golden Cycle and the Vindicator commenced work, or the Golden Cycle was started, and what do we find then, gentlemen? These men who were leading the union at that place, these very men who were responsible for the actions of this body, these men who

were the right hand as you might say, of Moyer and Haywood and the other leaders in Denver, as soon as these mines commenced their work with men that did not belong to the union, desiring to wreak the vengeance of their association on them, we find a carload of powder is supposed to be in that mine. Orchard is talked to by some of those leaders. He agrees to burn up this powder. Think of it, a carload of powder had been put in that mine. The evidence of Mr. Holman shows it had been put in there. They did not know it had been taken away, and it was contemplated by Sherman Parker and W. F. Davis and Easterly, by those men who are conducting this strike, that they would actually explode that carload of powder in that mine and send into eternity every man engaged in work there, and they employed Orchard for that purpose and he agreed to do it for them, and he inspected that mine, and he went to it, and failed to find the powder. And his truthfulness in this respect is shown by the eager, -- you remember the young man who was brought here and stated that after a shift was going up on the cage he was walking through the mine in that level and saw two men and he followed them back a ways and got close to one of them and two shots were fired at him and he retreated and saw them no more. That corroborates Orchard to the fullest extent. Now, Orchard knew this mine for he had been highgrading there, -- that seems to be a small matter perhaps, -- it seems to be countenanced though by the men who have control of this association, but on account of his highgrading there he had a knowledge of this mine and was therefore called in to assist in this enterprise, because he had been through it and knew where the rich streaks were and he was acquainted with the



mine.

But another thing, gentlemen, after they found that this powder was no longer in the mine, -- when they ascertained that this report was incorrect, did they stop then? No. They still wanted to work an injury, and what was done? Orchard and Masterly, I believe it was, was assisted -- or Oney Barnes, or at least one of these gentlemen who have testified here, and I believe it was Oney Barnes assisted him in that, -- they made a bomb and that was given to one, or was thrown into the coal bunkers of the Vindicator mine, -- thrown there so when it was shovelled into the engine it would explode and cause the death of all these scabs working in that vicinity. Orchard did not know that this man who was to throw it into the bunkers had done as he agreed or not, but we unexpectedly learned the other day when Mr. Ramsey was on the stand, we ascertained that there was a bomb of that description found in the coal. We find that that same amount of powder was there in that bomb. We find by an accident almost, -- by a statement that we knew nothing about, that was brought out upon cross examination itself, that the statement in regard to Orchard putting the dynamite bomb in the coal bunkers of the Vindicator mine was absolutely correct, and we account for it as having been found in that coal by the parties that had charge of it, before it was thrown by accident into the engine itself. This man Dempsey was the man that was given to. It was given to him by Aikman, I believe. I don't think it was Barnes; I don't think Oney would care anything, or that these men would care about a crime or two larger, unless they are guilty of it.

MR. DARROW: Not by you.

MR. HAWLEY: Not unless they are guilty of it.

Now, gentlemen, we come to one of the important matters connected with this, and that is the explosion in the Vindicator, which resulted in the death of McCormick and Beck. I can conceive, gentlemen, of ~~no~~<sup>no</sup> greater crime, of no more heinous offense than that. Here were two men occupying responsible positions who were sent unprepared into eternity, without cause or without reason, without notice or warning of any kind. It was an accident undoubtedly so far as they were concerned. There is no doubt about that. The intention of the perpetrator of that outrage was not to kill Beck or McCormick, because they had no quarrel with either of those gentlemen, but it was to kill the entire outfit of scabs who were working upon the shift on the seventh level. And again we find Orchard brought to the front. His knowledge of the mine made him a fit and proper person to carry out an outrage of this kind, and we admit his entire willingness to engage in it as long as he was properly paid for it, and these men at the head of that organization, gentlemen, employed him to go ahead and carry it out. And what do we find as a preliminary to this? He does not seem to have shown the efficiency of bomb making that he afterwards acquired, but he desires to ascertain some safe way -- some certain way of igniting the dynamite where it is placed in a certain position, and he goes off on Bull Hill with Easterly and there they experiment and they find by shooting a pistol into an amount of giant caps it will cause them to explode necessarily, and it is apparent that when they explode any dynamite in their vicinity would explode also, and having ascertained that to be the fact he is ready to commence



his operations. He procures from another interested party enough dynamite to make a bomb and he goes to the mine, and having prepared the bomb in advance and procured a pistol they go into the mine by one of these numerous tunnels by which it can be approached with perfect safety, and they go to what they suppose is the seventh level, but as afterwards proved they are mistaken in the level; they are going by tunnels and they proceed in such a way that it leaves it to a great extent a matter of guess with them, and they come to the sixth level instead of the seventh, and they place this dynamite close to one of the timbers which protects the shaft and down which the cage that hauls the men and the ore up from the mine and to the mine, and they put it there and it has some -- there is a contrivance there in these mines called a guard rail which keeps anyone from falling unexpectedly into the shaft from one of these levels. He runs across the guard rail and therefore in the dark he is protected from a fall, and knowing that it was the custom to raise a guard rail whenever a level was opened he fastens a string or a wire to the guard rail after he fastens his bomb, and connects that string or wire with the trigger of the pistol in such a way that when the rail is raised it will cause the trigger to relax and will cause an explosion of the gun and necessarily the explosion of the dynamite contained in the bomb. And they placed it there and left it expecting, gentlemen, -- observe the enormity of the proposed offense, because it is on a par with the Independence depot explosion, excepting the entire shift that goes down to that level to be there in the two compartments of that cage and one of them to attempt to raise that bar and cause the explosion and

have all of them hurled into eternity. But it would seem, being mistaken in the exact place where they were, they had selected for it a level which was not being worked instead of one that was, and Orchard had reported this occurrence to Parker and Davis who were representing Haywood and Moyer on that occasion and in that vicinity, and in that strike. They were waiting for the events. They were desirous of having this done. They wanted to strike terror into the hearts of these scabs so that no non union men would dare to work in the mines there -- that perhaps to so arrange matters that no man could disregard the wishes of the union and the union leaders and dare to work in one of these places without their consent, dare to do that which they prohibited them from doing.

We find that nothing resulted for several days. In the meantime, other matters were transpiring to which I will afterwards refer, but it would seem in the course of three or four days that McCormick and Beck had come to the conclusion that they would open up this level and it became necessary for them to go there, and they started down to the 6th level, and as they reached there, the moment after, this explosion was heard and both of them were instantly killed and the damage that has been testified to by the witnesses was done to this mine. Orchard, mind you, gentlemen, states he did this and that he did it for the Federation leaders. He swears positively that he was paid for part of the work three hundred dollars by the local leaders there who had sent to Denver and got it and afterwards he went to Denver and called on him in the city of Denver and was paid the balance that was due on the job, and was told not to take too much because



he could have plenty at any time and was commended for the skillfulness with which he had performed this undertaking, and he was placed upon the list of murderers who would in the future be used to the greatest advantage by the leaders of the Federation.

All of this was in evidence. All of this was important. It was a matter that applied to the consideration of every man that heard this evidence, and it must be true, the fact that these outrages were committed was a matter of history, that McCormick and Beck were killed by this explosion could not be disputed because accidents of that kind do not happen. It showed a premeditated, deliberate attempt to take human life. Gentlemen, the first thing an individual would think of when Orchard attempted to describe, or admitted having the part he tells of in carrying out a project of that kind, would be, what object would he have -- what motive governed him? Did he have aught of hatred or ill will against the Vindicator mine or its owners or against Beck or McCormick? Was there anything in his relations to that company or to any of those individuals that would cause him to perpetrate this awful crime and take the lives of this scab outfit who it was intended to kill? Nothing of that kind. Orchard had no reason to dislike the Vindicator; he had been high grading there; he knew where to seek the rich streaks of ore; he had no reason for any enmity towards any of the owners or against any of the officers of that mine, and so when he admitted that he committed the act it necessarily followed that we would have to look further to ascertain who it was that inspired the commission of this act upon his part, and I ask you, gentlemen, if all the facts in regard to the situation in that district

at that time, do not bear out to the fullest extent that which he alleges to be the facts, that it was done at the request of the local Federation who were there acting under and by the advice of Haywood, Meyer and Pettibone? Doesn't it bear out the matter of his statement with regard to his commendations by the defendant Haywood and the payment of other amounts that was due him by Haywood for carrying on this enterprise? Are you not forced to the conclusion, gentlemen, knowing that this awful crime was committed by the means described, that it was inspired by the men who were at the head of the Federation in that section, and under the direction of the defendant here at bar? I ask you in all seriousness who else in that whole section had an object? Who else in that entire community had a motive in destroying the lives of these men or in destroying that mine and the men that were working at it? I ask you in all seriousness, gentlemen, to take that matter back to your jury room with you and come to a conclusion if you can that anyone except the Western Federation leaders were responsible for this fiendish act. It is upon a par with the blowing up of the Bunker Hill & Sullivan mill, and also with the attempt to introduce dynamite into the Vindicator bunkers; it is on a par with this effort of Orchard's to blow up the car load of powder in the Vindicator mine. No human being could have an object in causing this crime to be committed except these men who stood at the head of the Federation, the men who were engaged in the combination to do these unlawful acts, to strike terror into that community and prevent non-union men from continuing in work. But my friends on the other side through the force of that argument, they understand that some-



thing must be done to counteract the effect of it which they fully appreciate. It was necessary that some witness be introduced here before the jury who would deny these statements of Orhard's in some respect at least, and would show that inaccuracies existed in his statements, or at least that there was a chance for this explosion to have been the result of an accident. They bring on Thomas Wood. I admit, gentlemen of the jury, that when he was brought upon the stand I was impressed by his appearance. I was impressed by his method of giving his evidence. He struck me as being a man that was attempting to tell the truth as he understood the truth, and although the absurdity of many of the statements that he made was manifest, still I could not make myself believe that he was intentionally swearing to a falsehood until I had made further investigation and inquired of witnesses who were bound to know the facts of the case. In the first instance, gentlemen, Mr. Woods testified that he had worked but a day and a half in the Vindicator mine. It has been in evidence here before you that the levels of this mine occupied a number of miles, I believe, in length, -- it was one of the extensive mines in the district; we have heard of the 1200-foot level and all that, but how extensive the workings were I do not know, but we do know it must have been of very great extent; one of those mines which would take a very long time for any person to become familiar with. This man who had worked for a day and a half all together in this mine as a timberman, whose efforts were confined to the 8th level comes here apparently as an expert upon the condition of affairs there

and gives his testimony in a manner that would indicate that he thought he knew all about the subject. He says that the first day he got a half a box of powder and put it upon the water barrel in the 8th level, or that it was there, and that he saw that half box of powder there on the next day, and then he goes on and he relates that McCormick and Beck were on the 8th level at about ten o'clock or a little after of the next day, and that the explosion occurred about twenty minutes to ten, and in order to explain certain other matters he states that Beck had a revolver in his pocket, -- don't overlook that fact, -- it was necessary to account for the revolver up there on the 8th level in accounting for the condition of affairs after the explosion, and he says that he came up after the explosion was heard, shortly after Beck and McCormick left the 8th level, that he clumb up to the 6th level and there he found the condition of affairs such as we have related, and he says another thing, gentlemen, that when he went up there, and he told us about the preliminary examination he made, he lifted up the safety bar across the shaft and looked at it and he did not see any wire upon that safety bar. That was a matter necessary to sustain the theory of the accidental explosion, because if they had found any wire there it would have shown the statement of Orchard to be correct in regard to having the wire fastened to that, but he finds none, and then he says that he saw the remnants of the gun that he picked up, and I believe he states that he himself picked up one of these remnants and he handed them to Mr. Holman who came down shortly after he was there. You will recall that Mr. Woods, so far as the description of the locality of the bodies



were concerned states it just as was stated by others. McCormack was in front of the cage in the place that was blown out of the floor,-- a quite an excavation made,-- he was lying there with his legs injured and mangled; the body of Beck was in the other direction some 15 or 20 feet off, I think about 15 feet in the other direction, and I believe the pieces of the pistol were picked up in different places but none seem to have been picked up around the body of Beck.

Now, this statement made at first blush would give an opportunity to argue what? Simply this, gentlemen of the jury, take this statement of Wood as being absolutely correct, and counsel who knew they could establish no motive on the part of Orchard for committing this crime, and no one else except the leaders of the Western Federation, would urge upon the strength of the testimony of Wood, he being naturally a man that a person would believe because his appearance was all in his favor, would establish this position that there was powder on the eighth level and half a box of it that had remained there over night upon the water barrel, that Beck and McCormack were up there the next morning, that shortly before they came to that level he saw that powder, that after they went away that powder was not on the powder barrel, and therefore it must be inferred that they took the powder with them. They would account for the pistol that was found there by showing that Beck had a gun in his pocket at that time and that necessarily the pistol found there upon that occasion was the gun carried by Beck, but it could not be the gun that had caused the explosion.

They would show by his evidence in reference to the safety-bar that there was no wire on that safety-bar in front of the compartment that contained the cage, and therefore there could not have been any explosion of the pistol into the powder; that the cause of death of these parties, Beck and McCormack; it would give an opportunity for a nice little argument in regard to its being an accidental explosion, and they could impress it upon the jury with a great deal of force,-- and when they address you upon this subject, or any other, they will use a great deal of force and they will use arguments like that in such a specious way to cause you to believe in it unless the facts absolutely disprove it. Now, what did we do in return? We are in a position that we must meet this evidence because, absurd as it is or would be to bring a man here who had only worked a day and a half in the mine when there was probably fifty other men who had worked in the mine for months, still they might say that the rest of these men had no sympathy with the Unions and would not come. Absurd as was his statement in regard to the practice of mines, still we knew we were not arguing the matter before a jury of miners and therefore that absurdity would not be manifest because you folks not being miners would not understand perhaps what was permissible or customary in mines and what was not, and so we had to rebut it, and what do we do, gentlemen? We sent for the very men of all others who had the best knowledge of this affair; we went and obtained the persons of Mr. Holman, the man who had had charge of the Vindicator mine at the time the shaft was sunk and these levels were run and who had been in charge as general



superintendent and manager up to a short time before the accident. Not satisfied with his evidence, we also sent for Mr. Ramsey who we knew at that time had charge of the powder in that mine, who although a young man at that time, was in that responsible position and had been closely related to one of the victims of this crime, and we brought them here and introduced them both upon the stand, and what do we find, gentlemen, in reference to the statement of this man whom we have been led to believe from his appearance and from his method of answering questions was a responsible, trustworthy witness? We find, gentlemen, there is not one word of truth in the statements he has made, that not one statement he made upon the stand connected with the material point - connected with that explosion will stand the test of investigation, and we not only prove it by these two witnesses, but we prove it by something that cannot lie -- the photograph taken of this level after this explosion occurred. Mind you, gentlemen, what Tom Wood says in regard to the effect of that explosion upon that cage. Mind you, he intends to impress upon you that the bottom of the cage was blown in. Mind you that he intends to impress upon you that damage was done to the guys and all that, trying to deceive you upon those matters, because it was necessary to make it appear that a ~~mass~~ very considerable damage had been done on that occasion, and all these matters. But what do we find? Holman, the ex-superintendent, the man who had a greater knowledge of this affair than any other man, being the man of all men who knows in regard to these matters, and he tells you

that when he left this mine a few months before there were no iron safety-bars in the mine except on the ninth, tenth, ~~eleventh~~ eleventh and possibly the twelfth levels; that there were no safety-bars above the ninth level. He tells you that as a statement of fact, and you know, gentlemen, from the other evidence that there had been no work done on the seventh or sixth level rather for a long time before, and therefore there could have been no change I apprehend in regard to the bars upon that level, and the first thing we establish by him is the all important point that there was no iron safety-bars on the sixth level, and the circumstances would indicate they could not have been put in there after he left.

We show also that he came down that shaft the first man after that explosion; he was the man that unloosened the cable from the cage and went down into the cage, and what does he say about the affairs? Here is the timber to the left of the compartment which contained the cage, just blown off almost at the foot, and there in the front of that compartment is this big pole which shows where the explosion had taken its effect, where the floor of the level had been blown out, and in that hole was lying the body of McCormick, and both legs had been blown off, and he was lying there dead in that condition.

We find further from his statement that there was no sign or vestige of a safety bar on the northerly side of that cage or on the other side of that cage, that the safety bars had been blown out of existence as they would have been by an explo-



sion because they would have necessarily had the full effect of that explosion. There was none on the south or north, or on the side next to the level where the car tracks were torn up, and we find out further that the body of McCormick was laying in the same place indicated by the other witnesses and that it was 15 feet or so on the southerly side of the track, and the body of Beck, gentlemen of the jury,-- the body of Beck was absolutely so far as he could see uninjured; that is, no portion of the anatomy was blown off; the legs were intact to all appearances although he had met this violent death; there was no such violent condition as was found on the body of McCormick.

What do we do? Then we bring all these matters up and bring this young man Ramsey in, and Ramsey, although he is a young man, although at that time he was so overwhelmed with grief and terror by reason of this awful tragedy that had come into his own home, that he could scarcely tell any matter in a way that would inspire our confidence because extreme terror rendered it almost impossible to make a logical statement of any matter here at this time, gentlemen, with his recollection refreshed, knowing the circumstances and talking in regard to matters that he was cognizant of, he tells us, and he corroborates the statement of Hoban, that there was no water barrel on the 8th level of that mine. They did not have water barrels there, and he goes on further and explains to you that no powder could have been left under those circumstances in that mine, because he explains what the duties of the parties were, and the Judson

powder was the only powder that was used there, and goes on and shows, gentlemen of the jury, that after this tragedy had come about and a couple weeks afterwards, powder was found around that shaft which was a different kind of powder and there were two or three sticks of it. We find furthermore, gentlemen, that Mr. Beck was not in the habit of carrying a gun in the mine. He says that he knew his movements; he said that Beck did not carry a gun in the mine and nobody ever heard of a man carrying a gun in the mine under these circumstances; nobody ever heard of such a thing as that, and he says it positively, and that he did not have his gun with him, and he gives you the information, gentlemen of the jury, that before this explosion both of these men came up on the surface,-- they had not come up together as indicated by Wood, but they come up there and met and talked things over and for some purpose unknown to him they went down shortly after and this explosion was heard and he states to you positively that there was not an iron safety bar in that mine above the 9th level, and when he is through, and these two witnesses are through, there is absolutely nothing left of the evidence of Thomas Wood. We find that he must have told, in making his statement in regard to that safety bar that he absolutely told an untruth and he tells it for the purpose of assisting this defense, in impressing a falsehood upon this jury. When he made those other statements in regard to the condition of that cage, and although he was absolutely telling an untruth for the purpose of impressing upon you the fact that this might have been the result of an accident,-- way, gentlemen, look at these photographs. I call your attention,



gentlemen, to these photographs. You will have the opportunity of taking them to your jury room with you. You will see that this cage is shown, gentlemen, the cage is shown here-- this is the back of it and here is the place where the safety bar would be marked -- it still points to the place where it would be, and I ask you in all seriousness if there is any sign of any safety bar on this side or that side? There is absolutely nothing to show that a safety bar was then thrown in front because it would necessarily have been destroyed just as Holman testified. There is the place where the safety bar is. There is the marks of it, having been present, and on these photographs which cannot lie we find no evidence of it at all, and with these photographs we do not need the evidence of Holman or Ramsey to show that the statement of Thomas Wood in that regard is manufactured for the purpose to impose upon this jury, to deceive you. B

But this other, gentlemen, to which I desire to call your attention strikes me as being more ridiculous yet. Here is State's exhibit W 2. This is the description of the mine. This here is the left, which is simply the shaft and cage as it was, showing the method of fastening the cable and all that, and also showing the broken timber. This ten inch timber to the left here was the one that was broke as shown here, gentlemen. This is an important matter in considering this matter; this heavy timber is broke here. This is the point, gentlemen, that the evidence of Orchard shows. The powder was fastened -- that the bomb was fastened, we find that here upon this side, the guy or

red iron, or whatever it may be called, guy iron I believe, was bent in in the way indicated, showing that the explosion was at this post as shown on the post itself, and the force exerted in that way at a point two or three feet above the cage -- the angle iron, that is what it was called. You will recollect, gentlemen, that taking the other portion of the diagram which represents the same thing, that in front of this post which was broken, the one marked with a cross, was six by ten and that was broken through the floor of the tunnel and here was this hole here, in which the body of McCormick lay, and you will observe that -- it was this point marked with the cross and you will recall that was a hole some six or eight feet across and we find that McCormick was lying there and had both of his legs torn off, showing what? That the explosion was from a point within somewhere about the knee and it caused this iron to be bent and caused this piece to be broke, and it caused the legs of McCormick to be blown off. It would not see, he was lifted up by the force of that explosion and dropped back into the hole. Again, gentlemen, powder in exploding would exercise its force upon the body on which it was resting, or near which it was resting. This powder was laid here close to these posts and upon this floor, or close to this floor. It would naturally have a force upon the floor of the level itself. If there had been an explosion in the cage it would have had a force upon the floor of the cage, but you remember the evidence of Holman is that the bottom of that cage



and that is the evidence of Ramsey also, because it was brought up there afterwards -- all these matters show the untruthfulness of Woods, and shows just what did occur upon that occasion, and how it occurred. It shows this, gentlemen, that McCormick and Beck when they went down to the 6th level and followed the shaft down to the 6th level stopped; that McCormick was in the lead, and that he started to lift the safety bar, that Beck was behind him, that the explosion occurred, that the force of the explosion knocked out the flooring immediately under \* him, bent the iron of the cage, and tore out the legs of McCormick which were in the immediate vicinity of it, that Beck was further back on the cage, that while the effect of the explosion would be to throw out the safety bar it would throw Beck off here at the point where his body was found. It would blow him backwards -- that would be natural. It would be the force of the explosion exerted in that way, but we don't find the body of Beck mutilated in any degree. Now, what follows from all that? That this finally constructed theory in regard to the ~~explosion~~<sup>pistol</sup> being the ~~explosion~~<sup>pistol</sup> that was on Beck's body is the veriest humbug. It could not have been Beck's. Beck's body was not mutilated in any way. I ask you in all seriousness, gentlemen of the jury, to take these parts of the pistol which are identified by Mr. Woods as well as by others and say whether or not that pistol could have been in the pocket of Mr. Beck at the time of this explosion. Look at the guard; look at that iron; see how it is twisted. If that was in a pocket of an individual at the time it was

twisted that way, what would have become of the individual at the time it was done -- what would have been left of that individual when it had that effect upon that gun? Look at this piece here, where the force of the explosion has been. Look how that heavy steel chamber has been put out of place, and then tell me a man could have had that pistol in his pocket, that Beck could have had that pistol in his pocket and his body be intact, and these parts of the pistol scattered around there in different places in that condition? Doesn't it prove to you past a doubt that Orchard's story is correct and absolutely correct, that the gun was put in a position where the trigger would be pulled by the lifting of the safety bar, that it was put up there close to the dynamite and to the caps, those that were in the dynamite and when the explosion was caused the force of the explosion would necessarily come on to some parts of the pistol? Look what a force was against it; look what an immense force was against this barrel. This was found upon the ground. This was one of the matters found by Thomas Wood, and they have elaborated upon this whole theory and have got this stuff before the jury, forgetting these things were in evidence, for the purpose of making you believe there was a chance for an accident, and instead of this being a pistol put there and fired off that it was there in the pocket of Beck at the time he went to the mine. This pistol, gentlemen, these photographs show conclusively, beyond a possibility of a doubt, absolutely and entirely, gentlemen of the jury, that this statement of Thomas Wood was absolutely false



and untrue; that this theory cannot pass muster nor can it hold water; that the statement of Harry Orchard is absolutely and entirely true and correct, and it follows in this case as surely as the day follows the night that the men responsible for that explosion and the death of those men is this defendant, and those subordinates under him who paid Orchard to commit the fiendish deed. For this was one of the incidents in this conspiracy to retain the power and perpetuate their rule and do these other matters which are charged upon them. If these are some of the incidents, would not the murder of Governor Steunenberg be a like incident?

Would the men that caused the death of Beck and McCormick, and intended in so causing it to send a carload of unprepared souls into the presence of their Maker, would they hesitate to murder the ex-governor of a state, gentlemen, if it suited their purpose to assist in carrying out their plans? I say, gentlemen, that these very incidents which are part and parcel of this conspiracy, and incidents like this that stands before you, absolutely proves that they cannot argue out of this case in a manner that would satisfy any reasonable man, or would satisfy any reasonable man of their guilt, and the man that would hesitate to convict upon matters of this kind, without going farther, is merely looking for an opportunity to rid himself of the consequences of an unpleasant verdict, and is not guided by a desire to serve his state and his country and as an honest jurymen.

Gentlemen, these are facts that can be verified from the record. These are circumstances that are bound to be considered, that cannot be explained away. These are matters, bound around with this evidence, for which they are trying these men, and we will not depend upon this alone, gentlemen, but we will go farther and will call to your attention matter after matter, that to our mind has been as clearly proven as this, and we hope, gentlemen, when all these matters are presented to you, when your recollection is refreshed and your attention has been recalled to these matters that you are prepared to do that equal and exact justice between the State of Idaho and this defendant, which the law and the people expect of you.

Your Honor, how long do you propose to hold?

THE COURT: We will suspend here, Mr. Hawley.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded to custody and court was adjourned until 9:30 o'clock A. M., Saturday, July 20, 1907.

ADJOURNED.



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Boise, Idaho, Saturday, July 20th, 1907.

9:30 o'clock A. M.

Parties met pursuant to adjournment.

Minutes of the session of Friday, July 19, 1907, read and the same were signed by the court.

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

MR. HAWLEY: (Continuing).

May it please the court and you, gentlemen of the jury:

We were considering on closing last night the question of the explosion at the Vindicator mine resulting in the death of Beck and McCormick, and in continuing these matters of evidence upon the part of Orchard, those matters that it is claimed have been corroborated by the testimony of other witnesses, and notably by those upon the part of the defense, in its ~~most~~ logical order, the next matter that we will take up will be that of the attempt to wreck the train upon the Florence & Cripple Creek railway. This was a matter only incidentally brought into the case so far as the prosecution is concerned. The main facts were brought out on the part of the cross examination of Mr. Orchard. Why it was brought out I don't know, but it is here as a part of the evidence and we believe all the circumstances corroborate Mr. Orchard's statement with reference to it. Orchard says that he had been informed by those with whom he had associated that an attempt had been made to wreck this railway train and another was made on November 17th. This was after

the bomb had been placed on the 6th level of the Vindicator mine. This, gentlemen, was before the explosion occurred and when there was reasonable ground upon his part and those with whom he was associated to think that that matter had been an entire failure. It seems, from his evidence, that on account of his not being called upon to participate in this outrage he informed Scott on the 17th or at least on the morning of the 18th of November that an attempt was to be made to wreck the train. He told Scott, actuated by these motives, which we do not claim were good motives at all, but actuated by this motive which was controlling him at the time he told him that a wreck would occur according to his information upon that night; that upon the night before it would have been pulled off if it had not been for the stormy weather. Scott tells you upon the stand, corroborating Orchard to the fullest extent, that he did have this kind of a conversation with Orchard and that Orchard gave him this information; but in asking him with reference to it he had told him of the first wreck and then also told him, while thanking him for the information, that there had been an attempt made to pull off the second wreck the night before, something that was unknown to Orchard; so this news that he was carrying Scott in regard to this matter was in regard to an event that had already come off although he was ignorant of that fact. Now the defense, if you please, gentlemen, attempt to make considerable capital out of this and attempt to discredit Orchard as an agent of the Federation, as one who was acting in collusion with it, and to show you by reason of this act that he was working in the interest of the railway company or some association and against the interest



of the Western Federation of Miners. They also had another theory in regard to this matter and that was that this whole thing was not planned, not by members of the Western Federation, not by the leaders in that vicinity, but by the railroad company and others themselves in order to discredit the Federation leaders. These two theories are absolutely inconsistent because I cannot understand upon what principle they could claim that if this was a job put up by the railroad officials, by Scott and others associated with him, how the union could have knowledge of that and that knowledge which was undoubtedly imparted to Orchard would have been by him imparted to the railroad men. How was it possible for him to have got this information, I ask in all seriousness, without he got it from the men who were engaged by the union to carry out this work or who were privy to this enterprise? And if it had been an enterprise concocted by Scott and Sterling and those who were associated with him how would that knowledge have come to these union men and how would it have been possible for Scott (Orchard) to have obtained that information? But they lay stress upon the matter and will lay considerable stress upon the matter, as I take it, of this collusion of Scott who was an agent, as you understand, of the railway company? Sterling, who was acting for another association, and Orchard? They have introduced evidence upon the stand, gentlemen, to show that Sterling and Orchard were intimate. They brought Mrs. King and Miss King to show that Orchard had met Sterling at his room in the hotel at which he stopped. Mind you, this was in November, 1903, if I recollect right the dates fixed for these matters, and these women who it is not pretended knew

Orchard, ever saw him before, these two women come upon the stand and swear positively here, as I understand the statements, or at least their best information and belief, that upon several occasions this man Orchard, whom they identify from a picture taken about the time that he was first apprehended for the Steunenberg murder, was the man that was in Sterling's room or at least in that rooming house inquiring for Mr. Sterling. I appeal to you, gentlemen of the jury, that a statement like that, whether it is made by man or by woman, is absolutely incredible and unworthy of belief. I appeal to you, gentlemen, as sensible human beings, who reason upon matters that are given to you in evidence and judge as to the truthfulness of witnesses, by applying your own reasoning power to their evidence and thus determining its probability or not, whether you believe that any human being, man or woman, could casually see a person with whom they are not acquainted four years ago nearly and then come into court and be able to testify positively that they had seen such person. Why, gentlemen, just think of some person that you saw that was a stranger to you three or four months ago, that you was casually brought into contact with, that you had no reason to recollect, and see if you could swear positively with any degree of certainty as to the identity of that person unless there was some controlling cause, some incident that would fasten the recollection absolutely in your mind. You cannot do it, and when a person comes upon the stand and swears that four years afterward in regard to a matter which could not imprint itself upon the memory, they were positive as to the identity of an individual with whom they were not acquainted, I say, gentlemen, the very



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narration of the testimony of itself shows an absolute falsehood or an attempt to deceive the jury upon the part of the person who related it. But again, gentlemen, this is an absolutely immaterial matter, absolutely immaterial. Orchard upon the witness stand admits seeing Scott. Orchard upon the witness stand admits giving this information. Orchard upon the witness stand upon his cross examination frankly tells you the motives that were actuating him in regard to this matter, and, as I have said before, they were not good motives at all; he admits having seen Sterling together with Scott. Now the important matter in this, so far as the Defense is concerned, if any importance attaches to it, is the fact of Orchard and Sterling and Scott having been together; of Orchard having been brought into communication with Sterling and having a personal acquaintance and meetings with him. The place of those meetings could not figure. It was the meeting itself that would be important if any importance attaches to it. And, gentlemen, they have brought this matter of contradiction before you upon a point that is absolutely immaterial, that could not in any way affect the truthfulness of the story that is told by Mr. Orchard, they have brought it for the purpose of discrediting him by having some witness that would swear to a different state of facts than that which he has testified to upon some point, and we find here that upon all of the material points involved in this particular inquiry he agrees thoroughly with all of the facts and the circumstances detailed and is only contradicted by this improbable statement of these two women upon a matter that is absolutely



immaterial. Gentlemen, the good faith of Orchard so far as his testimony is concerned, the absolute effort on his part to tell the equal and exact truth in all matters, be they great or be they small, is shown plainly by his answers to the learned counsel for the defense in his cross examination upon these points. These are matters, as I have said before, that were brought out by the Defense. Most of these matters were things only known to Orchard and to those who had been associated with him in this attempt to wreck this road. Mind you, this railroad, gentlemen, was simply one of those small affairs running from Cripple Creek up to Bull Mountain and these mining camps in that vicinity. It was a railroad intended to carry the miners to and fro from their work, and at this time, gentlemen, the passengers were composed entirely of scabs and it was the object and purpose of this wreck to strike terror into those people that were working in defiance of Western Federation orders in that community by causing a trainload of them to be hurled into eternity. And we know this attempt was made, gentlemen, if Orchard tells the truth in regard to it, and we cannot doubt it -- no one was privy to the matter except himself and those others of the Federation who were directly interested in it, and he could, if he had desired to tell you an untruth in reference to the matter, have made any kind of a statement that he wanted, but the fact that he did absolutely give his reasons in regard to this to you and give reasons that would militate against his own credit and would injure instead of assisting the prosecution, it strikes me is a strong proof that he has been truthful in this and truthful in all matters. They attempt to dispute this evidence in a certain



degree also by that of the engineer, and would have you imply on account of some evidence that was given by him in reference to the attempt to locate the place of the intended wreck that it was a matter that was prepared by Scott or by others in the interest of the railroad company. Gentlemen, we find upon the examination of Mr. Scott that he depended upon ~~his~~<sup>the</sup> information before he had heard from Orchard in this matter of one Beckman, who undoubtedly was a secret service man although he belonged to the Federation, and we find, gentlemen, that there is where the information comes from, and that this trip, this trip, gentlemen, to that railway, to that scene of the intended wreck, to that place in the vicinity of which the wreck was almost pulled off was before any talk between Scott and Orchard with reference to it. After the Victor explosion, gentlemen of the jury, had occurred, and this was only a few days subsequent to the attempt to wreck the Florence and Cripple Creek railway, Orchard, it seems from his statements, and he is fully corroborated by all of the circumstances as well as the other evidence, left Cripple Creek and went to Denver. The defense would have you believe that he went on business connected with the railway company, I presume, because he frankly admits that he went on a pass that had been furnished him by Mr. Scott and that he had money that had been given him by Scott. Scott felt grateful on account of the information that he had given in regard to the proposed wreck, although this information had proved of no value whatever, and Scott desired his presence in Denver it would seem, and he gave him this money and he gave him this transportation upon which he went there. In the meantime,



however, the explosion had occurred. In the meantime Beck and McCormick had come to their death, and Orchard went there. He had received before he left a part of the compensation that was to be paid for this outrage and he comes to Denver upon this transportation. He seems, gentlemen, to have been acting or playing double so far as Scott was concerned. He seems at this stage of his career to have been engaged in an effort to obtain money from both the railway company and from the Western Federation of Miners. Undoubtedly he was so doing. What reasons were actuating him outside of the desire to obtain as much money as possible from all sources for his misdeeds I cannot tell, nor will I endeavor to explain. I am not here to defend Harry Orchard or to paint him in any but his true color. I have no desire to impress upon you, gentlemen of the jury, that Harry Orchard is aught that is desirable in a man except in one respect, and that is that he will tell the truth, because that has been demonstrated by all of the evidence. He went there. Why he went to the Western Federation of Miners at this time might be open to doubt because he was taking money from the railway company and had betrayed one of their secrets. I care nothing for that fact because it shows immediately after he again engaged on the Western Federation work. He went to Denver. He there met the defendant Haywood, he met the defendant Haywood's particular friend and confidant in all of these matters, George Pettibone. He met Mr. Moyer, the president of the Western Federation. He was commended on account of his good work in the Vindicator mine. The defendant himself especially praised him on account of the death of Beck and of McCormick. They were the kind of men he



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wanted to get rid of because they amounted to more, so far as the terror inspired by their death was concerned, than many of the ordinary scabs who were at work there would have amounted to. And, as I say, they paid him the amount that was due upon account of this outrage. They kept him there and he stays there for some time and he has proved himself such a reliable assistant so far as carrying out their criminal enterprises is concerned that they desired his services in removing another enemy of the Federation. They wanted Peabody killed. Peabody was the governor of Colorado, gentlemen. He was the man that had inspired probably a greater degree of hatred and ill will upon the part of the defendant and his colleagues than any other man in the state. He was the man, gentlemen, responsible for the declaration of martial law in the Cripple Creek district, in Telluride and in other districts there. He was the man that was most violently attacked in its journal, who was regarded by the leaders as their worst enemy in the state. They desired to learn a lesson to their enemies by his removal, and Orchard had shown to them that he was a fitting man to undertake an enterprise of that kind and they called upon him for his assistance. He desired, however, further help. He was not satisfied, gentlemen, that he could carry out this scheme alone, and what do we find him doing at their request? Going back to Cripple Creek in order to find a proper man to come and assist him in this enterprise. He went there and after ~~some~~ little trouble he engaged the services of Steve Adams. Adams was evidently in the confidence of Haywood and these others, it would seem, as a man who was ready to carry out their schemes of blood-



shed and of murder. He was second only in the estimation of Haywood and his colleagues to Harry Orchard himself. They started in then, after returning to Denver with Adams, to watch Peabody to ascertain his movements, to find out an opportunity of killing him, and they concluded, gentlemen, that the best way to carry out their ideas or the ideas rather of Haywood and his colleagues was to use shotguns, and they were furnished out-off shot guns by Mr. Pettibone and Mr. Haywood and they attempted to take his life by that means. And you will remember, gentlemen, the testimony of Orchard with reference to the trip of Adams and himself to Peabody's home and the fact that they went up there in the evening expecting Peabody to come home in a hack; that they had their shotguns with them and intended to murder him upon that occasion, but when the hack stopped to their surprise out stepped two ladies instead of the governor and they let them go to their home and the attempt was abandoned; and we show the truth of that scene, of the important incident in all this matter, by bringing Miss Peabody upon the stand ex here who swears such an incident did occur. This attempt upon Peabody's life was abandoned shortly after this because there were other matters that were engaging the attention of the leaders of the Federation and of these men who were acting under their orders. That attempt was abandoned for the time being. But I ask you gentlemen, in all seriousness to consider this matter. I say that we have proved the accuracy of the statement that was made by Orchard by the corroborating evidence of Miss Peabody, so that there can be no doubt in your mind that Adams and that Orchard were there upon the night in question intending to take the life of the governor



if he had stopped out of that hack instead of those ladies. That is perfectly corroborated I say by this other evidence. I ask in all seriousness, gentlemen of the jury, what there is in this evidence, and the facts and circumstances developed in that line, I ask you whether there is anything to warrant an idea upon your part or any person's part that Steve Adams or that Harry Orchard had any ill will of any kind whatsoever towards Governor Peabody? I ask you, gentlemen, where in this record there is anything to indicate to you that Harry Orchard would have any motive in murdering the governor? Or that Steve Adams would have any desire to take the chance of being punished for a great crime simply for the satisfaction of sending Peabody into the next world? I ask you, gentlemen, as reasoning men, as men that know that no crime is committed without a motive or an object on the part of the perpetrator, what earthly object would either Orchard or Adams have had in this attempt upon Peabody's life? Who did have a motive? Who had an object? To whom was this man an object of enmity? Who was it that would profit by Peabody's death? Who were the enemies of the Governor of the state of Colorado? Who was it, I ask, that would be benefited by his removal and the substitution of another in the high office that he held? The Western Federation of Miners. It would be William D. Haywood and Charles H. Moyer and those who were associated with them, and they were the only persons in that entire state I apprehend, the only ones at least that were associated with Orchard and with Adams that would have any object or any motive in murdering him at this time or at any time that is spoken of in the evidence. And, gentlemen, these circumstances speak louder



than words. If we have proved the attempt, if we have proved it upon the part of Orchard with Adams, I ask you in all seriousness, gentlemen, if we have not equally proved circumstances that the leaders of the Federation including this defendant, who is the real leader in all of these matters, if they are not responsible for that attempt and if it is not an incident in this conspiracy that goes to show you gentlemen that all of these crimes were done under the suspicion of Haywood and his colleagues? Is it not true? Who could contradict this best if it was false? I ask in all seriousness, gentlemen of the jury, who of all persons could have shown to you the falsity of these statements? One of them is below here in a cell in the county jail, gentlemen, brought here by the prosecution so that if it was desired that he could be used as a witness upon the part of the defense, so that his statement could be taken by them --

MR. DARROW: We object to that statement. It is an absolute untruth, as counsel knows. In the second place, there isn't a word in this record to sustain any such statement as that.

THE COURT: I don't know what the rest of the statement is.

MR. DARROW: I object to what he has said, that Adams was brought here so that we could use him.

MR. HAWLEY: And I repeat it, and when you say it is an untruth you state an absolute falsehood on something that you don't know anything about.

MR. DARROW: I make the objection because Mr. Hawley has no right to testify in this case. He has no ~~any~~ right to



tell something which is not in the evidence and which is not true, and we ask the court to instruct the jury to disregard it.

THE COURT: Mr. Darrow, the court will instruct the jury at the proper time that they are not to regard the statements of counsel on either side that are not supported by the evidence.

MR. DARROW: But that does not help the matter --

THE COURT: You may now take your exception. The court overrules your objection.

MR. DARROW: Does the court say Mr. Hawley has the right to tell the jury that he brought Steve Adams here so that we might have him to testify?

THE COURT: No sir.

MR. DARROW: Then I ask the court to instruct the jury that there is no evidence to sustain that at this time.

THE COURT: The court will instruct the jury, Mr. Darrow, at the proper time.

MR. DARROW: It seems to me this is the proper time.

THE COURT: This is not the proper time. The law requires the instructions shall be given in writing. The court understands the law to be that when witnesses are not called to explain away any damaging fact that is a circumstance that may be taken into consideration by counsel in argument.

MR. DARROW: I do not understand, your Honor --

MR. HAWLEY: Has the court ruled, or is my argument to be interrupted?

THE COURT: The court has already ruled upon this motion.

MR. HAWLEY: Then I ask that counsel be instructed to

take his seat.

MR. DARROW: Well, wait a moment.

MR. HAWLEY: I am not going to wait a moment.

MR. DARROW: The exception I took was not to any theoretical statement of law that the court is going to give but to his statement that he brought him here for us. To that I object and I ask the court to now instruct the jury that that is not to be regarded.

THE COURT: The court has ruled upon that matter. I will instruct the jury at the proper time, Mr. Darrow.

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

THE COURT: Your exception will be noted.

MR. HAWLEY: It is the galled jade, gentlemen, that winces.

MR. DARROW: Then you wince.

MR. HAWLEY: Have I winced?

MR. DARROW: Yes sir.

MR. HAWLEY: Have I made a misstatement?

MR. DARROW: Yes.

MR. HAWLEY: You know in your heart that the statement is false.

MR. DARROW: I know it is false, I knew it when you said it.

MR. HAWLEY: I say, gentlemen of the jury, that this man was here ready to be used as a witness, that we brought him here. I say if this man Adams, being here, this man who was under the guidance and the control as the evidence shows, of



the organization, is represented in the crimes charged against him, and by the counsel upon the other side was not put upon the stand, not brought here to give the lie to this assertion of Orchard's in regard to his being a helper on that occasion, it is a circumstance that you have a right to consider, gentlemen, in arriving at your verdict, and it is the strongest kind of proof that every statement that Orchard made was true. And I say, gentlemen, that the very fact that this man is here and has been brought into this court, as he was brought here before you and identified, gives the lie to that statement that was made by counsel here not under oath in regard to the right -- or to the action of the prosecution in this regard being as I have stated it. I say, gentlemen, that this fact is something that you have a right to take into consideration and it is your duty to do it. Who is the other man, gentlemen of the jury, who is the other man that could have disproved these assertions upon the part of Orchard? Will they attempt by intimation, will they attempt, gentlemen of the jury, simply by argument not based upon evidence to wipe these facts out of the record when they could have disproved them? Wouldn't George Pettibone, gentlemen, if he was not the man that furnished these ~~sawed-off~~ sawed-off shotguns, if he had not been engaged in these matters actively as a participant and as one of the principals, would he not have been brought here with Steve Adams to have given the lie to these statements of Harry Orchard? Certainly, gentlemen of the jury, he would. But it would seem, gentlemen of the jury, that the executive committee was in session at this time in the city of Denver; that the convention was about to be called of the Western Federation



and that there was a desire upon the part of some of the leaders at least to have something doing in the Cripple Creek country. The question of the explosion of the Independence depot had been agitated before and it is that explosion to which I now desire to call your attention. This is the wickedest deed, gentlemen, of all this vast array of crimes that have been proved here against this defendant and those associated with him. Here was an act that consigned fourteen men to eternity in a moment's notice and maimed and disfigured a large number of others, one that caused a ~~kick~~ thrill of horror to go throughout the state of Colorado and the entire West. An act, gentlemen, that should forever condemn anyone that was associated with it, with its execution, in the slightest degree. This depot, if you will recollect, gentlemen, was not an abandoned one as counsel for the other side would have you believe, that is, abandoned in the sense that it was not used. There was no ticket office there at this time but it was a stopping place and the depot itself was used as a convenient place for those who were working in the adjoining mines to stop at when they were waiting for the arrival or the departure of the trains. The mines that were being worked, you will recollect, in that vicinity were entirely worked by what they choose to call scab labor, by persons who had refused to obey the mandates of the Western Federation. It undoubtedly would, gentlemen of the jury, have struck a feeling of terror into the hearts of every opponent of the Western Federation of Miners if an explosion could occur that would send a large number of non-union men into eternity. It would undoubtedly assist them greatly in the objects that they were aiming at in their



efforts to unionize that community because it would prevent other non union men from coming there and doing that work. No man, gentlemen, would go into a community, it strikes me, and go to work, except under great stress of circumstances, if he knew that his life was liable to be taken at any time by a criminal organization ~~that~~ <sup>if it</sup> was already shown that they were deadly in earnest when it come to matters of this kind. Orchard, when he was talked to in regard to this matter, assented to it. Haywood and Pettibone, he states, had first called his attention to it. He was sent there. He first saw Billy Alkman after going. Billy Alkman, if you will recollect, gentlemen, was the man who had assisted him in the Vindicator explosion, but Alkman wasn't nerry enough to engage in an enterprise of this kind, and Alkman with some excuse or other refused to render the assistance. He then falls back on his old partner and companion, Steve Adams. Steve seems to always have been ready for any desperate enterprise and they formulated a scheme by which they would blow up the depot. But although they had intended to shortly carry out their ideas it seems that a meeting of a committee was to be held in that vicinity and it was postponed for a few days. You recollect the evidence of Orchard, gentlemen, was that he obtained a hundred pounds of powder from Floyd Miller for the purpose of accomplishing this object. Floyd Miller hasn't been here, and it seems to me, gentlemen of the jury, when the telegraph news was flashed throughout the world, as it was in all matters conncted with this case, that Harry Orchard had testified upon the witness stand that he had procured from Floyd Miller, a former resident of Cripple Creek, a hundred pounds of dynamite with which the



Independence depot was blown up, that Floyd Miller, if above ground, if upon the face of the earth anywhere, if it had been a lie would have at once sent here a denial of that fact and his presence could then have been obtained no matter where he had been, and I think his very silence, gentlemen, upon this matter is proof conclusive that Orchard did obtain the powder from that source. But he goes on and tells how this was carried out. It seems, gentlemen, that his experiments in the Vindicator and all that had taught him considerable in regard to the use of dynamite. He had ascertained by this time that the explosion of dynamite could be greatly accelerated if upon the caps that are used in connection with it a mixture of potash and of powdered sugar was used and a little acid poured over them or something of that kind. But that was impracticable seemingly so far as this particular explosion was concerned. They knew in any event that a safe way would be to put these matters in, to fasten the bottle of sulphuric acid upon the windlass which would be prepared, and that it would be safer and surer than it would be to act in the manner he had done at the Vindicator and carry off the explosion by reason of firing a pistol into it, and he prepares all of this paraphernalia and he plants with the assistance of Adams this hundred pounds of dynamite under this depot. It was remarked that Orchard immediately prior to this time had contemplated a trip, a camping trip with Johnny Neville and his son, and in order to allay suspicion, in order to prove an alibi in the event of suspicion being directed towards him, he starts upon the afternoon before the explosion is to be brought off in the direction of Colorado Springs and camps seven or eight



miles out upon the road. Mind you, all is prepared and his confederate is there ready to proceed and by reason of their pre-concerted agreement he returns to Cripple Creek that evening. They go to the place prepared. They take the wire which has already been furnished them, tie it to the wire a chair rung which they had obtained from some locality unknown to me, they fasten it to the dynamite that is stored with the other matters to cause its explosion under the depot and they wait until the train comes up, until the coaches are upon the depot and then they pull it off with the result that I have mentioned. Orchard states that he immediately started for his horse, which was a short distance down the gulch, and read off and that Adams started for his home. You remember, gentlemen, the excitement that was caused by this explosion. That was to be expected. Counsel for the defense said claims, gentlemen, that this outrage could not have been committed by Orchard and by these other parties in the manner indicated and by reason of the desire of the defendant and of others. They seek to impress upon you that so far as this matter was concerned it was simply an effort made to destroy this depot and charge the crime upon the Western Federation; that it was not intended to kill any of these parties that were afterwards destroyed by reason of the explosion, but simply to discredit the union men in that vicinity. What there is in this matter except the opening statement that was made by Mr. Darrow is beyond my comprehension. I cannot understand that there has any evidence been introduced into this record, gentlemen of the jury, that for one moment would enable you to say that such was the fact, and certainly we are not going to take the state-



ment as made by Mr. Darrow in his opening statement to you as being fact unless it is corroborated by the evidence in the cause. Is there aught, I ask you in all seriousness, that would lead you to such a conclusion? You have heard men state upon the stand in regard to the depot being used for the purpose of the non union men congregating there waiting for the train to come or to go. We find upon this night they were there at the usual time and just before that train pulled in, at a time apparently when an explosion would not cause any injury to the trainmen, but would wipe from the face of the earth all of these non union men who were congregated upon the platform, the explosion was pulled off. I ask you in all seriousness, gentlemen, if out of that bald narration of fact that was made by Orchard and was corroborated by every other witness who went upon the stand, if there is anything in it that would warrant for one moment the theory that has been advanced upon the part of the defense and that undoubtedly will be urged upon you when they make their argument, in endeavoring, gentlemen of the jury, to impress upon you that this explosion was caused not in the manner that Orchard stated or at least by the persons whom Orchard accuses, but by others with the intention of discrediting the mine owners they have introduced the evidence of Cy Aller. Mr. Aller, you will recollect, gentlemen of the jury, was a station agent at the Independence depot -- or not at the Independence depot, at the depot at Victor. That was the place that D. C. Scott, when he was in the employ of the Florence & Cripple Creek railway, had his office. He swears, gentlemen, and he undoubtedly does it for the purpose of confirming that theory that was advanced by



Mr. Darrow in his opening and thus he swears positively that two or three weeks before the Independence explosion there was at least one meeting at the office of Scott in this depot at which Scott and Orchard and Sterling were present. He is endeavoring, gentlemen, without a doubt, by that kind of testimony, to impress upon you that there was a collusion and an understanding at this time between Scott and Orchard and Sterling, and it would be fair to infer, if this kind of evidence was correct, that such an understanding existed. Mind you, it is admitted here upon the part of Orchard and is undoubtedly the truth, that in November, 1903, Orchard had had several communications from Scott, had met Scott and Sterling at various times; all of that is a matter which is not denied, it is a matter of positive proof. But there is absolutely nothing in the record outside of this statement that is made by Aller and this other statement to which I have referred is contradicted by itself upon the part of Mrs. and Miss King, to show that there had been any communication between these parties from that time on. It was material, it was very material as I take it, that this matter be absolutely disproved upon the part of the prosecution, because if the testimony of Cy Aller was permitted to stand then there could have been a reasonable argument built upon it in regard to the method of the explosion or the causes that led up to it. And what do we find, gentlemen, when we come to examine into this and when we bring our rebuttal evidence before you? We show conclusively by the evidence of Scott himself that he was not in the employ of the Florence & Cripple Creek railway company from the first of April until along in August of the year 1904. We show



conclusively by the gentleman, and he swears positively to the fact, that after the middle of April, 1904, he was not in the Cripple Creek country until along in July -- or along in June of that year, after the explosion at the Independence depot.

Mind you, upon his examination and again upon his cross examination Aller, although he does not fix the date, swears that it was only two or three weeks before the explosion and the explosion was on the 6th of June, 1904, and therefore it must have been sometime in May that these parties had these interviews; that the dinner party that he had invited Scott to go to was postponed by reason of an interview between Scott and Harry Orchard. We proved all of this by Scott but we were not satisfied with this proof. One man might be mistaken. It would be the evidence of Scott against that of Aller. So we do what? We ascertain from him where he had stopped in the meantime, that he had been in the city of Denver, and we bring from Chicago Mrs. Ida Baker who kept the hotel at Denver in which he says he stopped, and she brings her books here into court, gentlemen, and she swears positively and her book here verifies the statement that Orchard from the middle of April or some time about that time until along after the 6th of June was an inmate of her establishment.

MR. DAWSON: You mean Scott.

MR. HAWLEY: Or Scott, and that not only did he stay there but that he had not been away for any length of time or any such length of time as would have enabled him to have gone to Cripple Creek and made his return. She gave her reasons for it -- because she was fearful all this time, threatening letters left there and all that, that made her take particular notice of the



presence of Scott in and about her premises. But we were not satisfied with that. We bring on Mr. Cogan, the manager of the road. Mr. Cogan had had charge of these things and Cogan brings his books of the company here and he shows, gentlemen, by those books that Mr. Scott was not in that vicinity during this time; that Mr. Scott was not in the employ of the railway company after the 31st of March until away along in the summer, weeks after the explosion at the Independence depot. He swears to this positively and his statements are backed up by the books of the company. And we bring Mr. Middaugh, gentlemen, another man whose evidence stands here unimpeached and unimpeachable and we prove by him the absolute accuracy of these statements of Scott and of Mrs. Baker and of Cogan. We prove by both Middaugh and Cogan, gentlemen, that Scott had no office in that building after the time that he was discharged from the employment of the company. We show the absolute inaccuracy of every statement that was made by the witness Aller. We show, gentlemen, past a doubt, that Aller when he made these statements upon the stand committed wilful perjury for the purpose of assisting this defense in this ~~trial~~ trial. Don't all of these statements of all of these parties warrant me in making this kind of an assertion before you? We have, I say, gentlemen, and I reiterate that which I said upon yesterday, proved by our rebuttal that every man or woman who has testified here upon the part of the defense has either been a member of the Western Federation or connected with it, or have committed rank, wilful perjury. And here we find another person who has so been proved past a doubt. "One by one," gentlemen, "the roses fall". One by one, gentlemen, these



witnesses are proved by this evidence to have been the perjurers that I have charged them with being at the outset, and I will charge no man with committing this offense unless the proof absolutely bears it out. And I appeal to you gentlemen if this proof is not as positive in regard to Aler as it was in regard to Flynn, as it was in regard to Davis, as it was in regard to these people's evidence which I commented on yesterday and who undoubtedly tried to deceive you as notoriously as the evidence of the witnesses who wilfully misstated the facts connected with the explosion at the Vindicator. But they make a point, gentlemen of the jury, in another way here. They attempt to show before you that some dogs were brought there from the penitentiary to the scene of this wreck and that their actions were curious to say the least. They would imply, not by any direct proof in regard to these dogs, but by inferences that they will draw from this proof or lack of proof rather, that something was radically wrong on that occasion or the dogs would have ascertained the true ~~trans~~ culprit. This is a matter, gentlemen, that undoubtedly will be argued before you at considerable length by counsel upon the other side. That the dogs, the old dog and the puppy, the hounds, were brought from the penitentiary admits of no doubt. That is a matter of positive proof. But when were they brought? The proof is equally plain, gentlemen of the jury, that these dogs were brought there some six or eight hours after this explosion, and the proof is equally plain that this explosion caused an intense excitement in that whole section. It was bound to cause such an excitement so that thousands of people congregated in this, the greatest mining camp of the West, and here was an



awful tragedy that had happened in their midst, and a large number of persons had to be sent to an untimely death, and of course they flocked there early in the morning; of course hundreds of men examined all matters that were supposed to be connected with this incident; here it was that a line was drawn from the depot or where the depot had been standing to a convenient place two or three hundred feet off and there that line was ended in an attachment to a chair rung, and it was evident, gentlemen, that it was found that the explosion was caused by pulling that chair round which was attached to that wire, and undoubtedly hundreds of people had handled that. There had seemingly been no effort made to keep people away from those scenes or from those things that had been used in carrying on this great crime. What necessarily would have been the result? Now, gentlemen, I am not prepared to argue in regard to the instinct of dogs in following a trail. We know that some dogs, we know it from common knowledge or common report, that some dogs have such a keen sense of smell that they can take the scent of an individual by ascertaining it from something that he has recently handled and follow that scent no matter where the individual goes. Now that is not a matter of proof, but we take it for granted here, gentlemen, that such was the characteristic of this class of dogs, that one of them, if permitted to obtain the scent, would be able to follow the individual, and what would be the result then? I ask you in all seriousness, gentlemen, if it would have been possible to have accomplished anything there at that scene of the explosion at the time the dogs got there? Hadn't hundreds of people handled those various things that had been



handled by the assassin who had committed this awful crime? Certainly. How could have scent of Harry Orchard's hands or of Steve Adams's hands upon that chair round have been distinguished by these dogs from that of Tom, Dick or Harry or whoever it was who had had it in his or her hands? Why, gentlemen, it seems to me that it was a preposterous thing in those people to attempt it. It was a preposterous thing for them to expect those dogs to give them any assistance there because they had handled it, the very man undoubtedly handled this that day that called for the assistance of the dogs. They knew that hundreds of people had been tramping in that vicinity and how was it possible under those circumstances for these dogs to have rendered any assistance whatever? Now the counsel upon the other side certainly are as well aware of this as are we. But, gentlemen, in their desperation, because they must have a theory in the absence of any real proof, in the absence of any real denial as to those things which we have brought forward against their clients, they intend and undoubtedly will build an argument upon this matter. They have shown these facts at considerable length and by many witnesses. They have shown or attempted to show, gentlemen, that these dogs when they were put upon the train went to the house of one Benere or something of that sort. They would imply what from that? Do they attempt by any evidence to connect Benere with any association or any individual that had committed this crime, or to say that Benere had any knowledge of it or that he had any reason to go into an enterprise like this? Nothing at all, except they give that bald, naked statement to it for the purpose of basing an argument upon it. Probably Benere had been there. He lived in that vicinity.



Very likely he had examined that chair round, that he had handled that wire, that he had started directly from there to his cabin, and if he had been one of the last men that had handled it the dogs would have taken that scent if they thoroughly understood their business, if their instincts in that line were fully developed, and they would have followed to Beane's cabin. What was there to make them follow Orchard's track? Here was the man that had handled this implement long after Orchard had, long after he had left the scene of the crime. Wouldn't it have been probable, wouldn't they likely have followed anyone, wouldn't the dogs necessarily have been at fault? Why, gentlemen, what is there in that? How does that disprove these assertions? How can they base an argument upon a matter of that kind? Ah, but they say Blizard took the dogs and he went down the canon afterward. Now Blizard took a dog, gentlemen, and there seems to have been an intention upon the counsel who was doing the examining to impress you with the idea that the dog that Blizard had was the dogs that were brought from the penitentiary, but it would seem from this evidence that Blizard talks about a dog while counsel upon the other side talks about dogs -- simply an attempt to distract your attention from the real fact there: Blizard did have a dog of some kind and it would seem that he got down the canon and that he thought he was following a trail some ways down the canon and that he was called back by Sterling. There is no doubt about the accuracy of Blizard's statement. He tells you that Sterling told him to come back, that he had an idea as to who had committed this affair, or something of that sort. And no wonder, gentlemen,



that he would have an idea if he was a man fit to hold the position that he was holding. But would that imply, gentlemen, or can you base an argument upon it that Blizard was called off for the purpose of protecting Harry Orchard? Why was this situation run in here as evidence in this case unless they intended to draw an inference of that kind from it? I ask in all seriousness why otherwise was it brought in here, gentlemen? Think how ridiculous it is. Orchard tells you, and it is undoubtedly true because he could not have made connection between his camp and the Independence depot unless he had rode there upon horseback, he told you that he had his horse fastened a short distance below the depot, and that circumstance is an uncontroverted fact in this evidence, and after he accomplishes this thing he got on his horse and rides down towards his camp in the direction of Colorado Springs, and I ask you in all seriousness, gentlemen, if it ~~was~~ had been possible for one of these dogs to have obtained his scent from this chair round from his handling of it and followed him down to the place where he got upon horseback how could they have followed that horse? How would he have followed him after he mounted the horse? The whole thing is preposterous upon its face, gentlemen of the jury. If the dog had a scent at all in going down that canon he was upon the scent of someone who had been there in that place after Orchard was there and who had handled this chair round and the wire hours after the man had carried out the awful purposes for which it was prepared.

Now, gentlemen, a number of events happened shortly after that to which I had expected to call your attention, but by



reason of the decision of the court with reference to the elimination of certain portions of the evidence, which he will explain to you in his instructions fully, it would be improper for me to make any reference to them. What follows, so far as the narrative is concerned, so far as Orchard's statements are concerned? We have him there at the depot, gentlemen of the jury, carrying on or engaged in this crime. We have him, according to his own statements, committing a crime that was unparalleled in the criminal history of this country for fiendishness. We have him sending into eternity fourteen men and crippling for life a large number of others against whom he had no personal enmity whatsoever. We find himself and Adams doing all this. He admits it all. Gentlemen, it is something almost incomprehensible, the enormity of the offense would almost make us refuse to believe it. Standing independent and alone I hardly believe that anyone would say under those circumstances that any human being would so far forget his duty to his fellowmen as to perpetrate a crime of this kind when there was no one to be the sufferers by it against whom he had the slightest ill will; but, taken in connection, gentlemen, with these other matters equally flagrant and which we have proved against the defendant and the other leaders of the Federation jointly with Orchard himself, we are constrained to believe that this is an incident in line with these other incidents that occurred carried out by means of Orchard for the purpose of carrying on this conspiracy and combination that had theretofore been formed. But, gentlemen, the fact is that this crime was committed by someone. The fact is proved, gentlemen past a doubt by reason of the machinery by means of which the



crime was committed being left there in the immediate vicinity, there was no chance for a doubt but what the chair round and the wire leading from the chair round to the Independence depot was the instrument by which the explosion had occurred. There was no doubt whatever but what some human being had been instrumental in carrying it out. Orchard says it was himself that did it. He says he did it at the solicitation of Haywood, of Pettibone and of these other parties. He gave you the name of the party that assisted him, gentlemen. He says that Steve Adams was his active assistant and equally guilty with himself in carrying out this crime. Gentlemen, I ask you in all seriousness then, why Steve Adams, charged as he was as one of the parties to this crime here, within reach of the defense here under the control to a certain extent of the defense, because these gentlemen representing Haywood represent him also, why was he not brought here to make this contradiction? Gentlemen, it is worthy of your consideration as I take it.

Now the next move that we find Orchard making according to his statement is toward Cheyenne -- or is towards Denver first. He goes to Denver and he stays there a day or two and he sees Pettibone and he sees Haywood and he procures some money from them. They pay him I believe it is \$500 but give him the same old promise that whenever he wants any all that he has to do is to call for it and he proceeds upon his way to Cheyenne in order to evade pursuit or at least to throw suspicion off of his trail, and he goes to Cheyenne; and he reaches there, but he finds after reaching there, ~~you~~ gentlemen, that suspicion is



already attached to his name; that it is thought from the newspaper account that Steve Adams and himself had some connection with this explosion. He naturally becomes anxious. He concludes that he must have more money. He thinks it to the best interests of himself and of the Federation as well that he leave the scene of these troubles and go to some other locality, and he wants more money to carry out that idea. It would seem, gentlemen, that upon reaching Cheyenne he had gone to the saloon or combined saloon and restaurant of Pat Moran. He says that after stopping there that night or one day, taking their meals there and becoming acquainted with Moran, who it is admitted was the confidential friend of Pettibone and who according to his own statement when in Denver was often a visitor at the Federation headquarters, it seems that he had developed enough confidence in him to ask him to go to Denver to do an errand, and Moran consented to go down and take a letter from him to George Pettibone, and the next morning he started. And Orchard tells you that this letter was a request to Pettibone to send him \$500, to get that much money at Federation headquarters and send it to him so that he would have the means to leave the country or at least leave long enough that this storm that had been raised on account of the Independence explosion would entirely blow over, and he went and he brought back, says Orchard, this money and he gave it to him that night and the next day they proceeded upon their way. Now Moran, gentlemen of the jury, denies absolutely the facts connected with this. Moran admits that at this time Orchard was at his place of business but he doesn't seem to fully recognize him, there seems to be a defect of memory in regard to the identity of individuals



on the part of Pat Moran. You will remember that he did not know Davis when he saw him, although he had at one time talked with him. He did not seem to be able to recognize Orchard fully here, but he says that they called him Shorty. He says there was a man he finally thinks was Orchard and another man and a boy and that he only heard the name of Shorty and he stayed around there two or three days. Well, now, gentlemen, this is the first time that we have ever heard in this entire affair Orchard's going by the name of Shorty. I admit that if Moran himself had been nicknamed that that would be a proper term to express his appearance. But there is nothing to indicate that ever such a name had been used in connection with Orchard. But be that as it may, he denies making this trip. That is the important thing. He gives us to understand that Orchard when he states that he went for him to the town of Denver was telling an absolute falsehood and endeavoring to impress an untruth upon the jury. Now, gentlemen, I want to call your attention to this, that if Orchard was not here telling the exact truth, if he was manufacturing the statement for the purpose of fastening the guilt of crimes committed upon this defendant, would he as a reasonable man in making such a statement have told you a story such as he related with reference to Moran? There was no necessity of his stating in this roundabout way the method of procuring the money from Haywood and from Pettibone. He could just as well have told you gentlemen, if he was here to manufacture statements and not to tell the equal and exact truth, that they had paid him this \$500 before he started in addition to the \$300, and then there would



have been no opportunity for them to have introduced a rank outsider here to have contradicted him. Men in ~~making~~ making false statements, gentlemen, do not give an opportunity of bringing in disinterested parties who will give the lie to those statements, and the very fact that he would state that this affair was conducted in the manner it was stated, the very fact that he would impress upon you that Moran had done this errand for him and brought up this money for him would indicate his truthfulness because he gave an opportunity for a disinterested witness to be brought forward to contradict him when there was no necessity for him so to tell his tale as to admit of that kind of rebutting evidence. But what are the facts with regard to it? Moran said not only that he did not make this trip, but that he was not in the city of Denver for six months and had not been. He was not in the city of Denver at all about this time. He is as explicit in that as he is in any ~~one~~ other statement that he makes in reference to this whole transaction. He is absolutely certain in regard to it. Gentlemen, if we had rested there possibly you could have believed this statement. It would have been a question of veracity between Orchard and between Moran, and although Moran's lack of memory, although Moran's relations to Pettibone, Haywood and to the other Federation leaders would cause great suspicion on your part as to the accuracy of his statement, still in view of the criminal career of Harry Orchard you might have taken his evidence in preference to the latter.



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But we have another witness brought upon the scene. Messer, -- or Bynum, -- Bynum, gentlemen, who has known Pat Moran for a number of years. Bynum at one time worked at Pettibone's place when Moran was also working there, and Bynum tells you, gentlemen, that on the 16th of June, 1904, at the very time -- taking the statement of Orchard -- that Moran would have been in Denver obtaining this money he met Moran upon a railroad car and he talked to him, and Moran denied his knowing him at first and then admitted it. He says he met him on the car at 13th street, and he rode to the corner of 15th street with him, and he tells you that the depot for the trains that go from Denver to Cheyenne was on 17th street and it is in evidence before you, gentlemen, that the Western Federation headquarters are upon 15th street. So it is that Bynum says, or Bynum thinks that it was between six and seven o'clock that he saw this man, but he is mistaken in that without a doubt, because he further says that he generally quit his work about five o'clock. The recollection as to the exact time could cut no figure there, and he could not be exact in that, although he would be certain as to the identity of the individual, and we must conclude it was before six o'clock instead of after, although it cuts no particular figure either way, -- for that he met Moran there, there can be no doubt -- that Moran was in Denver at that time, we cannot question if he was in Denver at that time. If he was in Denver at that time in the face of his denial, we must conclude that he was there for some wrong purpose, and that purpose was to obtain



this money for Orchard just as he has related it, and I believe, gentlemen of the jury, that all these circumstances show conclusively, or the testimony of Moser -- I called him Bynum a moment ago --

MR. STONE: It was Bynum.

MR. HAWLEY: Yes, that is right, -- that the testimony of Bynum shows conclusively that he falsified when he made those statements, and you take those assertions made by Orchard, and I think we can safely say, gentlemen, another rose has fallen when we make this proof as against Mr. Bynum.

But what happened then? Orchard continued after receiving this money -- he goes up farther into Wyoming. In the meantime he has met Davis there. Now, it is funny that Davis should be at that particular place. It seems peculiar that Davis should be therein Cheyenne going under the name of Jones so soon after the Independence explosion. If he had not imagined that he might be charged with being connected with it, and we find him where? Stopping at Pat Moran's place, making it his headquarters there. Why? Because Moran was a well known friend of the Federation and its members, and he goes there and Orchard finds him there, and not only is he staying there, but we find after Orchard and Neville left and went up the road a ways and stopped to fish, Moran and Davis come up there and spend a day or two with them. It shows the intimacy between Moran and the Federation people. It shows that Davis himself felt perfectly safe in being around Moran's premises, although he was going



under an assumed name. It shows, gentlemen, conclusively, I think, the intimate relations that in that short acquaintance had been established between Ormsd and Moran by reason of this service which Moran had done him in obtaining the money, because the minute after he leaves he goes up and joins him in this hunting and fishing expedition.

Almon returns, however, gentlemen. He goes back in Wyoming. He concludes he will risk it and return. And in a roundabout way he proceeds to a point in Wyoming where he had been, and reaches Denver, getting there in the latter part of July. He takes lodging under an assumed name in a certain place. He tries to conceal his identity. He goes in the night-time to Pettibone's house; he meets Pettibone and Heywood and Heywood goes to see him. They are anxious that he should be away from that locality there, fearful that he will be identified as one of the perpetrators of some of these crimes in which they were parties, and they desire to obtain his absence, and in doing so they think it better from all appearances that he shall engage in another unlawful enterprise against one of their well known enemies.

They bring up the matter of killing Bradley --- Brad Bradley who is then a resident of San Francisco. They call his attention to the fact that Bradley was a leader in the Coeur d'Alenee as against the interests of the Federation; that he had been in 1899 the President of the Duker Hill and Sullivan company against which the unlawful movements of that year was



directed, and as the Federation neither forgives nor forgets they thought it was about time to move against him and learn other enemies a lesson by the summary method in which they would dispose of Bradley, and Orchard willingly assented to this. He was glad of employment. It was in his line of business seemingly and he proceeded to San Francisco. We find that he reached there although he does not give the exact date, about the 1st of August. We find that he takes up his headquarters at the Golden Cycle, or Golden West Hotel, and soon sends for money that has been promised to him through Pettibone at any time that it was needed. He sends, I say, to Pettibone for money and Pettibone does what? He sends him a registered letter which is received there on either the 10th or 14th of August, containing Orchard says, \$100. This letter is not sent to him -- you, gentlemen, the exhibits will be taken by you to your jury room and you can determine whether or not we are telling the equal and exact truth in regard to these matters, -- it was not sent to the address of Harry Orchard or to Thomas Hogan nor by the name by which he was known, but he had an accomplice, and we have a suspicion, and he had called himself Harry Green when he went to this hotel, and it was understood, gentlemen, it would seem, in sending letters that he should go by one of the aliases which he had taken at other times, and it was sent to J. Dempsey at that address, and it was not sent in Pettibone's name, but was sent in J. Wolf's name. Now Wolf is the confidential man, or was at that time, of Pettibone; and he appeared upon the stand and endeavors to explain



4

these things to you. That letter was taken out -- that letter contained this money as Orchard says. Wolf attempts to say, gentlemen, when he is upon the stand, that long about the first part of August he took a letter to the postoffice for George Pettibone and that the letter was addressed to Orchard and that he saw Pettibone put in it a masonic emblem or a miners' union card or something of that kind. He does not say that he did not put a hundred dollars in, but he does say that he put these other matters in. What was the idea of introducing this kind of evidence? Simply, gentlemen, for the purpose of convincing you, or basing an argument upon it that Orchard had sent for other matters, not money, and that Pettibone had sent these other matters and not money to him through this registered letter. We had the United States authorities here, proving the sending of the letter and proving its receipt there. We have proved the signatures by the testimony of the expert upon handwriting, and they say it was absolutely necessary to wipe that record out, or at least to explain it, so they brought Wolf upon the stand. Why they did not put upon the stand the very man who could have given the explanation and given it in plain terms -- Pettibone himself -- is something I will leave for them to explain, but they seemingly dared not do it. Ah, gentlemen, we had the receipt here. It may not be assumed that Orchard had lied in regard to obtaining money from that quarter, for what do we find? In September -- on September 10th, we find, gentlemen, that he had obtained money again. How many times he obtained



5

that we don't know. He says he obtained \$450. in all while there, and this time it was through the Postal Telegraph Company, and a hundred dollars is sent to him through that means, or at least the amount that is sent together with the amount of the charges making a hundred dollars, and we have brought the record before you; and again in October, on October 15th, we find another communication to that company, another telegram for the payment of \$50. Both of these by way of identification, both of these telegrams are directed to Harry Green. Both of these telegrams, gentlemen, are sent by George Pettibone. How does he send them? He says that one is sent by Pat Bowen -- that is the name that is signed -- and the second one is sent by J. Wolf -- that is the name that is signed as the sender of this, and there is the evidence, gentlemen, -- it will be presented to you. I had it here and I was intending to show it to you at this time but it is hardly worth while because an examination will bear out the entire accuracy of every statement I make in regard to it. The handwriting upon both of these is the handwriting of George A. Pettibone, and he signs the name of Pat Bowen to one and J. Wolf to the other. He is the one that is trying to cast off suspicion from his skirts in the event of any suspicion being directed whether to him or to the sender of this money by reason of the intended crime in San Francisco, and he does it in this way, and this explanation given by an expert would show you that this writing is the writing of George Pettibone. You compare that writing with his writing as shown in the letter which must be

admitted to be in his writing. The letter of recommendation for Harry Orchard to the insurance company, and you will find it is identically the same, and that is a proven fact in this case, and is not disproved. I ask in all seriousness, gentlemen, if the intimation that has been made here before in the evidence, not the proof, because they have no proof; they are simply intimations contained in questions asked which show they are intended for the basis of an argument although the answers would not justify in any event, I ask you in all seriousness, gentlemen, can it be doubted for a moment that Pettibone sent this money, that he sent other moneys that had been obtained from the defendant and his colleagues -- from the Western Federation funds, and he sent it to Orchard for the purpose of assisting him in the commission of a crime. This idea of his having been Orchard's banker and having any of Orchard's funds in his possession is absolutely unworthy of credence. It belittles an argument even to introduce it.

They have some sort of a statement from Lottie Day that would intimate something of that kind, but nothing in the nature of proof. If Pettibone did have a fund belonging to Orchard in his possession -- if George Pettibone had money of Orchard's there in his safe, why, if he was retaining it for him, and Orchard desired it to be sent to him in San Francisco, would he not have sent it as you and I or any other man would have sent it, have gone to the postoffice or went to the telegraph people and under our own name, with our address given, have sent it to this man.



Why should we assume to mystify or conceal anything, but he signs Wolf's name, he signs Pat Bowen's name, he takes good care that George Pettibone's name is not signed to anything, and he sends it and Orchard receives it and, gentlemen, if there was any truth in these intimations, I ask in all seriousness if Pettibone would ever have been brought to the stand and prove that to be true. But the money is received. Orchard's movements continued there in San Francisco. He is endeavoring to carry out the errand upon which he has been sent. It was the object and purpose of Haywood and Pettibone when they desired him to go there to remove Fred Bradley, to show to the world at large that the Federation always punished its enemies. He had not made up his mind in going as to the exact procedure. He found when he reached there that Bradley was in Alaska. He wrote with reference to this matter and was advised by the conspirators in Denver to stay there until Bradley came. He took up his residence and Bradley finally came, and in accordance then with his usual custom he sought to ascertain the methods of Bradley, the habits of Bradley, and he finally in a short time took up his headquarters in a place near Bradley's residence. He hired a room from Mrs. Soward in that vicinity, and he soon ascertained what merchant it was that supplied the Bradley residence with its groceries and he struck up a friendship with Giubbini and he ingratiated himself into his favor so that he was soon a trusted friend and almost a confidant of Giubbini -- had such an excessive confidence with him that he sent him upon errands deliver-

ing groceries in this house of Bradley's and giving an opportunity to Orchard to ascertain the condition of things there. Further in carrying out his plans, gentlemen, his efforts to get rid of Bradley, he says he made the acquaintance of some of the female servants of the household, and that he became quite friendly with them, and that he met them on various occasions; he says one lady who occupied the position of cook, he invited or took her to the theater. Now, are those matters true? We brought here before you Giubbini, and he testified as to the entire accuracy not of those statements, but he went farther than Orchard, because he was asked in regard to the minutiae of it and we bring one of those girls that was in the household and she swears that those statements are absolutely true, and the statement of the other girl, the cook, was taken in San Francisco and we find that the statements were all absolutely true except that she denies that she went to the theater with him, but upon cross examination she admits that he gave her a ticket and wanted to go, but whether she went or not is absolutely immaterial, and I don't know whose memory is defective in that regard, whether hers or Orchard's.

We find Orchard then securing an intimacy with some of the household of Bradley, for what purpose? To carry out the wishes of the leaders in whose interests he was acting there, and he sees an opportunity to cause the death of Bradley, how? By the poison route. He ascertains how it is the milkman brings



the milk there, and he obtains strychnine in a large quantity and put it into the bottle of milk and cream there. His acquaintance with the interior of that house enables him to do that, and he puts it in and leaves it there, and Bradley unexpectedly detects the presence of that poison. He finds that the cream is bitter. We would generally find that a person would take enough of that strychnine by means of a cup of coffee or other way before he would detect its flavor to cause his death, but Bradley finds there is something wrong with the cream and the milk and the servants are brought in and they taste it and find it is wrong, and they take one of those bottles over to Giubbini's place and he ascertains the same thing. They call upon the millman, and so did we, and we put him upon the stand, Mr. Cook, the man who runs the Guadeloupe dairy and he told us how there was no other complaint made by any one that he served, which shows conclusively that that milk of Bradley was poisoned, and they took it to the city chemist and he finds poison enough in it to cause the death of almost a regiment of men. Well, the scheme failed. They have attempted, mind you, gentlemen, and that is the importance of this evidence,-- they have attempted to combat all the statements of Bradley in regard to it, or all the statements of Orchard in regard to the assassination of Bradley. They have seen fit, gentlemen, to rest a good part of their case upon this and have attempted to show to this jury the absolute inaccuracy of the statements of Orchard and how untruthful anything that he says must be. But I ask in all seriousness,



if there can be any doubt in the mind of any man who has heard this testimony but what Orchard poisoned that milk at the Bradley houses? Can any of you doubt it? Who else did it? He had the opportunity; he makes this statement before you which he could not have made unless he had been a party. He could not have taken the stand and testified, gentlemen, in regard to this poisoning matter, giving you the minutiae of it unless he was absolutely the party who had committed that crime, and he is corroborated in that respect. But, they say, he did not cause the explosion. You will remember the evidence of Orchard in regard to this explosion and how it was caused. After he failed, gentlemen of the jury, in the poisoning scheme, then he fell back on the ancient method of the Federation killers in disposing of its enemies and prepared a bomb. He was a little doubtful it would work in regard to the working of the bomb. He had got the powder and the other ingredients that were generally used by him when he was exploding a weapon of this kind. In order to make certain that the thing would work, he experimented in his room. They tried to claim there was no bomb there. But we brought Mrs. Soward, the landlady here to corroborate the evidence of Orchard. You will recollect he first experimented in his room by putting a screw in the door; he experimented by means of that and with the turning of the window that would cause the explosion, and in a moment of forgetfulness he left that paraphernalia there upon one occasion and he did not know whether the landlady saw it or not. But we brought the landlady



here and she describes that portion of that implement just as he gives it, and he left it there just in the manner he stated, and it strikes me that fact shows conclusively, that it proves conclusively that he prepared a bomb and blew up the residence of Bradley. But what more, gentlemen? He says in the morning of the day upon which the explosion occurred he had made everything ready and he waited until the Japanese servants who generally cleaned out the vestibule was away, and he slipped in and fastened or put the bomb under a rug which was there and threwed a newspaper there carelessly over it and fastened it to the door with a screw which he had put in a night or so before, knowing that Bradley in a short time, in accordance with his usual custom would come down and would undoubtedly cause the explosion when the door opened. That he then immediately took a car and went over the hill and down the hill into the heart of the city, and he was in that vicinity, I believe, no more,-- yes, I believe he was one short trip afterwards.

