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C. S. DARROW

HAYWOOD  
TRIAL

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Volume 4.

June 18, 19, 20, 21, 24, 1907.

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WOOD & WILSON,  
ATTORNEYS AND COUNSELORS,  
OVERLAND BLOCK,  
BOISE, IDAHO.

CABLE ADDRESS:  
WOODSON, IDAHO.

Archives  
University of Colorado  
at Boulder Libraries  
HEMONT WOOD.  
EDGAR WILSON.

BOISE, IDAHO.

Did you have a conversation with  
our Allen F. Hill <sup>formerly Capt. Eng. of Spokane</sup> about November 1st  
1905 at the corner of Riverside <sup>and Howard</sup>  
Streets, in the City of Spokane, Washington  
Jack Simpkins <sup>being present</sup> about <sup>which the following was said, to wit</sup>  
which the following was said, to wit

WOOD & WILSON,  
ATTORNEYS AND COUNSELORS,  
OVERLAND BLOCK,  
BOISE, IDAHO.

CABLE ADDRESS:  
WOODSON, IDAHO.

Archives  
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FREMONT WOOD,  
EDGAR WILSON.

BOISE, IDAHO.

Did you in February 1899 and  
afterwards about March 22, 1899 at  
the residence of Mr. Allen F. McGill  
in Burke, Blaine Co. Idaho offer  
to sell to Mr. Allen F. McGill your  
interest in the Hercules Mine?  
Did you any time?

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Boise, Idaho, Tuesday, June 18, 1907.

9:30 o'clock A.M.

Parties met pursuant to adjournment.

The clerk read the minutes of the session of Saturday, June 15th, 1907, and the same were signed by the court.

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

JAS C. NICHOLS, a witness on behalf of the People, being first duly sworn, on oath testified as follows

DIRECT EXAMINATION

BY MR. HAWLEY;

- Q. What is your name? A. J. C. Nichols.
- Q. Where do you reside? A. Caldwell, Idaho.
- Q. Were you residing in Caldwell in the fall of 1905 and the spring of 1906? A. Yes sir.
- Q. What official position, if any, were you holding at that time? A. Sheriff of that county.
- Q. As such sheriff did you become acquainted with Harry Orchard? A. I did.
- Q. State whether or not he was in your custody and under your control for a certain time? A. Yes sir, he was in my care and custody.
- Q. What months? A. From the 31st of December until some time in January I think it was.
- Q. 31st of December until some time in January? A. Yes sir.

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- Q. State whether or not while he was in your custody any letter was received by him? A. Yes sir, there was a letter received about the 3rd or 4th day of January.
- Q. 3rd or 4th? A. Yes sir.
- Q. In whose hands was that letter delivered and by whom?
- A. The letter was delivered to Harry Orchard in the jail by myself.
- Q. As sheriff? A. Yes sir.
- Q. State whether or not you opened that letter before making the delivery? A. I did.
- Q. What, if anything, did you do in regard to taking a copy of the contents and the envelope? A. I copied the letter.
- Q. Have you that copy? A. Yes sir.
- Q. Did you copy the envelope too? A. A part of the envelope.
- Q. You have the copy of both, have you? A. Yes sir.

MR. HAWLEY: Please mark this.

(Said paper marked by the stenographer as People's Exhibit X for identification).

- Q. I will hand you plaintiff's Exhibit X for identification. You may state what that is. A. That is a pen copy of a letter that Harry Orchard received while in jail in my custody.
- Q. Made by whom? A. Made by myself.
- Q. State whether or not it is an exact copy of that letter.
- A. As near as I could make it with the pen with the exceptions of this part that is marked "Cancellation stamp": That, -- the two letters in that is correct, but the number of lines I am not sure that that is right.
- 1584 Q. The writing of the letter then is correct, is it? A. Yes sir.

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Q. Was there any signature to that letter when it was received?

MR. RICHARDSON: If your Honor please, the letter will speak for itself on that subject. We object to his examining us to the contents of any writing.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q. State whether or not there was any signature to that letter when it was received. A. There was no signature.

Q. I understood you to say you made a copy of the envelope.

A. The copy of the postmark on the envelope is here on this copy, so marked.

Q. On the lower part? A. Yes sir, right in this.

Q. Under the word "Postmark"? A. Yes sir, that is one, the postmark; and this ~~addressed to~~ addressed to, and the cancellation stamp, that represents the cancellation stamp.

Q. After this copy was made by you in whose possession was it placed? A. The copy?

Q. Yes. A. I retained possession of it for some few days and I let Mr. Hanson have it a day or two and then he returned it to me.

Q. It has been in your custody all the time then? A. Practically.

Q. State whether or not it is in the same condition as when you made it? A. It is except the wear of the paper.

Q. Outside of the wear? A. Yes sir.

Q. There has been no additions or alterations or erasures?

A. No sir.

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Q. Do you know Fred Miller? A. Yes sir.

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- Q. One of the attorneys for the defense. Do you know when Fred Miller reached Caldwell? A. I don't remember the date.
- Q. Can you approximate the date? A. Not very closely.
- Q. Do you know of any telegram being received by Orchard prior to that time? A. Yes sir, he received a telegram.
- Q. State whether or not you as sheriff opened that telegram? A. Yes sir, I opened the telegram.
- Q. I will call your attention to plaintiff's Exhibit P; State what that is, if you know. A. As near as I can recollect this is the same wording telegram that I read and delivered to Harry Orchard.
- Q. That you delivered to Orchard on that occasion. Had any telegram been sent by Orchard prior to that time to your knowledge? A. Not to my knowledge.
- Q. Could any telegram have been sent without your knowledge? A. Not very well. I gave strict orders for nothing to go out but what I saw unless it be through his attorney.
- Q. You may state whether or not any order of any kind was given by Orchard to any person while he was in your custody? A. Soon after Mr. Fred Miller arrived he had an interview with Harry Orchard and he had a paper with some writing on that he said was an order --
- Q. Who said that? A. Mr. Miller, also Mr. Orchard.

MR. RICHARDSON: We move to strike that out as incompetent, immaterial and irrelevant as against the defendant William D. Haywood who is on trial, not binding upon him in any way.

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THE COURT: The motion will be denied. They are not



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attempting to show yet what the order was.

MR. RICHARDSON: Note our exception.

Q. What were the rules and regulations of your jail at that time with reference to communications in writing passing from those in your custody to other persons? A. No communications in writing was allowed to go out unless they was examined by me or my deputy, except between the prisoners and their attorneys.

Q. Where was this particular order made?

A. In the court room in the court house. I had taken Harry Orchard up there to have an interview with Mr. Miller.

Q. About how long was it after Miller came there? A. I think it was the next morning after he arrived.

Q. And that was not long before the preliminary examination? A. I can't say, for I was away a good deal of the time, and when the preliminary was -- I wasn't there at his preliminary examination.

Q. To whom was this order directed, if you recollect?

A. I didn't read the order, but they told me --

MR. RICHARDSON: We object to what they told him.

Q. Who told you? A. Fred Miller and Harry Orchard.

Q. I will ask you now what they told you with reference to that matter.

MR. RICHARDSON: We object to that as immaterial, irrelevant, incompetent, not binding upon the defendant nor tending to connect him in any way with the offense here charged.

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THE COURT: The objection will be sustained as to any

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statement Orchard made in relation to the matter.

- Q. I will ask you what statement, if any, Mr. Miller made with reference to that?

MR. RICHARDSON: We object to any statement made by Mr. Miller. Mr. Miller was not at that time Mr. Haywood's attorney, had no relation to Mr. Haywood, was not authorized to speak for him, immaterial, irrelevant, incompetent, and a lawyer could not speak for a client in a criminal case anyway so it would be binding.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

- A. Mr. Miller told me that it was a general order anybody that owed Harry Orchard money to pay him the money, to pay Mr. Miller the money.

MR. RICHARDSON: I move to strike that out as incompetent, irrelevant and immaterial, not binding upon Mr. Haywood, not tending to connect him in any way with the offense here charged.

THE COURT: I will hear you, gentlemen, on the materiality of this.

MR. HAMILTON: So far as its present status is concerned, we admit it is not material, that is, a general order; but the materiality of it will be brought in afterwards, we apprehend, because we expect to connect it with the Western Federation directly. If we don't, we certainly could not introduce it. If we do, it would be competent testimony, and for that reason; but we are compelled to bring it in at this time and make our preliminary proof in regard to it at

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this time.

THE COURT: Upon the assurance of counsel that they will connect the testimony, I will deny the motion.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: Take the witness.

MR. RICHARDSON: That is all.

MR. HAWLEY: Can you inform me, Mr. Richardson, when Mr. Miller will return?

MR. RICHARDSON: When he gets those depositions which he was sent for. He will be right back just as quick as he gets them.

MR. HAWLEY: That ought to be --

MR. RICHARDSON: The depositions are expected to be taken today and tomorrow and he will be here as soon after that as the train will bring him here.

MR. HAWLEY: He will return here immediately?

MR. RICHARDSON: Yes sir, he will return here. He was the only available man we had to send after those depositions so we sent him. We had him around here for these four weeks so that if you had wanted to have subpoenaed him you could have done so.

MR. HAWLEY: We are not complaining at all. We were simply asking the question. We will recall Mr. Orchard. I believe you are ready to proceed with your cross examination.

MR. RICHARDSON: I am not. There are two witnesses who have not gotten here that I cannot fix the time and place of conversations with until they get here.

MR. HAWLEY: You can go ahead with what you have here?

MR. RICHARDSON: I can do that if you want to have us.

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THE COURT: We will go as far as we can, gentlemen. The court is disposed to hear either of you at any time, but we want to proceed as far as we can.

MR. RICHARDSON: Shall I proceed?

THE COURT: You may proceed as far as you can, Mr. Richardson. An opportunity will be given later for you to recall Mr. Graham on the other matters.

MR. RICHARDSON: I want to say before proceeding to ask these impeaching questions that we have furnished a list of the names to the other side, and it may be that I won't be able to give just the exact language the witnesses will; they have not yet arrived, and while I have had some talk with them, they might remember the language differently than I do, but I will possibly want to recall the witness and ask as to the exact language. You have a statute here that requires the time, the place and the people present, and I understand the rule to be that the impeaching question must be asked in the exact language as was asked the witness on the stand, and therefore I may seem handicapped by the reason that these witnesses are not here. Your statute here is the same as in other places except as to the people present.

THE COURT: The court will give you every opportunity

*Max Malich* hereafter.

Q Mr. Graham, in June or July of 1906, did you have a conversation with one Max Malich in his store in Glensville, *he and his father living near the city,* and a part of the City of Denver, Colorado,

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wherein you said to Mr. Malich in substance and effect that there was one man whom you were going to kill, even if you had to swing for it twenty-four hours afterwards; whereupon Mr. Malich inquired who it was, and you told him it was ex-Governor Steunenberg of Idaho.

MR. BORAH: I submit that that does not come within the rule in two or three respects.

MR. RICHARDSON: I have not quite gotten through with the question.

THE COURT: Let him complete the question, Mr. Borah.

MR. BORAH: I will wait until you get through.

Q At which time you and Max Malich alone were present? That is the question.

MR. BORAH: Is June or July the nearest you can fix it?

MR. RICHARDSON: Yes sir. When Mr. Malich gets here I might fix it a little closer. I do not understand the rule to be that you have to fix a day, but on or about.

MR. BORAH: We will withdraw the objection.

Q You may answer the question? A No sir, I never did.

Q Neither in substance or effect? A No sir, in no way.

Q Did you in the course of the same conversation, at the same time and place, you and Max Malich alone being present, say that you were broke at the time, that Steunenberg was a man-- you called vile names which I will not here repeat,-- and did you say if it was not for Steunenberg you would be a millionaire

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today and would have an income of \$2,000.00 to \$2100.00 a day from the Hercules mine in which you had a one-sixth interest with old man Day, that Stuenenberg ran you out of the country so that you had to dispose of your interest? A No sir, I had no such conversation at all.

Q Either in substance or effect? A In no way.

Q Preliminarily, do you know a man named General Eugene Engley?

A I have seen him.

~~THE COURT: What is that name?~~

~~MR. RICHARDSON: Eugene Engley.~~

Q You know him, I mean? A Yes sir.

Q A lawyer practicing at Cripple Creek, Colorado? A Yes sir.

Q I will ask you if you did not have a conversation with General Engley in his law office on Bennett Avenue in the City of Cripple Creek sometime between the 15th and 30th of <sup>January</sup> 1904, you having gone to that office for the ostensible purpose of consulting General Engley on legal business?

~~MR. HAWKIN: What is that date?~~

~~MR. RICHARDSON: Between the 15th and 30th day of Jan.~~

~~1904.~~

Q In which you, after picking up a pamphlet which was lying on the table or desk at which Engley was sitting, and which related to the strike in the Coeur d'Alene district, after looking at said pamphlet a minute or two, stated that by means of that strike you had lost an interest in a mine; that Stuenenberg was an S. O. D., giving him filling in the words,--

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and I am going to fix him before I get through? A No sir,  
~~I had no such conversation with Mr. Hagley.~~

Q Either in substance or effect? A In no way.

Q Do you know a woman named Lottie Day? A I know a woman  
called Day; I don't know about the Lottie.

Q I will ask you if you had a conversation with a woman named  
Lottie Day in the Belmont hotel, in the summer-- the spring or  
summer of 1905, at a place-- at a room in that hotel where  
you and she alone were present, in which you stated to her that  
Stamberg was a villain and a scoundrel and used some other  
names in respect to him and you would kill him, if it was the  
last act of your life and you should swing for it immediately  
afterwards? A No sir, I had no such conversation.

Q At no time? A No sir.

Q Either in substance or effect? A No sir.

MR. HAWLEY: Kindly give me the date.

MR. RICHARDSON: I cannot give it any nearer than the  
spring or summer of 1905.

Q After the words Belmont rooming house in the question, I  
omitted to insert, Denver, Colorado; will the court allow that  
to be inserted in the question?

MR. HAWLEY: Certainly sir, we have no objection.

THE COURT: Insert those words, Mr. Stenographer.

MR. HAWLEY: We will object to the question being  
asked unless you fix the date closer.

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THE COURT: The court will overrule the objection at this time.

MR. RICHARDSON: We are going to try and get Lottie Day here, and we will fix the date more closely if she comes.

MR. HAWLEY: Then we will make no objection at this time, but I will give notice now that we will make an objection unless the time is fixed more closely.

Q You stated that you knew Kid Waters in his lifetime? A I knew of him.

Q I will ask you if you ever visited his house in the Gripple Creek district and was introduced by Waters to his wife as Thomas Hogan, and if you asked Mrs. Waters to leave the room while you were having a conversation with Kid Waters?

A No sir. I want to explain, when you say, Kid Waters, I don't know that I ever knew of him, but the man I was speaking of was the man they called the Kinley Kid.

Q That is not the same man? A No sir.

Q Did you not visit his house upon two occasions and hold a private conversation with Mr. Waters, requesting his wife to leave the room before the conversation commenced? A No sir, I never did.

Q Nothing of that kind ever occurred? A No sir.