You will recollect, gentlemen, that he states that he had sent his carpet bag and his other luggage away from that room the night before, that he had paid his room rent and prepared to leave; he saw that his opportunity had come to accomplish the death of Bradley and he wanted to be away from that vicinity when the deed was done. And Giubbini tells you that he helped him move this gripsack of his away, and the landlady tells you that he had paid up his bill the night before and he was not there

the next morning. What was the result of that expedition? Bradley came down in accordance with his usual custom; he opened the door, an explosion occurred, he was severely injured, was thrown away out in the street, and his life was despaired of for some time. A considerable damage was done to the building. The vestibule was absolutely blown in and there was considerable damage to the windows and other portion of the building around there; almost the entire front of the building being blown out. He says that he immediately left, and he went into another part of the city and was not in that vicinity again except for one short conversation with Giubini.

There was an opportunity on the part of the defense, gentlemen, to dispute this assertion. It would seem that the defense had carefully prepared for this portion of the evidence of Mr. Orchard. They were aware that he had made statements with reference to being there, and of the explosion, and knew that this would come out as one of the incidents depended upon by the prosecution. They did not know, gentlemen, seemingly that there had been another attempt to take the life of Bradley by means of the poison and had not taken that matter into their consideration at all. But they had prepared themselves thoroughly to disprove this statement and the incidents that have happened there gave them every opportunity of so doing. You will recollect, gentlemen, that the parties that owned this building, Mr. Linforth, had sued the Gas Company of San Francisco, claiming that the explosion was caused by gas. It would seem that in that



building for two or three weeks before that there had been a slight smell of gas at times. We all know that a small aperture in a gas pipe, no larger than that made by a needle, will cause a smell of that kind. There had been some complaint about it, and when this complaint occurred, not imagining for one moment that any one would make an attempt of this kind there, the owner of the building instituted a suit against the Gas Company and the jury found a verdict in a considerable amount,-- \$10,000, I believe.

It must be conceded by all of them, that no one knowing anything about this attempt, there being no reason to suspicion that any bomb had been used, or an explosive had been intentionally placed there, all of them seemed to concede that gas had caused this explosion because nothing else had ever been suggested as the cause of it. That, of course, required evidence. That verdict implied a trial and witnesses must have been sworn, and naturally, gentlemen, the witnesses who gave testimony upon that case and were responsible for the verdict, would be Bradley and others who supposed they had full knowledge in regard to this explosion, and having testified honestly, testified to the best of their impression in regard to the cause of this explosion. It would be very natural for them to be lead to believe they had been absolutely mistaken, and that this verdict was entirely unwarranted-- that events would cause them to discredit to a great extent this testimony of Orchard's. What do we find on



that, gentlemen? Orchard -- they sent to San Francisco to contradict Orchard, and they got the testimony of some fourteen witnesses, I believe, and I ask in all seriousness, taking that evidence as read before you, wherein and how it disputes anything that Orchard has stated, especially when it is read in the light of rebutting evidence that we have brought forward to answer it? Bradley, when he gets on the stand, and his evidence is taken down talks about this being a gas explosion, and seems to think it must be taken for granted that it was a gas explosion, but he states that there was two explosions, one threw him down and the other that threw him into the street and his theory was that it was both gas and dynamite. I don't take any stock in that, gentlemen, because it is not warranted by any statement any other witness makes, and Mr. Bradley's recollection of the events of that morning must be absolutely obscure because the explosion had such an effect upon him that he could not have a distinct remembrance of anything that happened after the explosion. We find, gentlemen, when we come to examine into these facts, into the physical facts, that Orchard's statement is corroborated even in a lot of the testimony given by those San Francisco witnesses.

Reilly, who seems to be the principal witness there as far as contradicting Orchard is concerned, goes upon the stand and he states that he went for his morning drink to Giubbini's place the Jap was at work and the explosion occurred so quickly after that he did not believe it possible for a man



to have slipped in and attached the bomb, and that is the substance of his testimony, and they bring it forward to answer Orchard in that regard.

I desire to call your attention to this fact, that Reilly has absolutely been discredited in regard to the occurrences of that morning because he swears upon cross examination as he did upon direct examination that he was up there and was going to Giubbini's to get his drink before breakfast as was his usual practice. There is no doubt but what it was his practice to go to Giubbini's place and have his morning's bitters, but he says that Giubbini served him, and he goes farther and says in that deposition that he is as certain of that as he is of anything else he testified to, and when he does that, gentlemen, he discredits his whole statement, because Giubbini says -- and he is corroborated by Mrs. Giubbini in that -- that Giubbini had not yet got up at this time. True it is, gentlemen, true it is that in all probability Giubbini's establishment was open and his clerk was there serving drinks as usual to his customers; we admit that, but it would be absolutely immaterial so far as any statements of Reilly's is concerned, but when a man is so positive in regard to the details of any occurrence of that kind that he is willing to swear that that matter of detail is as clear in his recollection as the important matters he testifies to, then we must conclude that his testimony is unworthy in all respects. But again, gentlemen, we find that they think they have disputed this testimony of Orchard in another essential



particular. You will recollect that when Orchard was on the stand talking about this thing he stated incidentally -- it was an important matter -- that he got upon a roof there at one time when he had been upstairs around this flat that was occupied by Bradley. I had supposed it was a matter not material that there had been a roof out there as a portion of that same building, and he had stepped on to it, and while the gentleman cross examined in reference to it, still he had no chance to make a full explanation in regard to it. If my memory serves me right there was a chance apparently to contradict, and so they brought Reilly upon the stand there and some others still, and showed there was no roof thereupon which he could have got from the flats -- no roof on that building upon which he could have stepped. They seemed to forget, gentlemen, that he would not have known whether that building and the adjacent building were connected or not, and seemed to think that the important matter they had to disprove was that it was impossible for him to get upon the roof of the Linforth building. Now, I don't suppose anybody would think for a moment that a gentleman could step from a platform of the third story, or the upper story of this building up on the roof of that building, but it would naturally follow that he was telling the truth, that Orchard had stepped out upon another roof that was there, and we bring Mr. and Mrs. Giubbini and I had then tell you that Curtis -- I think it was -- had owned the building next to it, with only a few inches of



space separating it, and it was possible from this Linforth building to step over on that roof there --

MR. RICHARDSON: You don't mean Mrs. Giubbini, for she did not testify to that.

MR. HAWLEY: I say Mr. Giubbini, -- Mrs. Giubbini did not swear to it. If I said Mrs. Giubbini in regard to that I made an error because she was not asked about it.

Now, gentlemen, there are some other things connected with it; we have shown, I think, that Riley's testimony does not contradict Orchard in any essential particular.

Now, do the facts corroborate these statements of Orchard in regard to that explosion? I call your attention to one thing, gentlemen, in commenting upon this because the evidence of circumstances that occurred during the explosion, the results right after the explosion, would speak louder I imagine than any words could in regard to what caused it. You will recollect that the statement of Orchard was that he planted this bomb in the vestibule near the door, and there was a slight marble or stone rise from the floor of the vestibule to the doorway, -- in other words, I should imagine something of that kind there (indicating the platform on which the jury sit) only a little higher, and this bomb was placed in there and covered with a rug that he found there and a newspaper which he threw carelessly over it as he has described. From the vestibule which was a small dark compartment or hallway leading into the street, the door opens into the Bradley apartments and other



apartments there. Mind you, the bomb was planted in the edge of the hallway. What would be the effect of it if it was dynamite that caused the explosion? The downward force would be exercised at the place where the explosive was placed, would it not? If it was placed in the vestibule the downward force would be exercised in the vestibule and the floor would be broken down into the basement below. Wasn't this the case? There is no evidence that shows this was not correct, and I say there is an important matter for you to consider when it comes to the cause of this explosion, that it could not have been gas because the vestibule floor was broken in. Presuming this explosion was caused by gas, -- presuming that that room in there was filled with gas and an explosion was caused when a man was standing at that door, what would be the effect of that gas explosion? It would have equal force in all directions. Would it break the floor down? If it was possible for the explosion to break in the floor of the room in which the explosion occurred, wouldn't it have been the flooring of the room itself? Would it have been outside of this door in the vestibule of the Bradley residence? The very statement shows its entire accuracy. Here is the vestibule, for instance, and that doorway leads into the Bradley hall, and in front of that door is the place where the floor was broken down, and the floor was uninjured in the hallway itself, so that shows the explosion was caused by dynamite and not by gas.

Let us go farther. We know something in regard to this



subject from a man who was brought here before you who has made it his life business to ascertain in regard to the effects of an explosion by gas. We hardly needed it though, because I think it is a matter of common knowledge that an explosion of gas can only be caused by a flame. You cannot explode gas by a fire such as a lighted cigar, though it might cause an explosion if that cigar was flaming. I appeal to you whether or not there is any probability of a cigar which was being smoked by a party, which had been lighted up two or three flights of stairs, and had been smoked from that time until he started down a hallway, whether that would be in such a condition as to develop a flame? The fact that it was lighted would not cause an explosion, and you cannot cause an explosion by it so far as gas is concerned, any more than you would by throwing a live coal into a place in which gas existed. There must be a flame, and that is the positive statement here before you. But, gentlemen, recollect this: This hallway was open. Here was an open space, and from this hallway up the stairs it went up to the Bradley flats and to other flats. There was a considerable open space in there. Now, there is one characteristic of gas and that is that it can be smelled very quickly. There is no doubt about it, but that the smallest leak in a gas pipe, as I remarked before even a hole as large as the point of a needle will allow gas to escape, and the most minute quantity of gas will still have such a perceptible odor that any one can distinguish its presence. It is one of the nuisances attendant upon the use of gas because such a



quantity would produce such an unbearable odor around the apartment. I ask you not to overlook this fact, that Bradley -- Bradley is a sensible human being, that he was so far as the evidence shows in the possession of all his faculties on the morning of that explosion, and he tells you, gentlemen of the jury, that he did not smell gas as he came out of his rooms in the hallway and went down the stairway into the lower hall; there was no odor of gas, -- he detected no odor of gas even up to the time he took hold of the handle of that door. Is it not true? That is a positive statement upon his part, but he made the descent of the stairs, gentlemen, and if there had been gas in that vicinity, if it had collected in such a quantity in that lower hallway as to have been subject to an explosion even by a flame, he would have certainly detected the odor because it is one of the characteristics of gas that it would spread out, and I care not how much of it had been coming from the stairs below, some of it would have found its way up into the hallway. There was nothing to keep it around that particular door, and he would have smelled it, and that very fact, if this witness is to be believed, and he is an honest man, would show conclusively that he was mistaken in regard to the explosion being caused by gas.

And again, gentlemen, let me call your attention to another matter on this point and we ascertain not only by the evidence of the expert, but common sense would teach it as well; we all know the poisonous properties of illuminating gas; we all know that gas will cause asphyxiation when it is taken into the



lungs; with many it is a favorite method of suicide; many die from accident because of escaping gas; in fact, it is almost a monthly occurrence in cities to have them turn off the gas when they retire to sleep and not shut it completely off. Now, I ask you if in that hallway there had been enough gas collected to have caused an explosion such as destroyed the front of that building, I ask you, could Fred Bradley or any other person come down those stairs and into that hallway and up to that door, and wouldn't he have been asphyxiated before he reached there? His lungs would have been filled with this deadly substance that would have caused him to have fallen senseless and there he would have been ~~deprived~~ deprived of speech or motion and he would have died if some one had not come to his rescue, and I appeal to you as sensible men that these matters, without the evidence of an expert, or any contradictory evidence, would show you absolutely that the statements in regard to this being an explosion of gas cannot be sustained. I could give you many other reasons, gentlemen, but it is not worth while to comment upon it. It is in view of the testimony in regard to the poisoning itself, and certainly that Orchard was responsible for, an attempt to commit murder upon Bradley, and it becomes absolutely certain in view of his testimony followed by the fact that the poison epinephrine thoroughly corroborated that with these other incidents in regard to the gas explosion being before us, in spite of that verdict given by a jury in San Francisco, that it was not gas but

dynamite that caused the explosion.

Another thing to which I desire to call your attention is the fact that there was nothing burned in that explosion except one hanger or cord to a curtain which was smoldering some; that the gas fixtures had been torn away, that the gas pipes had been torn away and the gas when the firemen were there had commenced peering out as it would because the explosion had caused those pipes to be bursted there, and I ask you in all seriousness, gentlemen, if gas had been coming from an open pipe in to that building and had exploded on account of a match which had been lighted, if it would not have been burning when the firemen got there?

But, leaving that, we have got another subject in connection with this to which I desire to invite your attention for a moment, and that is Orchard's movements after this explosion. He did not leave there immediately, you will recollect, but he went to a distant part of the town and we find him one night going into an entertainment on Market Street which is had there, and which represented the scenes in Cripple Creek at the time of the strike, and our loud voiced friend, Copley, it seems had the management of the stereopticon show, and was there delivering a lecture as explanatory of the pictures and gathering in what money he could from that source. And Orchard finds who it is and knows him. Copley is one of the members of the executive committee of the Western Federation, and he knows him, and goes



up to see him and there is some talk about this explosion, and Orchard tells Copley -- and this is Copley's own statement -- he informs Copley in regard to this explosion, this man who is one of the leaders of the Western Federation, this man who has been a member for a long time of the executive committee, and he tells him in regard to this explosion, which shows, gentlemen, this to my mind, that Orchard there at that time had committed that act and was not at all fearful of explaining what he had done to Copley because he knew he would be absolutely safe in his hands. He had done it at the request of the head men, the leaders -- Pettibone and Moyer and Haywood -- and Copley as one of the executive committee, even if he was not privy to it, he was bound to keep his mouth shut. Now, what would a good citizen have done under these circumstances? Why, he would have at once informed the authorities and said, here is the man that says he committed this crime by reason of this bomb. Did Copley say it? Oh no, none of that from Copley. Copley, gentlemen, on the contrary recognized Orchard as a brother and a friend and instead of informing in regard to this crime he takes him under his active protection and we find before leaving there that Orchard goes, in order to disguise himself perfectly, into the rooms occupied by Copley and there he takes his soldier's suit which he has bought in order to keep himself from being known, and he puts it on there, and there Copley or himself, and I don't know from the evidence which it was, but if I recollect rightly it

was suggested by Copley himself, that the disguise might be perfected by obtaining a pair of spectacles, and if I remember rightly I think he actually went out and got them for him. This leader of the Western Federation -- this man who was brought here to deny the assertions of Orchard when he comes to this important matter admits the truth of what Orchard said, and says he was there and was engaged in protecting a criminal and to obtain a disguise, or to see that it was so arranged himself that he would be disguised in leaving San Francisco and his presence would not be detected in going out.

They will undertake to show that this disguise was not for the purpose of leaving San Francisco, but had for its object his going into Denver without being known. That is the veriest humbug as I take it, because he was a long ways from Denver. If he was about going into Denver he would have waited before going in there before putting on his disguise, but it is a case that the very object and purpose of that disguise was to prevent his presence, or to prevent his identification by any of the officers of San Francisco who were investigating the Bradley matter, and who might have a description of Orchard and might be on account of his leaving that locality at that time he suspected of having committed the crime.

And again, gentlemen, his very actions after reaching Denver shows that that claim that Copley makes, that he was disguising himself to keep from being known in Denver, is absolutely unfounded. Now, gentlemen, this will bring us to the considera-



tion of another matter that will probably occupy me ten or fifteen minutes, your Honor, and that is, some statements with reference to this trip, and it being now closing time I will not, if your Honor so desires proceed at this time, or I will keep on as your Honor may deem best.

THE COURT: We will close here.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded to custody, and a recess was taken until two o'clock P. M.

RECESS.

Boise, Idaho, Saturday, July 20, 1907.

2 o'clock P. M.

Parties met pursuant to adjournment.

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

MR. HAWLEY: (Continuing).

Gentlemen of the jury, I feel like I am taking a great deal of time in presenting this case in the opening. I feel an apology is due you for it. My apology must be my desire to assist you as much as possible in ascertaining the view of the prosecution in regard to these different matters and our theories based upon them. It is a duty the prosecution owes to fully present their case upon the opening so that the statements may be attacked if necessary by the other side. And while I may be unnecessarily long, I crave your pardon on that account and ask you to take into consideration the magnitude of the case, the amount of evidence that has been brought before you and the number of witnesses whose testimony has to be reviewed. But I will say one thing, gentlemen, I am certainly following you closely so far as any discomfort is concerned because it is certainly more painful to me to talk this length of time in my present physical condition than it is to you gentlemen to listen.

At the time of closing this forenoon we were taking up the Bradley explosion, the San Francisco matters which have figured so prominently in this evidence. There are one or two matters in connection that are worthy of attention in my judgment. You will remember in the testimony of Orchard, gentlemen,



jury, succeeded as it was by the other witnesses of the prosecution, that there was a certain interval from about the middle of July, or at least the latter part of July -- about the middle of July in fact until the first part of August or nearly the middle of August that has not been accounted for by anyone, so far as the witnesses for the prosecution are concerned, except Orchard himself. That is, I am speaking of the year 1904. And we find that this defect, if defect it could be called, in the evidence of the prosecution was important and promptly ~~against~~<sup>seized</sup> upon by the defense, and we have in this connection one of the strangest if not the strangest piece of evidence that was brought before the jury. Dr. McGee was brought before you and he made a statement under oath, that in the latter part of July or the first part of August, 1904, he met Harry Orchard in the town of Wallace in Shoshone county in this state. He stated that Orchard at that time told him he was a spotter and made some other extraordinary statement. Why it would be assumed that Harry Orchard would go to this particular individual and make a confidant of him I don't know. But the matter was serious from our standpoint. It might be urged, if Orchard had been in Wallace instead of Denver upon his return from the Wyoming trip, that it was evidence that he had gone to San Francisco for the purpose of killing Bradley on his own account and without consultation with the defendant or his co-defendants and therefore would have been a material matter so far as our theory of the case is concerned. We immediately, however, gentlemen, began to look about us for rebutting evidence in order to positively ascertain the whereabouts of Orchard upon these occasions. It had not been necessary from



our standpoint to do this until the matter had been attacked, and we ascertained in regard to his whereabouts, to his stopping place upon his return from Wyoming to Denver before starting upon the Bradley expedition, and we brought before you gentlemen Mr. Moser, the keeper of the logging house at which he stopped. He states in substance that from the 25th of July, 1904, until about the 1st of August he had a room at his place of business there. Mr. Moser so testifies to this positively. He testifies he has a distinct recollection of it and although he hasn't his books here and while his recollection might be at fault as the recollection of any witness might often be, still, gentlemen, it must be evidence that some time after July he was stopping at his place, and this is the only interval of time, outside of his recollection of the time, that Orchard could have been there. But we go further, gentlemen. We know that in the Coeur d'Alene Orchard had one or two intimate friends. We were satisfied that if he would go anywhere he would go to his former places of residence at Burke because many of his friends lived there. You will recollect that was one of the places he went to in 1904 when he was on his visit to that locality, and we bring Sheriff Bailey down and we find that he hasn't seen him nor heard of him; and we bring his particular friend and old partner in the Hercules mine, Mr. August Paulson, who testifies he didn't see him or hear of him being in that section of the country during that period of the year. It isn't probable, gentlemen of the jury, that Orchard or anyone else could be in that section of the country or any section of the country and go to a comparative stranger to give him his confidence and tell him of his business and overlook his friends,



and that would be all I apprehend was necessary for us to have proved in order to have refuted this evidence in its entirety and have convinced you that it was an absolute mistake upon the part of Dr. McGee when he gave his testimony upon the subject. But we have gone further, gentlemen. Dr. McGee, you will recollect, testified that this meeting that he had with Orchard was after a certain occurrence, trouble with a certain man whom he saw afterwards with Orchard at the depot. It was after this. And this trouble occurred at the time that the Republican county convention was in session in the town of Wallace, and he states also that at this time he advised Orchard, who was talking to him in regard to the prospect of making some money out of that political campaign, to go to the chairman of the committee, Mr. F. F. Johnson. Now, gentlemen, I am not one of those who believe that any witness, unless there is some particular reason why he should remember a particular date, can with any degree of positiveness fix such a date. I believe that witnesses are very often mistaken in regard to dates, not only to the month but often as to the year, and it is an ordinary mistake that any witness might fall into because the frailties of human memory would render us all liable to mistakes or errors of that kind. But when a man fixes a date by a reference to some other matter, the date of which can be ascertained, when he states that at the time of the conversation a certain man was occupying a certain position or a certain convention was being held or was held, or the conversation was after that convention was held, we have something besides the frail human memory to determine the time that he means. And what do we ascertain by applying this test



to the evidence of Dr. McGee? We find, gentlemen, by the evidence of Mr. Cogswell and of Sheriff Bailey as well that the Republican county convention was held at the town of Wallace on the 31st day of September, 1904, and that was the only convention held at that time. Cogswell was the chairman of that convention. But this is a matter that cannot be overlooked. This is a date that we can consider absolutely fixed, but we go further and state that F. F. Johnson, Frank Johnson as he is called in some places in the evidence, was elected chairman of the Republican county committee at that convention, and this was in the latter part of September, 1904. So what necessarily follows? If McGee was attempting to tell the truth and was mistaken as to the date he was mistaken a long way, and this meeting with Orchard that he testified to in 1904 instead of being in the latter part of July or the first of August, which fact he is quite confident of and iterates and reiterates before the jury, must have been in the latter part of September or the first part of October, and have been an impossibility because it is conceded by all of the evidence, gentlemen, that after the time this convention was held, after the time Mr. Johnson took his position as chairman of the Republican county committee that Orchard was in San Francisco and the San Francisco witnesses fix that past adventure. So we are both forced to the conclusion, gentlemen, that this statement and the entire statement of Dr. McGee is simply a figment of his disordered imagination or an intentional attempt to deceive you upon what might have been a very material point in this case. I leave it to your charity to conclude which it was, a mistake or an intention misstatement.



There is one thing, however, gentlemen, that I have overlooked, and I haven't pretended to take these events up in chronological order, although I have done so to a certain extent, and that is the important matter, one of these important crimes which are charged as incidents of this conspiracy and in which both Orchard and Steve Adams were engaged -- the killing of Lyte Gregory. This is an important matter, gentlemen, because Orchard, if you recollect, testifies that Haywood and Pettibone were the men that incited him to this murder, and he tells you in positive terms --

MR. RICHARDSON: I think you are mistaken about that. He said Pettibone did but Haywood didn't know anything about it until after it was over with.

MR. HAWLEY: Very well, if that is the case, I may be mistaken, I thank you for the correction, Mr. Richardson.

MR. RICHARDSON: That is Mr. Orchard's testimony, I think.

MR. HAWLEY: It cuts no figure, because the acts of one of these are the acts of all, as the court will infer you. But I may be mistaken as to his having advised with Haywood in regard to this matter, although my recollection is the other way, but counsel for the other side thinks it is the way he states and very likely he is correct. But we will have that investigated and so far as that matter is concerned it will be brought to your attention by associate counsel in summing up the case. But we will take it for granted that I am in error in that. And if I misquote anything it is not intentional, and I will thank counsel upon the other side to call my attention to it



in the courteous and gentlemanly manner that I was interrupted at this time, to call my attention to any oversight or any mistake. But, gentlemen, in any event, this co-conspirator, this right hand man of the defendant Heywood was the man who made the suggestion, who supplied the weapons and who is responsible for the carrying out of this infamous crime. He was acting in this respect as one of these men, including the defendant, acting in their interest and for their mutual interest in getting rid of the man that was obnoxious to the Federation. An attempt has been made, gentlemen of the jury, to have you understand from certain remarks that have been made by the evidence of certain witnesses that this man Gregory was not an enemy of the Federation or engaged in any pursuit that would incur their ill feeling, but I call your attention to Mrs. Fallon, this lady from Butte that went upon the stand for the defendant, this rapid witness -- in fact the very rapidity of her talk as well as the improbability of her story must have convinced you all that she was animated by some other desire than that of telling you the equal and exact truth when she gave her testimony, and this lady says that she knows or says that Lyte Gregory was a detective for the Mine Owners' Association and was a running mate of Scott and Sterling. Now Pettibone says that he was an attorney in that behalf in his statement to Orchard -- or that he was a detective in that behalf in his statement to Orchard, but we have the evidence of Mr. Sabin, gentlemen, who comes from there and explains the reason of the enmity of the Federation leaders towards Lyte Gregory, and we ascertained from Mr. Sabin, whose evidence will hardly be disputed I imagine by counsel upon the other side, that he was one



of the principal witnesses in the Sun and Moon affair, a dispute involving members of the Federation and crimes committed by members of the Federation and upon which they were about to be brought to trial, and he as one of the main witnesses in that matter necessarily had incurred their enmity, so there is the reason, gentlemen, a reason for all this. We find this man Minturn, whose presence was testified to by Orchard, was one of the parties defendant in this Sun and Moon affair, and you will notice in that evidence of Orchard that Minturn was always around, was taking him around, drinking with him as the occasion offered and was informing himself so that he could tell Adams and Orchard exactly what to do in order to carry out their murderous purpose. And what do we find also? Pettibone was not only informing these men that were to commit the deed in regard to the necessity of it, not only formulated the plan, but he himself went in person and for a good portion of the time that they were hunting Gregory in the streets of Denver he was with them, but finally it was determined by all of them that the only way to successfully attack Gregory was with a shotgun. The shotgun was procured. Orchard and Adams, when he left a saloon where he had been drinking with Minturn and others, followed him up and as soon as they came to a convenient locality accomplished their fell purpose by shooting three loads of shot from that sawed-off shot gun into his body thus causing his immediate death. Now, gentlemen, I would like to have you reason with yourselves in regard to this matter. Is there aught in this evidence to imply that Harry Orchard, who was the actual slayer of Gregory, had any feeling against him, had any motive in taking him off? Is there



one thing to convince you, gentlemen, that there was any object of any kind in the world that would actuate him to commit this awful crime outside of his efforts to do the will of the Federation leaders and his attempt to earn the money that he was receiving from the Federation coffers? Not a thing, gentlemen, not a motive. Do men commit crimes without motive? Do men take chances of the scaffold and of the penitentiary without an object in view? I think, gentlemen, you must judge Orchard and Adams as being governed by the same motive to a great extent as would the ordinary individual, and certainly neither of them killed for the mere lust of blood, but they were killing for an object, although murder was their trade, although they were experts in that trade still there must be something that controlled their actions when it came to taking human life. And I ask you again in all seriousness what it was that would have caused Orchard to take the life of Gregory except the desire to comply with the wishes of the Federation and carry out their objects and purposes? And the same thing, if you please, gentlemen of the jury, would apply to Adams. Adams was a party to this although it was not his hand that pulled the trigger that accomplished the death of Lyte Gregory, still he was there personally present and just as guilty, just as guilty under any construction of the law as was Orchard himself. Now what object did he have? Had he ever in any manner incurred the dislike or had any reason for feeling animosity toward Lyte Gregory? Nothing at all that appears in evidence, and I say that he had no object except the object of serving the purposes of his employer, and without the object of serving the purposes of his employer he would not have been



guilty of this crime. Again, I call your attention, gentlemen, to the fact that Adams, here below, could have been brought into this court room in half a minute's time, but although charged directly with being one of the actual murderers so far as this tragedy is concerned has not made his appearance upon the witness stand, and the same remarks would apply so far as Pettibone goes that we have heretofore urged upon you in the consideration of other matters.

So then, resuming, after the trip in which he attempted to accomplish the death of Bradley, we find that Orchard comes back to Denver. He resumed his familiarity with the leaders. He is constantly a visitor at Pettibone's place. He is called upon upon numerous occasions by Haywood. Why, gentlemen, he goes so far as to live for one month in the very house of Pettibone and with Pettibone he resumes his attacks upon Peabody, himself and Adams, and ~~their~~ <sup>their</sup> attempts, ~~the winter~~ <sup>the winter</sup> before, had not accomplished anything. And I call your attention in this respect to another matter that I have forgotten to mention with reference to the winter before, and that is Max Malich and the Globeville hotel, and his statement that Orchard tried to obtain certain money from him for blowing up that hotel and killing the scabs that were congregated there. It seems there was a good deal of feeling engendered there and this man Malich was a member of the Federation, and he was running an opposition boarding house, I presume, and store and all that; but Orchard according to his statement manifested a desire to blow up the opposition boarding house although he would probably kill a score of people and do it for a consideration. This proposition was indignantly rejected by Max Malich -- none of that for Max; Max was a good



man according to his story and would have nothing to do with an unlawful scheme, with a matter of that kind, any more than he would have with burning up his place of business and obtaining the insurance money, although strange to say that his place did burn and he was conveniently away so it could not be charged against him, and presumably he did collect his insurance money but so far as his evidence is concerned I will call your attention to the absolute improbability of his statement. After this deliberate proposition, as he states it, of Orchard to murder a score or two of people in order to facilitate his business matters, while he indignantly rejected it, still afterwards he was the friend and crony of Orchard. It did not interfere with their friendship. He did not seem to regard him as a particularly obnoxious party on account of his efforts to induce him to be guilty of this crime, but he went on and continued his relations in the same old way, and he testified upon his cross examination, when asked by Senator Borah in regard to that, that he would have been willing to have backed him up for a few hundred dollars anyway to have gone into the saloon business. Another matter there in that connection that I might have called your attention to, and that was Joe Mahalich and some of his denials on the stand, although I feel that I haven't time, gentlemen, to call your attention to all of these matters which naturally will occur to one who is running over this evidence, but I will leave Joe Mahalich and his testimony in regard to Gratias and his connection with him, all of which is so emphatically denied and which was brought before you in order to base an argument upon, not founded upon any proven fact, I will leave that to your consideration without



further comment.

But there was another matter of grave importance and one that deserves more than a passing remark and that was after this time had elapsed and Orchard was back to Denver and had resumed his relations with the Federation people -- the effort to murder Judge Gabbert. There is something, gentlemen, that deserves your serious consideration. There is one of the incidents in this chain of circumstances that will point without doubt to this conspiracy which resulted as another of its incidents in the death of Governor Steunenberg. Who was Judge Gabbert? Chief Justice of the Supreme Court, gentlemen, of the state of Colorado. He had rendered himself particularly obnoxious to the Western Federation leaders by reason of some decision in regard to the eight hour law. His death was desired. Haywood desired the death, so did Pettibone, so did all of them engaged in this matter, and it devolved upon Orchard as one of the killers chosen for this particular work to accomplish that death, and himself and Pettibone watched Judge Gabbert, they ascertained his whereabouts, they knew it was his custom, after a few days' watching, to go over a vacant lot on his road from home to catch the car to come down town; that that was an invariable custom and so they planted a bomb there and they fixed it so that an article placed in the little pathway that was made when it was picked up would discharge the bomb, would cause its explosion by reason of it being fastened to the windlans which turned the bottle of sulphuric acid and thus caused it to work upon the explosive there. And they planted a second bomb then because the first didn't work, and Orchard is specific in regard to that



and he tells you in regard to his methods and tells you all his reference to it, how it was done and all that he did, and about riding off on his wheel about the time that Gabbert came out of his gateway, fastening first the bomb to a ladies' reticule so that it would be observed and the judge would undoubtedly attempt to pick up this article, and he rode off and to his surprise he heard no explosion and it was for some time unaccounted for, the reason being the judge didn't come along there that particular day but another person did, Merritt Walley was along there; Merritt Walley undoubtedly picked up that and the explosion followed which resulted in his death -- another murder added to the long list for which these men are responsible. Again I ask you, gentlemen, again I ask you in all good faith who had any object or any motive in accomplishing the death of Judge Gabbert? Was it Harry Orchard, the man who was really responsible for the explosion which blew Merritt Walley out of existence? No, he had none. It doesn't seem he knew him at all. But there was a strong feeling of animosity and ill will, which has been shown not only by Orchard's testimony but by all of the proof in the case, on the part of the defendant and his co-defendants against this individual. And so it is in regard to Judge Goddard? What do we find there? Again I don't know as I am taking these things in their chronological order, but they are matters that deserve passing reference at least. Judge Goddard, gentlemen, had also rendered himself obnoxious to the Western Federation. He was also a member of the Supreme Court. Haywood solicited his removal. Haywood felt particularly unfriendly to him on account of some decisions that he had made.



These decisions, gentlemen, have been put in evidence before you. One of these decisions was in reference to the eight hour law, another in regard to the habeas corpus matter of Moyer, and there were undoubtedly decisions that had ~~been~~ rendered them obnoxious besides these two that are in evidence as a part of the case of the prosecution. Can anyone doubt, gentlemen, after hearing the evidence of Judge Goddard as well as the evidence of Orchard and those others who have testified in regard to this matter that a bomb was planted in front of Judge Goddard's residence, at his gateway? Orchard describes particularly, and he states he described in his confession what the bomb consisted of, the kind of a receptacle that contained the powder that was put into it, the amount of powder that was placed there, the caps and the exact number of the caps, and a bottle of acid and those other ingredients which he had found would cause an explosion and which he afterwards used successfully to accomplish the death of Frank Staunenberg. He says he planted them and when he made his statement he made it as a portion of that statement and the attention of the prosecution, the attention of those interested there was called to this affair, and Judge Goddard, who has testified before you, amongst others, went there and made his examination and he found there in his gateway, although rather ancient and evidently having been there for some time, this little screw eye to which had been attached the cord which was to cause the bomb to explode by overturning the windless that carried the bottle of acid, and he found that there, and he found in exactly the place that had been described by Orchard beforehand that the grass had died some ways showing that it had been



disturbed and he went there with others and there in his presence, General Wells, and another, they dug up that sod which had showed that it had been moved long, long before, no possibility of its having been moved that spring, gentlemen, or after Orchard had confessed, but it showed conclusively that it had been there long before and there they found exactly what Orchard stated they would find. There was the attempt to accomplish the death of this distinguished jurist, by these men who hungered for his demise by reason of these adverse decisions and which a miracle alone prevented from becoming an accomplished fact. It was a miracle, as I take it, almost that he escaped this destruction which was hanging over him by the placing of this bomb. And, gentlemen, again I ask you in all good faith, in all good faith, gentlemen, why would Orchard try to do this? That he did this cannot be doubted. It cannot be reasoned out of the case. It cannot be obliterated from this record. They cannot account for it in anyway. He attempted to accomplish this. He planted this bomb which could only have been planted for one purpose, and that was to accomplish the death of the judge. Why did he do it? Was there any cause upon his part for enmity to Judge Goddard? Had he had any adverse decisions in regard to property rights or personal rights of his own? Is there any matter which would cause him to take these chances of punishment by committing the crime of murder? No, gentlemen, the only people that were interested in putting Goddard out of the way was this defendant and those who are associated with him because <sup>it</sup> he was in their pathway alone that he stood. He was obstructing their ideas, their intentions, their objects alone, and not those of any other



men. Gentlemen, it is proof positive, it seems to me, one that cannot be obliterated from this record, that this attempt upon Judge Goddard was made at the solicitation of this defendant and his co-defendants in this cause for the purpose that Harry Orchard has stated.

But, then, we go on to another matter and we find that this man who was ~~known~~ prone to commit crime and always ready to engage in this kind of desperate ~~enterprises~~<sup>efforts</sup> at the wishes of his master, at the request of Haywood and of Moyer and of Pettibone, could not remain idle long. He was too valuable a man, too handy a man in his methods to allow to remain long without any employment and probably too expensive a man to keep supplied with money unless he was giving them some equivalent for the expenditures they were making upon him, and we find that that effort that they had made to accomplish the death of Governor Peabody was renewed. They tried again to put him out of the way. They wanted to accomplish that death. He was one of the men that had incurred their enmity to a greater degree probably, gentlemen, than any other man in the state of Colorado and his escapes already had been miraculous. It was only a coal wagon that had saved the explosion of a bomb that certainly would have blown him into eternity at one time. It was only the fact that his daughter was in the cab instead of himself when he reached his home that had caused his escape at another. Several times they had been on his trail, but this particular time it would seem that they made up their mind that there should be no escape, and ~~then~~ a bomb of extraordinary size was then prepared for the specific purpose of accomplishing the death of Peabody -- this



lead: bomb which is here in evidence, this bomb that we have designated in the trial as the Peabody bomb. Now that might look like a fairy tale, gentlemen of the jury, if we had depended upon Orchard's statement alone. I admit that if he had come, or any man had come, no matter how firmly I might be convinced of his intention to tell the truth, and told me that he had prepared a bomb made out of a lead covering, that would probably weigh of itself twenty or twenty-five pounds and then filled it full of giant powder which would make its total weight probably in the neighborhood of fifty pounds, that I would think it was a pipe dream, something that he might have thought was correct but certainly could not have been done by him. But he goes into particulars. You know one thing, that upon his examination and upon his cross examination both, gentlemen, Orchard never tried to conceal anything and he went into the minutiae of all of these matters; amongst other things, gentlemen, he told in his direct examination as to the place where he had had this bomb made. He stated that Mr. C. A. Roach there in the town of Denver, a plumber in that town, had made this bomb for him, and we called Mr. Hunker Roach upon the stand and he stated that that was absolutely true, that he had made a bomb for Orchard at that time, that he had made it supposing it was to be used for an innocent purpose and we then called his clerk who was also put upon the stand and testified that he received the pay for it and he absolutely identified this bomb, which was put in evidence. Now Orchard, in order to accomplish his object, in order to have an opportunity of discharging this bomb against the person of Peabody had to leave the city of Denver because you will recollect



at this time, gentlemen, there had been one of those mutations of political waters that had caused the retirement of somebody from the Governor's office and he had retired to private life and was there in Canon City, his home, attending to his business. So Orchard conceived the idea that in order to accomplish this desire of Hayward and the others he must go to Canon City, the residence of somebody, in order to have an opportunity to carry their desires into effect; and he must have an excuse, as a matter of course, for going. And whichever he do then, in order to get that excuse, gentlemen? In order to frame an excuse he must have some apparent business, and it occurs to him that the life insurance business would be about the proper thing to do, and he sets about it and tries to ascertain an agent who would give him an appointment, and he finds that Mr. Stevens, who verifies his statements in every respect, was an agent for one of the large insurance companies in that locality, and he applied to him for the permission to go into this business under the auspices of his company, and he was told that he should have the appointment, he should be made an agent if he could give the proper references; and he says, in effect, there is no trouble about that, I will get the references, and he does obtain them, and who does he obtain, gentlemen? Does he go to the outsider? Doesn't the very fact that he went to the man that he did to have them to recommend him for this important position where he was handling the money of a large company and would undoubtedly be met in such a condition that he could work them a great hardship if he was not faithful to his trust, don't these very men and the nature and the character of the man he went to show the standing



that he had with Haywood and the other members of that Western Federation? Why, gentlemen, he went to Peabody (Haywood), part and parcel of this whole conspiracy, and he goes to Pettibone in this matter, one of the very men who is indicted here, and he got his recommendation, and he goes to Mr. Hawkins, one of the leading attorneys of the state of Colorado, and who the evidence has shown has been engaged in most of these defenses on the part of the Western Federation for crimes alleged against the membership, and he goes to Mr. Sullivan who is a leading labor leader there, and he goes to those men who are affiliated with, who are connected in business matters with the defendant, and it is from them he gets the recommendation. Now, gentlemen, that didn't amount to anything. He stayed there for a good while trying to get an opportunity. He intended to explode that bomb by clock work, it would seem, and he had a clock work attachment that would set it off at a given time. That is a mechanical device that could very easily be applied as any of you know to a piece of mechanism of that kind, and he put it in his grip sack and he took it there to Mrs. Adams' boarding house in the town of Canon City and he tried to get an opportunity of fastening it or placing it adjacent to Peabody's residence so it would be sure to explode and kill the ex-governor. But he got no opportunity. Some repairs were being made, and so forth, that prevented. Finally he got acquainted with Vaughn, who was in a similar business, Vaughn was rooming with him, Vaughn heard this thing going, he called his attention to it, asked him what it was. Orchard, probably thinking telling him the truth would be the surest way of throwing him off his guard, told him it was a bomb.



But he didn't mean to give the thing away, there is no doubt about that, that he didn't mean to be believed in that. But Vaughn was suspicious of him and finally persuaded him to leave and they went into the hail insurance business and left there because Orchard could see there was no opportunity at that time to accomplish the object, but he leaves this bomb there in his grip sack, this great heavy bomb that would weigh fifty or sixty pounds, and he goes on his business down the valley and he returns finally to Denver. What does he do after his return to Denver? He finally prepares a trip resulting in the killing of ex-governor Stearnsberg. But first, gentlemen, I desire, before going into that matter, to call your attention to several things or to one thing at least -- there are a number of matters I will afterwards call your attention to -- to one thing at least that occurred prior to this time as showing the intimate relations between Orchard and the defendant and his co-defendants. You remember that it became necessary in carrying out these different schemes of murder in which he was engaged at the solicitation of the defendant for so many months, then it became necessary for them to have some quick and ready method of conveyance. They could not always depend upon a bicycle, which he seems to have used, which implement he seems to have used when it came to the death of Merritt Welley and the planting of the Gabbert bomb, but they must have some other means. You will recollect that in planting the Goddard bomb a wagon was used, this man Joe Mahalich drove that wagon, although he denies it, and we expected him to deny it and he would have been very foolish if he had not denied it because he would have proven himself guilty



of a serious felony if he had told the truth about it, but they must have a team and he impresses it upon them and finally they go to work and get a team. Now we were fortunate perhaps in obtaining the witness who sold that team, because we would have been met here with the idea that instead of Orchard buying the team it was Pettibone, for Pettibone in the course of his business wanted that; but it seems from the evidence of this colored man that Orchard, I believe, was pretending to get a team for Pettibone, had come to him in regard to that team and he had made the negotiations for that team. He didn't know him as Orchard, didn't know him as Dempsey or Hogan or any of the other aliases that he had used upon various occasions, but he did know that he wanted a team and disputed about the price. Orchard was rather thrifty in these matters. He didn't want to pay more than the team was worth, and finally they came to a partial conclusion upon the matter and they took the team to ride, and where do they go? He goes, gentlemen, to the corner of 15th and this other street in Denver where is situated the offices of the Western Federation of Miners and Haywood himself goes and rides with him, tries that team, tests it with him and afterwards the means are supplied for buying it. I believe that the man who usually paid the bills, usually obtained the money from Haywood and covered up the transaction in that way, Mr. Pettibone, bought it and paid for it and it was used for the purpose for which it was intended, to facilitate the execution of these crimes and these intended crimes.

Gentlemen of the jury, that brings us perhaps in logical order to the consideration of that incident of this general



conspiracy for which this defendant is being tried upon this occasion, the murder of ex-governor Steunenberg. It has been shown here in evidence, gentlemen, that Governor Steunenberg was particularly obnoxious to the Western Federation of Miners. The articles that have been introduced here from the Miners' Magazine, their official organ, for which this defendant and Moyer are responsible, according to the statements of O'Neill himself, show this deep, lasting hatred. Never was there a man worse vilified and abused than was Frank Steunenberg through its columns, and it is to expressions either made orally or made in writing that we must look in order to judge of the feeling of one man to another. Abuse and open threats were continuously made. Now Steunenberg was probably more obnoxious to these men than an ordinary person would have been. We all know, from this record at least, that he was the governor of Idaho at the time of these troubles in 1899 which have been related before you in evidence, and that in these troubles he did his full duty as a man and as an officer and that he suppressed that incipient insurrection and restored order in that disturbed community. It would seem, gentlemen, because Frank Steunenberg had been a union man, not a member of the Western Federation of Miners but a member of another labor union, a labor union that is founded upon correct principles, it was expected that he would show great leniency toward these men who had been engaged in that unlawful enterprise, either, if he did not overlook it entirely (and you will remember the evidence in regard to the statement of Paul Coker at the Burke meeting in which the matter was referred to and in which it was stated that Steunenberg was all right, being a union man, or



words to that effect import), and because he was a union man he still insisted upon doing his duty, not such a union man as these defendants are, but that he did his full duty he incurred their enmity. It would seem, gentlemen, that ordinary hatred would have died out in the course of six or seven years, but it didn't on this occasion. There are certain classes of men, certain kinds of men that these people never seem to forget, and that is men who at one time affiliated with them or with other organizations which they choose to think should be friendly to them -- the ordinary individual they don't seem to care so much about -- but the man who has gone into office by reason of their vote or who they imagine should stand in with them even in their criminal matters is never forgiven if he fails them in that regard. Orchard, who had attained by this time the distinction of being the boss killer of the leaders of the Federation and whose abilities had eclipsed by long odds those of Adams and of Minster and the others who had been engaged in unlawful enterprises in their behalf, was selected as a proper individual, comes to Idaho and accomplishes this long expected purpose which had been delayed seemingly unnecessarily from their standpoint, the death of Steunenberg, and he was directed by Moyer and by Haywood and by Pettibone to come out here and ascertain the habits and customs of Steunenberg and to accomplish his death in such way as seemed proper or seemed best under the circumstances. And he did come, and he came to this section. Governor Steunenberg, as the evidence shows, was then living in the town of Caldwell. His business called him away at various times to various places. He was not there a great deal of his time at home, and Orchard



went to that little town. He investigated the surroundings. He found the place of his residence. He ascertained something in regard to his business habits. He came here to Boise, after coming toampa, looking for him. Finally he ascertained here in Boise a description of the man. It seemed he had not the slightest idea before that as to what Stoumenberg looked like even, and he got everything ready to accomplish his purpose whenever the proper opportunity presented. But he had a ticket that was good for a trip to the Portland fair, stopover privileges seemingly, and it was his purpose and his object to go into that section of the country and visit the Fair after he had ascertained what he could in regard to the habits of Stoumenberg, and also for the purpose to see into a matter which long had agitated the leaders of the Federation -- the purchase of a ranch, some convenient place which could be used for the shelter of their criminals when they were wanted in different sections. He made the trip, went there, returned by the way of Wallace. He wanted assistance. He knew, gentlemen, that Jack Simpkins -- J. L. Simpkins, generally called Jack Simpkins, was a member of the executive committee of the Western Federation of Miners and one of the prominent factors in that organization. He knew that he could be depended upon. He wanted assistance. He goes calmly into the northern part of the state where Simpkins lived. He broaches this matter to him, shows him this bomb which he has carried about with him and which we call the Peabody bomb. After talking the matter over Simpkins tells him, according to his account, that he will assist him when the proper time comes but he has some other objects to accomplish before that



and that it will take him some time before he can go to Caldwell and assist in the taking off of the ex-governor. But Simpkins insists, after examining this bomb, that it is too big and ~~unwieldy~~ <sup>unwieldy</sup>, it is liable to attract attention, cannot be carried around readily, and he suggests the advisability of getting rid of it, and Orchard -- his statement is to the effect that he did get rid of it at the solicitation of Simpkins. He gives it to this man Cunningham who has figured somewhat in the evidence, gives it to him and he has no personal knowledge of what became of it. But we find, gentlemen, digressing from this for awhile and following up the evidence of this bomb, we find that a few days after it was noised throughout the state that Orchard had made a confession that the man who had the custody of this bomb in that section up there at Wallace became fearful that investigations would be made in reference to its whereabouts and that bomb was in a day or two afterwards found in the ice in the Cour d'Alene river, undoubtedly thrown in there upon the ice and been covered by a fresh influx of water that caused it to be frozen in, and it was found there and was taken to the sheriff's office and was brought here and has been placed in evidence, and Roach, the plumber, you recollect, swears it is the identical bomb he made and it is identified throughout, and it is strong corroborating proof so far as the testimony of Orchard is concerned in regard to his movements and in regard to the objects that he was seeking to accomplish with the assistance of that formidable implement. They have various adventures. They have pulled out upon cross examination a number of matters that are not at all creditable to Orchard, the commissioner a number of minor crimes, crimes



that we did not think it worth while to bring to the attention of the jury because we ~~would~~ could not charge them up to the Western Federation of Miners, but for their own objects they brought them out. Orchard was absolutely frank when he told about them, no matter how humiliating it might have been to him, in his desire to tell the truth. He told these things that would militate against his standing as a truthfulness witness, the same as those that he had given an account of in his examination, showing that he was trying to conceal nothing. After a number of adventures, however, and a number of these matters which were not at all creditable and that showed that he was a thorough criminal, as we had already proved him to be by his own evidence as well as the evidence of others, himself and Simpkins made up their minds that it was time to start and carry out this enterprise which was to result in the death of Steunenberg. And they went to Spokane and they stayed there two or three days, and Simpkins with his knowledge of men and matters in that town found no trouble whatever in procuring powder with which to make a bomb and they made a bomb there for the purpose of accomplishing Steunenberg's death, and they fixed it up in the usual manner that had been used by Orchard in other bombs of that kind, the manner which he seems to have ascertained and had used on so many occasions. And after they had made it they started upon their trip and they landed in the town of Caldwell. Remember, gentlemen, that in a hundred places in this evidence in regard to matters respecting the Western Federation of Miners affecting these different crimes of which these men stand charged before this jury, in these matters which necessarily were inquired into

in attempting to ascertain the guilt and fix the responsibility upon the defendant for the death of Stearnberg, that no name occurs oftener than that of Jack Simpkins. In fact, Jack Simpkins, gentlemen, is one of the four men that were indicted in this indictment upon which the defendant is being tried at the present time. He, as a member of the Western Federation of Miners, as one of the chosen band who control its destinies and especially its fortunes, had the control, and the evidence of their own men shows this to be the fact, of all affairs of the Federation in Idaho, Washington and Oregon. He was a man, it would seem, that was ready for any criminal enterprise, that was ready to do anything to advance his own interests or the interests of the Federation. He was the friend, the confidant, the co-conspirator in all of these matters of Haywood, of Meyer and of Pettibone, and I think you will conclude, gentlemen, was properly indicted by the grand jury of Canyon county with the other three. This man, the leader of the Federation, the man who had occupied this prominent position in their councils for a number of years, starts upon this mission of murder which is thereafter to end in bloodshed, with the self-confessed assassin who has appeared before you, and they reach the little town of Caldwell -- not a mining camp, gentlemen. There might have been nothing unusual or strange if Jack Simpkins had gone to a mining camp and appeared there, especially a mining camp in which existed a lodge of the Western Federation of Miners. Nothing of that kind. Here, in the lower part of Boise valley, in one of the most peaceful communities in the entire state of Idaho, where agriculture is the only pursuit of the people, he lands there and he lands



there and he lands with Orchard. And what do they do? They go to one of these little hotels in that town and they register there. And they register how? As Harry Orchard and as L. J. Simpkins? Not by any means. Orchard puts those names upon the register and Simpkins is there watching him as he does it, and he writes the name of Thomas Hogan, which represents himself, and then he puts the name of L. Simmons, and that is supposed to represent Jack Simpkins. Showing right there, gentlemen, that they were there under false pretenses, for the purpose of doing something unlawful and wanted to conceal their identity. I don't know as there was anything particularly unusual perhaps in Orchard's registering as Hogan. He had gone by that name before and I presume that he had called himself Hogan when he was in Caldwell before, although, if I recollect right, he was not at this particular hotel upon his former visit which only lasted a few days; but Simpkins goes by the name of Simmons, this leader of this Federation, this intimate and confidant of Haywood and of Moyer and of Pettibone discards his own name and there in a strange community with an agricultural population, where he is not liable to meet anyone that would know him or that had been acquainted with him any other place, he assumes the false name, has it written down there on the register by Orchard so his own handwriting apparently could not be identified, and there for days and days and days he sails under these false colors and conceals his real identity from all that might otherwise have known him. He finds out there is there people that know him, according to Orchard's account; he has seen them on the streets and they might identify him, so he keeps himself away from the

crowd. He does not want to be identified. He does not want it to be known that he is there. What else does he do? Gentlemen, we are not depending upon Orchard alone in this regard. We find these men after that are trying to ascertain the whereabouts of Steunenberg. They are trying to ascertain the situation of his premises. They are endeavoring without a doubt as to frame up matters that when the opportunity presents itself they will know the locality in which he lived and the road leading to it so that they can accomplish their purpose without obstruction or hindrance? Therefore we find these men viewing, time after time viewing these premises from the road, we find them going down on the railroad track and observing it through the glasses, the opera glasses that Orchard had with him. I ask in all seriousness, gentlemen of the jury, I ask you in all seriousness to tell me by your verdict what this man Simpkins, this confident of these other parties, this leader in this Federation, was doing there at that time? How it was that he was engaged in these objects, why it was he was obtaining this information, why it was he was under this false name and evidently engaged with Orchard in an attempt to assassinate the ex-governor, if it was not for that purpose, if it was not to commit this very crime? I tell you, gentlemen, you cannot explain ~~it~~ by any theory consistent with the innocence of Jack Simpkins his whereabouts there upon that occasion. And again we find, gentlemen, and it is not disputed here, it could not be disputed, I imagine, that they absolutely planted a bomb there on the path, on the sidewalk that the governor used to travel in going from the town to his home, Simpkins with Orchard, and in some unexplained way it didn't work and the effort was futile and the governor escaped on that



occasion. Simpkins was an active party in all of this. Simpkins' duties compelled him to go to a meeting of the executive committee -- or first, to a meeting of one of the lodges in Silver City. He went from there leaving Orchard over there watching the further carrying out of their plans. He went to Silver City, gentlemen, but when he went to Silver City we find him returning in a little while. We produced the register showing the date he was there. But he returns again and spends another day with Orchard and again they go over this matter of the assassination of Steunenberg, but he is called away by a meeting of the executive committee at Denver. He has the most perfect confidence in Orchard, as all of the leaders had. He has assisted him in every way in so managing matters that the opportunity must present itself for carrying out their object, and he leaves, and in a short time the opportunity comes about that they so long have waited for. Orchard becomes fearful almost that he cannot accomplish his purpose with a bomb. He even contemplates using the shotgun in the manner that he had used it upon Gregory when they murdered him in the streets of Denver. But that does not work and it goes on until the 30th day of December, until the holiday season has arrived, until that era of peace and good will which prompts even the most savage man to respect the peace and quiet of his neighbor and feel at peace with them and with all the world, and there, gentlemen, at that time, right before the new year commenced he sees the opportunity to plant the bomb in front of the gate and blows the governor into eternity. There, gentlemen, was an act that probably shocked the people of this state, probably shocked the people of the United States, all the

people of the civilized world in a greater degree than anything that had ever happened. Here was a man, the foremost citizen of the state of Idaho, thought well of by every right minded citizen not only of this state but in the entire West, a man who had retired practically from active political life and was attending to his own business in the interest of his family there brutally murdered on account of some matters that had happened seven years before, killed at his own gateway, murdered in the presence of his own family. This untimely ending shocked the entire country in a manner that it was never shocked before, and it is for this infamous act committed by Harry Orchard with the assistance of Jack Simpkins, one of the executive committee of the Western Federation of Miners, and at the instigation of William D. Haywood, Charles H. Moyer and George A. Pettibone that the defendant is now on trial. Why, gentlemen, it seems to me that when you consider all of the circumstances leading up to this, it seems to me that when you consider all of the circumstances that you cannot conclude that Harry Orchard had any particular object in removing Steunenberg, when we come to look at the motive that would govern his action in the light of the motive that would govern the actions of any other man, we cannot find, gentlemen, any reason why he should have killed the ex-governor. What object did he have? What motive did he have? He didn't even know him. I can understand that Haywood would have an object, that Moyer would have an object, that Pettibone could have an object, that Simpkins could have an object, but in no way can we ~~imagine~~ imagine an object on the part of Orchard except his desire to serve his employer and earn the money that



he was being paid for his misdeeds. Ah, they realize, if you please, gentlemen, this matter. They realize this and they attempt to find a reason for it. They attempt to show that Orchard was an enemy of Steunenberg's by reason of having been run out of the Coeur d'Alenes in 1899 and losing his property on that occasion. How true is that, gentlemen? They have seen fit -- we will bring it up and consider it, gentlemen, later, I am going into this matter in a short time to the fullest extent, but I want to simply characterize this act to account for a motive on the part of Orchard in murdering ex-governor Steunenberg as one of the most futile efforts that had been made by the defendants in this extraordinary case. Before this was accomplished, gentlemen, and I meant to call your attention to it but I see had overlooked the point -- before the death was accomplished, Orchard you will remember had gone to Salt Lake. He was there in Salt Lake for a few days trying to get some assistance in carrying out the object, but he is disappointed and then he came back. Simpkins had left. He had felt that he had ought to have some help in the matter. But what did he do?

He writes to a man in whom he has confidence, whom he knows has been engaged in unlawful enterprises, and with whom he has associated in criminal matters, one of the leaders of the Western Federation in Cripple Creek, the financial secretary of Altman No. 19, Mr. W. B. Easterly who it was ascertained was then a resident of Silver City. And we find he writes over to him and says that he has something on hand that requires his assistance, and although the letter has falsified, it seems from Easterly's testimony that he knew some kind of crime was about to be committed, and he refuses to be a party to it. Undoubtedly at that time Easterly knew what Orchard was proposing to do. He brings this out as part of his evidence. And what do we ascertain from Easterly in regard to it? Did he, when he ascertained that this crime was about to be accomplished, when he had every reason to believe that an unlawful undertaking was to be done by Orchard, give any information to the authorities? No. Did he after the information came that Thomas Hogan was arrested for the assassination of Frank Steunenberg then come to the assistance of the authorities and tell them that he had received a letter in regard to some enterprise he was about to go into which was undoubtedly this assassination, and that he had implored his assistance in it? No. Easterly knew just as well as if he had been there when that bomb was set by Orchard that Orchard had accomplished that death, and yet he kept it to himself, and has kept it to himself to this day. This would never have been known if Orchard had not con-



fessed the crime on his own account.

It shows, gentlemen, the bond that unites these men that have been leaders in this Federation. This man, although he has retired from the Cripple Creek country still would not give information that would lead to the apprehension of the red-handed murderer who has slain one of the foremost men of the nation. But we go on and we find Orchard arrested, and then what happens? The very first thing, gentlemen, almost, after he is arrested, is the receipt of a letter -- a receipt of a letter which he swears was in the handwriting of Pettibone, and which we must assume was in his handwriting, or certainly Pettibone would have been brought up here to deny that fact, -- a letter which the sheriff had the forethought to copy, although he should have photographed it, and that copy has been introduced in evidence. I want to read this letter to you, although I am not reading much of these exhibits to you for you will have them all when you retire to your jury room.

December 30. Friend Tom. Your letter received. That was sent to Jack <sup>December 21</sup> for you. He should sent it so you ought to have it by this time. Will not write any more this time. Write me as soon as you get to your new field.

This is postmarked at Denver upon that date. Not signed by anybody, but in Pettibone's handwriting. "That was sent to Jack." That was undoubtedly something that Orchard had written to him in regard to. And who was Jack? Undoubtedly Jack Simpkins. What does Orchard say he wrote in reference to? The

subject of money. And what do we find in the other matter? We find that upon the 21st, the day referred to here, a check for \$100. had been sent by Haywood to Jack Simpkins, and it shows the roundabout circuitous way in which they ran affairs so as to distract the attention of the public from any of their members. It is sent, not directly to Orchard, but is sent to Simpkins who was to send it to Orchard. Doesn't this show past all doubt, gentlemen, the connection between Haywood and Pettibone and Orchard and Simpkins? Take this letter in conjunction with that draft or that check which was sent by Haywood, and that was sent on the 21st, doesn't it show, gentlemen, that although Pettibone was trying to guard himself so that if this letter fell into unauthorized hands the subject matter of it could not be known to him who read it, and who did not sign it because there was no necessity for signing it, and Orchard would know who wrote it. Doesn't this show, gentlemen, that he was referring to the \$100? That he said that that hundred dollars was sent to Jack on the 21st, and don't we ascertain that to be the case? He says here, "It was sent for you." I ask you in all seriousness, gentlemen, why it was sent to him by Haywood -- why should it be sent to him if it was sent for an innocent purpose or for any worthy object? They would not have adopted this method and sent it to Jack Simpkins at Wallace to be sent by him to Harry Orchard. That would not do, because William B. Haywood might appear in the event that this crime had been traced to the man who accomplished



it. That was the reason this route was adopted to have this money travel from the hands of Haywood into that of Orchard. It explains all this. It makes it appear plain that that might be otherwise uncertain. And take that in connection with this draft of the 21st, or this check, and we ought to be satisfied beyond reasonable doubt about the connection of these parties and of their connection with the killing of Frank Steunenberg.

What other object did Harry Orchard have in coming to this country, except to carry out the murder of Steunenberg? I ask you in all seriousness, gentlemen, did he have any other? And here is the proof, gentlemen of the jury, that he was carrying it out for these other persons, with their knowledge, and being supplied with means from the coffers of the Federation through the signature of Haywood himself, and with the knowledge of his co-conspirator, Pettibone.

And another thing that speaks loudly in regard to this matter, and that is the peculiarity with reference to the movements of the different attorneys. Mind you, afterward, on the 1st of January, 1906, Orchard was arrested by the sheriff of that county. He sent out no communications to anybody. He neither wrote nor did he telegraph to any one for several days. The matter of his arrest became known of course; that was current news that was bound to be published the next morning and it was so published without a doubt everywhere throughout the country, that Thomas Hogan had been arrested charged with the murder of

the ex-governor, and what do we find immediately succeeding that? Didn't we find a telegram which has been introduced in evidence and which informs Hogan that Miller will be there to defend him? We find all this, gentlemen, although he did not appear there at that time. Undoubtedly there were good and potent reasons for his turning back, undoubtedly you can surmise several reasons why he did not appear there afterwards; but what do we find? We find Mr. Sullivan of Denver coming out there to that cell in a few days. We find him travelling in this direction to assist this man who is under a false name; we find furthermore, what? That the interests of the Western Federation in the fate of this man was so great that not satisfied with sending these other two men there, that they were telegraphing to the Miners' Union in Silver City asking the secretary of that union in that place to secure the valuable services of Mr. Nugent and have him represent this man charged with this offense also. From three different directions we find these attorneys employed by the Western Federation hastening to the rescue of Orchard.

MR. RICHARDSON: Mr. Sullivan was not the attorney for the Federation.

MR. HAWLEY: He was engaged by the Federation in some of their enterprises.

MR. RICHARDSON: No sir, he never represented the Federation. He at one time represented Orchard in a suit on a commission for the sale of a rooming house, and that was his only connection with Orchard.



MR. HAWLEY: Another thing, gentlemen, and that is that Miller came there in a short time. He attended the preliminary examination of Orchard. He went from there to the city of Denver. Orchard was held over, charged with this murder, held to appear before the grand jury, and upon his appearance in Denver it would seem that the first thing he did was to go to the headquarters of the Federation. Now, I did not hear the examination -- the cross examination of Mr. Haywood; I was down in my office on account of other matters pertaining to the trial, but I understand from the reading of it, if I have read this correctly, that Orchard, or that the Federation paid him a retainer of \$1500. at that time. \$1500. as a retainer, gentlemen. They have earned a large amount of money. Here is the sum of \$1500. paid to a lawyer as a starter -- as a sweetener, you might call it, and this amount is paid out of the funds of the Western Federation for the defense of this man charged with the murder of ex-governor Steunenberg. What does it mean? Do societies or associations spend money in this lavish way for the defense of their members? Is it to be assumed that Haywood and Meyer and the others, those who had charge of the Federation funds were going to pay out this large amount which undoubtedly necessarily would be followed by still larger amounts unless the man they were defending had been engaged in Federation business, or at least upon business with which leaders of the Federation were connected? It seems to me, gentlemen, that the very statement of this fact would be sufficient to cause you to believe that there was something

radically wrong in this whole matter, and that Haywood and Moyer and Pettibone in paying these large amounts out for a starter were showing that they had some motive and design other than that to properly defend a member of the Western Federation of Miners. Why should the Western Federation of Miners defend one of their members any more than the Odd Fellows, or the Masons, or the Elks, or any other society should defend members of those organizations charged with crime? I have been a member for many years of some of these organizations, and I never knew one of those organizations, when one of their members, an unworthy member, has been charged with crime to come to their rescue simply because of his membership in the order. Why has such an exception been made in this organization? I will tell you: If Harry Orchard had come out to this country and had killed some man who had never been prominent in political life or run counter to the Western Federation of Miners or incurred the enmity and ill-will of Haywood and Moyer, you would not have found this institution putting up \$1500 -- no, not fifteen cents -- for his defense. They would have had nothing to do with him. They would have said to him, as any society would say to one of its members, you have committed the crime, and you must stand upon your own resources, because we cannot identify ourselves with alleged criminal methods.

There is another thing in that connection, gentlemen, that occurs to me while looking over my notes, and that is in connection with Simpkins in this affair. Simpkins has been more closely identified with Orchard in the killing of Steunenberg



than any other of their leaders. He was hereupon the ground and stayed a number of days and was undoubtedly privy to the whole matter. It is not conceded hardly that he had any interest in this matter or any knowledge of the matter unless that knowledge was known beforehand to both Moyer and Haywood. That he had knowledge of it cannot be disputed. Is there any doubt in the mind of any man, gentlemen, who has heard this evidence? Is there any doubt in the mind of any one as to Simpkins being a party to this? Isn't the very fact of his failure to appear and answer to these charges of his being a fugitive at the present time, of his standing under indictment, and his whereabouts unknown, too positive, gentlemen, that he is a guilty man? Would an innocent man stand the imputation of as foul a crime as this being committed by himself or with his active consent and not rush to the place where justice was administered and ask for a speedy trial and an opportunity to rehabilitate himself in the estimation of the public? Certainly he would. Does anything of this kind happen in Simpkins place? Why, gentlemen, if he was innocent he would have been here as one of the defendants; he would have been here to take the stand and prove his innocence and the innocence of those who were with him. It must be evident to any reasonable man, gentlemen of the jury, that Jack Simpkins was one of the active participants in this murder. He is active in the sense that he had been upon the ground and attempted to commit it in person and had only retired from that active ~~xxxxx~~ portion of the scheme a few weeks before, and had kept himself in constant

communication with Orchard. That must be just as apparent to Haywood and these other leaders of the Federation as to any one else, and shame be to the Western Federation of Miners, gentlemen, when we come to ascertain that this same man who to us, as to himself, confessed himself guilty of this crime, as since the crime was committed, although two elections have elapsed, he has been retained as a member of that executive committee and stands today as one of the highest officers of the Federation. Can you imagine anything more defiant of public opinion than a body that is under control, as this is, under the control of Haywood and Moyer, insisting upon this man who was their confederate in this awful crime being retained in this position? This is the evidence of Haywood himself upon the stand, gentlemen, and I believe the evidence goes farther and shows this man had been retained not only in this important position but they recognize that he is a fugitive from justice by doing that which they have done for no other person, for has that Federation appointed an alternate who could act in his place? Gentlemen, there is something worthy of your consideration and demands your active attention when you consider of your verdict.

But another thing, gentlemen, to which I desire to call your attention in connection with this, and that is the effort that is made upon the part of the defense in this action to account for a motive on the part of Orchard, a feeling against Steunenberg. They have brought forward a number of threats



which we will consider in a few moments, or threatening remarks to show that such a feeling existed. They claim, if it please you, gentlemen, that Orchard was incensed against Steunenberg by reason of his having been forced out of the Coeur d'Alenes in 1899, and that he had lost his interest in the Hercules mine which otherwise would have made him a millionaire. Now, this is a preposterous claim it strikes me. It seems to me, gentlemen of the jury, that it needed no evidence to refute it thoroughly,-- it hardly needed any reference to these alleged threats. What are the facts? Harry Orchard, gentlemen, -- and we have the certified copies of these deeds put in evidence -- Harry Orchard for between one and two years prior, fifteen or sixteen months prior to the riots of 1899 had no interest whatsoever in the Hercules mine or in any other property in that place. He has absolutely transferred his sixteenth interest to Dan Cardoner in March, I believe it was, 1898. He had purchased that property about a year before, and he had got rid of it entirely. The two deeds are the same. We have both the deeds before you and they are absolute deeds, they convey the title, and it might be said that instead of being a deed it was intended as security. It is not probable that such would be the case because the deed being positive in its terms could hardly be construed as security for if it had been, or was capable of being so construed, it would stand to reason that Orchard would long ago have redeemed that security by paying the amount borrowed, but in order to satisfy that remote possibility that such would be the case, we

place upon the stand Gus Paulson, the man who probably has a larger interest in that mine than any other of the partners, and he tells you in positive terms that that was an absolute sale, because he says that from the date of the sale Dan Gardner was recognized as the owner and Orchard was no longer considered as such, and he goes farther and shows that in the fall of 1898 Orchard worked there for the company and he was there on the payroll the same as any other employe, and had no connection at all with the affairs of the company. So that absurdity is eliminated from this case. These deeds show that these threatening remarks that they have talked about never were made, gentlemen. It seems to me that all this testimony in regard to threats is absolutely preposterous under these circumstances. But they may have found some lodgment in your minds, and I went through the evidence in this case in regard to threats, and I want to call your attention briefly to these different persons who have testified in that regard.

The first man was F. R. Red. You remember that fellow that talked in union hall with Orchard in 1903 at Cripple Creek. A total stranger to Orchard. He afterwards talked in the boarding house with him. He never met him before, but still he says that Orchard at the very first conversation stated to him that if it had not been for that -- giving a foul name, and referring to Steunenberg, -- I would not be here; I will get even with that -- again calling a foul name. Now, is that likely that Orchard would have gone to a perfect stranger and expressed himself in that



way? Even if there is talk of that kind, do you believe that this man Red, in 1907, could tell something that occurred between himself and a total stranger, some loose remark that was made to him four years ago there in Cripple Creek? You don't believe it, because you know that your memory does not work in that way. No man pays enough attention to the casual remarks of a casual stranger to attach enough importance to them that he remembers them for three months, or even three days, let alone three years; and why should Orchard have talked with him? Why should not he have talked to some of his friends instead? Do we find that he ever uttered a word of a threatening nature to Paulsen, or to Moyer or Haywood? No, nothing of that sort, but the next man is Charles A. Sullivan, and he goes back a while further. He knew Orchard in Cripple Creek in 1902, and he says that Orchard told him that if it had not been for Steunenberg he would have been a rich man and the S. B. ought to be killed and he will get killed yet, and if not I will kill him myself. Now, Sullivan was a perfect stranger to him. Now, is it probable that he would have made a remark to him of that kind? There was not a word of truth in it. We have demonstrated to you, gentlemen of the jury, that it was impossible for that to be a fact, for Steunenberg's actions had not interfered with him in any way in his property rights. We have shown you that he had no property to get rid of, and in fact he was an unknown quantity in the mining interests of the Coeur d'Alenes and his only interest that he ever had he had parted with fifteen months before. Is it possible that this

man would have recollected five years the conversation he had had with a stranger, or that a stranger had had with him? Is it possible that the man is not making a false statement for a definite purpose? Then comes Mrs. Lottie Day. Orchard said to her in 1904 that Steunenberg had driven him out of the country and he would kill him if he got a chance. Then he spoke of some other matters with her, spoke about the only woman he ever loved and all that sort of rot -- some woman that never saw him. Why should Orchard make a remark of that kind to Mrs. Day? Do you believe it could be remembered? Mrs. Day swears to it, but I cannot understand why he should have made any such remark or what there was in the relationship between these two parties that would warrant him in making a remark of that kind to her who was a stranger to him. You will notice that all these remarks were made to people who were absolute strangers to him. They do not bring in any of these men who were intimate with him. Of course Mrs. Day cuts an important figure perhaps in one way in this case. Upon her cross examination we developed the fact of an intimacy being such between Haywood and Orchard that Haywood called on him in his rooming house and went to him and had a private conversation with him in his own room. We disputed all the intimations given before that in that evidence, by showing that fact, and I presume that we can forgive this lady for having possibly misremembered some of this conversation in view of the fact that upon the vital points in interest she gave excellent testimony on behalf of the prosecution. Now the next one is



John D. Elliott and he gives a statement which occupies two or three pages of the record in regard to an imagined conversation with Orchard in the month of November, 1905. Now, this was on the 28th or 29th of November, only about a month before the killing of Steunenberg. Now, gentlemen, while none of those other conversations were had with comparative strangers that could have been remembered, there was nothing to cause them to be so fixed in the mind of the hearer that he could testify intelligently in regard to them from three to five years after. The statements were made, still I grant you as far as Elliott was concerned, there would be a probability, if any such conversation occurred as he relates between himself and Orchard, of his recollecting it, because after that Orchard was going by the name of Hogan, and in a little over a month's time he was accused of killing Governor Steunenberg and that would cause his recollection to travel back these thirty-one or thirty-two days and his memory would soon be refreshed and he would tell practically what that conversation was, so that there was one conversation which became worth while to refute, and we examined this man as to the occurrences of those days. He swore positively that this conversation was had between the 28th and 29th of November, 1905. He swore with equal definiteness that it was after he had made a trip from Council and had connected with the train going east from Weiser where the two railroads meet. He was certain of those days not from his own recollection, but from events which would fasten them in his mind -- he knew that his leave of absence from the soldier's home had expired on that day, and that fixed the matter

in his memory, and having fixed all this he gives his evidence. But we dispute that, gentlemen, absolutely. We prove upon rebuttal that this is simply a figment of the imagination, that it is something that originated in his own mind because the very circumstance which he relates in connection with this conversation was absolutely untrue. We prove by Mr. Heigho, the manager of the railroad from Council down to Weiser, that upon each of these days that train, and the only passenger train between those two points -- the only train running at that time, -- reached there at pretty near six o'clock in the evening. We prove by the chief dispatcher of the Oregon Short Line that the train coming east from Weiser -- the afternoon train, instead of being there to connect with the Weiser train was there about the time the Weiser train started from Council, and between three and four o'clock in the afternoon and there were no other trains that afternoon, and still this man is fastening this matter as a fact as part of his evidence, and we have disproved this in particular that there was no opportunity for him to have had this conversation. We have gone further and shown that Orchard was not in Caldwell at all upon these dates, but he was in Salt Lake City upon these occasions, and we brought the clerk of the hotel who recollected him personally and who had the book which explained his whereabouts on these days. So that much for Mr. Elliott and the only evidence of these men that could possibly have been dangerous, we find has been absolutely eliminated, and Mr. Elliott, inspired by a desire to become a factor in this great



criminal case, and having one of those spells of insanity which seems to have inflicted itself upon him at various times, has come upon this stand and told a deliberate falsehood in regard to this occurrence. The next man is Mr. D. C. Copley. He was one of the members of the executive committee of the Western Federation of Miners at the very time of these troubles; and at the time the troubles were being had at Cripple Creek. He was the gentleman that was upon the stand and evidently developed his deep bass tones by his services as a lecturer in San Francisco and other points with his stereopticon. This friend says that Orchard stated to him, speaking of Bradley and the Bradley explosion after Orchard admitted to him that he had been responsible for it, and Copley had failed to give him away, that that was one of the gang that had gotten what was coming to him, and among others mentioning Steunenberg's name. I hardly think that anything important will be attached to what Copley has said, because he is about as deep in the mud as the other parties are in the mire, and any conversation had under those circumstances would be regarded as absolutely untruthful. W. F. Devin comes in -- another prominent member of the Western Federation -- one of the most prominent outside of this defendant and Meyer and he said that Orchard in 1902, in Altman, that Orchard said he was going to try and get Steunenberg; and then comes along Mr. Easterly, another one of the bright and shining lights of the Western Federation in that section; one of their chosen band who is engaged in all sorts of crimes and misdemeanors, and he

says that in September, 1903, Orchard said to him that if he had not been run out of the Coeur d'Alenes he would have been rich, and he held Steunenberg and St. Clair responsible for it, and he would get those -- so and so -- some time. But I presume you will have about as much regard for this testimony of Easterly as you would for anything else he testified to. And then Frank Hale states that Orchard said in 1905, in September, that if it had not been for Steunenberg he would have been a wealthy man in Wallace then. Well, Hale has not testified to any threat, but he does testify to that remark, but the very circumstances disprove the idea of Orchard making any such remark, and why he would make it to this stranger is beyond any man's comprehension; and so it was with Coates, who likewise testifies at that time that he said, "It makes me feel hard the way I was run out of this country in 1899, and I would like to get even with Steunenberg." I believe we would all have some doubt as to the accuracy of Mr. Coates' statement. We find that he has been mixed up with this outfit a long time. He has shown his deep devotion to their cause by his actions here in the court room. He has occupied at one time in his career an important public position we will admit, but I don't know as that would cause us to imagine that he would tell the truth in regard to anything affecting his friends any more than he would if he had never held that position, and we do find one thing that makes us doubt in regard to him. He was a particular friend of Gus Paulson, and we find that Orchard in 1905 when he was up there in the Coeur d'Alene country waiting



for Jack Simpkins to get ready to come down and assist him in murdering Governor Steunenberg, had time hanging heavy on his hands, and his instincts lead him to study out the method of carrying out some criminal act, and he goes to him -- he goes to Coates -- D. C. Coates, and broaches the idea to him of kidnapping the children of Gus Paulson and states that they could make fifty or sixty thousand dollars off Gus, that he would willingly give that up for the return of the children, -- and I don't doubt but what Gus would have done it. Now, Coates says that he did take it seriously the first time but he himself admits that Orchard had made this offer and he saw he meant it, and then he told him not to mention it again. Strange to say, however, he did not inform Gus Paulson in regard to this attempt -- nothing of that kind. Now, do you believe, gentlemen of the jury, if he had not intended to go into a scheme of that kind -- if this man who he claims was almost a stranger, and he was satisfied as to his intention to do this great harm to that man who he claims to be his personal friend, -- he would certainly have gone and told him. If we ascertain that some man was going to kidnap a child of a friend, we, as being true friends, would go and inform him so he could be on his guard. So much for Coates. And the next man is General Eugene Angley, and you notice the unctious with which the title came from the lips of my friends upon the other side. General Angley is an ex-attorney general of Colorado. He was one of that misfit outfit that floated into power at the time that Blood to the Bridle Waite was

governor of that state. He wanted to go into the difference between philosophic anarchy and scientific socialism and would have been talking now if he had not been shut off by counsel, and he says that in January of 1904, in his office in Cripple Creek, Orchard referred to the troubles in the Coeur d'Alenes and said that by means of that strike he had lost his interest in a mine and that Steunenberg was so and so, and I am going to fix him before I get through; and that is the end of the threats, and there is not one of them there with the exception of the pretended threats to Coates and to Orchard that are worthy of any consideration, and in considering the source of these matters, they being comparative strangers in almost all instances, and the fact that Orchard came here and testified to anything of the sort, the fact that he had no interest in the mine at the time he left the Coeur d'Alenes, the fact further that he was not run out of the Coeur d'Alenes at all, and taking all this into connection and I think you must be satisfied there is nothing in these threats and there was nothing in this matter that was worthy of any consideration upon the part of the jury.

It was absolutely necessary, gentlemen of the jury, for something of this sort to be brought to your attention. It was absolutely necessary that some excuse be made for the actions of Orchard. That he killed Steunenberg there is no doubt, and in the absence of a motive upon his part, of any object guiding his movements, it would be presumed as a matter of course that he was acting under the direction of some other force or some other



person, and everything pointed to Haywood and to Moyer and to Pettibone. All of these other incidents pointed in their direction, and no other direction, and this was pointing with the unerring finger of fate in the same direction, and they felt that they must have some reason to urge upon the jury that this act was committed by Orchard of his own volition. It was an absurdity. He was obtaining his money from some source. He had enlisted the services of Jack Simpkins. It would be absurd to say that he was doing this without the active assistance, without the acquiescence of these Federation leaders who stand charged in this indictment. All of them would go without question, gentlemen, even if he had made these threats, but it was enough to hang an argument upon and so they introduced these threats for this purpose, and these threats as I take it, gentlemen, are absolutely unworthy of any belief whatsoever.

Now, gentlemen, we did not offer these main circumstances; I have not had an opportunity of going into the minor points that this conspiracy has been proven, with all the interests of this conspiracy, including the death of Steunenberg, that have been traced back to these defendants, that no other person was in a position where they could have been committed by them, that past all reasonable doubt you should be satisfied by this time after a thorough consideration of all the evidence that this defendant is guilty of the crime charged.

It is your duty as a matter of course to give the defendant the benefit of all reasonable doubt, but I desire to

call your attention to what is a reasonable doubt. It is a doubt that has reason for its basis. It is a doubt founded upon the facts and circumstances that have developed in the evidence. It is not some doubt conjured up in your imagination,-- nothing of that sort. It is not a possibility, because there is a possibility of any crime being committed by some one outside of the persons charged, but it is more in the nature of a probability than a possibility. There might be a possibility of any man being innocent of anything. I might present a gun here and shoot it and it might strike or wound one of you gentlemen,-- or one of you gentlemen would in a second fall over dead from a gunshot wound and it would naturally be inferred that the shot came out of the barrel of my gun. But there might be a possibility of some man behind here having fired here at the same time that I fired and it was his wound that caused the death instead of mine, but on account of such a possibility there could not be said that there was any reasonable doubt that I was not guilty of the crime, because it would not appeal to the intelligence, and therefore a jurymen would not be warranted in finding a verdict of guilty against me.

I will tell you, gentlemen of the jury, I think the court will instruct you, and I ask your patient consideration to his instructions such as you have given to the arguments,-- I think the court will instruct you that when you are satisfied from all the evidence, and the evidence alone, because you are not privileged to go beyond the evidence, to hunt up a doubt, or take



the statement of counsel in regard to matters creating a doubt,-- when from all the evidence you are satisfied of the guilt of the defendant as would impel you to set in the more important affairs of your own life, you are satisfied beyond a reasonable doubt; and you should convict, and I feel that while having only gone in to these main matters, there are one or two of the minor matters that are worthy of your consideration.