Q Do you know Dr. G. S. McGee? A I know a Doctor McGee.

Q Of Wallace, Idaho-- at one time, of Wallace, Idaho?

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A He was at Mullen when I knew him.



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Q I will ask you if in the month of October of 1905 you had a conversation in the hospital there in the town of Wallace, county of Shoshone, State of Idaho, at which conversation you and the Doctor alone were present, wherein you said to the Doctor, "I am a spyter;" the Doctor then said to you, "Are you working for Thiel's" and thereupon you said, "No, I am working for the other outfit; didn't you know there was another outfit in here now?" No sir, I never had no conversation with Dr. McCee at that time.

Q Either in substance or effect? A No sir, in no way.

Q Did you ever have such a conversation at any time? A No sir.

Q Did you at the same time and place, the same persons being present, have a conversation with Dr. McCee in which you said that Steunenberg and martial law had done you up and that you were going to get even with Steunenberg? A No sir, I never did.

Q Did you ever have any such conversation with him either in substance or effect? A No sir, I never did.

Q At any time or place? A At no time.

Q You know D. C. Costas? A Yes sir.

Q I will ask you if you had a conversation with D. C. Costas at his office, being the office of some newspaper in the town of Wallace, in the State of Idaho, on or about the 30th day of September, 1905, you and he alone being within speaking distance of one another, so that you and he alone could hear,

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but other people being around in the back part of the room or building, wherein you said, "the more I see of my old partners in the Hercules, the more bitter I get; they are all rich and I am a wandering pauper, but I will get even with Steuermann yet?"

MR. BORAH: Now, it is apparent from that question that there was somebody else around, and I presume that Governor Coates knows who it was, and Governor Coates is here, and we are entitled to know who they are.

MR. RICHARDSON: I especially limit the statement to the fact that the people present were not within hearing distance.

THE COURT: The language of the statute is, "In the presence of."

MR. RICHARDSON: Yes sir, but I take it that the language of the statute does not mean to be unreasonable. The people were present, but were not within hearing distance.

THE COURT: The objection will be overruled at this time, but I will not pass upon it finally until the objection is made in case the evidence is supported.

MR. RICHARDSON: I can say that Mr. Coates says that the employees of the office were around the office; one corner of the room is devoted to an office, and to that use, and these employees were in the back part of the room away from the office.

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MR. BORAH: I desire to make our objection and save the record. I don't care who the employees were, but he can get their names.

THE COURT: If the question is finally admitted you will have the opportunity to examine Mr. Coates upon the stand, and the court will not pass upon the question until Mr. Coates is upon the stand.

MR. RICHARDSON: Mr. Coates is out of town temporarily, and until he returns we cannot ascertain.

Q Read the question.

The last question was then read.

A No sir, I had no such conversation as that with Mr. Coates.

Q Either in substance or effect? A No sir.

Q At that place or any other place? A I had no such conversation as that at any time or at that place or any other place.

MR. RICHARDSON: Now, there are probably two more of these witnesses, but I cannot tell until we get them here; we have sent for them and as soon as they get here we will let you know.

THE COURT: When they come the witness will be recalled for that purpose.

MR. RICHARDSON: Very well, sir. That is all until those witnesses come.

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RE-DIRECT EXAMINATION

BY MR. HAWLEY:

- Q I believe you have stated that you knew Max Malich?
- A Yes sir, I have.
- Q When was it that you disposed of your interest in the Hercules mine-- what year and what month, if you recollect?
- A I think it was in February or March of 1897.
- Q February or March, you think? A I think it was about that time; I am not positive about the time, but it was somewhere between Christmas and April of that year of 1897.
- Q That is, Christmas of the year preceding that? A Yes sir.
- Q Did you ever have any interest of any kind in that mine after that? A No sir, never.
- Q Who did you sell your interest in the mine to? A Dan Cortonia.

THE COURT: What is that name?

MR. HAWLEY: Dan Cortonia.

- Q Do you know where Dan Cortonia resides at the present time?
- A I think he lives in Portland; I think I heard so.
- Q When did you last see him? A In September and October of 1898-- of 1900, I mean.
- Q At Portland? A No sir, I seen him in Gallatin.
- Q And you have not seen him since that time? A No sir.
- Q What was his business then? A I could not tell you his

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business. I understood he had retired from business.

MR. BARROW: Since what date does he say he has not seen him?

MR. HALEY: Since 1905, in Wallace.

MR. RICHARDSON: That is Dan Cordonia?

MR. HALEY: Yes sir, Dan Cordonia.

Q Prior to your employment as a miner in Burke, you had sold out your business in which you had theretofore been engaged?

A Yes sir.

Q And been engaged in the mining business alone, had you?

A Afterwards, do you mean?

Q Yes sir. A Well, mostly mining, yes sir.

Q Had you any property in that district after selling out your business in Burke? A No sir, I had not.

Q Had you had any mining property in that section after selling out the Hercules interest? A No sir, not any.

Q And no property of any kind after selling out your Burke business? A No sir.

Q At the time of the Ocor d'Alene troubles, the explosion in the Barker Hill and Sullivan mill, what property did you have, if any, in that district? A I did not have any.

Q Were you ever in that district after you left immediately after the explosion until you went back in 1905? A No sir.

Q When was it you last saw Max Kalich, if you recollect?

A I saw him about— I think it was in August, 1905.

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- Q You have been questioned in regard to General Engley; are you personally acquainted, or were you personally acquainted with General Engley? A No sir, I was not personally acquainted with him.
- Q Did you have any business relations or dealings with General Engley in-- at any time? A No sir, I had not.
- Q Were you ever in his office to your recollection, and if so state? A I think I was in his office once.
- Q When was you in his office? A I think I was in his office in-- some time in the fall of 1902, or the winter of 1902.
- Q Where was his office at that time? A In Cripple Creek, on Bennett Avenue.
- Q Who was with you when you was in his office on that occasion? A I don't just remember who all was with me, but one was Jimmie Lafferty.
- Q Was you on business of your own? A I went over there as a witness for Lafferty in a case that he was being prosecuted for.
- Q Did General Engley have anything to do with the case? A I think he did, yes sir.
- Q Was you ever afterwards in his office to your recollection? A No sir.
- Q You know the lady mentioned as Lottie Day? A I knew a woman that we called Day, but I don't know about Lottie.
- Q Where was this woman that you called Day residing when you knew her? A She resided in Denver, at the Belmont Hotel, when

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I first knew her.

- Q When was it you first knew her? A I could not tell exactly when it was; I think it was in 1904 though.
- Q Do you know where this lady was residing in the spring and summer of 1905? A No sir, I could not say that I do; she might have been at the Belmont Hotel some of that time-- I think she was there some of that time.
- Q Kid Waters has been mentioned; did you have any acquaintance with Kid Waters? A No sir, not that I know of.
- Q Do you know the man referred to as Kid Waters? A I don't know him only from hearsay. I never seen him that I know of.
- Q Did you ever have any relations of any kind with the man that you knew by that name? A No sir, I did not.
- Q Or that you had mentioned by that name? A No sir.
- Q Where was you, and where was this man, Kid Waters, reported to have lived? A I have read of him in the paper since I came here, that is all I ever knew of Kid Waters; I may have read of his name in the papers before I came here, but I don't know him only by hearsay.
- Q Then you don't know of any man of that name, at least you don't recognize him by the name of Kid Waters? A No sir, I don't.
- Q A question I asked you in your direct examination with reference to a letter which you received while you was in jail at Caldwell, I will re-ask you any way; you may state whether

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while you was in jail in Caldwell in the early part of January, 1906, you received my letters. A Yes sir, I received a letter.

Q More than one letter? A I am not quite sure whether I received more than one or not; I think I did receive two letters, I am not positive.

Q Will you state whether or not the letter which you received and opened-- or, who were the letters from that you received-- think again and see if it was one or two that you received?

A I think it was only one letter when I think. I received a telegram or two, but I think I only received one letter.

Q State whether or not that letter that you received was signed by any one? A No sir, it was not signed.

MR. RICHARDSON: He was examined about this on his direct examination.

THE COURT: He was examined about this fully on his direct examination, as I remember; he testified that Pettibone wrote the letter, didn't he?

MR. HAWLEY: I have forgotten whether I went into that or not.

THE COURT: You went into the matter thoroughly and he testified to having written a letter.

MR. HAWLEY: I think that is right, your Honor.

Q Did you state what became of that letter in your examination?

1603 A. I think I did.



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Q What became of it? A I destroyed it.

Q Do you remember the contents of that letter? A I remember very nearly the contents-- the substance of it.

Q Would you know the contents of the letter if a copy of it was handed to you? A Yes sir, I think I would.

Q I will hand you Exhibit X and call your attention to it.

THE COURT: Exhibit X for identification?

Q Exhibit X for identification, and ask you to state what that is. A Yes sir, that is about a copy of the letter.

MR. HAWLEY: I will ask to introduce this letter in evidence.

MR. RICHARDSON: I object to it as incompetent, immaterial and irrelevant, not connected with or tending to connect the defendant Haywood with the killing of ex Governor Stannenberg, or anybody else with that matter, and furthermore as not being proven to be the contents of any letter connected with, or a pretense to be connected with this case. The contents of the letter will speak for itself on that subject.

THE COURT: Let me see the letter.

The letter was handed to the court.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: I will ask that this now be considered as the plaintiff's Exhibit X.

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MR. RICHARDSON: I submit it ought to be read to the jury.

MR. HAWLEY: I am going to read it to the jury as soon as we have it filed. The letter referred to is as follows:

"December 30.

Friend Tom:-

Your letter received. That was sent to Jack December 31 for you. He should send it so that 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."

Postmarked, "Denver, Colorado, December 30, 5:30 P.M., 1905." Addressed to Thomas Hogan, Caldwell, Idaho.

MR. DARTON: Who signed it?

MR. HAWLEY: No signature.

Q This is the same letter that you testified to as being in Pettibone's handwriting? A That is a copy of it, yes sir.

Q Had you prior to the receipt of this letter and prior to your arrest written Pettibone? A Yes sir, I have.

Q How long before this letter was received had your last letter been written-- about what date was it written? A I could not tell you just what date; it was some little time before that.

Q What had you written to Pettibone with reference to at that time?

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MR. RICHARDSON: We object to that as not the best

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evidence, as incompetent, immaterial and irrelevant, and not connecting or tending to connect this defendant in any way with the matters contained in the letter.

Q Did you keep any copy of that letter you wrote to Zettibone?

A No sir, I did not.

Q What was that letter with reference to?

MR. RICHARDSON: Now, we object to that as calling for secondary evidence when the best evidence might be procurable; also as incompetent, immaterial and irrelevant, not connecting or tending to connect the defendant with the offense with which he stands here charged.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A I had asked him to send me a hundred dollars in a letter.

Q Had you mentioned, or can you give us anything more in regard to that letter than this request to send you a hundred dollars?

A I don't know that I could; that was the substance of the letter I had written to him.

Q About how many days do you think it was before the death of Governor Stearns that you sent this request in your letter?

A I could not say exactly; I think possibly about a week,-- it may not have been so long. I would not say exactly how long that was.

Q You do not fix that time? A No sir, I would not.

Q State if you said in that letter, or in any previous letter

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written from Caldwell, anything about your movements, or going to other places? A I had told Pettibone in some letters that I had looked over a ranch down at Seattle and would possibly go back there ~~again~~ again after I got through in Caldwell and would look it over here at that time.

Q This letter that you have referred to as having been written some little time before the death of Governor Stannbery was written in Caldwell? A Yes sir, that one was written from Caldwell.

MR. HAWLEY: Gentlemen, this is the letter that I have referred to. Although these exhibits will all be passed to you, I believe it is the rule in all criminal cases to have the jury have all the exhibits, is it not?

THE COURT: I think so.

MR. HAWLEY: I believe that is the statute. I merely mention it now because there are a number of these writings.

THE COURT: You had better examine that.

MR. HAWLEY: We will examine it and see, your Honor. I desire at this time to identify another exhibit by this witness. Gentlemen, if you will pay attention to this matter then you will have a further chance to examine the two exhibits. Q I believe-- I will hand you, Mr. Cochard, State's Exhibit P for identification, and ask if you recognize that? A Yes sir, I recognize that letter, something I got when I was in Caldwell. Q Was that received by you? A Yes sir, received by me, yes sir,

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handed to me in jail.

Q Do you remember the time that it was received by you in the jail? A I don't remember the exact date; it was just a little time after I was arrested-- a day or so.

Q Handed you by the Sheriff or his deputies? A I think, by the sheriff himself.

Q What did you do with the copy that was received by you?

A I destroyed it.

Q How long was this telegram received by you before Mr. Miller appeared in Caldwell? A I think it was four or five days, possibly more; quite a little time.

Q Four or five days or more? A Yes sir.

Q After Mr. Miller reached Caldwell did he refer to having sent the telegram?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant, and calling for a conversation that could not be binding upon Mr. Haywood in any way, shape or form, and not tending to connect him with the killing of Governor Stearnberg.

THE COURT: The court will sustain that objection.

MR. HAWLEY: I will now offer exhibit P in evidence.

MR. RICHARDSON: We object to the introduction of plaintiff's exhibit P for the reason that it is incompetent, immaterial and irrelevant, not connected with this defendant in any manner, not sent by any one authorized to speak for

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him, not binding upon the defendant, and that it does not connect or tend to connect him with the killing of ex-Governor Stearnberg.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: This is already marked for identification.

THE COURT: It may now be admitted as an exhibit.

MR. HAWLEY: And it will become Exhibit F. It is as follows, gentlemen:

Headed: "Receiver's Number, phone, time filed 7:30 P.M.,  
9, paid, charge, Robertson, Miller and Rosenfelt, Spokane,  
Washington, January 3, 1906.

To T. Hogan, care of Sheriff, Caldwell, Idaho.

Attorney Fred Miller will start for Caldwell in the morning.

M. 89 Hyde Block."

THE COURT: Gentlemen, I think you better take this opportunity and this time and get through with this photographic business. If you desire to have the light fixed for you, gentlemen, the sheriff may fix it, and you won't have to come back again. If you want a better light you may have it at this time.

MR. RICHARDSON: If your Honor please, I would like to call your attention to the fact that I overlooked moving to strike out the testimony of Mr. Jasper Nichols who was on the stand this morning, and I would like to move it now.

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THE COURT: You may make your motion.

MR. RICHARDSON: I move to strike out the entire testimony of Jasper Nichols on the ground that it is incompetent, immaterial and irrelevant, and does not connect or in any way whatever purport to connect the defendant in any way with the killing of Governor Stansbery which is the crime with which he is charged.

THE COURT: The motion is denied.

MR. RICHARDSON: Save our exception.

MR. BORAH: The motion is made nunc pro tunc, is it?

MR. RICHARDSON: Yes, it is nunc pro tunc.

Q Had you ever had any communication at any time with attorney Miller, or his firm, or any one in their behalf, in reference to his acting for you in this matter? A I had a little understanding with Mr. Simpkins.

Q With Jack Simpkins? A Yes sir.

Q When was that understanding had and where was it reached?

A I talked of it two or three times. I talked of it just before Jack Simpkins left me at Caldwell and went home.

Q What was that talk and understanding?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant and not connecting or tending to connect this defendant in any way with the killing of Governor Stansbery, the crime with which he stands here charged.

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THE COURT: The objection will be overruled.

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MR. RICHARDSON: Note our exception.

A The understanding was that if I got in any trouble down here he would send Robertson or Miller down here to defend me, and I was to wire him or any one, and that he would see that I got some one down here.

Q When was this conversation had, do you say? A Well, it was had-- the last one, just before Jack Simpkins left Caldwell and went home-- that evening.

Q After being in Caldwell? A The last time.

Q The last time? A Yes sir.

Q And that was in what month? A It was in November, I think.

Q 1905? A Yes sir.

Q Who was Robertson? A He was one of the firm of Robertson, Miller and Rosenfelt.

Q And in speaking of this to you what was Simpkins referring to in regard to trouble?

MR. RICHARDSON: We object to that. He can tell what he said if any of it is competent, what was said, and the jury can draw the inference.

THE COURT: You had better change your question.

MR. HAWLEY: Yes, I will question him in different shape.

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Q. What were you and Simpkins discussing when he made this statement to you?

MR. RICHARDSON: We object to that. The only thing he can tell is what was said.

Q. What subject were you discussing?

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

A. We were discussing the possibility of my getting into some trouble when I was trying to assassinate Mr. Stoenberg.

Q. Now you have said that prior to this time you had a one talk with Simpkins along these lines: When was this other conversation, this prior conversation? A. I think we talked of it just after I had been up to see Mr. Miller in their offices in Spokane with Mr. Simpkins, that he was saying that they were good attorneys and if we ever got into any trouble -- if I ever got into any trouble on this proposition, he would send them down there.

Q. "In this proposition": What proposition? A. Well, in the Stoenberg matter.

Q. You say this was while you were in their offices? A. No sir, I said after that.

Q. On what particular trip or what particular occasion are you referring to? A. I am referring to the trip of his coming down here; we were going down to Caldwell and we were talking over this before we came. I don't remember just the time.

Q. What was it you was up in Miller, Robertson's Roushert's office for? A. I was up there to get him to use the railroad company for holding my truck.

- Q. It was after this trip up there then that you had this first talk? A. Yes sir, I think it was after that.
- Q. Was there any conclusion reached, did you enter into any arrangement or agreement with them at all, come to any understanding with this firm to appear for you in case of any trouble? A. No sir.
- Q. Did you ever have any other conversation of any kind with Miller's firm or any of the members of the firm outside of this that you have stated, send them any communication or make any request at all personally? A. Previous to this?
- Q. Yes. A. No sir.
- Q. Or after this? A. I had after; after --
- Q. After Miller came? A. Yes sir.
- Q. But not prior to that time? A. I met Mr. Robertson once on the street and was introduced to him by Mr. Simpkins. That is all, just an introduction.
- Q. But had no talk with him about appearing for you in the event of any trouble? A. No sir, not any.
- Q. Where were you in the month of April, 1900? A. I think I was in Denver. I was in Colorado, -- in Denver part of the time.
- Q. State if on or about that time you had any arrangement with the defendant Haywood or with the defendants Pettibone or Meyer in regard to writing letters or sending letters from you to your wife, your second wife? A. I had told Mr. Haywood about sending some letters to my wife, but I think it was a little after that. I am not sure of just exactly the time.
- Q. What was this talk in regard to letters?

MR. RICHARDSON: We object to that as immaterial.

irrelevant and incompetent; does not appear to have anything to do with this matter, if your Honor please, not connected with it in any way.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

A. Mr. Haywood had told me that my wife was writing letters to him wanting to know where I was, and I told him that I would write some letters and date them from San Francisco and give them to Fuddy Maliney, he was their representative up there, and he was in Denver, and I asked him to write -- and I also wrote a letter there and sent it by Marion Moore and he was to mail it at Cape Nome, he was going up there, and I asked Mr. Haywood to write to my wife and tell her that he understood I was in Alaska.

MR. DAWSON: We object to all of this. It is not re-examination.

MR. BOWEN: It is re-examination.

~~MR. DAWSON:~~ They went very fully into this question of this correspondence with his wife and what he did and what he wanted to do, and we propose to show precisely what he did do and through whom he did it.

THE COURT: Objection overruled.

MR. DAWSON: I would like to say just a word about it if I might, your Honor. It is evident that the witness is now trying to give new testimony and to connect Mr. Haywood with matters where he did not connect him before or did not testify before, and if there was any such testimony to be given, any

such connection to be made it should have been made in direct. The State cannot save out a part of its case and put it in afterwards, nor they can't fill up something that they have omitted or that they need. And this is evidence which, if worth anything, clearly tends to prove that there is some further connection between Haywood and this witness than what he has thought of or what he has testified to on the direct examination, and it is not re-direct examination in any sense.

MR. HAWLEY: It is their cross examination that has made this valuable.

THE COURT: If there is any question about this being re-direct examination, the court will permit the prosecution to reopen.

MR. DARBOW: We want the theory understood at least. We want to save an exception.

MR. HAWLEY: We don't care what you want understood. The Court has ruled on it.

MR. DARBOW: We want to understand the theory of it.

THE COURT: The Court will overrule the objection.

MR. DARBOW: Then you have forgotten something or found something new.

THE COURT: The court will give you the same privilege.

MR. DARBOW: Then it is on the theory that it is something they omitted on direct?

MR. HAWLEY: No sir, it is not. It is something you made valuable.

MR. DARBOW: I would like counsel to point out the

asked one single thing on cross examination that would make any such thing as this competent testimony.

THE COURT: The objection is overruled and the witness will answer the question.

MR. DARROW: Save an exception.

- Q. Who was this man Malincy that you mention? A. Paddy Malincy.
- Q. Who was Malincy? A. He was the representative of the Western Federation at Grigole Creek, seemed to be giving out money to the families that the Federation were furnishing at that time and looking after them generally.
- Q. When was it he was acting in this capacity? A. He was acting in this capacity I believe after the men were deported out of there up until some time in the summer of 1905.
- Q. How do you know this to be the fact? A. He told me so himself; I seen him in Denver.

MR. RICHARDSON: We move to strike that out as immaterial incompetent, irrelevant, as hearsay, not binding upon the defendant.

THE COURT: The motion will be allowed.

- Q. Did you see him at the headquarters? A. No sir, I seen him at Pettibone's store.
- Q. Did you have any conversation with Haywood in regard to Malincy? A. I did afterwards, after I seen him I told him I was going to write some letters to my wife and date them at San Francisco and send them by Paddy Malincy.

MR. DARROW: You mean Haywood?

THE WITNESS: I mean Haywood, yes sir.

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Q. What did he say to that?

MR. DARRON: We make the same objection to this, that it is not re-direct.

THE COURT: Overruled.

MR. DARRON: Exception.

A. I couldn't say just what he said. I had asked him at the same time to write a letter -- he said he had got some letters from my wife asking him where I was, and I had asked him to say to her that I was gone to Alaska, that is the last he heard of me from there.

Q. How long had it been at this time since you had seen your wife? A. I hadn't seen her since I left Cripple Creek in 1904.

MR. HASKIN: I will ask you to mark this paper with two sheets as plaintiff's Exhibit Y. Please mark it on both sheets for identification.

I will ask you to ~~mark~~ mark this paper as plaintiff's Exhibit Z for identification.

I will hand you now letter and envelope which I will ask you to mark plaintiff's Exhibit A-1 and plaintiff's Exhibit B-1.

I will hand you a letter and envelope and ask the letter to be marked plaintiff's Exhibit C-1 and the envelope plaintiff's Exhibit D-1.

(Papers marked by the stenographer for identification as requested by counsel).

Q. I pass you plaintiff's Exhibit Y: Please examine that and state in whose handwriting that is? A. That is my handwriting.

Q. To whom is it addressed?

MR. RICHARDSON: It speaks for itself.

MR. HAWLEY: It speaks for itself. It is in his hand-writing.

Q. State whether or not this is one of the letters written in accordance with this understanding you have mentioned?

MR. RICHARDSON: We object to that, if your Honor please, as immaterial, irrelevant and incompetent; Mr. Haywood cannot be bound by any letters which he wrote.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

THE COURT: That only goes to this question, Mr. Richardson, not the question of the admissibility of this letter.

MR. RICHARDSON: Perhaps it is a preliminary question.

A. This is one of the letters I speak of, yes sir.

Q. And where was it written by you? A. It was written in Denver.

Q. At what particular place, do you recollect? A. It was written in Pettibone's store I think.

Q. Who was present? A. I couldn't say just who was present when I wrote it.

Q. What did you do with it after writing it? A. I give it to Paddy Maliney.

Q. This same man you have mentioned in charge of the Federation matters? A. Yes sir.

Q. With what directions?

MR. RICHARDSON: We object to any directions given to Paddy Maliney as not binding upon this defendant, immaterial,

incompetent, and irrelevant.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

- A. He was to hand it to my wife when he went back to Cripple Creek.
- Q. Did you afterwards hear from Paddy Maliney as to what he had done with it? ~~xxxxxx~~

MR. RICHARDSON: We object to that as immaterial.

- Q. Or from the defendant? A. I don't know that I heard it from the defendant. I seen Paddy Maliney after that.

THE COURT: One moment, gentlemen. There is an objection.

MR. RICHARDSON: We object as immaterial so far as Paddy Maliney is concerned.

THE COURT: There is a question there involving this party in Cripple Creek as well as the defendant?

MR. HAWLEY: Yes sir, we claim we have a right to bring in this party in Cripple Creek.

THE COURT: The general objection to that will be overruled.

MR. RICHARDSON: We object to it specifically for the reason it is immaterial, incompetent and irrelevant, not binding upon this defendant, in no wise connected with him, nor has it any relation whatever nor any tendency to show any relation to the killing of Governor Steunenberg.

THE COURT: As to the question connected with this defendant, the court ruled upon that. Is this another question?

MR. RICHARDSON: The answer to the previous question



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stated that he talked with Paddy Malinsy about it.

Q. Did you ever have any talk with the defendant in regard to these letters, in regard to it?

MR. RICHARDSON: Do you withdraw your other question?

MR. HAWLEY: I shall for the time being.

A. I did afterwards, your ir.

Q. When and where? A. I couldn't say just where. It was in Denver. I don't know whether it was up at Pettibone's store or up at his residence.

Q. What did he say with reference to it?

MR. DANKOW: I object. You asked him when and where. Now he says he couldn't say where. He hasn't said when.

Q. About when was it? A. It was some time the summer -- spring and summer of 1905. I wouldn't say just when it was.

Q. What was that conversation? A. Well, I told him that I had written a couple of letters to my wife stating I was in San Francisco and asked him if she wrote to him to say that -- I think I said in those letters that I was going to Alaska or thought I would -- for him to say to her that the last he heard of me I was in Alaska, and he said he would.

Q. That he would write? A. Said he would, your air.

Q. Was there any further talk about these particular letters or this particular letter that I have called your attention to, or a subsequent letter -- did you make any further statement to him in reference to these letters than you have already given?

A. Oh, I may have talked of it some, I think maybe I did. I told him about sending a letter to Alaska by Mr. Moore.

Q. I am speaking about these particular letters you sent by Paddy

Maloney: Did you have any further talk with him than this that you have already stated? A. I don't call to mind now that I have.

Q. But you did have this conversation that you have related?

A. Yes sir, I think I have spoken of it -- talked of it two or three times, but I wouldn't say --

Q. At the time of writing this letter there in Pettibone's store did you have any talk with Pettibone with reference to the matter? A. I spoke with Pettibone about it, yes sir.

Q. Tell him what you was doing? A. I told him I was going to send some letters --

MR. RICHARDSON: We object to anything he told Pettibone as not binding upon this defendant.

Q. I will ask you if you told him what you was doing when you wrote this letter, at that time?

MR. RICHARDSON: That calls for a yes or no, and that we do not object to.

A. Yes sir, I told --

MR. RICHARDSON: Wait a moment. I want to object if you ask what the conversation was.

MR. MALONEY: I certainly am going to ask. Wait until I ask and then get in your objection.

Q. What was that conversation between you and Pettibone?

MR. RICHARDSON: We object to that as immaterial, incompetent and irrelevant, not binding upon this defendant; Pettibone was not authorized to speak for him no matter what he said.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

Q. Go ahead. A. Well, I just simply told him that I was going to write these letters to my wife and send them by Paddy Maloney and write them as though I was in San Francisco.

MR. RICHARDSON: Now I move to strike that out as immaterial, incompetent and irrelevant, neither sustaining nor tending to sustain any issue in this case.

THE COURT: Motion denied.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: We now, if your Honor please, offer this letter in evidence as State's Exhibit Y. (Hands Exhibit Y to counsel for defendant).

Here is another one, gentlemen, on the same line that you might as well be examining so as to save a little time. (Hands paper to counsel for defendant).

MR. RICHARDSON: Do you offer this in evidence?

MR. HAWLEY: Yes sir, we are offering the one. If we succeed, we will offer the other immediately after. You might consider both as offered.

MR. RICHARDSON: We object to the offer of State's Exhibit Y in evidence for the following reasons:

It purports to be a private letter from this man to his second wife and, as such, has no relation to nor is it connected in any way with the defendant in this case, has nothing to do with the killing of Governor Stansberg, and is entirely immaterial, irrelevant and incompetent and not re-direct examination.

MR. HAWLEY: What is the ground of the objection to the second one? We offer them both.

MR. RICHARDSON: I object to Exhibit Z for precisely the same reasons that I stated in my objection to Exhibit Y.

THE COURT: Are all of these letters offered?

MR. BORAH: Two letters from Mr. Orchard to his wife are only offered at present.

THE COURT: The objection will be overruled to both of these communications.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: I now offer in evidence --

THE WITNESS: I would like to ask a question about this. Does that show that I said both of these letters were handed to Paddy Maloney to give to her?

Q. I will ask you about the second one. Take the State's Exhibit Z there of April 17th. A. Yes sir, this is my writing.

Q. The same writing? A. Yes sir.

Q. I will ask you in regard to State's Exhibit A-1 and A-2.

A. Yes sir, this is also my writing.

Q. Look at that envelope. Is that envelope also in your writing?

A. Yes sir.

Q. Where was you at the time this letter which is dated August 3th was written? Where was it written by you, what place?

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent, not binding upon the defendant. The defendant cannot be bound by letters he knows nothing of and never heard of.

THE COURT: He may answer the question.

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MR. RICHARDSON: Note our exception.

A. It was written in Denver, Colorado.

Q. You may look at this letter again and see if all of that letter was written there, or if any part was added afterward?

MR. RICHARDSON: I submit that looking at the letter wouldn't help him any on that.

THE COURT: Answer the question.

MR. RICHARDSON: Note our exception.