I desire to close this argument to-night and I desire to call your attention to one thing and it has touched an important part in the evidence in this action, and it shows, gentlemen, the motives that have actuated the leaders of the Federation in dealing with those with whom they have come into contact, who refuse to observe their wishes, and that is the beating up of old man Stewart. That old gentleman was brought here upon the witness stand. His appearance itself would impress everyone who heard his statements that it is being the equal and exact truth. I don't believe after hearing that man's statement that he would tell a wilfull falsehood on any account, no matter how much he might be prejudiced by the party who would be punished perhaps on account of that falsehood. He has undoubtedly given you an equal and exact account of the affairs that happened, and that account can hardly be questioned by counsel upon the other side. And what do we find he says with reference to this matter? He had incurred the enmity of the Western Federation officials, those who were next in authority to Haywood and Moyer, those of Sherman Parker and W. F. Davis, and W. B. Basterly, and those

other leaders of Altman No. 19 there in Cripple Creek, because he had the temerity to exercise his privilege as a free born American citizen and go to work and earn a living for his family at a mine that was taboed by the Western Federation, -- went and worked at his business as a carpenter, and because he disregarded the wishes of those leaders, this old man who had never probably in all his lifetime harmed a single living person, was taken out from his own house, from the presence of his wife and lead up the railroad track and beat with fists, and kicked, and beat with guns, and pounded with clubs, and left there apparently dead, and to end with, a bullet shot into his back. It showed the despicable methods adopted by these people who they would have you believe were law abiding because some time in their public addresses their leaders advised their followers to obey the law, and probably after they get from the rostrum they gave them a little further advice, and that is to commit further outrages than they had been indulging in.

There are other matters that show the truth of this statement of Orchard. Take Moran -- Moran's statement for instance. I don't think he was mixed up in this Steunenberg matter at all. He seemed -- but he was a member of the executive committee in 1904, and what do we find, gentlemen? We find that as a member of that committee he takes a letter from Orchard written in Denver and given into his custody by Orchard, and he takes it -- I don't mean Moran, I mean Marion Moore -- he takes that letter up to Home where he is going on business, and he adds



the date to it and puts it in the postoffice and it is directed to Orchard's wife, and he knew that he was assisting in deceiving Orchard's wife, and he does it as a matter of course. It shows the readiness with which a man will commit a dastardly act that affiliates with the leaders of this organization for any length of time. And whatelse do we find there? We find that Orchard is upon such intimate terms with Haywood and these other leaders that he sends letters through these leaders to his wife, pretending that they have been received by Haywood in enclosures sent from other points. He directs them from San Francisco and other places, and Haywood sends them on to the woman, and he sends a personal letter. It is introduced in evidence and I will not take the time to call your attention to it.

MR. RICHARDSON: Let me call your attention to those letters. You speak of their being forwarded by Haywood. That was not the fact as introduced in the evidence. They were sent by Paddy Maloney.

MR. HAWLEY: By another member of the organization acting under the directions of Haywood, because Haywood shows he was privy to all this. I thank you again for correcting me, because there was no doubt about ~~that~~ the evidence on that point. But this was done. It is not the fact that Easterly refused to give Orchard away when he knew that he was the man who murdered Governor Stearnsberg so much as the manner in which these persons hang together, and isn't it an element to be considered in the matter of corroboration, and don't the same remarks apply to Copley and his

dealings with Orchard there in San Francisco at the time of the Bradley explosion. Does not, gentlemen, the very fact that Laywood throughout the cross examination of Orchard and the other witnesses for the prosecution was continually coaching his counsel, showing a knowledge of all these matters that could not have been derived for the first time from hearing these statements upon the stand? Gentlemen, does not the fact that throughout this entire inquisition and inquiry not a man who has been connected in any prominent way with the Western Federation of Miners has come here in any way to give any assistance or aid to the prosecution, show that there is something binding between them that has cemented them together? I tell you, gentlemen, you cannot take these circumstances and consider them of themselves without these main points which I have heretofore argued without coming to the conclusion that Orchard committed this crime, and in conclusion and as a part of a combination between himself and these other parties?

MR. RICHARDSON: Didn't we furnish you Mr. Boyce at your request?

MR. HAWLEY: Mr. Boyce came here, I don't know who got him, but I know who paid for his expenses and his mileage.

MR. RICHARDSON: You requested us to get him and we got him for you.

MR. HAWLEY: We took very good care that we did not ask him anything but formal matters that could not be very well disputed. We asked him in regard to the Miners' Magazine and



58

he testified in regard to it. It was simply a formal matter and nothing affecting the question of the guilt or innocence of any of these parties in any respect whatever. And what kind of a plea is it we are met with? It is in reality a plea in confession and avoidance upon the part of these people. They admit all these matters except the crime itself. The confession is taken and the avoidance has failed because of the absolute failure to refute any of the main evidence that has been adduced upon the part of the prosecution. There is no doubt in regard to the harsh feeling entertained toward Steunenberg, that there was a great deal of hatred upon their part cannot admit of any doubt, especially after reading these Federation magazines in evidence, and there was one of these magazines which was introduced during the cross examination of Mr. O'Neil which had been refused admission by the court prior to the time the defense entered upon their testimony,-- that was the magazine of the issue of the early part of January immediately after the death of Steunenberg, and you will remember that this man that had come to his untimely end by this foul deed and with this vile act still reverberating in the ears of all, is referred to in a way that no newspaper or newspaper man imbued with any sense of proprieties would use, and it showed a hatred away down in the hearts of these people towards the dead man, and it is a matter for you to consider when you consider this crime committed by this defendant, before you come to any other point of that nature.

The Federation, gentlemen, we claim has protected their

criminals. We claim it is an organization, gentlemen, that cannot be commended to the attention of the public even if those crimes were eliminated from the record that they have made, because they have shown throughout, gentlemen, that it is their habit and custom to defend those men who have been guilty of crimes against the community as long as those crimes evidently were committed in the interests of the Federation and at the request of the leaders of the Federation. And go through this evidence and you will find in a score of places the fact creeping out that my brother Richardson and his partner and other lawyers for this Federation who have appeared at different places in the State of Colorado, pleading the causes of men charged with gross violation of the law, successfully, I believe, it is true, I believe it has been boasted of, I believe in the opening, but I would not say in the opening though it seems to me it was in the opening address, that the boast was made that no member of the Federation had ever ascended the scaffold or was occupying a cell in any penitentiary. I believe it, gentlemen. I believe in a country like Colorado, where officers such as have been shown to occupy high judicial positions have -- such as have appeared here as witnesses for the defense, have had the trials, I believe where it is possible to show alibis by a hundred, if necessary, or a thousand of it still becomes necessary, and none of these parties ever met their just deserts, but I tell you it is time that a change came about; it is time that this abomination, this stench in the nostrils of the decent people of the



west,-- that this organization be brought to the bar of justice and shown that there is a law of the land that is higher and greater than the decrees of their own Federation and the wishes of their leaders. It is time that this jury is satisfied beyond a reasonable doubt, as it must be from this evidence, that we show them here in Idaho that we are a law abiding people, and we propose to do our entire duty whether it is the leaders of the Western Federation of Miners upon trial for an offense, or some tramp that has blown into the state simply by accident and has committed a minor offense here. I believe, gentlemen, that it is the desire of every man on this jury, and I believe every man of this jury is impressed with that firm desire, that unwavering desire to examine into the circumstances of this case, and that those circumstances will ~~work~~ work in the opinion of the jury and warrant the bringing in of a verdict if they convince the jury beyond a reasonable doubt that this man is guilty, that then we will show -- they will express the faith that is in them by a verdict, and that is all we ask of you, gentlemen, all we ask of you in any way. We don't ask you to violate your oaths. We ask you to remember your oaths at all stages of this proceeding. We don't ask you to go beyond the law, but regard the law, and stay within the law. We ask you simply for your honest judgment and your own opinion after thoroughly reasoning this matter out, and we are satisfied then with whatever verdict you may bring in.

We know, gentlemen, that the opinion of counsel is but of little importance whether that counsel be of the prosecution

or of the defense. It is the opinion of you, gentlemen of the jury that is all important perhaps. In the heat of argument unfortunate expressions drop from the lips of counsel that might seemingly indicate that it was the duty of a jurymen to act in some different way than they would in the ordinary ~~xxxx~~ case, but if those -- if any such has dropped from my lips + desire to apologize for them because they are made in the heat of a discussion and they are not intended. I want your honest judgment upon these matters, and then I and all the counsel for the prosecution will be absolutely satisfied with the course that you think should be adopted in reaching that conclusion.



It will be said, gentlemen, without a doubt, that we are warring upon this Western Federation. It will be urged, gentlemen, without a doubt, that there is some other and different motive than a desire on our part that equal and exact justice may be done. I desire now at the close of my address to reiterate what I said in my opening statement, when I commenced this argument, that I am here as a representative of the State of Idaho entrusted with a duty on behalf of the state, and I am attempting to perform that duty to the best of my ability, and all my associates, from the county attorney or from the prosecuting attorney who has charge of the case, down all through the line of his associates, we have all been actuated by the same motive, and whatever compensation comes to us comes from the same source, the coffers of the state. It will be charged that we are making war upon the Western Federation of Miners, that we are making war upon unions and upon union organizations, but it is not true. No man has a greater respect than I for organizations and those engaged in the different branches of labor to assist themselves both so far as wages and hours of work are concerned. I believe it is right and proper that men should band themselves together in that way, but when they do they are not privileged to go outside of the law any more than is an individual, but this organization, gentlemen, as it is now constituted, -- this organization which is completely in the hands of and for the four or five years last past has been in the hands and under the control of W. D. Haywood and Charles H. Meyer

and George Pettibone, and the other few who at different times have occupied responsible positions, with them, this organization cannot be classed with those labor organizations which will undoubtedly be referred to and with which we are all familiar, because the ordinary organization is not criminal in its intents or law breaking in its objects.

I don't mean, to say, gentlemen, that the majority of the members of the Western Federation of Miners are criminal, but I do mean and say that this organization has fallen into the hands of men who are criminals, and they have shown it by a continued series of crimes, and that the organization is now so constituted that it allows this scum to float to the surface, and that an organization such as this should be warred upon by every good citizen until it is absolutely and positively obliterated as a factor either in economic or political matters, that these men shall still continue to control it for their own interest, and they should no longer be permitted by public sentiment to have unions such as have been in existence the last few years and which have been used in the furtherance of criminal designs and methods.

I have had, gentlemen, some experience with unions. I have been brought necessarily into contact with them on many occasions, and while it is not a matter of interest probably in this case, or possibly a matter of argument, or of reference that should be made, I would be pardoned I think for saying that at all times I have been a friend of these people and these



organizations when they have been carried on in a manner such as the law permits, and I hope to see to the end of my days. True it is that at the inception of this organization, and before it was as important as it is at present, I was consulted by members of the different unions, including Mr. Boyce, when I appeared for them in certain matters affecting the interests of some of those members, before the federal courts. But for that, gentlemen, I have no explanations to offer nor apologies to make, because I acted right, and if my advice had been followed by those organizations at that time, or the organization which was formed shortly afterwards had been carried on in the way it was intended by the men that formed them they would have been a factor for good in the development of the west, instead of being an engine of oppression. We have seen, gentlemen of the jury, that as constituted at the present time, wherever an organization of this kind has been brought into being, wherever a Western Federation lodge has been established, that at once troubles commenced in that community, and disputes between the employer and employe became ripe. We find that all the strikes in the mining regions of the west or all the strikes have not been by reason of any dispute as to wages or hours of labor, but to the intolerance of the leaders who desire to control all matters political and social in those communities. We have had object lessons brought to us in this case which I am not privileged to refer to now because that testimony is not before you, but, gentlemen of the jury, I believe it is sufficient for me to say that as at present

4

constituted it has been shown by this evidence that this body as a whole is not an American institution, that it is endeavoring to subvert the laws of the land, that it is not in harmony with the spirit of our institutions or of our constitution, or of our laws; that it is something that should be frowned upon by all good citizens, and while we should not condemn the rank and file, those who constitute the large percentage of its membership, yet it is the duty of all good citizens to so frown upon the crimes of this organization as to compel them to quit it, or at least to reorganize it so as to bring this union, or these unions upon the same line as are other labor unions of the different guilds of this country.

Gentlemen, the counsel for the defense have had peculiar methods of protection. The inference from this evidence and the argument that will undoubtedly be made, in the minds of any sane man will convict their clients. I have told you it was a plea of confession and avoidance, but gentlemen, they have gone further, and they have shown by their evidence -- they will show by the arguments based upon this evidence that William D. Haywood, and Willie D. Haywood as secretary and treasurer of this Western Federation, as the editor in chief of the magazine which is the official organ of this organization, is the strong man in this criminal organization whose officers preach peace in public places but advise violence in private, has been guilty not only of this crime that has been charged against him, but of every other crime that has been mentioned in the evidence. The desperation



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5

of despair I might almost call this defense that has been made for him. Evidence absolutely incompetent has been introduced under promises, and questions have been asked in such a manner as that they have not been competent facts, and the answers to those questions imply the accuracy of part of the statements made. The whole horizon of this is pictured on the part of the defense with Harry Orchard, and they demand you to believe that Harry Orchard is a perjurer and unworthy of belief. We have shown by this corroboration, I think, of Harry Orchard's testimony that he has told the equal and exact truth in all ways; but leave him out of this evidence, gentlemen of the jury, and I submit to you that not a word of the statements made by him is considered by you, still there will be sufficient proof to bring this man in guilty of the crime charged against him. And who is Harry Orchard? Do we not find him the boon companion and associate of Haywood, Pettibone and Meyer? Do we not find him at the town of Wardner lighting the fuse that destroyed the Bunker Hill and Sullivan mill? Do we not find him there committing these awful acts amid the applauding crowd of this Federation? Do we not find him at the headquarters of the Western Federation on the most familiar terms with Meyer, Haywood and Pettibone? Do we not find him as the chosen bodyguard of Meyer when he goes on a perilous trip into the distant mountains? Do we not find that he is the intimate friend of this good counselor and friend, Pettibone, and that that intimacy extends to so great a length that for more than a month, although accused of the greatest of

crimes he occupied a portion of his house in Denver? Crime after crime has been charged against these men, and in every crime we find that it is Orchard and Haywood, or Orchard and Pettibone, or Orchard and Adams, or it is Orchard and Easterly, or Orchard and Davis, or Orchard and some other member of this Federation who is a leader in it. We find his name constantly associated with these leaders, and when we come to ascertain the motives, those who must be responsible, all investigations point in every instance to W. D. Haywood and Charles H. Meyer and George A. Pettibone.

But more important than all in regard to this matter of Orchard is the fact that he has come before you and frankly confessed without promise of reward, has he made this extraordinary statement. He has shown himself one of the greatest criminals not only of this but of any century, and he has shown in spite of these criminal features those matters which he so freely admitted, as I told you in my statement yesterday, that he is absolutely worthy of our belief, because some higher power is controlling him in this matter than most men can even imagine. We find that the motive that Orchard has given for the killing of Governor Steunenberg has been unassailed -- almost unattacked. He was hired to kill, and he did kill. He was hired to kill Steunenberg and he earned his wages. He was hired to blow up the Vindicator and he earned his wages. He was hired to kill Lyte Gregory and he earned his wages. He was urged to kill Goddard and Gabbert and Peabody and he attempted to the best of



his ability to carry out their wishes. In all these matters, gentlemen of the jury, he has received the active assistance and support of all these persons on every occasion. Look in vain for any other source from which he would have drawn his compensation that out of the coffers of the Western Federation as supplied to him by Pettibone and Haywood, and we can find none. We find him, gentlemen, absolutely dependent upon them. We find in every crime committed that he had no motive or object, but he was carrying out the wishes of these men because they had a motive and object in getting rid of them. We find this stronger mass of corroboration than the evidence of any witnesses could be -- these facts and circumstances corroborating these statements and impelling us to believe every thing that Orchard said upon the stand, that he said the equal and exact truth, and above all when it comes to this crime which comes before you, which he is charged with committing, which is a matter of which you must find him guilty after all, in regard to which these other crimes have only been testified to as showing that they were only incidents of the same conspiracy and would therefore show that he had done this act, but that this killing of Steuenerberg of which you must find him guilty, we investigated it and we traced it back to this Federation, and to the leaders of the Federation, gentlemen, they who are those who were responsible for the Vindicator explosion, the outrage at the depot -- the Independence depot, or the killing of Gregory or of Walley, or any of these other crimes, because we proved, gentlemen of the

jury, that one of the trusted officers of this Federation, the confederate and accomplice of Haywood and Moyer in numerous of these other crimes was not only here advising the perpetration of this outrage, but he was upon the ground aiding in its commission. We find, gentlemen, that the money -- the money that was being paid to this man for his expenses when he was there carrying out the wishes of Moyer and Haywood was coming from the Federation treasury, and we have produced the check that shows it, and the letter that explains that check that was written by Pettibone and received in the jail. We proved it beyond the possibility of doubt.

Now, gentlemen, we might rest our case simply here as to the inquiry as to who Jack Simpkins is, and when it was answered that he was one of those Western Federation men who still occupied that principal position, and the so-called friend and accomplice of this defendant here, and when we show ~~that~~ <sup>that</sup> connection with his acts in regard to the murder of Steunenberg, it would be sufficient; but when we ask, where is Simpkins, it brings an answer, gentlemen, that proves his guilt beyond any reasonable doubt; and when you prove his guilt you undoubtedly prove the guilt of these other men, especially this defendant because he is associated with him in such a way that Simpkins could not be guilty and Haywood innocent, and the answer to that must be, where is Simpkins? He is a fugitive in the hills, and since the confession of Orchard has been flashed to the world he has vanished from the face of the earth although charged with



being one of the principals in this awful crime, and he never yet has been before a court of justice to demand a hearing, and still, gentlemen, he is retained by the Western Federation of Miners as one of their trusted officials, and we will be asked by counsel upon the other side to regard this association as we would the ordinary labor unions of the country which we all respect, although they have already decided to retain him in that position under circumstances such as these.

Gentlemen of the jury, I must again apologize for the length of time I have taken, and still while so doing I must really say to you that there are a hundred occurrences related in this evidence, a hundred incidents which might be brought up to show the connection of this defendant with this awful crime that I have refrained from saying anything in regard to by reason of the length of time I have already consumed, but I believe, gentlemen, that the time so employed in inquiring into these matters refreshing our recollection as to the evidence, is well employed and that you have so patiently sat week after week listening to the evidence I trust that you will with equal patience listen to all that may be said by counsel upon both sides. So far as I am concerned I thank you heartily for the attention you have given me in these remarks on my part. I have tried to enlighten you upon those points which present themselves to me as the salient matters which have developed in the evidence that has been given you by the 150 witnesses who have testified in the case.

Gentlemen, I wish that I could look over this evidence and find some way of satisfying myself that this man here upon trial was innocent. And that those other men associated with him in this indictment were also innocent of this offense. I have no desire, gentlemen, to have the scalp of any innocent man hanging at my girdle. I don't, gentlemen of the jury, desire that any man shall be convicted through any effort of mine in whole or in part that is innocent of any offense, but I have arrived at a time of life, gentlemen, that I believe would, I think, preclude one from desiring through over enthusiasm in a case which he is advocating to have a man punished for a serious offense who is guiltless of it. A young man may become inspired by his case, ~~that he~~ may reason that the only evidence worthy of belief is that which goes in upon his side, and may be so actuated by a desire to win that he may overlook those matters which should have been considered by him and which would show the innocence of the party accused, but I think after we have been in this business for nearly two score of years, as I have been we get beyond that stage, and I hope that I have get beyond that stage, because I tell you frankly, gentlemen of the jury, if I did not believe in my heart that this man was guilty I would so state. I wish I could find some way by which I could conclude from this evidence that I was satisfied of his innocence, because I would a thousand times rather have a man vindicated than to have him dragged through the mire and dirt of a conviction, but we can come to but one conclusion and that is that he is not



only responsible for this atrocious murder but that for more than a score of other murders that have been proven here is he equally responsible. That opinion on my part amounts to nothing; my opinion is nothing; the opinion of learned counsel upon the other side is nothing; your opinion is everything. Gentlemen, every effort should be directed to enlighten you in this matter. I ask you to take this evidence and carefully consider it. I ask you to give it that weight and consideration that under the instructions of the court it will be entitled to. I ask you that you honestly in your own good judgment apply the law to the evidence and thus find your verdict, and I for one, gentlemen, will say in advance that with the utmost confidence in this jury and every member of it I will be satisfied, whatever that verdict may be. Gentlemen, I thank you for your attention, and so far as I am concerned as an active participant in this case, it is with you.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, and the jury retired in charge of the bailiffs, the defendant was remanded to custody and court was adjourned until 9:30 o'clock Monday morning, July 22nd, 1907.

ADJOURNED.

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at Boulder Libraries

Boise, Idaho, Monday, July 22nd, 1907.

9:30 o'clock A. M.

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Court met pursuant to adjournment.

The clerk read the records of the session of Saturday, July 20th, and the same were signed by the court.

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

THE COURT: Gentlemen, after a consultation with counsel, I have decided that it would be impracticable to hold three sessions of two hours each a day as suggested, and counsel may divide the time of the two sessions to suit themselves or the jury. It has been suggested that on account of the heat of the afternoon session it may be that a recess can be taken over until this evening; I would not care to postpone it until later than six o'clock, or we might take two hours and a half in the afternoon, or work from six to eight thirty. What do you say, Mr. Richardson?

MR. RICHARDSON: I would submit it to a vote of the jury.

THE COURT: What do you prefer, gentlemen, in relation to that matter, a later evening session? It is apparent that we are going to have some very hot afternoons.

Several of the jurymen expressed themselves in favor of



the evening session rather than an afternoon session, and one juror stated to the court that the matter had been discussed by the jury and it seemed the almost unanimous desire of the jury was that they should hold the evening session.

THE COURT: As long as the weather remains in this condition we will convene in the morning and then adjourn or take a recess over the afternoon. You may proceed.

ARGUMENT OF MR. RICHARDSON.

MR. RICHARDSON: May it please the court and gentlemen of the jury, the events which resulted in the death of ex-governor Steunenberg on December 30th of 1905, passed consternation over the entire civilized world. It had been Governor Steunenberg's fortune while governor of this state to be called upon to stand in the fore front of a labor controversy which occurred in the northern part of the state. Perhaps the situation demanded of him all that he did. I don't know about that, and I am not going to discuss it. Perhaps in handling that situation Governor Steunenberg took such an advanced ground from anything that had ever occurred before in the United States of America that he received the condemnation of large numbers of the people of the United States. One thing is certain, that it gave rise to an endless amount of discussion throughout the entire United States if not throughout the entire civilized world. For the first time in the history of America the military bullpen was established in

the administration of what were practically civil affairs. For the first time in the history of America men were deprived of their liberty, with perhaps just cause, but without due, or any process of law, and so the changes rang throughout the entire country from one end of it to the other, with condemnation on the one side and praise on the other for the course which he took. Just according to the way you viewed the situation at that time, just so the comment was made by those who were interested in it; and so it was when this event occurred on December 30th of 1905, that there was at once started in the press of this country a statement that that death had doubtless resulted -- that that dastardly deed had been committed as a direct result of the conditions which prevailed in the Coeur d'Alene district in 1899.

I suppose probably that everybody's mind was directed to this general situation. I suppose perhaps that ninety-nine one-hundredths of our people believed that some relation existed between the Coeur d'Alene troubles of 1899 and the bomb which caused the death of Governor Steunenberg in 1905. The conditions had been such that the miners of America, in the metaliferous mining regions, had formed a union for the better protection of themselves, for the securing of shorter hours of labor, for the maintenance of a higher scale of wages, and out of it all occurred this trouble which arose in 1899.

When this event occurred the whole country was divided into hostile camps with respect to the occurrence, -- those who



were sympathizers with union labor and those who were sympathizers with the mine owners. Some of them declared, and some denounced the deed which occurred, and some of them, gentlemen of the jury, attempted to justify it, but there is no justification for it. We of the defense say that with everybody else. No right-minded person will assume to justify the deed by which Governor Stansberg lost his life at the hands of a dynamiter.

This situation being in existence, a new discussion came about -- a new discussion being rampant all over the country, and this time everybody from everywhere participated in it. One side immediately denounced the Western Federation of Miners and demanded the punishment of every one of them, and the annihilation of the organization. Another side said that probably some member of the Western Federation of Miners was responsible for it and was anxious to find out who it was. Another side declared that some man who had been in the bullpen or had been deported in the Coeur d'Alene district in 1899 -- some one who had a grievance, had nursed that grievance until it became mania, and at his hands and his alone, the dastardly deed was done. While those engaged in the management and ownership of mines as readily denounced the entire Federation and the leaders of it whom they had been after for years on account of the industrial warfare which had been waged. So general did these discussions become that after the arrests were made in this case we find even the President of the Republic taking a hand in the controversy and

deciding in advance as to the desirability or undesirability of certain citizens of the United States, including the leaders of the Western Federation of Miners. From the President in the White House to the humblest reader of a newspaper in the wilds of Oregon or in the woods of Maine this discussion took place and each one, or nearly every one, came to have some opinion, more or less pronounced upon the responsibility for the deed. That is the general situation which confronted us at the time that the original arrest was made for the killing of Governor Steunenberg.

In this case there never has been any doubt as to who was responsible for the actual commission of the deed. There has never been any trial for the one who actually committed the deed. That man was caught almost redhanded in the act, and later on I shall discuss his movements so as to see whether or not it throws some light upon the general situation. After he was arrested there came to the State of Idaho a certain member of the Pinkerton organization, who, after a short conference with this man Orchard, announced to the world that he had a confession from him involving the leaders of the Western Federation of Miners. It had been stated broadcast in the newspapers from the 1st day of January, -- yes, I think, from December 31st, the day after this event occurred, that the Western Federation of Miners was probably responsible for this occurrence. The ground was prepared, the seed was sown for the advent of this Pinkerton detective, and the moment that this confession was announced to the world -- but not the contents of the confession -- the world became divided



into camps containing pronounced opinions, in ~~the~~ each camp, upon the guilt or innocence -- not of the man who did the deed, but of those who were claimed by himself and by this agency which was back of him, to be responsible for it. Arrests were made under peculiar circumstances which will be detailed to you at some length before I get through, and in the meantime the controversy waxed hot. Newspaper after newspaper, that depended upon the capitalist-ic classes of our citizens for their support discussed the case and formed themselves into a class in denouncing the Western Federation of Miners with a zeal that knew no bounds; and another class espoused the cause of those arrested, and in equally intemperate language, upon the other side, declared the innocence of the accused of the commission of any crime whatsoever. Neither one of them knew, and could not know, anything about the matter at all because all of the evidence was secreted, and guarded, was kept entirely secret, except surmises and suspicions until the time it has been laid before this jury.

Now, I make these preliminary remarks, gentlemen, before proceeding with the arguments of this case for this reason. You are human like the rest of us. You have been sworn to try this case. There is no passion and no prejudice that can rightfully enter into your verdict. Your oath requires that you should try this case upon the law and upon the evidence which has been detailed upon the stand, and from those two matters, and those alone you are required as honest jurors to make up your verdict.

7

I call your attention to this because all humanity is swayed to some extent by the environment which has surrounded them. Anything that a man reads becomes a part of him. "As a man thinketh," the good Book says, "so is he;" and when we come to the trial of a case we must lay it aside without passion, without prejudice; we must enter into our other selves and discover from the evidence and all of it, from the law as stated by the court, and all of it, the very truth of the situation as it exists. And so I invite you at the very opening of these remarks to lay aside any feeling -- any possible feeling which any of you may even have ~~unconsciously~~ <sup>unconsciously</sup> entertained when you entered into this case, -- to lay aside any feeling which you may have had at any time you ~~was~~ <sup>were</sup> viewing the evidence introduced here, and start with me at the beginning of the case and take it up step by step to the end that we may honestly and justly determine in the light of our consciences, illuminated by high heaven, whether or not the man who stands ~~now~~ here at this bar, and his associates, are guilty of the crime which has been charged against them.

And in the course of these remarks, gentlemen, I shall endeavor to handle this case, if the heat does not overcome me, in about the following order:

I shall in the first place discuss with you what I conceive to be the law applicable to the case as applied to the principal prosecuting witness.

I shall then take up with you to some extent the history, as it is disclosed by the evidence, of the Western Federation of



Miners.

In the third place I shall proceed to a discussion of the general conditions which prevailed, not only at the time of the Bunker Hill and Sullivan trouble in the Coeur d'Alene district, but at the time of the Cripple Creek/and immediately prior thereto in the Cripple Creek district.

In the fourth place I shall endeavor to discuss at some length the series of events relied upon by the State for the purpose of establishing the general conspiracy which the State claims makes the defendant responsible in this case.

When I have done that I shall proceed in the fifth place to an ascertainment of the particular offense which we are on trial for, because you will have observed that while a great deal has been said and done here with respect to other states and other places, there is only one charge contained in this indictment, and that is an offense against the State of Idaho. When I have done that as I trust I shall, to your satisfaction, then,

I shall in the sixth place consider Mr. Orchard while he is under arrest.

In the seventh place I shall consider him while he is in the penitentiary.

The eighth sub-division of my argument will be directed to the impeachment of Mr. Orchard.

I shall then, in the ninth place, take up the treatment of Mr. Heywood, the manner and method of it, and the reasons for

2

it.

I shall then discuss, as I have been invited to do, in the tenth place, the reason why certain witnesses did not testify upon the part of the defense, and under that head I shall call your attention to certain witnesses for the prosecution who did not testify and the reason why they did not testify.

I shall finally sum up the entire case by a discussion of the standing of the case as it now appears before this jury, and when I have done that I shall have done all I will be able to do to assist this jury as best I can in arriving at a proper verdict in this case.

Taking up then the orderly course of my remarks as indicated, I want to call your attention to the fact that this case depends entirely upon the evidence of the prosecuting witness, Harry Orchard. Without Harry Orchard's testimony, it will be conceded <sup>upon</sup> ~~that~~ all hands that there is no case against Mr. Haywood or anybody else, -- neither Mr. Simpkins nor any man connected with the Western Federation of Miners nor with any institution. Harry Orchard comes before you under a statute of this state which limits the consideration of his testimony, and I propose to take that statute up and discuss it with you because it will be embodied in the court's instructions. The history of mankind has developed the fact that he who is on trial for his life, will resort to any subterfuge -- will indulge in any testimony -- will descend to any depths -- will apparently attempt to scale any



heights if by so doing a result can come to himself which will save his life at the expense of any one's else. And in olden times, it was found that men were so artful, or at least some of them were, under such circumstances that juries were misled by the apparent truth of their story, and injustice was found to have been perpetrated so many times that it finally became a rule announced by the courts as an outgrowth of the common law, that no man could be convicted upon the testimony of a man upon the stand who acknowledged that he was an accomplice where that testimony stood alone. It was found in the course of experience that the courts varied so much in announcing this doctrine that the legislatures of the various states took it in hand and enacted a positive rule of law upon the subject which should govern all juries in the future. And among the states which have so adopted such a statute as I have described, Idaho is found, as she is in most things, in the foremost ranks. That statute was enacted long prior to the time that this case had its rise; long prior to the time that Governor Steunenberg was governor of this state; long prior to the Coeur d'Alene troubles; long prior to the events which it is now claimed are responsible for the action of Harry Orchard and which resulted in this trial against this defendant.

That statute, gentlemen, and today I invite your most earnest and conscientious consideration, reads as follows:

"A conviction cannot be had" -- it is a positive rule of the law --  
"on the testimony of an accomplice unless he is corroborated by

11

other evidence which"-- that is, the other evidence -- "in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof."

Let us get the full import and meaning of that statute. An accomplice is a man who participates in and takes part in a crime. In this case the accomplice is the man who actually committed the crime. There is no contention about that. Nobody claims that this defendant was present,-- no one says that his associates were present. The only statement is that we have aided, procured and abetted this witness whom the statute defines as an accomplice in his commission of the offense which caused that great and, I believe from all I have heard here, that good man to come to his death as a result of the explosion of a dynamite bomb. This accomplice, before anybody else can be convicted, must be corroborated by other evidence, and that evidence must in itself -- it must, by itself -- it must, standing alone without the aid of Mr. Orchard in any sense at all, laying aside his testimony, putting it in a class by itself, putting the other testimony in a class by itself, that other testimony must tend to convict Mr. Haywood. It must be such testimony that you can say from it when it stands entirely alone by itself, that it is of such a character, that it so corroborates Mr. Orchard as that his guilt has been established to your minds beyond all reasonable



doubt. If it is not of that character, no matter how positive ~~that~~ the testimony of the accomplice, no matter how complete it may be, no matter into what detail it may go with reference to the commission of the crime, if it is unaided by testimony standing alone, without construing it with his testimony, without taking it in connection with his testimony, then the law says -- this law which you have promised to uphold and obey, this law of which you are now an integral part, says that no man can be convicted upon the testimony of a man like Harry Orchard. I propose to observe in the discussion of this statute some remarks which were made by Senator Borah in a case that he tried not long since in the city of Moscow in this state, where he was defending a man who was charged with crime, where the testimony upon which conviction was sought, was that of a man who was said to be a perjurer, who plead guilty to perjury, but who had not yet been convicted of it, and I think the language is very appropriate, coming as it does from the mouth of the vigorous and learned Senator, to be considered in connection with this statute.

Senator Borah said: "This case is the most extraordinary I ever came across in my limited career, as the testimony comes from a self condemned source." Of course that modesty about the limited career you can take that with a grain of salt. The career has been unlimited, and it is the humility which all great men have. Said Borah: "Can such testimony command your respect when the United States asks you to take the liberty of one of its citizens? We ask that the United States present such evidence

as will command your confidence. The statutes say," continued Mr. Borah, "That a man convicted of perjury can never again take an oath in a place of justice in settling the affairs of men. Yet the government asks you to believe these two young men that have not been tried, because if convicted the government could not use them to testify against Hobernett."

Orchard has not been tried, although in this court he pleads guilty -- with the plea of not guilty standing in another court, -- because if he was tried and convicted his testimony could not be used in this court. "You must have something stronger than that to satisfy the human intellect that the crime charged has been committed. I say, let those without fault cast the first stone."

I don't know of any better text upon this part of my remarks that I could urge before this jury, than the remarks of the Senator in that case. ~~There~~ There were two men had committed perjury in a land fraud case and were testifying against their associates,-- if they were unworthy of belief, where there is no statute upon the subject, what are you going to say where you have a statute like the one here in Idaho, which declares in so many words that there can be no conviction upon the testimony of an accomplice alone?

So, gentlemen, as I proceed to analyze this testimony, you want to bear in mind all the time that it is divided into two classes: One which the law places the sanction of its condemna-



tion upon; one which the law says you shall not regard as you do other testimony; one which the law says is not sufficient; one which the law declares there can be no conviction upon, and the other, the testimony which standing by itself and without the aid of the other testimony, tends to convict the defendant if any such testimony there be. So much for the statute of the state, and I might advert to a few other legal principles before we proceed with our remarks, so that you will be fully advised of how evidence should be considered as it is analyzed.

The law regards human life with great sanctity, and the compact of society is that you as a member of society shall not forfeit your lives unless the forfeit falls within the strict and the absolute letter of the law. Society is formed to take the place of the old doctrine of might that makes right. Before the law every man stands, or should stand, equal,-- the weakest, the humblest citizen in all the land, when he is on trial before this jury, has the same rights, is entitled to the application of the same rules of law as is the highest and most exalted citizen in all the land. Before society, the compact which exists by which the doctrine of right takes the place of might is that no man shall be convicted until due process of law has been urged in his behalf, until it is found by a jury of twelve men that beyond all reasonable doubt, beyond any peradventure, beyond any question, the defendant at the bar is guilty. It is then and then only that you can convict. The law deals with ~~the a-~~

presumption in ascertaining and carrying out that compact. It starts, in the course of the trial, with the presumption that every defendant standing at the bar of the court is innocent until he is proven to be guilty. It is your duty to believe him innocent, and you have no right to think that he is guilty or suggest to your own minds that he is guilty. The law gives him the benefit of the positive presumption, and that positive presumption attends him at every stage of this proceeding, from the first to the last, until it is overcome -- if it ever is overcome -- by evidence which shows his guilt beyond all reasonable doubt.

There is another rule of law that I want to call your attention to. It is not enough to have a suspicion that a defendant is guilty; it is not enough, under the law, that there is a probability that he is guilty; it is not enough, that weighing the chances, he may be guilty; it is not enough, that it is more likely that he is guilty than it is that he is innocent. Now, I call your attention to these rules of law, not because I think there is any occasion to exercise them in this case under all of the evidence, but I call your attention to them so that as the evidence is rehearsed before you, it shall be viewed rightly and your minds shall be kept in the proper state until you have the complete analysis of all that counsel have to say, as well as the instructions of the court, when you retire to consider of your verdict.

So much then for the law which is applicable to a case of this character. I might say here, however, that the State in



this case relies upon a general conspiracy for a conviction. If there were testimony, in the opinion of the state, which connected this defendant with Mr. Orchard in the commission of the offense by independent circumstances, so that the defendant would fall under the statute, your time and the time of the balance of this court would not have been taken up in the consideration of a long line of what are said to be offenses against the law by the Western Federation of Miners, and what are offenses against the law by some one, whether connected with the Western Federation or not. It is because the State knows that under this evidence as limited to Governor Steunenberg, that there is no corroborating circumstance upon which it can rely, under the instructions of the court, to make a case against the defendant Haywood, and therefore it goes into all these other transactions.

Now, gentlemen, I want to call your attention to the law of conspiracy for a moment. A conspiracy may be established in two ways: First by direct and specific statements or proof, or evidence upon the part of some competent witness, that a general or a special conspiracy to do an unlawful act existed. That is one way it can be done. The other is by proof of a series of events, one after the other, of a similar nature, in which certain individuals took part, perhaps some at one time and some at another, but all these acts tended to effect the same end and accomplish the same purpose. When such a series of acts are proven, correlated to one another, inter-dependent upon one another, all tending to one object, all apparently having one

purpose, from such a state of facts a general conspiracy may, if the evidence establish it beyond a reasonable doubt, be inferred. Now, the latter course is the one relied upon in this case. The witness Orchard testifies to no general conspiracy. Every conspiracy he testifies to is a positive, specific conspiracy, -- to do a specific thing at a specific time and ~~xxx~~ perhaps in a specific place, but in any event, upon a specific person. And that evidence stands alone, and so the State knows that it cannot rely on it because, as I ~~may~~ shall show you before I take my seat, there are no corroborating circumstances which will tend to support the testimony, independently of the testimony itself, of this witness Orchard. It is only when you can take the circumstances and couple them up with the testimony of Mr. Orchard that you can get the result sought to be obtained by the state, and so the state is driven one step farther in its proof upon this matter, and that is by the separate proof of those separate and independent acts of some like character, you are to infer that a general conspiracy existed and therefore this killing was a result of a part of that general conspiracy. But the state does not rely absolutely upon that, it has to go one step farther in its proof. It says that this general conspiracy must be inferred from these separate acts although there is no specific or general proof upon the conspiracy at all. Take the nature, the character of the case, and from them you are to infer what? That the Steunenberg killing is an incident of a conspiracy, -- not an object of the conspiracy. They don't claim that the



conspiracy is of that character which strictly means killing. Oh, no. The conspiracy is of a different character, and the result of that conspiracy is to incidentally result in the killings which are complained of in this case. So, the Steuermanberg killing under their proof -- under their argument is an incident of this general conspiracy to do what? A general conspiracy to control politics; a general conspiracy to control the labor markets; a general conspiracy to fix the price of wages without consultation perhaps, and certainly without dictation from the owners of these mines, or those who operated in labor and who do not labor themselves; a general conspiracy to elect men who are friendly to them, to office. That is the thing which has been urged before this jury both in the opening statement and in the learned and able argument which you, gentlemen, have listened to on Friday and Saturday of last week.

I want to say to you that this general conspiracy they complain of is a lawful one. If you are a Democrat, you are in a conspiracy if this be a conspiracy every time you vote a democratic ticket. If you are a Republican you are in a conspiracy, if this be a conspiracy, every time you vote a republican ticket. And there can be no such thing as an incident of a conspiracy to elect officers to control the price of labor and shorten hours and fix wages, to better the conditions upon the part of labor and laboring men. Every one of these objects are lawful yet in this country. Every one of these objects have the sanction of the statutes of this country. Every one of your farmers, every one of

your craftsmen have the same right, and every one of you take advantage of it just the same as the laborer does, only the conditions for you who are farmers are not as hard as they are for those who labor. If hay is raised on your ranch twenty miles from Boise, and another farmer raises hay within three miles of Boise, you both bring it to this market; you have got to sell it for the same price, and the man who has the shorter haul has the advantage over the other. If you could get together and control the market to equalize the price without doing any wrong to the consumer, there is no law upon the statute books of this or any other country which would prevent you, and if you belong to a community where you are in close connection with one another, and there was somebody else dealing in your products, dealing in that which came from your farm and from your workshop, and you could by combination regulate the price where they had already regulated the price on the other side, if you could regulate it a little different and a little more advantageously to yourself, is there one of you gentlemen who would not do it? These are the real things which are now complained of in this case if I understand the argument as the general conspiracy which these men are responsible for. But of course they do not push that to this logical conclusion, because to do so would be to ~~put~~ state themselves out of this court. They push it to this extent, that in carrying on that attempt to control wages, to control the hours of labor, to control the price of labor per hour, or in other words, to control the conditions as to boarding houses, as



to safety appliances, as to ventilation, as to how long they shall work, that is an incident to the idea that they have to put out of the way those who are obnoxious to them, or destroy their property, or do something of that kind. That is what they claim made the incident in the conspiracy which this man is on trial for at this time.

Now, I think, gentlemen of the jury, I have defined what an accomplice is. I have defined some of the primary rules of law applicable to this case, and I have defined the general doctrine of conspiracy sufficiently for our purpose so that you can understand what we are going to say as we proceed with our analysis of this testimony. I shall call your attention to the conditions now which resulted in the formation of the Western Federation of Miners. Forty thousand people belong to that organization; forty thousand people are guilty of a conspiracy if it be the result of a conspiracy which effected the death of ex-governor Steunenberg. Forty thousand criminals in one organization in the western part of these United States. That is the condition which the state confronts this jury with, and forty thousand criminals, commencing with a few thousand and attaining that great number after a period of about fifteen or sixteen years of existence where lawlessness has reigned supreme, according to their statements, where all right-minded and all right thinking people would shun them as they would shun a pestilence. Is there any man upon this jury so insane as to believe that forty thousand citizens of the United States of America, or

four thousand, or four hundred citizens, or forty citizens can be made to combine in one criminal aggregation for the purpose of destroying life and property? Gentlemen, I trust that none of you would have any such thought to commence with, and I trust that if any of you should have, it will be entirely dispelled as we proceed to discuss the conditions which resulted in the formation of and the work which has been done by this organization. Men would not go into it unless they received benefits from it. Men could not be found who would be so lost to all sense of decency and right in any considerable number -- half of them, quarter of them, ten per cent. of them, or any per cent. to amount to anything who would combine or would become a member of a combination which was organized for any such purpose.

Wherever you find the Western Federation of Miners, according to this evidence, you find a Mine Owners' association. In 1893, fourteen years prior to the time that we are now talking, down here in the county jail of this county, under the advice of that able and astute lawyer, Mr. James H. Hawley, men who were there suffering incarceration and whom he was defending, advised them that the only way that they could handle the situation as against those whom he claimed, and whom I think everybody claimed, to be their oppressors, was by forming a combination themselves so that the injury of one should be the concern of all; so that the good of one should inure to the benefit of all, and the good of all should secure the benefit to the one. And so, by the advice and under the plan suggested by Mr. Hawley, this organization was



22

formed. He disclaims that there was any purpose which was unlawful in its original organization. He claims that if it had followed the lines laid down by him there never would have been any trouble in the metaliferous mining regions of this country. Let us see about that.

Wherever labor is massed and the sole production is the production of labor, where neither earth nor air takes any part in the transaction, where it is the head-of toil alone that produces, there it is natural and inevitable under any system of government which has yet been devised that those who are engaged in the production have interests which are antagonistic to some extent at least to those who are engaged in employing them in that production. The man who has a mine is interested, and nobody is finding any fault with him that I know of, in getting ~~out~~ that he can out of the mine. I have heard, gentlemen, a great deal of talk and you have heard a great deal of talk; I have read a great many things and you have read a great many things about the ~~more~~ equal distribution of the world's goods to everybody. But so far as I am aware it has never been done, and so long as men are situated as they are the old rule that was adopted in the "Hoozier Schoolmaster" has been prevalent, "Git all you can while you're gitten, says I". That is the position which the capitalist takes upon the one hand, and naturally under our condition, "git all you can while you're gitten, says I", that is the position that the laborer takes upon the other, and it is perfectly natural from his standpoint. I wish, you wish, and perhaps everybody else wishes that somewhere, somehow and in some way the rule could be different, that our statesmen might be able to devise a better plan, that the goods of this world should be more equally distributed. But they are not. We have got to deal with conditions as we find them, and the condition in the Cosar d'Alence and elsewhere was that those who owned the property were antagonistic in a certain



degree to those who were operating in the property. And so this organization was formed. This organization had among its objects, as you are advised by the constitution which was read in evidence, certainly in its printed form, no thing and no purpose which was not beneficial to its members and lawful under the laws of this country. And what have they done under it? They have erected hospitals. They have supplied libraries. They have cautioned their men against drunkenness. They have urged that there should be no gambling. They have in all respects and in all ways sought with such knowledge as they had to better the condition of the working man, and no one charges them as an organization so far as their printed plan and purposes are concerned with any other object and purpose. This organization grew. It flourished. Members were added to it. Money came in voluntarily by the men who were engaged in working. Why? Because they thought that it secured to them benefits which they were unable to secure standing alone. Their jobs individually were at the mercy of their employers. Their hours were long, too long for any man to work especially where it was a red hot smelter and where you were confined in the gases of dynamite underground. Their remuneration perhaps might be thought by some to be large enough but it is certainly a laudable purpose to secure a larger one if they could, and these men, who are the best judges of their own conditions, who knew the hours of toil and labor that it took to put food in the mouths of their wives, their children and themselves, and clothing on their backs, and school them, knew that this organization was of some benefit to them, that they were securing something from it which they were

unable to secure and had never secured without its aid. And so, gentlemen of the jury, the organization grew and it flourished and it existed in that way until 1899. Now if there is any one thing that is needed to sustain a labor organization, and every labor leader knows it, it is to maintain public sentiment in its favor. Now a labor leader is no fool simply because he is a labor leader. You have heard this man, this man of the pickand of the drill eulogized by Mr. Hawley as the brains of forty thousand men as the members of the Western Federation. He knows as well as you do that no institution in this country can thrive and prosper unless the majority of the American people approve of its sentiments and its practices. And so this labor organization under him, his associates and predecessors, has been ~~its~~ <sup>of</sup> conduct ~~in~~ in such a way as to meet the approval of forty thousand people who have become its members. We know the organization embraces practically all of those who are engaged in the production of the precious metals of this country. It is but natural that there should be friction which would arise between them and their employers; when the employers of this country introduce cheap labor, pauper labor from Europe and elsewhere to control and regulate the price of American labor it is but natural that there should be friction. When a company operating in the Cocur d'Alencos is obliged to pay, because of the Miners' Union, \$3.00 a day to its employes when it has employ miners of like character in the copper regions of Michigan for \$2.50, it goes without saying that the miners of the copper region will be transferred to the Cocur d'Alencos but they will not be transferred to the pay of the Cocur d'Alencos. The pay which



they got in Michigan will follow them into the Coeur d'Alenes. Now, gentlemen, that was the condition which prevailed in 1899. There was no strike in the Coeur d'Alenes. We are advised of that by this record. Also we are advised by this record that there was no strike in the Coeur d'Alene districts in 1899. A condition prevailed there where the Bunker Hill & Sullivan Mining Company were paying fifty cents to a dollar a day less on the various classes of labor employed by that company than were being paid throughout the balance of the entire district. Something will be said in the course of these remarks about the Standard Oil Company. The Coeur d'Alene district is said to be a Standard Oil district, but I don't understand, gentlemen of the jury -- because I want to be perfectly fair in my remarks, -- that the Bunker Hill & Sullivan mine was owned by the Standard Oil. I understand that the balance of the mines in the district are largely of that character but the Bunker Hill & Sullivan was not. However that may be, the conditions there were in control of practically the two companies and it appears in some of these reports that have been introduced here in evidence in the Miners' Magazine -- one is called the Federal Mining Company, which is a Standard Oil Company, and the other the Bunker Hill & Sullivan Company -- and those two companies were really the only large companies at that time that there were in the entire district.

THE COURT: Does the court understand that you are making a claim or a point of defense on the question of the title to or ownership of the property?

MR. RICHARDSON: Not at all. I will show your Honor the connection.

Wherever the conditions exist which result in the production of a Rockefeller at one end of the line and a man with a dinner pail at the other with his week's wages consumed by his family and himself in order that life may stay in him to do another week's work, you are bound to have more or less friction; and because such a man or such a number of men belong to any organization, be it a local of the Western Federation of Miners or any other organization, is no reason in and of itself why crimes should be imputed to that organization except on one side of the controversy. The organization which makes it possible for that man to secure a larger wage and shorter hours is bound to be held responsible by that portion of society which undertakes to say what that wage shall be and which receives the margin between that wage and the value of the thing which is produced. It is a convenient thing, gentlemen of the jury, and a natural thing that such a result should be brought about. I say that there was a concerted effort in 1899 in the Coeur d'Alene mining districts to make a uniform wage scale there. The people who were connected with the union were no more interested in that matter than the people who were not connected with the union. One thing a union always does, bound to do it, it cannot help but do it, it secures the same hours to the man that isn't a member of the union and the same pay to the man who isn't a member of the union in any camp where it has the control of the labor that it does for him who is a member of the union. Wherever it possesses the men who are necessary in the operation of the mines or the mills, every man who toils with his hands is a recipient of the benefits conferred by that



union upon all of its members. And so everybody in the Coeur d'Alenes, as it would appear from the evidence, more than a thousand men from Burke, from Gem, from Millan, from Wallace and from Wardner, whoever they were, went down to the Bunker Hill & Sullivan mill and there they did, according to the evidence as it appears here, commit an offense against the law in the blowing up of a mill and incidentally there occurred the killing of two men, one of whom was a union man and one of whom was a non union man. It appears by this record introduced by the other side that the Bunker Hill & Sullivan Mining Company was turning in this mill for taxation at \$60,000 and the moment that it was blown up they claimed a loss of \$300,000 by reason of that fact. It is natural, just as natural for a company to escape taxation and to lower its rate of taxation and to lower its valuation, if it can, as it is to lower the price of labor and to lengthen its hours. Under these conditions of society a tax gatherer is antagonistic to the man who has to pay the taxes, and the Bunker Hill and Sullivan People were no different than any other. Now I am not going to explain or attempt to apologize for the crime which was committed by all who participated in it in the blowing of the Bunker Hill & Sullivan mill. Haywood was not a part of it. Moyer was not a part of it. Neither one of them was even a member of the executive board of the Western Federation of Miners at that time. Pettibone was not a part of it. He had ceased to be a miner as early as the summer of 1892 and had gone into a mercantile business and remained in a mercantile business from that time on. In any event, the principal witness in this case claims that at a meeting which was held in the Burke Miners' Union hall

6

7

it was agreed to go down there and blow up the Bunker Hill and Sullivan mill. But was it a union meeting? No. The secretary of the union called the meeting to order. The president of the union was there or came in after it was called to order. The secretary of the meeting was in favor of going down, with others, and accomplishing that object. The president of the union protested against it. Part of the union was with him and part of the union was with the secretary, according to Mr. Orchard. At Gen there was no meeting of the union at all nor any pretense that there was, although many of the men who went down from Burke got off of the train and went to the Miners' Union hall where certain things are said by Orchard and perhaps by some others to have been done in that hall. But there was no pretense that it was a union meeting. There was no pretense that it was sanctioned or authorized by the authorities of the Western Federation of Miners. It is true perhaps that they did come out in a magazine which was brought into existence a year later, in 1900, and denounce it. But the affair was an old affair at that time and it was presumed that Shoshone county and its officers could take care of its own criminals. Now that thing is brought into this case as being the first matter, the first criminal act of the Western Federation of Miners which is relied on here to show the killing of ex-governor Steunenberg. Orchard says that he attended it. I don't know whether he did or not, there is some evidence that shows he did not, and he says he did. I don't care whether he did or not. He had the same motive to get out of the country that every other man had who was a member of the union. Why? Because the troops were brought in there and the



8

announcement was immediately made that every member of the union was being looked for and would be put into the bull pen if he was found in the country. Every man, be it Bill Davis, be it Harry Orchard, or any other member of the organization was on notice, guilty or innocent, a participant or non participant, that he would be rounded up by the military and taken to a stockade which was then being built in the town of Wardner there to suffer for such length of time as it might please those who incarcerated him. Of course they didn't know at that time that they wouldn't have any trial. They didn't know the length of time they would be incarcerated. They didn't know of the indignities to which they would be subjected. But any man, I submit, who was a member of the union and who was advised that he would be put under arrest had a reasonable reason to indulge in flight at that period of time whether he actually participated in the blowing up of the Bunker Hill & Sullivan or not. But I say in this case, gentlemen of the jury, that you are not going to return a verdict of guilty against Mr. Haywood because that event occurred, and therefore it is not essential or necessary that it should be discussed at any great length. The events did occur whoever was responsible for them, and I have no doubt and you have no doubt that there were in that crowd many members of the Western Federation of Miners because there were many members of that Federation in the Caspar & Alonsa mining district in 1899. It is the result of that blowing up that may give you some concern in this case, and it is to that result that I now invite your attention.

The governor of this state happened to be Frank Steuneger

berg. The governor of this state declared martial law in that district. He called upon the military of the United States for aid and assistance in suppressing an insurrection and General Merriam and the colored troops under him were sent in there to suppress that insurrection which had resulted simply in one felony, with three branches, the commission of a crime on the afternoon of April 29th of 1899. Every man went back to his work the very next day. The very day that they went down there, it appears<sup>at</sup> least inferentially from this evidence and in one of the published articles as well as the testimony, that the superintendent of the Frisco mine at Gen unlocked the powder house where the powder was gotten from which resulted in the commission or which was used in the commission of the felony. All went back to their respective homes, all went back to work, all was peace, and the officers of the law had a perfect right and it was their duty at that time to have arrested the ring-leaders and as many of the followers as they could and to have incarcerated them in jail and put them on their trial before a jury of their peers according to the law of the land. What was done? General Merriam came in there with the colored troops and was there on the third day after the explosion had occurred. No armed resistance, no mutiny, no insurrection existed that anyone could see, but this single act of lawlessness had occurred and he came in there and without warrant, without any authority of law, because military law is the absence of all law, caused these men to be arrested without warrant, without complaint, and they were incarcerated in a bull pen prepared for that purpose, more than one thousand of them, and they were kept there at varying periods for more than ten months and they were subjected to all sorts



indignities and inconveniences. Now I am not impugning the motive of any man who thought he was doing right with regard to that matter, whether it be Frank Stansberg or anybody else. To the credit of Governor Stansberg be it said that he was not on the ground himself, but that a deputy, a man who was the state auditor of this state, one Bartlett Sinclair, was in the charge and in the management of the campaign with the aid and assistance of General ~~Wendell~~ Merriam and the Federal troops. I don't know but it would have been different if Governor Stansberg had been there. But however that may be, I want to say to you, gentlemen of the jury, that if you had been driven out of that country, if you had been incarcerated in that bull pen, if you had remained there in the summer of 1899, if you had been covered with the vermin which were there at that time, if you had been subjected to insult by negro soldiers, if you had been subjected to that which was done by those who were in command over the negro soldiers, and you, and you, there would have been created in your breast a resentment and a hatred of all who had any part or parcel in that incarceration. And I want to say that it is to the credit of every man who was put into that bull pen, who was never tried, who was never complained against, who it was never ascertained by a jury of his peers or otherwise whether he was guilty or innocent, I want to say it is to the credit of those men and to everyone of them that there was no result followed which was disastrous to any of the leaders who were engaged in any degree however small in securing their incarceration in that place. It speaks volumes, gentlemen of the jury, in my judgment, for the control of this organization over

its members. Ah, but they will say, Simpkins had a motive because of the fact that he was incarcerated there for more than ten months. I will discuss that, gentlemen of the jury, when I get to it in the orderly course of my remarks, and we will see whether Simpkins controlled himself notwithstanding the fact that he may have been in there ten months. Members of this organization in large numbers incarcerated in 1899 and not a single thing that the capitalist press of this country can complain of with respect to any of the men who are responsible for that incarceration until this event occurred on December 30th, 1905, six and one half years after the matters had happened; five years after Steunenberg had been relegated to private life, long after he had ceased to be able to carry on any matter whatsoever against the Western Federation of Miners this event occurred which is promptly placed by the capitalist press of the country not to the individual who did the deed but to the body, the Western Federation of Miners, demanding almost instantly that the leaders of the Federation be punished, entirely overlooking the man who was suspected practically from the very first and who soon after confessed that he himself was guilty of that deed.

Now, gentlemen of the jury, nothing occurred until the Cripple Creek strike arose, and I shall proceed to discuss the manner and method by which that strike arose. All was peaceful in 1900, 1901, 1902 and until 1903. And it is said here that there occurred a sympathetic strike in the state of Colorado, out of which sympathetic strike a condition of crime arose which was part and parcel of the general conspiracy or a result of a general conspiracy



to get rid of persons and property that stood in the way of the Western Federation. The record reveals that the Colorado strike arose in this way: There were three mills operating for the reduction of ores at Colorado City, a distance of some sixteen or eighteen miles from the Cripple Creek district and dependent solely upon the Cripple Creek ores for their patronage. One of these mills was a private mill owned by the Portland Gold Mining Company and as such mill it operated solely upon the ores of the great Portland mine, so we may lay it out of consideration because there was no trouble between the Portland mill or the Portland mine on the one hand and the Western Federation of Miners on the other. The two other mills were part and parcel of The American Smelting & Refining Company's property. One of these was managed by a man named McNeill, an uncompromising foe to organized labor. His laborers formed a union some time in the winter of 1903. So soon as that union was formed a Pinkerton detective was employed to become a member of it and as quickly as it was found out who were members of that union they were discharged. Now the manner of handling a district like Cripple Creek is this; There will be a local union, say, at Altman, another one at Independence, another one at Victor, another one at Cripple Creek, and so on throughout the district, nine of them in all. When this union was formed at Colorado City it became a member of the district union, a part of the union of the Cripple Creek district just as much as any other part. Now when there is a district of that character the method of handling the district is by district delegates. Each union or some number of unions elect a delegate to what is called a central district

union, and that central district union handles the situation of that district with respect to all strike matters. The American Smelting & Refining Company is owned by the Standard Oil Company. That appears in some of the articles which have been introduced here in the Miners' Magazine and I take it it would be admitted without controversy even if it were not in the record. And wherever the Standard Oil Company has its properties upon the one hand and there is a Western Federation or any other labor organization upon the other, there is always trouble with respect to hours of labor and with respect to wages to be paid. Whether it takes the form of the Colorado Fuel & Iron Company in Colorado or of the American Smelting & Refining Company throughout this entire western country, or the Calumet & Hecla Mining Company in Michigan, or the oil companies by various names throughout Pennsylvania, Ohio, Indiana and Texas, wherever they are, ~~usually~~ under whatever name they are thinly disguised, there is always trouble and the laborer almost always gets the worst of it when he is in a conflict with capital, and maybe it is right that he should, I don't know. It is not right, gentlemen of the jury, that he should bear the brunt, however, of anything which he does not do. Here was this strike on in the spring of 1903. Concession after concession was made to Mr. McNeill in order to go on with the work on his property. The men remained at work so far as they could. He promised to restore those whom he had fired and he failed to redeem his promise. The Cripple Creek district people were anxious to avoid a strike but there was no way of settling the strike, there was no way of securing the right to labor upon the part of these men in Colorado City, and it was



their union which struck. It was their union which was in difficulty. It was a part of the district union, and it is not and it never was true as charged by Mr. Hawley and from one end of this country to the other that there was any sympathetic strike in the Cripple Creek district. It was the same district union and the same delegates that had charge of that transaction and that declared that strike because the mills of Colorado City had no ores to operate on except those ores which were being produced by union miners in the Cripple Creek district where the brothers of these union miners were thrown out of employment, were refused to be allowed to retain their places in the mills simply because they were members of the Western Federation of Miners. The whole controversy arose over the organization unknown to Mr. McNeill of a local of the Western Federation of Miners in Colorado City, and when he found that these men who worked for him had organized he knew that he was going to do things which would cause them to declare war upon him and so in order to be first in the field he declared war upon them and proceeded to discharge every man who he could ascertain was a member of the Western Federation of Miners and came out openly with the declaration that he would not deal with them, he wouldn't have anything to do with them whatsoever and they couldn't work in his place of business. And there the trouble began. It was temporized with from March of 1903 until August 10th of 1903, gentlemen of the jury, before the men who were producing the ore at Cripple Creek said if you do not reinstate these men whom you have discharged because they are members of our union, because they are our brothers, we will refuse to produce ore to operate

your mill upon, and if it hadn't ore it can't pursue its operations that was the condition of affairs upon August 10th of 1903. Now there had come into the Cripple Creek district at that time who? There had come there a man by the name of Harry Orchard. Who was he? He was a man from Ontario, Canada. He was a man who had commenced life weighing milk short. He was a man who had commenced life weighing cheese overweight, and he had followed it up by learning to gamble, by running away with another man's wife, by taking another name, by going to British Columbia, by deserting the woman whom he had run away with through inability, I suppose, to support her, at least she went back to Canada, according to his story. He burned a cheese factory in Ontario. He had fraudulently collected the insurance, and he was just as bad as he knew how to be. He had drifted into the Occur d'Alence. He had worked at the Maxwell dairy for a short period of time. He had been discharged. He had bought a wood yard. He gambled away his wood yard. He had bought an interest in a prospect. He had gambled away his interest in the prospect, according to his own statement. Now I pause here to observe about that interest. There was one man of all others who could have determined the exact status of the interest of Harry Orchard in the Hercules mine. That was Mr. Dan Cardener. It was to Mr. Cardener's interest to come here and say, if he could say it, that Mr. Orchard had sold him his interest in the mine absolutely, and he was in the country as it was disclosed by one of the witnesses for the State. But he didn't come here. Now it is a common thing, gentlemen of the jury, for a man to sell an interest in a piece of property by giving a deed which is absolute on its face and having



an agreement with the man to whom he sells it that it shall be collateral security; that is to say, he can pay back the money which he has got for the deed and he can take up the deed within some specified time. Sometimes there is no time specified. The deed is simply taken as security for the loan. Now Mr. Orchard says that he did not give any such deed. He says that he gave an absolute deed, and Mr. Paulson says with respect to that that Mr. Cardoner assumed control of the property from the time that he got the deed and that Mr. Orchard worked on the property bringing him supplies for a short time after that. That is all of the evidence that there is with respect to it on the State's side of this case. Cardoner, who knew better than any one else what the real condition is does not come here to testify to it, and, as I say, it would be to his interest to testify that way, if he could, because it would prevent any right of redemption if any such right of redemption ever existed. But however it may be, whether he had a right of redemption or not, we produced here a large number of witnesses that I will call your attention to a little later on in the course of ~~his~~<sup>these</sup> remarks, to whom he did talk as though he did have a right of redemption and as though he had been cheated out of that right of redemption by reason of the fact that he had been compelled to leave the Occur d'Alene country in 1899. He goes to Butte, Montana. He says he gets a card from Mr. Boyce of the Western Federation of Miners. We proved that that was untrue by Mr. Boyce, and untrue for two reasons: first, because Boyce says he did not get anything of that kind; and, second, Boyce says, and nobody disputes it, that he had no authority and could not have issued any such card if he had wanted to. He goes down to Salt Lake City and he makes Salt Lake City

his headquarters for a year or two. What has he become by that time? According to his own statement, and we pursued it in wearisome detail for the express purpose of showing you, he becomes nothing more nor less than a plain ordinary tin horn gambler, money today, none tomorrow -- all the time his mind running upon but one thing; he lived without working when he could possibly avoid it, lived with a dream in his mind, a dream that he was a dime novel hero, a dream that he was a bad man, a dream that he wanted to be recognized as such, and we find him in Salt Lake City causing a picture of his to be taken where he stands over a card table with a smoking revolver in his hand looking upon the victim of the bullet from his revolver, who lays dead upon the table, and the other man in the game of cards with horror depicted upon his face rushing to the assistance of the man who has thus been deprived of his life at the instance of this dime novel hero with the smoking revolver in his hand. I say that photograph depicts the character of Harry Orchard. It depicts the desire that is in his mind. It depicts the hereditary taint which was suggested when he was lost on the stand where his uncle he confesses committed suicide in despondency over some imaginary offense that he had committed, and where his grandfather--

MR. BORAH: No, you are mistaken about that. He said he was suffering from dementia.

MR. RICHARDSON: I asked him the question if he did not do it because of some imaginary offense, and my memory is he said he did, but if I am wrong about that you gentlemen know what the evidence was. Here was a grandfather whom he didn't know and didn't know how he came to his death, nor when he came



to his death, and yet he knew this grandfather's name. I say that the examination on that matter, I say that the photograph upon that matter shows the condition of this man's mind and what his mind was running on when he went into the Cripple Creek district in the summer of 1902 or 1903, I am not quite sure which. When he got into that Cripple Creek district he stayed there until after the strike of 1903. I believe he got in there about the Fourth of July and I believe it was 1902.

He stayed there for but a little over a year and we don't hear much of him. The strike of August 10th, 1903, occurred. The district at the time of the strike was peaceful. It remained peaceful for a period of one month and men were out on a strike. The mines were quiet, and if the men remained on strike and the country remained quiet the strikers would win. If violence of any kind or character occurred every member of the Federation knew or was bound to know that the Mine Owners would make the most of that condition, whoever was responsible for it, in order to break the Western Federation of Miners. Now let us see what happened there. There is no act of violence complained of in that quiet district during that month of August. On September 1st, the same day, two events occurred which resulted in the bringing of the troops into the district three days later. A justice of the peace was beaten up, to what extent we are not advised by this record. For what reason we don't know. Whether it was for some decision he had rendered in a lawsuit or who it was that beat him up we have no knowledge. It is fair to presume in the state

of this record and in the manner in which this country has been asked from one end to the other that if there was any connection between the beating up of the justice of the peace and the Western Federation of Miners the attorneys for the prosecution would have made it apparent. But there is nothing of that kind which appears in this case. The only piece of evidence that they bring before you is that in a district holding 25,000 people, probably five or six thousand of whom were out on strike, perhaps ten thousand of whom were out of employment because of that strike, that Mr. Stewart, this poor old unoffending man, was beaten up, as he says, by certain men who were connected with the Western Federation of Miners. Not a leader does he mention, not a knowledge of their grievance against him do we have unless, forsooth, it was because he was building a fence around the Golden Cycle mine, and for that beating of a man who was known, by men who were known, the governor of the state of Colorado immediately rushes in to the assistance of the Mine Owners' Association, the Colorado National Guard, and Holman tells you on the stand that the mines of the district were assessed to take up the warrants which were issued for the pay of that guard so-called into the district at that time. Whose servants were this militia? In whose interest were they called? What would they be liable to do and all for one assault or two assaults at most in a district of 25,000 people who were otherwise peaceable and comfortable and engaged in the administration of their own affairs and of law and of justice? Gentlemen, it was the irrepressible conflict between the capitalists who owned the mines on the one hand and the Western Federation of Miners on the other who were seeking to compel the capitalists



to make the American Smelting & Refining Company through its mill at Colorado City, by whatever name it was known, employ the fathers of these families whom it had discharged because of the fact that they were members of the Western Federation of Miners. That was the condition which resulted in the calling in of the troops on September 4th of 1903. Should we find fault with the Governor of Colorado for it? Should we find fault in with the Mine Owners' Association for demanding it? Should we find fault with the Western Federation of Miners for complaining of it? But, gentlemen of the jury, things went on in that district in a perfectly quiet manner until an event occurred which they claim now should be considered by this jury here. The first event which happened was the train wrecking which occurred on the 16th day of November of 1903, a previous attempt having been made, although we have no evidence of what the attempt consisted of, other than Scott's statement to Orchard with respect to it, on the evening of November 15th, 1903. The first time in the district that we have got any knowledge of this man Orchard he is associated with Mr. Scott, a detective of the railroad in the Cripple Creek district, and a close associate of Mr. Sterling, a detective of the Mine Owners. We find him going to them on the 15th day of November of 1903 and telling them that there is going to be a wreck, according to the evidence as it appears from Mr. Orchard and according to the evidence as it appears from Mr. Scott, he testifies that the wreck had already been attempted. What is the evidence upon that? I think it is as clear as it is that the sun has arisen this morning that Mr. Orchard and Mr. Sterling were responsible for that attempted train wrecking, and

I will tell you why I think so. Rush says, and he is certainly a disinterested witness if anybody is -- he is not a member of the Mine Owners' Association nor a member of the Miners' Union -- that on the night of the attempted wreck, nobody knowing about this first attempt at a wreck, he having run there every night and never being advised of it at all, that Scott and Sterling got onto this train and asked him where there was a good place to wreck a train, and he tells them, and they then ask him to let them off at that place. He lets them at precisely that place. They go there and when he comes back they met him at Victor, about two miles before he gets to that place, and tells him that the attempt has been made. In the meantime, after leaving them there, he has gone on to the end of his run, has turned around and come back to that place, and what does he find? His train is stopped, the headlight is thrown onto the track, and it is found on the inside -- a place where there is no danger -- of the rail on a curve there ~~are~~ have been about ten of the spikes gone and two out of the four bolts taken out of the fishplate, so that there wasn't a particle of danger in running his train on the track as it had been left. If for any reason an extra had followed or an extra had gone on before them and Scott and Sterling had known about it they took pains to see that there should be no injury to the company's property, and on the strength of that, gentlemen, the first arrests were made. And who was arrested? The leaders in the district of the Western Federation of Miners. Why? Because these men were out on a strike, because they were conducting a strike, because public sentiment must be manufactured against them, as I take it;



because, if any violence occurred it would be manufactured against them. And they knew, and later on there was a report from a Pinkerton detective that each member of the Western Federation of Miners was a committee of one to prevent a disturbance of any kind in the district, and immediately it was heralded to the world that on this 15th of November of 1903 the Western Federation was responsible for an attempt to wreck the Florence & Cripple Creek train and kill a lot of non union miners and so sympathy was started in the direction of the Mine Owners' Association and against the Western Federation, and these men were put into jail and many of them were kept there on that charge for a period of two or three months and most of them were finally discharged without any trial whatsoever. They eventually brought three of the leaders of the Western Federation of Miners in that district to trial. What was the result? The president of the union was discharged by the judge at the close of the state's evidence. Mr. Orchard, who knew, as he tells this jury, of that attempt at train wrecking and who was responsible for it, was never called as a witness in that case. Why wasn't he called? Why, if he knew about it? Because Mr. Orchard was a handy man for Mr. Scott and Mr. Sterling. Because his usefulness would be impaired if he was called as a witness for the prosecution in that case; and in the course of the trial it was developed that if any man was implicated in that attempt at train wrecking it was a man named Bookman, who wasn't put upon trial in that case, who was a member of the union and who as it now appears was a Pinkerton detective at the very time that the thing complained of was on trial and at the time of its alleged perpetration. There they

were with three union men on trial, one of them discharged by the court, two of them discharged by the jury and another member of the Federation, as it was supposed, who was implicated but who was not put upon trial at all and who <sup>it</sup> ~~was~~ turned out was a Pickerton detective. So much for the train wrecking case. I think you, gentlemen, will believe that the Federation of Miners was not responsible for that case, whoever else might have been. But in the meantime this man Orchard says that something had been done. He says that in December, 1903, he had been to Denver and had become acquainted with the leaders of the Western Federation. He says that the Vindicator incident had occurred, and I will take up that Vindicator matter and talk with you about that. Now there is no pretense that at either of those times was Orchard acquainted with any leader of the Western Federation of Miners other than those who were local to that district. He knew Parker, who is dead. He knew Kamison, who is dead. He knew Davis, who is alive and who came here as promptly as he heard Mr. Orchard testify. He knew Mr. Rasterly, who had lived there, and who likewise has been here in the course of this trial. He says that Mr. Parker told him, or Mr. Davis, I have forgotten which, that if he would touch off a carload of powder in the Vindicator mine which he, Orchard, had discovered there that he would pay him \$200 for it. Now let us see about that. Orchard had discovered a carload of powder in one of the levels of the Vindicator mine. I believe that the powder man of the Vindicator said that it was on the <sup>eight</sup> ~~second or the third~~ level of that mine. Orchard must have been very familiar with the mine. Why? Because he was high-grading on it, he had worked there, and he had become an ore



thief. Whenever he broke down any ore in the mine or discovered any that was rich, he concealed all of it that he could upon his person and he carried it away. And after he had ceased to work there he went into the mine, he went through its levels, he became familiar with it and he continued his high-grading in that mine. That was his method of making a living at that time -- at least he doesn't appear to have been doing any work other than high-grading after he got into that delectable employment. Now how did that conversation arise? Who took the matter up first? Orchard told Davis with respect to it. Davis didn't go to him. Orchard, according to his own testimony, suggested the crime to Davis, and he says that Davis offered him \$200 if he would touch off the powder. He didn't touch it off so he didn't claim that anything was due and yet he was ~~made~~ mad because he hadn't been paid anything for it and that was the reason that he told Scott and Sterling about the attempt at the train wrecking. He also said if I remember correctly in regard to that, that he did not claim anything on account of the attempt to blow up the Vindicator Mine with regard to this powder, but he was jealous because they didn't give him the job of the train wrecking which he thought was an easier job and which he thought under all of the circumstances he ought to have. So for two reasons, because he hadn't discharged the powder, because he hadn't been paid for the thing that he didn't do, and because he was jealous for the reason that he was not allowed to commit another crime that he wanted to commit, he went and told these men about this attempt at train wrecking. Well, now, after the train wrecking, which occurred on November 16th, there was ~~another~~ another event in which

Orchard said that he participated and that was the setting of a bomb in the Vindicator mine, he had been inspired to do that by Parker and Parker had told him that he thought it would be a good idea to set off a bomb down there and kill forty of those non-union men. Think of it! These men were largely those who had been members of the Western Federation of Miners, their brethren, some of whom felt compelled perhaps by necessity to work notwithstanding the fact the strike was on. Some of them were imported and non-union men. And here was Mr. Davis, a man who Orchard says had been arrested for the blowing up of the Busker Hill & Sullivan, a man who was at the head of the union or very near the head of the union in that district, hiring Orchard to set a bomb, taking him into his confidence, when as Mr. Hawley tells you there is nothing on the face of the earth that Mr. Davis wouldn't brave in the shape of danger, that you could tell it from his manner and his demeanor upon the witness stand, and offering to give him \$500 if he would go in there and blow up men who had been his brethren and men who were assets. There wasn't a leader of the union that didn't know and who shouldn't have known under the advice of Haywood, under the advice of Moyer and under his own common sense, that the one thing of all others that would be detrimental to the union would be to have any act of violence happen in that district. Furthermore, gentlemen, here was a mine which was guarded by militia, by soldiers; a cordon of soldiers was about the mine. No union man could get within that cordon of soldiers. No union man was allowed to go through the lines. And we find that this man Orchard had access in and out of the lines at all times and appeared not to be the subject



26

of arrest, under this testimony. He says he went up on the hill and experimented with the discharge of dynamite caps so as to find out the best method of discharging that bomb -- no acquaintance with Moyer, Heywood or Pettibone at that time, no claim that there was any authority from them, and having gone up onto that hill and experimented, a thing which Davis says never took place and which was subsequently modified to some extent by Orchard he went down into the mine with a man named Billy Allison, who also comes here to dispute it, and set a dynamite bomb by mistake on the 6th level when he should have set it on the 7th level. He knew that non union men were at work on the 7th level. He knew that the 6th level was abandoned. He was familiar with that mine, and he says that he set this dynamite bomb upon the 6th level without any knowledge whatsoever that he ever set any bomb there at all, because he was surprised, as he claims, that the bomb didn't explode on the 7th level at the time that the men went to work on the next shift after he had set it there. Now he says that Joe Scholtz helped him at one stage of his career in the Vindicator. We produced here the only Joe Scholtz that could be found in that district, a man who was there at that time and nobody seems to have known of any other, but Orchard says that he is not the man and so we are unable to give you any evidence as to the Scholtz who assisted him if that was not the man. Now he says that Billy Allison is the man who assisted him at the time of the Vindicator explosion. We produced Billy Allison here and Billy Allison says he had absolutely nothing to do with that transaction, and the cross examination does not reveal that he did although it was exhaustive and thorough. Now let us

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proceed to an analysis of the condition which existed there then and see whether or not Mr. Orchard set any bomb at the 6th level of that mine. In the first place, he was familiar with it. He intended to set it at the 7th level. He believed he had set it at the 7th level. We believe that he didn't know anything about it until after it exploded and then claimed credit for it as I will show you that he claimed the credit for other crimes which he had never committed. McCormick and Beck, according to Wood, who was a non union man, who never had been a member of the union and who was actually working as a non union man at that time, had been at the 7th level on that day, more than a week after the time that Orchard claims to have set the bomb on the 7th level. They were getting ready to go to work on the 6th level. They were going up there to make explorations, I suppose, of the place where to set the men to work, and so forth. Any man who has ever been in a mine, even Mr. Orchard, can tell you that you can tell the difference in conditions between a non-used level and a used level whether a mine is wet or dry. Mr. Wood says that there was powder lying upon a water barrel at the 8th level some distance from the cage. There was a water barrel there on the 8th level with some powder lying on it. He went out to get some timber within half an hour before the explosion occurred and saw the powder lying there and he described it. It is perhaps a regular and a proper place for people who have an over supply of powder to put it. You will remember that the powder boy at the end of each shift had to go through the mine and gather up the powder that was left by the men or wasn't used to be reissued to the next shift or some shift thereafter.



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When he came back, after McCormick and Beck had gone, that powder was not there. When he got back into the drift after seeing the powder McCormick and Beck were there and McCormick stooped over and his revolver slipped out or came near slipping out of his pocket and he called his attention to it. The boy says that he had two revolvers, that he had them in the house. It was a time after the troops had been called in there. It was a time when the Florence & Cripple Creek incident is said to have happened with regard to the pulling of the spikes, and it is entirely probably that Mr. McCormick, who was the superintendent of the mine, was at least liable to have carried a revolver. Whether he did or not, it is up to Wood, who saw it, as against his step son who says that he didn't have it on at that time. When they went out of the mine they went from the 8th level to the 6th level for the purposes which have been stated, and when they got to the 6th level, just a few minutes after they had gone, Mr. Wood heard this report and he hurried there to the 6th level and was there as early as any man who got there. Now let us see what the condition of affairs was at the 6th level of the mine.

I think, if your Honor please, it is no hot here that if your Honor is willing I will put in the other quarter of an hour tonight, because I cannot finish the discussion with regard to that subject and the heat is certainly very trying to all of us.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded, and a recess was taken until six o'clock P. M.

R E C E S S.

51

Boise, Idaho, Monday, July 22nd, 1907.

6:00 o'clock P. M.

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Court convened pursuant to adjournment.

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

ARGUMENT BY MR. RICHARDSON CONTINUED.

MR. RICHARDSON: May it please the court, and gentlemen of the jury, in speaking of Mr. Borah's speech this morning, and in drawing the contrast between the witness he was there talking about and the witness Harry Orchard, I said inadvertently that Orchard could not testify should he have been convicted. What I meant was that had he been convicted and the record of that conviction had been shown, he would have stood impeached and therefore his testimony would be of no avail.

There is another matter that I want to call your attention to, and that is this, that we are not on trial for any of those matters that happened in the State of Colorado, and so far as the real gist of this case is concerned, it makes no difference whether Orchard committed those crimes or whether he did not commit them so far as the real trial of this case is concerned. It makes no difference whether this defendant assisted him in the commission of those crimes in the state of Colorado or



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82

if he did not assist him in the commission of those crimes. But I am arguing the commission of those crimes from two standpoints: First, that as to some of them, Mr. Orchard probably did not commit them at all, although as I have said it is immaterial whether he did commit them or not; and second, whether he did or not, there is no connection whatever between Orchard and the defendant at the bar. I take it in reference to any crime that is sought to be established by the state in this case, the connection is as important to be shown between Orchard and that offense as it is to be shown between Orchard and the offense with which he here stands charged. That is to say, that independent evidence tending to connect the defendant with such an offense must be shown before that offense would be established in your mind as having any connection whatsoever with the defendant in the case at bar. With these preliminary remarks I will resume the discussion of the Vindicator trouble, and owing to the intense heat which we have suffered here this forenoon and this evening, I purpose to abridge this argument without leaving out any material matter connected with it and so I hope to get through with it some time during the course of the day to-morrow.