A. It was all written except the day of the month.

Q. The day of the month? A. Yes sir.

Q. What is the word "5" after the word "August"? A. Yes sir.

Q. After you wrote this letter what did you do with it?

A. I gave it to Marion Moore.

Q. Who was Marion Moore? A. He was a member of the executive board of the Western Federation of Miners.

Q. A member at that time? A. Yes sir.

Q. Where was you when you wrote this letter and gave it to Marion Moore? A. I think I wrote it in Pettibone's store and gave it to him; I wouldn't say positive whether I gave it to him there or whether I gave it to him at some other place. I think I gave it to him there, but I am not positive.

Q. What instructions did you give him with reference to mailing?

A. MR. RICHARDSON: We object to that as immaterial, incompetent and irrelevant, not binding upon this defendant, not tending to connect the defendant in any way, shape or form with the killing of ex-governor Stearns, which is the only crime with which he here stands charged.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

- A. He was going to Cape Nome for the Federation and I asked him to take that letter and put the date in when he mailed it there, the date on the letter, I left it unsealed, and to mail it from there.
- Q. Was you ever in Cape Nome or in Alaska? A. No sir.
- Q. I desire to present to you State Exhibits C-1 and D-1; Examine these two exhibits and say whose handwriting those are in.
- A. I think it is in Mr. Haywood's handwriting.
- Q. You have seen Mr. Haywood write? A. Yes sir, I have seen his writing.
- Q. And you know his handwriting? A. I think I do. I think that is his handwriting.
- Q. Look at the envelope, state's Exhibit D-1, and state whether that is his handwriting or not. A. I think it is, yes sir.

MR. HAWLEY: Gentlemen, we will ask as a part of our showing in this regard to introduce State Exhibits A-1 and B-1, also C-1 and D-1.

MR. RICHARDSON: To the State's Exhibit A-1 and B-1 we object for the reason that they are both immaterial, irrelevant, incompetent, they are not binding upon this defendant, they neither connect nor tend to connect him in any way with the killing of Governor Stearnsberg, which is the only crime with which he here stands charged.

To the State's Exhibits C-1 and D-1, being the letter and the envelope which is supposed to contain it, from W. D. Haywood to Mrs. H. Orchard, we simply object as immaterial,

irrelevant and incompetent.

MR. COURT: The objection to the admission of both of these offers will be overruled.

MR. RICHARDSON: Note our exception.

- Q. Now, Mr. Orchard, I will ask you if between these first two letters that we introduced, one dated April 1st and one dated April 17th, you had received any letters from Mrs. Orchard?
- A. Yes sir, I received a letter from her.
- Q. By whom had it been delivered to you? A. Delivered by Mr. Haywood.

Exhibit Y was hereupon read to the jury by Mr. Borah, and the same is in the words and figures following, to-wit:

"San Francisco, Cal.,

Apr. 1st, 1905.

My dear wife:

I am ashamed to write to you. I have not written in so long but I got no answer to the last letter I wrote & maybe supposed you did not get it. How dear the reason I have not written lately. You no doubt now I do not care for any charges they may have against me for they are without foundation, but I don't propose to let them bring me up before a kangaroo court & treat me as they have hundreds of others.

How dear I have made arrangements so you will get this I think. I have sent for money twice & it has been returned. I thought I made arrangements when I was in Denver last summer for you to come to Denver & stay but the party left here. How Dear if you want to come away from there I will make arrangements for you to go to Denver & live & I will come up

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there before long or send for you to come here & think I will be able before long to get a place here. I have written to our secretary & told me that you was getting relief but I think you must be getting tired of staying up there. I am well but not very contented. I have been working part of the time. Now Dear don't tell the Boys or anyone else that you heard from me for I don't want the layout to know where I am at just yet. I have found out that they did not treat you wright when you was here last summer. They told me they would look after you when I left & I expected they would & thought you was in Denver until a one little time ago. I will not write any more now. Hoping this will find you well & to hear from you soon, I remain as ever your loving husband

H.O. H \* \*

U.S. Paddy Maloney will hand you this & when you write me address Harry Cochard,  
San Francisco,  
Calif.  
General Delivery.  
Be sure and do this.

{ but put it in a big  
{ envelope and give it to  
{ Paddy & he will send it  
{ to headquarters & they  
{ will send it to me. "

MR. BORAH: This is Exhibit X, if your Honor please.

Mr. Borah then read Exhibit X to the jury, which is in the words and figures following, to-wit:

"San Francisco, Calif., Apr. 17, 1908.

My Dear Wife:

I received your letter or rather your roast. Now if you feel as you write I don't know as I will be up there very



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soon. It is true I have not done as I might of, but I have  
no excuses to make. You have had enough to live on I think.  
I am very sorry you have been sick. I have been well all the  
time but have been running around from one place to another  
until lately. I am working now and will be for some time.  
I am either going to Alaska or will come to Colorado. I do not  
know what to say dear. I love you just as well as ever but  
I do not think you do me. No, I did not read any letters you  
got from Mrs. A. I told her to write to you and thought you  
got a \$100.00 as I made arrangements for. I don't wish to  
explain anything here. I will not write any more this time.  
Hoping this will find you well and to hear from you soon, I  
remain as ever

Your husband."

MR. BORAH: This is Exhibit A-1.

"Cape Nome, Alaska,

Aug. 8, 1905.

Mrs. Harry Orchard,  
Independence, Colo.

Well, Dolly,

I will not call you my wife as you are ashamed of the  
name. Well, I am not ashamed of it and think I am sorry you  
are but I cannot help it. I am going out to make a fortune  
I think. Just come in from the interior for an outfit for  
the winter and hope to get all the money I want and if I do  
although you do not care for me, I will not forget you if  
I am lucky which I hope to be. Hoping this will find you

well as I am myself I will close with best wishes, yours  
respectfully,

Harry Orchard."

MR. BORAH: On the envelope is "Klondike (Nome)  
Alaska, August 5, 2:30 P.M., 1905. Mrs. Harry Orchard,  
Independence, Colorado."

I will ask the jury to look at that envelope.

MR. HANLEY: Give them all of them.

MR. BORAH: We will pass them all up to you.

I now read Exhibit C-1, on the letter head of the  
head officers.

"OFFICERS:

Chas. H. Moyer, President,  
No. 3, Pioneer Bldg.,  
Denver, Colorado.  
John C. Williams, Vice-Pres.,  
Crown Valley, Calif.  
Wm. D. Haywood, Sec'y-Treas.,  
No. 3, Pioneer Bldg.,  
Denver, Colorado.  
John H. Murphy, Attorney,  
Kittredge Bldg.,  
Denver, Colorado.  
John M. O'Neill, Editor,  
No. 3, Pioneer Bldg.,  
Denver, Colorado.

Department of Mining,  
Industrial Workers of the  
World.

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B. J. Brown,  
Flat River, Missouri.

WESTERN FEDERATION OF MINERS.

Denver, Nov. 18, 05.

Mrs. H. Orchard,

Dear Madame & Sister:

I have not heard a word since I saw you. The

last information I got was from Alaska. I think Fairfield was the name of the place. I see that awful conditions prevail among the Law and Order element.

Yours very truly,

Wm. P. Haywood.\*

MR. MORAN: The envelope is "Denver, Colo., Nov. 18, 7:30 P. M., 1906. Mrs. W. Orchard, Independence, Colorado, Teller county."

THE COURT: Gentlemen, how long do you think it will take to get through with this witness?

MR. HANLEY: I think it will take probably an hour on re-direct anyway, probably longer.

THE COURT: We will take a recess now until half past one, and we will have a two hours session this afternoon, from half past one to half past three.

Thereupon the jury were given the statutory admonition by the court, the bailiffs were sworn and the jury retired in the custody of the sworn bailiffs.

The witness and defendant were rounded.

A recess was hereupon taken until half past one this afternoon.

-----

Boise, Idaho, Tuesday, June 18, 1907.

1:30 o'clock P.M.

Parties not pursuant to adjournment.

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

THE COURT: Mrs. Gilman, the wife of one of the jurors, is here with one of her small children. She would like to have the privilege of interviewing her husband after the hearing this afternoon. I presume the same order may be made to the bailiffs as has been made heretofore permitting her to have an interview in the presence and hearing of two of the bailiffs.

MR. BARROW: Yes, sir, your Honor, we are satisfied.

THE COURT: I will give the bailiffs that direction after the adjournment.

(The Exhibits introduced and read to the jury during the forenoon session were exhibited to the jurors.)

WITNESS MARY ORCHARD ON THE STAND:

RE-DIRECT EXAMINATION CONTINUED

BY MR. BARROW:

Q. Mr. Orchard, what name was you known by while you were in Spokane and in the company of Mr. Fred Miller? A. By the name of Orchard I think.

Q. Had you at any time instructions from the defendant or Meyer or Pettibone with reference to what your course of action should

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be in the event of your being arrested while perpetrating some of these crimes?

MR. RICHARDSON: We object to that except in so far as the defendant himself is concerned.

MR. DAWSON: We object to it too for it is not re-examination in any event, still another effort to patch up a connection which has not been testified to on direct examination and is not re-examination of any cross examination.

THE COURT: Read the question.

(Question read).

Q. So far as sending for attorneys is concerned.

MR. RICHARDSON: We object to that as suggestive, if your Honor please, in addition to what we have already said on the subject.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. Yes sir, I had.

Q. When and where and what was it? A. I couldn't say just when and where but it was from a short time after I had been engaged in these criminal proceedings.

MR. DAWSON: Now we object because he does not say who.

THE WITNESS: I will, if you will let me.

MR. DAWSON: Well, you had a chance to.

MR. HARTLEY: Now you needn't argue with the witness.

MR. DAWSON: No, I am not going to argue with him.

THE COURT: The objection is overruled. The witness

may answer.

MR. DAWSON: I object unless the witness says who

the conversation was with.

THE COURT: Objection overruled.

MR. DARROW: Note an exception.

A. The conversation was with Mr. Haywood and Pettibone and Moyer, that at any time I ever got into any trouble or got arrested to not send for -- not to write or wire them about any attorneys, that they would send someone there as soon as they could to look after me.

Q. Will you state, Mr. Orchard -- I believe you have stated in regard to a certain fish line that was used as a part of the Staunenberg explosion? A. Yes sir.

Q. State how it was, or what it was used to carry out the Bradley explosion and fastened to the Goddard bomb to cause the explosion?

MR. RICHARDSON: We object to that, if your Honor please, because he was asked fully regarding the fish line and told all about it.

MR. HAWLEY: I don't think he was in connection with the last one.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. Well, I don't think that I used a piece of that fish line on the Bradley bomb, but I did on the Goddard bomb, the same as I had used before.

Q. The same fish line, a part of the same fish line? A. Yes sir.

Q. You made a statement, Mr. Orchard, with reference to leaving Steve Aimes' place on account of his getting drunk; I will ask you when you left with reference to his getting drunk, what time was it you left his place?

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A. Well, he got drunk three or four times, and the last time that he got drunk, that I did leave, was some time I think in March or April, 1905.

Q. And when was that you say you left there -- I don't know as I catch your answer right; when did you leave Adams' place?

A. I think I left there some time in March or April of 1905.

Q. You have spoken in regard to seeing Scott after the Vindicator explosion: What was your object in seeing Scott after that explosion? A. I had talked to him a day or two before that and told him something about the attempt at train wrecking or there was going to be one; during the time -- a day or two after that the Vindicator explosion occurred and Mr. Scott sent for me and I had to go or I thought I had to go, it would be better for me to go over and see him after I had spoken to him before. I did go more for my own protection than anything else.

Q. Do you remember the day that Steve Adams was put in the cell with you after he was brought to the penitentiary?

A. No sir, I do not.

Q. Do you remember the month? A. I think it was in February but I wouldn't say positive.

Q. How long was he there in the cell with you before McFarland came? A. Well, it was only a few days, possibly four or five days, maybe a little longer. I wouldn't say positive as to the time. It wasn't long.

Q. Did you state to him before McFarland came that you had made a confession? A. Yes sir, I did.

1683 Q. State whether or not prior to McFarland coming there Adams had

seen anyone else? A. He told me that he had, yes sir.

Q. Who was it? A. He said he seen an attorney that come there to represent him by the name of Moore, and one of his neighbors, I think his name was Bond.

Q. When was this with reference to the time he was brought there?

MR. RICHARDSON: We object to that, if your Honor please, as immaterial, irrelevant and incompetent; don't make any difference what Adams said to him or what he said to Adams. They were arrested and they were in the penitentiary and if there was any conspiracy it was over with and it could not bind Mr. Haywood, the conversation that these two men had in the penitentiary.

THE COURT: In what way would any statement made by Steve Adams be material?

MR. HANLEY: There was a great deal of time spent on cross examination, if your Honor please, with reference to this matter of inducement on the part of Orchard and McFarland to have Adams confess. If we matters were gone into in various ways. There was a number of inquiries made in regard to their course, in regard to the connection between the two, in regard to the conversations between them and in regard to the inducements held out by Orchard to Adams. In fact, there was some time spent upon this matter, I believe it was upon the last day of the examination of this witness. And an impression would undoubtedly be left upon the jury in regard to this matter. It was the impression -- I need not state what it was -- to my mind that was sought to be conveyed. Now we are not attempting, if your Honor please, to go into



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this matter to have any conversation detailed? We are not asking for that at the present time in any event. We are going into this circumstance.

THE COURT: My understanding is you are asking for statements made to this witness by Steve Adams.

MR. HAWLEY: Yes, in regard to seeing someone else because these matters have been gone into whether he had seen anybody else; those things were necessarily depending upon the statement of Adams to him, and this is simply in line with that cross examination. This is a predicate upon which I will have another question whether or not he stated that he had, when he went out, seen some one prior to seeing McFarland. I propose then to ask in regard to the statement.

THE COURT: Can you show that fact, Mr. Hawley, by the statement of Adams not made in the presence of this defendant?

R. HAWLEY: We can show that, if your Honor please, after they have gone into those things as part of their cross examination, because it is necessarily a part of that matter itself.

THE COURT: Whatever they have gone into of course you can examine about. I am not sure about that cross examination.

MR. RICHARDSON: Now, if your Honor please, it is quite true in the cross examination we asked him about what occurred in the jail there with respect to the work which he had done in procuring the Steve Adams confession. We did not ask him for any conversations which he had had with any attorney

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nor was any attorney's name mentioned in any way whatsoever. Now can it be that because an attorney of Steve Adams' choosing or an attorney who purported to represent Steve Adams went there and saw him, that he, after that, having a conversation with the attorney, could make a statement which would be binding upon Mr. Haywood with respect to any matter? We think not. The attorney was not present when it was made --

THE COURT: Read the question and the objection.  
(Question and objection read).

THE COURT: That question only calls for the time.

The court will overrule that objection.

MR. RICHARDSON: Note our exception.

- A. Well, it may have been just -- I think four or five days, or possibly not that much. I wouldn't state the exact time. I don't think it was quite that long; about three days, if I remember right.
- Q. Three days after that? A. After Mr. Adams was brought there.
- Q. And this was how long before McParland came there? A. Well, it was just a day or two before McParland came. He came soon after that. I wouldn't say just how long it was.
- Q. Was there talk between you and Adams there in your cell in regard to his confessing after this? A. After he had talked to his attorney?
- Q. Yes. A. Yes sir, there was.
- Q. What did he say with reference to it?

MR. RICHARDSON: Now, if your Honor please, we object to that method of proving a confession of Steve Adams or any statement that was made by Steve Adams as not the best

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evidence, immaterial and irrelevant, and as not binding upon Mr. Haywood. Mr. Adams could make no statement while he was in jail which would in any wise be material or competent to bind Mr. Haywood upon any subject.

THE COURT: I do not understand the prosecution is seeking to introduce any confession, Mr. Richardson.

MR. RICHARDSON: We will take it as a declaration of a co-conspirator. Here were men in jail. The conspiracy was accomplished. So far as they were concerned, they were out of it. They were where they were powerless to do anything more with respect to it.

THE COURT: The only question in the mind of the court is whether the prosecution is entitled to this as a result of your cross examination.

MR. HAWLEY: Yes sir, we claim it on that ground, your Honor.

THE COURT: It is only upon that ground that it will be entertained for a moment by the court.

MR. RICHARDSON: We say, if your Honor please, that that conversation could not be gotten in upon that ground or upon any other ground as binding upon Mr. Haywood.

THE COURT: Call the attention of the court to the testimony in cross examination that would authorize it, upon which this re-direct examination is based.

MR. RICHARDSON: Whatever the cross examination was upon it, if your Honor please, was for the purpose of testing the credibility of this witness, the entire method. It could not be binding upon Mr. Haywood, a statement made by him

to Mr. Adams or Mr. Adams to him.

THE COURT: If the purpose of this was to test the memory perhaps of the witness or his credibility, that would not prevent the other side from having the matter explained upon re-direct examination, if it was brought out.

MR. HAWLEY: I will call your attention to a part of this-- it is on page 11, it is numbered, I don't know what the regular number would be, but it is part of the proceedings of the last day I think, on the cross examination of this witness; I will read this:

"Q. Were you told to work on Steve? A. No sir. When Steve was arrested and brought there the warden asked me if I wanted,-- if I thought he better put Steve in with me. Q. You were not told to work on Steve? A. No more than that; he asked me what I thought about it. Q. What did you say? A. I told him if he put him in there I would try to get him to tell what he knew, that I would tell him that I had told all. Q. That you would do the best you could to get Steve to make a confession? A. I did, yes sir. Q. And you did start right in to work on Steve as soon as he was put in the cell with you, didn't you? A. I did in a way. Q. And you worked on him so constantly and so hard that you got sick? A. No sir, I did not. Q. How many days did you work on Steve? A. I think only a couple days, or three days, when he promised-- well, he never promised me he would make a confession. Q. Never did? A. Not before he said he would make one. Q. Not before

he said he would make one? A. Not before he promised Mr. McFarland. Q. But you kept talking to him about your confession? A. I told him just before he went outside that I had made a confession and told everything. Q. You told him that the first thing didn't you? A. No sir. Q. Did you refrain from telling him that in order to scold him? A. I refrained from telling him at first. Q. You did? A. Yes sir. Q. And put yourself in the position of being a friend of his in trouble with him and discussed with him the idea of whether or not it was not best for you and him to make a confession? A. I told him I thought of making a confession, that I thought it was right, and there was so many that knew this thing it would get out any way and he might as well make a confession too. Q. You did advise him to make a confession? A. Yes sir. Q. And you told him that for the purpose of getting him to make a confession as though you and he were going to make it together? A. I did not tell him I had made a confession, I told him I thought I would. Q. You told him that you would? A. Yes sir. Q. And the purpose of that was to make Steve think that you were still right with him? A. I wanted to see whether he would or not. Q. But you had already been told that it was the proper way to work? A. No sir, I had not been told nothing. Q. Hadn't McFarland told you about that? A. No sir, he had not. Q. You had not got religion then? A. I had not got much religion, but

I thought I would lead a better life if it was possible for me to be forgiven for what I had done. Q. And you had not any instructions as to how you were to handle Steve? A. No sir. Q. And you commenced to lie to Steve, did you? A. I don't know as I exactly lied to him; I did not tell him I had made a confession. Q. Wasn't that a lie when you said to him that you and he had better make a confession?" and so on; it goes on, a long lot of this same kind of stuff, and on page 21 we find: "Q. You have been put in a cell since the time you went into the hospital after Steve Adams came there? A. Yes sir. Q. When? A. Well, a little while after that. Q. Was that about the time that Steve Adams went back on his confession and said it was extorted from him? A. No sir. Q. A little while after that? A. No sir, it was before that." and so on. There are a number of places where this same thing comes in and it is apparent, I think, if your Honor please, that no matter what the ostensible object of this was or what counsel say as to their object which we are bound to take as correct, that one of the objects that could have been accomplished and would undoubtedly be urged here before the jury was that there was something extorted from Steve Adams, that there was not only an attempt to extort a confession from him-- a job put up on him in that line, but that it was extorted from him during this time. Now, that is not the fact--

THE COURT: That is from the examination of this wit-

ness?

MR. HAWLEY: Yes sir, that is from the examination of this witness. Now, it is not the wording so much of a statement of that kind, but it is the object aimed at by the manner of asking the question. It strikes me it would enable us to ascertain whether or not the matter has been left in such a shape that the true facts <sup>could be</sup> inquired into when it came to the re-direct examination. Now, I am not contending that under these-- I am not contending, so far as this question is concerned at least, that under this theory we could go into all these conversations between these parties, but I do insist that after such a cross examination as this witness was subjected to, after these endeavors upon the part of the learned counsel upon the other side to put this witness in the position of having been an assistant at least in extorting a confession from Steve Adams, after having attempted to place him in that position, and the prosecution in that position, we are entitled to go into the circumstances even if we are not permitted to bring out the conversations themselves, but go into them sufficiently at least to show that such a condition of affairs could not prevail. In other words we would have a right, and we would follow this up with other conversations to show that he had the conversations not only with the witness upon the stand, but with others, and talked about these different matters which have become a matter of evidence here, and this conversation was at such a time, of such a character as to

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entirely dissipate the idea that there had been any collusion or any extortion of any statement of any kind from him, and we do think that we are acting within the limits of a re-direct examination, or within the limits to which it is permitted to go, and we submit that it is entirely proper evidence to bring in.

MR. RICHARDSON: If your Honor please, you interrupted me a while ago saying that you were in accord with me on the position I took unless there was something in the cross examination of this man in reference to the interviews had with Steve Adams. Now, I submit, if your Honor please, that there is nothing asked as to the conversation which he had with Steve Adams so far as Steve Adams himself was concerned, in all that testimony which he has read there. The only question was as to whether he had used any arts or wiles, or had any instructions from Mr. McFarland or Mr. Whitney or from any outside party to attempt to secure a confession from Steve Adams. Now, they seek to introduce the statement of this man as to what those confessions were which were made by Steve Adams, but which he afterwards repudiated as having been extorted from him.

THE COURT: Is there any evidence of that fact?

MR. RICHARDSON: That is, as to their being extorted from him?

THE COURT: Yes sir.

MR. RICHARDSON: Except that which he testified to in the last examination. Now, we are not here trying now the question

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of whether or not Steve Adams confession was extorted, or whether it was repudiated by him.

THE COURT: If there is any evidence of that character before this jury the court will at once overrule this objection and permit the answer of this witness to go in.

MR. RICHARDSON: I don't understand that there has any evidence been introduced in the case with regard to Steve Adams statement made at any time while he was in the penitentiary. Your honor has asked them to read the testimony. They have read the record,— all that they cared to read of the record, upon that subject, and there is not a word as to any statement made by Steve Adams at all. Now, they are asking what these statements were that were made by Steve Adams, and that cannot be done under the guise of a re-direct examination. You have said on the other propositions of law with regard to the statements of co-conspirators that that could not be admitted. Now, I submit that they have not got a thing they spoke to your Honor about which gives them the right to go into this on redirect examination and we think they ought to be denied the right to go into it.

MR. BORAH: If your Honor will permit me, we are not seeking to introduce this evidence as the declaration of a co-conspirator in introducing our case in the first instance. The counsel went into this examination very fully and evidently with some purpose in his mind; he certainly did not go into it with no object, and we can only conclude what the purpose was by the questions asked and the answers made. Now, we ask him if he was not

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put into a cell with this witness for the purpose of securing from him a confession, and if he was not instructed to secure from him a confession, and he closed up his interrogation and asked him if that confession which was obtained was not the confession he afterwards repudiated because it was extorted from him. Now, the only thing we desire to show is not what he said in stating his confession, but the manner in which he said, and the circumstances under which he did say that which he said. If it turns out that it was a confession we are entitled to know the exact facts, conditions and surroundings at the time, and that it was not got from Steve Adams as the result of an extortion or threat, but as the voluntary statement of Steve Adams.

MR. RICHARDSON: If that position is true,-- if you ask a man if he was at a certain time at a certain place and had a conversation with another man that entitles them to the whole of the conversation, but there is no rule of law such as is invoked here that can be found in the books, and there is no basis for such a redirect examination on the cross examination. No where can be found anything asked as to what Mr. Steve Adams said upon the subject of his confession. The only question was as to the circumstances and influences which were used by this witness in securing the alleged confession, and whether or not those circumstances arose by reason of the instruction which he got from McParland and Whitney, and as to those we have no objection to what the witness may say upon that subject. But what Adams said

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in making this confession we submit, that would be to allow all rules of law to be violated in introducing the evidence of that confession before this jury.

MR. HAWLEY: Counsel begs the question on that.

THE COURT: Read the question and objection.

The question was then read to the court.

THE COURT: It is difficult for the court to tell what is called for by that question. The court is of no doubt but that you may examine this witness on the question of whether or not he was active in the extortion of a confession from Steve Adams. If he made a confession you may go into that to that extent and no further, but you have no right to go into the question of what the confession may be.

MR. HAWLEY: What I am expecting to do is this,-- simply the fact that there was a confession and that he admitted there was, but it was not through the inducement of Mr. McFarland or this witness.

THE COURT: You may show that any confession that was secured was not extorted or aided by this witness.

MR. HAWLEY: I will re-ask this question.

Q After Steve Adams had his interview with his attorney-- this interview that you have spoken about prior to Mr. McFarland's appearing on the scene, what, if anything, did he say to you with reference to his desire to make a confession?

MR. RICHARDSON: If your Honor please, we object to that as incompetent, immaterial and irrelevant, as not binding

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upon this defendant, as a mere declaration of Mr. Adams outside of the presence of the defendant, as not redirect examination and not connected with the defendant.

THE COURT: The court will override the objection and permit the question to be answered.

MR. RICHARDSON: Note our exception.

A He said he did not think I would be alone in making a confession,-- he thought he would do it too.

Q And after-- A He did not say he was sure he was going to; he said he thought of doing it.

Q How long after this was it that McFarland came? A It was just shortly after that; I don't think it was over a day or two,-- I could not say the exact time.

Q Did you have any talk prior to McFarland's coming with Steve Adams with reference to those matters in Colorado that you have testified to as having been engaged in with him? A Yes sir, I did.

Q State generally the lines upon which those conversations were conducted-- the subject matters which were discussed, not the talk themselves?

MR. RICHARDSON: We object to that. The utmost theory upon which you could go with respect to that would be that it would be the declaration of a co-conspirator. The conspiracy had long before ended.

THE COURT: I will hear Mr. Hawley on that.

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MR. HAWLEY: It is not for the purpose of putting in evidence the declarations of Steve Adams, but it is for the purpose of combating the idea that shows all through this cross examination that Steve Adams was acting under the influence, suggestion or dictation of this witness. It is the implication throughout all this testimony and undoubtedly what it is put there for, and this is introduced in order to combat that; then, as there was conversations since this conversation which he had had with his attorney, I think we are entitled to bring that out and the lines upon which that was had. They have asked in regard to their talking together; implying in that language that there was an undue influence being used by this witness, and if I can show the line upon which this conversation was had-- not the conversation itself, I think it would explain that matter-- not the conversation as I have said, but the general line as to what was being asked.

THE COURT: I don't see how you can get the general line of conversation without going into the conversation itself. The court has indicated the length to which it was willing to permit this evidence to go.

MR. HAWLEY: I will ask another question.

MR. BARRON: That objection is sustained?

THE COURT: Yes sir.

Q Was there any conference after this talk with Steve Adams and his attorney, between you and Adams with reference to the

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matter except as to dates of given occurrences, or on any other subject except dates of given occurrences until after Mr. McFarland came?

MR. RICHARDSON: We object to that for the reasons stated in our objection to the last question. This witness has made his declaration with respect to that matter, and your Honor has stated that he could not go into the conversations.

THE COURT: I don't understand that this question asks for the conversations.

MR. RICHARDSON: No, but he asks if he had any other conversations except this one stated.

THE COURT: The court will overrule that objection.

MR. RICHARDSON: Note our exception.

Q Answer the question. A I did not have much talk at all after-- about these things until after Mr. Adams talked to Mr. McFarland,-- not very much.

Q After Adams and McFarland had talked did you have any conversations, or did you and Adams still continue to live together, to have the same cell together?

MR. RICHARDSON: If your Honor please, there are three questions; one is objectionable and the other two we have no objection to their being asked.

THE COURT: What is the objectionable feature?

MR. RICHARDSON: Please read that question, Mr. Libby.

The question was then read.

MR. HAWLEY: I will ask the question over again.

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Q Did you and Adams still continue to occupy the same cell after his talk with McFarland? A Yes sir, for a day or two.

Q Shortly after this talk did you and Adams have a conversation, or a conference with Senator Borah and myself in regard to these matters?

MR. RICHARDSON: If your Honor please, we object to that as entirely immaterial, incompetent and irrelevant, and not redirect examination. Suppose he did have a conversation with them how would that affect this defendant?

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A Yes sir, we did some time after that; I don't know exactly the time.

Q Where was this conference between Borah and myself, and Adams and yourself held?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant and not binding upon the defendant Haywood.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A It was in the clerk's office up at the penitentiary.

Q How long did it continue?

MR. RICHARDSON: That is objected to for the same reason.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

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A Oh, possibly an hour and a half or two hours.

Q On how many different dates?

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

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A Either two or three different times.

Q You may state if in this conversation between the four I have mentioned, Senator Borah, myself, you and Steve Adams, these matters you have testified to in which yourself and Adams were engaged, were gone into?

MR. RICHARDSON: We object to that, if your Honor please, as incompetent, immaterial and irrelevant. Senator Borah, and Mr. Hawley, and this man and Steve Adams could not get together and say anything or do anything which would bind this defendant.

MR. HAWLEY: We are on the question of extorting this confession, your Honor; that is what we are after.

THE COURT: Can't you show that without going into all of those details?

MR. HAWLEY: I don't know how we are going to show it without making the questions.

THE COURT: I don't know how the court can help you out. The court has indicated to what extent he is willing you should go into this.

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MR. HAWLEY: I understood we could go into these matters generally but not state the conversation. I may have misunderstood the court, but I thought I was confining my questions--

THE COURT: Read the question, Mr. Stenographer.

The last question was then read.

MR. RICHARDSON: That gives the substance of the conversation in the question without calling for anything from the witness.

MR. HAWLEY: That, we absolutely deny.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: Note our exception.