You will remember there was some testimony upon the carrying of a gun. This morning I inadvertently said that it was McCormick whose gun was seen in the lower, or the seventh or eighth level -- the eighth level, at the place where work was progressing at the time McCormick and Beck ascended to the sixth level for the purpose of seeing what work should be done there

when work should be resumed on that level. The witness Wood there says it was Beck whose gun he saw sticking out of his pocket, and he called his attention to it and it was replaced shortly before they went up to the sixth level. Now, let us follow them to the sixth level. I say it is immaterial whether they went to the surface or whether they went directly to the sixth level as is stated by the witness Wood. I cannot understand the animadversion which has been passed upon Mr. Wood by Mr. Hawley. He had every appearance of frankness and honesty when he was here upon the stand; he told his story without reservation; he told it without hesitancy; he had an answer for every question put to him; while the stepson of Mr. McCormick hesitated and basked and finally when he was caught squarely in a lie he explained -- and I want to say it is a reasonable explanation, I am not finding any fault with the young man, the impression was so great upon him caused by the event which had occurred that he was so rattled he did not know what he did say. I want to say that if he was so rattled then that he hardly knew what he said then, it is entirely possible he has got some of his events mixed still, and when he comes here now to testify it is not as probable that he tells the truth with respect to that as it is that Mr. Wood tells the truth, who comes here in this perfectly frank manner and discusses this matter openly and above board with this jury, from the standpoint of a non union man, a man opposed to the Federation, and who was doing the things at that time which was opposed to the wishes of the Federation. Now, to my mind, always whenever I can analyze an



54

event in the life of a physical disturbance, I can arrive at a conclusion much more satisfactory to me than I can from the testimony of witnesses who saw the event and whose memory upon it may be deficient. Two or three men may see an occurrence such as the collision of an automobile with a wagon upon the streets of this city. No two of these witnesses can tell exactly how that collision occurred. They cannot tell whether it is the fault of the wagon or the fault of the automobile. One will lay it to one and one will lay it to the other, and so, from the happening of the event as described by the witnesses you may still remain in doubt. But if something else occurs in connection with the transaction so that you have got a physical mark which is placed upon the one vehicle or the other, you are able to tell exactly how it happened and whose fault it was.

Now, let us see about this event which occurred on the sixth level of the Vindicator mine. Orchard had never intended to go there. An event had occurred some time before where a cage man had been shot at. It was likely then that a shift boss, -- and Beck was a shift boss, would carry a gun after that in that mine. When the shift boss went there, as he did, an event happened at that point and it was the explosion of powder. Whether it was the powder placed there, in the manner described, by Orchard who never intended to go there, under his own testimony, and who did not know he had gone to that level, -- or whether it was powder exploded by McCormick or Beck perhaps we shall never know. But let us look at the surrounding circumstances next after

the explosion occurred. It is in evidence here by three witnesses, and by a map that has been made and been received, that McCormick was found upon one side of that shaft and Beck's body was found upon the other side of that shaft. There is no showing that any gun was found upon Beck after the explosion occurred, although one had been seen upon him shortly before it. Here were these two men, one blown in one direction and the other in the other, clear across that shaft. Now, gentlemen, powder if exploded in front of two men who are lifting the bar to a cage in order to step off of that cage into the drift would never put one man on one side of the shaft and the other man on the other side. The force of powder as it explodes is expanded equally in every direction. If two men were about to get off of that cage, and if they lifted the bar in order to do so and an explosion occurred of powder which was placed outside of the cage, as Orchard says it was, it would be impossible to find one of the men on one side of that explosion and the other man on the other side of that explosion. And that is what they are all agreed upon.

Now, you will remember that there was some powder on a water barrel at the eighth level, as testified to by Mr. Wood. You will remember that that powder was gone when he came out of the shaft thirty minutes afterwards and went up to the sixth level. You will remember that nobody ever saw that powder afterwards. If one of those men was carrying that powder, and if the other man was behind him and he dropped the powder and exploded it they would have both been blown in the same direction. If he



36

exploded it in front of him -- if he dropped it as he naturally would if carrying it under his arm or in his hands one of the men would have been found on one side of the shaft as he was, and the other would have been found on the other side. Now, I do not say a man could not have dropped it in front of him, but I do say where Orchard placed the powder both of these men would have been found in the same direction as the result of the explosion, and so, gentlemen of the jury, it seems to me that this is another one of these pieces of which there are several as you will see, where Orchard claimed the credit of a crime which he had never committed, but it had gotten into this crazy imagination of his, and which he boasted of. But it is not very material whether he did or whether he did not commit it. And I only call your attention to it in this connection for the purpose of showing the unreliability of his story, especially in respect to his connection with these others.

There is another event I want to call your attention to. Major Naylor found a wire when he got down to the scene of the explosion, and that wire had been folded up and introduced here in evidence and passed to this jury to examine. Mr. Holman who was there as soon as Naylor was, yes, I believe, before Naylor was, -- yes, I am sure he was there before Naylor was, -- and Mr. Holman found no wire and no bar at all, and he so testified with respect to it. Some of them found an iron bar, some of them found a wooden bar and some found no bar at all. Orchard's story was connected with the bar and a wire which discharged the

gun which exploded the caps, which exploded the powder which he says he had placed there. Now, there is another bit of evidence I want to call your attention to. The stepson says that he found on that level some pieces of paper afterwards, of a kind of powder which was different from any they used in the mine. Now, gentlemen of the jury, there is no one that would have had the hardihood to come here and tell this jury that if dynamite was exploded there would have ever been any paper found at the scene of the explosion. Whatever else happened you would never find any gunpowder or any paper that surrounded any powder which had ever been exploded. If he found pieces of paper there and he says he did they must have been placed there for a purpose or they were pieces of paper which had found their way there through some unexplained cause. They could not have been paper which surrounded powder, because that would be impossible.

Now, in connection with this Vindicator explosion we have then Mr. Kasterly denying that he exploded the caps; we have Mr. Joseph Shultz saying he had never been there at the time of the explosion of the carload of powder; we have Mr. Joseph Wood who shows that the explosion occurred through an accident; we have Mr. William Aikman denying any connection with it, and we have Oney Barnes denying any connection with the making of any bomb to blow up the Vindicator coal bunkers; and we want to call your attention to the subject of the testimony given by this stepson. He found a roll of powder, or some sticks of powder wrapped in a paper in the powder house which were said to have



been put there by the fireman. Now, on his examination before the coroner's jury that was all of the powder that he ever found. He was examined with respect to that and so testified. Now, powder tied up in a bundle or wrapped in a paper did not confirm Mr. Orchard's testimony. If anything, it had a tendency to disprove it, and so when he comes here, notwithstanding his testimony before the coroner's jury, he had found two bundles of powder, one of which was wrapped up in a cloth and which was turned over to him by the firemen, and even then with all of his attempt, it does not confirm Orchard's story with respect to that powder, because Orchard says that he tied that powder up, that he put a burlap around it and then he soaked the burlap in pitch so as to make it look like a lump of coal, he had the powder together giving a cylindrical shape to it, then a lot of burlap put about it and it was filled with pitch or coal tar so make it look like a lump of coal. But that is not the condition of the powder that is testified to by this boy, so he is disputed by everybody in connection with that case, unless it be Mr. Mayler who claims to have found the wire and the pieces of revolver. Now, we don't know whether this revolver was Beck's or not. I do not say that it was, but I do say that a revolver was seen upon Beck shortly before. I do say that none was found upon him after the explosion. I do say that he was carrying it in such a manner that he was liable to lose it out of his pocket, and if as he stepped off from the cage his revolver was discharged in such a way that it discharged the powder or the powder was dropped in

such a way that it became discharged at the time the revolver fell it would account for the condition of this iron, but I don't pretend to explain that; I don't know, gentlemen of the jury. I want to be fair. I don't believe that anybody knows with respect to it, but I do believe that you gentlemen will be satisfied that Mr. Beck carried a revolver and some how, in some way, either in attempting to change that revolver from his pocket, or do something with it, as he stepped out of that cage on that day this powder was caused to explode whereby he was blown in one direction and Mr. McCormick was blown in another direction. So much for this Vindicator matter.

The next place that we find Mr. Orchard is on his trip to Denver in the month of December. How does he go to Denver? As the guest of Mr. Scott. After his talk with Scott and Sterling. Why has not Sterling come upon this stand to tell this jury about it? What is there about Sterling that would prevent his testimony, if that which has been said with reference to him is untrue? He has been pointed out here as being in town; he has been testified to as being in the room, and before this jury Mr. Hawley called Mr. Sterling in the forenoon of the last day of this trial, before the trial was rested in the afternoon, but Mr. Sterling was never put upon the stand. What is there about Sterling's story that he don't dare tell to this jury if he had no connection with Mr. Orchard? We find Scott, according to his testimony, and according to Orchard's testimony, taking Orchard as his guest to the city of Denver in the month of December, and according to



Orchard that is the time when he first met Mr. Moyer and Mr. Haywood, and Mr. Pettibone some time after that in the month of January. Now, if Orchard has got to be corroborated by independent testimony with respect to that trip to Denver, where does it come from? Whose name does he mention as ever having been seen with this defendant and his associates? Where is the man, the woman or the child who ever saw him paid any money? Where is the testimony with respect to the fund that it came from? Mr. Hawley in his opening statement to this jury told you that he would prove beyond a peradventure that the funds of this Federation had been depleted, that they had been furnished to Orchard and to other murderers who were hired by the Western Federation, but there is not a scintilla of testimony in this case sworn to by anybody, or suggested by anybody, that one ~~cent~~ single dollar was ever gotten out of the Western Federation treasury by Orchard at any time, at any place, under any circumstances, except by this man Orchard himself. Orchard's testimony standing alone upon that proposition is insufficient. Orchard's testimony is disputed by both Moyer and Haywood. Moyer and Haywood are in worse plight, to say the least, than Orchard is in respect to their testimony. Their testimony may be to save their lives, but Orchard's testimony is testimony to save his life also as we shall see before we get through with this argument.

Now, Orchard testifies to going back therein January. He testifies to different people that he saw,-- not a word of connection with Messrs. Moyer and Haywood except that at a meeting

where there were twenty of them present to discuss general matters in respect to the Federation, Orchard was one of the men, he being a delegate to the convention which was called by Mr. J. C. Sullivan, President of the State Federation of Labor. No criminal connection. No statement that at that meeting there was any crime talked of or agreed upon or paid for. No witnesses coming to corroborate Mr. Orchard upon that or upon any other matter connected with this defendant and his associates. And then it was that he stayed around Denver for some little time, and afterwards went back to the city of Cripple Creek, and was there in attendance upon the trial which he says that Moyer went to. Now, is it corroboration -- is it corroboration, gentlemen of the jury, the story of Orchard, that because there was a criminal trial on there in which the Western Federation men were indicted and interested, that Moyer saw him? If so, any one who was connected with that trial could just as well be here and be on trial as the defendant Moyer or the defendant Haywood. There was no pretense that so far as that case was concerned Orchard was any different than any other member of the Western Federation who was in attendance upon the trial. And all the while here was this knowledge that Scott and Sterling had, who were conducting and assisting the prosecution in that case, but Orchard was never called as a witness; Orchard, associating with the Western Federation members, on friendly terms with those members, and yet he, Orchard, unable to give them any other testimony which would secure a conviction, and unwilling for some reason



to furnish the testimony which he said he knew existed, and which he pretends to have told Scott and Sterling of at the time the attempt at the train wrecking took place. We think that you will take Mr. Orchard's testimony with a long grain of salt upon that matter. He testifies that Mr. Moyer gave him \$50. upon one occasion in Cripple Creek, and \$100. upon another occasion while he was there. Neither one of those occasions did anybody see them. Moyer denies it emphatically. Orchard has no corroboration upon it, and standing without corroboration, the statute of this state forbids you to take it, because I take it that it is just as essential that Orchard should connect ~~with~~ these men up with himself in some way that is tangible with respect to the offense that is complained of, as it is with respect to the particular offense that is charged here against the defendant at this bar, and which the defendant is here on trial for.

Now, the next relation which Orchard ever had with these men or any of them, was the time when he came back and was employed to go down to Telluride -- to go down on the Telluride trip. Orchard says he was sent for. Does the state produce the men who brought that message? No. Does the state give you any independent evidence with respect to that matter? No. There is no such evidence, and it cannot be produced or the state would have produced it. In reference to that message Orchard says that in response to it he went to Denver. Moyer says that he came to Denver because the strike was on in the Cripple Creek district,

and he came to headquarters to inquire where would be a likely place to go in order to secure work, and he had concluded that he would go into the San Juan country. Meyer told him that Telluride was not the place; that Ouray was already loaded with miners who had been deported from Telluride, and Silverton over the hills and beyond in the mountains was suggested, and Orchard said he would try Silverton, and bought his own ticket to that point, and he would accompany Meyer on his trip down to Ouray. Is there any corroboration of the commission of any crime in that? Even Orchard don't claim that that constitutes any corroboration of the commission of a crime. Mooney, Evans, Warjon, although I am not quite sure that Warjon had been beaten up at that time, but Mooney and Evans, and one other man, I mean, who belonged to the United Mine Workers of America, had been beaten up in that same section of the country by men who were reported to be detectives from the Reno detective agency, and Gregory was one of those men. It was perfectly natural and proper for Mr. Meyer to take steps to guard himself on this trip to Ouray where his business called him, and where he or any other citizen of the state of Colorado had a right under the law to go, no matter what the fact might be, with reference to his safety in going. And so, shotguns were procured. Is there any corroboration in the fact that the Federation bought shotguns for that purpose in that Orchard was the committer of crime by their suggestion and their employment? I think you will hesitate a long time before you see any such matter as that constitute corroboration. Every thing



was open and above board. Even Orchard testifies to that. This man had a right to go there, he had a right to arm himself, he had a right to carry weapons so long as they were not concealed, and he had a right to carry concealed weapons upon his person in a community in the absence of a statute or municipal provision to the contrary.

He went to Ouray and was arrested, because some time before that in the city of Denver, Mr. Heywood had caused a picture of the flag of our country -- of Old Glory -- which is as much thought of and as much revered by the Western Federation of Miners as it is by any combination of capitalists who use it for their purposes in the entire world, and he had had printed on it some ostensible truths with respect to the state of Colorado. One was that habeas corpus was a thing of the past in Colorado; another was that the troops were hired out to the mine owners' association in Colorado; and so there weretwelve or thirteen -- there were thirteen statements that were made upon that flag, and you can take that flag and look at it and apply it to this evidence in this case as applied to the state of Colorado, and you will find that every statement made upon the flag is indubitably true in respect to that statement. It was no disrespect to the flag; it was no violation of law; it was nothing upon which there could be anything but pretense made for arresting this man, and he was arrested because he was the President of the Western Federation of Miners, so that they could put him in

the bullpen in the city of Telluride the very day he got to Ouray on the 23rd day of March.

It is in evidence here that he telegraphed the governor of the state of Colorado, "Will the deported miners be allowed to return to their homes in Telluride and will they have the protection of the military if they go there unarmed." And the governor of the state of Colorado without replying frankly to his telegram, sends back a telegram that, "I have no hesitancy in saying that men unarmed will be allowed to go anywhere within the state of Colorado, but the massing of armed men and the marching of them in the state will not be permitted;" a thing that had not been asked, and at the very moment of answering that telegram he had declared Telluride to be in a state of insurrection and the plans were laid for the capture of Moyer and for the holding of him in the military bullpen from the 23rd day of March until the 12th day of June, when a writ of habeas corpus was gotten in St. Louis of a federal judge, notwithstanding the decision of the Supreme Court of the State of Colorado which has been introduced here in evidence, and then they trumped up a charge against Moyer that he had killed Rexey McGee on the 6th day of June of 1904, at the time of the riot in the town of Victor, in the county of Teller, three hundred miles from the place where he was at that time suffering incarceration in the military bullpen. And they took him and held him in Telluride for some time after that until they finally discharged him without trial.



When the writ was granted in the city of St. Louis, the first thing that was done was to turn him over to the civil authorities without any warrant at all, and the next day to swear out a warrant against him for killing a man whose name was not even mentioned. I say it speaks volumes upon some of the conditions which existed, which I want to weave into your minds under this evidence, so that when I come to show, and to analyze what has been done in respect to this Steunenberg matter you will have some power to discern what there is behind this prosecution and why it is that Orchard stands on one side dressed and clothed as he does, and in safety as he is when he is the self-confessed murder of your late governor, and the attempt is being made to secure the lives and the blood of other men, who as men would not be counted or thought of for a moment, who if they were guilty of these offenses in Colorado would be left to Colorado law, but who are here for the purpose of using this as a measure by which they can be put out of the way at the instigation and for the benefit of those whose names I will mention hereafter in the course of this argument.

We are not allowed under the conditions of the record of this case to discuss the deportations, and we will not do that. We are not allowed to discuss conspiracies as applied to the Pinkertons or to the Mine Owners' association, and we will not do that, but we are allowed to discuss the conditions so far as they affect those men whom we are here defending, and one of whom is

now here on trial. And if I say anything beyond and over the line which has been laid down by the court it will not be with any intention of violating his instruction in regard to that, and he will put you back on the track if I should overstep the line.

Now, so far as this Telluride-Coray trip is concerned, there is no element of criminality in it so far as "rehard states, and so I will not spend any further time upon the discussion of that. I pass now to the event which resulted in the death of Lytle Gregory. Lytle Gregory was a Reno detective. Lytle Gregory had never had any connection with the Western Federation of Miners. Now, I say that broadly. There are probably no two men in the world who know more about that than Mr. Sabin who testified here on the stand and myself, and the true state of the condition appeared from the examination and cross examination of Mr. Sabin. There was a strike on at Idaho Springs in the summer of 1903. In January of 1904, after the departing of the leaders of the local union of the Western Federation of Miners there was a trial with respect to that matter. Thirteen or fourteen men -- fourteen men were put on trial. Sixteen men were complained of, I need not state who two of them were, they were not apprehended and they did not appear for the trial,-- they were not arrested,-- they appeared to be beyond the jurisdiction of the court, and the case was tried without them; and when the state rested its case the matter was given to the jury without a single syllable of testimony upon the part of the defense, and



each and every one of those men were discharged. The evidence shows that Mr. Sabin tried the case, or assisted in the trial of it, -- another great lawyer by the name of Ralph Talbot, a man whose reputation is as wide perhaps as that of any man in the state of Colorado, tried the case with all the vigor that he possessed, with all of the unlimited wealth at their command, with a detective agency behind them, they labored night and day and long and well to secure a conviction in those cases, and it is no credit to the man who was defending them, and he don't claim any credit for the defense at all. The case was so weak that standing alone it fell of its own weight, or lack of weight, on the part of the state's evidence. All that they could do, all that they could produce, all that they had was insufficient to require the defense to place one single witness upon the stand in that case. And Lytle Gregory was not a witness in that case. He was a detective and he ~~was~~ had been employed, but there was no animosity there that could be known with respect to that case except that it grew out of the deportations, and no one declared in that case, or contended in that case, that Lytle Gregory had any part in those deportations at all, but Mr. Sabin comes here and he says to you that Lytle Gregory was expected to be used as a witness upon the trial of the subsequent cases when they occurred in Central City. The fact of the matter was that the local union was in Idaho springs. The property which was destroyed was just over the line in Gilpin County. The charge in

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Clear Creek county, which is the county where Idaho Springs was situated, was a conspiracy to destroy property. The charge in Central City, the county seat of Gilpin County, was the actual destruction of the property. So, gentlemen, you see it involved precisely and absolutely the same evidence, and if Lytle Gregory had known anything, or had been an important witness in that case, he would have been upon the stand in the Georgetown case, and this thing is a myth of his being a witness in the case at Central City because no one expected him to be, and no one ever asserted that he knew anything about the case, much less himself, and so there was no animosity I say, -- and I say it advisedly, there is no animosity shown by the record. It would not be a particularly important matter if it were, because Haywood and Meyer did not know anything about the killing of Lytle Gregory, and Pettibone is not on trial, and Orchard does not know, or does not say that he knew anything about it until he told them afterwards, and then he says he drew a hundred dollars on account of the killing, with no evidence to support it. It is of no great importance. But Lytle Gregory was described, his name was mentioned, and it was generally believed that he was the man who had beaten up several members of the United Mine Workers of America who were in the field conducting what was known as the Trinidad strike against the Colorado Fuel & Iron Company, and the Victor Fuel Company of the state of Colorado.

Warjon had been beaten up at Sargent, over near Gunnison, on the very line of road that Mr. Meyer had to go; Mooney and



Evans were on the stand, and they had been beaten up at Pueblo right on the line or near the line where Mr. Moyer had to go; and Mrs. Kid Waters told you about her husband being absent, and his connection with Lytle Gregory about that time; and Mr. D. C. Scott comes here and he tells you that he himself at the time of the beating up of Warjen was on the road between Paonia and Salida, and Sargent is about half way between Paonia and Salida on the Rio Grande road. Of course Scott was not there at the time Warjen was beaten up. I say, if there was any motive for his slaying of Lytle Gregory the motive must have come from some man who had been beaten up or was connected with the United Mine Workers of America, but I don't say that there was any motive upon their part; I don't say that they would do it; I don't believe that they did do it. The character of Lytle Gregory was such, his history was such, his movements were such, that anybody almost might have done it, and Orchard may have done it. I don't care if he did do it; where is the connection between Orchard and our people with respect to the killing of Lytle Gregory if he did kill him? I don't know whether Captain Loomis' name has been mentioned here in the course of this trial or not.

MR. BORAH: No, it has not been mentioned.

MR. RICHARDSON: I don't think it has, and I will refrain, Senator, from mentioning him, for I don't want to go outside of the record. You will bear in mind, Senator, that I have been four years defending some of these cases and it would not be

at all astonished' if I might make some slip in some of my statements, but I will endeavor not to do so. I desire only to be fair with everybody connected with this case, and especially with this jury, and I ask you to keep close track of every statement I make and everything that I do to see whether or not I do not attempt to be fair with you in the discussion of this case. There is therefore, so far as Lytle Gregory is concerned-- whoever assassinated him -- no connection that has been proven by any independent testimony, nor will there be any claim upon that score by Senator Borah or by any one else. The only claim that Orchard himself makes with reference to it, standing alone, is that he afterwards talked with Heywood, with Pettibone and Simpkins in Simpkins room in the Granite Building and he told them that he did it; and he says that some one of them said it was a fine job. No pretense that he got any money in the presence of anybody. No one comes here to corroborate him with respect to that matter.

Now I want to call your attention to this, gentlemen of the jury, I have said something about corroboration in the course of my remarks, and I have defined to you what corroboration is under the statute. It is not corroboration to say that Orchard killed Gregory and that somebody saw him do it; it is not corroboration that he was in Denver at that time and that he could prove it. If such were the case, there is no evidence of it. It is not corroboration that he had a shotgun and that he could show the shotgun; that would not be the kind of corroboration



which is defined by the statute of this state. The corroboration which he wants is not on a confession which involves him, under the statute, but it is the sort of testimony which enables him to prove, added to his own proof, that Mr. Haywood paid him some money for that matter. If the corroboration depended upon some independent event connected with the transaction, it could be illustrated perhaps by an American play which has been much in vogue in this country in the last few seasons. A man was out all night who had been attending the St. Louis Fair; he came home in the morning and his wife reproved him for being out all night, and he told her the fact of the matter was that he went up in the Ferris wheel in the fair grounds, and the wheel got stuck and he could not get down, -- they could not get it moving until morning and there he was away up there in the air and he had been compelled to stay there all night. Well, she says, you can't put any such fish story as that down me in the condition you are in this morning, for I don't believe it. He says, it is so and if you don't believe it come out there and I will show you the wheel. And that is the kind of corroboration Orchard has in this matter. He says he got money from Haywood, and he says, if you don't believe it, why is here is Haywood on trial. How is that corroboration of the fact that he got any money from Haywood or that Haywood knew anything about it in any way, shape or form, and Haywood says to you that he did not. Haywood at least is as credible a man as Orchard. Haywood comes here under no ban of the statute. Haywood is confessing to no crime. Mr.

Orchard is the man who is confessing, and as I will show you before I get through, the purpose of his confession is as clear as the sun that shines at noonday from a cloudless sky. So much for the Lytle Gregory matter,-- entirely without corroboration.

Orchard pretends to have remained in Denver. The convention of the Western Federation of Miners is going on, and he remains there until that convention, through the meeting of the executive committee, according to his say so, and yet no living soul is produced here that says they ever saw him until the convention opened. Haywood says he believes, but he is not sure, that he saw him there at the time of the opening of that convention upon the 23rd day of May of the year 1904. Now the next event of any importance was the blowing up of the Independence depot which occurred on June 6th of 1904. Orchard, you will remember, had planned a trip to Wyoming, prospecting and fishing, with Joe Neville. Orchard, you will remember, had burned Joe Neville's saloon. He did not tell us about it in his direct examination. He told us of every crime that I knew of that I called his attention to on cross examination. How many has he committed that we don't know about? If he was frank with us in this history of his life, why didn't he give that to us, and all these other things when he was giving his direct examination to this jury for two days, and telling all these crimes which connected the Western Federation of Miners? Orchard had burned Neville's saloon; he had collected the insurance; he had gotten the money from Neville for that act, and yet under his testimony he was in Denver up



to the time of the holding of that convention, and there at the very moment that the peace committee was appointed to go down to Victor and confer with the mine owners in regard to a settlement of the strike. Look at the condition which prevailed in Gripple Creek at that time. The strike had been going on for nearly a year; everything was peaceful after the Vindicator explosion; the courts had tried and determined the train wrecking case; a condition of peace prevailed, and the strike also prevailed. Nothing to interfere with anybody. On April 24th the troops were withdrawn. On May 30th a Decoration Day parade occurred, and those opposed to the Federation got out threesor four hundred people for their parade in the morning, and on the afternoon the Western Federation got out 2500 or 3,000 people in a parade. There was the condition that prevailed shortly prior -- one week prior to the 7th day of June, 1904, and Orchard claiming that he was in Denver, and yet at the same time admitting that some time along there he had burned Neville's saloon; had gotten the insurance and arranged a trip to Wyoming; had purchased a team and was already, so far as he was concerned, to move out of the district. When did he do that? When did he make those arrangements? Did he make them all between the time the peace committee went down on Friday night and the time when they returned on Sunday to Denver? I think you will look in vain for a long time to determine that fact from Orchard's testimony, and yet he was down there, so he says, and I presume he was. As far as I am

concerned I don't care whether he was or not, on the 5th and the 6th days of June, 1904.

He had prepared his team, -- he had moved out, down in the canyon on the road to Colorado Springs on the afternoon of the day of June 5th and he returned that night on horseback to Independence where he perpetrated the awful crime which hurled fourteen souls into eternity and maimed others. Where was Neville? Neville and his boy had gone with him down on that trip into that canyon; they were there on that night. The elder Neville is dead, -- and dead as this record shows from natural causes. The younger Neville was in this court room -- marched in here day after day in the presence of this jury, guarded by a Pinkerton detective especially assigned for that purpose; brought here day after day before this jury, -- called in a feeble voice on the last day of this trial and then never put upon the stand at all. I say, gentlemen of the jury, you have a right to infer from that fact, from the fact of his not being called, that there is something back of all this which makes that the prosecution -- not so far as Mr. Berak and Mr. Hawley are concerned, because I have no fault to find with either of those gentlemen, -- I believe every jurymen, the court and everybody else will say that this case has been tried fairly and decently by the attorneys upon both sides, -- but somewhere is an influence which kept young Neville off of the stand when he was here in this court room and might have given valuable information to the jury in this case. It is a significant fact that Neville was down there



in that canyon, this boy,-- this fourteen year old boy then,-- this seventeen year old boy now,-- that he stayed there all night, and he probably knew something about Orchard's movements and probably could have testified to them, and this man claimed to have gone back there and to have pulled a wire which resulted in the killing of these fourteen men.

I want to say to you, gentlemen of the jury, who ever pulled that wire, by whosoever direction, under whatever instigation, that to my mind this evidence discloses there was no intention upon the part of anybody of killing anybody at that time, at that place. It is true that this depot is one which was used by men getting off to work on the Flindley and perhaps the Vindicator mine, and in returning to their homes in Victor and Gripple Creek. It is true that the shift would take the train which comes along there about the time of night that the explosion occurred; but significant as this testimony in this fact, that from the time the train appeared or whistled around the curve there was ample time to come from the mine and to get on to the train while it was getting into the depot, stopping, and getting ready to start out again. Now, Orchard explained that he did not want to blow up the train because this man Rush was the engineer on the train. The testimony discloses that Rush was not the engineer on that train, but I want to be just --

MR. BORAH: You say that Orchard testifies to that?

MR. RICHARDSON: Yes, he may have believed that Rush

was the engineer. I think you will find I am right on that Senator. He may have believed that Rush was the engineer on that train and he gives as his excuse for not wanting to blow up the train there, because Rush was the engineer and had given valuable testimony for the Western Federation at the time of the spike pulling case, and that therefore he did not want to kill Rush. But the evidence discloses that the method of coming to that depot was at a time when the train was coming in. He had no expectation and no right to expect that any man or any number of men would be at this disused depot where a ticket could not be bought at any time before the train arrived there, because all there was to it was to step down that hill and step on that train as it came along. For some reason or other the men came down that night a little before the train got there. It may have been that the train was a minute or a couple of minutes late, -- I am not quite sure whether the record discloses that fact or not, but however it may be the testimony of Orchard himself discloses that he pulled the wire when the headlight of the engine came around the curve in the distance.

Now, gentlemen, I say that the blowing up of the Independence depot, surrounded by the circumstances which accompanied that blowing up was the most suicidal, the most insane, the most idiotic, the most absurd thing that could happen to the Western Federation of Miners in conducting that strike. It had become peaceful, -- every man had constituted himself -- in the language of one of the Pinkertons -- a committee of one to



preserve the peace and quell disturbance, to see that nothing should happen, and it had been reported so to the Pinkerton agency. The most beneficial thing that could possibly occur to inflame public sentiment against the Western Federation would be to have some casualty occur in the district which could be charged to the Western Federation of Miners,-- something of a startling nature. What more opportune time -- what better place -- occurring as it did right after the ~~explosion~~ exhibition of the parade and right at the time when the peace committee had been in the district, although it is not pretended by Orchard that the peace committee was responsible for it,-- than to have an explosion of dynamite at this disused and inconsiderable depot which could be damaged two, or three or four hundred dollars and be made as an excuse to exterminate route and branch this union which was trying to control wages and to control labor to the end that those who belonged to it could have employment in the mills at Colorado City and in the mines at Cripple Creek,-- to help them wage their side of that industrial conflict which was taking place there in that district? Whoever did it, whoever was responsible for it, if he was connected with the Western Federation of miners was the most consummate fool that ever occupied a position with any organization, be he high or low in its councils, and I have yet to hear any man from the other side or from any other source say that this defendant and his associate are fools. They knew the consequences of anything happening in that district which would change it from the banner district of

all of the Western Federation of Miners to a district where a Federation man could not even get a job under any circumstances whatsoever. I say that the circumstances disclose that there was no intention of destroying a single human life nor property of any considerable value, but it was the best thing that could occur for those who were opposed to the Western Federation, and the worst thing that could occur for the Federation itself.

Ah, but it is said that Steve Adams is charged by Orchard as being one who assisted him in the blowing up of the Independence depot, and why didn't you call him; we had him down here, -- we brought him here for your use, although they never said that to us until the final argument. "We brought him here for your use." He was charged with Orchard here. Why didn't you put him on the stand, gentlemen? I will tell you and I will show you further a little later on, I will elaborate upon it and I will tell you -- Steve Adams was put in that penitentiary -- the testimony shows what influence he was subjected to, the same which Orchard had been subjected to, and the testimony shows how Orchard worked upon him and how they ~~xxx~~ <sup>wrung</sup> and extorted from him a paper which he has repudiated, and neither the defense nor the prosecution would put Steve Adams on the stand. One had his confession and the other had his repudiation, and it was six of one and a half dozen of the other. We might be frank about it; if we put him on they could take his confession and cross examine him; if they put him on we would get his statement



and his cross examination would then be on his repudiation, and one was afraid and the other didn't dare to. Now, that is all there is about the Adams matter. Nobody knows just what effect it would have had upon the jury; nobody knows under those circumstances, but we will analyze the facts, gentlemen of the jury, as they were disclosed in that penitentiary, if God gives me health and the breadth of life until to-morrow when I get through with this case, and we will see what is the reason why it should be flaunted in our faces in this court room, why we did not put Mr. Steve Adams on the stand when they had brought him here from northern Idaho where he is charged with taking human life.

There is a big difference between putting a man on the stand in another man's case when he is to be tried for his life, and putting him on the stand in his own case, and I might just as well pause here to remark by way of passing that the only reason that ever justified any lawyer who has ever tried a law suit, in putting Mr. Moyer upon the stand in a case in which he was not being tried, where he is charged with the crime of murder, is because there was not a scintilla of testimony under the law other than the ~~unsubstantiated~~ unsupported statement of Mr. Orchard which is insufficient, which involved Mr. Moyer in no way, shape or form. That is the reason that Mr. Pettibone was not put upon the stand. Pettibone is on trial for his life. He is charged with the killing of Steunenberg. He has had some ostensible and visible connection with this man Orchard, and when

his case comes to trial he will explain it and show to the twelve men who are trying him what his defense is; but no lawyer would allow him, who has ever had any experience in these matters, to go into another man's case to assist him in his defense and furnish food for them to examine and cross examine him on when he comes into the trial of his own case. And had Mr. Moyer been similarly circumstanced you would not have heard his voice in this case. So much in passing for that matter. I advert to it now, but I shall discuss it at some length I trust when I get to that portion of my remarks a little later on.



To go back to the Independence depot: Fourteen men were hurled into eternity without any design or intention so to do, in my judgment, whoever did it, whether it be these men Orchard and Adams or anybody else. And what do we find the next day? We find this man Sterling telling Mr. Blizzard over the telephone "Call off the dogs," -- dogs which are on Orchard's trail, which have started down the canon. "Call them off, we know who did it, it was Steve Adams." If Mr. Sterling didn't tell Ike Blizzard that why didn't he bring his complicity onto the stand here to testify to this jury with regard to it? Why should he come from Colorado to Idaho to refute that testimony, if it could be refuted, and then turn around and go back to Colorado without saying anything to this jury about it? I am curious to know what explanation can be offered if the Western Federation of Miners is responsible for that deed. I am not saying who is responsible. I don't know. I am forbidden to argue it, as I understand the court's instructions upon that point, but I am saying that this evidence discloses that K. C. Sterling, the chief detective of the Mine Owners' Association, knew on the 6th day of June, the morning when this explosion occurred, he knew on the afternoon of that day or at least he told Blizzard that he knew who was responsible for the blowing up of the Independence depot, and no arrests, no pursuit, and when this ignorant, this ill bred, this uneducated, this good-for-nothing bloodhound, which had no college education according to Senator Borah, was put upon the trail and was hot upon it he was called off by Mr. Sterling because it was said that he knew who was responsible for it. Where did Sterling get his information? Now there were only two ways that that could possibly

occur. Sterling was either a party to the blowing up of the Independence depot and therefore knew it, or Sterling got his information from Harry Orchard, and you can take either horn of the dilemma that you please. If Sterling got his information from Harry Orchard he must have gotten it, gentlemen of the jury, before the explosion occurred because Orchard left immediately afterwards and neither he nor Sterling nor anybody else pretends that he ever saw him afterwards. If Sterling knew it in advance then Sterling is as responsible for it as was Orchard or Adams if as a matter of fact Adams associated Mr. Orchard, and Mr. Orchard was the one who was responsible for it in the primary instance. So, gentlemen of the jury, I think that you will say that in every spot and place there is no independent evidence outside of Mr. Orchard's of any kind or character with respect to the blowing up of that Independence depot. Davis disputes absolutely any part in it. Mary J. King, her daughter Frances King, Mrs. Petchyew and Mr. Aller all describe the intimate character of the association which Mr. Orchard had had during that winter with Mr. Sterling, and Mr. Orchard himself does not deny that he told Mr. Scott and Mr. Sterling with regard to the spike pulling case. The intimacy thus created extended throughout the spike pulling trial and there is no reason in conscience or anywhere else why it shouldn't have continued down to the time of the blowing up of the Independence depot. And if it did not, why didn't Sterling come here and tell us about it on this stand? Orchard went to Denver. Orchard reported at headquarters, according to his say so. No support to his testimony. Orchard got \$300 through Pettibone from headquarters. No support to his story. He or the State



has got to prove by independent facts and circumstances, and it cannot be done, that the Western Federation or the leaders of the Western Federation were connected with that transaction. There is no such proof here and I propose to analyze now some of the statements of Orchard to show you gentlemen that such a condition of affairs never took place. Here was a man reporting to the Western Federation the commission of a dastardly crime. Here was a man who at its behest and under its commands through some of its subordinates had killed two men and had attempted to kill a number of others in the fall of 1908. Here was a man whose every habit and whose every characteristic at that time demanded money, and yet with this leverage upon the Western Federation, with this command of its treasury, with the power to say to them "Give me that which I want or I will tell the public on you," he was suffering for the lack of money to such an extent that he confesses to having committed a crime so as to secure from Mr. Neville the paltry sum of one hundred dollars of insurance money which Mr. Neville could collect after the time that the crime was committed. Does it stand to reason? He goes to Denver after the blowing up of this Independence depot and Mr. Sterling, the chief detective of the Mine Owners' Association, knows where he has gone, knows who he went with according to all the testimony in this case, because it appeared in newspaper publications that I will call your attention to a little later on that have been introduced here and have not been read, and he is uncollected. And, according to his story, he goes to headquarters and asks for what? He asks for the sum of \$300 and he says that Adams blows in there and asks for the sum of \$200, and he takes his

\$300, the amount that he asks for, the amount that he receives, and he tells you this ridiculous story that in two days' time he sends back from Cheyenne, Wyoming, for \$500 more. No pretense that he needed any more. No pretense that he was out of money. The only excuse he gives for it is this, that he had changed his mind when he got to Cheyenne and had come to the conclusion that instead of going on this fishing and hunting trip he would go onto the state of California. Well, say that that affords some excuse. We trace him to Thermopolis, Wyoming. But I pause a little bit in Cheyenne, to call your attention to a condition which existed there. It is suggested that some condition existed which caused Davis and Copley and Neville and Orchard to stop and meet at the town of Cheyenne. So soon as the Independence depot was blown up, gentlemen of the jury, the Western Federation was charged with it. You have had evidence in regard to what occurred in Cripple Creek on the afternoon of that day. C. C. Hamlin, the prosecuting attorney of that district, appointed on that day and remaining so since, has been here in this court room, came here to testify and was not called to the stand -- C. C. Hamlin arose on a platform wagon in the town of Victor on the afternoon of June 6th, 1904, and delivered a speech which started a riot wherein Sterling fired the first gun, and he does not pretend to deny it, and neither one of them come here to deny it, and the Western Federation in that speech were charged with the responsibility, and C. C. Hamlin was at that time the secretary of the Mine Owners' Association, and he says "It is up to you men now to go out and drive every man of them up over these hills and out of the district;" and somebody



inquired who he meant and he said "Western Federation men,"-- the very excuse that was needed by the Mine Owners' Association suggested by the secretary of that association and acted on. But that I will not discuss. Now, as soon as that charge was made the newspapers published the names of Federation men, according to the testimony, some thirty or forty of them were implicated as being wanted for the blowing up of this Independence depot being published in the newspaper, and, knowing the experiences which they had had and those which would come they changed their names and they went from the city of Denver and from the city of Cripple Creek and everywhere else where they were known. Nobody pretends that Mr. Copley was a criminal. Orchard gives him a clean bill of health. He says he didn't think Copley was that kind of a man, and there is nothing that shows that he was that kind of a man except Mr. Hawley's assertion here in his argument on Saturday or Friday of last week. They met there in Cheyenne. Why? Because that is on the regular beaten travelled line out of Denver. Copley went to Omaha and to Iowa. Davis went to the Battle Lake mining district, which is up around Grand Encampment, and Orchard and Neville pursued their trip as they had intended to do. The only excuse that Orchard gives for sending for money to Denver was that he had changed his mind and was going to California. He had \$300, he says, of Western Federation money. He had \$100, less what he had spent in Denver for a rifle and for a revolver and for some fishline, and so forth, that he had gotten for the burning up of Neville's saloon. He had not paid part of that and Neville had paid part of that, and he had then according to his own say so between four three and four hundred

dollars in money, and he went back to Denver for \$500 more. Gentlemen, if he had gotten \$300 in Denver a day or two before would he have went back at that time for \$500 more? If he had gotten \$300 and had it in his pocket and could get more when he wanted it, why didn't he go as long as his \$300 would last? That story is a fake story from start to finish and no man corroborates him upon any independent circumstances connecting the Western Federation of Miners with it. Let us see all of the corroboration that Orchard has got. There is a flat denial by Moran. But lay that aside as not counting anything and let us see what his corroboration is. A man comes here from Denver named Hymus and declares that on or about the middle of June of 1904 he saw Pat Moran in Denver on a street car. Does that connect the Federation? Does that show that Mr. Moran got any money from the Western Federation? Isn't there a better and an easier way of showing that? Why not take the books of the Western Federation? Why not examine Mr. Kirwan about that? Why not examine Mr. Haywood about that? Why not go to see if their funds are intact according to their books as their expenditures are shown? Not a single source of corroboration anywhere upon the fact that is charged by Orchard that the Western Federation parted with \$600 or \$800 of its funds and that he received those funds. I say that this man Hymus is totally unworthy of belief upon this proposition. He comes here from Denver on rebuttal evidence, (He has seen Mr. Moran's testimony), to testify, not from a book, not from a date, but from recollection of having just barely seen this man on a street car in June of 1904, and the best reason that he can give for it is that he fixed somebody else's oil stove on that



day who had no relation to Pat Moran or to Haywood or to Moyer or to Pettibone or to Orchard, and he knew nothing about those people at all. But there is one thing which gives him the absolute lie on the proposition. Orchard declares that Moran left Cheyenne on the morning of that day and returned on the evening of that day; that the train arrived at Cheyenne at about nine o'clock in the evening, that the distance was one hundred and five miles from Denver and that the train left Denver at six or 6:10 o'clock in the evening; and this man Bynum testifies on the stand that it was after his day's work was done, when he was on his way home to supper and some time about seven o'clock in the evening, between six and seven o'clock in the evening. Mr. Moran, if he were in Denver and returned on that day, must have been at the union depot at least as early as six o'clock in the evening, and that is the earliest possible moment that Mr. Bynum mentioned. And so it was that Mr. Hawley ~~apologized~~ apologized to this jury yesterday for Bynum's testimony by saying that he was mistaken as to the time of day when he saw him. If he was mistaken as to the time of day when he saw him, why isn't he mistaken with reference to the other matters with respect to when he saw him? Bynum, in addition to that, had seen Mr. Moran on at least one other occasion, and I think two and perhaps three, and he could give no date and no circumstance of his seeing him except that he was dressed in a brown suit of clothes and brown always attracted his attention when it was on a short and a fat man. Now it is evident from Orchard's testimony that he had in mind going to California. It is evident from Orchard's testimony, although it is unconfirmed by anybody else, that he received a letter from Mr.

Pettibone when he got to Cody, Wyoming, that he had better hike to the tall timber, that his name was mentioned in the newspapers and they appeared to be after him. Now I don't know, gentlemen of the jury, whether Dr. McGee was mistaken in his testimony or not. I say that it is a little singular, although the Doctor seems to be very positive about it, that he is the only man who has come here from Wallace to say that he saw Mr. Orchard in 1904. It is possible that the Doctor may be mistaken about that, although he seems to remember the event and to be able to give the conversation. No one will pretend that he is an officer of the Western Federation, and I think no one having the experience of Senator Borah and Mr. Hawley will ever charge that in the Coeur d'Alene troubles Dr. McGee was a friend of the Western Federation. Be that as it may, Dr. McGee testified positively to having seen Orchard in the town of Wallace in the latter part of July -- or the latter part of August, and he cannot tell which month because he fixed it by a certain event, the same event occurring in the last end of each of those two months, of 1904. Now this circumstance would tend in my judgment to corroborate Dr. McGee's testimony. Orchard had it in his mind to go to California, according to his own statement. Orchard did go to California in 1904, there is no doubt about that, and was there nearly all of the fall of that year, arriving there, according to his own testimony, early in the month of August of 1904. Now if Orchard was going to California it would be a perfectly natural thing for him, if he was in Cody, in the extreme northwestern part of the state of Wyoming, to go by Billings, over across by Missoula, down through Wallace and Spokane on to Portland and then down to San Francisco.



I say it was a natural thing and it was a probable thing. He was directed to hike to the tall timber, according to his own statement. He had thought about going to California, according to his own statement. It was natural for him to have stopped off in Wallace if he did go, and if he was in the business that he told Dr. Mc Gee that he was in it would be a perfectly natural thing for him not to be seen very extensively around the town of Wallace. There is another thing that confirms me in my belief with respect to the truth of Dr. Mc Gee's testimony. Orchard, receiving a letter to keep wide of Denver and to take to the tall timber, for the exigencies of this case declares that he turned around and went immediately back to Denver, and in order to dispute Dr. Mc Gee he says that he was there in Denver, and the State brings here a man to confirm the fact that he alleges--that he was in Denver in the summer of 1904. Now what does the witness testify to? The witness testifies that Orchard came to his wife's rooming house in the latter part of July of 1904 and that he remained in that rooming house for a period of ten days or more in July and the fore part of August of 1904. He does not say anything about the latter part of August. What is Orchard's testimony on it? Orchard's testimony is that he got into Denver, that he sneaked up 17th Street, that he went out to a rooming house in the neighborhood of the place that this man comes from, it might be the same one for all I know although he wouldn't fix it, he gives me the ~~name~~ name of a place, he said it was a rooming house out somewhere in the neighborhood of Cherry Creek on Broadway and this is all he could tell me about it, not the name of it nor who kept it, nor anything connected with it; he went out there, he met

Haywood and Pettibone that night, and he stayed in Denver two or three days and then started for San Francisco. Now I say Orchard is untruthful with respect to that matter or this witness who is brought here to dispute Dr. Mc Gee is untruthful with respect to that matter; and Mr. Haywood denies that he ever saw Orchard there at that time, and Mr. Moyer denies that he ever saw Orchard there at that time. So we have ~~him~~ him on the denials and we have him on the probability of his story as related by himself, and taking all these things into consideration I think that you gentlemen will come to the conclusion that he did go to San Francisco in 1904 by way of Wallace and Spokane. However that may be, I don't know that it is a matter of any particular importance because, as I have said, there is no independent connection by Orchard with that transaction any more than there is on ~~some~~ any other with respect to this defendant Haywood, and without it it is impossible under the statute of this state to rest this case upon Orchard's testimony with respect to any of these matters.

There is one matter which I have been obliged to treat a little bit out of its course, and I might stop and discuss that at this point. That is Orchard's alleged first attempt to assassinate Governor Peabody. There is no connection with the Western Federation established by Mr. Orchard upon that matter. You will remember that he said that in April of 1904 he went down to Independence and he got Steve Adams to come to Denver to help him assassinate Governor Peabody and that they tried it for a while with shotguns and they tried it a while with bombs, that they got some money for their attempt to do it from the Western Federation but that the attempt resulted in nothing. Now there



was a wonderful piece of corroboration with respect to that testimony of Orchard. And what was it? Cora May Peabody, the daughter of the then governor of the state of Colorado comes here to corroborate Orchard and she testifies that somewhere between January of 1904 and the time when they went down to attend a banquet which was given for Governor Peabody at St. Louis at the Planters' Hotel in his honor as governor of the state of Colorado in commemoration of the opening of the St. Louis Exposition, she got out of her carriage one night after having been to the theatre with her mother and her sister, and two men came up close to the carriage and peered at them. And I suppose the halo that surrounded the beautiful Miss Peabody as she detailed that fact upon the stand perhaps impressed the jury and those who were in the court room as being a corroborative measure of proof as to Orchard. Well, what does it corroborate? It corroborates the fact, if it is a fact, that Orchard was there, if it is a fact that Orchard was one of the men who was there. It does not corroborate the fact that is charged by Orchard that he was there by the direction of the Western Federation of Miners, and this court will tell you, under the law, that any amount of that kind of corroboration is not the corroboration which is required by the statute of the state of Idaho upon any of these events. Of course Orchard was in Denver. It is probable that he was on Grant Avenue. He might have looked at the carriage from which some ladies were emerging after a trip to the theatre, but does it show or tend to show that Orchard, if it was Orchard, was there at the instigation of the Western Federation of Miners for a criminal or a felonious purpose? It is no corroboration at

all of the only thing which can fix criminal responsibility, to-wit, the connection of the man who here stands charged of crime with Mr. Orchard himself. And if they had a million Miss Peabodys, and if her father instead of being the governor of the state of Colorado was the king of the Sandwich Islands or some other important part of the world's surface, it would not be the corroboration which is required by the statute. So I think that there was a mountain made out of a mole hill in bringing Miss Peabody here to testify, to corroborate this man Orchard in his criminal career, that she saw some man when she got out of her carriage upon her occasion in the winter or spring of 1904. Do juries send men to the gallows upon testimony of that kind? Is human life a matter of such little importance that that sort of testimony can be introduced in a case and received as having any weight? Is it not rather a reflection upon the weakness of the case which the State presents to this jury for consideration when they bring a witness of that kind here and say that that is a piece of testimony upon which men are asked and expected to hang their brother men. They will look a long time to find a jury in Idaho or anywhere else so lost to all sense of right and of fairness between man and man as to say that any such corroboration as that can be introduced for the purpose for which it is sought to be introduced by the state. But I have dwelt thus at length upon it because the character of the corroborating testimony upon these Colorado matters is all, where there is any, of that kind and character. Even Governor Peabody himself bears no testimony upon the so-called first attempt to assassinate him.



I shall proceed now with a discussion of the attempt to assassinate Bradley as testified to by Mr. Orchard and as contradicted by everybody else who has been sworn in this case, both the witnesses upon the part of the state as well as upon the part of the defense. Orchard says that on this three days' visit to Denver in July of 1904 he had a talk with Mr. Haywood, Mr. Moyer and Mr. Pettibone wherein he was directed to proceed to California and to assassinate Mr. Bradley, and on his way there he was to stop and kill Andy Maybury, an old time friend of Mr. Haywood who had so far progressed in his experience as a miner that he had become the superintendent of a mine somewhere out in the state of Utah; and when it was suggested that Maybury was Haywood's friend, -- well, perhaps I am not quite right about that -- before it was suggested that Maybury was Haywood's friend the Maybury project was abandoned by Orchard or at least nothing ever came of it. Haywood wanted him to stop and murder Maybury. He was engaged in murder and engaged in carrying out Haywood's and Moyer's requests and yet that is the last that you ever hear of the Maybury transaction. But he did proceed to California at the request of Moyer, Haywood and Pettibone for the purpose of assassinating Bradley. No man of the Western Federation, so far as this evidence discloses, ever had anything against Mr. Bradley. Pettibone, not a member of the Federation except in an honorary capacity on account of his associations with the Western Federation in 1892 living at Gem, Idaho, with no knowledge of Bradley at all, neither Pettibone nor any man connected with the Western Federation had anything against Mr. Bradley so far as we know. It is true that he is said to have been the general super-

intendent of the Bunker Hill & Sullivan mine in 1899, but there was nothing on the part of Haywood, there was nothing on the part of Moyer, there was nothing on the part of Pettibone that caused them to have any animosity toward Mr. Bradley. If anyone had it at all it must have been Mr. Orchard himself. And yet he says, without any corroboration as I say from this testimony, that he was detailed to go to California and to assassinate Mr. Bradley -- detailed in the broad light of day sitting out in Pettibone's back yard in a conference between himself and Haywood and Pettibone. The thing was openly discussed like you would discuss buying a pound of cheese or sending to a grocery for a beefsteak or a pound of crackers, and money was furnished him by Pettibone to go on, and how much did he take? One hundred and fifty dollars to go out there and engage in a crime, a crime which would shock the civilized world, an amount of money which would be insufficient to take him there and back again and keep him while he was there -- going to have money telegraphed to him, going to have it sent by mail if he needed it, and of course he would need it. That was the condition of affairs under which he started out to assassinate Bradley. Gentlemen, these men if they had been going to assassinate Bradley would have met in a secret place. Ways and means would have been devised and talked over, a fund sufficient beyond peradventure would have been furnished to the assassin so that there would be no connection between him and them of any kind or character, all things would have been ~~xxxxxxxxxxxx~~ guarded at every point and in every place; but instead of that they sit out in the back yard, in the broad light of day, and discuss the situation, and with an inconsiderable



account of money Mr. Orchard starts off on his mission of assassination in July of 1904 reaching San Francisco early in August of that year. I submit, gentlemen of the jury, that the circumstances show that he never went to San Francisco with any such purpose. I submit that the circumstances more clearly demonstrate than the opposite that he never accomplished any such purpose. I submit that he spent his time there gambling with the soldiers, that he made some money to live on in that way, and that he openly in the broad light of day and in a manner that could be traced without any difficulty for all future time, sent, as he said he did, to his friend Mr. Pettibone for money or other objects, which money or other objects Mr. Pettibone had in his safe which he forwarded to him without any attempt at concealment that amounted to anything except insofar as what would tend to protect Mr. Orchard himself. Now Pettibone knew and Orchard knew that he was accused of the blowing up of the Independence depot, and knew that his name had been published with respect to that, and ~~xxxx~~<sup>so</sup> there was every reason why Orchard should not go under his own name. Pettibone when first applied to for whatever it was, which was sent, whether it was money as Orchard says it was, or whether it was a Masonic charm and a Western Federation book or some book, as Wolff says that it was, sent it down immediately upon receipt of the letter, registered it in the man's name who took it there, Mr. Wolff, and directed it to him as he had directed that it should be directed to him. Now there is no evidence to the contrary. There is no evidence that connects Haywood with the transaction. Orchard says that Pettibone was to get the money from Haywood? But who corroborates

Orchard with respect to that Where has any Federation money gone to Mr. Pettibone or where has any Federation money gone to Mr Orchard? The claim is absolutely unsupported in this evidence and the same thing is true of that which was sent by telegraph by Mr. Pettibone. They say that because he sent it as Pat Bowen and J. Wolff that there was an attempt at concealment. Why, Orchard himself tells you that Pettibone was known as Pat Bowen -- the most natural name that would be given to him. Here was a man who pretended to be his friend who called him by his nickname of Pat Bowen, easily to be seen how it was derived -- from "Pettibone" and there was not attempt upon Mr. Pettibone's part to conceal himself in the transaction in any way unless it was to the benefit of Mr. Orchard, and no showing that one cent of this money belonged to this Federation. You are to guess because of the letter and because of the two telegrams that therefore Mr. Pettibone must have gotten it from Mr. Haywood and that this is a circumstance which corroborates Orchard. You cannot guess, under your oaths. You cannot surmise. You cannot discuss probabilities. It is proof that is required. It is proof to be adduced upon the part of the state and it is proof which satisfies your minds beyond all reasonable doubt, and if there was such proof it would be of a crime committed in Colorado or in California and would be no evidence I take it of a crime which is committed in the state of Idaho. There is no connection whatsoever between the Western Federation by this letter or either one of these telegrams, and furthermore there is no sufficient evidence that Mr. Orchard ever committed the crime. In the first place, Orchard says that he put some poison in the milk in Bradley's house after Bradley



returned from Alaska. Orchard bought the poison at a drugstore that he cannot tell us where, of a man whom he cannot name, and he watched the milkman and he went up there and put it in these bottles of milk. Now I will show you Orchard could have known that one of the bottles of milk was taken over to Giubbiny's store. Orchard came into the store and saw a bottle of milk on the end of the bar. Orchard inquired about it. Giubbiny told him that it had come from Bradley's, that they had complained of its being bitter, that they had sent some of it down to be analyzed and that he had some of that on the counter, and there is where Orchard found his testimony with respect to the milk story. Now let us see: The Pinkertons had been working on this matter; from the time of Orchard's confession they had been attempting to get proof to corroborate Orchard within the meaning and under the terms of the Idaho statute; they go out there and they find what? They find that there is, from the photograph, back of the Linforth flats a building the roof of which is flat and which comes on a level with the floor below the windows in the Bradley flat, and so when it is asked how Mr. Orchard got up there so as to put the poison in the milk before it was taken in by the girl he said that he stepped from the Bradley porch (that is the testimony in this case) onto a flat roof which was there and concealed himself on that flat roof until the milkman had left the milk and had gone away. Gentlemen, we proved that the building which was in the picture was a building which had not been erected until six months after the time that the Bradley explosion occurred. No living man could have stood on that roof because it was not in existence; and when the state found the condition that they were in with

respect to it, what did they do? They bring Giubbiny here, and Giubbiny comes out, got a second trip and he pay the second time for coming, to show that it was possible from a story or a story and a half below the Bradley flat to step out onto a roof or jump onto a roof which he described as somewhere between two and six feet away from the railing of the porch, down below the Bradley flat. But the testimony of the depositions is that that building was so far away that no living person could step onto it from any portion of the structure connected with the Bradley flat at all. Witness after witness testified that there was no roof that could be reached except the overhanging roof of the Linforth flat itself and that that was some twelve or fifteen feet up higher than the floor of the Bradley porch and could only be reached by a ladder, and there is no pretense that Orchard had climbed up onto that porch at that time and that place. So it seems to me, gentlemen, that upon the questions of the poisoning Mr. Orchard is overcome, although of course we cannot show who did put the poison in that milk. It is possible that Orchard did it but if he did it he told a wrong story about where he was at the time that the milkman came. But there is no corroboration of his story in any event that connects him with the Western Federation of Miners, and the only thing that corroborates him is that he was around there, that there was poison found in the milk and I suppose inferentially that it would be possible for him to have put that poison in the milk. Now let us discuss with some degree of care the condition of the flat itself.

Gentlemen, there is one thing that my co-counsel remind me that I ought not to overlook calling your attention to.



I have been discussing these matters as though the preponderance of proof were a matter to be considered and weighed by you, and I have been doing that because in my judgment the evidence warrants such a discussion. But in a criminal case the defendant is only required to raise a reasonable doubt upon any matter. I say upon the question of the poisoning of this milk, so far as Orchard's connection with it is concerned, there is at least as much evidence in favor of his not having done it as there is in favor of his having done it. But it is not necessary for the defense in the case to have anything to do with the question of the poisoning of the milk at all; it has only raised a reasonable doubt with respect to Orchard's connection with the transaction. The all important point is of course as to whether or not there is any connection established between Orchard and the man who is now here on trial before this jury. And I say upon that there is no corroboration of any kind or character connecting Mr. Orchard with Mr. Haywood. There is some testimony, standing alone, which tends to connect Mr. Pettibone with Mr. Orchard that is separate and apart from Orchard's testimony, and the doctrine of reasonable doubt might have to be discussed in Mr. Pettibone's case. But there is no testimony independent of Mr. Orchard's standing alone or at all, which establishes any connection of any kind or character between Mr. Haywood and Mr. Orchard with respect to the Bradley transaction.

Now let us discuss his connection with the blowing up of the Bradley house by a bomb. He declares that he manufactured that bomb in the house of Mrs. Soward and Mrs. Soward is brought here to testify to the fact that he roomed at her house and that

she discovered a screw eye in his door. That would be some testimony to the effect that he was conducting perhaps some experiment in that room -- no tendency to connect Mr. Haywood with it, however, and that we will pass. We will assume that he was conducting some experiment and maybe manufacturing some bomb and possibly exploding that bomb. But let us see with respect to it how the testimony stands. The explosion occurs. Orchard declares that on the morning of the explosion he attached this bomb to the door of the Bradley house and he tells me on cross examination that that door that he attached it to is a hard wood door, and the testimony is that it is a glass door with a wooden frame around it. The glass runs from the top to the bottom and there is just a frame to hold the glass and nobody would describe it as a hard wood door who had ever seen it or examined it or had any correct recembrance of it. But I want to be just to Orchard. There was a hard wood frame around it and it is possible that that is what he meant, although we don't deal in possibilities or probabilities with respect to the State's testimony. We find in the first place a glass door. In the second place we find a house that had complained of a leakage of gas in two or three of the apartments connected with that house for several days. We find that the gas company had sent somebody up there and they were unable to discover the leakage. We find that the partition above the gas meter was open at the bottom so that there was lath and plaster on one side, and lumber boarding on the outside, sheathing I suppose it is called, on the outside. We find that the porch, the under side of the porch was in some way right above the gas meter so that as the gas arose out of this leak in the



gas meter the walls and the floor would all furnish a convenient reservoir for the holding of the gas which was escaping. For ten days or two weeks this gas had been escaping and had been complained of. For the same length of time the reservoir of the walls and the floor had been filling and filling with the gas. Gas don't move rapidly. It is rather heavy. If allowed to escape it ascends and ascends slowly. It ascends, truly, if there is no resistance. But the walls of a building, lath and plaster, will hold gas to a limited extent just as well as a gas pipe will hold gas, until the pressure becomes too great. Now of course there was some leakage of that gas around in the various apartments and so this complaint was being made, and the leak being small and the reservoir that I have described holding the gas, it was not found until up after the time of the explosion. Now there is one element of this explosion which confirms the story of Harry Orchard, and there are several elements of it which confirm the story of Linforth and all of those who testified in his case wherein he recovered \$10,000 against the gas company. If a bomb lay on the porch in front of the De Laveaga door and opposite Bradley's door and that bomb exploded on that porch it would be natural enough to find a hole under the place where the bomb lay and the facts of the case tend at first blush to confirm the theory of the prosecution that Mr. Orchard was responsible for it. Now, mind you that we start in with a judgment in favor of Linforth in a case that has been tried, where a motion for a new trial has been overruled, where affidavits have been furnished with regard to Orchard's statement and the court overruled the motion for new trial, so that the great burden of that testi-

mony and the great weight of it is with the contention of the Defense in this case rather than with the contention of this prosecution. But, desiring to be fair with them, I grant them the hole in the floor of the porch near the place where Orchard laid the bomb but not at the place where Mr. Orchard laid the bomb. If I understand Mr. Orchard's testimony and the pictures which have been introduced in evidence we can imagine this to represent the flat. You come in off the street as I indicate here. You ascend on the porch past the rail that comes out from the Bradley door and you strike first the Cummings door at this point, you strike, second, the De Laveaga door at that point, you strike, third, the Bradley door at that point. The porch is large enough for these three families, for the doors which extended up into the upper apartment. The hole which occurred in the porch, in the floor, was directly opposite the De Laveaga door and not down here in the corner next to the Bradley door as was described by Mr. Orchard as the place where he laid the bomb. He put the bomb right in the corner and right opposite the very place where Mr. Bradley was bound to open his door. And so I say, gentlemen of the jury, that while the hole being in the porch, if not minutely examined would at first blush tend to support the theory of the prosecution here, when closely examined it supports the other theory that the explosion of gas accumulated in the reservoir formed by the floor and the sheathing below the floor occurred opposite De Laveaga's door as the point of greatest pressure and blew a hole up through the floor instead of the hole being blown down through by the explosion of a bomb. And I say that, gentlemen of the jury, because you will remember that



the picture which was introduced was declared by the fireman to have the gas meter which was located directly under the De Laveaga door. You remember as you look past the telegraph pole you see the little window through which the fireman entered in order to cut off the gas meter, and it was right square under the place where the De Laveaga door would be that he describes the place where the gas meters were. Now I say that further fact and circumstance supports the theory of this defense that this is one of the crimes which Mr. Orchard was bragging about that he had brought off and in which he had no participation. It is a singular and a paradoxical feature of this case, gentlemen, that the prosecuting witness is confessing to every crime in the calendar and the defense is showing that as to some of those crimes it was impossible that the prosecuting witness committed them. We are not very particular about it, we don't care very much about it except to show that this man Orchard is possessed of a mania which he is exploiting here before this jury to be known as an all around bad man and as a hero, and I will show you that a little further on by other and independent matters that I think will convince you of the truth of our position with respect to it. Now if you will examine the building where the explosion occurred the first thing you will find is this, that every partition inside which was affected by the explosion was blown in two directions, from the inside out. That is the testimony of the man who built the building, who subsequently repaired it and all of his employees, showing that the force which was exerted blew the panelling between the partitions one way in the one room and the other way in the other room. If a bomb had

exploded on the porch would there have been anything of that kind which occurred in these partitions? If a bomb had exploded on the porch -- take that exhibit which was introduced in evidence and tell me, if it is going to have any weight with your verdict, tell me how it comes that the front of that building behind the bomb was blown out into the street. Using this illustration of the books, can you find that the principal place where the explosion affected the building was in front of the De Laveaga flat and that the front of the De Laveaga flat was blown out into the street and not back into the building. If a bomb had been exploded here the building would have been blown in this way. If it had exploded or there had been an explosion in the wall here or back of the wall the force of the explosion would have been outward. Again, if a bomb had lain in front of Bradley's door and Bradley had put his hand on the knob of that door and had drawn it toward him and so exploded the bomb would you have found him in the street directly opposite the very place where he was standing when the explosion occurred? Why, gentlemen, bombs don't act that way. Bombs don't draw people into the place of the explosion, they drive them back from it in every direction. And when I asked Orchard how he accounted for Bradley being found out on the street as he said that Bradley was found out on the street, as he read it in the newspapers, he said it was impossible to account for it that unless in some way he got between the bomb lying here and the street. Bradley's testimony is that the instant that he put his hand on the knob of that door there was a flash in front of his eyes, a bearing down and a hoisting and throwing out; and while he lost consciousness at no time he



was dazed and stunned and found himself in the middle of the street, and every other witness who testified upon that subject say that they found him in the middle of the street. If the bomb had exploded in front of Bradley's door he would have been over here, or over here, or at most over in that direction. It was impossible that a bomb exploding in front of him would have driven him out into the street directly opposite the place where he was standing when the bomb exploded. And so I think, gentlemen of the jury, that you will conclude that that is a phantasy of Mr. Orchard's imagination. But that is not all. Mr. Orchard says that he did not return to that vicinity for a week; that after he had fixed the bomb he got on a car and went down town and that he got so far away from the explosion that he never heard the explosion at all, and one woman describes the explosion as of such a character that you could have heard it all over San Francisco. The explosion of a bomb gives a sharp, quick report. The explosion of gas, according to the testimony, gives you a volume or carrying report, one which could be heard a long distance. That is the testimony which is introduced here by all of the experts. To overcome this testimony an expert is put upon the stand who has charge of the local gas company here in Idaho and he says that an explosion of gas could not be produced without a flame. He allows smoking around his gas house because he says the ventilation is absolutely perfect. If it were not he would not allow smoking around there, and around the old gas houses that have been built in times gone by no smoking is allowed. He says that from a dead light, a dead coal, a dead burning substance there could be no explosion of gas without a

flame. But he doesn't say that a man puffing at a freshly lighted cigar might not have flame enough in it to explode gas. Why, gentlemen, those of you who have come from the East all know that in the winter time you can run along on the carpet and slide on it and put your finger to an open gas jet and light the gas with a spark from your finger, so it don't take very much of a flame, and the expert admitted upon the stand that any sort of an electric spark would light gas. If so, a man going down stairs and puffing a cigar and coming up to the place where this gas had been accumulating in this reservoir between the partitions and gradually leaking out, coming up close to it, would have had just exactly the result that Bradley declares that he did have there at that time. But again, remember Bradley was an expert in the use of powder -- superintendent of great mining properties from Alaska to Mexico, from the Rocky Mountains to the Pacific Ocean. He knew dynamite. He knew its characteristic odor, and he tells you that there was no dynamite explosion at that point. In addition the courts having tried out and having determined that matter, one of the greatest experts of this country, Mr. Bradley himself, tells you that there was no explosion of dynamite at that time and in that place; that he was familiar with it and familiar with the results of it and that there could have been no such explosion. One of their witnesses, this boy who stuck his nose over the shaft after the explosion in the Vindicator, tells you that no man who has ever breathed the fumes of dynamite at any time in his life can ever be mistaken about those fumes at any time afterward. But there was an explosion which was accounted for by every theory by gas and



which was pretty nearly inconsistent with every theory of a dynamite explosion. Seven pounds of dynamite in that bomb laid at Bradley's door and only a small portion of the front of that building blown out, and Bradley himself included, standing there by that glass door, as he opened the door ! I would like to have one of you gentlemen tell me when you come to analyze Mr. Orchard's story on the Bradley explosion what would have happened to Bradley if there had been seven pounds of dynamite exploded within a distance of a foot or two of Mr. Bradley. There wouldn't have been enough left of him to find. The man was to all intents and purposes practically uninjured. He was temporarily deafened and he was temporarily injured with respect to his eyes but he made a perfect recovery. I want to say one other thing: If dynamite had been exploded there in a metallic case, a leaden case containing caps, containing the fulminate which discharges dynamite powder there would have been in the woodwork of that building a large number of little pieces of metal which could have been detected and picked out of the woodwork. Not a piece of metal injured anybody nor could a piece be found anywhere in that entire building. I think that this man read in the newspapers of this Bradley explosion, that he was there in San Francisco for purposes of his own, that he was a typical wanderer over the face of the earth, that he had been during nearly all of the period that you have known him, that he was a tin-horn gambler, that having read of that explosion he adopted it as his own. But be that as it may, there is no connection established by any independent evidence between him and Mr. Haywood with respect to that explosion

whether he was the man who perpetrated it or not. The chances, the evidence, ninety-nine-one hundredths of it, is in favor of his not having caused that explosion. Riley coming out to take his morning drink comes back from the taking of the drink and discovers the Jap on the porch picking up his pails and brushes, he walks a distance of less than one hundred feet or not more than one hundred and fifty feet at the outside down the street, opens his own gate and the explosion occurs. Orchard says that he waited for the same Jap, who had been described in the newspapers, as having cleaned the porch, and that after he cleaned the porch and after Orchard had fixed the bomb there he got on a car and went down town so far that he didn't hear the explosion at all. Mr. Cummings, living in one of the same flats, comes out of his door before the Jap has finished cleaning the steps, sees him there, passes by him, walks down the street a block and a half and hears this explosion. Some time after Cummings came out of his flat and the Jap had gone--some time after the Jap had gone, if Orchard's story is to be believed, he fixed the bomb, and some time after he fixed the bomb he got on a car and had gone down town so far that he didn't hear the explosion; and all of this had occurred while Mr. Cummings, an honorable man, charged with and confessing to no crime, had had a chance to walk one block and a half in San Francisco that morning. So you may take any horn of the dilemma you please, it cannot be overcome by Giubbiny's coming back here from San Francisco to tell this jury that Mr. Riley did not get the drink from him on that morning because he says and it is possible that he was not dressed, and his wife comes here to support him in the statement of the fact that he was not dressed at the time Mr. Riley gets his drink. Riley says he bought ~~in~~ his drink from Giubbiny. What difference does it make whether he bought it from Giubbiny or bought it from



Giubbiny's clerk? It was his accustomed place to get the drink, and all agree upon that. Nobody disputes that he had been there that morning. Nobody disputes he is a truthful man, and having gotten his morning drink that morning and returning home he finds this explosion to occur as I have said. Giubbiny gives Orchard the lie also in his testimony. Giubbiny says that within half an hour after the explosion occurred he stood there on the street in front of the flat and discussed with Orchard what had caused the explosion and they both expressed the opinion that the explosion at that time had been caused by gas.

MR. BORAH: No, I beg your pardon. You are mistaken.

MR. DARROW: They discussed it.

MR. BORAH: Yes, but they didn't say it had been caused by gas.

MR. RICHARDSON: They did discuss it within half an hour.

MR. BORAH: Mr. ~~Richardson~~: Giubbiny didn't say that it was caused by gas.

THE COURT: I think we will suspend here, Mr. Richardson.

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Thereupon the Court gave to the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded, and the Court hereupon adjourned until Tuesday, July 23rd, 1907, at 9 o'clock a.m.

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A D J O U R N E D.

Archives  
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Boise, Idaho, Tuesday, July 23rd, 1907.

9 o'clock A. M.

Parties met pursuant to adjournment.

The clerk read the minutes of the session of Monday, July 22nd, 1907, and the same were signed by the court.

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

MR. RICHARDSON: (Continuing)

May it please your Honor and Gentlemen of the jury: Before leaving the Bradley matter in San Francisco I want to call your attention to one thing which I think is quite significant in aiding you as to a determination of whether or not Mr. Orchard committed that offense. Of course, as I have said before, we are not on trial for the attempted assassination of Mr. Bradley in San Francisco. It is only an incident which has occurred in a series of transactions upon which the State is relying for the purpose of attempting to connect the defendant who is on trial with the killing of Governor Steunenberg, which is the one offense with which we here stand charged. You will remember that Mr. Orchard had an interview with Mr. Copley at his hotel prior to the time that he left for Denver and after the time that the incident occurred of the blowing up of the Linforth flats. You will remember also that Mr. Orchard stated emphatically that he did not tell Mr. Copley that he had anything to do with that matter at all; that he discussed it on the theory of its being a gas explosion, or at least he dismissed it with reference to the kind of a man that Bradley was and said that he got what was coming to him and that some time or other there was



a fellow named Steinsberg who would get what was coming to him. Now Mr. Conley says that from all of the talk which he had with Mr. Orchard the impression was left upon his mind by Orchard that he had something to do with it. But you will see from Orchard's talk and from what he himself says about it that at that time to a man who had lately been a prominent officer of the Western Federation of Miners he didn't pretend to have any connection with the blowing up of the Linforth flats. I think, therefore, that I will now leave the Bradley transaction or the Bradley attempt at assassination in your hands and for your consideration. I do not believe that there is anything further that I can say which will aid or assist you in coming to a conclusion with respect to that.

I shall pass over his return to Denver for the moment and his disguise upon that return and shall probably, if I do not forget it, take that up in another connection; and having gotten back to Denver, we will proceed to analyze the second attempt, as it is described by Orchard, to assassinate Governor Peabody. Orchard claims that that attempt was made by himself and by Adams and by Mr. Aikman. You will remember that when Orchard returned to Denver Adams was living in two rooms out on Walton Street somewhere. Aikman had a room in the same building and was boarding with Adams. You will remember that their conditions betokened extreme poverty, extreme economy in the way in which they were carrying on their domestic affairs. Aikman, it seems, had had some trouble with his teeth, some trouble with his jaw. He had met Adams on the street and Adams had taken him in and had nursed him as a brother miner or as a friend, and Aikman had continued to reside in Adams' house. There was

no pretense upon the part of Orchard or upon the part of anybody else that there was up to that time any criminal connection whatsoever between Adams and Aikman. The only pretense of a criminal connection at all, so far as Aikman is concerned, is Orchard's unverified and disputed statement that Aikman had assisted him in planting the bomb which resulted in the Vindicator explosion that killed McCormick and Beck. He said that they procured a sheet lead case in January of 1905, he having returned at about Christmas, 1904, and with that sheet lead case they made a bomb. He says that Joe Mahalich hired a rig to enable them to go and plant this bomb so as to assassinate Governor Peabody. You will remember that at that time there is no pretense upon the part of anybody of an acquaintance with Joe Mahalich. Orchard dropped that in at that place. It was before they went to Globeville to live. Joe Mahalich was living at Globeville, was a ~~member~~ member of the local out at Globeville, some three or four miles from the place where they were residing at that time, and he claimed that this man Joe Mahalich hired a rig for them to go and own and assassinate Governor Peabody with the bomb which they had so constructed. You will remember that Mr. Mahalich emphatically denied that proposition, and it is not asserted here by anybody except Orchard that Mahalich is a criminal in any way, shape or form. In fact, Orchard doesn't assert that Mahalich is a criminal. The only thing on earth that he charges Mahalich with is at one time he assisted him, Orchard, in the stealing of a sheep or at least he allowed the sheep to be butchered on his premises. Now nothing came of that transaction. The bomb which was made Adams subsequently threw into the river.



There was some attempt made in trying to shoot him. There was some attempt made in trying to dynamite him. There was some statement made that they could not pull the wire to set off the dynamite on account of the coal teams that came out of the alley. Now you will remember that I asked Mr. Orchard at that time how many talks he had had with either Haywood or Moyer with respect to the transaction which he was engaged in. Mr. Orchard stated, at folio 913 of the record, that he had only talked with Haywood three or four times between December, 1904, and April, 1905; and that during that period of time he had not talked with Moyer at all. It was at this period of his career that he claims to have had some talk with Mr. Malich in regard to blowing up the Globe hotel. Now, think of it! Malich was a man who had for years lived there. He was an Austrian. The people who were working in the smelter were Austrians. They were countrymen of his. And Orchard claims as against Malich's testimony that Malich came to him and talked to him about the blowing up of a hotel that had 150 people in it. Malich says, which seems to me the more reasonable story, that Orchard suggested it to him, that he resented it and that then Orchard treated the matter as though it had been a joke. Now upon all of these matters Orchard is disputed by Malich, by Malich and by Aikman and you have his unaided and his unsupported word alone for the history of these transactions. It is one against three. Not one single man does the State produce before this jury to establish any connection between Haywood and Moyer, or Pettibone even, and Orchard, so that with respect to that transaction there is nothing which can corroborate Orchard, not even the driver of the coal

wagen who comes here to corroborate the fact that he was there, and if it were a fact that he was there it would not be the corroboration, as we all concede, which is contemplated by the statute.

There is one thing that I might call your attention to here as being rather singular. Here, according to his statement, were men of determined character, of criminal instinct, engaged in carrying out criminal enterprises. They hired him as an assassin and a murderer. They designated the men who should be killed and they sent him upon his mission to kill them. How many of these men did he abandon the enterprise which he had started on as a paid employe? If he had a homicidal mania, that mania was more apparent at times than at others. If he was engaged in a criminal course on his own account and at times desired to satisfy that mania by killing somebody and he tried it and failed there would come another time when he would have less of desire and ~~there would come another time~~ he would cease his operations upon his proposed victim. Now that is just exactly what occurred three times, according to his story, with respect to Peabody, twice with respect to Gabbert, once with respect to Godard, once with respect to Sherman Bell, once with respect to James F. Hearne, once with respect to David Moffat. All these enterprises were abandoned. Do you suppose that if there had been any inner circle of the Western Federation of Miners and that they had met in solemn convulse and determined upon the assessment of the death penalty upon any individual and had delegated a paid assassin to carry out that death penalty, that there would have been any withdrawal of the pursuit of the victim until the



and had been accomplished which had been declared upon and determined by those who were sending him out to commit the death penalty. I think, gentlemen of the jury, that you will come to the conclusion that this man was at times possessed of a mania, that that mania compelled him to go out and seek his victims and kill; that the mania was greater at times and less at times; that as he wavered in the pursuit of his victims sometimes the victims escaped and sometimes they did not. That this desire which he had manifested to be a criminal and to be known as a criminal, gauged by what his past life had been, gauged by the picture which he had taken in Salt Lake, which shows the tendencies of the man, as it seems to me, I think you will come to the conclusion that there was a desultory maniacal method of pursuing victims whom he himself had selected for one cause or another, either because of some fancied grievance of the organization of which he was a member, or because of some fancied grievance which he had on some other account; and that of his own volition, of his own will, he went out after these men, and when some obstacle would occur, when his mania would have a cessation, a retrocession of feeling, he would abandon temporarily the enterprise upon which he had been engaged; and then when the surge of hate and desire the mania would come over him again, it would seek other means of gratification. But in any event there was nothing that came of this second Peabody assassination, and nobody even gets out of a carriage upon the occasion of that second attempted assassination to come here and corroborate Mr. Graham.

There were in Denver men who were wanted outside of Peabody and Bell and Goddard and Gabbert and Moffat and Hearne -- Bulkley Wells, who was also living in the city of Denver. I don't remember that there was any attempt upon Wells' life. But Wells was a man who at all times had been connected with the Mine Owners' Association and who had been interested in carrying on enterprises against the Western Federation of Miners. Wells, by the way, gentlemen of the jury, was one of the men who brought the men here on a private train after the time of his arrest, and Wells is a man who day after day has walked into this court room and sat here throughout this trial, and with his name on the indictment as a witness in this case he has never been called upon the stand to testify before you gentlemen.

Now I want to proceed to the third attempt to assassinate Peabody, which followed the second attempt in Denver. Peabody, during the winter of 1905, was engaged in a contest to retain his seat as governor of the state. He had been defeated by a large majority upon the face of the returns. The canvassing board of the Senate and the House of Representatives had been compelled to declare on the face of the returns his competitor seated and his competitor was seated on the first Tuesday of January, 1906. Such action was taken in the Supreme Court of the state of Colorado with respect to that matter as that whole precinct containing Democratic majorities were thrown out. Wherever the Democratic majority was large the entire precinct was thrown out and refused to be counted. So that enough of those precincts were thrown out so that in the end it was agreed that Peabody should be seated as the governor of the state of Colorado,



as it appears from the evidence in this case, and he was seated as governor when and at a time that his resignation was demanded and received and placed in escrow <sup>with</sup> by the secretary of state before they would declare him elected. And the reason of that was that by unseating Adams and seating Peabody and passing in his resignation they could put the lieutenant governor, the Republican who had been elected lieutenant governor on the ticket with Mr. Peabody in power. And so we had, as has been stated here, three governors in the state of Colorado in the course of one day, one of whom had been elected, one of whom had been defeated and one of whom who finally became the governor for a year and nine months who had never been voted on at all for that office.

Now, after Peabody had ceased to be the governor of the state of Colorado there was no power in his hands to harm the Western Federation of Miners or any other member of it. He was like any other citizen of the land. So far as Peabody was concerned he simply represented his class. That was all there was to it. There were a thousand, there were five thousand men in the state of Colorado who would have taken his place, if they could have gotten it, who would have pursued the course which was pursued by him. He was no other nor different than a representative of his class, any more than Governor White was other and different than a representative of his class, and you have heard him slurped here by Mr. Hawley as a representative of his class. When he held office in the state of Colorado it was well recognized that the corporations need were no appeal to him for aid because they would not secure any aid if they did. If he had gone out

of office, if he had been assassinated and another man representing the same interests had been chosen the governor of the state of Colorado he would have done precisely the same things which were done by Governor Waite. And another man succeeding Governor Peabody would have done precisely the same things which were done by Governor Peabody. Everybody recognizes that these men are but the exponents of a policy, a policy which is agreed and declared upon and which they proceed, as the exponents of their party, to carry out in a given crisis, so that the entire cause of any disaffection which existed with respect to Peabody was removed the moment that Peabody ceased to be governor of the state of Colorado.

Now, Orchard claims that Heywood and Meyer and Pettibone sent him down to Canon City to kill Governor Peabody. He had tried twice in the city of Denver, according to his own statement, with every opportunity which was favorable, and he had failed and had given up the attempt. And upon both occasions in the city of Denver he had had what he declared to be an able assistant in the person of Steve Adams. No success came from it and now he was going down into the little town of Canon City all by himself and accomplish the thing which he claims he had tried to accomplish in Denver twice and failed. No living person corroborates Mr. Orchard with respect to that testimony. Every person who is summoned here and who testifies with respect to it are Mr. Peabody and Mr. Vaughn and Mr. Stearns. They are the only three witnesses who come here with respect to that transaction. What is Stearns' testimony? His testimony is that he gave Mr. Orchard a job of soliciting insurance for the New York Mutual.



Life Insurance Company. Does that have any tendency to connect Haywood or Mayer or Pettibone with the trip to Canon City? Orchard's unaided testimony stands alone upon that proposition. Vaughn comes here. The state of Idaho brings Mr. Vaughn here from Minneapolis, Minnesota, and places him on the stand. All that Mr. Vaughn says is that Mr. Orchard was as a matter of fact in the summer of 1906 in the town of Canon City engaged in attempting to write life insurance; and when he asked him what it was that he had in his grip that made it so heavy he declared that it was a bomb that he was going to put under Governor Peabody, in a laughing way. And what did Mr. Vaughn say to you gentlemen with respect to Mr. Orchard? From the way Orchard talked he became, to use his own language, leery of him. "To tell you the truth, Mr. Richardson, I thought he was hushouse." He had associated with Orchard. He had slept with him, occupied the same room, had been out and had solicited insurance with him and he came to the conclusion that the man was hushouse. Now here was a man who had made great preparation to kill Governor Peabody. He had prepared a bomb. He had gone to Mr. Roach to get that bomb made or to get the case for the bomb made, and he had gone down to Canon City with that bomb in his grip, and all of a sudden at Canon City he abandons the enterprise. Sent there on a specific mission, sent there to earn money, sent there to receive pay for the specific ~~work~~ purpose of killing Mr. Peabody -- and what did he do? Because Peabody was making some repairs on his house he abandoned the enterprise and went over to Rocky Ford and continued to write life and hail insurance. Do you

He changed from life to hell when he got over to Rocky Ford. Do you suppose that a professional and hired assassin, a man who was employed for the specific purpose of taking away human life, a man who was using the writing of insurance as an excuse for his presence in a town, do you suppose that such a man as that after five or six days, would abandon his employers, abandon his enterprise, abandon the thought of killing and go off to another and a distant part of the state to write hail insurance? He didn't have to write it for money according to his account. The funds of the Western Federation were his to command. All he had to do was to reach forth his hand and take from the well filled coffers of that institution that which was needed by him or that which he thought he needed. There was nothing, no let or hindrance upon him, according to his story, except the mild statement of Mr. Heywood "Don't take too much, you know you can always get more when you want it." They never jewed him down on his price, never asked him how much he wanted nor how little he could get along with, but "Don't take too much because you know you can come here and get more whenever you want it." I say, gentlemen, it is the most absurd story upon the face of the earth. And I say to you that Mr. Howley, in his opening statement, recognized the absurdity of that story. He told you, gentlemen of the jury, in his opening statement that he would show to you that the inner circle of the Western Federation of Miners had a scale of prices for the murder of men, and that governors were reckoned at ~~xxx~~ so much and other people holding other positions were reckoned at so much, and common workmen were reckoned at so much and that this man went out like a laborer goes to his day's work



for his day's pay to perpetrate assassination upon those who were designated by the Western Federation of Miners. Where is the testimony even of Orchard that there is any scale of prices given out by the Western Federation of Miners or made known to him for the killing of anybody? Why, gentlemen of the jury, in his entire career, under his own claim, for the assassination of Gregory he went the next day he says and drew a hundred dollars. I asked him if it was for the assassination of Gregory. "Well", he says, "I don't know that it was for that. I know I got a hundred dollars the next day." For the assassination of Bradley drawing \$150, according to his own statement, to go there. Gambling to secure money to live on -- and right here at this time working hail insurance in order to get money. Do you suppose that this man would ever spend any time in figuring up how much he was getting out of hail insurance, do you suppose he would have gone to Lamar, gone to Rocky Ford, gone to Monte Vista, where there was no man on earth that the Western Federation of Miners by the remotest possibility could have wanted to kill, and spent the summer months in the arduous occupation of soliciting hail insurance and cheating the farmers while he was doing it if he was on the salary list of the Western Federation of Miners and could dip his hand into the treasury and take therefrom whatever he needed? I say it is the height of absurdity. You saw his interest in that insurance. He was working as hard soliciting it as was Vaughn himself, and Vaughn's living depended upon his success as an insurance agent or he would have to go into some other occupation.

I submit another thing, that not only does not Starns

corroborate Mr. Orchard and Vaughn does not corroborate Mr. Orchard so as to establish any connection with the Western Federation of Miners, but James H. Peabody doesn't establish it.

We were told in the opening statement of what great events were to occur and what great proof was to be laid before this jury as to the Colorado situation. And there came from the state of Colorado Mr. James H. Peabody himself. And when his name was called in this court room a hush of expectancy fell upon the audience and the interest was manifest upon the part of the jury to hear the disclosures of this man who had been attempted to be assassinated three times, who was the war governor of Colorado, who had carried on the enterprise in behalf of the Mine Owners and had loaned out the militia of the state to the Mine Owners and the Mine Owners had agreed to advance the money for the pay of that militia. He was called onto the stand and lo, a revelation was expected. The promises were about to be fulfilled. The prophet of Colorado was at hand. The one man who knew the entire situation, the man whose hand was on the throttle when these events were occurring which startled and shocked and disgusted the entire civilized world. And when he got on the stand this was his testimony: He was governor of the state of Colorado; he was in Canon City in the summer of 1905 and on the street one day in Canon City he saw the same man who had been here on the stand and who testified under the name of Harry Orchard. That is all that he was asked, every question that the state propounded and all that he knew or was supposed to know of the inner workings of the Western Federation of Miners against whom he had declared war and against whom he had furnished the



troops of the state had dwindled down to a recognition of a man as a witness on the stand whom he had seen in Canon City in the summer of 1905. Gentlemen of the jury, examine such evidence as that and tell me by your verdict in this case what this state is depending on when they come here before a jury and bring men to give such testimony of that for the purpose of inducing this jury to put a halter around the neck of this man and send him into eternity at the behest of a Mine Owners' Association and its representatives. It will be a long time, gentlemen of the jury, before the law will sanction a conviction upon such testimony as that.

The next event that occurred in the history of these transactions was the explosion of the bomb which caused Mr. Walley's death. I might say to you, gentlemen, that in all this series of complaints in the city of Denver there are only two deaths which are reported for your consideration. One was of the detective Lyte Gregory, who was shot after a night of drunken debauch in a saloon, and that of Mr. Walley who was walking across a vacant lot in the city of Denver when a hitherto unexplained explosion occurred and he was hurled into eternity. Now we don't know whether this story is real or fictitious in this case, and it is not necessary for us to know. It is not necessary that Mr. Pettibone should be called upon the stand to deny it. And why? Because there is no testimony upon this proposition of any kind or character except the testimony of Mr. Harry Orchard. When Mr. Orchard and his cohorts get ready to try Mr. Pettibone, Mr. Pettibone will be heard upon the part which he did not take in that transaction. But there is no

pretense of any connection of Mr. Haywood and therefore it is entirely unnecessary that there should be any discussion with respect to that. No witness is called upon the transaction. Walley's death is not even proven. All that is said about that is that Mr. Orchard read in the paper the account of the transaction after having heard the explosion and he read that Mr. Walley was killed. The State does not even take the pains to bring to you one witness, not one witness with regard to that transaction. How then does the fact that Mr. Walley, if it be a fact, that he was hurled into eternity, how does it establish any proposition of guilt upon the part of this defendant who is at the bar of this court? Not in the remotest degree. Orchard might just as well mentioned me or my partner or any other man who was in the city of Denver at that time and the evidence would be just as competent and just as perfect against us as it is against Mr. Haywood. No one verifies his statement with respect to that matter and I shall, therefore, not spend any further time upon it.

The next event that occurred in Colorado was the attempt to assassinate Judge Luther M. Goddard. There is not one particle of testimony other than Orchard's that that bomb was planted there by him. And it is a singular thing, gentlemen of the jury, that if the bomb was planted in June of 1905, at a time when there was a sod that was cut out in order to prepare a place for the bomb on an irrigated lawn in the city of Denver, it is a remarkable thing that neither Judge Goddard nor any member of his family nor any child playing on the street nor any person living in that vicinity should have noticed and commented upon this



dead square of not appearing among the living green of that lawn. Now, mind you, I don't say that Orchard didn't plant a bomb there. I don't care for the purposes of this case whether he did or not. But I say that there are some very queer circumstances with respect to that transaction. The fact that he planted a bomb is no indication that it was planted at the behest of Haywood. The fact that he was engaged in that transaction or that somebody saw him at it -- nobody did -- but if somebody had seen him at it it is no corroboration and does not tend to establish, within the meaning of the law as defined by your own statute, that Mr. Haywood was in any wise responsible for it. There must be some evidence independent of his tendency to connect Mr. Haywood with it before this jury would be at liberty to infer that he had any knowledge of it. But take the transaction itself: In the summer of 1905 he had planted this bomb. He claims that Nick Kekuk, an Austrian, drove him to within a couple of blocks of the place where the bomb was planted. Now I don't care if Nick Kekuk did. It doesn't follow that because Nick Kekuk drove him there -- and they don't bring Nick Kekuk here to testify with regard to it -- it is true we didn't bring him here to refute it, but it may be because he lives out of the state and neither one of us could get him, I don't know about that, the process of the state you will remember is limited to the state, a witness can't be forced to come here from abroad; the state didn't produce him anyway, but if they had produced him or if we had produced him there would have been no tendency to connect Mr. Haywood with the event which occurred there, because Mr. Orchard doesn't pretend that Nick Kekuk went there at

Nick Kekuk's request, or that Heywood had anything to do with Nick Kekuk whatsoever. Now there is the only witness that he mentions on the Goddard transaction, although he says that at times he and Steve Adams, and on one or two occasions his wife, Annie Adams, whose name was endorsed on the indictment here as a witness against on behalf of the state and who was not called by the State, went out walking in that vicinity and if they had gotten a good chance they would have shot Judge Goddard with a shotgun. He planted the bomb there in June of 1905 on an irrigated lawn. We ask the question with regard to it, it was green, and there can't be anything green in Denver except people who come there from the East and irrigated lawns. You have got to irrigate anything there to make it green unless it is something that gets there from some other section of the country and is green until such time as it fades. Here was this bomb planted in this lawn, here was this dead grass that Orchard himself saw there a week afterwards and nobody has come to testify in regard to it. In the box were forty sticks of giant powder laying there two or three inches under the sod in a blazing summer sun, irrigated night and morning by water, and they produce here in this court room paper taken off from that powder which shows no water stain upon it, which shows no yellow stain upon it and which from its appearance was taken off from a stick of perfectly fresh powder. Is it possible that giant powder could have lain over six months in the ground in the city of Denver within three inches from the surface and there would be no evidences of water marks upon the paper which surrounded it or no evidences of rust mold or that there would be no evidence, if there was no moisture, of the heat of the sun melting, thawing the powder and running it together? Why,



gentlemen of the jury, if that powder had stayed in the ground that length of time it would have been in an unrecognizable mass either from moisture or from heat or from both. But, let us see about that. Orchard makes a confession with respect to powder at Goddard's gate. It is said that Goddard is a man who is wanted and the only reason that is given that Goddard was wanted was because he rendered an eight hour decision which held unconstitutional a statute of the state providing that eight hours should constitute a day's work in underground mines and in smelters. We have the book introduced in evidence for the consideration of this jury. We find from an examination of that book that Campbell was the man who rendered the decision, and the excuse is made that they didn't want to kill Campbell. Why? Because you always knew just exactly where to find Judge Campbell. He was always against organized labor. Every decision that he had ever rendered was bound to be against them, and yet that furnished the reason why Campbell should not be killed, and strangely enough, gentlemen, it furnished the reason why Goddard should be killed. Now did you ever hear of reasoning like that? A man who had simply concurred in an opinion was to be killed for concurring in that opinion. The man who had rendered the opinion was to go scot free because he had rendered the opinion. I confess, gentlemen of the jury, that such reasoning as that is worthy of an Orchard but it is not worthy of the consideration of an intelligent jury and I think it will receive no consideration at their hands.

But there is another point that I want to call your attention to. Orchard having made his confession, Bulkeley Wells

being present in Denver in Pinkerton headquarters a week or ten days or two weeks after he had returned to Denver from Boise, where he had come with the prisoners, which I shall detail a little later on, and they went for Judge Goddard and Goddard came to those Pinkerton headquarters. Wells had been there for some time. There the confession purports to have been read of Mr. Orchard. There for the first time Goddard was made acquainted with the alleged fact that he had been designated for assassination, and he and Bulkeley Wells go out there to that gate and they find the bomb and they find the screw eye. Now I want to call your attention to the box that they found buried in the ground. I want to call your attention to the screw eye which they claim had been on that gate for a period of something like eight months before Judge Goddard discovered it. I want to show to you by the box itself that it must have been in the ground at a time, if it was in the ground at all, when the soil was perfectly dry and when there had been no irrigation going on, which would be, in Denver, in the winter time. I want to show to you another thing. That Bulkeley Wells, whose name is on this indictment, was never put upon this stand and subjected to cross examination as to how that box got in to the ground at Judge Goddard's gate, as to how that screw eye got there, and I say that the box and screw eye themselves will come mighty near demonstrating that one had not been in the gate and the other had not been in the ground during any period covered by an irrigating season in the city of Denver. There is no corroborating evidence of Harry Orchard, even if his statement is true, with respect to the box. No one comes here to testify or support



him that he planted it there because of any arrangement or agreement that he had with any officer of the Western Federation of Miners, and there must be evidence independent of Mr. Orchard's upon it. The fact that Goddard found a bomb there corroborates the fact that a bomb was there only. It does not corroborate any fact as to who put it there. The fact that he sealed it up does not corroborate the fact that is alleged that Mr. Haywood was responsible for it. Gentlemen, there is a box said to contain forty sticks of dynamite powder that was placed in the ground in the city of Denver in front of Mr. Goddard's gate in June of 1905 and remained there until February of 1906. (Exhibit box to the jury). Look at it. Look at the evidences of it. Why, the nails in the box are scarcely rusted. There is one of them there that is almost as bright as the day it was driven and could only have occurred by being kept in a place which was perfectly dry during that period of time. I say the box itself, the cover on the box and everything connected with it is an indication that that box never had been in that ground for any such period of time. Somewhere there, among those exhibits, there is a screw eye that I will be glad to show to the jury, if one of our people can find it; as the screw eye was exhibited here it appears to me that it had not been in the gate for any period, at least for eight months, in the city of Denver. But be that as it may, you have got nothing but the unaided word of Mr. Orchard for it. (Screw eye found and exhibited to the jury). Now there is a screw eye, gentlemen, but nothing but atmospheric discoloration upon it. There isn't a particle of rust that can be seen upon that screw eye or that has ever been upon it. If that

screw eye had been in a gate for a period of eight months I would like to have you look at it and tell me whether you will believe the testimony that says that it was there. There are things which cannot lie, as I have already observed to you. Physical objects of that character can tell their own story and no one can change it. I won't say of course that that was not there. I don't know. But even upon Orchard's own story it will be for you to say that it was there and I entertain the idea that any man would certainly have a reasonable doubt upon that proposition. This was abandoned, you will see. Nothing came of it. Nobody goes there to inquire, no report made to headquarters that is confirmed by anybody. No reason why it should be abandoned if there was a report made. There had been a command, according to his story, to carry on the work. Maybe he claims that there was a command to stop the work. But why stop it if there had been a command to carry it on? What difference is therein the transaction?

Now, in regard to Frank Hearne's assassination: It was found that Mr. Haywood had made a speech at a time when Frank Hearne was present. It occurred in the state capital where Hearne had been accused perhaps of driving the legislature of the state of Colorado, either directly or indirectly, and there was an argument upon the eight hour proposition and the justice of it; and Governor Grant, representing the Standard Oil, American Smelting and Refining Company and James F. Hearne representing the Standard Oil Colorado Fuel & Iron Company, and some others were present at that conference, and so it was thought that it would be a good idea to lug one of ~~the~~ these men in because there it could be shown that Haywood had engaged in a public discussion



in which Mr. Hearne took part, and it was thought that perhaps that would constitute some connection. Why is a man to be held responsible for every event that occurs after he has held a public discussion where a certain man was present? But they couldn't prove any crime with respect to Mr. Hearne. Mr. Hearne had walked his way in Colorado and elsewhere unmolested. Mr. Hearne had lived within two blocks of the state capital. Mr. Hearne was known to everybody. No trouble to kill him at all if anybody had any desire to do so or any murder in their hearts toward him. But Mr. Hearne was lugged in here by the ears by Mr. Orchard because it was thought that there would be some slight corroboration of his story because of the fact that Mr. Haywood had engaged in a public debate in which Mr. Hearne took part. Corroboration! Is that corroboration of Orchard's story that he was impelled by Haywood to kill Hearne? Where is the man who tends to connect Haywood with any crimes upon the body of Mr. Hearne or any other of these gentlemen. But there was nothing that came of Hearne. They walked around the house there two or three nights and that is all that even the imagination of Orchard can conjecture with respect to him.

The next is the attempt to assassinate Dave Moffat. They walk up around Moffat's house two or three times, the same as they had walked around Hearne's house. The cost that Orchard claims with respect to that is that Haywood said that he believed that Moffat was back of all these troubles. Moffat was the president of the First National Bank, the bank that the Western Federation of Miners has had its account in ever since it has had its headquarters in the city of Denver, a bank that they intro-

duced every draft that was introduced in evidence from Mr. Houston, you remember, was the assistant cashier of that bank. The funds of the Western Federation of Miners are in that bank. That bank knows about them. The bank issues these drafts. That bank cancels and pays the checks which are presented upon the funds of the Western Federation of Miners, and when Mr. Houston's name was called, in the light of Mr. Hawley's promise that he would show you gentlemen that the funds of the Federation have been wasted in paying those who had been employed to commit crime and in the payment of lawyers to defend those who had been employed to commit crime, I looked for Mr. Houston to furnish some testimony which would tend to back up that false charge which was made by Mr. Hawley in his opening statement. Not one scintilla of proof does Mr. Houston give upon that subject. He identifies twenty-seven drafts here which are not even introduced in evidence. They have been marked for identification and the State never offers to introduce them after they have been marked for identification. They never cross examine Mr. Haywood upon them, Mr. Meyer nor anybody else, and there is no claim before this jury that any one of these drafts represents an illegal or an improper payment of money. They introduced five or six drafts which had been furnished to Mr. Simpkins and these are the only ones that were received in testimony, and these I will explain a little later on when I get to that part of my argument.

Moffat, their friend; Moffat, the man whom they trust with their funds; Moffat, the owner of the bank into which Haywood goes day after day, and this creature, covered with the slime of his crimes and of his past career, comes here upon the stand and declares that this man is engaged in an enterprise to commit



murder upon the very man to whom he is entrusting the funds of the Western Federation and with whom he is upon terms of almost daily intercourse. I say, gentlemen of the jury, that every fact and every circumstance introduced in evidence gives the lie to that monstrous story with respect to Mr. David H. Moffat of the First National Bank of the city of Denver. But the order was given and abandoned. Nothing was done with respect to it. Moffat walks into that bank with the regularity of clock work every morning, and he walks out of it with the regularity of clock work every night. He is a conspicuous man upon the streets of Denver. He is known to every man, woman and child. His haunts are known, his home is known, his home, and his club and his bank are all within a half or three quarters of a mile of one another, and any man who desired to kill David H. Moffat, who had murder in his heart for him, could kill him a dozen times a day, if he had a dozen lives, upon the streets of the city of Denver, and he could time his movements to a nicety. There are thousands who know his habits. You could inquire of anybody in Denver. There wouldn't be the slightest difficulty, if Mr. Graham had ever had any desire or had ever had any authority to kill Mr. Moffat, or had ever been employed for that purpose. It is simply a cock and bull story put in here so that in the mass of all this evidence this jury can be urged to say, well, things have been stirred up, there has been a good deal of trouble around here somewhere, probably somebody is to blame for it, maybe this man is to blame for it, maybe it will quiet things if we just hang him and a few others. Well, gentlemen, if you are going to quiet things in this country upon any such proposition as that you have

got to hang the leaders of all of the factions that there are in the country. There are Citizens' Alliances; there are Bankers' Alliances; there are merchants' combinations; there are policemen's unions; there are printers' unions; there are all sorts and conditions and combinations of men everywhere in this country, and the fact that they organize begets the idea that these men are struggling for something that they haven't got. Struggle creates friction, friction creates trouble, and trouble will exist just as long as men are created with the natures which are implanted in them. And troubles can never be avoided and can never be quieted by hanging any man upon the doctrine of general principle. More than that, the law forbids any such thing, and you, if you are incited to do any such thing as that, or urged to do any such thing as that, would be false and recreant to your better selves and to the oaths which you have taken to administer the law as it is declared by the court in this case, on the doctrine that the ~~unimpaired~~ proof must be complete and establish the guilt of the defendant beyond all reasonable doubt.

We come now to Sherman M. Bell. If there ever was a man who merited the obloquy and the hatred of union men anywhere and everywhere I think it will be conceded that Sherman M. Bell was that man. If there was any man upon the face of the earth that union labor would be desirous of getting and wiping out of existence, if they were engaged in that business, it is Sherman M. Bell. Sherman M. Bell was adjutant general of the state of Colorado under Peabody. There is no evidence which warrants me in saying that he is the veriest braggart that the world ever saw, but there is plenty of evidence here which shows to this jury the action



which was taken under the command of Bell with respect to Mr. Moyer and with respect to the conditions which prevailed in Telluride and elsewhere. Sherman M. Bell, the fact remains, has walked the streets of Denver and all portions of the state of Colorado with as much safety as you or I or any other comparatively unknown man could do. He has never been troubled or molested in any way, shape or form. He does not even come here to tell you that there was ever anybody around his place, that he ever in all the course of his career had one single particle of trouble with anybody with respect either to the safety or the life of his person. But this man lugs him in here. Why? Because Sherman M. Bell, as you know from the reading of the record in this case, was adjutant general, brigadier general, provost general and two or three other things that he describes himself as when he signs the official documents of his office. And so he would be a good man to bring to the attention of this jury. You would be likely and liable to believe Orchard's testimony that the Western Federation officers would be desirous of getting rid of him because he had been so active and so energetic an officer in the field. If any man connected with the Western Federation of Miners had started out to assassinate General Sherman M. Bell and had determined upon that course, do you suppose, gentlemen of the jury, that Sherman M. Bell would have been alive today? One cheap detective, whom the evidence tends to show had been engaged in beating up the officers of the Mine Workers of America, one unknown man blown into eternity in crossing a vacant lot in the city of Denver, and Bell spared, nobody spared, Goodard spared, Gabbert spared, all selected as

men who were inimical to the Western Federation of Miners, all of them spared, but uncorroborated statements made here by Orchard as against this defendant for the purpose of inspiring this jury with passion and prejudice to hang this man on account of his story. Not one of these men would have been alive if the death sentence had been pronounced upon them as Orchard says it was. Not one of them would have escaped if there had been an inner circle of the Western Federation of Miners which had determined upon their death. Orchard don't claim there was any inner circle, but he does claim that one or two men urged him to commit these crimes.

Now Orchard brings forward here as his main corroborating circumstance this story, and produces one or two men only who have ever seen Mr. Haywood and Mr. Orchard together in the world, outside of Mr. Moyer, who comes here to deliver testimony upon our part. One of these men is a "nigger" who had a horse to sell, the other is a policeman who walks on the beat on Evans Street where Haywood and Pettibone lived. The policeman says that he has probably seen upon the streets of Denver and on the front steps of Pettibone's house Orchard and Pettibone and Haywood maybe three or four times, or maybe five times in all. The negro says that he got out of his carriage at the corner of 15th and Larimer, where the office of the Western Federation of Miners is, and that Mr. Haywood came down, got into the carriage, rode out a little ways and came back, and that is all there is of it. Now there is the corroboration of any connection with Haywood. Does it tend to show any criminal purpose on the part of Haywood because he got into a wagon and rode with Orchard part way across



the viaduct? We admit it. We could have denied it. It would have been Haywood's word against the negro's, but there is no desire upon our part to contradict anything as against any man who is telling the truth here. It would have suggested itself to your minds, I am sure, that if this man had been committing perjury upon the stand, and of course either he or Orchard has committed perjury, that if he had been committing perjury upon the stand he would have denied the story of this negro. But he tells you frankly that it was so and tells you why it was so.

Now, gentlemen, I want to examine that story of Orchard's as to its absurdity. If Pettibone wanted to get a gray mare which Mr. Haywood had and which was one of a team, to use in his business, and Orchard was loafing up around his place there, and he sent Orchard down with that horse that he could buy and asked him to see if he couldn't trade it for that gray mare, it was a perfectly natural thing for Haywood to get into the wagon and view the steps of the horse that he was about to trade for, if he was going to make the trade. If Pettibone and Orchard were buying a horse with which to travel around to commit an assassination, what difference did \$10 make on the price? What difference did \$25 or \$50 make on the price of that horse, a horse to go and assassinate Sherman Bell with? Do you suppose that anybody who had murder in their hearts against Sherman Bell was going to hesitate and dicker and bargain about the price of a horse? Not in the world; if Pettibone and Orchard wanted a horse to commit murder with Haywood would have told them, if he was engaged in that, go and get a horse, get anything that you need, I want the murder committed, the rest of it will take care of itself, when he

was paying any price that might be asked or might be desired by Mr. Orchard with respect to the amount of money which he was to furnish him for the commission of that deed. But he goes down there with this horse and Haywood says that they were desirous of trading him out of a gray mare which he had, and he had the gray mare there, and he got in and looked at this horse, and he says, I wouldn't break up this team for this horse. The idea was to put this dark colored horse with a dark colored horse which Haywood had, and in that manner Pettibone could save a little money himself and get what he called a better horse; and Haywood, representing the Western Federation of Miners, wouldn't stand for it. The story, gentlemen, is too absurd to require consideration. The jury don't corroborate Mr. Orchard that that horse was purchased for any crime. He don't corroborate him that Haywood purchased him. He don't corroborate him that the money came from Haywood. No one does that. Orchard himself says that he got the money from Pettibone, that Pettibone got it from Haywood, and that he, Orchard, took it down to the livery stable and gave it to the man and brought the horse back. Now that is the story which is told by Mr. Orchard. Why don't they produce somebody who can show that the money came from the funds of the Western Federation of Miners? They know that they can't produce any such evidence as that. If they could they would have done so, and it is for the state to produce the evidence which establishes the guilt of the defendant beyond all reasonable doubt. So that upon this question of Sherman's Ball's assassination there is no pretense of corroboration, even with the witness Sehorn or the witness Roney and they are the only two who testified as to



any condition of facts with respect to that.

Now, gentlemen, the veriest incidents which I have recited constitute all of the incidents upon which evidence has been received down to the date of the real transaction in this case. That transaction is Governor Steunenberg's death. That is the matter which you are here to inquire of. That is the matter which you are to render your determination upon. You have only to consider the Coeur d'Alene troubles, the California incident and the several matters in Colorado for the purpose of enabling you to determine the all important question in this case, and that is the responsibility for Governor Steunenberg's death. California must take care of the crime committed within its borders. Idaho has placed upon it the burden only of taking care of crime committed within its borders. You have been fooled in this case largely by the state of Colorado. She has sent up here all her dirty linen in order to have you gentlemen wash it. But this court is going to tell you that ~~knowing~~ for any crime committed in Colorado there can be no conviction in this case whoever committed that crime, whether it be the man here on trial, or Orchard, or anybody else, but that your determination must be limited to ascertain whether or not the man who is here on trial is responsible as an accessory before the fact for the killing of Governor Steunenberg on December 30th, 1905. Any crime <sup>committed</sup> in Colorado should be inquired of there and must be punished there, it cannot be punished here. Your punishment, if punishment you inflict, can only rest upon that which occurred in Colorado, and that which has been received elsewhere has only been received for the purpose of enabling you in the light of all of the cir-

circumstances to determine upon whom responsibility rests for the event which occurred here. You will be a long time paying taxes here for attempting to try some cases that are said to have arisen in Colorado. But that is a matter probably which does not concern you and it certainly does not concern me. So far as Steunenberg's death is concerned, and so far as the evidence with respect to it is concerned, this case ought to have been tried and could have been tried within a period of a week. But, as I have said to you when I started out, it would not be tried that way and put a cinch upon this defendant, and therefore the state, in order to secure a conviction of this defendant, was obliged to go to a lot of other circumstances occurring elsewhere and ask you to infer from them, if you could under the evidence, that because he might be guilty of them that therefore he might be guilty of this, and so supply the evidence which they have not got to connect him directly with this transaction.

And now we shall proceed, gentle men of the jury, with some degree of care I trust, to examine the matter which we are now on trial for. I need not spend any time, I take it, upon that evidence which came from Caldwell and vicinity respecting the death of Governor Steunenberg and the circumstances surrounding that death. So far as we are concerned we are perfectly willing to admit that Mr. Orchard killed Governor Steunenberg as he said that he did, killed him by the explosion of a dynamite bomb. There were some eighteen witnesses, commencing with Mr. Swayne and ending with Mr. Guy Peight, who testified upon the event itself, and these witnesses I lay aside because it is not necessary to discuss that branch of the case.



The talk with respect to Steunenberg is said by Orchard to have arisen at the time that he quit on Bell. He had bought this horse about a week before he quit, and then it came about last in a conversation that he had with Haywood and Moyer and Pettibone at headquarters, no person coming here to say that they ever saw him at headquarters at all unless it be John H. O'Neill, whose testimony is discredited because of the fact that he was convicted of involuntary manslaughter some twenty years ago in a row which occurred in Dakota, no man comes here to corroborate that meeting or give any testimony with respect to it. Orchard claims at that time he was withdrawn from the assassination of General Sherman Bell and detailed to assassinate Governor Steunenberg, and he tells a most remarkable story. They met in that room and Moyer says "I don't want anything pulled off here, if anybody is killed here the first thing that will happen will be that I will be arrested and thrown back into the bull pen, and I have had 105 days in the bull pen and my health is broken, I am in bad condition and I can't stand any more of it." Now think of it! There is the way the conversation arose, when a horse had just been purchased for the purpose of assassinating Sherman Bell. I have heard of people purchasing guns and other things in order to effect an assassination; I have never heard of their purchasing a horse before. But however that may be, at this meeting Moyer determined that he wanted to get rid of Neville. Neville had been up to the office and had asked, according to the story of Orchard, for \$1200 in cash, or he would tell what he knew about the Independence depot transaction. Now if Moyer was involved in the Independence depot

transaction and Neville had threatened to tell what he knew about it if he didn't get \$1200 he would have gotten the \$1200. How unreliable is that story, for on March 23rd of 1904 Mayer was incarcerated in a military bull pen and remained there until July 5th, more than one month after the Independence depot explosion had occurred. That story is too thin to wash. There is no pretense that Mayer knew anything at all the plans or the pulling off of the plans which resulted in the Independence depot explosion. Furthermore, if Neville had been there with a threat of that kind and had not gotten the \$1200, as he evidently hadn't, Neville would have told the story because there was nothing in the evidence claimed anywhere that ~~Mayer~~ involves Neville in that transaction in any way, shape or form. There is no reason why he shouldn't have told it if he was there for the purpose of levying blackmail. Mayer tells you what the true story was with respect to Neville. Neville came there with his boy and Neville said "I was away with Orchard." Orchard was wanted, sought to be arrested for the Independence depot explosion. He had gone on to Cody and had remained at Thermopalis. "They arrested me at Thermopalis, left my team there, they took me back to Victor, they made their investigation, they determined that they didn't want me and they discharged me. Now I have got to go back and get my team and bring that team back to Colorado. To hire a lawyer and to get my team and to take care of them while I have been gone will cost \$250. In view of the fact that it was one of your men who was wanted, Mr. Orchard, and in view of the fact that I had been within, don't you think you ought to help me out and reimburse me for that \$250?" No, Hadley says, that



is an absurd thing that Moyer would take that under consideration if he, Moyer, was not guilty. Why, no one pretends that Moyer was guilty of the Independence depot transaction, and inasmuch as it had grown up in that way Moyer told him that while he didn't think that he could do anything for him that he would as a matter of fact lay it before the executive board which was soon to meet and the executive board had the power. He had no power. He had no funds applicable to that purpose. He had no right to do a thing of that kind. Moyer never did lay it before the executive board. Before the executive board met he forgot all about it. Neville went away and never came back again. And yet Orchard says that the beginning of the meeting which resulted in the killing of Steunenberg came about because Mr. Moyer wanted Mr. Neville put out of the way because he knew too much about the Independence depot transaction. And Haywood spoke up and said "Well, while you are out on that mission you might just as well go up around and kill Steunenberg; I have sent several men up there to kill Steunenberg and none of them have been able to succeed, now you go up and see if you can kill him." Gentlemen, Orchard came to Salt Lake. He never did kill Neville. He never attempted to kill Neville. But some time afterwards, having heard that Neville had died a natural death, he wrote a letter, so he says, to Mr. Pettibone stating that he had employed Mr. Shoddy or Mr. Wyatt, who was one and the same man, to go down and kill Neville, and Shoddy or Wyatt had gone down there and done the job. He had not seen Shoddy, according to his own story, had not employed him, Shoddy had not gone there, and yet this man, if he could hear of a death of anybody anywhere, was writing a

letter with regard to that death claiming to have inflicted it himself. I say, gentlemen, that you will never believe from this evidence that he was ever sent to kill Neville, that he ever wrote a letter to anybody with respect to it about Shoddy or anybody else, and that he never had any idea of killing Mr. Neville, nor did Mr. Moyer have any idea of killing Mr. Neville, and he doesn't claim that he did kill Mr. Neville.

Haywood said to him that he had sent a man named McConnell, I believe that was the name, McDonald or McConnell, Art Baston and Steve Adams up here at separate times to have them kill Governor Steunenberg and that each one of them had failed. Gentlemen, if there was an assassin who was engaged in assassination, who wanted a shining mark to commit an assassination upon, Governor Steunenberg was that man. He was a man who for aime could be hit where anybody could shoot near enough to hit the side of a barn. He was a man who was in the habit of taking long rides into the sheep camps, according to Mr. Orchard's testimony, across the prairies of this country where he could be seen for a distance that no living man could be distinguished and he could shoot him anywhere within rifle shooting distance. Probably there wasn't a week of Governor Steunenberg's life that he couldn't have been safely or comparatively safely assassinated, if anybody had wanted to have assassinated him in any other than a perfectly spectacular manner. I say that when Mr. Orchard came here the things that he did shows that he has a mania for assassination under circumstances which will attract attention, and now let us take up and review his movements after this crime was



entered into which he says was entered into.

Haywood had given him \$240 in cash on account of \$300 which he had demanded to start on this trip. He failed to remember on cross examination that he had said that he had gotten \$300 in his direct examination, and so on cross examination he explained it in this way: He got \$240 in cash from Mr. Haywood when he started, having received \$20 on three different occasions from Haywood before, at three different times -- I believe one of the times was from Moyer, possibly Mr. Haywood -- that he had received \$20 each time, so he had gotten his \$300 in that way and started out on his trip. Haywood had told him, having sent him on this mission, that he could get more any time he wanted it. Now think what he had got to do. He had got to go from Denver to Goldfield, Nevada, if he kept the contract which he says that he made, because that was where Neville was living. He had got to go from Nevada to Idaho and find Governor Staunenberg. He had got to assassinate both of these men and make his get-away and he was doing it for the sum of \$300 less \$60. Why, gentlemen, the amount which he was receiving would hardly pay car fare out to Goldfield and Caldwell and back to Denver, let alone paying his hotel bills, and here was a man of intelligence, a man of wisdom, a man who has received even Hawley's recommendation for his brains, starting him out on a mission of that kind with directions to use the mail and the telegraph and any other means that he saw fit, to draw on him at any time and under any circumstances for all of the money that he needed. If he had been sent out to commit an assassination upon any man do you think, gentlemen of the jury, that ingoing to commit

that assassination he would have started with funds that were inadequate for the purpose and inadequate to get him back to the place from which he had started? I submit that the manner and the method of his starting gives the lie to his story. He came out to Salt Lake. He stopped at Salt Lake a while. He went from Salt Lake to Nepa. He stayed four days in Salt Lake. He stayed in Nepa three or four days. He stayed in Caldwell two days, the place where he was to commit this deed, the deed which he had been sent to commit. He went to Portland. He stayed three days at the fair. He went to Seattle. He stayed one week at Seattle. He went to Spokane. He stayed one night at Spokane. He went to Wallace and Burke. He stayed over a month. He came back to Spokane and he stayed three or four days. He then went to St. Joe upon the St. Joe river and he stayed one week and then he came down here with Jack Simpkins. Now let us look at the circumstances of the transaction.

He was not sent from Denver to go and meet Jack Simpkins or to employ him, or to employ Hasterly, or to employ anybody else. He doesn't make any pretense of any kind or character like that. He was sent here to do his job alone. He came up into this country and the first thing he did was to get off at Nepa and inquired, according to his story, around Nepa about Steunenberg. What for? So that if anything happened to Steunenberg the finger of suspicion would be pointed at him? He went to Caldwell and stayed two days. What for? So that if anything happened to Steunenberg the finger of suspicion would be pointed at him? Totally unnecessary. He learned that Steunenberg was in Boise. He came here to Boise. He stopped at the Capital



hotel. He went over to the Idanha hotel and found Steunenberg there and went into his room. What for? So that if anything happened to Steunenberg that the finger of suspicion would be pointed at him? Then he went back toampa, on up to Caldwell, out to Portland, abandoned the enterprise that he was sent here for. Did he have cold feet? No, there is no claim that the man has a particle of feeling of any kind or character. Remorseless he sat here and told his story to this jury day after day, not the slightest compassion for his victims, not the slightest expression of feeling for those whom he had hurled into eternity, and most of whom, if the good book is true, had probably gone to eternal damnation. Not any expression of any sentiment of any kind or character. I say that there was working in that maniacal mind of his the proposition of shutting his mind with the killing of somebody at that time and for reasons known to him and which he expressed. Among others he had fixed upon Steunenberg, but his intellect, his mind wavered upon it, and he went on to Portland to the fair. When he had bought his ticket, gentlemen of the jury, he had bought it from Denver to Portland and back by way of Seattle, Spokane and Billings, Montana, to Denver on the Burlington road -- started out to make the round trip, started out to come back to Denver, gone to Portland to see the fair, gone to Seattle to look up a ranch, that he had some talk with Mr. Pettibone about a letter which Pettibone received from some of the deportees from Cripple Creek who had gone up into that country and who had bought small ranches up there and who had turned from miners into farmers, as many a man had done before. And all of the talk which we find that he had had about it from our side of

the case was with reference to his going up into that western country, telling Mr. Haywood at the sink in Pettibone's house that he was going up to the new mining camp of Fairview in Alaska.

I want to pause to talk just a moment about that trip to Alaska. It is evident that Haywood and Marion Moor had no collusion with respect to the Alaska trip. Meyer and Haywood don't claim to have had it and Orchard does not claim that they did have it. Moor wasn't going to Fairview. Fairview is in the interior of Alaska. He was going up to Cape Nome away on out in the Arctic Ocean some place to form a lodge of the Western Federation of Miners. Orchard gave Moor a letter to mail at Nome and told him that he might follow after up into the Alaska country later on, and Moor had taken his letter and mailed it under the circumstances which were related to you. Orchard don't even claim that there was anything wrong with Moor or anything wrong about mailing that letter or that Moor had any criminal enterprise of any kind or character. Orchard had told Clifford that he contemplated going up into Alaska. Orchard had told Haywood before he left there that he contemplated going to Fairview, Alaska; and so, months later, in November of that year, when Mrs. Orchard wrote to Haywood and asked him if he knew where Orchard was, being a man who was at the head of the Western Federation of Miners and thinking that he might know something about any miner in the country, Haywood replied that the last that he heard of him was that he was in Fairview, Alaska; and that, they claim, is a corroborating circumstance which tends to show what? That Haywood committed crimes through Orchard. I do not believe that this



jury will ever hold that that letter was anything which was any evidence of the commission of any crime by Mr. Haywood.

Well, Orchard goes up there and pretends to look at a ranch, which is in accordance with the talk which he had had with Mr. Pettibone. He goes over to Spokane -- a man, now, who had been sent on a direct and a specific mission to Caldwell to kill Governor Steunenberg -- and then we find him up in Portland, up in Seattle, up in Spokane, up in Wallace, and when he gets to Wallace he meets Jack Simpkins. I said to him "Were you sent to Jack Simpkins? Did he know anything about it? Was he to take any part in it?" And he answered me that Jack Simpkins' name was never mentioned by the men who he claims had sent him up here to kill Governor Steunenberg. He goes up there and he gets acquainted with Jack Simpkins. Jack Simpkins was a man who had suffered in the bull pen in the Coeur d'Alene district in 1899. Jack Simpkins is a man who Hawley says has fled from justice after the time of the arrest of these defendants or after Orchard's confession was made known. I am not here defending Jack Simpkins but I am here to say, gentlemen of the jury, that I don't believe from this evidence that there is one iota of guilt established directly or remotely against Mr. Jack Simpkins except that this man, when he was contemplating a trip down here to these unions in response to a letter from Mr. Moyer, in response to a request made by Mr. Nelson of Silver City that a man should be sent, that Orchard inveigled him off of the train at Caldwell for a day or two in order to fasten suspicion upon him for the commission of a thing which was running through his mind. I am here to say also, gentlemen of the jury, that if I were living

in the state of Idaho in January, 1906, and I had been incarcerated in the bull pen in 1899 and had remained there over ten months and had suffered the indignities that Mr. Simpkins had suffered, that if Governor Steunenberg had been killed on the 30th day of December of 1905, and I coupled that with the fact that he was governor of the state of Idaho at the time that I was in the bull pen, and added to that fact that I was a member of the executive board of the Western Federation of Miners, and added to that the fact that for a period of two or three days in November I had been in Caldwell, Idaho, with a man who was subsequently arrested for the killing of Governor Steunenberg, I would have done, and under similar circumstances I believe that you would have done, precisely that thing which was done by Mr. Simpkins. You would have fled to cover in order to have preserved your liberty. And if I could have foreseen or had any knowledge of what would have happened to other leaders of the Western Federation of Miners, or any belief or suspicion that such a thing would have extended on to them so that they would be arrested and brought here to Idaho, it is no dead two to one, gentlemen of the jury, that I wouldn't have advised them to do the same thing.



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Because this man was a prominent, he was a well loved man, he was a man who had walked in and out before these people for years, he was a man who had had a difficulty with the local unions of the Western Federation, he was a man who had incurred the enmity and hatred on account of his official action only, as I understand it, ~~of~~ those who had suffered indignities at the hands of the soldiery, who had been brought into northern Idaho. And every one of them must have known that in seeking for an excuse as to why Steunenberg should have been killed it would have been bound to be laid at the hands of somebody who suffered by reason of the transactions in northern Idaho in 1899, in the absence of any other avowed reason.

We may never know what the real truth may be with respect to that motive, but I submit, gentlemen of the jury that Mr. Orchard was a man who had a motive, whether he had sold absolutely his claim to Cardener or not. Whether he had a right to redeem it or not, it was going through his head that the fact that he had been obliged to leave the Coeur d'Alene, whether he had participated in the Bunker Hill Sullivan mill destruction or not, was something which interfered with his prosperity and with his right to be a rich man.

I call your attention to the witnesses upon that proposition so that you may see whether or not they are all liars with respect to it. Orchard is obliged to dispute the following witnesses on that: Max Malich. How could Max Malich ever have gotten the story he did in the Turkish baths, at the

time and the place, unless Orchard had told him? Whatever Orchard's true position was with reference to it, his feeling existed toward Governor Steunenberg. But it is said that Max Malich is a liar because he is a member of the Western Federation of Miners, just the same way that it is said that Jack Simpkins is a criminal and responsible for the death of Governor Steunenberg because he fled when his name was mentioned in connection with it,-- just as it is said that Bill Davis is a criminal because he did not flee when his name was mentioned in connection with it. What operates on one man one way operates on another in another. Hawley says all these men who come here have in a measure corroborated Orchard, and to this extent these men are truthful and worthy of belief, but that every one of these men who have disputed Orchard is a liar because he is a member of the Western Federation of Miners, and has come here for that purpose and with that motive and is unworthy of belief. The standard with Hawley consists in corroborating or denying Orchard a man whom the statute discredits and whom I take it Hawley and Jorah cannot apologize for to this jury. They cannot explain or give him any credence before this jury on his unsupported testimony alone. Wherever there is a fact that tends to corroborate Orchard's statement, Hawley says they are all right with respect to that, but are liars in everything else, and one of our men, because he fled, is a criminal, and others who come here are criminals because they came. Now, that is like a man starting to go down town and he gets half way there and meets himself



3

coming back. It is logic that does not go in the books and does not go with the human mind. If these men have come here to refute Orchard's story, where he charges them with being criminals, like Aikman, like Davis, and like Masterly and one or two others, if they are criminals because they have come then Mr. Simpkins is not a criminal because he ran away. If Simpkins is a criminal because he ran away they are not criminals because they came,-- if there is anything in the logic of Hawley upon that subject.

The next witness is Mrs. Day. She tells you you of her intimacy with Orchard; how she met him at the Belmont, how she visited with him, how she sat on the sofa with him in the reception room or the office of that building, and how he talked with her and became confidential, how he described to her that there was but one woman he had ever really and truly loved, and how he described to her how they separated her from that woman, and how he told her that he at one time owned a sixteenth interest in the Hercules mine and that he had lost that interest, which would cover a right to redeem that interest, because of the fact that he had been run out of the country by the soldiers in 1899. He then talked of going up to Encampment,-- going up there because payday was about to come around at the Encampment Smelting Company's plant and the mining companies perhaps, and he was going to get some easy money from these men,-- always looking for a place where he could get some money, notwithstanding the fact that he could go to Haywood and get it at any time,-- and she told him that her experience was that gamblers lost more than they

accumulated, and he told her that he did not get busted because he left part of it with Pettibone and he could not get busted, and he still had a place where he could get some more money to start his operations on again. Couldn't he tell Mrs. Day? I think there can be no dispute about that, because she is not a criminal,-- she is not a member of the Western Federation of Miners,-- she is not interested in this case, and she has the sanction of the State; the state endorsed her name as a witness on the indictment, and the state brought her to testify, but the state did not use her. Why? Because the state only wanted to use her to establish the fact that Orchard and Haywood had been seen in Orchard's room together down at the end of the hall, which Haywood says is not so. He says it was a toilet room that he went to down at the end of the hall, and no one has come here to dispute the statement that there was a toilet room there at the end of that hall. The state wanted to prove that, but some way or other the state learned either from Mrs. Day or somebody else, that if they took the good which would establish Orchard as having been seen with Haywood they would have to take the bad and establish the fact that Orchard had made to her this statement at that time, and so we brought her here and gave the state the benefit of the testimony they wanted and we took the benefit of the testimony we wanted. I don't think anybody will claim that Mrs. Day was a liar, and if she was not a liar I would like to know by what process of reasoning it can be said these other witnesses were liars.



The next witness is Mrs. Waters. It is quite evident that Mrs. Waters was able to testify that her husband was connected with Harry Orchard and that he was a gun man in the employ of the mine owners' association. I don't know as that tends directly to the impeachment of Orchard except in this way, that Orchard says he never was at Kid Waters house, and she testifies that he was there on two occasions.

The next witness is Doctor McGee, and I have told you about that, and the next is Dave Costes to whom he told substantially a similar story as to Mrs. Day, and told it to him upon two or three different occasions. The next is <sup>Eugene Angley</sup> ~~John Smith~~ who is maligned by Mr. Hawley because he says he came in with that riff-raff administration that was known as Blood to the Bridle Waite's administration of Colorado. I have never known that anybody but the mine owners and their particular friends have ever found any particular fault with his administration, and neither does his administration of the affairs of the state reflect any disgrace on that state, and I am quite sure that an examination of the state house will find among the other famous governors of Colorado that you will find a painting on the walls of the Governor's chamber, where Governor Waite occupies a very prominent position.

But be that as it may, General Angley speaks for himself. He may be ~~an~~ in advance of or behind the times upon public questions. I think we may safely say he is not a republican, and it is equally true that he is not a democrat, and therefore he

does not belong in the same band wagon with either Mr. Borah or Mr. Hawley, and whatever may be said of him in reference to his past career, if history is written correctly and I am not misinformed, Mr. Hawley and Mr. Borah did not occupy in the campaign of 1896 a very much different position than was occupied by General Angley. They may have reformed since that time, and therefore there is not any reason to say anything about any part of his past career, and no one claims there is anything the matter with Eugene Angley except his politics, and a good many people have gotten off on politics at different times.

The next witness is Mr. Elliott, the old soldier, whom you will remember. Some eight or ten of their witnesses on rebuttal were brought here for what? For the purpose of casting discredit on the story of a man who had at one time been insane. I think it was the most laughable part of this case. Here was this old soldier coming on to this stand and telling a long story which he had dictated himself the night before to a stenographer with respect to a conversation he had had with Orchard, coming on the stand and telling it absolutely after the impeaching question had been asked Mr. Orchard. We turn him over to Mr. Hawley for a cross examination which lasted for an hour, and this man, though he had been insane, could not be shaken on the substance of his story at all, with all of the ingenuity which Hawley had, with all of that force, denunciation and effect which comes in his voice, with all the belligerency of



his attitude, by the enlargement of his eyes,-- this old soldier sat there and told his story and the lawyer could not shake him. And what was done? The fact that he had been temporarily in an insane asylum on account of being ill at some former period of his life was brought up and the records of two great railroad companies, one which tries to go up in the forenoon and another in the afternoon -- or rather one tries to go up in the forenoon and back in the afternoon, and the other which runs across the great desert in the lower part of this state, were brought here to show that he was mistaken in his date. He said it was the 27th or 28th day of November and as he remembered it his furlough from the soldiers' home was about to expire on one of those days, and he knows that he got back at the time that the furlough expired, and he was just going back at that time. Now, the old man was disputed on this that he came down from Council on the day he did, and took the train on the same day in the afternoon and came through to Caldwell. If it was a day that the trains were on time the trains would meet and there would be no difficulty in regard to that, but on the 27th and 28th it happened that on this road the trains did not connect because the transcontinental trains were practically on time that day, while the local train did not get in there until five or six o'clock that night, so he could not have taken the train at Weiser if he came down on one of those two days. That is one thing they disputed him on. The other was that Crocker had left here on or about the

24th or 25th day of November -- on the 24th I think, and had arrived at Salt Lake on the 25th because a fugitive leaf was introduced from the transfer book of the Gullen hotel which showed that Orchard had arrived there on the 25th day of that month, and his testimony shows that he left for Denver and stayed there until about the 14th or 15th of December so they said the old man's story cannot be true, because Orchard was not here on the 27th or 28th, and the trains did not connect on that day. And I say if you are going to disbelieve a man's story you have got to disbelieve it upon the story itself, -- the probability that he was mistaken in the date, and the events which happened on that day, and all the events. You have got Orchard and himself. You have got a man here that no man pretends was fixed up; no man pretends there was any attempt to cause him to commit perjury. He came in voluntarily and told his story to some old soldier out there who had casually mentioned it to Mr. Nugent, and Mr. Nugent sent for him and he repeated it to him. I told him that I wanted him to come to see me, and he sent for him at the proper time; he sent for him and he came and told his story in the presence of a stenographer and it was taken down, and he was placed on the stand and turned over for cross examination, but Mr. Hawley could not shake him on the happening of the event itself. If I say, gentlemen of the jury, that I have made a trip to the Barber dam on Wednesday of last week, and describe a certain event which occurred there at that time, it is no



evidence of the untruth of my story because you prove that as a matter of fact I was not there on Wednesday but on Thursday. The time is not the essence of the thing inquired about, and here is one thing that occurred to me as peculiar: This old man testified that he had a furlough, that he got back to the soldiers' home on the day that the furlough expired, and he remembered his furlough expired on the 27th or 28th day of November. Here is the soldiers' home within three miles of Boise. They were looking up rebuttal testimony. Why did not they bring in the books of that institution to show that that furlough expired on the 27th or 28th of November? Suppose the books show that the furlough expired on the 22nd, or 23rd or 24th of November, that would have some tendency, if the furlough did expire on the 28th of November, to strengthen the probabilities -- I should have said did not expire on the 28th -- that would have some tendency to strengthen the probabilities that the old man's story was wrong. But I submit to you that that story could not be shaken, and that this man Orchard gave to him the story he did give to him -- told him to keep track of the papers and he would see that something was doing, and told him furthermore that in this trouble between the mine owners' association and the miners he had become satisfied that the mine owners' association would win out and that the miners would be put down and out because they had the capital to do it; that he had been on both sides of the controversy and knew what the situation was, and the old gentleman replied that if he had been on both sides he ought to know what he was taking

about. I say that an independent piece of evidence like that you are bound to believe.

Mr. Copley also tells you that Mr. Orchard had a motive; that he told him about his ownership of the Hercules and his interest in it, and how he had lost it. That Bradley had got his deserts and that Steunenberg would get his deserts some time; and Mr. Copley, in the main, I take it is an honest man, if Orchard is to be believed,-- because, if Orchard is the paragon of virtue in this case,-- Orchard said upon the stand that Copley/<sup>he</sup> did not think was a kind of a man who knew anything about the crimes that were being carried on by Moyer and Heywood. He tells you that at the time of his meeting up in Cheyenne, and he reiterates by showing what took place at the meeting in San Francisco, and I want to say to you that Mr. Copley stands by himself; Mr. Hawley may malign him, but he appears to be as fair and above-board a witness as was placed upon this stand in the entire course of this trial.

Here is Mr. Sullivan who is another liar, I presume, a man not interested in this controversy who was a member of the Engineer's Union, working as an engineer in the Cripple Creek district, and Orchard told him the same thing. Here is the man Reacy, and Orchard told the same thing to him, and here is the man Gill and his wife from Spokane, who lived in Burke in 1899, and Orchard was trying to sell his interest to them long after the time he claims now to have sold it to Gardner. You know you heard them try to impeach the testimony of this man and his wife --



Mr. Gill and his wife, by bringing here the bookkeeper of the Federal Mining Company to show that Orchard worked certain shifts for that mining company, just as though they could show that if he worked a shift on a day that he talked to Gill it would be impossible for him to have had that talk with Gill.

Now, we have got Orchard in the Coeur d'Alenes, and we have got him talking with Mr. Jack Simpkins and Dave Coates, and to my mind that situation is a very strong one against the prosecution in this case, and against the truth of Mr. Orchard's story, and I shall proceed to discuss it.

Orchard was back in his old haunts. He was gambling, he was thieving, he was burglarizing, he was borrowing money, five and ten dollars at a time, and he was desperately poor. Is it conceivable that for a period of more than one month, in Wallace, resorting to all sorts of schemes to raise money, even to robbing the cash register of his friend and stealing the trunk of a man whom he had been associating with, -- is it possible that this jury will believe that this man who, all that he had to do was to touch the wires or write a letter to the city of Denver and get all the money that he wanted? There was no embargo upon him from writing. There was no embargo upon him from telegraphing, and if there had been it would have been violated the same as it was in San Francisco when he wanted money from Pettibone there. He was on a mission for the Western Federation of Miners, with the right to ask and receive all the money he wanted, and he was resorting to every subterfuge, and was clothed in abject

poverty during the time,-- during the time that he was in that district, until finally he got into a condition where he started first to rob Paulson of his children and hold them for ransom, and second, he borrowed the money from Paulson -- the only money that he, Orchard, had -- the only money that he brought with him, the money which paid his board, his room rent, and his other expenses in Caldwell while he was carrying on the enterprise of assassinating Governor Steunenberg. It was Paulson's money in his pocket that he left Wallace with, and I say to you, gentlemen, it gives the lie to the story that he ever received a hundred dollars from Mr. Simpkins purporting to come from Mr. Moyer through Mr. Haywood. Where is the evidence of that hundred dollars? There would be some evidence of it somewhere -- some check -- some telegraphic communication -- some draft,-- something that could be gotten which would be put here in the evidence by the state if he had ever gotten a hundred dollars from Mr. Simpkins as he said he did. There he was a little over a month in that district; there he was borrowing five and ten dollars at a time; there he was robbing or burglarizing the depot, and robbing a trunk, burglarizing a saloon and pilfering from the cash register.

That was his financial condition when he says that at that identical time he had a hundred dollars which was given to him by Mr. Simpkins, coming from Mr. Moyer, through Mr. Haywood, where there is not a trace of a pen with regard to it, which is even sought to be introduced in evidence by the state in this case. I say it gives the lie to his story that he was on a mission of



murder of Governor Steunenberg at the instance of anybody, because if he was there would have been no lack of funds. There never was a lack of funds for any legitimate purpose when anybody ever applied to the Western Federation of Miners.

There are now 40,000 members of that institution. There have been for years between twenty and forty thousand of those members; there never was any trouble in raising an assessment that would provide any reasonable funds for any legitimate purpose where it was sought to be used by the officers of the Federation.

Now, Mr. Orchard, after loafing around and bumming around in that district for a month, goes down to Spokane for a few days with Mr. Simpkins. He sees Simpkins there and Simpkins is going over into this country, and says he must go to the St. Joe and spend some time on his ranch -- on his homestead before he can get away, and Orchard waits for him with Paulson's \$300. in his pocket and knowing, as I believe, what he was then going to use that money to do. Not that Paulson knew it, but Orchard knew it and knew what he intended to use the money for at the time he borrowed it. The same idea was running in his mind that had been running through it all the time in San Francisco, when he talked with Mrs. Day, and with Mr. Coates, and with the rest of them, and furthermore, gentlemen of the jury, you remember he said if he could to take this child of Paulson's and to hold it for the \$60,000 ransom and if he got the \$60,000, what was they going to do? He came very near making a slip on that, but he finally landed it by saying that

Simpkins said that when they got the \$60,000 they would hire an assassin to go down and kill Steunenberg and they would not have anything to do with it themselves.

Well, he comes down here to Caldwell and <sup>gets</sup> ~~gets~~ off there. I have never heard that Mr. Simpkins was not a man of some determination and resolve, and I believe, gentlemen of the jury, that while I have no knowledge of how it comes that Mr. Simpkins got off there, if he did, -- and of course we have got to believe that he did in this case until we hear from him, I believe he was inveigled off there by Mr. Orchard on some proposition of hunting, or looking for a ranch, or something of that kind; because if Simpkins had ever gone to Caldwell for the purpose of killing Governor Steunenberg, Mr. Simpkins would have effected that purpose. If Simpkins had ever intended to kill Governor Steunenberg, or had talked with any one about it, Steunenberg would not have lived from the summer of 1899 until the extreme latter end of the year 1905. Man's animosity and men's hatred do not as a general thing increase as the years lapse between the event which caused that animosity and the perpetration of the offense. Generally the animosity dies down and dies out in the course of a period of years. Here was this man's indignities inflicted upon him in 1899. He lived here in this state with Steunenberg, he doubtless heard Steunenberg in political campaigns, it was no trouble to go to see him at any time, he could get him at any time or place almost, and yet this man



comes down there and gets off at Caldwell the better part of a week with this man Orchard, and stays there exactly like Bill Easterly was sought to come, by Orchard, and visit him, to come over there and look over the field, as he says -- Orchard -- and see if he did not want to help him in a contract which he had, as Easterly says to come over there and give up his job and help him write insurance, but Easterly would not give up his job for any such purpose. He did not know anything about the insurance business; he did not know what he could do with respect to that, and so Easterly declined, and it seems to me that Mr. Simpkins was down there for some purpose which Mr. Orchard had made, innocently in itself, in the light of all the events which occurred, and Simpkins had no reason to believe that he was there attempting to commit a crime.

Nobody saw the bomb that Orchard testifies to; no one testifies to its having been made or that any were made there at the time that Simpkins was there, and he goes away without any object being accomplished with respect to it.

Now, I am about to take up another matter and I would be very glad if your Honor would allow us to come in at a later hour in respect to that.

THE COURT: At six o'clock?

MR. RICHARDSON: Very well, yes sir. That worked very well last night, and I will say to the jury that I will get through to-night.

THE COURT: Very well, we will stop here then.

Thereupon the bailiffs were sworn, the court gave the jury the statutory admonition, the jury retired in charge of the bailiffs, the defendant was remanded to custody and a recess was taken until six o'clock P. M.

R E C E S S .



Boise, Idaho, Thursday, July 25th, 1907.

6:00 o'clock P. M.

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Court convened pursuant to adjournment.

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

ARGUMENT BY MR. RICHARDSON CONTINUED:

MR. RICHARDSON: May it please the court, and gentlemen of the jury: I trust that in the course of this evening session I shall be able to close the remarks which I propose to make to you in this case, and so far as I am concerned, to leave the matter in your hands.

At the time of the last adjournment we had left Mr. Orchard in Caldwell. I had called attention to the fact of his coming there and the manner in which he came, and the fact that Mr. Simpkins had been there with him at some time in the month of October of 1905. When Mr. Orchard returned from Salt Lake as he remembered, he said he did return on or about the 15th of September,-- it was after writing a letter to Mr. Coates in Wallace stating he had been taken sick and that was the reason he did not keep his proposed arrangement with him to go on to California, to Los Angeles, and engage in the selling of mining stock. It shows that at the time he left Wallace there was no statement

upon his part with respect to the man whom he now says he could ~~trust~~ trust as a fellow criminal. He did not go to Los Angeles, but he returns to Caldwell, and that too, gentlemen of the jury, in the most open manner possible.

You will remember that he had procured spy glasses -- field glasses, in Spokane. You will remember that during the two weeks, or two weeks and a half that he was in Caldwell prior to the killing of Governor Steunenberg, that he had made himself pretty generally acquainted, that he had stopped at the leading hotel in that town, that he had a room in that hotel, that he played cards there, that he was seen much about the bar room, that he was out about town, and there is no denial upon his part that practically everybody in the town knew him, and knew him well. He went down, gentlemen of the jury, in the vicinity of the house where ex-governor Steunenberg resided, and there, instead of going up to study the house and learn the habits of Governor Steunenberg, he stood off at a distance and examined the house with his field glasses. People saw him and came here and testified to it. It looks to me as though it was a pre-arranged matter upon the part of Orchard to call attention to himself so that when the event did occur which resulted in the death of Governor Steunenberg, everybody would at once point the finger of suspicion to him. You will remember also that in this record Orchard is said to have written a letter to his wife that he expected to get into serious trouble. That appears in the course of the record in this case, although the letter itself does



not appear showing that he desired and expected, when this event happened for which he was to become responsible, to have the world know that primarily the responsibility rested upon him. In my judgment it was a part of his general purpose which has since been carried out.

Whether he was engaged with the Pinkerton agency or with anybody at else at that time may never appear from this evidence, but we show in the course of our examination of this evening-- we will come pretty near finding out the relations which he sustains to that organization, and it will not be placed as it was placed on the stand, gentlemen of the jury, on the ground of any conversion that he has had, or for any reason that he has become a believer in the christian religion, because you will remember that his confession to McFarland was made a long time prior to any claim upon his part that he had embraced christianity or that he was engaged now in leading that new and that better life. But I will analyze that as we come to it in our remarks.

No one claims that this defendant was present at the death of Governor Steunenberg. The only claim is that Mr. Cronard, who committed the deed, who stands before this jury confessing that he committed the deed, and who stands in Canyon county under a plea of not guilty, where he is charged with the commission of the deed, was the one who did commit the deed at that time. The connection, if any connection exists, is sought to be established directly outside of the events which I have heretofore analyzed to you, by things which occurred at or about,

or immediately after the time of his arrest.

Governor Steunenberg lost his life on December 30th of 1905. On December 31st, Sunday afternoon, the 30th being Saturday, Mr. Orchard was placed upon parole, and placed under arrest on Monday afternoon. Monday passed, Tuesday passed, Wednesday passed, until on the evening of that day Mr. Orchard received a telegram from Mr. Miller in Spokane that he would come down and see him and was about to take the train on the evening of that day.

Now, you will remember that Mr. Orchard had had some trouble with a trunk at Spokane, some two months previous to that time, that he had been introduced to Mr. Miller by Mr. Simpkins and had employed Mr. Miller to recover that trunk and recover damages for its detention by the railroad company, and that Mr. Miller had taken up that job and pursued it to completion. You will remember also that Orchard testified that he had never had had any talk with any of the members of the Western Federation of Miners in Denver about furnishing him a lawyer if he should get into any trouble. There was never any claim of that kind. He does claim that when in Spokane he had a talk with Simpkins, and Simpkins told him that if he got into any trouble Simpkins would furnish him a lawyer. I don't know how that may be because Mr. Simpkins is not here to testify with respect to it himself, but this may be said to be true that when Orchard was arrested, Orchard made a statement that as soon as it was known



that he was arrested there would be a lawyer there to see him from Spokane. That appears in one of the publications which has not yet been read to you, gentlemen, but it appears there and is in evidence and comes to you as a result of ~~him~~ <sup>his</sup> being brought before the justice of the peace after his arrest, and it may be in his testimony; but in any event -- I insert that because the Judge looked up as though he was trying to call whether it was in the record or not. There was no claim upon the part of Mr. Orchard that there would be any attorney from Denver whatsoever to see him and no thought of that upon his part.

Now, when this telegram was sent to Mr. Orchard Mr. Miller started as it is said from Spokane in order to come down to Caldwell to see Mr. Orchard, and Mr. Hawley says, what was it that prevented Mr. Miller from continuing on his journey which was promised to be taken on the evening of the 31st of January, 1906. Gentlemen, from the time of the finding of this indictment Mr. Miller's name has been endorsed upon it as one of the witnesses, -- at least endorsed upon it long before this trial occurred. Mr. Miller is one of the attorneys for the defense of record in this case. Mr. Miller being an attorney for the defense naturally would not care to testify upon the part of the defense, especially when his name was endorsed as a witness for the prosecution. You will remember that Mr. Hawley asked me, when Mr. Miller went to San Francisco to get the depositions, where Mr. Miller was and when he was expected to return, and I

told him that he would be back here as soon as the depositions were taken. You will also remember that long before this case closed Mr. Miller came into this court room and sat here day after day during the putting in of the rebuttal testimony, and he was never called to the stand by the prosecution, so there is nothing very suspicious in respect to that matter. It may be that he stopped off at Walla Walla and was delayed; there may not be any reason for it, but at least there is nothing against this defendant in this case because Mr. Miller did not go promptly to Caldwell. A man is not tried and disposed of and hung in a minute, and there is no occasion to find any fault with us in regard to this transaction, because if they had wanted Mr. Miller he was here in this court room and they could have had all he knew upon the subject.

On the 4th day of January -- before I call your attention to this, gentlemen, the first testimony which was produced by ourselves, -- Mr. Simpkins telegraphed in cipher to the city of Denver under the code which is used for the purpose of passing the semi-annual password, "Can get a lawyer for Hogan, answer;" I believe that those were the exact words of the telegram. There was some trouble in deciphering that. Why? Because there are twenty-six letters in the alphabet and each letter was represented by a number, and if you should use the figures 23, it might stand for two letters, the letter represented by twenty and the letter represented by three; twenty-four might be two letters, twenty and four, or it might be one letter, twenty-four, and so there was



some trouble in deciphering the telegram. The telegram probably meant, can you get a lawyer for Hogan, but it read can get a lawyer for Hogan, answer. I have forgotten the exact language for that, and perhaps I had better get the exact language for it, but that is the substance of it, I cannot get a lawyer here to defend Hogan, answer. There was some doubt about the telegram on account of these letters. Now, at that very time the newspapers were indulging in this sort of publication and I want to call your attention to this because they have not been read to you yet. I shall not read all of them, but I shall read some of them.

In the Rocky Mountain News of January 4th, appeared the following, among other things: "

"Among Orchard's effects a leather postal card was found addressed to Charles Moyer, president of the Western Federation of Miners in Denver. It was one of the kind, the mailing of which is prohibited, and Orchard, discovering that it could not be transmitted had evidently put it back in his pocket. It bore a New Year's greeting."

Orchard himself had here a postal card, had carried it, directed it to Moyer, and had carried it in his pocket. There never was a reason why a leather postal card could not be mailed; there never was a law against it. He had bought this card and addressed it and put it in his pocket so it would be found when he was arrested.

"Orchard was arraigned before the probate judge at Caldwell today. He was charged with the murder of Steunenberg. Hogan had formally demanded his release and this action was necessary to hold him. When Orchard was brought into court he asked if his arrest had been telegraphed to the newspapers, saying: 'If the Spokane newspapers published a report of my arrest a lawyer will come to defend me; otherwise I need two days to get one from that city.' The hearing was set for Saturday.

"Besides Orchard, five other suspects are held in jail. Two of these men are known to have been in consultation with Orchard at Nampa, nine miles from Caldwell, the day before Steunenberg was assassinated. They are known as Frank Campbell and Warren, alias Herron. These men are miners, who have been working in a rock cut on the grade of the Idaho northern railroad and who left that work two days ago. The three others declined to give their names, and refused to talk. An effort is being made to identify them. Officers who were at Coeur d'Alene during the disturbances there are on their way to Caldwell to look at the prisoner.

"The big reward of \$25,000 offered for the arrest of the assassin is causing some friction between the local officers and the private detectives who have come in to work on the case."

"Verily, wherever the carion is, there shall the vultures be gathered together." \$25,000 reward appears to have been offered. Prior to January 3rd private detectives were working



on the case. Prior to January 3rd a private detective had taken possession of the effects of Orchard. On January 5th, a paper published in Denver says:

"Sheriff Bell says that the man in Caldwell may not be the Hoglan, alias Harry Orchard, wanted here, but he is inclined to think that Hoglan and Orchard are one and the same persons."

This is under the caption: "Idaho suspect may be Orchard."

"Sheriff, Caldwell, Idaho, January 4. Please send photographs of all men implicated in killing of ex-governor Steunenberg, as we are interested in identification on account of similar explosions here June 6th, 1904, when thirteen men were killed. Names mentioned indicate their connection here. Signed Edward Bell, Sheriff."

Edward Bell, you will remember, is the man who succeeded the lawfully elected sheriff of Teller county, Mr. Robertson, who was deposed on that day by the mob which congregated at Victor and which was headed by Mr. Hamlin, the secretary of the Mine Owners' Association. Bell became the sheriff and Hamlin became the district attorney.

"Sheriff Bell says that the man in Caldwell may not be the Hoglan, alias Harry Orchard, wanted here, but he is inclined to think that Hoglan and Orchard are one and the same person. Harry Orchard, alias John Dempsey, left here immediately after the blowing up of the Independence depot. Sheriff Bell this

evening said that about forty days after the explosion he learned that J. J. Neville and Orchard were the fellows that pulled off the Independence explosion. Bell added that Neville went away in a wagon from Independence at 4 P. M. on June 5, the day before the disaster, drove to the Love school house and camped.

The information in the hands of the authorities, so Bell states, is that Orchard waited for the shift to come off from the Findley mine, and after applying the torch to the explosives, went to Neville's camp. The latter had bought a span of mules and an express wagon from Joe Adams, paying \$150 for them. On their way to Colorado Springs Neville and Orchard, it is said, were seen by three different persons. Orchard and Neville are supposed to have remained in Denver for four or five days and sold their outfit in Greeley for \$50. Sheriff Bell states that ~~most~~ their information is that Orchard got \$2,000 for pulling off the explosion. Neville and Orchard parted in Wyoming and a short time afterward Neville was arrested at Cody but no case was made against him when he was brought back here. Nothing has ever been heard of Orchard until the arrest in Caldwell created the impression the suspect may be Orchard. Warrants are out for Orchard here in connection with the Independence explosion."

The Denver Times of January 2nd had an article of the same character, and on January 4 it had this article:

"The fourth day of the work of the officers engaged in running down the person or persons responsible for the murder has



developed the real name of the man calling himself Thomas Hogan. He has admitted he is Harry Orchard. He has also admitted he was in the Cosur d'Alenes mine until the time of the trouble there in 1899. He was living at Burke and was a member of the Burke Miners' union."

Then there is a description of the leather postal card. On January 5th, two days before there was any action whatsoever by the Western Federation of Miners or any of its officers, there appeared in the Denver Times the following:

"As yet nothing definite has developed, but detectives and officers both here and in Idaho are working on the case and Sheriff Edward Bell of Cripple Creek has telegraphed that Orchard must be held for investigation on the charge against him here. Former adjutant Sherman Bell and S. D. Crump, representing the mine owners, all assert that the man arrested in Idaho is the Harry Orchard who lived at Cripple Creek, and that he has been wanted for a year and a half in connection with charges concerning the Independence explosion.

"The records of the Western Federation of Miners, show that a man named Harry Orchard was a member of the union in the district, and came to Denver during the strike and received relief here, and later went away.

"The officials of the Federation say that are at a loss to know why no hunt has been made for Orchard before, and why Orchard is the third or fourth consecutive man whom the mine owners claim to have done the deed."

You will remember that it is in evidence here that at the time of the blowing up of the Independence depot, the Western Federation of Miners offered a reward of \$5,000 for the arrest and conviction of the perpetrator of that foul crime, and you will remember that it was the only reward that was offered by anybody or any authority in the state of Colorado or elsewhere to secure the arrest and conviction of the one who was responsible for that deed. In the same article, in an interview with Mr. Moyer, or with Mr. Haywood, we find this language:

"We renew our offer of a reward of \$5,000 for the apprehension of the man who committed the Independence outrage last year, said secretary W. D. Haywood of the Western Federation of Miners."

"In fact the offer of the reward was reaffirmed by our last convention. We do not believe that Orchard or any other member of the Federation did that deed.

"It seems strange indeed that Sheriff Bell, the mine owners, and the Adjutant General should all be so sure that Orchard is the man they want and is guilty of the Independence explosion when a little over a year ago they were all so sure that Romaine, down in Kansas, was the man. They insisted, then, that the right man had been found, and now they are sure that Orchard is the right man.

"Orchard was at the mass convention in Denver and was made a member of the ways and means committee. His address on the stationery of that committee was given as Independence, Colorado. The mine owners association is assisting Sheriff Bell



of Cripple Creek to try to fasten the charge of blowing up the Independence depot on Harry Orchard, said Sherman Bell, adjutant General of the state militia during the Cripple Creek troubles this morning. Governor McDonald will be applied to for requisition papers shortly so that if he is not convicted in Idaho he may be brought back to Colorado to stand trial.

Bulkeley Wells, adjutant general of the National Guard, who was in Telluride during the strike, does not know much about Orchard. He says that a man answering his description was wanted on suspicion that he was the slayer of manager Collins of the Smuggler Union mine."

The Denver Times of January 6, one day before any action was taken by the Western Federation of Miners reported this article which I will read in part:

"Sheriff Bell arrived in Denver this noon on his way to Boise, Idaho, to try to identify Orchard."

I call your attention to that in view of the letter which was written wherein Mr. Nugent was ordered to be employed, only to proceed to Boise to defend and take care of the interests of the Western Federation, in view of Crump and Bell coming here.

"Sheriff Bell declares he feels no doubt that the suspect in the Stansberg murder is the same man who is wanted in Colorado. He says he has evidence enough to bind Orchard over to the district court, and that his evidence will include others.

Sheriff Bell came in over the Denver and Rio Grande.

He was met by Samuel D. Crump, attorney for the mine owners, and the two held a conference and examined the papers in the case. At two o'clock they appeared before Governor McDonald and asked for a requisition on the governor of Idaho for the return of Orchard after the Idaho authorities are through with him. This requisition, it is expected, will be granted and Bell and Crump expect to leave over the Union Pacific for Idaho to-night."

Why, it was suggested, gentlemen of the jury, on the stand, when Mr. Moyer was under cross examination, that his testimony in regard to the Federation being involved was a myth, that he had sprung to the assistance of Mr. Orchard, that he knew who he was all the time, and that at once he had taken steps to protect the Western Federation of Miners, before anybody had charged it, and it was said that we should produce the papers if we had them, and we set to Denver and we got the papers and we turned them over to Senator Borah, and here we are reading from them for your consideration in this case.

"I will have no trouble whatever in identifying Orchard, if he is the man who was at Cripple Creek, said Sheriff Bell today.

We have been after Orchard for over a year. He came to Denver after leaving with Neville and went under the name of John Dempsey while here. We got Neville, but he knew he was safe if he did not talk, so we could not hold him. He made some admissions, however."



Admissions involvi ng the very association these men were after? No. Because if there had been any admissions of that kind or character, the attention of the public would have been called to it at once and the officers would have been arrested.

"If the man in Idaho is Harry Orchard, who was in Cripple Creek, we shall bring him back when our opportunity comes and try him here for the Independence explosion. I think we have evidence enough to convict him, said attorney Crump."

You will remember that Crump was the special attorney for the mine owners' association and had been paid \$10,000 for his aid and assistance to the association in carrying on the industrial war in Cripple Creek wherein the Federation was on one side and the Association on the other.

MR. BORAH: What witness do you refer to?

MR. RICHARDSON: I think Mr. Meyer or Mr. Haywood's testimony shows it, and if not I refer to it in a letter here in evidence and which I intend to read. I won't get outside of the record, I don't believe. It is not a good thing for me to get outside of the record. On December 31st the Denver Post contained this article:

"The murder is believed to be a work of revenge by miners convicted of complicity in Coeur d'Alene riots of 1899. Steunenberg was governor at the time of the riot, and sent state troops to quell the riot and arrest the leaders. They were tried, convicted and sentenced to six years in prison. They were recently

released.

"At the time of the trials many threats were made against the Governor.

"A special train carrying detectives and blood hounds left Boise at eight o'clock for Caldwell."

In that same sheet, on January 1st, appeared a long article describing the murder and using this language:

"FEDERATION WILL INVESTIGATE."

You will remember that the day before the same ~~sheet~~ <sup>paper</sup> had stated that the Federation was responsible.

"An inquiry into the assassination of former governor Steunenberg of Idaho will be conducted by the Western Federation of Miners. We will do this not only to prepare ourselves against any charges that may be brought against the Federation, but in order to ascertain if possible whether or not a member of our organization committed the crime. The affair is to be lamented. No one is more sorry for its perpetration than are the officers of the Federation. -- Charles H. Moyer, President of the Western Federation of Miners.

A dispatch from Idaho states that Governor Gooding, after having spent the day at the scene, states that there is only one conclusion -- that Governor Steunenberg was killed for the stand he took at the time of the Coeur d'Alene riots.