Q Read the question again.

The question was again read.

A Yes sir, they were.

Q You may state if in that conversation, the first part of it, there was anything said by Adams in regard to his statements having been extorted from him or in any manner being untrue?

MR. RICHARDSON: We object to that as entirely incompetent and as attempting to get before this jury the question of the admissibility of Adams confession and the contents of it.

THE COURT: The court will sustain this objection.

MR. HAWLEY: Take the witness.

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RE-CROSS EXAMINATION

BY MR. RICHARDSON:

Q When you disposed of your interests to Cordonia, in the Hercules mine up there, you were in debt, weren't you, to Cordonia?

A I may have owed him a small bill.

Q Well, didn't you owe him a small bill? A I would not say positively whether I did or not.

MR. DONAH: These were exact questions that were asked this witness on cross examination.

MR. RICHARDSON: He has gone into the Cordonia matter and I want to ask some new things in regard to it.

THE COURT: You may ask him.

Q How long had you had your interest in the Hercules mine in your hands before you disposed of it to Cordonia? A I think I had only had it about six or eight months; I am not positive about that.

Q Now, you kept getting advances from Cordonia on it after you gave it to him, didn't you? A No sir, I did not.

Q Didn't you have any advances from him after the time you turned your interests over to Cordonia? A No sir, I did not.

Q Wasn't it in part payment of your bill that you turned it over?

A If I owed him a bill I paid him at the same time and possibly it might have been taken out of that.

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Q Now, when you turned it over to him hadn't you pledged your

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interest in this property to him some time before that?

A No sir, not to him.

Q Who had you pledged it to? A I borrowed \$150. on it of an engineer on the railroad.

Q How long did you have it pledged to this engineer?

A It was not very long; I borrowed this \$150. I think some time in January of 1907-- or 1907, I think.

Q Cortonia was in the business of loaning money on collateral security, wasn't he? A No sir, I don't think he was.

Q You don't think he was? A Not that I know of.

Q And didn't he advance the money to you to get this property away from the engineer? A No sir, he did not. He bought it outright.

Q In what form did you have your escrow with the engineer?

A I gave him a note for this \$150. and left this interest in the mine as security.

Q Didn't you give a note to Cortonia and leave that deed in escrow with Cortonia to secure the payment of that note?

A No sir, I did not.

Q Never at any time? A No sir.

Q Did you ever get any more money from Cortonia out of it?

A Not after I sold it to him.

Q Didn't you get \$50. from Cortonia about the time you left the company? A No sir.

Q Never got any money from Cortonia until after the time you

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transferred this property to him-- it was all done on one occasion? A Yes sir, it was all done on one occasion.

Q Absolutely? A Yes sir, absolutely.

Q Did you ever get any more money from Cortenia at any time?

A I dealt with Cortenia some but I don't think I got any money from him. I paid him money.

Q Did you borrow money from him-- from Cortenia after that?

A I don't remember that I ever borrowed any money from Cortenia.

Q Did he ever advance you any more money or give you any more money after the time you gave him your deed to this property?

A No sir, I don't think I ever did.

Q Did you tell Dave Costen that Cortenia held your property as security for a loan and you had a right to take it up up to the time you went out of the Coeur d'Alone country when you were there in 1887? A No sir, I never did.

Q Do you know the stage driver who drove the stage between Malien and Wallace in 1889, about the time you left that country? A Well, I knew a stage driver or two.

Q Did you ever have any talk with that stage driver about the time you were getting out of the country-- shortly before the time you went out of the country, in which you told him that Cortenia held your interest in this property as a pledge and you could redeem it at any time, and sell your interest in the property to him? A No sir, I did not.

Q You did not? A No sir.

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- Q What was that stage driver's name? A I don't know.
- Q You don't know the stage driver's name at that time?
- A I rather think it was Pat McFhear, but I am not sure.
- Q Now, in 1905, in Wallace, in Idaho, in Dave Coates office, did you tell him that when you went out of the country you tried to sell your interest to this stage driver and have him take up your interest with Gordonif? A No sir.
- Q You did not find Gordonif there when you went back in 1906?
- A I seen him when I was there.
- Q Did you get any money from him when you first were there in 1906? A No sir, I did not.
- Q Nor ask him for any? A I did not ask him for any money; I said to him in a joking way that I heard he was looking for me to give me four or five thousand dollars, in just a joking way, that is all.
- Q When was that? A That was while I was in Wallace in 1905, over at the Short Line depot there.
- Q You asked him if he did not think he ought to give you four or five thousand dollars? A I says, "I understood you was looking for me to give me four or five thousand dollars, you have done so well out of that interest;" but just in a joking way.
- Q You say you did not know Kid Waters in Cripple? A I do, yes sir.
- Q You did know him at all? A No sir.
- Q And yet you were around there all of 1903 and in the early

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spring or winter of 1904, up to June 6th, of 1904? A I was there off and on.

Q And never heard or knew of Kid Waters at that time? A I never heard of him by that name, no sir.

Q Or any name that you know of? A None that I know of, I don't.

MR. BORAH: May I ask counsel, was Kid Waters--- was that his name?

MR. RICHARDSON: Yes. I don't suppose Kid was his name, but he was known as Kid Waters.

MR. BORAH: If you have got his name we would like to have his correct name, and if not, if you have it, we would like to have his photograph or some means of identifying him.

MR. RICHARDSON: I don't know what his first name was.

MR. BORAH: That is what I apprehended.

MR. RICHARDSON: I will tell you how you can find out, if you want to know; I saw Mr. Carlton--

THE COURT: Proceed with your question.

Q You did not know of any man in the Cripple Creek district commonly called Kid Waters? A I don't remember of any.

Q A gun man in the employ of the Mine Owners Association?

A No sir.

Q And the head of the thugs in that district at that time?

A I don't remember of no man by that name.

Q What is that? A I say I don't remember of no man by that name.

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- Q You did know of Kid ~~Waters~~ Kinley? A I heard of him.
- Q And never heard of Kid Waters in connection with that name?
- A No sir. I think I have heard of this man called Kid Waters since that time, but I never knew his name.
- Q You and Jack Simpkins went to the office of Robertson, Miller and Rosenfeld? A Yes sir.
- Q You and Jack Simpkins met Robertson there at that time?
- A No sir.
- Q Did you see Robertson at any time at all with Jack Simpkins?
- A Yes sir.
- Q Where did you see him? A I saw him on the street one day; I think it was just evening.
- Q Did you know that Robertson was Paulson's attorney at that time? A No sir, I did not.
- Q You knew he was Jack Simpkins attorney at that time? A I did not know that he was at that time; he said he had represented them some.
- Q Said he had represented him? A I don't know that he said he had represented him; he said he had represented the Federation.
- Q You have spoken about a conversation that you had with Mr. Haywood about writing some letters to your wife as to your being in Alaska? A Yes sir.
- Q Where were you when you had that conversation with Haywood?
- A I was in Denver. I could not say just where.
- Q Well, can you give us some idea of where it was? A I think

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possibly it was at Pettibone's residence, or perhaps it was at Pettibone's store; I would not say positive where it was.

Q Or perhaps at Federation headquarters? A I don't think I went up to headquarters.

Q Or perhaps out on the viaduct? A That is my best recollection, that it was at Pettibone's residence, or his store, or at Haywood's residence.

Q You cannot give us any one of the three places where you had this conversation? A I cannot say where it was; we used to meet there usually when we did talk.

Q Now, give us the time when the conversation occurred which you had with Haywood about it? A Well, the time was somewhere in the summer of 1903; I would not say the exact date.

Q You wanted him to write to your wife that you were in Alaska, did you? A I did, yes sir.

Q You asked him to write to her that you were in Alaska?

A He said to me that she had been writing to him and wanted to know where I was and we talked that over together and I said I would write a letter and send it by Marion Moore to Home as he was going up there and for Haywood to answer her if she wrote to him again and say I was in Alaska.

Q You have just said that she had written him two or three times to find out where you were and you talked to him about it for him to write a letter and say that you were in Alaska?

A I told him to write that.

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Ex 1659

Q You don't remember the place definitely where this occurred?

A No sir.

Q But you do know that the time was in the summer time?

A Yes sir.

Q What time in the summer time was it? A I think it was in July but I would not say positive.

Q Who else was present when you asked him to write this letter to your wife in July? A I would not say whether there was any one present or not; I am not sure.

Q Wasn't there some one else present? A I don't remember that there was.

Q There was nothing about this conversation that you should conceal, was there? A Yes.

Q You was not afraid of that conversation, was you? A I did not talk that out public-- only between ourselves.

Q You left Denver as early as the middle of August, or somewhere about the middle of August? A No sir.

Q When did you leave? A I think I left between the 25th and 30th of August.

Q Very well, you left between the 25th and 30th of August, and it was more than a month prior to the time you left that you had this conversation with Mr. Haywood, was it? A Well, I might have talked about it again; I think it was-- I think the time I spoke of it was the time I gave the letter to Marion Moore.

Q About when was that? A I think it was some time in July.

- Q You think it was some time in July? A Yes sir, I think so.
- Q You are quite certain you never spoke to Haywood after you left between the 25th and 30th of August? A No sir, I am not. I think I have spoken to him about it.
- Q When did you see Haywood after the 25th day of August, 1905, and where? A After the 25th day of August?
- Q 1905, when and where did you see him? A I seen him at headquarters about the 25th of August, about the time I left.
- Q What time was it you left? A I think between the 25th and 30th of August.
- Q Where and when have you seen him since you left between the 25th and 30th of August? A I have not seen him anywhere since then.
- Q Then you are certain that you must have told him about writing this letter to your wife about being in Alaska prior to the 30th day of August? A Yes sir.
- Q Because you have not seen him to tell him to write any letters since that time, have you? A No sir, not to tell him about writing any letters.
- Q How long have you had these letters in your possession which were introduced this morning as exhibits X, Z, and A 1, A 2 and A 3? A I never had them in my possession only to look at them.
- Q When did you first see them? A Four or five days ago.
- Q Your wife delivered these letters to a Pinkerton agent, didn't

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she, more than a year ago? A I don't remember when she delivered them.

Q You wrote to her to deliver those letters and all letters she had, to the Pinkerton agent shortly after the time you made your confession, didn't you? A I don't think I said anything about delivering any letters.

Q You don't? A No sir, I don't think I did.

Q Don't you know that those have been in the possession of the Pinkertons ever since that time? A I am not sure that I did.

Q I don't believe they told me about them until a few days ago.

Q Was that since you went off the stand? A No sir.

Q You went off the stand last Thursday afternoon, didn't you?

A I believe so.

Q You have had Friday, Saturday, Sunday and Monday since you went off the stand, and you say it was four or five days ago?

A I seen the letters before I went off the stand.

Q Why didn't you tell us about that? A I was not asked about them.

Q You came down for a conference, didn't you, on Sunday at Mr. Hawley's office? A I saw him on Sunday.

Q Did you see Mr. McFarland on that day? A Yes sir, I spoke to him.

Q You had quite a consultation in the office there, or Mr. Hawley, lasting more than one hour, didn't you? A I think

I was there more than an hour, yes sir.

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- Q Did you go over these letters then? A I don't think that I did.
- Q You don't think that you did? A I am not sure about it though.
- Q You came back from Caldwell yesterday and took a carriage or a cab up to Mr. Hawley's office? A Yes sir.
- Q And spent about two hours up there yesterday afternoon, or three, didn't you? A I think I was there about two hours.
- Q And you went over these letters there yesterday, didn't you?
- A No sir.
- Q Did not see them at all? A I don't think I did, no sir.
- Q And you did not see them Sunday? A I never saw them the letters but once before I was shown them here today.
- Q Now, when was it that you saw these letters? A A day or two before I went off the stand.
- Q Who showed them to you? A Mr. Berah.
- Q And where did he show them to you? A At Mr. Hawley's office.
- Q Who was present when they were shown to you? A I could not say; Mr. Hawley and Mr. Berah was there I think, and I don't think there was anybody else right in the office then.
- Q Wasn't it on the strength of the letter from Haywood to your wife that you have stated that this conversation occurred with Haywood in the month of July, 1905? A No sir, it was not.

MR. RICHARDSON: Let me see that exhibit, if you please.

MR. HAWLEY: We haven't it here. I think the clerk has

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it.

THE WITNESS: I might say that I don't state positively that this was in July.

Q You do say it was prior to the 30th of August? A Yes sir.

Q It must have been because you were not there after that time?

A Yes sir, I was not there.

Q Look at the date of that letter? A I don't see any date on it.

Q Don't you? A Oh, November 18.

Q November 18; the letter was written, which has been introduced in evidence from Mr. Haywood to your wife, on November 18; can you tell us how it comes that that letter which you requested to be written in July by Mr. Haywood was not written until November 18th? A I think I can.

Q You think you can? A Yes sir.

Q All right, we will take the lid off and allow you to do so.

A I think he neglected writing it then and in the meantime my wife wrote him again asking again about me and then he wrote it.

Q Don't you think your wife wrote Mr. Haywood along about November 18, just prior to that, asking where you were and that he wrote her the 18th telling her all he knew about it?

MR. HANLEY: No object to this.

THE COURT: The objection is overruled.

A I think she possibly wrote him a letter asking him about me

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if he knew, and he thought about this letter I had asked him to write and he wrote it.

Q You had not said anything to Mr. Haywood about paying fare for you, had you? A No sir.

Q You had not said anything to Mr. Haywood about Fairview, had you? A No sir.

Q And you did not know that there was such a place as Fairview, did you? A I knew there was some such place as Fairfield, or something like that.

Q Did you tell Haywood to write to her that you had gone to Fairview? A No sir, I think I mentioned Cape Nome.

Q You don't know whether he wrote her that the last he heard of you you were in Fairview, Alaska? A I could not say as to that.

Q You could not say? A No sir.

Q Paddy Malincy was a man who lived at Cripple Creek?

A Yes sir.

Q Where was it you saw Paddy Malincy and handed him this letter to give to your wife? A At Pettibone's store.

Q And that is where you wrote this letter? A I think I did, and I think I gave it to him there.

Q Mr. Haywood was not present? A No sir, I don't think he was.

Q Mr. Meyer was not present? A No sir, I don't think he was.

Q And Mr. Pettibone was not present, so far as having any knowledge of the letter was concerned? A I had talked it over with him about writing these letters, I think.

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- Q Why did you talk with Pettibone and Haywood about this letter which you had given to Paddy Maloney? What was the occasion of it? A The occasion of it was this, that I understood my wife had told a party that if she knew where I was she would tell the officials, that she would rather have me in jail than not know where I was.
- Q And so you told Haywood and Pettibone that you had written a letter to her and had given it to Paddy Maloney to deliver it to her? A I think I spoke to Pettibone about it, and to Haywood afterwards, and thought that there would probably be some mail come to me there.
- Q And this woman that wanted to put you in jail you wrote this sweet effusive letter to? A I wrote the letter with the intention of making her believe that I was in San Francisco.
- Q Notwithstanding the fact that this woman wanted to put you in jail you wrote this letter to her? A Yes sir, I wrote it that way. I don't know that she wanted to put me in jail.
- Q You stated, didn't you, a moment ago that you understood that this woman had stated that if she knew where you were she was going to peach on you and have you put in jail? A I understood she would tell where I was, but if I did go to jail she thought they would not keep me and I would be out of it.
- Q And that is the reason you wrote her this nice sweet letter, because she wanted to put you in jail?