This means, said Charles H. Moyer, president of the Western Federation of Miners, this morning, that the Federation has become involved in the affair and we intend to investigate.



Steinberg had enemies -- many of them. One of them committed the act. Why say it was a member of our organization at this time? When the depot at Independence was blown up we offered a reward of \$5,000 for the perpetrators. No one else offered a cent, not even the state. This shows our position in cases of this kind. It is not fair for any one to take the position that this man was killed by any one connected with the Coeur d'Alene strike. The men had other enemies. During that great strike, there were deportations; business men were thrown into a bull pen; business men lost all the property they had; they were subjected to great indignities, all because they simply sympathized with the miner who was fighting for a principle. These men were not members of the Federation.

Mr. Meyer continued that this class of men was naturally more of a bitter enemy to the governor than that which simply lost a job.

I don't say the Federation was an enemy of Steinberg, resumed the president.

Personally I had nothing against him, but I was only a member of the Federation during the trouble. I have done a great many things that have made me enemies; this man probably did the same.

We have never countenanced such crimes as this; our record of attempting to detect such men bears out my statement. And I can say this: If it was a Federation man who killed the

former Governor he would not remain a member of the organization. It is peculiar that almost every crime of mysterious nature is charged against the Western Federation of Miners. It is because we are kept in the limelight of publicity. In the east there are riots, murders, property destroyed and conflicts of all kinds and we hear but little about them. You can rest assured that this body will conduct a thorough inquiry in order to protect its interests. We want to be prepared for any direct accusations. Steunenberg was not an official of the state or connected with any mining interests, as I understand it, at the time he was killed. The enemies he made were while he was governor long ago. If Fosbody, or Sherman Bell, then whom no one is more aggressive in persecuting union men, should have been killed, there might be some ground to connect the Federation of Miners; but under the circumstances it is a very rank injustice to even hint that our organization had anything to do with Steunenberg's assassination. After years of peace and prosperity in Idaho, is it fair to lay murder at our doors, simply because this man, long ago, opposed the Western Federation of Miners? Hardly."

On January 2nd the same paper had another article which I will not stop to read. On January 4 the same paper had this article: I read a part of it:

"Telegrams were immediately sent to Cripple Creek and to Idaho with this additional information. S. D. Crump, who has offices with George P. Steele, in the Equitable building, and who was counsel of the Mine Owners' Association, has gone to Cripple



Creek, where he will assist in the legal preparations to hold Orchard. Colonel Burbridge, secretary of the organization, is also laying plans to bring Orchard with reach.

Orchard has been traced all over Colorado, New Mexico, Old Mexico, British Columbia, Idaho, Wyoming and other sections, but he always managed to slip out of the noose, never mind how carefully it was laid. Thousands of dollars have been privately outstanding as a reward by the mine owners for the capture of the man who is now accused of the murder of Idaho's former executive. The Federation of Miners also offered a reward of \$5,000 for the arrest and conviction of the perpetrators of the Independence butchery."

Then follows an article purporting to come from Sheriff Bell, and I will not stop to read that.

"The chase was rendered the more exciting from the fact that the mine owners' association, thoroughly convinced by this time that Orchard was the man of all men implicated offered rewards aggregating several thousands of dollars for his capture. Private detectives from various points in the United States were placed at work and the still hunt was conducted for months, the outside world having not the faintest suspicion that one Harry Orchard was the object of a systematic and insistent pursuit as was ever conducted in the west."

Then comes in the same article a statement about this card which was found in Mr. Orchard's pocket, directed to Mr. Meyer, and also the statement: "H. C. Robinson, who assisted in

the defense of the Coeur d'Alene dynamiters, lives in Spokane. The supposition is that Orchard had reference to him in speaking of legal advice coming from Spokane." Mr. Miller is the partner of Mr. Robinson as probably you will remember.

"It is claimed that while in Denver with a friend about a year ago, Orchard was in consultation with two men. All were had been drinking, and during the exchange of confidences, it is declared, Orchard and his male companion admitted blowing up the Idaho mill and remarked that it was a good job."

On January 7, Sunday morning, the Denver Post had this article:

"The mine owners' association has spent more than a thousand dollars in attempting to locate Orchard. Shortly after the explosion Governor Peabody issued a requisition for Orchard's partner, J. J. Neville and he was brought from Wyoming. The evidence was insufficient to hold him on preliminary hearing and he was released. It is claimed by those acting for the mine owners' association that Neville and Orchard drove away together in a buggy from the vicinity of the dynamited station on the morning of the explosion. It was represented at the hearing yesterday that prior to the blowing up of the station Orchard had made a trip to the large eastern cities collecting money for the Western Federation of Miners to aid the strike fund in the Cripple Creek district.

In the affidavit sworn to by deputy district attorney C. A. Gillette of Teller county, and yesterday presented to the



Governor, it is asserted the whereabouts of Orchard were not known until the past week.

AFFIDAVIT ON WHICH CAPIAS FOR ORCHARD'S ARREST WAS ISSUED.

On the allegations of this affidavit a capias for the arrest of Orchard was issued, directing the sheriff to produce his body before the district court of Teller county on the 6th of February next.

Among other recitals in the affidavit of Sheriff Bell, sworn to yesterday, is the following:

That the said Harry Orchard, on the 6th day of June, A. D. 1904, did, in the town of Independence, and in the county of Teller and state of Colorado lay an infernal machine under the depot of the Florence and Cripple Creek railroad company and did explode the same by a wire laid to and connecting with said machine and did at that time explode said infernal machine, and by that said explosion did kill and murder the said J. A. Hartsock, together with twelve other men; that the said Harry Orchard escaped and fled to parts unknown to the officers of this county, and that his whereabouts have only been discovered within the past week.

Sheriff Edward Bell, attorney S. D. Crump and a special detective employed in the case, appeared at the hearing before the Governor.

The requisition was allowed and the three parties named started last evening for Boise city, where they will at once

lay the matter before the Governor of Idaho, and attempt to secure extradition papers for the return of Orchard.

SHERIFF BELL SAYS THERE IS NO DOUBT OF PRISONER'S IDENTITY.

All doubt regarding the Harry Orchard wanted for blowing up the depot at Independence, when fourteen men were killed, and the Harry Orchard under arrest at Caldwell, Idaho, for complicity in the assassination of former Governor Steunenberg, being one and the same man is now removed.

Private advices were received yesterday morning from Caldwell to sheriff Bell establishing positively the identification of the man wanted.

In addition to this, Mrs. Harry Orchard, who, with her children, occupies the small home near the Independence depot, yesterday had a long talk with the sheriff in which she confessed having received letters during the past days from her husband in Caldwell. She says her husband is the man wanted for the Independence affair, and that he is the man also accused of the Steunenberg assassination.

James J. Sullivan, an attorney, with offices in the Ernest & Cramer block has appeared at Caldwell as attorney for Orchard. Attorney Hassen of Spokane also arrived on the same mission. Hassen is the lawyer to whom Orchard referred when he was first placed under arrest. Sullivan's connection with the case is proving a surprise, although he has handled labor cases before, in connection with his partner, Henry Cohen. Sullivan is the attorney for Panaini, the Italian banker, who escaped



after the failure of the North Denver bank."

That is the day that the telegram was sent, and the first action that was taken after the receipt of the Simpkins telegram which we introduced in evidence. That telegram was submitted to the general counsel for the Federation and action was in abeyance until such time as he could examine and report upon it.

"A dispatch from Boise yesterday states that a strange man occupied a room with Orchard the first week in November, and that he is supposed to be Charles H. Moyer, President of the Western Federation of Miners, who was at Silver City, New Mexico, October 26th."

Silver City, New Mexico, is the way it appeared in the paper and it may have been meant for Silver City Idaho. I know I had some difficulty in locating the city of Silver City.

"The sheriff said Mrs. Orchard admitted having received letters from her husband dated Caldwell and Boise during the past two weeks and that he expected serious trouble."

Think of it; he intended to stay there,-- he intended to have the trouble,-- and he knew what the trouble was going to be and he knew at that time evidently how he, Orchard, was going to get out of it.

"You can tell the people for me through the Post, said Sheriff Bell, that we expect to have this man in Colorado unless the Idaho officers convict him for the Steunenberg murder, and that we shall secure from him enough information to place a

dozen more men behind the bars, probably for life. We have such a strong case against this fellow that I have no doubt in the world he will loosen up and confess, giving us the names of his accomplices of which he had several. I know we shall convince him of the wisdom of such a course."

Think of this appearing in the newspapers, in public, in the light of what has been done in this case, in the light of this case as it now appears before this jury. See who had any preconceived knowledge in respect to it.

"A reward of \$25,000 offered by the Mine Owners' Association for the arrest of the Independence murderers is said to be still in force," and that is the first time it was mentioned, because if they had offered anything it was of a secret character. While the officials of the Western Federation of Miners say their offer of \$5,000 for the capture of the guilty man is still effective. This will make a comfortable legacy for the parties responsible for Orchard's arrest in case the man is convicted.

"General Sherman Bell said yesterday that he has evidence in his possession to the effect that Orchard was involved in the wrecking of the Colorado Springs electric light plant, which furnished power for the Portland mine and the Standard Reduction Works at Colorado City."

"Mr. Hoyer was not in Limbo during November, said W. D. Haywood, secretary of the Western Federation of Miners. He was in Silver City in October, but at headquarters during all of November. Our reward of \$5,000 still stands good. The offer was



reaffirmed at the last convention. If Orchard is proven to be the man who did the work the Federation will repudiate him in no uncertain terms. We won't stand for that sort of thing. I know nothing about attorney Sullivan being employed to defend Orchard."

And neither did any one else. Now, on January 1st, the Denver Republican, the paper which perhaps is more bitter against the Western Federation of Miners than any paper published in the State of Idaho had a long article upon the situation with respect to Steunenberg's murder, and it said:

"Governor Gooding, after having spent the day at the scene, states that there is only one conclusion -- that Governor Steunenberg was killed for the stand he took at the time of the Coeur d'Alene riots. It transpires that the dead leader received a letter of warning while in Washington about one and one-half years ago. It stated his time was short. Some such letters were also received several years ago."

There was a long article on January 2nd which I will not read and another on January 3rd which I will read in part.

"At Caldwell today Hogan was brought into court and formally committed to the custody of the sheriff. He said he thought he could get counsel in two days and be prepared for his preliminary hearing. There are two other suspects in jail there and two more will arrive from Council tomorrow. Those at Council are E. Campbell and Harold Warren. The latter two were in Nampa last Friday when Hogan was there and they all registered

at a local hotel. Hogan carried some business cards with him  
'Thomas Hogan, Silverton, Colo., agt. Mutual Life Insurance  
Company.'

The funeral of ex-governor Steunenberg was held today  
in Caldwell, his home town. Among those present were the  
Governor and two ex-governors and all the other state officers.  
The feature of the services was a brief oration by former Congress-  
man W. E. Borah."

I suppose that that meant future Congressman, Senator.

The Denver Republican of January 5th said in part:

"The Cripple Creek officers are certain that the man  
who gave the name of Orchard, arrested for the murder of Steunen-  
berg, is one of the men who escaped from Cripple Creek after  
the explosion of the depot at Independence, resulting in the  
death of fourteen people. He was known under several aliases.  
He was and perhaps is, a member of the Western Federation of  
Miners.

It has been proven through a close examination of the  
scene and the remains of the explosives used to murder the Idaho  
men, that identically the same methods were employed there as at  
Cripple Creek. The work in both cases was done by professionals.  
No chances were taken. Experts in explosives were responsible in  
both instances. The wiring and detonations and every particle of  
evidence that remained went to prove that the people who committed  
the later outrage either committed the Independence horror or the  
instructors were the same.



**NO CHARGE IS PREFERRED AGAINST THE FEDERATION:**

No charge has been preferred against the organization as a whole. The executive committee cannot be held responsible. But there is no question but the assassination of Steunenberg was brought about by men who had a grievance against him for his stern insistence upon the maintenance of the law when he was governor of the state. Neither is there any denial of the fact that the Coeur d'Alene district is the refuge for the Colorado outlaws. Vincent St. John, president of the Miners' Union, who fled from Telluride after the murder of mine superintendent Collins is at Burke, Ida., under the name of John Vincent. He is one of the leading spirits in the organization. The men who escaped from Cripple Creek and others who were driven from that district are to be found in the mining camps of Idaho.

For several months the Miners' Union in the Coeur d'Alene have been unusually active. They have been getting ready to make demands on the mine managers. The non union men have been going out and miners' union men going in under disguise. The unions have been filling some of the camps with their own men. It was thought that the time was nearly ripe for an uprising on behalf of the unions.

The Western Federation of Miners did not encourage the strike. It has had enough. Recently President Meyer has been making a tour of the unions. He was advising radical action in getting men into the unions.

Commenting on the tour of the president, the Miners' Magazine, the official organ of the Federation, had this to say last week:

We cannot too highly commend the work of President Charles Moyer for the amount of organizing work that has been done. His visit to the different parts of the jurisdiction has been the means of imbuing a more aggressive and revolutionary spirit into the membership of the Western Federation of Miners and will be of lasting benefit to all wage workers.

But the treasury of the Western Federation of Miners is not overflowing. And although Moyer did his very best, the membership of the affiliated unions has not been increasing. In Colorado there has been a marked falling off.

Nevertheless, with the kindred spirits that wrought a reign of terror in Cripple Creek and Telluride, in the Occur d'Alencos were the headquarters of this kind of people.

#### CRIPPLE CREEK OFFICERS WILL VIEW IDAHO SUSPECTS.

At least half a dozen men are held in jail in Idaho, suspected of complicity in the assassination of Gov. Steunenberg. The Cripple Creek authorities will send officers to the scene, to learn regarding the suspects, and their connection with the Cripple Creek outrages.

Former Adjt. Gen. Sherman Ball is of the belief that Orchard is one of the men who was connected with the Independence outrage.

Will inquiry at Governor Steunenberg's home and through-



out the state, has made clear that he had no personal enemies made in recent years, and that there was no act of his life outside his official life, that could have been in any way responsible for his murder. The assassination was the work of the 'Inner Circle' or 'Rifle Club' or 'Black Hand' or whatever name it may take in Idaho, done to deter others from doing their duty and upholding the law.

#### ORCHARD CHARGED WITH INDEPENDENCE OUTRAGE.

Sheriff Bell says he has proof of Orchard's guilt for months.

Cripple Creek, Colo., Jan 4 -- (Special) -- Sheriff

Edward Bell declared today that Harry Orchard, charged with the assassination of former Gov. Steiensenberg of Idaho, blew up the Independence station on the morning of June 6th, 1904, when the lives of thirteen non union miners were snuffed out and a score of other persons injured.

Sheriff Bell claims to have been in possession of information that Orchard was the guilty man, nineteen days after the explosion. He made repeated efforts to apprehend him, but without success. He tried to get him when he went to Thermopolis Wyo., in August, 1904, but Orchard escaped going into the interior. It has since been learned that Orchard paid an acquaintance \$250 to secret him during the search.

If Orchard is not convicted of the murder of Steiensenberg, he will be brought to this county to answer to a charge of killing thirteen men at the Independence station.

Sheriff Bell said today that J. K. Neville and Orchard,

associates, left Independence at 4 P. M., June 5, 1904, driving to Love, where they camped for the night. After pulling the wire that dealt death to the miners on the station platform, Orchard went over Bull Hill to the Black sampler, and then down Beaver creek, where he joined Neville. They drove from Colorado Springs to Greeley, where, becoming frightened by newspaper reports telling of warrants having been issued for their arrest, they sold their team and buggy for \$50 and separated.

Neville went to Cheyenne and Orchard went to Denver. Orchard received \$250 of his blood money, according to Sheriff Bell, before leaving Cripple Creek, \$750 in Denver and \$1,000 at Cheyenne. Neville admitted to Sheriff Bell that Orchard received two rolls of money, containing \$500 each, at Cheyenne, and that he, Neville, took care of one roll for Orchard on their subsequent journey to Cody, Wyo. At Heetsetse, Wyo., Orchard lost \$500 at roulette. It was there that the Wyoming authorities first got track of him. It is believed that Orchard lost the rest of his money at Cody, where he played faro and roulette. His trace of him was lost at Park City, Utah.

At this point in the search a woman entered the case. She wanted to join Orchard and while he was not unwilling to meet her, he was afraid to do so and because of his fear the officers were foiled again. The woman was being watched. It is believed that she had been in the neighborhood of Goldfield and Tonopah until recently and that the Idaho authorities will be able to follow his career from the time he left Cripple Creek. Orchard



figured in the Coeur d'Alene strike of 1899 and spent a period in the 'bull pen'. Orchard came here in 1899, after the conclusion of the strike in Idaho, and became a member of Free Coinage Union No. 19, W.F.M., at Altam. He left the camp, returning in 1903. From this time on he lived in a cabin near the Findley mine, working in the mine occasionally, and also living by his wits. He gambled and was suspected of handling stolen ore. He was of strong physique, stout, smooth shaven, wore good clothes, was easy of address and when travelling pretended to be a commercial traveler.

Neville is said to have died in Tonopah six weeks ago.

#### THREATENING LETTERS ARE SENT TO PEABODY.

Former governor gets one from Idaho and one from California.

Canon City, Colo., Jan. 4 -- Special pp Former Gov.

Peabody was seen today in reference to a report that he had received letters of a threatening nature. He stated that he had recently received two such letters, one from Wallace, Ida., and one from a small place in California. The letter from Wallace was signed 'committee of Thirteen', and said that he would be killed on a certain date. The other letter has a coffin drawn on one side and the writer stated that the recipient would be sent to h---. The former governor said that he had received so many letters of a similar nature that he did not pay any attention to them whatever.

#### SPOKANE ATTORNEYS TO DEFEND HARRY ORCHARD.

Boise, Ida., Jan. 4 -- The feature of the day in the

Steunenberg assassination case at Caldwell was the news that the law firm of Robertson, Rosenbaur and Miller of Spokane would defend Harry Orchard, alias Thomas Hogan, accused of the murder. Last night they sent him word that one of the firm would be on hand Friday. That firm has long represented what is designated as the dynamite element of the Coeur d'Alenes.

Capt. Swayne, in charge of the case, is convinced there was a conspiracy and is working on that theory."

On January 6th it says, "Sheriff Ball will leave tomorrow for Caldwell, Idaho, where he will make an effort to secure Harry Orchard who is under arrest there charged with the assassination of former Governor Steunenberg."

On January 8th the same paper published the following:

"The chains are being forged that connect the Cripple Creek outrages with the Idaho assassination. Men who escaped Cripple Creek have turned up in Coeur d'Alene. For the arrest of the dynamiters responsible for the death of the Idaho men, who was marked for destruction because he dared to obey the law and his oath of office, rewards aggregating \$25,000 are to be paid. The money itself would be an incentive. But murder will out."

"Whether Orchard is a Cripple Creek man will be known

in a very few hours, as the Cripple Creek officers should reach Idaho this morning with extradition papers for Orchard, in case he should not be connected with the Steunenberg assassination."

Now, I think that this is all there is that I care to read from these articles. Now, in view of the telegram which



was sent to Simpkins, and in view of the action which was taken by the attorney for the Western Federation of Miners, I want to call your attention to what Mr. Haywood did. January 7th,-- that is the first telegram,--

"R. J. Hanlon, Secretary Miners' Union, Silver City, Idaho. Employ John F. Nugent at the expense of the Western Federation of Miners to protect the interests of the organization at Boise. Answer. Wm. D. Haywood, Secretary-Treasurer, W.F.M."

You will remember that the article which I read to you on that day was headed from Boise. In answer to that, this telegram was sent:

"William D. Haywood, Secretary-Treasurer, W. F. M., Denver. Wire at length in what manner you wish Nugent to proceed. He wants full particulars to what is the attack on the organization and what is the complaint. R. J. Hanlon, Secretary Silver City Miners Union."

Then on January 8th:

"R. J. Hanlon, Financial Secretary, Miners Union, Silver City, Idaho. Press dispatches indicate that there is another conspiracy entered into to connect the Western Federation of Miners with grave crimes. Several persons in Caldwell, Idaho, have been arrested in pursuance of the conspiracy. The Western Federation of Miners defends no member guilty of crime, but in the past, it found every one of its members accused of crime innocent and they would have been the victims of a conspiracy had the organization not aided in their defense. So have Mr.

urgent take up the defense of any member of the organization, so that if innocent, they may be discharged. William D. Haywood, Secretary-Treasurer, W. F. M."

The next is as follows:

"Silver City, Idaho, January 10, 1906. W. D. Haywood, Secretary-Treasurer, W. F. M., Denver, Colorado. Mailed you a letter this morning with full explanations. R. J. Hanlon, Secretary, Silver City Miners Union."

Then follows the letter from Mr. Hanlon and the reply to it by Mr. Haywood which I will read:

Dear Sir and brother:

Your letter of the 9th inst., replying to my telegram of the 8th, was received in due time. Before taking up the matter of having you secure counsel in behalf of the Federation, we reviewed the situation as best we could from this distance. When it became public that Sam Crump and Sheriff Ed. Bell from the Cripple Creek district intended to go to Idaho, it was evident to us that something would have to be done immediately to checkmate Mr. Crump, as all during the Colorado trouble Crump has been an implacable enemy of the organization. It was he that received \$10,000 from the county commissioners of Teller county to prosecute the perpetrators of the Independence outrage. This money has all been dissipated without results. Crump is recognized in Colorado as being the most unscrupulous attorney in the legal profession. There is nothing too low, mean or dirty for him to stoop to do. It was Crump and Hanlin who from a place of vantage



in an express wagon inci ted the mob to riot the day after the explosion at Victor. Morally and mentally, as well as physically, he is a monstrosity, and it was because of his departure or intended departure for Idaho that gave us reason to think that an effort would be made to implicate the organization in Idaho.

For this reason we believe that it would be well to have a representative on the ground to look after the interests of the Federation. Being well acquainted with John Nugent, and knowing his ability and integrity as a counselor, I notified you to secure him for the purpose as mentioned. I am very glad that he is willing to be counsel for the organization in the event of the authorities attempting to connect the Federation or fasten the guilt upon the organization. I fully appreciate the delicacy of our position, but even that must not prevent us from being in a position to protect ourselves, as we know that the capitalist and the mine operators' associations of Idaho and Colorado will do everything within their power to point the finger of suspicion toward the Western Federation of Miners.

I enclose you copy of letter that was directed to Mr. Nugent by attorney J. H. Murphy, and would also call your attention to the article under caption 'We court the fullest investigation' which appeared in the last issue of the Miners' Magazine. Yours fraternally, Wm. D. Haywood, Secretary-Treasurer."

So much for that. Now, gentle men of the jury, what was done? This man was arrested, Mr. Miller appeared for him at his preliminary examination, and after his preliminary examination

Mr. Miller returned to Spokane. On the preliminary examination all that was disclosed with respect to the transaction was the fact that Governor Steunenberg had been killed, and neither Mr. Miller nor anybody else knew that Mr. Orchard was guilty. There was not even any suspicious circumstances with respect to him except in regard to some white powder that was found in his room, but it was thought best to hold him and he was held, and Mr. Miller returned to Spokane with his report. And thereupon Mr. Miller was sent to Denver in view of all that had transpired to lay the proceedings which had been taken before the officers of the Western Federation of Miners to see whether they desired to defend Mr. Orchard whose name appeared upon the roll as a member of that organization; and Mr. Miller did go to Denver, and he had a long and an earnest consultation about it, and Mr. Miller gave it as his opinion, and it was not disputed, that at that time and under the examination which had been had before the magistrate that Harry Orchard could not be convicted of the killing of Governor Steunenberg; that there was no evidence of a sufficient character to connect him with the offense which had resulted in Steunenberg's death. And thereupon the Western Federation did as they had a perfect right to do, and as it was their custom to do -- they employed Mr. Miller because he was from this vicinity, and they paid him \$1500. to enter upon the defense of Harry Orchard.

But what had been done in the meantime, gentlemen of the jury? There had been those who started from Colorado and who



had arrived. The detectives were busy, and finally Mr. James McFarland appeared upon the scene, before Mr. Miller's return to Idaho; and Mr. James McFarland, about the time he was ready to appear upon the scene, had had -- or at least Mr. Orchard had been transferred from the county jail of Caldwell county where he was awaiting his examination and trial, to the penitentiary at Boise, -- to an institution, gentlemen of the jury, which is erected for the sole purpose of holding condemned criminals. No one will claim that there was any warrant or any authority of law whatsoever at that time, or at any other time, for the incarceration of a man in the penitentiary who was accused of crime.

This organization defended its men wherever they were accused, and to the end that it might be determined whether they were accused rightfully or wrongfully. They do employ lawyers to defend, and they have defended a large number of men in the State of Colorado, and they have found, in accordance with Mr. Haywood's letter, that every time it was the result of some effort upon the part of those interested on the other side to secure a conviction, of those whom they accused and cast odium upon the organization of the Western Federation of Miners.

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This man here in Idaho was transferred to ~~in~~ a place of condemnation without warrant or authority of law,-- the penitentiary of the state, and there he awaited the arrival of this great detective who had been advertised so widely from the State of Colorado and who had earned his fame and his spurs in a transaction which occurred back in Pennsylvania <sup>from</sup> in the year 1873 to the year 1876. I want to stop a moment, gentlemen of the jury, to call your attention to what this case shows with respect to this man.

I asked Orchard on the stand if he did not know it was a fact and if McFarland had not told him that out of twenty-six murders committed in the mining regions of Pennsylvania prior to McFarland's advent there in 1873, only one had been committed -- one in 1864, one in 1867 and one in 1871, and the balance of the twenty-six were committed between the years 1873 and 1876 when McFarland was doing the same kind of detective work in the State of Pennsylvania which we think this record shows is being done in the State of Idaho. And of course Mr. Orchard denied that,-- that Mr. McFarland had told him anything of that kind.

Now I don't say that the record proves that, but I do say that Mr. Hawley stood before this jury and in his opening address he described Harry Orchard, and in the same breath he described McFarland, and he turned to us and says, "Gentlemen of the jury, you will here the testimony of both of these men



upon this stand; they will both of them appear here;" and he called them, gentlemen, and Mr. Darrow interrupted him and said, "Which one do you call the gentleman?" And Mr. Hawley said, "You will find out about Mr. McFarland here as you have elsewhere, the terror to evil doers."

Where is this terror to evil doers? What has become of him? Only once has he darkened the doors of this court room since this trial started. That was after the testimony was all read. I expected Mr. Hawley to deliver a eulogy upon him and he came in here to hear it. I would like to have him here in this court room to hear the eulogy I am about to pronounce upon him. Never did he come upon this stand. Never was he subjected to cross examination, and you all know because you all said you had read the newspapers, you know for a year and a half that he has been held up in a sort of nebulous atmosphere as "the great I am" that was connected with this case, and that back of it somewhere he was going to produce evidence that would astound the world.

What is the evidence here that has been produced by this man? The seas have been combed, the land has been raked, thousands and tens of thousands of dollars have been spent, and when we come to this trial there is not a single scintilla of evidence that has been gotten to sustain Mr. Orchard's original statement which was made here by him, and by Mr. McFarland in the first instance. There is no more evidence now than there was then.

Two hundred thousand people in the city of Denver, and one lone policeman can be found to come here and say that he has seen Orchard two or three or four or five times with this man and his co-defendants. Not another soul from all the City of Denver,-- two hundred thousand people in that city, and only one of them could come here to dispute Doctor McFee. Where is this fund of evidence which was going to corroborate the work, which was going to corroborate Mr. Orchard? Why wasn't it produced? What is the reason that the Pinkerton agency could not get it here, gentlemen of the jury? The Pinkerton agency for years past has had a man practically in every local of the Western Federation of Miners. We introduced to you the names of twelve or thirteen of those men, and showed you the locals with which they were connected. They were there for the purpose -- the express purpose of destroying the Western Federation of Miners, the only organization that has ever had the power or the courage to raise its hand against the mining interests of the country that existed for the purpose of securing the largest amount of labor for the smallest amount of money,-- the only obstacle that has ever stood in the way of the progress of the mine owners, and for the benefit of the people who strike the drill and break down the rock from which the mineral was produced.



For years and years they have persecuted our organization for the purpose of finding out if there wasn't some criminal record upon which they could lay their hands to the end that they could destroy the organization. Experience, experience has taught labor organizations, as it teaches everybody, that they must be law abiding, that they must go down to the lowest member that they have got and control that member to the end that law and order shall be observed; and out of all these Pinkertons, this grinning hyena who sat on the stool here by this door, who was for three years a member of our organization in Telluride, <sup>was</sup> never able to return to the people who employed him one single particle of evidence which could connect any man in that organization with a crime. This man Grimes, who was connected with our local at Globeville, actually distributing our money under the supervision of James McFarland, reporting to him in a letter in which he states "I have now got to go down and write up the books for the union and see to the distribution of relief, and I will continue this report to you a little later on." Think of it, gentlemen of the jury! And out of it all, out of all the troubles that ~~have arisen in Colorado and elsewhere~~ have arisen in Colorado and elsewhere in this country not one single crime have they ever been able to fasten upon the Western Federation of Miners. And when this event occurred when Governor Steunenberg was assassinated, when it was known that he was the great governor of this great state at the time of the dynamite troubles in the Coeur d'Alene in 1899, how like vultures they flocked to the scene with a statement in advance that the Western Federation was responsible for it, and with the statement in advance that the man who was

suspected of it would "cough up" and make a confession, a thing which they knew before they came up here, a thing which I solemnly believe this record will disclose to you as having been in existence and known to them before they came here at all, and finally when the great McFarland appears upon the scene, after this man has been paraded out to the penitentiary, who has gone there docilely, has remained there docilely, ostensibly in solitary confinement, what happens? McFarland, the man who is engaged in proselyting to the cause of Christianity -- I don't think -- appears upon the scene and he secures from Mr. Orchard a confession apparently without any trouble; the second time that he sees Mr. Orchard he proceeds to tell him a part of it and from that on he proceeds to tell him the balance. No trouble to secure this confession; it was as easy as though it had been prearranged, and I think the circumstances indicate that it was prearranged. What was done? Why, this man was set to work upon Steve Adams, who had also been arrested. What for? For the purpose of securing the corroborating testimony. Steve Adams was thrown into the cell with him and the minute that Orchard had made his confession and the minute he had gotten <sup>through</sup> with Steve Adams, Orchard has been fed from that day to this from the table of the warden of that institution. He is brought into this court room dressed in part at in the clothes of the warden of that institution. He is brought in here with clothes that are especially prepared to enhance his appearance and elevate him in the eyes of this jury. He has never been treated as prisoners are treated. He has never been treated as an assassin, self-confessed, in the eyes of Heaven and in the eyes of humanity



ought to be treated. He has lived there a year and a half and his very appearance bespeaks that he has lived upon the fat of the land and there is only one thing that I can see, gentlemen of the jury, that in any wise interferes with his prearranged and preconceived story as I believe it to be under this evidence, and that is the fact that prior to his conversion, as he speaks of it and after his confession to McFarland as he speaks of it, he undertook to commit suicide. He admits it on the stand before this jury. What was he committing suicide for? Why was his conscience pricking him? If he had been the foul murderer which he claims to have been, if he was clearing his heart and his mind and his soul of the awful burden of crime which it placed upon his shoulders, what was he attempting to commit suicide for after that had been done? But if he was in a scheme, if he had made an arrangement, if at the instigation of the Pinkertons or anybody else he was engaged in swearing away the lives of innocent men, if he was part and parcel of a conspiracy of that character, well might the soul which was within him, if he had one, well might the conscience which some remnants of existed appeal to him to say, "Out of your mouth you have condemned innocent men and that is a burden which should rest heavy upon your soul," and that, preying upon his mind, might have caused him to attempt to commit suicide. There can be no other explanation of it. Fatted and coddled, visited by the governor, called on familiar terms "Harry" by the counsel for the prosecution and by the governor of this state and by the warden of the penitentiary, this vile, this loathsome, this damned creature who sat upon the stand and related the most blood curdling series of events that

was ever perpetrated by a single individual upon the face of the earth, associating with a United States senator and with a man who if it were not for his democracy would probably be his colleague in the same senate, with the governor of this state, all upon equal terms; I don't know that Mr. Orchard calls the senator "Bill", but I do know from Mr. Orchard's testimony that Mr. Borah calls Orchard "Harry". Think of it, gentlemen of the jury! Here is this loved governor, the man who stands here self-confessed as having foully assassinated him is treated in a manner that is better by far than the average workman of this country is treated from the Atlantic to the Pacific, from British Columbia to Mexico, better treatment by far than nine-tenths of the world's population has, and he, the self-confessed murderer, and everyone of them altogether for the purpose, not of hanging him, this self-confessed murderer, but for the purpose of making this jury believe that this murderer told the truth to the end that they can hang, not an individual -- oh, no, but an officer or officers of an organization which has been waging an industrial war against the Mine Owners' Association of the West which is largely another name for the Standard Oil Company of New York. That is the condition that confronts this jury. The men taking charge of this prosecution, the two greatest lawyers in the state of Idaho and I am willing to concede perhaps the two greatest lawyers in all of the West -- I think perhaps that the people here very generally believe that my associates and myself are not fit to try a case on the opposite side with them on account of their ability, and I am willing to concede it, come in here and take charge of a criminal case and supplant the



district attorney regularly elected by the people to fill that office. Never in all the course of this trial have you heard the voice of the regularly, duly elected, qualified and non-acting prosecuting attorney of Canyon county except that he read one day a part of one deposition which he had taken in San Francisco. Reluctant to the rear, Hawley tells you, gentlemen of the jury, Hawley tells you that back of him and his colleague, Mr. Bernh, sits the district attorney of Canyon county who has the real say in the charge of this prosecution. Where is the district attorney who is sitting back of him? Hawley must be ever in his office and he must be out in the outer office sitting on a stool at Hawley's beck and call. He is not in the court room and when he has been in the court room he has not occupied in this case nearly as important a position as the grip in which I carry the papers that belong to the case. Why is it that if this case is a murder case and we are here solely for the purpose of ascertaining who killed Stennessberg, why is it that we are spending a hundred thousand dollars in this prosecution? Why is it that we are hiring the two greatest lawyers in the West? Why is it that McFarland and his cohorts, the Pinkerton detectives, thicker than the leaves of Vallambrosa here in this court room since we have been trying this case are engaged in it? Why, gentlemen, the law of the land is that unless where a murder has been committed the proof is so evident that it establishes the guilt of a defendant beyond all reasonable doubt that he shall go free, and that law cannot be complied with unless it be overgone by the talent which is engaged for the prosecution. No particle of evidence, not a single scintilla of it which they have claimed

furnishes, it seems to me, the corroborating circumstances which are required under the law. They will call your attention to a letter purporting to have been written by Pettibone on December 30th of 1905 in which he declares that something was sent to Jack for the recipient of the letter on the 21st, and they will say that that is such an independent circumstance. I have already called your attention, gentlemen of the jury, to the law of this state which is that the independent circumstance must be of such a character as that standing alone, without the aid of the accomplice's testimony, is sufficient to connect the defendant directly with the offense. Here is the letter. The original of it is not preserved. Why? There is a complete answer to it. The original is torn up. The copy is made and the copy is introduced, the original being destroyed, and Mr. Orchard makes this statement with reference to it: That the original of this letter he believes to have been written by Pettibone; to his best knowledge and belief it was written by Pettibone, and if there is any doubt about my stating that correctly I can among my papers presently give the folio where that testimony occurs. When Mr. Pettibone's case is tried he will give to the jury which tries him the explanation of that letter; but I want to say to you, gentlemen of the jury, that it takes Orchard's testimony to connect the letter even with Pettibone. Therefore it is not an independent circumstance which, standing alone, tends to connect the defendant or even Mr. Pettibone with the killing of Mr. Staunenberg. It must stand alone. It must not require the aid of Mr. Orchard's testimony to show the connection, and therefore there is nothing against Mr. Haywood with respect to that.



Ah, but they will say, we have a draft dated December 31st which exactly corresponds to the date which is referred to in that letter. This draft is for a hundred dollars. It was sent to J. L. Simpkins and the letter probably refers to the draft, possibly refers to the draft. You are not ~~dealing~~ dealing in the trial of this case with probabilities. You are not dealing with possibilities. Mind that, gentlemen of the jury, you are only dealing with proof with respect to it, proof which establishes beyond all reasonable doubt, and if it fails to establish it beyond such a doubt it must be rejected. But I will discuss with you the probabilities of it or the possibilities of it, because we have got the whip hand of them even on that proposition. Here is a murderer in Idaho sent on a murderous mission by an organization in Denver. Jack Simpkins leaves Denver after the 11th day of December. He goes to Salt Lake and we find him writing a letter back to Denver on the 16th day of December saying that he had forgotten certain credentials. It is certain then that he went right through Caldwell on his way to Spokane. There is no other possible way to get there unless he went up around by Butte, Montana, and I submit that no one would think of going to Wardner, Idaho, or to Spokane, Washington, by way of Butte when they could go this way. In any event, you will find that Mr. Orchard himself states that he was in Salt Lake as late as the middle of December. He had gone down there you will remember on the 25th day of November and he remained there three weeks and he stopped at ~~the~~ this same Cullen hotel that Mr. Moyer tells you that he received a letter from Mr. Simpkins on a letter head of that hotel dated December 16th, 1905. Will you tell me why any

man connected with the Western Federation of Miners was sending an open draft that could be read by all the world to Mr. Simpkins at Spokane on December 21st when Simpkins had left to go right by the town of Caldwell and to go through Salt Lake on the 15th day of December and would meet this very man who they now claim that all of them knew was there for the purpose of committing this murder? Another thing: The draft of December 21st which was sent to Mr. Simpkins, if it was for this murderer who was out of funds, who needed them to carry on his enterprise, would have been cashed and the money would have been forwarded. The draft should have reached Mr. Simpkins on or not later than the 24th day of December, the day before Christmas. There was no reason why it should not have been cashed. There is no reason why Mr. Orchard should not have had the money on at least the 26th day of December, and, gentlemen of the jury, the stamp on the back of the draft itself shows that it was not cashed by Mr. Simpkins until January 4th, and that then it was not cashed by Mr. Simpkins. It was endorsed payable to the order of somebody else and that somebody else wrote his endorsement upon it and deposited it in one of the banks of Spokane and there it was sent to New York. So there are other corroborating circumstances upon that matter, each of them requiring evidence to connect them of Mr. Harry Orchard, who stands here condemned before this jury.

Now, gentlemen, I don't want any of you to entertain any misconception with respect to what I have said about conversion. I say that the greatest institution that the world has ever known is the Christian religion. I say it is the



greatest factor in the progress of humanity that has ever been created, be it God-given or otherwise. I say that it has imbued human souls to do the most remarkable things and under the most remarkable circumstances. But I say, gentlemen of the jury, that it is true that the livery of Heaven is often stolen by the devil to render service that cannot be fitly placed upon the altars of religion. I want to say to you that Orchard himself says that his confession was not the result of religion. There is no claim that it was. I want to say to you that he does not pretend that at the time he made this confession and that these proceedings were instituted that he was actuated by any motive of religion. But, gentlemen, how convenient it is after having made a confession, when there can be no evidence that he either sought or obtained a conversion, and this case is coming on for trial, how convenient a thing it is to assert that a religious enthusiasm has seized him and that he is now actuated by religious motives in the testimony which he has given to bolster max up, to support and to give credence in the eyes of this jury to a confession which was not sanctified at the time that it was made. I say that this man is a cheap and a tawdry and a tinsel here, seated on this witness stand like a king upon his throne -- written a magazine article which was going to be published and which was going to the support of his family, to which support the governor of this state had contributed, while he was in the penitentiary, for the purpose of rehabilitating this witness in the eyes of the jury. Gentlemen, I am the father of children both boys and girls; and if I had a sweet little daughter and she bore my name and I had left her to shift for herself and left the innocent mother who

bore her to shift for herself, to support herself and her daughter, and they had not heard from me for a period of eleven years, I would never let them hear from me from the penitentiary; I would never send them money from the penitentiary. And if I had been travelling under an assumed name I believe that the God in highest Heaven would pardon the lie which I would deliver upon the stand under similar circumstances in refusing to give the name that was borne by that wife and that daughter. This tinsel here has clothed his wife and his innocent daughter with a cloak of infamy and of obloquy which will make them the subject of contumely, the recipients of sneers from now until the time that their tired bodies and their weary minds shall have gone back to the native earth from which they came. This load of sin that is lifted from him has been placed upon them, and this cheap hero is just as cheap before this jury as he ever was in all the world. Sitting here upon this stand under a promise as plain as noonday that his worthless head and carcass shall be saved if only there can be secured the condemnation of the officers of the Western Federation of Miners. Which would you rather be and which would you rather believe, this man on the stand wearing his cheap bravado and putting obloquy upon those who are innocent, or this husband and this father leading an exemplary life, an exemplary citizen all of his life, nursing tenderly and caring properly for the crippled woman who now sits and has for long years sat by his side -- proud of his children and proud of his name, they proud of him and proud of his name, bearing a record that no living man comes here to besmirch in any



way, shape or form, unless it be by Stewart, and the only thing that he said was that in 1899 the defendant in this case made a sharp criticism of Governor Steunenberg at that time, and the reason that it was impressed upon him was because he had always regarded him, and he had known him for years, as an exemplary citizen. Where out of all the hundreds of people and thousands of people with whom he comes in contact, where is there one man who has sought to say against William D. Haywood with the exception of this accused criminal who comes here clothed and educated for the purpose of condemning the Western Federation of Miners, to the end that it may be wiped out and reformed, as Mr. Hawley says to you in his argument. And what do they rely on for a motive to connect this man with the killing of Governor Steunenberg? They call your attention to certain magazine articles, and they appeared in the magazine, the last one of them, at the time that Governor Steunenberg was retired from the office of governor. He had a perfect right to assist in retiring the governor if he was opposed to him. It don't make any difference whether the governor ought to be retired or not, he had a right to his views upon that, and there are introduced against him here articles which were written by Edward Boyce which he knew nothing of, articles written by Mr. John M. O'Neill that he knew nothing of until he saw them in the papers, and last but not least, gentlemen of the jury, an article is introduced here which is a speech republished in the Miners' Magazine and which was delivered by Congressman Knowles in South Dakota winding up with a quotation from a man who I had always supposed represented the acme of patriotism in this country, Mr. James Russell Lowell; and that

speech so delivered by Congressman Knowles and so quoting from the poem of Mr. Lowell is brought in here for the purpose of furnishing a motive for the condemnation of Mr. William D. Haywood. When, if ever, do you suppose that James Russell Lowell thought that a poem that he would write would be put to such a base use? This speech contains articles quoted from the great and immortal Lincoln and from others who are supposed to be the greatest patriots in the world, and it winds up with this poem from Lowell which has been put to a perversion in this prosecution, and with it I want to close the argument for my side of this case, that is for the part of it I represent, leaving the case in your hands, gentlemen of the jury, for such determination as you think that it warrants. I want to say to you in closing that no lawyer has a right, and in my judgment Mr. Hawley should have been corrected for putting the personal equation into his speech, he has told you that if he did not believe the defendant ought to be prosecuted and convicted he would not be here asking for his conviction; his belief is immaterial. I want to tell you if I did not believe that the defendant was innocent and ought to be acquitted I would not be here pleading for his acquittal, and the word of one with respect to that matter ought to be as good as the other and both should be rejected and the case should be determined from the evidence adduced upon the stand. I say that this case represents a phase of an industrial warfare. It bears none of the aspects, or at least but a few of them, of the criminal case. It is not a trial for the murder of Governor Steunenberg. It is a trial of the Western Federation of Miners at the instance of those who do not represent the authority



of this state and who have secured the aid of the authorities of this state as they secured the aid of these authorities in Colorado and some day or other they will find that

"Right forever on the scaffold,  
Wrong forever on the throne,  
But that scaffold sways the future  
And behind the dim unknown  
Stands God within the shadow,  
Keeping watch above his own."

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Thereupon the court gave to the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was reexamined, and the court adjourned until Wednesday, July 26th, 1907, at nine o'clock A. M.

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*Larrow*

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Boise, Idaho, Friday, July 26th, 1907.

9:00 o'clock A. M.

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Court convened pursuant to adjournment.

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

ARGUMENT OF MR. BORAH CONTINUED:

MR. BORAH: May it please the court, gentlemen of the jury: When I closed my remarks last evening, I had undertaken to call your attention to some general principles which the state claims obtained in this case, and under which it is to be tried, and some general rules with reference to the evidence and the corroboration of it which should prevail in a case in order to obtain a verdict at your hands, and also some general remarks in reference to the main witness in the case. Now I am going to undertake, gentlemen of the jury, not to review all the evidence in this case -- I shall not do so for several reasons; in the first place I don't know that I should be able to do so from a physical standpoint, and secondly, there is no necessity for that after a man like Mr. Hawley has stated the facts which should be called to your attention in the State's case. But particularly for the reason it is only my design to group the evidence around four points in this case, and if I succeed in



doing that, I shall be content, at least in my own mind, that I have done all I can for the state's final presentation.

I want to call your attention to the first point, and that is whether or not a conspiracy existed; whether there was an agreement upon the part of four or five certain men whom I shall name, to commit a crime and to do violence to those whom they believed to be antagonistic and unfriendly to the Western Federation of Miners. Second, was the defendant a member of that conspiracy, -- did he know that it existed, -- did he aid, abet, assist and encourage any one in the commission of that crime; third, is Harry Orchard telling the truth in this case; and fourth is there sufficient corroborative evidence of itself to tend to connect the defendant Haywood with the crime, aside from Orchard's testimony. I want you to keep these four propositions in mind and be patient with me while I go through some of this evidence, and of course I will have to travel over territory that has been covered and much of it more successfully than I can do.

Now, I want to take up the case a little different from what my associate did or from what my opponent did. I desire to begin my discussion of this case with the murder of Governor Steunenberg and to travel back upon the trail of Harry Orchard, rather than to commence with the Colorado situation and come this way; and I want you to pay particular attention to one proposition as I go along, with reference to the killing of ex-

governor Steunenberg, and that is the corroborative features of the testimony of Mr. Orchard.

Now, there are no mine owners' associations connected with the death of Governor Steunenberg. There are no Pinkerton detectives connected with the death of Governor Steunenberg. Mr. Orchard was not sent there by the Mine Owners or by the Pinkertons. There was no conflict-- there was no trouble, this man having done what he believed to be his duty once in his life when he held a high official position, having had retired to private life; he was going his way among men, passing out and in; there were no difficulties here; there were no conflicts to divide men's passions and feeling. It was a cold blooded, deliberate murder of a man who at the time stood unchallenged in his actions before the world. Now, that relieves us of much of the discussion that pertains to other situations here, and it is very necessary to get the proper point of view from this standpoint. There are many things which happened in Colorado on both sides unquestionably, in my judgment, things which men on either side had no right to do; things which ought not to have been done. I am not here to defend the mine owners -- I don't care anything about them. I am not here to defend the militia -- I don't care anything about that. I am not here to criticize them farther than to say that I apprehend that the time will come when Colorado will awaken to the fact that there ought to be something in Colorado better than militia, better than the question of union men or non-union men, and that is the manhood, the integrity,



and the patriotism of the state.

And in this discussion we have a clear field with reference to that matter, and we get a clear view of the relationship of these men -- their actions toward one another without any of that condition of affairs which might embarrass or cloud or veil the ~~track~~ true situation from a jurymen's standpoint.

In the first place, beginning with the matter of the death of Governor Staunenberg we observe that Harry Orchard again starts upon his mission of crime from the city of Denver. This is not dependent upon the testimony of Orchard. It is proven entirely outside of any statements he made or of any evidence he gave in this case. Mr. Haywood tells you that along in the latter part of August, between the 25th and the 30th of August of 1905, Harry Orchard left the city of Denver. He says that along about that time he came home one day and that his wife said to him that Orchard must have gone or departed, that he had left; he says that he saw him several times during the latter part of August, some time in August, and he talked with him at Pettibone's house and observed his presence there in Denver and tells you that he ~~first~~ left there between the 25th and 30th of August, 1905.

Now, we track Orchard, not by his testimony but by the testimony of other parties largely, from Denver to the city of Nampa, and from there to the city of Caldwell. We find a few days after he is in the city of Denver at the home of the defendant and that Mrs. Haywood saw him there, we find a few days afterwards that he is registered at the hotel in the city of Nampa;

we find a few days after that that he is registered at the Saratoga hotel in the city of Caldwell. We find from Mr. Basterly that about the 1st of September or the fore part of September, 1905, that he had some communication with him of some character; and we have, aside from the testimony of Orchard, the fact that he came direct almost from the city of Denver to the city of Caldwell and that he went practically from that town to the place where Governor Steunenberg lived.

Now, as stated to you by Mr. Darrow, you are not obliged to put aside your common sense; you are not obliged to lay aside your reasoning powers; you are not obliged to refuse to weigh the probabilities and improbabilities and exercise what we call in this country some times, horse-sense, in reference to these matters, and when we find Orchard coming direct from Denver to the home of Governor Steunenberg we know with no ostensible reason under the sun, and we naturally ask why he took this trip; why did he come? Did he come there to gamble with soldiers? Did he come there to pursue the vocation to which they say he was devoted? Did he come there for the purpose of working in the mines? Did he come there to associate with any of his old comrades or friends or find those with whom he was inclined to associate?

We find another thing. When he arrived at Caldwell, at no time did he engage in any pursuit or purport to do any business nor did he give any evidence of the fact that he was there for any legitimate or proper purpose. He left Denver and he went



directly there and went to the home of him who it will be conceded the Western Federation looked upon as an enemy of that organization.

You must find an interpretation for a man's acts, and under these conditions he left the immediate presence and contact and association with the defendant, and the leaders of the Western Federation of Miners when he left there. He left the City of Denver, and the company and the association of this defendant, and that is not proven by the testimony of Harry Gerhard either. I want to call your attention to one thing which goes back just a little of the time he left, and that is a letter which he wrote and sent to have Marion Moore take to Alaska to be mailed back to his wife. Now, there are two uses to which this letter can be put, and I want to call your attention to the letter at this time to show the close association of this man with the leaders of the Western Federation of Miners. He wrote a letter, -- he left out the date. He went to him, -- not to some other tin horn gambler -- not to some associate in the awful walks of life where he had been pictured to be, but he went to one of the leaders of the great Western Federation of Miners organization, and he said to him, "I want to deceive my wife," -- taking Moore's statement for it, or as Moore put it, "I want to deceive my mistress," and as far as Moore is concerned in his connection with it, it don't make any difference whether he regarded her as his wife or his mistress, but he says, "I want to get away from her; I want to mislead her in effect as to my whereabouts, and I want you, an officer of this

organization, to carry this letter up to Alaska, and become a co-conspirator from a moral standpoint, in my effort to disassociate myself from my wife and my children, or the women with whom I am living."

Now, gentlemen, I ask you, what questions would you have asked, and what would you have done under the circumstances if this man had been nothing more than a stranger to you, or practically so? Would you have engaged in that dirty, contemptible little piece of work? Wouldn't you have said, have the manhood and the courage to go and tell your wife the situation, or the woman with whom you are living? Wouldn't you have said, if this is your way of doing things I will have nothing to do with it? But for some reason or other he felt assured that he could go to an officer of the Western Federation of Miners and not be turned aside, and he was not mistaken in that fact, and here we have the close association of these men, not only in the ordinary affairs of life, but what was at least a violation of the moral law, here is a moral outrage disclosed by this transaction, because Mr. Moore takes this letter and carries it all the way to Alaska, puts the date on the letter and sends it back to the woman over whom they have shed so many alabaster tears in this case. Now, was Harry Orchard very much worse in that transaction than Mr. Moore?

What was the association of this man with the leaders of the Western Federation? That took place in the latter part of July of 1905.

Now, another thing: We find that Mr. Hoyer came here



from California, according to his own testimony -- not that of Orchard, in the latter part of August, 1905. Now, we have no testimony of the association of Orchard with Mr. Moyer other than Orchard's testimony in the latter part of August, 1905. Mr. Moyer, however, does say that he was there, that he returned from the State of California and was there at that time; that he left -- and here is one incident that I desire to go out of my way a little to call your attention to, and that is the Neville matter. Now, something has been said as to why we did not put Charlie Neville on the stand. I will discuss that later, but I want to call your attention to the fact that Mr. Moyer admitted one of the propositions which it was very important for us to prove in this case, and which Charlie Neville probably would have been able to testify to, and that was that old man Neville had at one time appeared at headquarters and asked for money from the Federation. It may be immaterial as to the amount, but certainly the fact that he was there, -- that he asked for money, and by reason of the fact that he had been connected with the Independence depot explosion is admitted by Mr. Moyer, and for that the presence of Charlie Neville had something to do with the admission possibly; in fact it is an important thing that Neville was figuring in the light of these parties, and was in touch with them, and by reason of the fact that he had been arrested or had been connected in some way with the Independence depot explosion.

But we have Mr. Moyer then, we have brought from him as a witness the fact that Neville was in his presence asking for

money in reference to this matter. Mr. Orchard says that Moyer called his attention to the fact that he wanted to get away with Neville at that time, but we will pass that over; we want to show that Moyer was present there in Denver at that time.

And again, what next do we find? We find by the testimony of Orchard that Pettibone arranged and assisted in his departure. Now, they will say to you there is no evidence except the evidence of Orchard. I say to you it is the strongest kind of corroborative evidence in view of the fact that Mr. Pettibone does not deny it upon this witness stand. The court, in my judgment, will instruct you that when important testimony is within the control of the defendant, or when important testimony is to be important to the defendant, -- and it is to the defendant in this case -- if Mr. Pettibone was a member of this conspiracy Haywood knew of it and his act was Haywood's act and his act requires explanation as much as Mr. Haywood's; and if they were associated together they cannot say it was the act of Pettibone and not the act of Haywood, because it was the act of Haywood, and when he remains off the witness stand, charged with the fact that he had done a certain thing associated with Mr. Orchard which is vital and controlling in this case, that of itself is strong evidence; itself and corroborates Mr. Orchard in this case.

But, says Mr. Darrow, we would not put Mr. Pettibone upon the stand because he has got to be tried. Now, I am not going to quarrel with them as to the keen and shrewd manner in



which they try cases' I am not going to ask this jury to pass any criticism upon them whether they act in good judgment or not in keeping him off the stand. You are not judging whether we try this case for the state properly or whether they try the case ~~xx~~ properly for the defense. He may have exercised good judgment, and I think he did; I think his philosophy is correct; I think he showed his shrewdness as a lawyer in that respect as he has many other times in this case, but does that change the testimony in the case? Doesn't it add to it -- the fact that the man is off the witness stand, the fact that the lawyers called in consultation decided that he should not go upon the witness stand -- is his absence under these circumstances any less a matter of strong proof in this case for this jury? Why was he off the witness stand? Why does he remain away? Because he is to take care of himself? Sure. But, nevertheless, there is the place there, the opportunity to explain some of the most vital points in this case, and it is a matter of proof and corroboration of the story of Orchard in this case. So we have Mr. Orchard say that another member of this conspiracy was there in Denver, and was associated with him, assisted him in his departing, and getting ready to come to the city of Caldwell.

Again, what does Mr. Haywood, the defendant, say with reference to Orchard going from his immediate presence and association with him to the City of Caldwell? He says that he saw him -- I think to put it altogether in his favor -- two or three times during the month of August; he says that he was stopping a

this man Pettibone's house; that he had a talk with him in his kitchen; that he talked with him over his domestic affairs. The policeman says that he walked with him, and he says it might have been true that they were walking and talking and associating together and discussing matters that only men in intimate relations would go into with one another and would likely discuss. And again, not only that; but he says to you that Mrs. Haywood said to him between the 25th and 30th of August that Orchard is gone, and that is the last we see of him. So, gentlemen of the jury, he not only starts from the city of Denver, but he starts from the immediate association and companionship and the touch of these defendants, to this city of Caldwell not proof positive? Oh no, As Mr. Richardson says, this event does not prove anything. Possibly not, but it is the beginning of the proof of a very strong fact.

We are building, step by step, from these circumstances to the point where we will ask you as jurymen to take it all, group it all together, explain it if you can on any other theory than that of the defendant's guilt.

And how did he go? He not only left Denver, the immediate association of these defendants, to go to Caldwell where he had no ostensible business on the face of the earth, unless it was murder, but he went armed like a Cuban Major General. He had a sawed off shotgun in his trunk; he had the Peabody bomb, loaded, in his trunk; and he left Denver as you know, if these facts are true, with crime in his heart. He did not get the



inspiration from Wallace a month afterwards. His inspiration did not come from his association with Paulson and those with whom he had at one time been associated. He carried it with him; he has it with him; it was the moving and impelling and compelling power when he left the city of Denver. Did he have that sawed-off shotgun? Did he have the bomb? In the first place, let me call your attention again to the fact that here is where Pettibone might offer some testimony. Mr. Darrow says that Pettibone was the man whom everybody called on for everything,-- buying shotguns, and everything else, in order to run the business of the Western Federation of Miners so they would go to Pettibone, and Orchard says that Pettibone helped him get ready, that Pettibone helped to pack this Peabody bomb in his trunk. Now, gentlemen, I want you to remember this, that here is one of these conspirators down here in jail whom another conspirator, Mr. Orchard, says helped him pack his utensils in his trunk when he started on this trip from Denver. Is it a fact that it is undenied? Is it a fact that he does not open his mouth, and is that any proof to you? Is it not corroboration of Orchard? Is not the silence a confession?

That event is independent testimony. It is the kind of testimony which the court permits you to take and consider, and which as reasonable men you would take and consider. Let us trace this Peabody bomb for a moment and find out if there is any other corroborative evidence in this case. Orchard says he went down into Denver at one time when he was anticipating killing

Governor Peabody, and that he ordered a bomb made, and ordered it for a certain purpose to be a cactus plant in, and Mr. Roach comes here and tells you that the order was made, and this bomb is identified as being the bomb which he made on that occasion; it was delivered over to a man in the tailor shop there and by him to Mr. Orchard. Orchard says he took it to Canon City. Mr. Vaughn says there was something of that nature there,-- that there was some talk about it. Mr. Orchard says that he wrote to Marion Moore to bring it up from Canon City, and Marion Moore don't deny it, and it got up from Canon City and Mr. Orchard says he packed it in a trunk with Pettibone's assistance to bring to Caldwell, and Pettibone does not deny it.

They come on at once and we will follow the bomb. He comes to Caldwell and afterwards the bomb turns up where? Up here at Wallace, on the trail of this man and Haywood. He says it was empty; he cannot conceive of the fact that Orchard would carry it up on the train. You cannot conceive of any such thing. You study the life of that man,-- he puts crime superior to everything when life was in the balance; in his estimation of things he had no more regard for it than I have the ants upon which I tread upon the face of the earth. If it killed Goddard's family, he passed on; if it killed Gabbert's family he passed on; a man who could blow up the fourteen men at the Independence depot would not hesitate to put a bomb in his trunk and carry it along,-- and the fact remains that he did carry it; for the fireman at



Wallace finds it in the river and finds it loaded. Angus Sutherland brings it down here and identifies it. Mr. Hoach identifies it, and we have this instrument of war taken with Mr. Orchard on his trip from Denver to the city of Caldwell.

He did not have it for the purpose of engaging in cards with soldiers; the mine owners did not give it to him; the Finbertens did not furnish it to him, but he left Denver from the association of these defendants, on their payroll, a benefit receiver, a Western Federation man, a man who was rushed to the moment he got in trouble. He left Denver in their association, to come to the city of Caldwell, and he went there for the purpose of murder, and there is not any doubt in the minds of this jury but what he did.

You may doubt as to who sent him, but you cannot doubt that he left Denver and intended to kill Governor Stausenberg when he left. That is one fact that must be settled in your minds.

Now, gentlemen of the jury, when we find men engaged together or associated together for the purpose of crime, when the question of who is responsible and who is not arises, we come immediately to the question of motive. We have him coming from Denver to Caldwell, and have him there, and have him armed. Now, the question comes, "Whose motive was it? What was it that impelled him to come?"

First I want to examine into the personal grievance which they claim this man had against Governor Stausenberg as they have intimated that they would prove in this case. Mr.

Darrow said that he would show that this sale from Orchard to Cardener was a conditional sale. Now, you know what a conditional sale is. Is there a single word in this case -- has a single witness testified to anything that has the semblance of a conditional sale? Some witnesses have said that he made threats, that because he lost his property that he was going to kill Governor Stearns, but what we want to know is first, where is this conditional sale which we were told and upon what could Mr. Darrow possibly base his statement that they would prove it, and also, upon what could Mr. Orchard possibly base his statement that he lost any property? The conditional sale has not been proven in any way, nor in any other method than the fact that it is said that Mr. Orchard made some threats in this case, and the transaction when Mr. Cardener purchased it, how he purchased it, whether absolutely or upon condition, whether the deed was a deed or the deed was a mortgage, -- not a word of testimony in this case upon the proposition; but he says, why doesn't Mr. Cardener come here? He does not seem to ask why we do not bring him. Now, I apprehend that Cardener is not an idiot. Why should he come? He has an absolute deed, recorded, -- has been in possession for eight years and he is the grantor in the deed testifying that it was an absolute deed. Do you know of any way to make a better title? There is nothing here for Cardener to be anxious about. That is a perfect title -- an absolute title -- a possessory title -- and all recorded and here is the grantor testifying that it is his property, so that Mr. Cardener could



well afford to spend his time in Spain looking at that country and observing where he once lived and visiting with his friends as has been suggested in the court room he was doing. The title is perfect and absolute. Now, this deed was made upon the 7th day of March, 1898. When they asked Mr. Orchard if he did not make a conditional sale, he told them promptly that he made a deed. When we go to the record we find that the record corroborates Mr. Orchard. I want to call your attention to one thing here, and don't ever forget it; in this case there is not a single scintilla of evidence here in this case that shows any attempt of having been tampered with, as record evidence, as registered letters, as telegrams, as deeds, -- not a single scintilla of that kind of evidence which was subject to another man's power to change -- that does not corroborate Mr. Orchard. He says he got money, and we find the telegram; he says the registered letter was sent, and we get the registered letter. He says he sold the property, and we get the deed. Put your finger if you can upon that kind of testimony which has dovetailed into the story of Harry Orchard where there is a single chance of discussion as to whether he is telling the truth.

Now, it is barely possible that he did. It is barely possible that Esterly would tell a story. It is barely possible that Lottie Day was mistaken, -- she is a woman, so I will not say anything stronger than that. But these things -- the telegraph office, the deeds and the records filed upon the trail of this man cannot be mistaken, and he has not come in contact with a place

in his story but what they have case forward and we find that these are facts. And what does the deed say? "And also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof with the appurtenances.

"To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever. In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

"On this 7th day of March, A. D. ~~1898~~ 1898, before me, John H. Finn, a notary public in and for said county, personally appeared H. E. Orchard, personally known to me to be the person whose name is subscribed to the within instrument and who executed the same and acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein set forth.

"In testimony whereof I have hereunto set my hand and affixed my official seal, at my office in Wallace, the day and year in this certificate first above written. John H. Finn, Notary Public.

"Recorded at the request of D. Cardoner March 8th, 1898, at 9 o'clock A. M., in Book 7 of Deeds, page 628, records of Shoshone County, Idaho."



Now then, upon the 7th day of March, 1898, Mr. Orchard gives a deed absolute to Mr. Cardoner. Mr. Cardoner takes that deed to the public recorder and puts it on record where it is a notice to the world that he is the sole owner of that property, and it is recorded, and it is recorded on March 19th, and Harry Orchard never owned any of it after. And Governor Steunenberg did not come in there with his colored troops until in 1899, more than a year after Orchard had parted with his title. The other man had taken possession and is working the property, and Orchard is working for him for pay. Is it proven by Orchard upon his testimony alone? Certainly not.

Now, there are two things we all agree upon about Orchard. First, he is not a fool, and second, he is a rascal. He dispute about it at all,-- he was a rascal during this period, and yet here they say it was a conditional sale from Harry Orchard to Cardoner, which he knew was a conditional sale, because he was trying to sell it to the Gills, and yet from that day to this this man who wanted money, who would take every opportunity that he could, who has never for a moment undertaken to get his rights in a mine which would make him a millionaire many times over. He was going to kill Steunenberg. There is one thing else he would have done were their contention correct, and that was to have gone after Cardoner. If that was a conditional sale in 1899, it is a conditional sale right now.

Now, if Harry Orchard had ever gone on the 29th of April, 1899, and sold out that remaining interest or equity,

if he had changed this conditional sale into an absolute sale there would be some basis for his claim that he had to forfeit his interests, but he does not change the condition of affairs one particle.

They say that Governor Staunenberg caused him to lose his interest. How did he cause him to lose it? Think of that for a moment. How did he cause him to lose it? Suppose you should make a conditional sale to-morrow of your property and suppose for some other reason you find it necessary to go off and leave the state of Idaho, going to London, would that change the title of your property? Wouldn't your rights be just the same down in Colorado as they would if you stayed in Idaho? The evidence don't show that he executed any other instrument or that he went back and got any additional money and executed another instrument to release the equities, and this is the only paper he ever executed, and he sold it, as he believed, and under any theory, the fact of his leaving the state of Idaho did not change his title from a conditional to an unconditional sale in any way. He had just the same title to the Hercules mine when he arrived in Cripple Creek in 1902 as he had when he left the Cœur d'Alene in 1899.

What did Staunenberg's coming there have to do with the changing of this title in any way, shape or form? The deed has been executed; it is absolute; and there is only thing that could be said of it, and that is this I presume, that they want you to infer without saying so that this deed was in fact a mortgage.



Then my logic is all the more forcible. If it is once a mortgage, every lawyer and everybody else knows that once a mortgage always a mortgage. If it was a mortgage upon the 29th of April, 1899, it was a mortgage when he talked with Gill in Spokane, in 1905. If he had anything to sell in March, 1899, he had the same interest to sell to Gill in 1905. He had not sold anything in the meantime, had he? He had not executed any other papers had he? He had ~~not~~ not forfeited anything, had he? There is no forfeiture there, and it would be a mortgage now and all he would have to do would be to say to some one this was a conditional sale and he would immediately have about a dozen lawyers from Chicago and elsewhere bringing a suit to recover an interest in the Hercules mine, and he would pay Mr. Gardner his original debt and the interest thereon, and have his property.

Now, the testimony shows that he sold this interest more than a year before the trouble, and he could not have any possible reason for assassinating ex-governor Steunenberg because of the fact that he had lost an interest in this mine. But, they say, he has said a number of times that he did lose an interest. Well, I am not going to discuss all the testimony in regard to that matter but it might throw light upon some of it if I discuss a little of it.

Bill Easterly says that way back in 1902 or 1903, somewhere along there, that Orchard told him he was going to kill ex-governor Steunenberg some time, or words to that effect, because he caused him to lose his interest in a mine. Of course it

is not for you to find he had no interest in that mine. He says that he told him on one or two occasions that he was going to kill this man whom Easterly did know was the governor of the state, whom Easterly must have known, and did know, had been prominent in the Coeur d'Alene affairs; and Mr. Easterly carried that with him until he came down to Silver City in the state of Idaho, and when he got down to Silver City and Orchard got down to Caldwell about the place where he would have to be in order to carry out this grudge, he called up Mr. Easterly and had a talk with him --

MR. RICHARDSON: Not from Caldwell, that was from Haupa.

MR. BORAN: From Haupa. He called up Mr. Easterly and had a talk with him at a time when he was at Haupa within about ten miles of where Governor Steunenberg lived. Now, after he had this conversation with Easterly <sup>it</sup> ~~he~~ seems they had some further communication in regard to some matter, and it puts it in such shape that when Mr. Easterly saw by the papers that Governor Steunenberg had been blown to pieces, he knew that he had been murdered at that time by the man who was a suspect for the blowing up of the Independence depot, and who had been a fugitive from justice from the 6th day of August, 1904. He knew he was at that time, according to the papers, killed by the man who was going under the name of Tom Hogan, -- the man who had said he would kill him -- the man with whom he had been associated, whom he knew as a suspected criminal, and still he kept the matter entirely quiet himself. A few days afterwards the question arose, -- or shortly after, as to who was guilty of this crime.



In the meantime now, Easterly had heard from Orchari, from the city of Caldwell. He kept this unto himself. The state was searching for evidence; the papers were disclosing the fact that there was an effort to locate this upon Mr. Tom Hogan. They say he was caught redhanded in the act, and the papers disclosed that they were gathered up piecemeal, a circumstance here and there, to connect this man with this killing, and Mr. Easterly who knew Orchari, had communicated with him, had talked with him over the phone, and had been written to from him, who knew he was a suspect, who knew he had a personal grudge against Governor Steunenberg, never opened his head about the matter as he testified in his first cross examination, until these men were arrested and it became necessary to show a motive for this killing upon the part of Orchari.

Now, I am not going to say that Mr. Easterly lied. That is what you are to say in your verdict, -- or that he did not. But I will say this, that he either testified to a falsehood or that he was a member of the conspiracy that killed Governor Steunenberg. Take which horn of the dilemma you want to. You cannot say to me, you cannot say to any reasoning man that this man Easterly knew Orchari as he did, this vile wretch whom they paint here day after day as the most consummate criminal of the twentieth century, who knew him as a suspect, who knew his grudge, that he is telling the truth in this case unless he knew why he was at Caldwell and that vicinity. Why was he concealing this

fact? For the protection of whom? I admire him for one thing; he practically says in the close of his testimony -- he leads any man to believe that he would not have told it if it had not been necessary to protect these defendants.

Now, another thing,-- Bill Davis says he heard this thing. Don't forget another fact as we go along, and that is while they are building up all this knowledge within the Western Federation of Miners and their friends, as to the knowledge of that, or that he was going to kill Governor Steunenberg, that the Western Federation of Miners from the 30th day of December, 1905, ~~in~~ until the 18th day of February, 1906, was in absolute possession of evidence which would have enabled the state to hang Harry Orchard without any evidence at all, and never handed it to anybody.

Now, Bill Davis is a very cool, calm fellow; he is a man who can see a train go through a town in daylight, with a thousand men armed, with masks on, and feel no interest in the subject at all. He is very cool and calm,-- Grant was a circumstance in war compared to Davis. It is said that Grant, when going to Vicksburg, was very much disturbed as to what would happen when he got there, and he learned afterwards that the other fellow was just as badly disturbed as he was. But Davis would not be decomposed by such an event as that; Davis, who was not at the Bunker Hill mine at all, who went up to work at the Hercules a few days thereafter, and changed his name to get to the taller timber, Davis says that he told him also that he was going to kill Governor



Steunenberg. When did he make known this fact? What is his interest in this case? After you listened to his testimony with reference to his actions upon the 29th of April how much consideration do you give to his evidence, wherever it is of importance to this defense? Reason it out for yourselves, make up your minds whether he is interested or whether or not you will want his testimony to suit the action, and he ~~xxxx~~ comes here and says a man who sold a mine a year before the event happened and who had no interest in it but had another man working it who owned it, told him he was going to kill Governor Steunenberg because of that interest. Can they say that Mr. Ramey would not lie, and I am inclined to think that it is correct that he did not. I am inclined to believe that is true, that he would not wilfully and knowingly state a falsehood. I don't know the man but he appears well and appears to be disinterested and does not appear to me to have sufficient interest to cause him to state a falsehood. He says that Orchard undertook to sell him this claim. Now, that might be entirely true, and the only thing that would be material would be the question of date. For instance, if we should take the date of 1898 at the time that he was trying to sell it, and did sell it, there would be nothing strange in the fact that he was attempting to sell it to Ramey, and the question of date would be the one matter in the evidence which would in any way contradict Mr. Orchard.

Now, what are the facts which tend to show that Ramey was mistaken as to the date of that conversation? Orchard comes

along on a horse and they have a few minutes conversation and pass on. Afterwards it is called to his attention, and without making any memorandum at that time, or any other reason to remember it, he thinks it was in 1899. But think how improbable that is in view of the fact that Ramey lived there in Shoshone county where this absolute deed had been of record for more than a year. Mr. Orchard, even if he was the rascal they claim, could not have accomplished that in any way for he had parted with his interest, and now I apprehend that Mr. Ramey, if he was honest in the matter, which I am not going to deny, was mistaken as to the date, and the same logic and the same rule would apply to Mr. and Mrs. Gill, although I am frank to say I would not want to go so far, though I had no opinion as to them before. We will assume that they were telling that which they thought to be the truth. We cannot conceive of the fact that they were undertaking to buy an interest in property to which the title had passed more than a year before, and there was Cardoner up there working at the time they were trying to buy.

Cardoner did not regard it as worthless evidently, as he was in possession, with his deed, and that was recorded; and I say that discloses the fact, if we are going to reconcile the testimony in accordance with the undisputed facts and with the honesty and good faith of these people that they were mistaken as to the spring in which they were talking about this sale.

I think Mr. Costes said something about that too, and I



want to say something about Mr. Coates; he has some peculiar ideas and I don't know how far they got into this testimony. I don't think that Mr. Coates is entitled to the eulogy that Mr. Darrow pays to him. I am not going to judge him by anything except the testimony which he has given in this case.

The testimony in this case shows that in 1905, Mr. Orchard went up to Wallace, that he met Mr. Coates, that he had met him before some time in Denver, and that he had a conversation after he got there -- very quickly after he got there with reference to stealing Paulson's child. Now, watch Coate's transaction in this matter. It is very funny that Orchard was so free to go to any friend of the W. F. of M. or their associates to talk of crime, but he did. Paulson was Coate's neighbor, -- he lived just across the street, and the little child played about his yard likely. And here was a man who came to him and seriously stated that he was going to steal the child. It did not make much of an impression upon Coates; it did not seem that the fact disturbed him a great deal, and he did not take it very seriously; but Orchard comes back a day or two afterwards and says, I want to carry on these negotiations again, and Coates seemed to think at that time there was something serious about it, and he came to the conclusion that he would have to do something. He don't call up by phone and tell Mr. Paulson to look out for his children; he don't go to the officer and say, here is a suspect from Colorado, a hyena in here to steal children; he kept it all unto himself, which makes me think that it is some corroboration of Orchard in

saying that he would do his part in taking the money, and it passed on, and he finally says, "Orchard, if you steal that child, I will get out a special edition of my paper; I will denounce you." The child will be gone,-- the horse is stolen -- but I will lock the door. Perhaps Paulson would have paid for that special edition to come out, but the child would have been stolen. A day or two afterwards Orchard comes along and says, "I want to get \$500. from that man, and I want you to tell him a lie if he asks you certain things about our stock deal." It is a lie. What does Coates say? Why, you miserable rascal, who was going to steal his child, you are now after his money -- I will go tell Paulson. Does he? No,-- he says, "All right, I will tell him if he asks me! Isn't that his testimony? So, Orchard lies his way down to unsuspecting Paulson. Orchard says he is going to get \$500., and Mr. Coates does not care if he did; but Orchard's heart failed him, and he only got three hundred; Coates heart didn't fail him. He came back up the street and he pulled out the check and showed it to Coates and told him he has got the money. Now, Coates knew, and he gave you to understand that that transaction,-- and they argued it here, was a disreputable transaction upon the part of Orchard, that a little story was to be told by Coates if he was asked; and again we find, as in the case of Mr. Moore, and Mr. Coates here enters into a little conspiracy to aid, abet, and assist in getting \$300. from this man whom Orchard had been threatening to steal his child from for two or three days. Now, that is the association of Coates with Mr. Orchard.



Now, after he has told him that he is going to steal his child, and after he has gotten his \$300,-- gotten it by the connivance of Coates, does he break off with this criminal? Certainly not. He goes down to Salt Lake and Orchard writes to him, and they are still doing business together. Now, it does not seem to me that that man is entitled to the eulogy of the counsel. There was something shady in his transactions. He was conniving in this matter, and I haven't any doubt in the world but what if that child had been stolen he would have got out an extra edition.

Now, Coates is one of the parties who says that Orchard made this statement to him. Did he come forward with it at the time the State was searching for evidence in this case -- a public citizen -- an ex-lieutenant governor, reading the newspapers and publishing a newspaper of his own -- did he say anything about it in his newspapers?

Again they introduce a man here, a party whom they brought here, by the name of Miss Lottie Day, or Mrs. Lottie Day, I don't know which.

MR. DANKOW: I think it is Mrs. You people found her first however.

MR. BORAH: I don't know whether she was single or married at the time Mr. Stone found her. Now, Mrs. Day tells us of a talk that took place down in the boarding house -- in the Belmont rooming house in Denver. All these matters, gentlemen of the jury, are for your to consider, and I am simply going to call your

attention to some of the circumstances surrounding that particular transaction. It seems that Orchard and Lottie were sitting upon a lounge talking in a rather confidential way, when something -- when that confidence arose does not appear in this case, but Orchard was there on the lounge with Mrs. Day talking over matters of a confidential nature, and she says that he told her he was once in love. ~~but it~~ An altogether probable proposition from one standpoint and unsupposable from another, and they had a conversation in which he said that he had owned at one time an interest in the Hercules mine, but that Governor Steunenberg's actions in some way caused him to lose his interest, and he was going to kill him. Now, the conversation continues until Mr. Haywood appears upon the scene, and then she says with equal positiveness that Haywood and Orchard, this friend of hers -- there was an introduction passed there some where -- I have forgotten who was introduced and who to, but there was an introduction passed and Haywood came in, and Orchard and Haywood went off into a private room to have a conversation. That part of the story they say is untrue. She was just as positive of one statement as the other. It was all one transaction -- it was all one conversation -- it was all one scene, and Mrs. Day was just as positive as to the fact that Mr. Haywood was there that he went into a room with Orchard, -- he left her presence and went away with Orchard and went into a room as she is that Orchard had been whispering in his ears something about his early life.

Now, Haywood says that is false, that he did not do



anything of the kind. Well, as I said a few moments ago, in view of the fact that Mrs. Day is a lady, at least a woman and I presume a lady, and in view of the fact that they have shown that she was mistaken in a very important and very controlling feature of this matter, and in view of the fact that they have brought her here to impeach her themselves, I leave it for this jury to say whether or not the testimony of Mrs. Day impeaches the deed which has been recorded for a year, under which this man had been in possession and had worked?

"Forget it," she says to Orchard. The same thing might be applied to Lottie. Now, gentlemen of the jury, there is some other witnesses in regard to this matter that might be mentioned to whom the same line of reasoning would apply, but it is impossible for me to go down through the details of this testimony, but I do want to call your attention to one witness and that is the testimony of General Eugene Engley,-- the ex-attorney general of the state of Colorado. I don't care to refer to the fact that he was attorney general under Waite's administration, but something else; that he was an interested witness you have no doubt; that I was here to make a speech from the probable standpoint of these defendants you can have no doubt; that there was not power enough in the court or myself or the attorneys for the defense to stop him, you have no doubt; that he was extremely concerned, and manifested it, there can be no question. He says that Orchard made somewhat of a similar statement to him. Now, above all

men, I want to know where Engley was from the 30th day of December, 1905, until the 18th of February, 1906. The ex-attorney general of the state of Colorado, who is supposed to be in favor of punishing crime, had in his possession the fact that this man had a personal grudge against Frank Steunenberg,-- sufficient to justify him in the belief that he was going to murder him, and he held that in his possession during the time that the newspapers were carrying the news all over the country, that the officers of Idaho were looking for evidence against the man who perpetrated the most dastardly crime ever committed in this state.

Engley comes here and says, I had this evidence and I gave it to no man, and I give it to you now for the first time in this case. Perhaps there is a reason for it because he was an attorney general and it would not justify anything in regard to his veracity. I want to say this in passing, because you have a right to take all these things into consideration. General Engley does not believe in law. General Engley does not believe in such things. He does not believe in the ordinary condition of society. You remember I asked him what it was and he said that if you refer to the fact of a man's believing in the initiative and referendum, in the imperative mandate, in the controlling of the trusts, in the control of railroads, then I am not a socialist, but if you believe in taking this earth from the few who have gotten possession of it and turning it over to the many to whom it is entitled, then you may write me down as a socialist.



Socialist the dickens! He is an anarchist and not a socialist in any sense of the word. He believes in turning society upside down, arraying class against class, and saying to the man who has his home or his ranch or his property, give it up and get out, turn over to the man who did not earn it, turn it over to the man whose sweat did not make it, by force, and I am not surprised that the state of Colorado has had hell within its boundaries for the last ten years.

When men preach such doctrines what do you think that the man down in the mine will do, what do you think that he is likely to do when the ex-attorney general of a state comes before a court in a civilized community, in an orderly conducted society, and preaches his infamous doctrine as he did here upon the witness stand? "Philosophical anarchy", he says. You might just as well talk about philosophical Hades. From his standpoint it is one and the same, and whether he was attorney general under Mr. Waite or not, it is no credit to Mr. Waite that he was. Now if Mr. Orchard didn't have a personal motive in going to Caldwell, because we are getting back to that proposition, then who had a motive in sending him there?

Now briefly let us go back to the 29th of April again. Upon that day there was trouble in the Coeur d'Alenes. Upon that day or a day or two afterwards Governor Steunenberg as governor called the troops into the Coeur d'Alenes. A few days afterwards a bull pen, so-called, an improvised prison, was erected. Hundreds of miners were placed in that bull pen or that improvised prison. A permit system was established by which a man couldn't get work in the mines except under certain conditions and prosecutions followed of certain members of the Western Federation of Miners. As shown by the evidence here one of those members was convicted and a good deal of trouble followed in the Coeur d'Alenes. Now there can be no question but what there was an intense and deep seated hatred and feeling against Governor Steunenberg by reason of that fact. There can't be any doubt but what on the part of the Western Federation members there was a



feeling that he was the pronounced enemy, the uncompromising foe of the Western Federation of Miners, and that feeling continued. It is not for me to argue here today whether Governor Stearnsberg was right in all his transactions or not. It is not for me to say whether he was correct in all his movements or not. That is immaterial so far as this case is concerned. I have my opinion and my convictions, but it is no evidence in this case and you care nothing about it. But the fact remains that he went there, that he did those things, that they were considered as being unfriendly in every respect to the Western Federation, and that he was looked upon from the day that he called the soldiers into that camp until the day that he died and even thereafter as the mortal enemy of the Western Federation of Miners. The bull pen proposition was his they say. The permit system was in a large measure his, and the troubles in Colorado did not cause that hatred to die, did not cause them to forget their troubles in the Coeur d'Alenes; and all that has been proven here in this case with reference to the Colorado situation rather accentuates and strengthens the theory that they had an intense and an abiding hatred for Governor Stearnsberg, and that their motive continued from the time that the transaction occurred down until the time that his death occurred, and I want to call your attention to a couple of the matters which disclose that fact.

Now, gentlemen, I am reading here from the Magazine called the Western Federation of Miners' Magazine. I want to read one article dated in 1901 and another article or two dated in 1905 and 1906 to see whether or not this is hatred, this ill will which prevailed and which Mr. Haywood admitted upon the witness

stand died with the passing of Frank Stearns into private life; whether they did not regard him as a foe to the Western Federation and to organized labor; whether they didn't look upon him as one of those who was swayed by the capitalistic class? Whether they didn't look upon him as the corrupt representative of Rockefeller and those men who have been denounced here in the court room as entitled to punishment not at the hands of the law but in a more forcible way. They looked upon him in that way. There can be no question about it. The only question is how long did they continue to conceive of him as being their enemy and the man who had made trouble for them over which they did not get even at the time of his death.

Now it says here: "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 stockholder!

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?"

The same old story, the mine owners. "Whose lackey he was from the day he was elected governor." He stood in the same class with Peabody. He stood in the same class with Bell. He stood in the same class with Goddard. He stood in the same class with Gabbert, the same class with Hearne, the same class with the fourteen poor fellows who went into eternity upon the 6th of June, 1904. That is the man who was regarded as the enemy the opposing enemy of organized labor.

Now let us separate right here this proposition of the individual hatred, the individual ill will of any member of this



organization, and go to the proposition which the State proposes to prove to you, and that is that it was a hatred arising out of what Mr. Darrow is pleased to call an industrial warfare. And the question which you jurymen are sitting here to determine is not whether or not Mr. Haywood had a personal ill will but whether or not this country will submit to the proposition of any man fighting out an industrial war on the theory of murder. It was an industrial war, it was trouble from their point of view, and that is the reason why they looked upon the matter and why the hatred never died, because the war wasn't over.

"Farewell, Steunenberg, once governor of Idaho; your political career is ended.

You have done everything 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."

How insignificant the feeling of Harry Orchard, his Hercules mine case; how insignificant in keeping alive the passions of hatred compared with the unforgiving, unforgetting, unrelenting hatred of the officials against Frank Steunenberg; and why? Simply because he could not conceive that as governor of the state he had a right to sit still and see a thousand men go into a neighboring town armed and masked and destroy property and commit murder. He might have erred in the manner possible, but he was called into action, he did his duty. He did according to the lights that were before him and there isn't any question in

the world but what these men opposed to such things conceived of the fact that Frank Steunenberg was in unrelenting opposition to such action. But, as Orchard says, kill him, not alone for what he has done, kill him that these men in Colorado and elsewhere who come into opposition to the Western Federation may know that we don't forget, and that they are living a living death. Hatred! Corroboration!

"Your ~~own~~ 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!'"

Why? Why traitor? Did he desert the state? Did he abandon his oath? No. He went to the Coeur d'Alenes with the soldiers because there was no other power, and he did one thing, he stopped assassination in the Coeur d'Alenes. He restored order, and I will leave it to you whether or not when a thousand armed men get together drastic measures are necessary to do those things.

How did they think of this man when he laid dead, before the grave had covered his body? Seven years had passed. He had gone into private life. He was murdered, blown up at his gate as he was looking into his lighted home that holiday night. Everything surrounding the awful scene would appeal to a man to forget his hatred. Even if he had been an enemy, anybody should have said let us forget and forgive. Perhaps he erred. No, no!

"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."



That is the eulogy which the Western Federation of Miners passed upon Frank Steuenberg stood shocked at the awful crime. "The press dispatches report his dissolution via the bomb route." Gentlemen of the jury, you know the man who wrote that article under those circumstances was a man who was capable of possessing within his heart the instincts of murder, and it turned out it was so. The man who wrote that article, who boasted of it, whose eyes gleamed with gratification when he was asked about it, turned out to be a murderer. And he expressed the sentiments, he said, and reflected the views of the officers of the organization of which he was spokesman.

But again: "A chap by the name of Steuenberg was blown up by a bomb at Caldwell, Idaho, on December 30th. He was governor of that 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 the Steuenberg habitation. Such carelessness should be frowned down. The gate was completely wrecked." This is the eulogy. No motive, no feeling left, but, says Richardson, Simpkins had forgotten. It was a thing of the past. He was in private life. We had no feeling against him.

And again it says: "The organs of the capitalistic class recognize in the death of Steuenberg 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." Still fresh.

"The brutality and barbarism 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 a flame of hatred that would burn as long as there lived a victim that bore the scars of the conflict of the year 1899," and so forth and so on.

Now, gentlemen of the jury, there are the words of the men who were running that paper, the defendant who was paying for it, the Western Federation officials who were sustaining it, and we know just as well as know that we are here trying this cause that out of the conditions of 1899 arose this hatred for Governor Steunenberg and that it never died, that it was not forgiven, that it would live as long, state they, as an individual lived that was acquainted with that condition.

And so we find that Harry Orchard left the city of Denver, left the defendant, went to Caldwell, the home of the man upon whom had been passed the hatred and the ill will of these men for more than six or seven years. Now after he got there what happened? We have learned that he was there. We have learned where he was. We have ascertained the fact that he carried instruments of murder. We have discussed some about his motive. And he arrives there and what happens next? He goes in search of Governor Steunenberg. He doesn't locate him specially Mr. Richardson thinks that there is considerable in the fact that he didn't kill him at once, that if these men desired his death



that Orchard should have accomplished it at once. Now there is always a condition to murder, and that is that it shall be done under such circumstances as the man can likely get away, and Harry Orchard it seems had gotten away a number of times. He was an expert at that and he chose his time, the circumstances and the conditions for that purpose. And so he passed on. After visiting Hango and Caldwell he took his ticket and went on down to Portland and then he went up to Seattle and then he wandered over to Wallace and there he came in contact with whom? With Jack Simpkins. Jack Simpkins is the representative of the W. F. K. for the state of Idaho. They get together for some reason. They seem to be drawn together. Wherever Orchard was he was in contact with the Western Federation if it was there. When he was in San Francisco he meets Copley. When he gets to Cheyenne he meets Davis and Copley. When he gets to Wallace he meets Simpkins. Wherever he is whenever there is a Western Federation man Mr. Orchard comes in contact with him. And he meets Jack Simpkins, and what do they do? I will pass over some of the transactions in Wallace. They leave Wallace and go to St. Joe, from St. Joe to Spokane -- remember this isn't Orchard's testimony alone -- from Spokane to Caldwell. Now I want you to remember that Jack Simpkins became a part of this conspiracy and it doesn't make any difference when he joined it and it doesn't make a particle of difference on earth whether they sent him to Simpkins or not. Simpkins had been in Colorado. He had been in the bull pen. He was there, says Orchard, when they were talking about some murders in Colorado, and he was a representative of this organization, and we find that as soon as a transaction occurs he is their

representative and they act upon his representation in this particular transaction. So he meets Simpkins and Simpkins goes with him down to Caldwell, and I want to ask you what this co-conspirator went with Orchard to Caldwell for? Richardson says he must have inveigled him off of the train. Oh, no, the mine owners put him off the train, the Pinkertons put him off the train. Jack Simpkins got off that train because he knew Harry Orchard and knew his mission, and why do I say that? He goes to the hotel. With whom? With Orchard. How does he register? He registered under the name of Simmons, not Jack Simpkins, but he goes and registers at the hotel as Mr. Simmons. With Harry Orchard? No. With Tom Hogan. And they are there in the city of Caldwell together with no ostensible purpose on earth unless that of a crime, and the very fact that they were under an assumed name stopping together shows that they knew, were conscious of the fact that they were not there for a lawful and legitimate purpose. The representative of a labor organization travelling under an assumed name and he was there under an assumed name in the very home of the man whom they hated, whom they had the strongest ill will toward, who had injured, as they thought, Mr. Simpkins himself. They were in the home of Governor Steunenberg to whose home Harry Orchard had gone direct from Denver with the means to murder.

Now, gentlemen of the jury, I want you to watch these five men. Here is Jack Simpkins, Harry Orchard, William D. Haywood, Charles Hoyer, George Pettibone. Watch these five men. In a little over thirty days Frank Steunenberg is going to die. What are their actions? They are going to and fro, their association, their connection -- you will find out whether there



is evidence here or not to show a conspiracy outside of any testimony of Harry Orchard. One conspirator today self-confessed; another conspirator a fugitive from justice. Another conspirator down here in jail and afraid to testify. No evidence? What more do you want? Watch them from this time because we have got them all in action. We have got them in touch with one another. They are moving to the scene. Jack Simpkins stays around a few days, and upon this we only have the testimony of Orchard. While they are there they plant a bomb, says Orchard.

Now here, gentlemen, I want to call your attention to one matter. You remember that they planted that bomb for Steunenberg in the first place along about the 15th or 17th or 18th of November, at the time that Jack Simpkins, the member of the executive board, was at Caldwell under an assumed name; at the time that Harry Orchard was there under an assumed name; at the time that they were shadowing upon the home of Frank Steunenberg. Mr. Haywood writes a letter upon that fell same day to Mrs. Harry Orchard and states in there's falsehood, at the very time that the representative of this great organization representing Idaho, the co-defendant with Mr. Haywood and one of the officers, and Harry Orchard, the murderer, the self-confessed murderer, the other the fugitive, are in Caldwell slouching upon Governor Steunenberg, we have a false letter written by Mr. Haywood telling his wife that he is in Alaska. Don't forget that in these conspiracies the alibi proposition is always an essential ingredient of a conspiracy. Don't forget that there is brains behind this murder. It is not an accident. And so we have him up in Alaska

while as a matter of fact he is down at Caldwell, the point at which he went direct from the city of Denver. No evidence? No corroboration? Jack Simpkins leaves Caldwell and goes toampa, changes his name within 10 miles. He is Simmons at Caldwell where Governor Stearns lives, he is Jack Simpkins atampa, 10 miles away. Conscious of guilt? Didn't know? Inveigled off the train? Certainly not. He passes on over and goes to Silver City and there he sees Bill Easterly. What conversation took place between Jack and Bill Easterly nobody will ever know, because there is no hope in my judgment of catching Jack and Bill will never tell. But they met and the fact that Jack had been there a short time before at Caldwell with Orchard under an assumed name leads me to believe that it is very probable that they talked over some matters. But he passes and then Jack goes back to Spokane, takes Orchard's ticket, says Mr. Barrow, and goes where? Comes in contact again with the other members of this co-conspiracy. Reaches there and there we don't know what took place, but we do know this, from which reasoning men will reason, that Jack Simpkins was there at Caldwell under an assumed name with a murdered thug who was there for the purpose of murder. We know he went direct to Denver and we know that it is entirely probable, entirely reasonable that some conversation there took place. What next happened? He comes back from Denver. What happens while he is there? Now I am taking this up a little out of its line because it illustrates. While Jack Simpkins is at Denver he gets the large sum of \$218. He conceives of the proposition that that is too much money for a Western Federation official



to carry home , so he takes \$218, I believe it was, or \$223. I have forgotten which, and leaves the other hundred with Mr. Haywood. Now the probabilities of these things are just as much as a matter for your consideration as the actual facts. but he has \$218. and splits it up and gives Mr. Hays of a hundred dollars. Why? Well, on December 30th, after Frank Steunenberg, or about the time that Frank Steunenberg was killed this letter was written: "Friend Tom." Who is Tom? How did he know it was Tom? How did he know whether his name was Green or Bempsey or what it was? How did he know he was at Caldwell under the name of Tom Hogan? Who told him? How did the men in Denver know that he was at Caldwell at that time under the name of Hogan or that he was there at all? "Friend Tom"-- the man whom they say I called Harry, which I had forgotten. Rather familiar at that time with this murdered. "Friend Tom: Your letter received. That was sent to Jack the 21st." What was sent to Jack and who was Jack? Jack was at Caldwell or had been, and where was Orchard? He was at Caldwell and he says that he had asked them to send him some money, had written to Pettibone, there comes a letter back unsigned which shows that the man who wrote it that he was in connection with a man who was committing crime and he says "Friend Tom: That was sent to you upon the 21st." And so it happens that we go into the bank at Denver, Colorado, and we find a draft dated on that fell some day to Jack Simpkins. What is the coincident there? And that draft is sent by William D. Haywood. I don't care whether it is sent as the secretary-treasurer or in his individual capacity. It is immaterial. What I want to say that there

is a piece of evidence which called for the presence of Mr. George Pettibone, that co-conspirator in this case whose act binds William D. Haywood the same as his act did if he is a member of this conspiracy. Orchard says that Pettibone wrote it. Pettibone, by his silence, says he wrote it. Let William D. Haywood take the chance of having that interpreted against him by this man Pettibone who Darrow tells you was the friend of humanity and afraid to take his chance on this witness stand. Mr. Haywood himself had just as well have kept silent. Simpkins goes to Denver. They say they give him a hundred dollars. It is for you to say in view of that letter what that hundred dollars was for and at whose instigation it was sent. Simpkins goes back home--back up into this western country and finally home. Now they say that this draft wasn't cashed until the 4th of January. Does that cut any figure? The fact that it didn't reach its destination, does that show that it wasn't sent at Orchard's suggestion? The murder was pulled off sooner than anticipated, but in view of the fact that it is proven in this case that Jack Simpkins gave Fred Miller a hundred dollars on the 4th day of January, the same day that this draft was cashed. I apprehend that instead of Orchard getting it Fred Miller got it. It all went to the same fund for the same purpose, driving home to the same conclusion, bringing into play this entire combination and all the actors. After he comes back up into this western country he goes to Wallace. Mr. Orchard goes down to Salt Lake, returns to Caldwell, registers and stays about there, and upon the 30th of December he goes up to the yard gates puts his bomb in place, arranges it so that the governor will pull it off when he steps inside the gate, hides his



way down the street, gets to the Saratoga Hotel practically when that dreadful murder takes place. Experienced criminal ! Killed, murdered, by whom ? By the bodyguard of Mr. Moyer; by the late associate of Mr. Heywood; by the man who a few weeks before left Denver armed by George Pettibone; by the man who is in company with Jack Simpkins. Murdered by one of the co-conspirators in this case, and they had frequently been in connection for the last two months. Is this the testimony of Orchard? Aren't these facts crowding in upon you and forcing you to the conclusion that back of him somewhere, are advisers and abettors, men who furnished money, men who furnished sustenance and power and encouragement to commit crime? There is no doubt about it. Did the mine owners do this? Did the Pinkertons fix up this job? What happens next? Orchard commits the crime and upon the second, I believe it is, Mr. Orchard is apprehended -- the first or second. Upon the third -- we will get the connection now of the co-conspirator again. How quickly they act! What would you expect them to do? Now stop and reason for a moment. If as a matter of fact Orchard was there to commit that crime and if as a matter of fact they knew that he was there for that purpose what would you expect them to do immediately upon learning that he was apprehended? You would expect them to get busy. You would expect them to get busy under cover. You would expect them to show knowledge of the crime. You would expect them to go to Orchard's rescue before he asked it. Did they do it? They acted in exact harmony with those facts, upon the third day of January, 1906, without a word from Tom Hogan, without any request whatever, before the Western Federation had in any way been implicated in this matter, so far as the man who was sending this

telegram was concerned. We find here a telegram from whom? First, here is the receiver's number "Phoned". The man who sent that telegram didn't have the nerve to go to the telegraph office and let his face been seen. "Time filed, 7:30 P. M. Paid. Charged to Robertson, Miller and Rosenhauf." Who hired them? One of the co-conspirators here, the man who had been down there with him under an assumed name and helped him plant a bomb. And he says "T. Hogan, Care of Sheriff, Caldwell, Idaho. Attorney Fred Miller will start for Caldwell in the morning. Signed M." Rather quick in their action, rather hurried to get to the defense of this man. Why? Sending an attorney from Spokane. Well, does the attorney go? He starts from Spokane, and if the theory of the defense be correct in this case that the Western Federation of Miners goes to the defense of a man who has ever been upon their list and for that reason only, there wasn't any reason why Fred Miller should not proceed at once to Caldwell openly and above board, if he knew and if Jack Simpkins, who employed him, knew that this man was a Western Federation man but didn't know that he was guilty, and was moving under that rule? Why shouldn't he go? Why shouldn't he? Why shouldn't he sign it, Rosenhauf, Robertson and Miller? He starts down and he gets down to the city of Walla Walla. He buys a ticket for Caldwell, goes down to Walla Walla and for some reason or other Mr. Miller turns around and flees from his client. They were trying to reach him under a concealed hand. They were trying to give him encouragement under cover, and when it began to be spread about that they were uncovered Mr. Miller takes his back track and leaves his client in the city of Caldwell. If he was going to defend a Western



Federation man, believing him innocent, was there any reason to be ashamed of him? No. Jack Simpkins has been to Miller's office. He had also been to Caldwell. He had been there under an assumed name. He had registered and left, as Orchard and he knew the minute Frank Steunenberg passed into eternity that he would be implicated by reason of the action of his co-conspirator, the man whom he had aided and abetted and encouraged only a few weeks before. Now what does he do next? After starting upon his fruitless mission the brave Miller, who starts to his client and turns and flees, what does he do next? He goes home, Miller does, and then he turned around upon that day, starting the next morning after that telegram was sent at 7:30. Mr. Simpkins then gets in touch with another member of this conspiracy, and he sent him a telegram so secret in its nature, so undecipherable to them, so hidden from the world that it took the attorney for the Western Federation and Mr. Haywood and Mr. Mayer three days to interpret it. They worked upon it and worked upon it, and they are not satisfied entirely yet. Why this secrecy from Jack Simpkins, and why does he send it to Haywood at all? What does he say? "Can't get a lawyer to defend Hogan. Answer". Why can't he get a lawyer to defend Hogan? Miller started and turned back. Now he turns to get action down there at Denver. Send a man here to defend Max Hogan. Who is Hogan? A murderer with whom I was at Caldwell a few weeks ago and whom I saw you about while in Denver, the man to whom Pettibone sends the letter later, the man who is on the benefit roll. Get busy. And what does he say? "Can't get a lawyer here -- or "Can't get a lawyer to defend Hogan". Now, gentlemen, I want you to think of that telegram when you get into

your jury room. It is a very peculiarly worded telegram if Mr. Haywood didn't know before it was sent anything about this transaction. He doesn't say Harry Orchard here is Tom Hogan, is charged with the killing of Governor Steunenberg. He doesn't say do you want me as a member of the board to act in this matter. He doesn't say do you want a lawyer employed, shall I act? Now, he simply says, "can't get a lawyer to defend Hogan," and the man who sent this telegram knew that the man who was to receive it understood the situation. There isn't any more doubt about it than that the telegram was sent in this case. Now what do they do?

Surely after that they begin to get ready for war. Mr. Nugent is telegraphed to through Mr. Hanlong at Silver City. And what does Nugent say? He says a very wise and a very proper thing, a thing that would naturally suggest itself to you. When they telegraphed him to get ready to defend the Western Federation of Miners because Harry Orchard has killed Governor Steunenberg or charged with it, why, Nugent says, "I don't see how the Western Federation of Miners is involved." Now neither do you at that time. He wants explanation and he was very wise and level headed because at that time there wasn't any more reason to the mind of John Nugent, shrewd and keen and level headed as he is, why the Western Federation should get into that defense than there was why he should take up any other man's defense. Here is one of their straggling representatives up here in the state of Idaho murdering the governor, arrested, no charge against the defendant here, no charge against Pettibone, no charge against Moyer. Nevertheless Jack Simpkins sends a telegram which he knows



the man who receives it knows that they want defended. It is unfortunate in this case indeed that that telegram should have been sent, and they should have acted upon it, by Jack Simpkins who is now a fugitive from justice. Therefore in a few days after this transaction which I have just referred to what do we see? We see Sullivan, the attorney from Denver, going to Mr. Orchard. We see Mr. Nugent from Silver City whose attention is engaged for this matter. We see Fred Miller moving down after awhile upon a second trip and he finally reaches Caldwell. Now there is something more important in this matter. After these parties have all come in contact with Orchard they know who he is, they know it is Tom Hagan as Orchard, or Orchard as Tom Hagan, rather, and they proceed to his defense. Mr. Moyer says in one of these paper interviews that we will investigate and that if we find out that this man is guilty we are not in favor of protecting criminals. They had from the 30th day of December until the 30th day of January to make their investigation. What investigation did they make? Do they go to Jack Simpkins? Do they hear from Jack Simpkins? Making an investigation! Why, the knowledge was there. Jack Simpkins, the member of the executive board from Idaho, had all the information that they needed. Who were they going to make an investigation from? Why, Fred Miller goes down there direct from Jack Simpkins, and Jack Simpkins is in entire possession of all the facts that it is necessary to hang Harry Orchard on. What investigation did they make? They didn't make any investigation. They had the facts with them in their possession. The Western Federation through its officials knew it, one of these co-conspirators knew it, and what one of them

knows all know, what one of them does all do. And yet they say they will proceed to investigate. They do proceed to investigate. Mr. Fred Miller goes down to Denver thirty days afterwards from Mr. Hogan -- Mr. Orchard -- the suspect from Colorado, and they issue him a check for \$1500. For what purpose? Why, to defend this man who they knew as a conspiracy and as an organization, who Jack Simpkins knew and Pettibone knew had committed the crime and gone there for that purpose. Are these facts which depend upon the testimony of Orchard? Now go back for a minute and see how much of this is proven outside of Orchard's testimony entirely.

First, his trip to Caldwell, where he went, his trip to Wallace and that Simpkins went back there. That Simpkins was there is proven by Deaspey, by Russell, by Bowman, and by the register and is an undisputed proposition here. We have him there under those conditions outside of Orchard's testimony. That he went back and went to Denver is outside of Orchard's testimony. That the draft was sent is out of it entirely. That the letter was sent from Denver to Orchard is outside of this testimony entirely. That it was in his handwriting is dependent upon Orchard's testimony and Mr. Pettibone's silence, which is a confession here. That this telegram was sent by Simpkins, that Fred Miller went down, that he went back, that the other telegram was sent by Simpkins, that they acted upon it, that they employed counsel, is all proven outside of Orchard's testimony. Is that evidence which of itself tends to connect the defendant with this crime? Are we standing here before you with a case of Orchard alone? They say that the Pinkertons have built up this case.



The Pinkertons have built up nothing. They have simply uncovered. No Pinkerton has been upon the stand. They have simply uncovered this testimony where it lay hidden beneath the wily schemes of those who were engaged in the crime. Did the Pinkertons send Orchard to Caldwell? Did they send his bomb with him? Did they send Jack Simpkins down to Caldwell? Did they cause him to register under an assumed name? Did they send him back to Wallace and from there to Denver? Did they cause him to send the telegram? Did the Pinkertons send help to Orchard? This is a case of the killing of Frank Steunenberg which stands clean, absolutely clean of any evidence which can be charged the parties interested in this case. Mr. Darrow may say that I am crazy, that I have lucid intervals. I say to you that if you will start with me with Harry Orchard from the time he left Denver until Fred Miller was hired on the 30th day of January, 1906, to defend this murderer and trace the testimony and watch the action and watch the letters and watch the telegrams, the movements, the concerted actions of all these five men you will find that there is a complete and absolute conspiracy here to murder Frank Steunenberg aside from any other evidence in this case or any crime that was committed in the state of Colorado. Standing alone, measured by the rules of evidence and the law which will be given you by the court you will find that here is a case clean, absolutely clean of that testimony, and it proves this combination and this conspiracy.

Does it? What have we got when we get through? No crime? Where is Jack? That "Dear Tom" was talking about? A fugitive. Where is another member of the conspiracy, Mr. Orchard,

a self-confessed murderer? Where is George Pettibone? Driven to the corner where he does not dare to come to the rescue of his life long friend. Three members of this conspiracy are confessing either by silence or words or by being a fugitive that they are the murderers of Frank Steunenberg. Uncorroborated? There is only one other feature of the evidence to be added, and that is the admission of the other two. That is all.

Now, gentlemen of the jury, something has been said here about newspapers and about why they got into this defense, and certain newspapers have been introduced. You may be called upon again to look over them. I shall not take the time to read them. But I have read them and I want to call your attention to three or four things which they show, and when you come to read them over, read them over in the light of these suggestions.

First, these newspaper articles upon which they rested show beyond question that Orchard was wanted in Colorado for the blowing up of the Independence depot, a crime for which the Western Federation had issued a reward of \$5,000. They certainly couldn't object to having a thorough investigation of that. If they did object it might be suggested that that \$5,000 reward was issued for a blind. This is what the newspapers say. Mr. Crisp, Mr. Ball and these men who were coming here, as they say, said they were coming with extradition papers. For what purpose? To come after Mr. Haywood or Mr. Moyer or Mr. Pettibone of the Western Federation? No. To get this individual who they say themselves had been suspected for some two years. No charge made that the Western Federation was in this killing. The only thing they said in the paper was the fact that there was a postal card



in his pocket addressed to Charley Moyer. Unsent, no suggestion that Moyer was a co-conspirator or that the Western Federation was there back of him. But this suggestion comes after the telegram is sent by Mr. Miller to Mr. Orchard at Caldwell. Now there isn't a single intimation in the papers that the Western Federation or its officials had anything to do with the murder of Governor Steunenberg at the time these first two telegrams were sent. Now you read these papers and ascertain, for I haven't time to go over them and I haven't the endurance to do it. But you will find that at the time these telegrams were sent, this secret telegram, that there was no suggestion of that proposition. The first open declaration which showed that the Western Federation was in this fight came from the first defensive telegram of this defendant. Shrewd? Keen? Brains? Of course he has got brains. He entered upon his defense in the second telegram he ever sent, and that is the first time that the Western Federation of Miners was thrown into the front of this fight. You will find again that these papers promised upon the part of Mr. Moyer and Haywood that there would be a close investigation as to whether or not this man is guilty, and if he is we don't defend men who are guilty of crime. Those are the things which are disclosed by these newspaper articles. But they come too late to explain the telegram which went from Jack Simpkins or Fred Miller to Hogan, and from Jack Simpkins to Mr. Haywood.

Now, gentlemen of the jury, so much for the ex testimony in reference to the killing of Governor Steunenberg. This is the crime for which the defendant must be convicted if at all. This is the crime which is charged in the indictment. If we

haven't proven this case beyond a reasonable doubt, then it is immaterial what Simpkins may have committed in the state of Colorado. If we haven't satisfied you of a conspiracy existing for the killing of Frank Steunenberg and satisfied you that this defendant was a member of that conspiracy, it would do us no good to show that there was a conspiracy and an attempt to murder as a result of it. It would do us no good to show that they were in the Independence depot explosion. It would do us no good to show that they killed Lyte Gregory. This is the offense for which he must be convicted and the evidence must be satisfactory and satisfy you beyond a reasonable doubt on that proposition. Hence I have taken considerable time in discussing this particular offense but I want you to group all the evidence of the state around it. I want you to understand that every particle of evidence in this case that is introduced is being introduced and has been introduced to prove this crime. That it is the one you must be satisfied of beyond a reasonable doubt. You may be doubtful as to whether they were in the Independence depot explosion. You may be doubtful as to whether the Vindicator mine was an accident or a designed explosion. You might be doubtful of some other transaction, but that would not preclude you from coming to the conclusion that they were in this conspiracy if the evidence that is here is sufficient to satisfy you on that proposition. Then the question arises why did they go into California and why did they go into these other offenses which we claim to have been committed in the state of Colorado? Not that we can convict the defendant of these offenses, but for the reason that we desire to show the jury the nature of this organization, the fact of its



~~relationship~~ association with Orchard, the relationship of Orchard with the defendant, the fact that they were associated together in crime, to furnish the motive, the incentive and the reason for the commission of the crime of the killing of Frank Steunenberg. Therefore when you come to examine the Bradley matter you examine it for the purpose of deciding in your minds something which aids you in determining, something which accentuates the strength of the evidence surrounding this particular offense.

Let us see if they had a motive for killing Mr. Bradley by reason of his association at the Bunker Hill & Sullivan or by reason of the fact that he was considered an enemy of the Western Federation. If they murdered Lyte Gregory because he was considered as an enemy of the Western Federation; if they blew up the Independence depot because these men were scabs and because they considered them unfriendly or a hindrance to the advancement of their cause; if they attempted to murder Goddard because he had rendered decisions which they considered unfriendly and that he was the agent and representative of the capitalistic class which was arrayed against them, and they attempted to murder Gabbert and got Walley for the same reason; if they attempted to murder Bell and Peabody because they regarded them as they regarded Steunenberg and in the same class; then we are coming step by step to the conclusion that there was a conspiracy embracing in its purpose, the commission of these crimes covered by a single motive, by a single design, for a single purpose and all for the purpose of strengthening the proposition that they were together when this crime was committed also. For instance, if you should be satisfied that they were associated together in crimes

in Colorado and for the same motive and for the same reason that they were in Idaho, it would certainly strengthen you in your belief as to this crime. For instance, it would be pretty difficult at first thought to conceive of the proposition that a great labor organization had at once and suddenly determined upon the proposition of sending a man up into Idaho to kill an ex-governor. At first blush it seems improbable and unreasonable. Therefore we go back into the history of the organization. We traced it back to its first cause, we go back to the motives which actuated them in the first instance. We find out who are their friends, who are their associates, what their objects and purposes are, what they have been doing, what kind of an organization it is, and all of this is for the purpose of throwing light upon this particular offense.

Now, gentlemen, let us take up one other fact a few moments, and that is the attempt to kill Mr. Bradley. And before going into that in detail I want to call your attention to the similarity between these two offenses, and as you go along watching the development of the evidence in this case you will find a wonderful similarity in the plan and scheme and purpose to the killing of ex-governor Steunenberg. For instance, we have, as we believe, proven clearly again that Mr. Orchard started from the city of Denver. He testifies to that fact and he also testifies to the fact that Mr. Pettibone was present against the time he took the train and made the arrangement. So we have, as before, the statement of Mr. Orchard supported by the silence of Mr. Pettibone in this case. And he starts again from the city of Denver direct to the city of San Francisco. They would have



you believe that he went all the way to San Francisco to play cards with the soldiers of the Presidio; that this man at his own expense, at his own initiative, by reason of some motive of his own suddenly got up, took the train in Denver and went down to the city of San Francisco -- a ~~rough~~ a roving, irresponsible, tin horn gambler. Well, he gets to San Francisco and he comes immediately into the presence or shadows upon the home of Mr. Bradley. Notice how directly Mr. Orchard moves from Denver to the very home of the man who is the recognized enemy and opponent of the Western Federation of Miners. This roving and irresponsible tin horn gambler had a ~~marked~~ scent for the enemies of the Western Federation of Miners that was ten times stronger than the scent of a blood hound. He moves direct to the scene. He shadows upon his house. Is there any evidence outside of Orchard? Let us see. When he gets to San Francisco in a few weeks he turns up at Giubbiny's store, an outside place, a little store out apparently in the outer portion of the city, in the residence portion of the town. Has he any business at Giubbiny's? Is there any reason for his being there? Is it a gambling dive? Is there anybody there that he knows? What motive has he for going there? What prompts him? Why, just across the street lives Mr. Bradley, the man who is he had been in the Bunker Hill and Sullivan mine upon the 29th of April, 1899, would have been blown into eternity; the man who was manager of the mine which was blown up, who stood in the same class with Frank Steunenberg, the man whose property was destroyed and whose employes were murdered, which called Frank Steunenberg into action. And so he goes direct to Giubbiny's, and he makes himself familiar with Mr. Giubbiny, stays about the

store, gets acquainted where? Incidentally they would say, accident they would state. He saw some girls over at Bradley's and wanted to get acquainted with them. It happened, however, that they were the employes of Fred Bradley, the Bunker Hill & Sullivan mine manager -- seemingly the only girls that Orchard cared to meet in the city of San Francisco. After he gets acquainted with these girls, which he asks for, then he says to Gubbiny, I want to carry some groceries over there. He goes over and takes groceries and he gets in touch with the doors, the openings. He knows where Mr. Bradley lives. He knows his flat. He takes no chance. He is certain. He is deadly in his aim. And he moves up closer and closer in touch with Fred Bradley and he finds he is away. He loafs around for a while and Fred Bradley comes back. In the meantime what does he do? This is not dependent upon Orchard's testimony. Mr. Gubbiny says he asked him to get him a room. Where? Where does he want that room, says Gubbiny. Anywhere where it is cheap? No, I want a room which overlooks Fred Bradley's place of residence. This is the testimony of Gubbiny. So Orchard goes down from Denver, goes direct to the hiding place to get at Bradley's residence, gets a room which overlooks his home and then they tell you that there was no design, no motive, that he was not shadowing, slouching, intending to kill. After he gets this room overlooking Fred Bradley's what does he proceed to do? He stays around there pretty close. He watches the movements. True, he didn't kill him in a day. True, he didn't kill him at all. True, he didn't kill him when he was in the mountains. But it is true that this stranger went where he would expect to find him. It is true that he



went with the evident design to find him. It is true that every act of his shows that he was intending to find him and for an evil purpose. How was this his motive? Was this his own design? What reason did he have? After he gets acquainted, gets his room, gets located, knows what they are doing, he proceeds in the first place to undertake to poison the milk. How did he do this? What is the evidence in regard to it? Orchard says that he did. What are the other facts which show that he did? In the first place, Mr. Bradley says that he tasted the milk and found it bitter. The girl who was working there did the same thing. A part of the milk was taken out and taken back by the dairyman. The dairyman gave it to the chemist and the chemist found out it had enough strychnine in it to kill half a dozen men or more. Was it an accident that the only man who found the milk bitter, the only complaint in that entire flat or in that entire neighborhood was Mr. Bradley? Was it an accident that the man whose milk had poison in it was once the manager of the Bunker Hill & Sullivan mine? Was there no design, no purpose? But what do they say in answer to that? Why, they say he couldn't have gotten upon that flat roof. And Mr. Barrow says that here is a piece of testimony that was undoubtedly manufactured by the great manufacturing establishment, the Pinkertons. That we found out by pictures that there was a flat roof there and then that it turned out afterwards that the flat roof wasn't there until six months after the milk was poisoned. Is that true?

Now, in the first place, that would lead to <sup>the</sup> ~~most~~ conclusion that there was a design upon the part of the state to put in this piece of manufactured testimony, that we had these pictures, that we had therefore built up our proposition upon the basis of these photographs and that it was a piece of evidence

considered, weighed, manufactured, fitted for its place and brought into this court room. Now the question of the flat roof was not a thing which the state put into this evidence at all. Mr. Richardson, when he got hold of Mr. Orchard, among a few other questions that were asked him, asked him this: "And you laid on a flat roof somewhere? I laid on a flat roof there three or four or five feet above the roof on the back part." Mr. Richardson draws out upon cross examination that the manner in which he reached that was by going up and getting upon a flat roof there somewhere. It doesn't show very much design or preconceived action or determination to manufacture. It is drawn out upon cross examination, and I submit that Orchard doesn't say anywhere in the testimony that he got upon the flat roof of a four story flat.

MR. DARROW: There is a question just before that, Senator, if you will permit me to call your attention to it. Shall I look it up?

MR. BORAH: I have got it.

MR. DARROW: All right.

MR. BORAH: Mr. Orchard didn't say, as I read his testimony, that he got up on the Linforth flat, that is, upon the roof of a four story flat. What he says, under any fair interpretation of the evidence, is that he got upon a roof there somewhere, a flat roof, in direct conjunction and connection with the Linforth flats. There was a flat roof on his back story and I got over on there before daylight, in connection with the testimony in which he says he got on a flat roof there somewhere, and Mr. Orchard wouldn't know, couldn't know whether it was upon



his back story or whether it was the house adjoining his that belonged to someone else. He doesn't undertake to say that he was on the top of the Linforth flats. But it is apparent that he went up that pair of stairs, and just as Mr. Giubbiny says he could do, he passed over onto this flat roof of the Wise house which had been there at the time of the poisoning of the milk. Isn't that correct?

MR. DARRROW: No. I thought you would say that.

MR. BORAH: Well, you are wiser than seven men, if you know what a man is going to say two days ahead.

Now there is the statement of Mr. Orchard in connection with it. Of course he couldn't get on top of the roof of the Linforth flats and he wouldn't want to be there. He wouldn't be any closer to the place where he could put the poison in the milk than if he was down on the ground. It therefore stands to reason that he meant just what he said in answer to Mr. Richardson when it was first brought out, that he got on a flat roof there somewhere. Now Mr. Giubbiny says that there was a flat roof there some three or four feet from the pair of stairs by which he could make the connection, and undoubtedly that is just exactly what Mr. Orchard had ~~in~~ reference to. We don't contend for a moment, never did contend, that he could get up on the top of the Linforth flats. But when you take into consideration the fact that he went there and went to this house of Bradley's, that he put himself in touch with the inner part of the house as near as he could, that he got acquainted with the servants, that he went into the home, that he stayed there and shadowed it and remained with it and that the milk was poisoned, and there is no question

about it, it will not take you very long to determine whether he stepped from that pair of stairs over to the Wise building where there was a flat roof or not. There is too much of design. When you see a piece of machinery at work you know that there was a designer behind it. You may not know how he did it. You may not know what mechanism he used. But you know behind it was a design and a designer. And the evidence which shows the poisoning of this milk is so conclusive, so thoroughly corroborated, so incidental to the theory of Bradley's presence there and of his presence in the Bunker Hill & Sullivan mine that you know that there was a design and a designer behind it; that it was not an accident, and that he went up the stairs, he had gone up there several times and he found his opportunity and he poisoned the milk. A few days afterwards, that having miscarried, he went back to the proposition of "via the bomb route". He concluded that that was better. What does he do?

Now go over to Mrs. Soward's room where this gentleman is stopping and find out how he was amusing himself. This tin horn gambler down in San Francisco without a purpose and motive, resting, gambling, what is he doing? Why, he is fixing up over there a fac-simile scheme to the one which killed Frank Steunenberg. Take a photographic view of what Mrs. Soward says was taking place in her room -- the fixing of the screw eye, the lead shavings, the lumber shavings, the evidences, and you see the beginning of what you would have seen in room 19 of the Saratoga hotel. Did the Pinkertons fix up that room for Mrs. Soward? Did the Pinkertons put the lie upon her lips? Did the mine owners put that condition of affairs there? Who had to do with



this? That Orchard was there, with his window looking out upon the window of Mr. Bradley, that he was manufacturing this bomb, that is evident. And he wasn't manufacturing it for the purpose of playing it against the soldiers. What happens? The night before the bomb is exploded, as we contend, at the door Mr. Orchard moves his valise, the night before he takes his belongings and hikes away. Alibi! Why does he go? Why, he knows that there is going to be a gas explosion the next morning at Bradley's house. When he is out upon the sidewalk taking the extra car Mr. Giubbini says, "Where are you going?" He told him he was going to a certain part of the city and Mr. Giubbini says he observed that he didn't go there. So he was storying to Mr. Giubbini, he was concealing his whereabouts, but he was moving, getting away, making his chance of flight perfect. His scheme was being worked out in his own brain and the man whom he had come there and shadowed for weeks, whom he had attempted to poison, is going to have an accident next morning and Orchard is getting ready for it.

Now, what happens next morning. Upon the next morning Mr. Bradley comes out of his room. In the first place, Miss Bell had come down, gone down to the outer door, opened the way from top to bottom of the hallway and gone into the street to get the paper. There had been an entire opening of that hallway where the gas was supposed to be accumulating that morning upon the part of Miss Bell. After she had gone back and taken the paper into the room Mr. Bradley left a few minutes afterwards and in his room as I remember lighted a cigar. Now if there had a sufficient amount of gas permeated that building to blow it all

to pieces, to wreck it, to make the damage \$10,000, it would have permeated certainly something more than the space immediately surrounding that door. He lights his cigar up above, and if there was gas there in any amount it would seem that there would have been some indication of its presence either in the way of smell or the effect which it would have had upon that light. But he had no smell of gas. He didn't observe anything. He walked on down to the door, and with his cigar lighted, his match out, he opens the door or starts to do so. Now at the very moment that he springs that latch which would pull that wire and set off the deadly bomb, at that ~~the~~ very instance he is blown, thrown down; he smelled no gas going down the stairs, he never smelled any until he was knocked down and until such time that it would naturally be there from the explosion itself. Do you believe it was a gas explosion? Look at the condition of the floor immediately in front, the way the vestibule and the floor outside of the door was torn up, the hole that was there in the floor, the condition of the building, the fact that he didn't discover the presence of gas until after the explosion, the fact that the hallway had been open, the fact that no one claims to have observed gas that morning. Every physical incident, every physical fact discloses that when he opened that door it was not the impossible thing of a cigar lighting gas, but it was another bomb placed not at the yard gate it is true, but at the doorway of Mr. Bradley.

Now what happened? This tin horn gambler, who went down to San Francisco without any purpose or design, doesn't stay there to gamble very long after that. His mission is ended. In



a few days he starts. But what does he do before he starts? Why, he goes over to see Copley, another Western Federation man, appears upon the scene and of course Orchard comes in contact with him. Now what does he tell Mr. Copley? He says that that man over there, Mr. Bradley, got what he deserved. Do you understand by that that he meant an accident? Does that suggest to your mind that there was lurking in the thoughts of Orchard that he had got what he deserved through the design of someone who intended that he should have it? And what does Copley say? I got him to admit that he understood from Orchard that possibly he had something to do with it, but I couldn't get him to admit all of it because ~~that~~ he didn't know ~~just~~ just what I wanted and he knew he didn't want me to have what I wanted. He didn't know that. But when Mr. Darrow got hold of him and in his persuasive, subtle way he asked him a question and he thought that surely Darrow is my friend and I would judge that that is what he wants, and so he says "Yes, I got the idea that he had something to do with it." Here within a few minutes or a few days or a few hours after this thing has happened, which they say the Pinkertons have built up, Mr. Orchard is going to Mr. Copley and giving Copley to understand that this man got what he deserved or what he ought to have and that he had something to do with it. Of course he had something to do with it. What else did he do with Copley? Why, he made a proposition to Copley to begin to trim coins. There is a peculiarity about this man Orchard. It is the familiarity in criminal matters with some of these leaders of the W. F. M. He never hesitated to discuss anything with them. Whenever he had a crook in his mind, a criminal bent, he went to his father-confessors and told them

all. They didn't protect him. They wouldn't take him seriously, and he kept on and on until he became the greatest criminal of the age. He went to Copley and he says, "Copley, I think we could do some business," or, "I could"; I saw in a paper where a man had been successful trimming coins," and so forth. Well, Copley of course didn't go into the business. He was lecturing upon the troubles of Cripple Creek. He considered his voice and his pictures were a whole lot better than trimming coins undoubtedly.

What next happened? Orchard says to Mr. Copley "I am going to get out of San Francisco, have you any objection to my coming over here and disidentifying myself?" Now remember this man had been telling him about this explosion -- how he come to be talking about a gas explosion I don't know -- and he told him that the man had gotten what he deserved, and he had given him the impression that he had something to do with it, and the next thing he said to him was "I have got a pair of soldier's clothes and I would like to come over here and put them on so that I can get into Denver without them seeing me." That is the story which Mr. Copley tells. Now you know precisely why Mr. Orchard put on the soldier's clothes a thousand miles from Denver. Not to get into Denver but to get out of San Francisco. And that, taken in connection with the fact that he had told him about this matter, that he knew it would happen, that he had been there shadowing his house, was sufficient to have satisfied any mind on earth except Copley's that he had committed a crime. But nothing like crime would hang to the mind of Mr. Copley, so he saw this boy go forth with a pair of soldier's clothes on and a pair of spectacles in order that he might get back into Denver,



safely back to Denver. From Denver to San Francisco, the crime is finished, I have done all I can, back to Denver. What was the magnet, what was the power that drew him back there? Wander where he would and do what he might, when the crime was finished he took his trail to the city on the plateau. What touch did they have with him while he was there? Pettibone, the immortal George Pettibone -- friend of humanity, says Darrow -- a Happy Hooligan, says Mr. Darrow. There is something about this Hooligan that is a little different from the Hooligan which we know. Hooligan has a disposition to talk; Pettibone believes silence is golden.

Now while Orchard is down in San Francisco who is his banker? Where does he get his support, his help, his money? "Lest we forget". I am of the opinion that my subtle friend from the city of Chicago thought that there might be something in this Pettibone matter which would need explanation. He undoubtedly said to himself, "I am out here trying a case before twelve men that I am not very familiar with. They may want some explanation of Mr. Pettibone's action. And as reasonable men, I guess we had better give them some or it might go hard with us." And so at one time he gets his courage up to the point and he says he wired him for money on two occasions, possibly three, I think only two. He wired him for money telling him how to send it, under what name to send it and what name Pettibone should use when he sent it. Pettibone, unsophisticated, just a child, never had any experience in sending money, buying shot guns or doing any business other than selling Bibles. Pettibone should use Wolff. That is what Orchard tells Pettibone to use, use Wolff or Pat

Bowen, which he is often called among the boys, and to wire the money to be released so that it could be paid without the identification, and giving him strict instructions about it, and he did it, and that is all there is about it. That is the testimony of Mr. Darrow.

MR. DARROW: Not the release part isn't.

MR. BORAH: Isn't it?

MR. DARROW: I think the evidence was have it released so that it could be paid to him. That is, I think so.

MR. BORAH: I was reading from your opening statement.

MR. DARROW: Well, I think we corroborated that part of it.

MR. BORAH: This is the uncorroborated testimony of Mr. Darrow. Perhaps I should add that.

Now what happened while Orchard was in San Francisco in reference to that matter. Orchard, being a gambler, of course had to have a banker -- in your mind. So when he got to San Francisco, say they, he wrote up and told them to send down his union card, going down there to gamble with the soldiers, then he ought to join the union and also get in touch with some union friends -- send down my charm, and so Mr. Wolff comes into court and of course that is just exactly what was in that letter because the letter was covered up, it wasn't any trouble for Wolff to testify to that. There wasn't any money in that letter, I am sure of that. The letter was hidden from the world, nothing in it but a union card and few other trinkets, but the registered letter went, Orchard said it had a hundred dollars in it. The probability of it is with you.

Again, a few days afterwards a telegram is sent from



this same Wolff under his name and there wasn't any concealment of that fact because it was open to the inspection of the world. You know that Mr. Orchard got money from Pettibone. You would like to know why he got it. You know that at the time he was shadowing the house of Bradley he was being help up by one of the conspirators. You would like to know why he was. We have an explanation of the letter -- nothing but a card and some trinkets, but the telegrams are there. They show that he was sending it not to Dempsey, not to Tom Hogan, not to Harry Orchard, but to Harry Green. Why didn't this man Wolff tell us, explain why he didn't send that money in his own name. He knows about that letter, and that is easy. But the fact remains in this case that Mr. Pettibone, one of the men who is charged here and who refuses to testify, sent Mr. Orchard money and held him up and sustained him, aided and abetted and encouraged him, while he was down there trying to commit this crime. No evidence? No corroboration? They are in the county jail. It is the silence of the man whose silence is a thousand times stronger than Harry Orchard's statement. It is corroboration of the most ~~powerful~~ powerful form and nature. But you gentlemen are not permitted to know. The relationship of Orchard and of George Pettibone was close, so many circumstances, that they have closed his lips in silence and he is not here to tell you. Of course I agree with Mr. Darrow that it is wise for him to keep him off the stand -- one more chance at least for Pettibone.

Now, gentlemen of the jury, why shouldn't Pettibone come on the stand and tell you about these telegrams? What difference does it make for Pettibone to send a man one hundred

and fifty dollars that was down in San Francisco playing cards with the soldiers. What criminality could there be or what criminal connection would there be in the fact that Pettibone sent one hundred and fifty dollars to a man in San Francisco at a time when a gas explosion occurred? If they believed it was a gas explosion, if they believed that he didn't poison the milk, there wouldn't be any reason in the world why Pettibone shouldn't put himself here upon the witness stand, because he could say "Yes, I sent it." But there is <sup>the</sup> knowledge which is sometimes stronger than any other fact in guiding men to action, the inward conscious knowledge of crime upon the part of Pettibone. He knows that while you are up there talking about gas explosions and the fact that he couldn't get on the roof, he knows that he did explode it, he got on the roof and he knows that Pettibone helped him to get on. It won't do to say that Pettibone can keep quiet. It isn't the logic of the case. When you are reading the instructions I apprehend you will find that men may testify against themselves that way just the same as telling something in court. Harry Orchard goes home.

Now, just another incident which may throw some light on this matter. After Orchard leaves San Francisco, no more poisoned milk. After Orchard leaves San Francisco Mr. Bradley's residence seems all safe enough. Somehow or some reason and in some way his presence seems to cause gas to explode and strychnine to get into the milk, and everything was all right after he left. Don't forget that throughout this case you will find just that kind of unquestioned proof all the way through. When they say that he didn't do it his very presence there is enough



to prove positively that he did.

Now, if your Honor please, it is within three or four minutes of the time to adjourn, and I would like to stop now.

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

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R E C E S S .

Boise, Idaho, Friday, July 26th, 1907.

6:00 o'clock P. M.

Court convened pursuant to adjournment.

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

ARGUMENT OF MR. BORAH CONTINUED:

MR. BORAH: May it please the court, and gentlemen of the jury: There is an understanding between myself and the court that the discussion of the evidence in this case shall close to-night. That is undoubtedly an agreeable proposition to all parties concerned, and I propose, as Mr. Darrow said to you, to carry out that agreement if I never make another with you. Now, to do that it must necessarily follow that a vast amount of this territory that has been covered by the evidence must be left uncovered by myself; it would be impossible for me to take up and discuss all the different transactions in Colorado and the features that led up to those transactions in Colorado, and as I say, it will be impossible for me to go over all these things in the short ~~length~~ period of time which is left and especially on account of the warmth of the evening. It would not be necessary for me to do that for the reason that the ground has been thoroughly covered. You have listened to the testimony of



the witnesses, and the vast amount of the evidence which you will carry with you, and you will apply it as quickly as though I took up time in discussing it.

I want to take up, however, some of the important features and will do so to-night. In the first place I want to call attention to a matter which slipped my mind this morning in connection with the Bradley affair. I stated that Mr. Orchard started for California from Denver for that particular matter, and undoubtedly this thought suggested itself to your minds that it will be necessary for me to call some attention to the testimony of Doctor McGee, because if his testimony be true it would appear that Mr. Orchard did not start from Denver as we claim he did. It would appear also that Mr. Orchard made an untruthful statement in that regard, therefore I want to call your attention a moment to Doctor McGee's testimony. Mr. Darrow wanted to know if I would say that Dr. McGee was a liar, and I will say to Mr. Darrow that I will not say that Dr. McGee is a liar or was a liar, because I am not in the habit of saying that in the court room any more than that I can help, and I never say it to a man as large as Doctor McGee outside of the court room.

Now, Dr. McGee, when he first came here and was present in the court room, the question which was direct by Mr. Richardson or rather was asked of Mr. Orchard by Mr. Richardson laying the foundation for an impeachment by Doctor McGee had reference to the fall of the year 1905. If you will recollect, the first questions propounded to Mr. Orchard relative to his talk

with Dr. McGee alone in the presence of Orchard, in the town of Wallace, that the question related to the time of the fall of 1905, when we did know as a matter of fact that he was there; and that suggests, not as you might infer from my remark, that counsel led the witness up to the point where he was willing to change it to 1904, because that is not the inference I would have you draw, but this inference may fairly be drawn, and that is that Doctor McGee was in doubt himself when the matter was first called to his attention as to when this conversation took place. He had undoubtedly fixed it in giving the information to the counsel as the fall of 1905, because that was the question which was first propounded to Orchard when the first impeaching question was presented to him in reference to Dr. McGee. Now, of course we know he was there in the fall of 1905. We know, and according to Orchard's statement, that at that time he was there in the fall of 1905, that he delivered this Peabody bomb, he says, over to a man by the name of Cunningham, according to his own statement, and we know that Dr. McGee testifies that he saw him in company with Mr. Cunningham. There is another circumstance which leads me to believe that the Doctor was honestly mistaken. The dishonest part somebody else can take charge of.

Again, if Mr. Orchard had been in the city of Wallace in the fall of 1904, it seems entirely probable that he would have come in contact with some one whom he knew so well, some of his old associates, and would have likely gone to the residence of Mr. Paulson, and as Mr. Barrow frankly admits, it does not appear



somewhat strange that this one witness, and the only one to be brought here to disclose the presence of Orchard in the fall of 1904, when all the evidence showed that he was there in 1905, and when I claim that this record shows that Dr. McGee at one time thought it was 1905 when he saw him, I think that is conclusive; and again, this is in harmony with the entire evidence of the case, that Orchard went direct from Denver to California and that he did not go in that way.

In addition to that, they brought some direct testimony here of the fact that Mr. Orchard was in the city of Denver at the time Dr. McGee thought he was in the city of Wallace, so I say you can take all the evidence -- all the testimony, and if you want to reconcile it upon the basis of honesty upon the part of Dr. McGee it is perfectly easy to do so, and you can do so if you wish, or you can take the other proposition and determine your own minds as to whether he was wilfully misrepresenting a fact. I am perfectly willing that you should act upon it as jurors are apt to, to reconcile it to the testimony of witnesses on the stand.

Again, I want to call attention to a matter in regard to Orchard, and that is this: Much has been said here about Orchard's attempt to fasten this crime upon these defendants and the inference has often been thrown out or left rather to be thrown out to you from statements that have been made, that he was sinister in his motives at the time he was doing these things, going about here and there, and had the ultimate design and purpose to fasten these crimes upon these defendants. I want to call

your attention to the fact that Mr. Orchard, from every act of his, as you may interpret it, throughout these entire four years, was perfectly loyal to the Western Federation of Miners and to its officials. If it had been his design to preserve testimony, it would have been his purpose to gather up evidence against these parties, going here and there, having as you know to a great extent their confidence, parading with them, receiving letters and telegrams from them-- he could have gone forth with the design and purpose of gathering all this evidence and he could have had such an accumulation of evidence that there could have been no possible question under the circumstances in this case, but the evidence shows that every piece of testimony that came into his possession, he destroyed the evidence of guilt which passed into his hands just as fast as he got hold of it. He could have preserved his letter from Pettibone, his telegrams, his letters at Caldwell, and all these different pieces of evidence which he had, and more than that he could often have placed them in a position where the evidence would have been much stronger by reason of some motive on his part to get it.

Now, as far as being associated with the mine owners' association, as far as being a Pinkerton was concerned, if he were there in connection with these parties in any way, or had anything to do with them, and if this purpose and motive that is largely necessary by the position which he has taken with reference to the evidence which came under his control and his



entire transaction discloses the fact that he never at any time undertook to build up a case against this defendant. His first determination to tell what he knew came after he was arrested and was put in prison and had had time to think over the matter. And such other evidence as we have had in this case we have had to go to the four corners of the earth and secure. Such other evidence are the evidences and the facts which he left upon his trail and which it was not within his power to destroy. It was not the act of a man whose design and purpose was that of weaving a rope for this defendant, as Mr. Darrow says, but evidently going forth for the purpose of committing these crimes and with the full intention of protecting those with whom he was associating.

Again, you will remember that Mr. Orchard never did a day's work after at least the 1<sup>st</sup> day of August, 1903. I think, if I remember correctly, when the strike was called a few days thereafter he was engaged a short time in the Vindicator matter, and after that he never did a day's work in his life. He had no income; he had no employment; he was going here and there; he was travelling to California, he was travelling to Wyoming, he was travelling back and forth and going about over the country expending money, and insofar as the evidence in this case is concerned, with no source of supply unless the supply came from the source we suggest in this case.

These are matters which you will undoubtedly want to

consider, and I call your attention to them at this time before I pass into the Colorado situation, and they are matters that throw light upon the fact that somewhere there was some one connected with Harry Orchard who aided and abetted him in going about and committing these crimes.

Another thing, I think it is pretty clear in this case that after the 6th of August of 1904 Harry Orchard was a fugitive from justice; I think it is pretty clear that he was a suspect; I think it is pretty clear that, as claimed, he was associated with the crime at the Independence depot; I think it is pretty clear in this case that it was known that the people wanted him for that, and if the evidence could be had it was the design of the people of Colorado to punish him. Notwithstanding that fact, under an assumed name, ~~xxxx~~ ~~ix~~ disidentified, he goes here and there, and as we have shown beyond all question, always in touch with some members of the Western Federation of Miners.

He is there with Pettibone, loafing in his store, as his banker -- Mr. Pettibone, or he is living at his house; or he is with Mr. Moyer, or he is walking about with Mr. Haywood -- at his house; or with Mr. Copley, or Mr. Davis, or Bill Easterly, -- he is always in touch with those men.

Now, I think the evidence shows more than the fact that he was a suspect; I think it shows beyond a question that some prominent members of the association knew that he was guilty, and I will tell you why in a few moments.



Now, going down into the Colorado situation, as I said to you this morning, Mr. Haywood cannot be convicted of course for any crimes in Colorado. You are only trying him for one charge, and we are only going into the situation in Colorado for the purpose of ascertaining certain facts which tend to prove, as we claim, the ultimate fact to be proven, and that is his connection with the affair at Caldwell. Therefore it does not follow that the state must prove in this case those facts in Colorado, each particular one, or each particular offense beyond a reasonable doubt. There is only one in this case which we have to establish beyond a reasonable doubt and that is the fact that the defendant was connected with the offense at Caldwell, and if the circumstance, or the circumstances in this case, one piled upon another, one connected with another, finally reach that strength of proof where you can say the ultimate proposition is proven, that is the measure of proof which the state has to furnish you in this case.

If you take all the transactions in Colorado, and from all these transactions you come to the conclusion that the association of Mr. Orchard with these defendants in these crimes is established, it does not follow that any particular one of them must be established to your satisfaction beyond a reasonable doubt. The ultimate and final fact is whether all of them taken together satisfies you of the guilt of the defendant of this particular crime beyond a reasonable doubt.

One circumstance standing alone may be very weak, but

two circumstances seeming to gain some strength, and three circumstances making it stronger, and then another circumstance, and so on until the chain of proof becomes so positive and so clear and so strong that it is just as potent in a case as if you had the direct testimony of the party. People some times say you should not convict upon circumstantial evidence; but there are a class of circumstances which are just as potent to the human mind, just as strong, just as conclusive, as the direct testimony of a witness. For instance, a man may say, I saw John Jones shoot Smith at a certain place; and that man may be lying, but if you get a chain of circumstances composed of such facts as are not subject to being manufactured,-- if you take telegrams over which neither side had control, if you take the record of a registered letter which could not be tampered with, if you take that class of circumstances and declarations upon the part of the defendant and such things as are not subject to be tampered with and build them into a chain, it becomes just as satisfactory to the human mind as if you had the direct testimony, and this is the reason we are in Colorado, for the purpose of showing motive and association, and the conspiracy, the combination, the understanding, and for that purpose only therefore we have gathered them up, not to prove any particular transaction in Colorado beyond a reasonable doubt, as we would have to do, but to gather out of that transaction the facts and circumstances which show the relation of Harry Orchard to this defendant, which shows what they were doing there, which shows the combination,



the understanding between them, and that they were moving to one common purpose and by reason of one common motive.

Now, something has been said rather briefly with reference to the extradition or kidnapping. I presume that would come in logically in connection with the Colorado matter. Only a word in regard to that: If these men were not legally here, they would not be here -- they would not stay here. If there was anything which was defective in regard to the manner of bringing them here, I apprehend that the very able counsel which represent them would not permit them to remain here, and that is a question with which you are concerned, and that is whether or not the defendant was connected with the offense at Caldwell. If he was it was our law that he violated; if he was, it was a citizen of the state of Idaho that was murdered; if he was, it was in this jurisdiction where he raised the red hand and it is right and proper that a jury of Idaho should sit in judgment upon the crimes committed within this jurisdiction.

True, he is a stranger to you, as was said by Mr. Darrow, but he is just as safe in the hands of the men here as he would be in the State of Colorado, because Mr. Haywood is not in any more danger in Idaho, unless the evidence will satisfy you beyond a reasonable doubt, than in the state of Colorado, and everything that the law provides has been thrown around his trial, -- the court and every one else has extended to him everything that is known under the law to belong as a right to the defendant.

I sat here at this table for two or three days and permitted Mr. Darrow to chat with Mr. Meyer and Mr. Haywood in violation of all the rules known to direct examination, -- leading questions, -- they told everything they wanted to tell without a single objection upon the part of counsel, and it is only an ~~illustration~~ illustration of the fact that they are here legally answering for a crime committed within this jurisdiction, and that is the only place where they could be tried. If they are innocent they will go forth, but he said something that he did not like because Bulkley Wells brought them here; as if that would make any difference whether they were guilty or innocent. This young man with the Harvard accent. Now, if you should happen to have a boy who had an ambition and wanted to get an education, and he should unfortunately drift into Harvard, pull him back, -- he is going in the wrong direction. It is no discredit if Mr. Bulkley Wells passed through Harvard, to Mr. Wells, and I apprehend that that kind of logic will not satisfy a jury on the question of the guilt or innocence. Mr. Wells was Adjutant General of the state of Colorado, and he came here in company with the man sent by the Governor of this State. I don't suppose it was a question of society, but that is all there is of it as to him, that he came.

And again they say that there were some Pinkertons down in Colorado and that they did a great deal of devilment down there by getting into the unions, and that the state of Idaho has employed Pinkertons for the purpose of uncovering some of the



evidence in this case. That is true. The state has employed some Pinkertons. We have employed men -- the state of Idaho has paid for them, or is going to pay for them, and the fact that there have been some deficiency warrants that have been issued, -- if they have been, -- is not a matter about which the counsel for the defense need feel uneasy. The State are willing to pay in order to find out whether we have got a system which can protect the lives of its citizens and no appeal to a jury upon the proposition of taxes will answer the great question or satisfy the mind as to who killed Frank Steunenberg. If there has been any squandering of money we have council that audits our bills, and at about the last I would like to compare his compensation with mine.

They called Mr. Friedman on the stand, -- Mr. Freak it ought to be, -- who had been employed by the Pinkertons. He had been there two or three years, I think it was, -- had been a stenographer -- been in touch with Mr. McFarland -- Father McFarland, the man who has all kinds of schemes in his mind for the purpose of convicting innocent men -- of putting upon innocent men crimes, so they say, and they labor and labor, and they finally brought forth Mr. Friedman with his letters, and what do they show? Why, I thought sure that they would prove that Harry Orchard was a Pinkerton. I supposed that they would at least get in touch with him some where. I supposed that they would show something in regard to the mine owners having been

guilty of the crime at the Independence depot. I did not know when I looked into that fellow's face what they might show. I know he would show to his full capacity. I know that a man who steals letters, steals with a purpose and a design, and he stole them and brought them here, and they revealed them to the world, and they showed beyond a question that the mine owners were not clients of the Pinkertons in 1904 and 1904 at all. They broke the backbone of the conspiracy; isn't that true? Do you find anything in those letters showing this conspiracy? Certainly not. Mr. Londoner went down there in 1904 and gives a description of the condition in Cripple Creek, and what does he say about the mine owners? Nothing. What does he say about the miners?-- this organization which has for its object and purpose poison and crime -- what does he say upon that, whether they are guilty or innocent? Why, the best certificate of character that has been given to the Cripple Creek miners. So, in that letter of Mr. Londoner's, and if there is any proof in this at all, it proves that they were in the employ of the Western Federation of Miners. I don't think they were, but it certainly proves that there was no design or purpose upon the part of the Pinkertons to fasten anything upon this organization. You remember the letter from Mr. Londoner. They were very proud of it. Mr. Richardson read it to you, and he said, "Here we have a proof from the Pinkertons themselves that every man was a committee for preserving peace and order." As it turned out, Londoner was there



only one or two days.

And Mr. Riddell was a Pinkerton. He went down to Telluride and got into the union and got to be secretary, and remained an officer of the institution for some time. What did he do? It appears that Mr. Collins had been killed. Now, we don't know, but murder is apparent. It appears that Smith and Barney had mysteriously disappeared; that these mysterious crimes were there in Telluride, -- again men being murdered, disappearing mysteriously, no officers or no power apparently to uncover it. Riddell went down there and you can imagine what he went there for. He had his suspicions and when he went to Rome he began to do as the Romans did, -- he talked anarchy, and the more he talked it the higher he climbed in the union. Isn't that true? How did he come to be an officer? Why, John O'Neil went down there and he did not find any fault with Riddell because he talked anarchy. He simply found fault with him because he did not talk strong enough. He said he talked with him a few moments, and found out he did not know anything about philosophical anarchy, and he was not fit to be secretary of the union or anything else. But what did Riddell do in the way of connecting the Western Federation of Miners with crime?

Now, there is no question but what Pinkertons are often called into play by very respectable people. I think I remember when Abraham Lincoln went into Washington the first time, that he went under the protection of the Pinkertons. They are an or-

ganization having, as every one knows, the purpose of ferreting out and uncovering crime, and if you find in this case where a Pinkerton has appeared in it, if you find a Pinkerton on the witness stand, just credit that up against the state as far as interest is concerned. They are employed the same as an attorney, but not one of them has been upon this witness stand. They have simply gone forth, not to produce witnesses, but to uncover evidence,-- to ferret it out and locate it and enable the state to get hold of it.

They did not send Jack Simpkins down to Caldwell; they did not prepare Mrs. Seward's room in the condition in which she found it; they did not send the telegram in the name of Pat Bone and Mr. Wolff to Harry Green. These are simply the uncoverings of the evidence made by the Pinkertons, and the State of Idaho has employed them, and we think the results in this case show that they have uncovered evidence which was legitimate and which the court would receive and which you would consider.

But there are also some mine owners down there, and they had a vast amount to do with the Colorado situation undoubtedly, but I want to call your attention to one thing, that the mine owner is just like anybody else; he is no better and he is no worse. We are all human, and they are human. We might be mine owners today and we might not tomorrow, and vice versa. They are men who have gathered their money together and have put it there in the mines, and there is no evidence in this case that



shows that there was any feeling against the Western Federation of Miners until these strikes occurred in Colorado.

Now, I know this, and you know it, that when a strike occurs there is bound to be trouble, and no one can tell just with whom rests all the fault and with whom rests all the right. But until these strikes occurred in Colorado there was no evidence that the mine owners desired to get rid of the miners' union. After the strikes, things were done and acts took place which we are not here to defend, or with which we have any concern, but we notice in this evidence an exhibit, X-2, which reads as follows:

"It is hereby agreed between the miners' union by V. St. John, president, and the Sauggler Union Mining Company, by Edgar A. Collins, that all work shall cease on said mine for the space of three days, ending Friday evening. Also that the said Miners' union will refrain from violence either to person or property for the same period.

"The said Sauggler Union mine is to have the right to keep four men as watchmen at the bullion tunnel, one at Penn tunnel and one at Sheridan dump.

"Agreed this third day of July, 1901.

Sauggler Union Mining Company

By Edgar A. Collins,

Assistant Manager.

V. St. John."

That is signed by a president of the Western Federation, and states that just for a limited length of time they will restrain themselves from violence to person and to property. Is violence to person and property a tenet of the Western Federation? Does it take a contract to hold them down for three days? These men came in contact -- the mine owners -- with that situation. All they did cannot be justified, but the state of Idaho has nothing to do with it, and as I said before, I apprehend that the time will come when Colorado will come to the front and settle these questions regardless of who is upon this side or upon that.

Now, let us talk about the Independence depot for a few minutes. I want to call your attention to the fact that in my judgment the Independence depot explosion was not an accident. That is to say, that the men who were killed there were not killed by accident, -- that the people who pulled off that bomb did not intend it to go off at any other time than the time when they were around the depot. There was a suggestion by Mr. Harrow in his opening to the effect that this depot blew up, simply for the purpose of a scare, that it was not intended for the mine owners or the Pinkertons to actually kill anybody, that they had an old depot of very little value, and it was their intention to explode a bomb there and destroy the depot and place that upon the Western Federation of Miners, and cause such an uprising of the community as would drive them from the vicinity. Now, he put one witness on the stand -- Mr. Blizzard. He asks him, "what was its condition? A. It was in good condition; it was quite a nice



uptodate station with a waiting room and a large office.

Q. What do you know as to its size? A. I don't know, but I would judge a hundred feet long or forty or fifty feet wide.

Q. And there was a platform? A. Yes, there was a nice large platform leading down to the track." And there was no other evidence upon the subject, so we find there was a depot there used for one purpose practically, and that was for enabling the scabs to get off and on the train. It was not selected in my judgment because it was an old depot; it was selected because there was the place where these scabs got on and off, and they were the only ones, practically who were using that depot. When the time comes for the explosion, the men who pulled off the bomb, must have known that those fourteen men were on the platform. It does not seem reasonable or probable that they were in such close contact with the platform and that they would not know that some 15 or 20 men were on the platform. It was intended to kill because the man who did it was in the killing business. The man who did it was a murderer, and when he shot he shot to kill, and what was Harry Orchard and one other,-- Steve Adams.

Now, there is not any possible doubt in this case under the evidence as it stands now but what Harry Orchard blew up that depot. We do not prove it beyond all reasonable doubt, but they did. Their evidence satisfies any human mind that Harry Orchard was the man that blew it up. What else does it show? Harry Orchard says he did it. They testify that the hounds tracked him, and now, Mr. Darrow proceeds to show that Harry

Orchard did do it, and we concede it.

What else is shown? Not only that Harry Orchard was in the transaction but also another distinguished gentleman of whom you have heard considerable, -- that Steve Adams was there also. Now, I wonder if Steve -- loyal Steve -- the man who they are now defending, I wonder if he is a Pinkerton too? I wonder if he is in the employ of the mine owners. It is absolutely certain from the evidence here that Orchard and Steve Adams blew up that depot, and I will tell you why. That Orchard did it is conceded now upon both sides. We have convinced them of that. Orchard says Steve Adams assisted him. When they are upon the hunt for Orchard they put a man upon the stand by the name of Blizari, and he testifies that Mr. Sterling told him that Steve Adams was the man that blew it up. In addition to that it appears to you here that Steve Adams has made a confession. What that confession is, you don't know, but that it has been made is proven here before this jury. So, we have the statement of Orchard, we have the circumstances as brought up by Mr. Sterling, and the hounds, and we have this man who is the only man in their control and in their possession, -- their client -- admitting by his <sup>silence</sup> ~~name~~ that he was there.

Now, we have had two explanations as to why Steve Adams is not on the witness stand. You have observed in this case that there has been a vast amount of travel around over different parts of the United States for the purpose of gathering up a little piece of evidence here, and a little piece of evidence



there, for the purpose of showing that Harry Orchard did not do this and did not do that. Harry Orchard tells you when he is upon the witness stand that the man who was associating with him in the Independence depot explosion, that the man who helped kill Lyte Gregory, and hunted Peabody and was with him in these crimes in Denver, was Steve Adams. It further appears that Steve Adams has made a confession. They say that Mr. McFarland and Mr. Orchard got in touch with Mr. Adams at the penitentiary and that he made a confession that he afterwards repudiated.

Now, gentlemen of the jury, there is a man who could uncover the infamy, all of the infamy upon the part of the State which has been thrown out here by way of insinuation; there is one that not only knows that Harry Orchard is testifying falsely -- he knows all the transaction, he was with him day after day and night after night, and he knows where he was. Doctor McGee would not have to guess; this incident and that incident would not have to be called into requisition. Steve Adams knows if Harry Orchard is telling a falsehood, -- he knows it from the beginning to the close.

Can they say that Harry Orchard's confession came from the manufacturing establishment of Mr. McFarland? They leave the inference to you that he also tampered with Steve Adams. Now, if they want to know what took place in the penitentiary, if they want to know what kind of divine ~~arrangement~~ appointment Father McFarland puts upon a man to have him talk, they have got it here

in their possession, and they could uncover the whole transaction and show the infamy upon the part of the state from beginning to close by Steve Adams. But Steve, like Pettibone, thinks this is a good time to keep silent, and his counsel say they have kept them silent. He is their client now, -- he is under their control, he is to keep silent when they tell him to keep silent, and he is keeping silent. Now, gentlemen of the jury, that is not entirely a good reason for Mr. Steve Adams remaining silent in these matters. As appears before you, he is being tried for a murder up here in northern Idaho, for killing a man who had something to do with a timber matter. He is not being tried for anything connected with the affairs in Colorado. If he is guilty he could be tried for those matters, but if Harry Orchard's statement is false and Steve Adams is innocent there is not any good reason why he should not come upon this witness stand and testify to it than that any other witness should come here who has been called upon the part of the defense. True, he has got to be tried. He is perfectly safe so far as the Colorado situation is concerned and so far as those matters are interesting with this jury or any other jury, if the statement of Harry Orchard is false, and it is within their power to prove not only the falsity of Orchard's statement by this man who was associated with him, but it is within their power also to show the manner in which the state of Idaho gets its evidence, as they say -- that is, in a questionable way and manner. Adams can tell you who McFarland is; Adams can tell you how he does business.



Now, Mr. Richardson says in answer to the proposition that they did not blow up this depot, as one of the suggestions which he makes, that it was the most foolish, the most unreasonable thing which the Western Federation of Miners could do,-- that that which was done upon the 6th of June, 1904 was of more injury, was a greater detriment to their cause than anything that could have happened. Well, when you get to talking about them doing foolish things, I want to refer you back to the 29th of April, 1899. Could you conceive of a more unreasonable, or a more foolish, a more injurious act upon the part of the organization than that which took place upon their part on the 29th of April, 1899? They went forth in the open light of day, in the defiance of law, and put themselves upon record upon that day as a criminal organization. It was the height of folly. It was unreasonable from every standpoint, and we find out by tracing them up for seven years that that is not always a correct rule by which to measure them.

Again, what was the motive for this explosion -- this Independence depot explosion? What reason could they have to do it? He says they had no motive and no reason. Now, let me call your attention to a little thing which might explain that. You remember old man Stewart was called upon the witness stand and testified in this case as to some of his experiences. He says that he undertook to go to work upon a certain day as a scab, and he was told that he should not do so, and if he did he would

suffer the consequences. That was some time, it is true, before, but it illustrates the thing just the same. He went to work,-- the old gentleman -- and came home that night, and who came after him? Steve Adams, the man whom we say blow up the depot, and for the same reason, to do business with a scab,-- Sherman Parker, William Cooper, Ed. Minster, and a few others went up to the old man's cabin, took him out and beat him up, shot him and intended that he should die. They supposed undoubtedly that he was dead. Why? Why? For the simple proposition that he went to work upon a certain day in defiance of the dictates of the Western Federation. No other reason in the world. What other excuse could be got for attacking the old man?

And here upon the Independence depot platform are some twenty odd men who are known as strikebreakers,-- men who had gone into the non-union mines and were at work, and every other mine in that district was working non-union men except the Portland and a few leasers. Had the Western Federation won the fight? Certainly not. They believed that by doing business with the scabs they could drive them from the district and make them afraid to go back into the mines and do the work. The motive rested with the men here. This conspiracy they talk about was a very peculiar conspiracy. It seems to have been formed for blowing up a number of the conspirators themselves, and killing the members of the conspiracy itself.

One other transaction down there, and that is the death of Lyte Gregory. It was stated here in the opening that the



evidence would show that the Western Federation never had any grievance against Lyte Gregory and knew nothing about him. Now, the evidence in this case shows that they did have something to do with Lyte Gregory and shows that they knew something about him. It appears from Mr. Copley, from Mr. Sabin and from Mr. Haywood that he was a detective, and of all the despised things upon the face of the earth, would be a detective. It appears further that he was in active operation as a detective down there at a time that Mr. Copley was interested also. He might not have been actually called as a witness, but I don't apprehend that they love Mr. McFarland any more because he was not called as a witness in this case. I apprehend that they don't love Mr. Riddell any more or any less because he was not called, -- but he was there associated with them, and expected to be called as a witness in that particular transaction. And that was the motive in that -- that was the motive which Mr. Orchard gave. They find him up in Denver one night, and Pettibone comes to Orchard -- this man with silent lips, -- and says, "This man Lyte Gregory is up here and we would like to make an example of him," and he and Adams ready for the job, start out like blood hounds upon a trail. They go out -- he said that they had shotguns -- they hunt him into a saloon and watch him there until he comes to the door and then they kill him.

Mr. Baldwin comes upon the witness stand and gives you his testimony which is in direct corroboration of Orchard. Orchard

says that he went out to that saloon and first sat down in a front room, that he afterwards went into a little ante room and began to have a game of cards. So Mr. Baldwin says that he did go out there and went into the front room, and then went into this ante room, and sat there and played cards, and afterwards passed out of the door and in a few minutes was shot.

Now, Orchard gives a description of this man, where he was in the house, and all, just as Mr. Baldwin gives it. But what else in regard to that? Mr. Orchard also states that there was present a man by the name of Maldon, a member of the Western Federation of Miners, and that when Mr. Gregory was shot he went in one direction and Orchard and Steve Adams in the other. Where this member of the Federation is we don't know. Mr. Orchard says that Pettibone was the man who instigated him to go. Pettibone is here and it is not denied. Now, we have the killing described by Mr. Orchard, corroborated by Mr. Baldwin, -- the motive -- the reason for it, and these two men present and neither one of them come here to deny the story of Mr. Orchard. Now, it is for you to say, not beyond a reasonable doubt, but it is for you to say whether this has been established so that you may take it into consideration as a circumstance and a fact to go to build up the chain of evidence showing the connection and the relation of Orchard with this incident. Take the Independence depot and the killing of Lyte Gregory, the evidence which surrounds it, the transactions, and you will find it all points to one transaction or to one motive and the one purpose -- and Mr. Orchard is corroborated in regard to these things.



Some matters took place up in the city of Denver to which I desire to call your attention for a few moments, and I am going to group them together. It is claimed here by Mr. Orchard that he attempted to kill Mr. Goddard, Mr. Gabbert, Mr. Bell and Governor Peabody. Now I shall not be able to take each one of these separately and discuss them but I want to discuss them together so as to throw some light upon that transaction or those transactions and show you the association of Orchard again with this defendant or with the Western Federation.

In the first place, there can be no doubt of the proposition I apprehend but what a bomb was found at Goddard's gate, that it had been there for some considerable length of time. And the circumstances surrounding the transaction show beyond a question that it has the Orchard brand upon it. He goes and fastens it to the gate just as he fastened it to the gate practically of Governor Steuenberg. It is true that it didn't do its work, but nevertheless he says he placed it there, and after his arrest and his confession they took the parties there and uncovered it and found it in just the condition in which he says it was placed.

Now who was Goddard? He was a member of the Supreme Court of that state. He had rendered a decision in which they were much interested. But that is very slight testimony compared with the testimony of the defendant upon this witness stand. He says to you that he regarded Mr. Goddard in the light of a corrupt enemy of the Western Federation of Miners -- not in that language, perhaps, but that is the effect of his testimony. That he regarded Heams and Bell and Peabody and Goddard and Gabbert

as the awayed tools of the capitalists, men who were organized against them and wouldn't give them justice and whom they looked upon as their uncompromising enemies.

The same with reference to Mr. Gabbert. Mr. Gabbert was a member of the Supreme Court also. Now there was a bomb placed for him in almost the same manner as Orchard says that Jack Simpkins and Orchard fixed a bomb for Governor Stearnsberg. It was put across a pathway along which he should go. The result was that Mr. Gabbert was not killed but beyond a question Mr. Walley was. The bomb did its work but not upon the right individual.