MR. HANLON: We object to that as trying to put words in the witness's mouth.

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MR. RICHARDSON: Why what is the object--

THE COURT: The objection is sustained.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: And I ask that the answer be stricken out.

THE COURT: Has he answered the question?

MR. HAWLEY: No.

THE COURT: If he has answered the question the court will overrule it.

THE WITNESS: The question was answered.

- Q You say you had a conversation with Meyer, Haywood and Fetti-  
bone in which they told you not to write or wire, or send to  
them, but that if you got into trouble they would get you  
attorneys immediately? A Yes sir.
- Q Where did you have that conversation? A I could not tell  
you where we did have it, but it was spoken of at different  
times.
- Q How many different times? A I would not say how many differ-  
ent times.
- Q What was the occasion of speaking of it so many different  
times? You understood it just as well the first time, didn't  
you, as having it repeated? A It was talked of several times.
- Q And yet you cannot tell me a single place where it was spoken  
of? A It was spoken of where we used to meet and talk these  
things over, over at Fattibone's store or at headquarters, or

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at Pettibone's residence or at Haywood's residence.

Q But you never saw Meyer at Haywood's house in your life, did you? A No sir, I don't think I ever did. I don't say that these conversations were all at one time.

Q You did tell counsel that you had a conversation with Meyer, Haywood and Pettibone about not writing or sending to them, that they would send attorneys if you got into trouble? A Yes sir, but perhaps that is a wrong conclusion.

Q Did you answer that because you saw I was going to eliminate Haywood's house? A No sir, I answered it because I thought it might be a wrong conclusion.

Q Did you ever see Meyer in your life at Pettibone's house?

A I think I have, but I am not positive.

Q You know that you never saw him at Haywood's house and you are not positive that you ever saw him at Pettibone's house?

A No sir, I don't think I ever saw him at Haywood's house.

Q Did you ever see Meyer at Haywood's house in your life?

A I don't think I ever did.

Q Did you ever see Haywood at Meyer's house? A No sir.

Q Did you ever see Pettibone at Meyer's house in your life?

A I don't think I ever saw him at his house, no sir.

Q Then, so far as Meyer is concerned, it must have been at Pettibone's store or at headquarters that you talked that matter over, must it not? A Well, I think it was.

Q Did you ever talk with Meyer at Pettibone's store? A Yes sir, I have talked with him a little there.

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- Q How many times have you ever seen Meyer at Pettibone's store?
- A I could not tell how many times I have seen him there, though some few times.
- Q A large number or a small number? A Not near so often as I have seen Haywood there.
- Q Would you say a half dozen times or a dozen? A I would say a half a dozen times.
- Q Half a dozen times in all? A I would say that many at least.
- Q Do you think you had this conversation with him at Pettibone's store? A I would not say that I did. I know we have talked it over, but less with Mr. Meyer than with Haywood and Pettibone.
- Q You don't know that you talked it over with the three at any time together? A I think it was spoken of when I came down here.
- Q It is quite important to know whether it was or not, and to get your best recollection on that subject. A I would not say positively whether it was or not.
- Q And so far as Haywood and Pettibone are concerned you cannot give us the specific time or place where you ever had any conversation with them on the subject? A No, no nearer than I have, no sir.
- Q The most you can tell is a sort of general recollection that if you got into trouble all you had to do was to sit down silently

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and wait and they would relieve you? A That was the understanding that I was not to write or wire them, but that they would send an attorney.

Q Now, is that not the understanding that generally prevails that any member of the Western Federation of Miners who gets into any trouble that the headquarters will defend them?

A I don't know that it is.

Q You know that for years the Federation has been doing that with respect to every man that has been charged with crime?

A They have defended a good many of them.

Q You know that all over the State of Colorado you have known of their sending lawyers to defend men charged with complicity in these various transactions? A I believe they have defended some of them, yes sir.

Q Well, wherever there has been a strike eventually there has occurred some violence, hasn't there, after the strike has been on some time? A There has in some of the strikes.

Q And immediately the newspapers have denounced the Western Federation, you know that don't you?

MR. HAWLEY: We object to that. The newspapers are the best evidence.

Q Ain't that right? A Well, I could not say. Some of the newspapers have denounced them, I believe.

Q And you have known generally that the attorneys for the Federation have gone to those places where these things have

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occurred, and when the trial came up-- A Yes sir.

Q -- they have defended the men charged with these offenses, isn't that right? A I have known of them paying counsel to defend them at times.

Q And you attended court once where that was done, down at Cripple Creek, didn't you? A Yes sir, I did.

Q Now, with regard to this man Scott, you went to see him after the Vindicator explosion because you had seen him a day or two before the Vindicator explosion about the train wrecking case, you say? A He had sent for me.

Q And you had seen him a day or two before that? A Yes sir, I had.

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8. Where were you when Scott sent for you? A. I was living at Independence. I don't know just where I was at the time.
9. Don't remember the circumstances except that he did send for you and you went to see him? A. He sent me a note and I went to see him, yes sir.
10. You hadn't thought it was necessary to slip out of Independence for your own protection, had you? A. I hadn't at that time.
11. Why did you go to Mr. D. C. Scott, the detective for the Florence and Cripple Creek railroad company, for your protection? A. Well, I thought after I had went over and seen him the first time and told him about this and he had sent for me if I didn't go it would look suspicious on my part, and I wouldn't have went if I hadn't -- I was sorry that I had went at all and told him anything at all then after the <sup>Vindicator</sup> ~~Western~~ explosion, but I thought that I better play the string through then the best I could.
12. You had already been told by Mayer, Haywood and Pettibone if you got into any trouble an attorney would be sent to defend you, hadn't you? A. No sir, not at that time.
13. You had not? A. No sir.
14. And that was the reason, was it, why you went over to see Scott so as to protect yourself? A. No sir, it was not the reason.
15. It was not? A. I went over because I thought it would be better for me to go, it would look suspicious if I didn't go.
16. You didn't know then that if any offense should occur -- any trouble arise that an attorney would be sent to protect the Federation man if he should be charged with the commission of

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That offense? A. I didn't know particular. I didn't propose to get into any trouble if I could help it.

Q. Didn't want to take any chances on it? A. No sir.

Q. And you thought Scott was a safer man than a Federation attorney, didn't you, at that time? A. No sir, I thought Scott would suspicion me if I didn't go after he sent for me.

Q. What is the name of your daughter, back in Canada?

A. Olive.

MR. RICHARDSON: That is all.

MR. HAWLEY: That is all.

MR. RICHARDSON: Of course, if your Honor please, I will recall him for those impeaching questions.

THE COURT: Yes sir. The witness will be recalled.

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

DIRECT EXAMINATION

BY MR. BORAH:

- Q. What is your name? A. Edward Boyce.
- Q. Where do you reside, Mr. Boyce? A. Wallace.
- Q. Wallace, Idaho? A. Yes sir.
- Q. How long have you resided in Wallace? A. Well, I have called  
Wallace my home since May, '87.
- Q. Were you at one time officially connected with the organization  
known as the Western Federation of Miners? A. Yes sir.
- Q. In what official position? What official position did you  
occupy with them? A. I was a member of the executive board  
and president.
- Q. During what years were you president, Mr. Boyce?
- A. '96, '97, '98, '99, ~~1900~~ 1901 and to May, 1902. That was  
seven years.
- Q. Also 1900? A. Yes sir.
- Q. 1900 and 1901? A. Yes.
- Q. Up until May, 1902? A. Yes sir.
- Q. Who succeeded you, Mr. Boyce? A. Charles Moyer.
- Q. Charles H. Moyer? A. Yes sir.
- Q. When was the Western Federation of Miners organized, if you  
know, Mr. Boyce? A. The 15th of May, 1893.
- Q. ~~1893~~ 1893? A. Yes sir.
- Q. You were not the first president then? A. No.
- Q. But you served during those years which you have just stated?
- A. Yes sir.

- Q. Who was secretary-treasurer during the period which you were president? A. The first secretary-treasurer was Mr. Eddy; the second was Mr. Maher; the third was Mr. Haywood.
- Q. William D. Haywood? A. Yes sir.
- Q. Where was the headquarters of the Western Federation of Miners during the period you were president? A. In Butte and Denver.
- Q. Up to what time was it in Butte, Mr. Boyce? About what time? A. 1901 I think it was moved from Butte.
- Q. And then it was removed to Denver? A. Denver.
- Q. How many members are there of the executive board of the Western Federation of Miners? A. I think there are nine.
- Q. What other officers are there besides the president and secretary-treasurer and the executive board? Any other officers? A. I believe that is all. Is that just at the present, do you mean at present?
- Q. Yes, during the period in which you were president were there any other officers other than the president, secretary-treasurer and executive board? A. No, except the attorney. I forgot to mention that.
- Q. How many members were there of the executive board?
- A. There were -- first I believe there were five and then it was increased to seven and afterwards I believe it was increased to nine. I won't swear positively to that, but it is the best of my recollection.
- Q. Were the president and secretary members of the executive board?
- A. Yes sir.
- Q. And were there five members including the president and secretary or five besides them? A. I think it was seven --



I want to be plain on this, Mr. Borah. I believe that in the beginning the secretary-treasurer was not a member of the board. I think that was in the beginning. And I believe that there were four members of the board elected and the president constituted the fifth.

Q. Was that executive board afterwards increased in number?

A. Yes sir.

Q. And did the secretary afterwards become a member of the executive board? A. Yes sir.

Q. Did you as an organization print a magazine or a publication called "The Miners' Magazine"? A. Yes sir.

Q. What year did you commence to publish that, do you remember?

A. Yes, I think that it was published in -- I believe the first issue was January, 1900.

Q. What was the name of the publication? A. The Miners' Magazine.

Q. You may state whether or not this magazine was the official organ of the organization? A. It was after the first convention after it was started.

Q. The first convention after it was started? A. That would be May, 1901.

Q. Since May, 1901, then this publication has been the official organ of the Western Federation of Miners? A. Yes sir.

Q. Published under the auspices of that organization?

A. It was up until the time I was president, and I presume it is not; I don't know.

Q. It was so long as you were president? A. Yes sir.

Q. And paid for out of the funds of the Western Federation of Miners? A. Yes sir.

- Q. Through this magazine I presume you conveyed whatever knowledge you desired to the members of the organization in the way of publication -- published matter? A. Yes sir.
- Q. The first publication that was made was made under the auspices of the organization just the same as those which followed, was it not? A. Well, I don't believe you could call it that because I was anxious to have a publication of some kind that would reach the members in general.
- Q. (Magazine handed to the witness). Just refresh your recollection by looking over that and state whether or not that commenced as the official organ of the organization? A. That is correct.
- Q. Who signs that first article, Mr. Boyce? A. I did.
- Q. And wrote it as the president of the organization?
- A. As the president of the organization -- have I signed it so?
- MR. BURAH: I have forgotten whether you did.
- MR. HAWLEY: I don't think it is signed as president.
- Q. But you were president of the organization at that time?
- A. At that time, yes sir.
- Q. Now you left this organization in May, 1902? A. Yes sir.
- Q. And up until that time you know that this Miners' Magazine was the official organ of the organization? A. Yes sir.

MR. BURAH: We desire, if your Honor please, to introduce a number of articles from the Miners' Magazine and I don't know -- I presume counsel will want to see them of course before they are introduced. I have a list of them here and could give them to them so that they could examine them by

tomorrow morning. I presume it would take a great deal of time to see them here.

THE COURT: If it will take too much time, is there anything else you can go ahead with?

MR. BORAH: Not very well.

MR. RICHARDSON: If they will furnish the articles and mark what they want to introduce then we will be able to pass upon them and determine what we want to do.

MR. BORAH: We will furnish them that.

THE COURT: You can furnish them that, can you, Mr. Borah, so that they will be ready to go ahead in the morning?

MR. BORAH: Yes sir.

MR. RICHARDSON: I will say we have not the files of the magazine bank that far with us. You will have to furnish us the article which you intend to introduce. Of course we have got nothing which we can read them from unless you can furnish them to us.

MR. BORAH: We will furnish them to you. You may cross examine, if you wish to at this time.

MR. RICHARDSON: I wouldn't think there was anything to cross examine on so far. Go you through with him? If you are, I will move to strike out what he has said just to keep the motion good, so I won't forget how to use it.

MR. BORAH: We are not dismissing the witness from the stand.

MR. RICHARDSON: Then there is no need of making the motion until you get through with him. I don't care to cross examine him on these matters, but I might on some others.

MR. BORAH: We will try to keep you from cross examining except as to these matters.

THE COURT: (To the bailiffs): Gentlemen, you will permit Mrs. Gilman, under the rules that have been made heretofore, to interview Mr. Gilman in the presence and hearing of two of the bailiffs.

Thereupon the court gave to the jury the statutory admonitions, the bailiffs were sworn and the jury retired in the custody of the sworn bailiffs.

THE COURT: Adjourn court until 9:30 tomorrow morning.

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Boise, Idaho, Wednesday, June 19, 1907.

9:15 o'clock A. M.

Articles not pursuant to adjournment.

The clerk read the minutes of the session of Tuesday, June 18th, 1907, and the same were signed by the court.

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

MR. MORAN: We desire to offer, if your Honor please, certain articles in what is known as the Miner's Magazine. These articles are taken from different issues of the magazine and have been suggested to counsel for the other side. I will state, gentlemen, that the first article is simply the opening article of the publication and it is introduced largely for the purpose of showing the object and purpose of the magazine. The other articles are articles referring to parties who, we claim, have been subjected to assault, as Stenmohr, Peabody, and the other parties.

MR. RICHARDSON: I suggest that each article be offered and marked and after being marked, then offered, and we can make our objection to it.

THE COURT: You better offer them in regular order.

MR. MORAN: We now offer the article appearing upon

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pages 15, 17 and 18, signed by Edward Boyce, in volume 1, No. 1, of the Miner's Magazine under date of January, 1900.

MR. RICHARDSON: And designated how in the record, as what?

THE COURT: Offer them in the usual way, Mr. Borah.

MR. BORAH: We will ask to have this marked as an exhibit for identification.

THE COURT: That is the magazine already identified by Mr. Boyce?

MR. BORAH: Yes sir, he identifies the entire publication as the official organ of the organization.

MR. RICHARDSON: What is the number of it?

MR. BORAH: The exhibit is for identification, B 1, and pages 15, 17 and 18.

MR. RICHARDSON: To the offer of exhibit B 1 in evidence we object for the reason that it is immaterial, incompetent and irrelevant, neither sustaining nor tending to sustain any issue in this case, nor connects or attempts to connect Mr. Haywood with this case.

THE COURT: Is there any objection to having this entire offer made and considered as one matter?

MR. RICHARDSON: There are certain of these resolutions which purport to be signed by Mr. Haywood with other people perhaps, and therein one resolution and one other matter, but his name appears there twice, and you have offered to introduce the table showing that he was an officer of the organization four or

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times five times. As to that the argument will be different than with the others.