Now who was it in the city of Denver that was going around planting bombs at gates and across pathways? Do you see any similarity between that work and the work which took place down in Caldwell? And again, where was the motive for this crime? Certainly Orchard wasn't doing it upon his own responsibility. Certainly he wasn't sustaining himself while this work was going on. Somewhere or other there must have been somebody, someone aiding and upholding him in these transactions.

There can be no question, gentlemen of the jury, it seems to me, but what Orchard went down to Canon City after Peabody. And this is a very important transaction. He went down to Canon City and he carried with him a bomb which Mr. Vaughn discovered there in his room. At the time that he went down to Canon City we again come in contact with Mr. Pettibone. Mr. Pettibone suggests that he take down there as a cover the right to write life insurance. And he suggests to him that if he will go up to Mr. Stearns and suggest it to Mr. Stearns that he will



give him some letters, and the letters are here in evidence, a letter from Mr. Pettibone, Mr. Sullivan and other parties. And Mr. Orchard goes down there for the purpose of writing life insurance and carries with him again the deadly utensils of murder. All the time and each and every time that he goes forth he is in touch in some way with Mr. Pettibone. These letters show, of course, upon their face no criminal act. But when you take them in connection with the purpose for which he went, the manner under which he went down to Canon City and the things which he took with him, the evident purpose of his going, ~~it~~ they show why he was there and for what purpose.

Now certainly there could be no question as to the attitude which Governor Peabody bore to the Western Federation of Miners. There can be no question as to how they looked upon Governor Peabody. There can be no question of the feeling which had arisen between this organization and the governor. And again the motive appears, the connection with a member of this conspiracy, and although the testimony of Mr. Orchard is not corroborated in the fullness in which it is in the Steunenberg case, it shows that he was in association, in connection with these parties, or some of them, in carrying out his crime.

Now can there be any question either of the relation of Mr. Orchard to the Western Federation of Miners during the year 1905? I am not going to read these letters in full, but here are two letters written by Harry Orchard in April, 1905. These letters disclose the fact that at the time these crimes were attempted to be committed that Mr. Orchard was receiving benefits from the Western Federation of Miners and show that he was carry-

ing on his correspondence with his wife, keeping his identity concealed through the Western Federation headquarters. Now it doesn't seem reasonable that Harry Orchard would write these letters with the idea in his mind that they would ever be used; and yet in these letters are the full statements of Orchard to the effect as to how he was getting his money, what arrangements he had made with the secretary, Mr. Haywood, that his wife should be taken care of in his absence. In other words, his association is continuous from the 6th of June at least, 1904, until the time that we find them putting up the money for him on the 30th of January, 1906. These letters, if you are permitted to read them (they have been read to you) show that he was receiving his money or expected to receive it by reason of an understanding with "our secretary" as he calls him, and that his wife shall be taken care of. Now at the time he wrote these letters, although they are dated <sup>from</sup> San Francisco, yet it is an unquestioned fact that he was in Denver. He was still again concealing himself from his wife and doing so by means and with the assistance and aid of this Western Federation organization.

Now, gentlemen of the jury, there is one other thing I want to say, not in criticism of Mr. Darrow, because personally I like him very much but I don't like his doctrines which were preached here to this jury, and I am going to say just a word in answer to them, and it comes in here at this particular time when we are talking about why Orchard might have gone forth at the suggestion of this organization to commit crime, to take the life of Pembury, the life of Bell, the life of Goddard and the life of Gobbart. When you heard the doctrine which was announced to you yesterday as a reason for the actions of these men you must have



come to the conclusion that it was put forth as a justification for it. If Haywood felt as was announced here in this argument I don't see why Bell or Peabody or Goddard or Gabbert or any of them escaped with their life. If constitutions are only for the rich, if laws are only made to be broken, if that is the way they feel in this matter, it is the strongest reason and the most potent motive that could exist in a man's brain for taking the law in his hands and going forth to commit crime. But we are here for the purpose of determining whether or not the state of Idaho can enforce the laws which are upon its statute books. We are here to determine whether or not there is power here to protect property and to preserve life. Whatever factions there may be or whatever classes there may be, whatever troubles they may have, under our statute laws and under the organization of our form of government and under the flag must be settled under the auspices and in accordance with the principles of law. You cannot raise a condition which justifies murder. Somewhere and in some way there is lodged in our state government and in our entire form of government a power which can control and guide men without their taking the law in their own hands and going forth to commit crime. And I say again that if that reflects the sentiment of the Western Federation of Miners there needn't be any doubt in the mind of this jury as to whether or not they would ~~commit~~ commit murder against men who are representing the correct principles of law. It is a circumstance, it came forth from the lips of Mr. Haywood and it is in this case. It is at the bottom of a vast amount of these crimes. It is a question whether this jury will become a part of such a transaction.

Now, gentlemen of the jury, if I should go further into this matter it would necessitate my reading some of the evidence in the case and discussing some of the details which have been so fully covered by Mr. Hawley and I am not going to do so. I am worn out and I have no doubt that you are sore than weary also, and I am not going to trespass any longer upon your time or your patience. You have been patient and considerate in this case in the extreme. The great task imposed upon you, the great trust reposed in you, has stimulated and sustained you throughout this long and tedious trial and you have watched and listened and been faithful. You are carrying with you tonight the solicitude of an entire people. There is no home in Idaho tonight but ~~think~~ that a thought of you and your final duty will mingle with the sentiment which made that home possible. Very soon the court and the faithful officers and the attorneys will pass into the background and all thoughts and all considerations will be with you, the twelve men selected and sworn and solemnly charged to perform the most important and solemn task ever given to twelve men in the state of Idaho. You will never again occupy a position so important in all its bearings as you occupy now. On the one hand there is the defendant; upon the other the State. If he has not been proven guilty under the measure of the law, he must be released and given his freedom. On the other hand, if this case has pointed you to the man or the men who conceived and caused to be carried into execution this dire and awful crime, then in the name of the humanity of the state and of the welfare of the state you will do your duty without dread of men or the fear of men.



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After this trial has been finished, after the work is over, after the excitement has died away the thing which will remain with us is that sleepless mentor of the soul asking over and over again as the years go by were you brave and faithful in the discharge of the <sup>most</sup> solemn duty of our life? You have no doubt often in this case been moved by the eloquence of a counsel for the defense. They are men of wonderful powers. They have been brought here because of their power to sway the minds of men. It has been their part and duty and in loyalty to their clients, as it seems to be, to sometimes draw you away from the consideration of the real facts in this case; to beguile you from a consideration of your real and only duty. But as I listened to the voice of counsel and felt for a time their great influence there came to me after the spell was broken another scene. There came to me in more moving tones than ~~xxxxxxxxxx~~ of voices -- I remembered again the awful thing of December 30th, 1905, a night which has added ten years to the life of some who are in this court room now. I felt again its cold and icy chill, faced the drifting snow and peered at last into the darkness for the ~~xxxxxx~~ sacred spot where last lay the body of my dead friend, and saw true, only too true, the stain of his life's blood upon the whitened earth. I saw Idaho dishonored and disgraced. I saw murder -- no, not murder, a thousand times worse than murder; I saw anarchy wave its first bloody triumph in Idaho. And as I thought again I said "Thou living God, can the talents or the arts of counsel unteach the lesson of that hour?" No, no. Let us be brave, let us be faithful in this Supreme test of trial and duty. If the defendant is entitled to his liberty, let him have it.

But, on the other hand, if the evidence in this case discloses the author of this crime, then there is no higher duty to be imposed upon citizens than the faithful discharge of that particular duty. Some of you men have stood the test and trial in the protection of the American flag. But you never had a duty imposed upon you which required more intelligence, more manhood, more courage than that which the people of Idaho assign to you this night in the final discharge of your duty.

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Thereupon the court gave to the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded and court took a recess until ten o'clock tomorrow morning.

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R E C E S S.



*Harrod*

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Boise, Idaho, Saturday, July 27th, 1907.

10 o'clock A. M.

Parties met pursuant to adjournment.

Minutes of the session of July 26th, 1907, were read by the clerk and the same were signed by the court.

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

THE COURT: In relation to the exceptions to the instructions, the understanding may be that the exceptions may be taken after the jury retires. The record will show that they are taken in the presence of and before the retiring of the jury.

MR. RICHARDSON: I suppose the jury will take the instructions with them, so that the exceptions may be taken when they come back, unless your Honor has a copy of them; in which event we will be very glad to take our exceptions before the jury ~~retire~~ retire.

THE COURT: I have an extra copy. I will state, gentlemen, in passing upon the requests I have marked those given or refused or modified and have just filed them with the clerk. The clerk can hand them to you at the present time but it will be impossible for you to follow them.

MR. RICHARDSON: But it will be easy to identify them.

THE COURT: Yes, they can be easily identified.

The defendant, by his counsel, requested the court to give to the jury the following instructions, which were refused or modified by the court:

The jury is instructed, as a matter of law, that the statute forbids a conviction in this case. You will, therefore, return a verdict under the law acquitting the defendant.

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

The jury is instructed that in this case the State relies for a conviction upon a conspiracy said to have been entered into by and between the defendant and others to procure and compass the death of Frank Stoenberg; and the overt act charged in the indictment is that the defendant did on the 30th day of December, A. D. 1905, at the city of Caldwell, in the said county of Canyon, and state of Idaho, then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought make an assault upon the said Frank Stoenberg, which said assault was felonious in character and resulted in the killing of the said Frank Stoenberg. You are instructed that no conviction can be had in this case unless such overt act as alleged is proven beyond a reasonable doubt.

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.



A conspiracy, within the meaning of the criminal law, consists of a combination between two or more persons for the purpose of accomplishing a criminal or unlawful object, or a lawful object in an unlawful manner. As applied to this case and under this indictment, proof of conspiracy is only proper in so far as it may tend to show a common design to encourage the particular murder charged against the defendant, and it can only be introduced for the purpose of establishing the position of the members of the combine as accessories to the crime of murder. In this case there is no direct proof of any general conspiracy to kill and murder. The State relies upon a series of acts which it charges resulted from such a conspiracy, and it seeks to establish the fact of such conspiracy as an inference from the facts introduced in evidence. While the jury is not precluded by the law from inferring that a conspiracy exists where no direct proof of the conspiracy is shown, nevertheless the jury should act with great care and caution in the absence of such evidence in drawing the inference that a conspiracy existed because of the existence of a series of acts from which it is sought to establish the existence of such a conspiracy.

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

The jury is instructed that in this case the state seeks to establish a general conspiracy, having for its object, among

other things, the destruction of the lives of those who are opposed to the will of the members of the conspiracy. This alleged conspiracy is sought to be proven by the happening of certain events which have been received in evidence, and with the happening of which events the defendant is charged to have been connected. The defendant offers evidence tending to prove that the happening of such events was wholly beyond and outside of his control and in no wise connected with him; that a certain combination of individuals existed, having the accomplishment of certain objects in view, which objects and purposes were greatly aided by the occurrence of the events which the state charges to have been brought about by the defendant and his co-conspirators.

The jury is instructed that they are entitled to, and should, take into consideration the nature and effect of such events as bearing upon the question of the responsibility or non-responsibility of the defendant therefor, and the jury is entitled to determine from the evidence whether or not the happening of such events would tend to effect or thwart any purpose which the defendant and others who were associated with him were trying to effect. And from all the facts and circumstances received in evidence the jury will determine whether or not the defendant was in any wise responsible therefor, for the sole purpose in these instructions defined.

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.



The jury is instructed that where the state is seeking to establish a conspiracy it must so establish it by other evidence than one of the co-conspirators; and if there is no evidence of such conspiracy except such as is derived from the acts and declarations of a single co-conspirator, the law will not permit a conviction to stand on such testimony alone.

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

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 Staunenberg. 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 everyone 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.

WHICH INSTRUCTION WAS MODIFIED BY THE COURT:

To the modifying of the above and foregoing instruction, and to the refusal of the court to give said instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

The jury is instructed that if you believe from the evidence in this case that the state has failed to make out a case against the defendant, beyond a reasonable doubt, you have no right to convict the defendant either for a failure to produce testimony upon his part, or for the absence of testimony upon his part.

WHICH INSTRUCTION WAS MODIFIED BY QUALIFICATION BY THE COURT.

To the modifying of the above and foregoing instruction, and to the refusal of the court to give said instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

A reasonable doubt is that the state of mind which after a full comparison and consideration of all the evidence, both for the state and the defense, leaves the minds of the jury in that condition that they cannot say that they feel an abiding faith amounting to a moral certainty, from the evidence in the case, that the defendant is guilty of the charge as laid in the indictment. If you have such doubt -- if your conviction of the defendant's guilt, as laid in the indictment, does not amount to a moral certainty from the evidence in the case -- then the court instructs you that you must acquit the defendant.

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.



"The court instructs the jury that upon the trial of a criminal cause, if a reasonable doubt of any facts necessary to convict the accused is raised in the minds of the jury, by the evidence itself, or the ingenuity of counsel, upon any hypothesis reasonably consistent with the evidence, that doubt is decisive in favor of the prisoner's acquittal."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"If, after a consideration of the whole case, any juror should entertain a reasonable doubt of the guilt of the defendant, it is the duty of such juror so entertaining such doubt not to vote for a verdict of guilty, nor to be influenced so to vote, for the single reason that a majority of the jury may be in favor of a verdict of guilty."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

The jury is instructed that if there is any one single fact proved to the satisfaction of the jury, by a preponderance of evidence, which is inconsistent with the guilt of the defendant,

7

that is sufficient to raise a reasonable doubt, and the jury should acquit the defendant."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The law will not justify the conviction of a citizen accused of a grave and serious crime upon any degree of proof, no matter how strong, which does not create certainty beyond every reasonable doubt; that is, such certainty as a careful and prudent man would require to act upon in the most grave and important concerns of life; and although you are instructed to believe as jurors if from the evidence you would believe as men, yet you are not required to believe as jurors in any case where a careful and prudent man would pause and hesitate to believe if the most grave and important concerns of his life were at stake."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant by his counsel, then and there duly excepted.

"The court instructs the jury that the evidence in a criminal case must satisfy the jury to a moral certainty and beyond a reasonable doubt, that is, it must entirely satisfy the



jury of the guilt of the defendant before they can convict. If the jury are not entirely satisfied, they should acquit."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court further instructs the jury that in this case the law does not require of the defendant that he prove himself innocent, but the law imposes upon the prosecution to prove that the defendant is guilty, in manner and form as charged in the indictment, to the satisfaction of the jury, beyond all reasonable doubt; and unless they have done so the jury should find him not guilty."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury are instructed that if any one of your number, after having considered all the evidence in the case, and after having consulted with his fellow jurymen, should entertain any reasonable doubt of the guilt of the defendant, then the jury cannot find the defendant guilty."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury are instructed that this defendant, like all persons accused of crime, is presumed to be innocent until his guilt is established to a moral certainty and beyond a reasonable doubt; and this presumption of innocence goes with him all through the case, and until you have arrived at a verdict."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that a defendant in a criminal case is presumed to be innocent until the contrary is proven, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown he is entitled to an acquittal."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that the defendant must be presumed to be innocent until his guilt is fully established by legal evidence. The presumption of innocence prevails throughout the trial, and it is the duty of the jury, if possible, to reconcile the evidence with this presumption."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.



"The defendant comes into court protected, as every citizen of the state is, by the presumption of law that he is innocent of any crime, and particularly that he is innocent of the crime charged against him in this indictment. That he has been arrested and charged with the perpetration of a crime does not tend in any degree to show his guilt or remove from him the presumption of innocence which the law throws about him. That an indictment has been filed against him is not evidence of his guilt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"It is the duty of the jury to enter upon the consideration of each fact and circumstance proved having in your minds at all times the presumption that the defendant is innocent, and in considering every <sup>such</sup> fact and circumstance they should apply to it the presumption of innocence. This presumption of innocence is not an idle form; it is a fundamental and important part of the law of the land, and should not at any stage of your investigation be lost sight of or ignored until your minds are convinced of his guilt by the evidence beyond a moral certainty and to the exclusion of all reasonable doubt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that the law presumes the defendant innocent in this case, and not guilty as charged in the indictment, and this presumption should continue and prevail in the minds of the jury until they are satisfied by the evidence, beyond all reasonable doubt, of the guilt of the defendant; and, acting upon this presumption, the jury should acquit the defendant unless constrained to find him guilty by the evidence convincing them of such guilt beyond a reasonable doubt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court instructs the jury that you should commence the investigation of this case with the presumption that the defendant is innocent of the crime with which he is charged, and you should act upon this presumption throughout your consideration of the evidence until it shall have been overcome by evidence of guilt so strong, credible and conclusive as to convince your minds to a moral certainty and beyond a reasonable doubt that the defendant is guilty."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that the defendant, at the



outset of the trial, is presumed to be an innocent man; he is not required to prove himself innocent, or to put in any evidence at all upon that subject. In considering the testimony in the case you must look at it and view it in the light of the presumption that the law clothes him with this innocence, and it is a presumption that abides with him throughout the entire trial of the case until the evidence convinces you to the contrary beyond a reasonable doubt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed further that the presumption of innocence is not a mere form to be disregarded by the jury at pleasure, but it is an essential, a substantial part of the law of the land, and binding on the jury in this case; and it is the duty of the jury to give the defendant in this case the full benefit of this presumption and to acquit the defendant, unless they feel compelled to find him guilty as charged, by the law of the land and the evidence in the case, convincing them of his guilt as charged beyond all reasonable doubt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that every defendant in a criminal trial enters upon that trial with the presumption of innocence; that the law clothes him with this presumption as an affirmative defense; that it accompanies him at all stages of the trial and stands as his sufficient safeguard until it has been overcome by evidence received in the case which establishes his guilt beyond a reasonable doubt; and if in this case the state has not established his guilt beyond a reasonable doubt by the evidence which has been received in the case, then the presumption of innocence has not been overcome and the defendant is entitled to the benefit of the presumption, and in such case it is your duty to acquit him."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"In a criminal case the prosecution must prove every allegation in the indictment beyond a reasonable doubt; probabilities, or that the greater weight or preponderance of the evidence supports the allegations of the indictment will not warrant a conviction. Nothing is to be presumed or taken on implication against the defendant. The law presumes him innocent of the crime with which he is charged until he is found guilty beyond a reasonable doubt. This presumption of innocence has the weight and effect of evidence in the defendant's behalf, and should continue until it is overcome by competent evidence which dispels any reasonable doubt which you might otherwise have



of the defendant's guilt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The court instructs you that an accomplice is defined to include all persons who have been concerned in the commission of a crime, whether they are considered in strict legal propriety as principals in the first or second degree, or merely as accessories before or after the fact."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"You are instructed that the testimony of an accomplice ought to be viewed with distrust."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted."

"The jury is instructed that the law views with suspicion the evidence of an accomplice, and if such evidence is accompanied by any facts or circumstances which tend to show that such acco-

police has received immunity in any degree, or the promise of immunity in any degree, either express or implied, from punishment in consideration of his testimony, then such testimony should be viewed in the light of such additional circumstance or circumstances as affecting its credibility."

WHICH INSTRUCTION WAS REVIEWED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that they are entitled to take into consideration all of the facts and circumstances, so far as the same have been received in the evidence occurring subsequent to the arrest of the witness Harry Orchard, for the purpose of determining the weight which the jury will give to his testimony; if the jury believe from the evidence that the said Orchard has been treated differently than he would have been treated had he not made a confession and agreed to furnish evidence to the state, then and in that event that is a matter which should be taken into consideration by the jury in determining the credibility of the said Orchard. (If the jury believe from the evidence that he has been visited and corresponded with by a detective or detectives who have been engaged in the prosecution of this case, and in the preparation and securing of evidence to be introduced therein, then these matters are proper to be considered by the jury as affecting such credibility.) And if the jury believe from the evidence that any hope or promise of



immunity, either in whole or in part, has been made to the said Harry Orchard, whereby the said Orchard will not be punished at all, or his punishment shall be modified in any way, or to any extent, then these facts should be taken into consideration by the jury as affecting its credibility. And if from the evidence it appears that any favors have been extended by the authorities of the state of Idaho to the witness, Harry Orchard, and there is any promise, or there are any promises, either express or implied, relating to further favors to be received by him on account of his testimony in this case, then these are proper matters for the consideration of this jury, as affecting the credibility of the said Orchard's testimony.

While the rules of evidence are the same with respect to the weight and credence to be given to the testimony of other witnesses, such weight and credence is to be determined in the light of all the existing facts and circumstances surrounding any witness, so far as the same shall be received in evidence. And from all such facts and circumstances you will make up your minds as to what amount of weight and credence you will give to the evidence, of the witness Harry Orchard and determine accordingly."

WHICH INSTRUCTION WAS MODIFIED BY THIS COURT.

To the modifying of the above and foregoing instruction, and to the refusal of the court to give said instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury are instructed that under the law of this state a conviction cannot be had on the testimony of an accomplice unless it is corroborated by other evidence which, in itself, without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged, and the corroboration is not sufficient if it merely shows the commission thereof."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that a conviction cannot be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that the witness Harry Graham is an accomplice, and that in a case where the State relies on the testimony of an accomplice the statute forbids a conviction on



such testimony unless the accomplice is corroborated by other evidence which in itself and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that in this case there is no sufficient corroboration, under the statute, of the testimony of the witness Harry Orchard, and that there is no corroboration of such testimony which in itself and without the aid of the testimony of the said Harry Orchard tends to connect the defendant with the commission of the offense alleged in the indictment. It is, therefore, your duty and you are instructed as a matter of law to acquit the defendant."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court instructs the jury that the corroboration of an accomplice required by law, in order to warrant a conviction upon his testimony, must tend pertinently to connect the accused

with the offense. Corroborative evidence as to matter having no tendency in this direction, however thorough and complete, will not suffice."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that the testimony of an accomplice must be corroborated by evidence at least showing the connection of the defendant with the commission of the felony. It is not enough that it be so confirmed as to convince the jury that it is true."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"Under the provisions of the statutes of this state the corroborative evidence must, in itself, without the aid of the testimony of the accomplice, tend in some degree to connect the defendant with the commission of the offense. This corroborating evidence need not be sufficient, of itself, to establish the guilt of the defendant, but it must tend in some degree to implicate and connect the defendant with the commission of the offense charged. The requirements of the statute are fulfilled if there be any corroborating evidence which of itself tends



to connect the defendant with the commission of the offense. The statute does not require that such witness should be corroborated in respect to every material fact, but only in respect to such of the material facts as constitute the necessary elements in the crime charged."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court instructed the jury that the evidence in corroboration of the accomplice must tend directly and immediately to connect the defendant with the commission of the offense."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court instructs the jury that the corroboration, however strong in all other respects, must point to the connection of the defendant with the commission of the crime to be of any avail."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court instructs the jury that the law of this state absolutely forbids a conviction in a criminal case upon the uncorroborated testimony of a accomplice, even although the jury may believe such testimony to be entirely true and that it establishes the defendant's guilt beyond a reasonable doubt."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court instructs you that evidence corroborating an accomplice as to the fact that a murder has been committed, and that the accomplice is guilty thereof, is not sufficiently corroborative of his testimony that he committed the murder at defendant's request."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury are instructed that if it is necessary to consider the corroborative evidence in connection with the evidence of the accomplice, it is not legally sufficient. It is legally sufficient only if, standing alone, it tends to connect the defendant with the commission of the offense charged."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and



foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that when the proof of a conspiracy is circumstantial, a defendant's connection with it must be established by evidence of his own acts and declarations -- not those of others."

WHICH INSTRUCTION WAS MODIFIED BY THE COURT.

To the modifying of the above and foregoing instruction, and to the refusal of the court to give said instruction as requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"When the State relies upon circumstantial evidence to establish a conviction, each fact to establish the guilt of the accused must be proved by competent evidence beyond a reasonable doubt, and the facts and circumstances proved should not only be consistent with the guilt of the accused but inconsistent with any other reasonable hypothesis than that of his guilt. In looking to the evidence in the case at bar for the corroboration of the self-confessed accomplice, Harry Orchard, you are required by the law to exclude his evidence from consideration until you find from the balance of the evidence that there is evidence which tends directly to connect the accused with the offense charged. And if you find such evidence to be circumstantial, when laying aside the evidence of the said accomplice, it is

your duty to determine the effect of such circumstantial evidence in the light of this instruction."

WHICH INSTRUCTION WAS REFUSED BY THE COURT.

To the refusal of the court to give the above and foregoing instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.



"The jury is instructed that in this case the state relies upon circumstantial evidence to establish the connection of the defendant with the conspiracy sought to be proven by the evidence taken in connection with the direct testimony of the accomplice Harry Orchari. Unless there is some evidence other than the evidence of Orchari which tends directly to connect the defendant with the offense charged without the aid in any degree of the testimony of the said Orchari, there can be no conviction in this case; and in determining whether or not the circumstances offered and received in evidence tend to show such connection, it is your duty to consider all such circumstances in the light of the presumption that they are innocent in themselves; and if such circumstances, when so considered, are consistent with any hypothesis of innocence, it is your duty to give to such circumstances that consideration and to acquit the defendant."

WHICH INSTRUCTION WAS MODIFIED BY THE COURT:

To the modifying of the above and foregoing instruction, and to the refusal of the court to give said instruction as requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"It is the duty of a jury, especially in a capital case, to exercise the most careful and conscientious caution in the examination of all the facts and circumstances in the case. It is not sufficient that it is quite likely or more probable that the defendant is guilty. You cannot decide the issues in this case upon any doctrine of chance."

## WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is further instructed that the indictment in this case is of itself a mere ~~xxxx~~ accusation or charge against the defendant, and is not of itself any evidence of the defendant's guilt, and no juror in this case should permit himself to be to any extent influenced against the defendant because or on account of the indictment in this case.

## WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"If it is possible for you to reconcile the facts in this case upon any reasonable theory consistent with the innocence of the defendant, William D. Haywood, it is your duty to do so and find the defendant not guilty."

## WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that the absence of all evidence of an inducing cause or motive to commit the crime, when the



fact is in reasonable doubt as to who committed it, affords a strong presumption of innocence."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that if they believe from the evidence that the witness Harry Orchard was induced to become a witness and testify in this case by any promise of immunity from punishment, or by any hope held out to him by anyone that it would go easier with him in case he disclosed who his confederates were, or in case he implicated some one else in the crime, then the jury should take such facts into consideration in determining the weight which ought to be given to his testimony thus obtained and given under the influence of such promise and hope."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury are instructed that greater care should be exercised in receiving the testimony of detectives and other persons specially employed to hunt up evidence against the defendant than in the case of witnesses who are wholly disinterested."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that in weighing the testimony greater care should be used by the jury in relation to the testimony of persons who are interested in or employed to find evidence against the accused than in other cases, because of the natural and unavoidable tendency and bias of the minds of such persons to construe everything as evidence against the accused and disregard everything which does not tend to support their preconceived opinion of the matter in which they are engaged."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction so requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that mere probabilities are not sufficient to warrant a conviction; nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment; nor is it sufficient that upon the doctrine of chance it is more probable that the defendant is guilty. To warrant a conviction of the defendant he must be proved to be guilty so clearly and conclusively that there is no reasonable theory upon which he can be innocent when all the evidence in the case is considered together."



WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The court further instructs the jury that this is not a civil case but it is a criminal prosecution, and that the rules as to the amount of evidence in this case are different from those in a civil case, and a mere preponderance of evidence would not warrant the jury in finding the defendant guilty; but before the jury can convict the defendant they must be satisfied of his guilt beyond all reasonable doubt, and unless so satisfied, the jury should find the defendant not guilty."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury have no right to disregard the testimony of the defendant on the ground alone that he is the defendant and charged with the commission of crime. The law presumes the defendant to be innocent until he is proved guilty beyond a reasonable doubt, and the law allows him to testify in his own behalf, and the jury should fairly and impartially consider his testimony together with all the other evidence in the case."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above

and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury have no right to disregard the testimony of the defendant on the ground alone that he is the defendant and stands charged with the commission of a crime. The law presumes the defendant to be innocent until he is proven guilty beyond a reasonable doubt, and the law allows him to testify in his own behalf, and the jury should fairly and impartially consider his testimony together with all the other evidence in the case, and give the defendant's testimony such weight as you believe it entitled to in view of all the facts and circumstances proved on the trial."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"In your consideration of this case and in determining the question of the defendant's guilt or innocence, you should be guided solely by the evidence and the law given you by the court. You should in no way consider or be influenced by any question or answer given thereto which the court has ruled out as improper. You should not consider or be influenced by any outside matters or influences, but adhere strictly to your duties as jurors to try the matters at issue in this case upon the evidence



and find a verdict in accordance therewith."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury are further instructed that while you are the exclusive judges of the evidence, and of the weight to be given to the evidence of the several witnesses, still it is equally the province of the court to give the law of the case, and it is your duty, under your oaths as jurymen, to accept the law as given by the court without hesitation or reservation, and to apply such law to the facts proven and so find your verdict, regardless of your opinion of what the law is or should be, and regardless also of what counsel upon either side have stated the law to be."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly excepted.

"The jury is instructed that evidence has been allowed on the manner and method of the arrest of the defendant, and under whose control the defendant was brought to the state of Idaho after such arrest. This evidence was admitted along with other evidence to enable the jury to determine whether or not any one other than the state of Idaho was interested in the prosecution and punishment of this defendant, as affecting the credibility

of any of the evidence received in this case, and the jury is entitled to take into consideration the arrest of the defendant, the circumstances of his incarceration in the city of Denver, and the matter and method of his trip to Idaho, and who was in charge and control of such trip, in connection with the other evidence, for the purpose of determining what, if any, influences have been exercised upon any of the testimony received in this case, as affecting its credibility."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that if they believe from the evidence that any man, or anybody of men, any corporation, or any number of corporations, any mine owners' associations or associations, any Pinkerton detective agency, or any other detective agency are, or have been engaged in any attempt to secure the conviction of this defendant in any degree whatsoever, they are not to allow any such attempt to have any influence with them whatsoever in determining their verdict in this case. This case is to be judged solely on the facts received in evidence and not by the wishes of any man, or class of men, or any association of men whatsoever."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.



"The jury are instructed that they cannot consider the fact of the flight of Jack Hopkins, if they believe that such fact exists, as evidence of the guilt of the defendant."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that in considering the failure of George A. Pettibone to testify in this case as a circumstance in any way affecting the issues in this case, they have the right to consider, and should consider, the fact, if it be a fact, that said Pettibone is jointly indicted with the defendant herein and will probably be placed on trial at some future time under such indictment. And this fact should be considered in connection with all other facts as bearing on the failure of George A. Pettibone to testify."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that in considering the failure of Steve Adams to testify in this case they have the right to consider, and should consider, the fact, if it be a fact, that said Steve Adams is under indictment and will probably be placed upon trial under such indictment. This fact should be

considered with all the facts as bearing upon the failure of said Adams to testify."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that in considering the question as to whether Harry Orchard had any motive for killing Frank Steunenberg, which motive grew out of his former ownership of an interest in the Hercules mine, they are to consider not as to whether a valid deed alone had been made by said Harry Orchard prior to the time that said Frank Steunenberg was killed, or prior to the time of the explosion of the Bunker Hill and Sullivan mill, but as to whether Orchard believed he had any interest in said mine, and whether any such belief created any feeling in his mind as against said Frank Steunenberg."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly accepted.

"The jury is instructed that in considering the evidence upon which it is sought to establish the connection of Jack Simpkins with the offense charged in the indictment they are to limit such consideration to the facts and circumstances as



they appear in the case. The fact, if it be a fact, that Jack Simpkins was a member of the Executive Board of the Western Federation of Miners is not, in and of itself, any evidence whatsoever that the defendant is guilty of the offense here charged, even though you should find, and believe from the evidence that the said Jack Simpkins was in some way connected with the said offense. Before you can find the defendant guilty of the offense charged in this indictment upon circumstantial evidence considered in connection with the testimony of the accomplice, such circumstantial evidence must be consistent only with the guilt of the defendant and inconsistent with any upon any rational theory with his innocence. And if, after considering all of the evidence the state has failed to establish such facts and circumstances in addition to the testimony of the said accomplice as tend directly and without the aid of the testimony of the said accomplice to connect the defendant with the offense charged in the indictment beyond a reasonable doubt, it is your duty to give the defendant the benefit of the doubt and to acquit him."

WHICH INSTRUCTION WAS REFUSED BY THE COURT:

To the refusal of the court to give the above and foregoing instruction requested by the defendant, the defendant, by his counsel, then and there duly excepted.

WHEREUPON THE COURT INSTRUCTED THE JURY AS FOLLOWS:

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE  
OF IDAHO, IN AND FOR ADA COUNTY.

State of Idaho,

vs.

William D. Haywood,  
Defendant.

Gentlemen of the Jury:

The evidence in the case having been introduced, and the arguments of counsel being completed it now devolves upon the Court to instruct you in relation to the law of the case, but before doing so I desire to join with counsel for the state and the defendant in congratulating you upon the approaching termination of your duties, and I also wish to extend to you and each of you the thanks of the Court for the attentive manner in which you have thus far performed your duties as jurors in this case.

You have been selected to this responsible position and for the performance of this important duty from a very large number of your fellow citizens after a long, pains-taking and most thorough examination by able counsel. The oath which you took as jurors when sworn to try this cause imposed upon you the most solemn duty that devolves upon any citizen, that of sitting in judgment upon your fellowman.

You have been called here at the busiest season of the year, and perhaps when many of you could not well afford to be



absent from your respective avocations, but the duties here imposed are necessary and essential under our system of government, and if any of you consider the performance of this duty a burden or a hardship, you should feel fully recompensed therefor in the fact that your selection to try this cause from the very large number of jurors examined is a splendid testimonial to your citizenship and should be accepted as a guarantee that you will give this case that conscientious consideration which the law imposes upon you when you take it with you to your jury room for final action thereon.

No. 1.

In your consideration of this case it is your duty under your oaths as jurors to accept the law as given by the court, without limitation or reservation, and follow that law regardless of your own opinion of what the law is or should be and regardless also of any claims or statements made by counsel as to what the law is pertaining to any subject connected with his trial. It is your duty to apply the law given by the court to the facts shown by the evidence. At the same time you are the exclusive judges of the facts, of what has been proved in the case, of the credibility of the witnesses, and the weight to be given to the testimony of each and all of them, and in determining these important questions, you should take into consideration every fact and circumstance in evidence which in your judgment affects the credibility of any witness and the weight

to be given to his or her testimony; and from all the facts and circumstances in evidence it is for the jury to determine what witnesses have spoken truthfully or otherwise and to give credit accordingly; and in determining the weight that shall be given to the testimony of any witness who has testified in this case, you may take into consideration the appearance of such witness upon the stand, as well as the interest that said witness may have in the result of the trial.

No. 2.

In determining the question of the guilt or innocence of the defendant you will only consider such evidence as has been admitted by the court; you will not consider as evidence any statements made by counsel for either the State or the defendant. You should entirely disregard and decline to consider any testimony which may have been objected to and excluded or stricken out upon the trial of the cause. And you will not consider in determining your verdict any portion of the evidence admitted upon the trial and which is hereinafter specifically excluded and withdrawn from the jury. You should not consider or be influenced by any outside matters or influences, and should adhere strictly to your duties as jurors to try the issues in this case upon the evidence and find a verdict in accordance therewith. It is the duty to consider the arguments of counsel so far as they aid and assist the jury in the elucidating the



4

facts and circumstances in evidence and so far as they may aid the jury in reaching a conclusion as to what is shown by the evidence; but no statement of counsel on either side, whether made in their opening statement to the jury or on final argument, which is not fully supported by the evidence shall be given any consideration by the jury.

No. 3.

Upon the trial the witness Orchard was permitted to testify to a conversation between Orchard and Pettibone, in which a conversation it was claimed by the witness that Pettibone had described a trip that Steve Adams had made into northern Idaho, with further statements that Adams had been a party to certain crimes when on that trip. This testimony was admitted on the express promise of the State that it would be directly connected with the defendant Haywood, and that the alleged crimes said to have been committed by Adams were a part of the general conspiracy involved in the case. In the opinion of the Court the proper connection was not made as to the defendants on trial, or the conspiracy relied upon by the prosecution, and I therefore instruct you that in considering this case you will entirely disregard the entire testimony of the witness Orchard upon said subject, and dismiss the same entirely from your consideration for all purposes of the case.

## No. 4.

Upon the trial of this cause a large amount of evidence was introduced by the defense showing a series of deportations of miners and other persons, and other acts of violence, involving the destruction of property belonging to the Western Federation of Miners, or certain local unions thereof. Other evidence was introduced showing that the Pinkerton Detective Agency had placed its detectives in various local unions of the Western Federation of Miners. The above testimony was admitted upon the assumption that the proper connection would be made showing that none of the acts of violence testified to by Orchard were either not committed by Orchard, or if committed by him, that he was procured to commit said acts of violence by some person or persons in the interest of the Mine Owners' Association, the Citizens' Alliance and the military occupants of the various mining camps involved.

In the opinion of the Court the proper connection has not been made which makes the above mentioned evidence material as a defense in this case, as it fails to legally point to any person or combination of persons as either having committed said acts of violence, if the same were committed, or to any person or combination of persons as having procured said Orchard to commit said acts of violence, if actually committed, as claimed by the defense as a basis for the admission of said testimony.

I therefore instruct you that in considering this case you will entirely disregard all evidence introduced by the defense and upon rebuttal in relation to the deportations of



of miners and other persons in the Telluride country, as well as all evidence relating to the destruction of property belonging to the Western Federation of Miners in the same country. You will also disregard all evidence introduced by the defense and upon rebuttal in relation to deportations of miners and other acts of violence including the destruction of property belonging to the local unions of the Western Federation of Miners in the Cripple Creek district after the alleged explosion of the Independence depot as testified to in this case. And you will further disregard all evidence introduced by the defense relating to detectives of the Pinkerton agency having been placed in the local unions of the Western Federation of Miners. All of the testimony referred to in this instruction is hereby withdrawn from the consideration of this jury, and you should dismiss the same from your minds in your consideration of this case.

No. 5.

The indictment in this case is a mere accusation in itself against the defendant, which is not in itself any evidence of the defendant's guilt, and no juror should permit himself to be to any extent influenced against the defendant because or on account of the indictment filed against him and upon which he is being tried.

## No. 6.

The jury are further instructed that the defendant at the outset of the trial is presumed to be an innocent man, and he is not required to prove himself innocent; you should commence the investigation and consideration of this case with the legal presumption that the defendant is innocent of the particular crime with which he is charged in the indictment, also of the intent to commit the same, and you should not upon this presumption throughout your consideration of the evidence until it shall have been overcome by evidence of guilt so strong, credible and conclusive as to convince your minds to a moral certainty and beyond a reasonable doubt that the defendant is guilty. The rule of law which clothes every person accused of crime with the presumption of innocence, and imposes upon the State the burden of establishing his guilt beyond a reasonable doubt is not intended to aid the guilty, but is a humane provision intended so far as human agency can provide, to guard against the danger of any innocent person being unjustly punished. You should therefore carefully consider the evidence in the light of this presumption of innocence, which presumption abides with the defendant throughout the entire trial of the case and until the evidence convinces you to the contrary beyond all reasonable doubt. And it is the further duty of the jury to reconcile the evidence if possible with this presumption of innocence. This presumption of innocence is not an idle form, but is a fundamental and important part of the law of the land, and should not at any stage of your investigation be lost sight of or ignored until your minds are convinced of the defendant's



guilt by the evidence, to a moral certainty and to the exclusion of all reasonable doubt. This presumption of innocence has the weight and effect of evidence in the defendant's behalf, and should continue until it is overcome by competent evidence which displaces any reasonable doubt which you might otherwise have of the defendant's guilt.

No. 7.

The court instructs the jury that in this case the burden of proof rests upon the prosecution to make out and to prove to the satisfaction of the jury, beyond a reasonable doubt, every material allegation of the indictment; and unless that has been done, the jury should find the defendant not guilty.

No. 8.

You are instructed that mere probabilities are not sufficient to warrant a conviction, nor is it sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment. I

To warrant a conviction of the defendant he must be proven to be guilty so clearly and conclusively that there is no reasonable theory upon which he can be innocent when all the evidence in the case is taken together. So that unless the jury, after a careful and thorough inspection and consideration of all the evidence in the case, can say and feel that every material

allegation in the indictment is proven beyond a reasonable doubt, and to a moral certainty, the jury should find the defendant not guilty.

No. 9.

The court instructs the jury that in criminal cases, even where the evidence is so strong that it demonstrates the probability of guilt of the party accused, still if it fails to establish, beyond a reasonable doubt, the guilt of the defendant in the manner and form as charged in the indictment, then it is the duty of the jury to acquit the defendant as to whose guilt they entertain such reasonable doubt.

No. 10.

The jury is instructed that if you believe from the evidence in this case that the State has failed to make out a case against the defendant, beyond a reasonable doubt, you have no right to convict the defendant for a failure to produce testimony upon his part, or for the absence of testimony upon his part.

If, however, it appears that either party has failed to produce any material evidence which is peculiarly within the knowledge or control of such parties, and which would meet, explain or rebut material evidence which has been introduced



against him, the failure to produce such evidence may be considered by the jury in determining the guilt or innocence of the defendant.

No. 11.

The jury is instructed that in this case the defendant William D. Haywood, who is alone on trial, is jointly indicted with others for the murder of Frank Staunenberg. It is charged that the defendant did, on the 30th day of December, A. D. 1903, at the city of Caldwell, in the county of Canyon, and state of Idaho, then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought make an assault upon the said Frank Staunenberg, and with a certain contrivance, generally and commonly called a bomb, made out of and loaded with dynamite, giant powder caps, sulphuric acid, chlorate of potash and other materials or explosive to the grand jury unknown, then and there unlawfully, wilfully, deliberately, premeditatedly, feloniously and of his malice aforethought shoot off, discharge and explode said bomb at, against and upon the person of him, said Frank Staunenberg, with the intent then and there on the part of said William D. Haywood to kill and murder the said Frank Staunenberg, and that by said means and such unlawful, wilful, premeditated and felonious action and with malice aforethought did strike, penetrate, injure and inflict upon the body of the said Frank Staunenberg one mortal wound, of which mortal wound he inflicted on aforesaid Frank Staunenberg

then and there died. There are three counts in the indictment, but the substance of each of them is the unlawful, wilful, deliberate, premeditated and felonious killing of the said Frank Steinerberg with malice aforethought. The essential elements of the offense charged in the indictment consist of the following features: 1st. There must have been a killing; 2nd. That killing must have been unlawful; 3rd. It must have been wilful; 4th. It must have been deliberated upon; 5th. It must have been premeditated; and 6th. It must have been accompanied by malice in the mind of the person or persons doing the killing; and unless these features, and each and every of them, are proven to your satisfaction beyond a reasonable doubt, then the defendant cannot in any event be convicted of murder in the first degree.

#### No. 12.

The jury are instructed in the language of the statute of this state that, murder is the unlawful killing of a human being with malice aforethought. Such malice may be express or implied.

It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.

It is implied, when no considerable provocation appears or when the circumstances attending the killing show an abandoned and malignant heart.

All murder which is perpetrated by means of poison, lying in wait, torture, or by any other kind of wilful, deliberate



and premeditated killing, or which is committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary or mayhem, is murder of the first degree; all other kinds of murder are of the second degree.

Manslaughter is the unlawful killing of a human being, without malice and is of two kinds.

Voluntary, when committed upon a sudden quarrel or heat of passion; and

Involuntary, when committed in the commission of an unlawful act, not amounting to a felony; or in the commission of an unlawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

To make the killing either murder or manslaughter, it is requisite that the party die within a year and a day after the stroke received or the cause of death administered; and in the computation of which the whole of the day upon which the act was done, shall be reckoned as the first.

#### No. 13.

Thus you will see that, by the statute of this state, every unlawful killing of a human being, with malice aforethought, is murder. The distinction between murder of the first degree and murder of the second degree is that in murder of the first degree (unless it was committed in the perpetration or attempt to perpetrate arson, rape, robbery, burglary or mayhem), the killing must be deliberate and premeditated; while in murder of the second degree the killing is not deliberate or premeditated.

In both, however, the killing must have been unlawful, and accompanied with malice; while in manslaughter the unlawful killing is without malice. Thus we have the three grades of crime included in the indictment:

1. Murder of the first degree, which is the unlawful killing accomplished with malice and by a deliberate and premeditated intention to take life, or an unlawful killing committed in the perpetration or attempt to perpetrate any treason, rape, robbery, burglary or mayhem.

2. Murder of the second degree, which is an unlawful killing without deliberation or premeditation, but with malice; and

3. Manslaughter, which is an unlawful killing, without deliberation, premeditation or malice.

No. 14.

Before the defendant can be convicted in this case it is necessary for the state to prove to your satisfaction and beyond a reasonable doubt that the person who is charged to have been murdered in the indictment was killed; that he came to his death by the felonious means mentioned in the indictment; that the place of his death was within the county of Canyon and the state of Idaho, and that it occurred within a year and a day after the infliction of the mortal wound as alleged in the indictment; that such death was felonious, and that the defendant was responsible therefor within the meaning of the law as in these



instructions defined, and unless all of these essential elements are so proven beyond a reasonable doubt, it is your duty to give the defendant the benefit of that doubt and acquit him.

No. 15.

The jury is instructed that the malice mentioned in these instructions may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears or when the circumstances attending the killing show an abandoned and malignant heart.

No. 16.

Malice includes not only anger, hatred and revenge, but every other unlawful and unjustifiable motive. Malice is not confined to ill will toward an individual, but is intended to denote an action flowing from any wicked or corrupt motive; a thing done with a wicked mind, when an act has been attended with such circumstances as evince indications of a heart regardless of social duty or fatally bent on mischief. Hence malice is implied from any deliberate or cruel act against another however sudden/ which shows an abandoned and malignant heart.

## No. 17.

The words, "malice aforethought," do not necessarily imply deliberation or the lapse of a considerable time between the malicious intent to take life and the actual execution of that intent.

Whether the design to effect death was formed on the instant, or had been previously intended, is immaterial, for the malicious killing, if proved, by the evidence, beyond a reasonable doubt, in either case would be murder under the laws of this State.

## No. 18.

The court instructs the jury that under the law no jury should convict a citizen or citizens of crime upon mere supposition, however strong, or simply because there is a preponderance of all the evidence in the case against him, or simply because there is strong reason to believe that he is guilty; but before the jury can lawfully convict they must be convinced of the defendant's guilt beyond all reasonable doubt.

## No. 19.

If it is possible for you to reconcile the facts in



this case upon any reasonable theory consistent with the innocence of the defendant,, William D. Haywood, it is your duty to do so and find the defendant not guilty.

No. 20.

The court further instructs you that each juror must be satisfied beyond a reasonable doubt that the defendant is guilty as charged in the indictment before he can, under his oath, consent to a verdict of guilty; and if any one of your number, after having duly considered all of the evidence, and after having fully consulted with his fellow jurymen, entertains such reasonable doubt of the defendant's guilt, the jury cannot in such case find the defendant guilty.

No. 21.

The jury is instructed that the defendant in this case is charged as a principal under our statute, which provides that "The distinction between an accessory before the fact and a principal and between principals in the first and second degree in cases of felony is abrogated, and all persons concerned in the commission of an offense, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall hereafter be prosecuted, tried and punished as principals, and no other facts need be alleged in any

indictment against an accessory than are required in an indictment against his principal." While this statute does away with the former method of charging an accessory before the fact, it does not do away with the essential elements of proof with respect to such an accessory. In this case it is not claimed that the defendant Haywood was personally present at the time of the commission of the offense charged in the indictment. It is claimed that he, not being present, advised and encouraged its commission, and the plaintiff relies upon such advice and encouragement as having been given by the defendant to the actual perpetrator of the offense prior to its commission; in such case a defendant is defined to be an accessory before the fact, and the burden is upon the state to establish, beyond a reasonable doubt, that he did give such advice and encouragement to the one who committed the acts before he can in any degree be considered guilty thereof.

No. 22.

I further instruct you, gentlemen of the jury, that while proof has been admitted of the commission of other crimes by the defendant and his associates, and tending to prove the commission of such other crimes by them, that it has only been admitted for the purpose of showing the existence of a conspiracy to accomplish certain objects, and that such crimes and the crime resulting in the death of ex-governor Steunenberg as well, were all incidents of such conspiracy; but you must not



forget that the defendant is being tried for the murder of Frank Steunenberg and for that crime alone, and it must be proved by all of the evidence beyond a reasonable doubt, before you can convict that he was guilty of such murder under the instructions heretofore given, and it is not sufficient that you should be satisfied beyond a reasonable doubt that he had been guilty of the commission of other crimes as incident of such conspiracy; if you are not satisfied beyond such reasonable doubt of his guilt upon the charge for which he is being tried; but you are privileged to take such other matters into consideration as part of the evidence in the case, and as incidents and circumstances bearing upon the question of his guilt upon the charge of the murder of Frank Steunenberg.

No. 23.

The State has attempted, by the evidence which it has offered and which has been received, to establish the defendant's connection with a general conspiracy to kill and murder those opposed to the plans and purposes of the Western Federation of Miners, and the leaders thereof, and that the offense which is here charged in this indictment is one of the series of offenses perpetrated in pursuance of that general conspiracy. You are charged that there is but one offense for which the defendant is on trial in this court and in this case, and that evidence of other offenses, if any such have been shown, has been re-

ceived for the sole purpose of determining whether or not such general conspiracy existed, and particularly whether or not the offense charged in the indictment was a part and parcel of that general conspiracy. It makes no difference in this case what crimes have been committed in Colorado, in the Coeur d'Alenes or elsewhere, or who was responsible for the commission of such crimes, if any there be. The defendant cannot be convicted unless the state has established beyond a reasonable doubt that he is guilty of the crime charged in the indictment, to-wit, the felonious killing of Frank Stannenbery.

No. 34.

A conspiracy, within the meaning of the criminal law, consists of a combination between two or more persons for the purpose of accomplishing a criminal or unlawful object, or a lawful object in an unlawful manner. As applied to this case, and under this indictment proof of conspiracy is only proper insofar as it may tend to show a common design to encourage the particular murder charged against the defendant, and it can only be introduced for the purpose of establishing the position of the members of the combine as accessories to the crime of murder.



## No. 25.

The jury is instructed that you cannot convict the defendant in this case because of any alleged connection which he had with any offense against the law which was perpetrated in Colorado or elsewhere, and not charged in this indictment. He cannot be convicted unless his guilt has been established beyond a reasonable doubt, that he if his malice aforethought did aid, assist, procure and abet the felony charged in the indictment, to-wit, the felonious killing of Frank Stearnberg.

## No. 26.

The jury is instructed that the evidence which has been permitted to go before you of the condition of offenses in other states and other places, if any such offenses have been established as having been committed, cannot be received or considered by you as supplying any deficiency whatsoever in the evidence with respect to the killing of Frank Stearnberg. Before the defendant can be convicted in this case the evidence received must establish beyond a reasonable doubt that the defendant was connected with and guilty of the felonious killing, if there was such felonious killing of Frank Stearnberg on or about the 30th day of December, 1905, in the county of Canyon, and in the state of Idaho. It is not enough for you to say that the defendant may have been connected either directly or indirectly with the commission of any other offense at any other time or at any other

place, and the sole object and purpose of allowing such evidence to go before you is to aid you in determining under all of the evidence whether he is guilty of the offense charged in this indictment.

No. 37.

It is not essential to the formation of a conspiracy that there should be a formal agreement between the parties to do the act charged. It is sufficient if the minds of the parties meet understandingly, so as to bring about an intelligent and deliberate agreement to do such acts, and commit the crimes charged, although such agreement be not manifested by any formal words. A conspiracy in the first instance may be established by evidence having no relation to the defendant, by acts of different persons at different times and places or by any other circumstances which prove its existence, but the prosecution are not required to prove the particular time upon which the conspiracy was formed. It is sufficient if the state prove beyond a reasonable doubt that such a conspiracy existed at the time of the commission of the unlawful act, and that the defendant on trial was a member of such conspiracy. An act done by a party to an unlawful conspiracy in furtherance thereof and naturally flowing from the common design, is the act of each and all of the conspirators. And where murder is committed as a result of such conspiracy, each one of the conspirators is



guilty, even though he was not present at the place of the crime, if he aided, abetted and encouraged the commission of the unlawful acts resulting in the crime charged. Therefore, in this case, it is incumbent upon the state to prove beyond a reasonable doubt that a combination and a conspiracy was formed, that is to say, that the defendant and others conspired to kill men who had been prominent in putting down strikes, or who had in any manner opposed the plans and purposes of the Western Federation of Miners and that by virtue of a common design of such conspiracy the killing of Frank Steinhilber was incident thereto. The burden of establishing these facts is upon the prosecution throughout and never shifts to the defendant, and if the prosecution have failed to prove these facts beyond a reasonable doubt, you should find the defendant not guilty. If, however, you believe in this case from the evidence beyond a reasonable doubt, that the defendant William D. Hayward aided, abetted, advised and encouraged the killing of Frank Steinhilber as charged in the indictment, then the said defendant is guilty and it would be immaterial whether he was actually present at the time of the killing or not.

No. 30.

To find a person guilty of a conspiracy to commit a crime, it is necessary for you to be satisfied from the evidence, beyond a reasonable doubt, that the party accused shared in the

criminal purpose; and in this case if you find the defendant did no overt act in carrying out the conspiracy and did not enter into any unlawful agreement, then, even though you should be satisfied from the evidence beyond a reasonable doubt, that the defendant knew of the conspiracy and did not dissent from it, then such knowledge of the conspiracy on the part of the defendant would be insufficient to warrant you in presuming that he was guilty of the crime charged.

## No. 29.

The jury is instructed that even though you believe from the evidence, a conspiracy existed to kill and murder different persons, Frank Steinenberg among others, and that in pursuance of such conspiracy the said Frank Steinenberg was killed yet, unless you are convinced beyond a reasonable doubt that the defendant William D. Haywood, was a member of such conspiracy, and advised, encouraged, aided or abetted therein, you should find him not guilty.

## No. 30.

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



ment killed Frank Steinberg. 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.

No. 31.

The question of whether or not a conspiracy existed which resulted in the felony charged in the indictment in this case is a question solely for the jury, and nothing in these instructions contained is to be regarded by the jury as controlling them in any degree in ascertaining that fact. It is for the jury to say, from all of the facts and circumstances received in evidence, whether or not such a conspiracy existed, and if so, whether or not the felony complained of is proven to exist as the result of that conspiracy, and in such case not only must the felony charged be proved beyond a reasonable doubt before there can be a conviction, but the conspiracy must likewise be proved beyond a reasonable doubt or the defendant is entitled to an acquittal.

## No. 32.

The jury is instructed that the burden is on the prosecution to prove beyond a reasonable doubt that a combination and conspiracy were formed to kill Frank Steunenberg, and that the defendant was a party thereto, and that the said Steunenberg was killed in pursuance of said conspiracy. The burden of establishing these facts is upon the prosecution throughout, and if the prosecution has failed to prove beyond a reasonable doubt each and every one of these facts you should acquit the defendant.

## No. 33.

I further instruct you that if you find from the evidence beyond a reasonable doubt that a conspiracy existed and that the defendant was a member of such conspiracy or aided, advised and encouraged the same, and as a result of such conspiracy the life of Frank Steunenberg was taken by a member of such conspiracy, then I instruct you that, whatever crime or degree of crime the conspirator who caused the death of said Frank Steunenberg was guilty of, the defendant would be guilty of the same crime or grade of crime, as the act of one conspirator in furtherance of the conspiracy is the act of all.



No. 34.

The jury is instructed that the witness Harry Orchard claims that he was an accomplice in the commission of the offense charged in the indictment. An accomplice is defined to include all persons who have been concerned in the commission of a crime, whether they are considered in strict legal propriety as principals in the first or second degree, or merely as accessories before or after the fact. Under the statutes of this state a person cannot be convicted of a crime upon the testimony of an accomplice unless such accomplice is corroborated by other evidence which of itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

By corroborative evidence is meant additional evidence of a different character to the same point.

The law views with distrust the testimony of an accomplice on account of the motive he may have for laying the responsibility of his crime upon another when by so doing he may secure immunity for his own participation in the crime charged. For this reason the law exacts such corroboration and although the jury may believe that the testimony of an accomplice is true, and that the defendant on trial aided, assisted and abetted such witness in the commission of the offense charged, still the jury could not convict the defendant upon such testimony unless they further find that the testimony of the accomplice is corroborated by

other and independent evidence as above stated. The corroborating evidence above referred to must of itself and without the aid of the testimony of the accomplice, tend in some degree to connect the defendant with the commission of the offense charged. This corroborating evidence need not be sufficient of itself to establish the guilt of the defendant, but it must tend in some degree to implicate and connect the defendant with the commission of the crime charged. The provisions of the statute requiring the corroboration of an accomplice are fulfilled if there be any corroborating evidence which of itself tends to connect the defendant with the commission of the offense charged. The statute does not require that the accomplice should be corroborated in respect to every material fact, but only in respect to such of the material facts as constitute a necessary element in the crime charged.

No. 35.

The court instructs the jury that in order to ascertain whether or not the testimony of the accomplice is corroborated, as the law provides it must be before a conviction would be warranted, you should eliminate from the case the evidence of the accomplice and examine the evidence of the other witnesses with the view to ascertain if there be evidence tending to connect the defendant with the offense. If there is, the accomplice is corroborated; if there is no inculpatory evidence there is no corroboration, though the accomplice may be corroborated in regard



to any number of facts sworn to by him.

No. 36.

You are further instructed that although you may find from the evidence that Orchard is corroborated by other evidence independent of his own as to the commission of the particular offense charged, as well as other offenses claimed to have been committed by said Orchard, still if this is the extent of the corroboration, you cannot convict under the statute because the statute requires that the corroborative evidence particularly referred to in these instructions must tend to connect the defendant with the particular offense upon which he is now on trial.

No. 37.

You are instructed that an accomplice cannot be corroborated by evidence confirming the truth of his testimony in regard to immaterial matters.

No. 38.

The jury are instructed that you should not understand by the rule with reference to the corroboration of an accomplice

that the statute requires that the whole case should be proved outside of the testimony of an accomplice. Such a rule would render the testimony of an accomplice in most cases unnecessary and would defeat the policy of the law which permits accomplices to testify as witnesses in aid of and in the interest of public justice. It is therefore not necessary that the corroborative evidence itself should be sufficient to show the commission of the crime or to connect the defendant with it. It is sufficient if it tends to connect the defendant with the commission of the crime. And the corroborating evidence under the law need not be founded upon facts directly connecting the defendant with the commission of the offense, but it is sufficient if the corroboration consists of circumstantial evidence tending to connect the defendant with the commission of the offense charged.

No. 39.

The jury is instructed that in this case the state relies upon circumstantial evidence to establish the connection of the defendant with the conspiracy sought to be proven by the evidence taken in connection with the direct testimony of the accomplice Harry Orchard. Unless there is some evidence other than the evidence of Orchard which tends directly to connect the defendant with the offense charged without the aid in any degree of the testimony of the said Orchard, there can be no conviction in this case; and in determining whether or not the circumstances offered and received in evidence tend to show such connection,



it is your duty to consider all such circumstances in the light of the presumption that they are innocent in themselves if they so appear; and if such circumstances, when so considered, are consistent with any hypothesis of innocence, it is your duty to give to such circumstances that consideration and to acquit the defendant.

No. 40.

Circumstantial evidence in criminal cases is the proof of such facts and circumstances, connected with or surrounding the crime charged, as tends to show the guilt or innocence of the party charged; and these facts and circumstances must be sufficiently conclusive to convince the jury to a moral certainty and beyond a reasonable doubt of the guilt of the defendant as charged in the indictment before the jury can convict him; and if the facts and circumstances shown by the evidence in this case, are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendant guilty.

The law demands a conviction wherever there is sufficient legal evidence to show the defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

No. 41.

The Court instructs you that an accomplice cannot

corroborate himself by his own words or deeds. The corroboration to satisfy the statute must come from some independent source, and must tend to connect the accused with the crime; mere corroboration as to immaterial matters testified to by the accomplice, or as to the fact that a crime had been committed, or as to the connection of the accomplice therewith, or all these combined, will not suffice.

No. 42.

The Court instructs the jury that a bare suspicion falls short of such corroboration as can be safely relied upon to support a conviction.

No. 43.

The jury is instructed that when the proof of a conspiracy is circumstantial, a defendant's connection with it must be established by evidence of his own acts and declarations, -- not those of others.

No. 44.

The jury is instructed that in order to justify an inference of legal guilt from circumstantial evidence, the existence



of the inculpatory facts must be absolutely incompatible with the innocence of the accused upon any rational theory, and incapable of explanation upon any reasonable hypothesis other than that of his guilt.

## No. 45.

The jury is instructed that where in a criminal prosecution the state relies upon circumstantial evidence for a conviction, such circumstantial evidence must be inconsistent with any hypothesis of innocence and consistent only with the hypothesis of his guilt; and if after a consideration of such evidence together with the direct evidence if any, the jury has a reasonable doubt as to whether or not the defendant is guilty, it is their duty to give him the benefit of that doubt and acquit him.

## No. 46.

The Court instructs the jury that if you believe from the evidence herein that the witness Harry Orchard was induced or influenced to become a witness and to testify in this case by any promise of immunity from prosecution or punishment, or by any hope held out to him that if he testified against the defendant he would not be prosecuted or punished, then the jury should take such facts into consideration in determining the weight which ought to

be given to testimony so obtained. Such testimony should be received by the jury with caution and scrutinized with great care.

No. 47.

The jury is instructed that they are entitled to take into consideration all of the facts and circumstances, so far as the same have been received in the evidence occurring subsequent to the arrest of the witness Harry Orchard, for the purpose of determining the weight which the jury will give to his testimony; if the jury believe from the evidence that the said Orchard has been treated differently than he would have been treated had he not made a confession and agreed to furnish evidence to the state, then and in that event that is a matter which should be taken into consideration by the jury in determining the credibility of said Orchard. And if the jury believe from the evidence that any hope or promise of immunity either in whole or in part, has been made to the said Harry Orchard, whereby the said Harry Orchard will not be punished at all, or his punishment shall be modified in any way or to any extent, then those facts should be taken into consideration by the jury as affecting his credibility. And, if from the evidence, it appears that any favors have been extended by the authorities of the state of Idaho to the witness, Harry Orchard, and there is any promise, either express or implied, relating to further favors to be received by him on account of his testimony in this case, then these are proper



matters for the consideration of this jury, as affecting the credibility of the said Orchard's testimony.

While the rules of evidence are the same with respect to the weight and credence to be given to the testimony of other witnesses, such weight and credence is to be determined in the light of all the existing facts and circumstances surrounding any witness, so far as the same shall be in evidence. And from all such facts and circumstances you will make up your mind as to that amount of weight and credence you will give to the evidence of the witness Harry Orchard and determine accordingly. But in determining whether or not the said witness Harry Orchard has been promised immunity from punishment, or been extended any hope of immunity, or that his punishment shall be in any way modified or diminished in consideration of giving such testimony, you should consider only the sworn evidence in the case in determining such facts.

No. 43.

If the jury believe from the evidence that any of the witnesses for the prosecution were induced or influenced to become witnesses and testify in this case by any promise of immunity from punishment, or by any hope held out to them by anyone that it would be better for them or go easier with them in case of their testifying in the case, then the jury should take such facts into consideration and determine the weight which ought to be given such testimony thus obtained and given under the influence

of such promise or hope. Such testimony should only be received by the jury with great caution and scrutinized with great care.

No. 49.

The court instructs the jury that they are the sole judges of the facts in this case, and of the credit to be given to the respective witnesses who have testified; and in passing upon the credibility of such witnesses they have the right to take into consideration their prejudices, motives or feelings of revenge, if any such have been proven or shown by the evidence in this case; and if the jury believe from the evidence that any witness or witnesses have knowingly and wilfully testified falsely as to any material fact or point in this case, the jury are at liberty, unless corroborated by other evidence, to disregard the entire testimony of such witness or witnesses.

No. 50.

The verdict of not guilty means no more than this, that the guilt of the accused has not been demonstrated in the precise, specific and narrow terms prescribed by law. The evidence to convict the accused must not only be beyond all reasonable doubt consistent with the hypothesis of his guilt, but it must be beyond all reasonable doubt inconsistent with any hypothesis of innocence that can be reasonably drawn therefrom.



## No. 51.

The jury is instructed that the court has allowed to be received in evidence two decisions of the Supreme Court of the State of Colorado. In considering these decisions the jury is limited to one matter and one alone. These decisions were allowed for the purpose of enabling the jury to determine whether or not the defendant had any motive whatsoever to commit any offense against Justices Gabbert and Goldard, of the Supreme Court of the state of Colorado, and not for the purpose of establishing that there was any offense committed against or upon the said justices, or that the defendant participated therein, or was in any wise connected therewith. If any such connection exists it can only be determined by the jury from the other evidence in the case. Such opinions are received for the purpose of determining the question of motive only.

## No. 52.

The jury is instructed that certain articles have been received in evidence from the Miners' Magazine. These articles should not be considered by the jury as evidence of the existence or non-existence of any fact or facts stated in them or either of them. This evidence was received for the sole purpose of determining whether or not any motive existed on the part of the defendant to participate in the offense charged in the indictment, and not for the purpose of establishing in any wise the commission of such an offense.

## No. 53.

Your personal opinion as to facts not proven cannot properly be considered as the basis of your verdict. You may believe as men that certain facts exist, but as jurors you can only act upon evidence introduced upon the trial, and from that, and that alone, you must form your verdict, unaided, unassisted and uninfluenced by any opinion or presumption not founded upon the testimony.

## No. 54.

You should not be governed, controlled or prejudiced by any remarks or statements made by either court or counsel in the discussion of questions of law or the admissibility of evidence during the trial. These were questions of law for the court to pass upon, and any remarks made by the court in so doing should not in any way influence your verdict, and you should disregard any expression of the court which might seem to assume the existence of any facts or what had been proven; what are the facts and what has been proven are matters wholly for the jury.

## No. 55.

The jury is further instructed that by statutory provision the defendant in a criminal case is made a competent wit-



ness in his own behalf, and where he testifies, as in this case, becomes the same in all respects as any other witness, and his testimony must be tested by the same rules or tests that are applied to other witnesses, and the jury may take into consideration the interest he may have in the case in determining the weight to be given to his testimony.

No. 55.

The jury is instructed that where the evidence of any witness is contradicted by the evidence of any other witness or witnesses, it is their duty to determine the force and effect to be given to the evidence so contradicted, as well as the evidence contradicting it, and in this case if they find that the evidence of the witness Harry Orchard has been contradicted by other witnesses, it is their duty to take into consideration all of the facts and circumstances surrounding the testimony of said Orchard in the light of the testimony given by such contradicting witnesses. The fact that he has been charged with the murder of Frank Stangenberg; the fact that he confessed himself to be guilty of that murder; the fact of his imprisonment under the charge of that murder; the facts and circumstances surrounding that imprisonment, and the fact that none of the witnesses so contradicting him, other than the defendant and the witness Meyer, are under any charge of connection with the offense charged, or complicity therein, and from all of such facts and circumstances the jury will determine what weight shall be given to

the testimony of all of the witnesses in that respect.

No. 57.

A witness may be impeached by the party against whom he was called, by contradictory evidence, and that he has made statements out of court contrary to what he has testified to on the trial, or by evidence that his general reputation for truth, honesty and integrity is bad. But he cannot be impeached by evidence of particular wrongful acts, except, that it may be shown by the accusation of the witness or the record of the judgment that the witness has been convicted of a felony.

No. 57-a.

The jury are instructed that the flight of Jack Simpkins, if you find such flight to have taken place, standing alone would not of itself be any evidence of the guilt of the defendant. But you are further instructed that if you find that said Simpkins did after the arrest of Orchard flee or become a fugitive from justice, then that fact may be taken into consideration together with all the other facts of the case in determining whether or not said Simpkins was a member of said conspiracy which the state has sought to prove and of which conspiracy it is claimed by the state that the defendant was a member.



## No. 58.

You are instructed that under the indictment in this case the defendant may, if the evidence warrants it, be convicted of murder of the first degree, murder of the second degree, man-slaughter, or you may find him not guilty.

## No. 59.

The jury are instructed that before the defendant can be convicted under this indictment of any offense, or of any grade of the offense charged in the indictment, each and every material allegation of the indictment must be proved to their satisfaction beyond a reasonable doubt; and if the jury have a reasonable doubt as to the truth of any one or more of the material allegations of the indictment going to constitute the crime of murder, or the lesser degree of homicide, they must acquit the defendant.

## No. 60.

The material allegations of the offense which, before a conviction can be had, must be proven beyond a reasonable doubt and to a moral certainty are:

1. That Frank Steunenberg is dead.
2. That he came to his death in the county of Canyon, state of Idaho.

3. That William D. Hayward, the defendant, unlawfully, wilfully, feloniously and of his deliberately, premeditated malice aforethought, by the means set forth in the indictment, killed and murdered said Frank Stearnsberg.

4. That said Frank Stearnsberg died within a year and a day after the stroke received or the cause of death administered.

Sub-division 3 of this instruction must be read and considered by the jury in connection with instruction No. \_\_\_\_\_ as well as all the instructions in this case.

No. 31.

A reasonable doubt as used throughout these instructions is such a doubt as a prudent and reasonable man would be likely to act upon in determining the important affairs of life.

A doubt produced by undue sensibility in the mind of a juror in view of the consequences of his verdict is not a reasonable doubt, and the jury is not allowed to create sources or materials of doubt by remote conjectures or to possible states of the case different from those established by the evidence. You are not at liberty to disbelieve as jurors, if from the evidence you believe as men. Your oath imposes upon you no obligation to doubt when no doubt would exist if no oath had been administered, and in considering the case, the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical or conjectural.

A doubt to justify an acquittal must be reasonable and



must arise from a candid and impartial consideration of all the evidence in the case, and unless it is such that were the same kind of a doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it would be sufficient to authorize a verdict of not guilty. If, after considering all the evidence you can say you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

## No. 62.

The jury is instructed that in considering the law applicable to the case they are not to single out any one instruction as <sup>saying</sup> ~~being~~ all of the law of the case. These instructions are to be taken as a whole and considered as a whole by the jury. No one of them states all of the law of the case, but all of them when taken together state the law which is to be applied to the facts in the case as the jury shall find them to exist.

## No. 63.

In conclusion, you are to determine the question as to whether or not the defendant killed and murdered Frank Stannenberg as charged in the indictment, or aided and abetted such killing. If so, you should find him guilty; if not, you should find him not guilty.

## No. 64.

## No. 64.

You are instructed that, to render a verdict the same must be the result of your unanimous action, and in arriving at a verdict you should not resort to any means or methods of chance; and when you have agreed upon a verdict your foreman will sign the same and you will return such verdict into open court.

## No. 65.

Gentlemen of the jury, the court now delivers this case into your hands. It is your duty to consider it and deliberate upon it without fear and without favor. If the evidence shows that any individual or individuals, any person in any private or official capacity, or any class or classes of people are interested in any way in the conviction or acquittal of this defendant, such fact or facts should not be considered by you or have any influence upon your deliberations. You are here to try and determine this case between the state of Idaho and the defendant, William D. Heywood. If, under the law and the evidence, you find that he is guilty as charged in the indictment, it is your duty to convict him; if you have any reasonable doubt of his guilt, it is your duty to acquit him. And in the consideration of this case I again admonish you that it is your duty to consider it in the light of the instructions heretofore given that the defendant is presumed to be innocent of the crime with which he is charged until his guilt is established beyond all reasonable doubt.

I herewith submit for your consideration appropriate forms of verdict suitable to any conclusion you may reach.



THE COURT: Now, gentlemen, in reference to the papers that are to go out, is the evidence prepared that has been introduced, that is to go to the jury.

MR. DARROW: What is to go with the jury besides the instructions?

MR. DONAH: I suppose there are a number of exhibits that can be picked out.

THE COURT: Do you want them to go to the jury?

MR. DONAH: The supreme court has said they cannot go unless by agreement.

THE COURT: That is why I asked you. The exhibits will not go except by agreement of counsel. There is certain documentary evidence that can go to the jury.

MR. RICHARDSON: If there is anything the jury want I would say, let them have it. Your Honor speaks of documentary evidence,-- there are the depositions which are certainly documentary evidence.

THE COURT: The statute especially excepts depositions.

MR. RICHARDSON: My opinion would be that if there is anything the jury want, to let them have it, and if they don't want anything, all right. Of course let them take the instructions.

MR. DONAH: That would be satisfactory to us.

THE COURT: Very well, let them take the instructions, and if there is anything else they want we will supply it. You may retire, gentlemen.

Thereupon the bailiffs were sworn and the jury retired in charge of said bailiffs, to their jury room, there to consider of their verdict.

MR. RICHARDSON: If your Honor please, we have not a copy of the instructions. We would be glad to have them, but I suppose it is not necessary to put the exceptions in a formal manner to them until we see what the jury does, for if they should disagree it would be unnecessary, and if they should bring in a verdict of conviction then I presume we may have the privilege.

THE COURT: That is satisfactory to the court.

MR. RICHARDSON: And then we can take our exceptions.

THE COURT: Yes sir. I will state that ~~we~~ I have only one copy of the instructions, but you can take these if you desire.

MR. RICHARDSON: We will take good care of it.

MR. BORAH: I desire to withdraw exhibit Z-2, to have a certified copy of it made and placed here in its place.

THE COURT: It will be permitted. We will take a recess until two o'clock.

Thereupon the defendant was remanded to custody, and a recess was taken until two o'clock P. M.

R E C E S S.



Boise, Idaho, Sunday, July 28th, 1907.

7:30 o'clock A. M.

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The parties met pursuant to notice.

The defendant present in court.

Thereupon the jury returned their verdict, as follows:

"In the District Court of the Third Judicial District.

State of Idaho

vs.

William D. Heywood;

We, the jury in the above entitled cause, find the defendant, William D. Heywood, not guilty.

Thos. B. Goss, Foreman."

Hereupon an adjournment was taken until Monday, July 29th, 1907, at ten o'clock A. M.

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Boise, Idaho, Monday, July 29th, 1907.

10 o'clock A. M.

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The clerk read the minutes of the session of July 27th and July 28th, 1907, and the same were signed by the court.

THE COURT: Gentlemen, are you ready to advise the court as to what action you wish to take in reference to the cases against Moyer and Pettibone?

MR. DARROW: Your Honor, we had a conference and agreed that it should stand over until two o'clock, if it is satisfactory to the court, and we will see how much we can agree on, and come in at that time.

THE COURT: The court will give you time to agree, gentlemen, provided you agree today.

MR. DARROW: Well, we will do that today. I think we can agree on as much as possible by two o'clock. We will make it one o'clock if it will be better for the court or anyone else.

THE COURT: No, at two o'clock. We will go back to the usual hours.

MR. DARROW: Does your Honor want to go out of town today or tonight?

THE COURT: No sir.

MR. DARROW: Tomorrow?

THE COURT: It is the intention of the court to adjourn court tomorrow night.

MR. DARROW: So any order could be entered tomorrow easy enough?



THE COURT: Yes sir, the court will be in session tomorrow.

Mr. Clerk, I wish you would notify the attorneys as far as you can between now and tomorrow afternoon, the time of adjournment, that the court will hear any default matters that they wish to present in the meantime. Is there anything else, gentlemen?

MR. DASHOW: I don't believe we have anything else, your Honor.

THE COURT: The court will take a recess until two o'clock.

Recess until two o'clock this afternoon.

Boise, Idaho, Monday, July 29th, 1907.

2 o'clock P. M.

THE COURT: Gentlemen, are you ready to move in the matter of these other defendants?

MR. BORAH: When will the term of court be so that we can try one of the other defendants?

THE COURT: The September term will open on the first Tuesday of September, that is the 3rd.

MR. BORAH: We would ask that the State vs. Pettibone be set for trial, but we would like to have it set about the first of October.

THE COURT: Do you want it set for the first day of October?

MR. BORAH: Yes. I think, though, that perhaps the defendants ought to be present, ought they not?

MR. DARROW: Your Honor, we will be ready the first of October. We would like to have it set for as early a day as we can have it set.

THE COURT: Bring up the defendant, Mr. Sheriff.

MR. BORAH: I understand there is to be some action in the Mayer matter, so I suppose he had better be brought up too.

THE COURT: If there is going to be any action taken in the Mayer matter, bring up Mr. Mayer and Mr. Pettibone both, Mr. Sheriff.

(Defendants Charles H. Mayer and George A. Pettibone were here brought into court.)



THE COURT: Gentlemen, are the appearances for these defendants the same as in the Haywood case?

MR. DAWSON: They are at the present time, your Honor. So far as the Pettibone case is concerned, we want to try it at the earliest possible time and we are willing to have it set down for the first day of October.

THE COURT: The case may be set down for the first day of October, Mr. Clerk.

MR. DAWSON: Now, your Honor, we want to move for bail in the case of Meyer, and we have had a conference with counsel for the other side on that question, and I take it that that will not be opposed, and we can agree on the size of the bond, if it meets the approval of the court. Anyhow we want to move for bond in that case.

THE COURT: There is no question about the power of the court to admit to bail?

MR. BORAH: Not in my judgment.

THE COURT: Do you agree upon the amount of the bond, gentlemen?

MR. BORAH: I suggest twenty-five thousand dollars.

MR. DAWSON: I think that is reasonable, your Honor. We haven't the bondsmen here but we hope to have them before night.

THE COURT: The defendant Meyer will be admitted to bail in the sum of twenty-five thousand dollars and the record may show if it is made by agreement of counsel for the state and for the defendant.

MR. DAWSON: And to appear at the time set for him to appear or from time to time as he is notified.

THE COURT: From time to time whenever wanted.

MR. DARROW: Of course we would be notified at Denver when he is wanted. He will go out of the state but he will always be ready.

THE COURT: It must be a continuing bond.

MR. BORAH: I should say to appear October first and make it a continuing bond and then it would not be necessary for him to appear until we notify him.

MR. DARROW: Yes, to appear October 1st and be a continuing bond. That will be satisfactory. Now, I suppose that bond will be subject to the approval of the court. It may come any time this afternoon, and if it could be left with the clerk--

THE COURT: I suppose you expect to give a surety bond?

MR. DARROW: I think we will give a personal bond here. It may be a surety bond, however. We have got some arrangement to make that we are trying to make by wire.

THE COURT: Does our statute, Mr. Borah, show how the bond shall be approved, whether by the clerk or by the court?

MR. WILSON: By the Court.

THE COURT: The court will approve the bond in this case.

MR. DARROW: You will be within call this afternoon?

THE COURT: Yes sir.

MR. DARROW: Now we may want to make another motion tomorrow morning, and I suppose, as the court said this morning, you will be here?

THE COURT: The court will be in session tomorrow morning at ten o'clock.



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MR. DAWSON: We may ask for another band tomorrow morning. I am not saying whether we will or whether we will not. But if we do, we would like to come in then.

THE COURT: The court will be in session tomorrow morning. Have you anything else, gentlemen?

MR. DAWSON: I guess that is all we have.

THE COURT: These defendants will be remanded to us today. Mr. Sheriff, the court will take a short intermission.

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INTERMISSION.

Beine, Idaho, Tuesday, July 30th, 1907.

10 o'clock A. M.

Court convened pursuant to adjournment.

The clerk read the record of the proceedings of the sessions of Monday, July 29th, 1907, and the same were signed by the court.

THE COURT: Is there anything to present to the court?

MR. DARRON: Your Honor, may we ask to have Mr. Pettibone brought up?

THE COURT: Yes sir. Mr. Sheriff, you may bring Mr. Pettibone into court.

Thereupon Mr. George A. Pettibone, one of the defendants herein, was produced in court in charge of a deputy sheriff.

MR. DARRON: Your Honor, the State agreed with us in the Meyer case, but they don't feel like consenting in the case of Mr. Pettibone to fixing a bond and admitting him to bail, and I wish to make a motion that the defendant Pettibone be admitted to bail. After all that has been said in this case, I don't think it is necessary to argue it, and I don't care to argue it. I just submit the motion.

THE COURT: The motion will be denied.

MR. DARRON: It is not necessary to take any exception; it is a matter within the jurisdiction of the court and consequent-



ly we are not entitled to an exception. Now, as to the bond in the other matter, they are writing it up and I suppose within thirty minutes at least we will be ready with it, and the court will be in chambers or here?

THE COURT: The court will very likely be in session. I have some other matters.

MR. BORAH: The court will not want us here, will you?

THE COURT: I would prefer that the bond be submitted to counsel for the state before passing on it.

MR. DABROW: We will submit it to the Senator for his O. K. first before bringing it to the court for approval.

THE COURT: Any further use for Mr. Pettibone?

MR. DABROW: No, not now.

THE COURT: The defendant will be remanded.

Thereupon the defendant was remanded to custody, and counsel retired to prepare the bond in the case of Mr. Moyer for presentation to the court.