MR. BORAH: Now, we offer page 42 of exhibit E 1, volume 1, No. 1, of the Miner's Magazine, insofar as it discloses the names of the officers of the organization of that date.

MR. RICHARDSON: To which we object for the reasons heretofore stated in our objection to the offer of the previous exhibit.

THE COURT: Let the record show that the court will rule upon this with the other similar matters.

MR. BORAH: You may mark volume 1, No. 2, for identification.

The exhibit was marked State's exhibit F 1 for identification.

MR. BORAH: We now offer pages 2 and 3 of State's exhibit F 1 for identification, being volume 1, No. 2, of the Miner's Magazine.

MR. RICHARDSON: To the State's offer we desire to object for the reasons stated in our objection to the offer of exhibit E 1.

MR. BORAH: We offer page 17 of the same exhibit and also page 18 of the same exhibit.

MR. RICHARDSON: To pages 17 and 18 of exhibit F 1 for identification we object for the same reasons stated in our objection to exhibit E 1.

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MR. WICKERT: Now, the first notation on this paper is volume 1, No. 1, pages 16, 17, 18, and 42; then the next is volume 1, No. 2, pages 1, 2, 3, 17, 18, and 42.

MR. BORAH: Yes sir, page 42 is simply the names of the officers again.

MR. RICHARDSON: To that page 42 we desire to object for the reasons stated in our objection to exhibit B 1.

THE COURT: The same action in regard to that.

MR. BORAH: We offer a paragraph from page— you better mark this for identification.

The exhibit was marked State's exhibit B 1 for identification.

MR. BORAH: We offer a paragraph from page 42 of exhibit G 1 for identification, under date of April, 1900.

MR. RICHARDSON: To the State's offer of Exhibit G 1 for identification we desire to object for the same reasons as stated to the State's offer of exhibit B 1.

THE COURT: The same action as to the others.

MR. BORAH: We offer a paragraph from page 14; we offer the first article on the top of page 14, being entitled an eight hour law, in exhibit H 1 for identification, it being volume 1, No. 4.

MR. RICHARDSON: To this offer we desire to object for the same reasons as stated in the objection to exhibit H 1.

MR. BORAH: We offer page 15, it being an article

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entitled, Idaho Veterans, Do your Duty.

MR. RICHARDSON: To the offer of page 18 of the State's exhibit H 1, we desire to object for the reasons stated in our objection to the offer of exhibit H 1.

THE COURT: The same action will be taken as to the others.

MR. DORAN: We offer an article upon page 18 and 19, Sovereign entitled, Submission at the Convention, of exhibit H 1, being volume 1, No. 6, under date of June, 1900.

MR. RICHARDSON: To the offer of pages 18 and 19 as stated by counsel we desire to object for the same reasons as stated in our objection to exhibit H 1.

THE COURT: The same action.

MR. DORAN: We offer page 44 of the same exhibit, being the names of the officers of the Western Federation of Miners.

MR. RICHARDSON: To the offer of page 44 of exhibit H 1 we desire to object for the same reasons stated in our objection to exhibit H 1.

THE COURT: The same action in reference to this as to the others.

MR. RICHARDSON: I suppose he might read them and let the stenographer put in this objection as I have formulated it, and that will save my rising up and sitting down here, for I am getting old.

THE COURT: You sir, the court will do what it can to help you, Mr. Richardson.

MR. RICHARDSON: Then, let the stenographers put in the objection just as I have formulated it in the others.

MR. BORAH: I offer at present page 60 of State's exhibit I 1, volume 2, No. 6. I offer page 60 only of that, -- simply the names of the officers of the Federation at that time.

MR. RICHARDSON: To the offer of page 60 of State's exhibit I 1 we object for the same reasons stated in our objection to exhibit E 1.

MR. BORAH: We offer pages 7 and 8 and the top paragraph on page 9 of State's exhibit J 1 for identification, volume 1, No. 10 of the Miner's Magazine.

MR. RICHARDSON: To the offer of State's exhibit J 1, we desire to object for the same reasons stated in our objection to the offer of exhibit E 1.

MR. BORAH: And page 60, which is simply again the names of the officers of the Western Federation of Miners.

MR. RICHARDSON: And to page 60 we desire to object for the same reasons stated in our objection to the offer of Exhibit E 1.

THE COURT: The same action.

MR. BORAH: We offer State's exhibit K 1, being volume 1, No. 1, of Miner's Magazine, January, 1901. We offer page 7 and the first paragraph on the top of page 8, of an article entitled, the passing of Stearnberg.

MR. RICHARDSON: To which offer of State's exhibit K 1 for identification we desire to object for the same reasons stated in our objection to the offer of exhibit E 1.

THE COURT: The objection may be entered. Have you got those all marked as you go along?

MR. BORAH: Yes sir. Now, you will have to mark this volume I guess, as one exhibit, it being bound volume No. 3.

The volume was marked State's exhibit for identification E 1.

MR. BORAH: We offer exhibit E 1 for identification, it being bound volume No. 3 of the Miner's Magazine. We offer the article upon pages 23, 24 and 24, entitled, warning against labor's greatest enemy.

MR. HUBERT: Is that all one article?

MR. BORAH: That is all one article.

MR. RICHARDSON: To which offer of State's exhibit L 1 for identification we desire to object for the same reasons stated in our objection to exhibit E 1.

THE COURT: Enter the objection, Mr. Stenographer.

MR. BORAH: Miner's Magazine, under date of August, 1904, States exhibit M 1 for identification, we offer the paragraph at the bottom of the second column on page 6 together with the caricature concerning which it speaks on the same page.

MR. RICHARDSON: To which offer of State's exhibit N 1 we desire to object for the same reasons as stated in our objection to the offer of exhibit E 1.

THE COURT: The objection will be noted.

MR. BORAH: State's exhibit E 1, Miner's Magazine under date of September 1, 1904, I offer pages 8 and 10. Let me see if it takes in the entire page. We offer the last three paragraphs on page 8, of the first article upon that page.

THE COURT: What do you mean by the last three paragraphs? Have they any heading.

MR. BORAH: We want to strike that out. No, they have no heading; it is a subdivision, however, but no-- I will pass that up for a moment until I look at the-- there are about four or five pages there and it is not sub-headed. I will withdraw this and wait just a moment, if your Honor please. State's exhibit C 1, being Miner's Magazine under June 6th, 1906; we offer the first paragraph at the top of page 3, second column, it being an editorial paragraph.

MR. RICHARDSON: If these are received in evidence they will have to be read anyway, I suppose.

THE COURT: Yes sir.

MR. RICHARDSON: Very well, to the offer of State's exhibit C 1 we desire to object for the same reasons stated in our objection to the offer of exhibit E 1.

MR. BORAH: Exhibit F 1, Miner's Magazine, under date of January 11, 1906, we offer the article at the top of page 3 entitled, the death of Stenmanberg.

MR. RICHARDSON: To the offer of State's exhibit F 1

we desire to object for the same reasons stated in our objection to the offer of exhibit # 1.

THE COURT: The same action.

MR. DORAN: Exhibit Q 1, Miner's Magazine under date of January 25th, 1906, we offer the editorial paragraph, being paragraph 5 in the first column marked at the siden page 3. That is our offer at present, if your Honor please, until we have time to look at these two.

MR. RICHARDSON: To which offer of State's exhibit Q 1 for identification we desire to object for the same reasons as stated in our objection to the offer of exhibit # 1.

THE COURT: The objection may be entered and the same action will be taken as with the others.

MR. RICHARDSON: Now, I would like to be heard briefly upon this objection, and of course I am obliged to preface my remarks by saying it will not be so intelligible in the argument of this objection as it would if you would take time to read the articles. They must be introduced upon the theory that the general object and purpose of the Western Federation of Miners is to carry on a conspiracy against the lives and well being of different individuals and that the articles themselves are the direct matter which incites to the ultimate destruction of the people whose names are mentioned. Now, I admit that in all these articles there is not a suggestion or claim that any forcible violence shall be used upon the person of any one; there

is not a thing in the articles which indicate that they consist of anything outside of the usual newspaper abuse of those whom the newspaper is opposed to. Some of the language is intemperate; some is copied from other papers and re-published in this magazine. Now, that is the, generally speaking, character of the articles up until the time that Governor Stansberry was assassinated on December 30th of 1908; after that there is---

THE COURT: I notice there are two articles there.

MR. RICHARDSON: Yes sir, but after that there is some comment upon his death, both by the editor himself and copies, I think, two of them, which are taken from other newspapers and which are copied into this magazine. Now, what I have to say will be based upon the case of Spies vs. The People. I suppose we are all willing to concede the ultra doctrine of newspaper publications as applied to criminal cases-- they are for the purpose of showing motive, or inciting to killing, or any other purpose whatsoever, and I say that these articles published in this paper are not within hailing distance of the articles published in the Spies case. There was a very great controversy in that case as to whether these articles should be received in evidence or not, and the case itself marked a very great advance in criminal jurisprudence, in this class of cases, for the purpose of showing what would be competent evidence against the defendant. Now, these were the articles which were published in the papers which were controlled by some of the defendants in the case of Spies versus the people, and the platform of the

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International Association of Workingtons was as follows:

"The Declaration of Independence declares, when a long train of abuses and usurpation, pursuing invariably the same object, evinces a design to reduce them (the people) under absolute despotism, it is their right-- it is their duty-- to throw off such government, and to provide new guards for their future security. Are we not too much governed, and is it not the time to practice this thought of Jefferson? Is our government anything but a conspiracy of the privileged classes against the people? Fellow-laborers, read the following declaration, which we issue in your interest, for humanity and progress:-

"The present order of society is based upon the spoliation of the non-property by the property owners. The capitalists buy the labor of the poor for wages, at the mere cost of living, taking all the surplus of labor. By machinery constantly reducing the volume of human labor, produce constantly increasing quantities of goods, whereby the competition of labor is increasing, and its price being reduced. Thus while the poor are increasingly deprived the opportunities of advancement, the rich grow richer through increasing robbery. Only by rare and accidental opportunities can the poor become rich; avarice increases with wealth, and capitalists compete for the spoliation of the masses. In this struggle, the moderately wealthy succeed, while monopolists flourish, concentrating in their hands entire branches of industry, trade, and commerce. Industrial and

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commercial crises follow, which force the wretchedness of the non-property owners to the highest point. Statistics of the United States show that, after deducting raw material, interest on capital, etc., property-owners claim five eighths and allow to the laborers but three eighths of the residue. The result of the present system is recurring over-production, while the increasing elimination of labor from the process of production brings the impoverishment of an increasing percentage on non-property owners, 'who are driven into crime, vagabondage, prostitution, suicide, starvation, and manifold ruin. This system is unjust, insane, and murderous,' therefore, those who suffer under it, and do not wish to be responsible for its continuance, ought to strive for its destruction by all means, and give their utmost energy. 'In its place is to be put the true order of society. This can be brought about only when all instruments of property -- all capital produced by labor -- has been transformed into common property, for thus only is the possibility of spoliation cut off. Only by the impossibility of accumulating private capital can every one be compelled to work who claims the right to live. Neither lordship nor servitude will thereafter exist. This system would result further, that no one would need to work more than a few hours a day, and yet every reasonable want of society would be satisfied. In this way, time and opportunity are also given for opening to all the people the possibility of the highest imaginable culture.'

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"Opposed to such a system are the political organizations of the capitalists, whether monarchies or republics. States are in the hands of property owners, with no other apparent end than to maintain the disorder of the present day. The laws turn their sharp points against the laboring people, and, so far as they seem otherwise, are evaded by the ruling class. The school exists for the offspring of the rich, while the children of the poor receive scarcely an elementary education, and this directed to promote conceit, prejudice, and servility, — anything but intelligence. By reference to a fictitious heaven, the church seeks to make the masses forget the loss of paradise on earth, while the press takes care to confuse the public mind. These institutions aim to prevent the people from reaching intelligence, being under the sway of the capitalist class. The laborers can look for aid from no outside source in their fight against the existing system, but must achieve deliverance through their own exertions. Hitherto, no privileged class have relinquished tyranny, nor will the capitalists of today forego their privilege and authority without compulsion. This is evidenced by the brutal resistance always manifested by the middle classes against all efforts by the laboring classes for their advancement.

"It is therefore evident that the fight must be of a revolutionary character, — that wage conflicts cannot lead to the goal. Every reform in favor of the laboring classes involves a curtailment of the privileges of the rich, to which we cannot

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expect their assent. 'The ruling classes will not voluntarily relinquish their prerogatives, and will make no concession to us. Under all these circumstances, there is only one remedy left,-- force.'

Now, I call your Honor's attention particularly to that, when these matters come to be read and considered by your Honor.

"Our ancestors of 1776 have taught us that resistance to tyrants is justifiable, and have left us an immortal example. By force they freed themselves from foreign oppressors, 'and through force their descendants must free themselves from domestic oppression.' Therefore, it is your right and duty to arm, says Jefferson. Agitation to organize, organizations for the purpose of rebellion,-- this is the course if the workmen would rid themselves of their chains. And since all governments combine in their policy of oppression, it is evident that the victory of the laboring population can be confidently expected only when the wage-earners along the whole line of capitalist society inaugurate the decisive combat simultaneously. Hence the necessity for international affiliation and the organization of the International Association of Workmen."

"Our platform is simple and clear:

- "1. Destruction of existing class domination through insurrectionary revolution and international activity.
- "2. The building of a free society on communistic organizations of production.

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"3. Free exchange of equivalent products through the  
produced organization, without jobbing and profit making.

"4. Organization of the educational system upon non-  
religious and scientific and equal basis for both sexes.

"5. Equal rights for all, without distinction of sex or  
race.

"6. The regulation of public affairs through agreements  
between the independent economies and confederations."

The letter from Johann Most to the defendant Spies, which  
was offered and received in evidence when translated into English,  
was as follows:

"Dear Spies,— Are you sure that the letter from the Hocking  
Valley was not written by a detective? In a week I will go to  
Pittsburg, and I have an inclination to go also to the Hocking  
Valley. For the present I send you some printed matter. There  
sch. 'H' also existed but on paper. I told you this some months  
ago. On the other hand I am in a condition to furnish 'medicine,'  
and the 'genuine' article at that. Directions for use are per-  
haps not needed with these people. Moreover, they were recently  
published in the 'Tr.' the appliances I can also send. Now, if  
you consider the address of Huchtel thoroughly reliable, I will  
ship twenty or twenty-five pounds. But how? Is there an express  
line to the place, or is there another way possible? Paulus,  
the Great, seems to delight in hopping around in the swamps of  
the N. Y. V. E. like a blown up (blasted) frog. His tirades  
excite general detestation. He has made himself ridiculous.

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The main thing is only that we fellow cannot smuggle any more rotten elements into the newspaper company than are already in it\*. In this regard, the caution is important to be on the minute. The organization here is no better nor worse than formerly. Our group has about the strength of the North Side group in Chicago, -- and then, besides this, we have also the Soc. Rev. G. 1, the Austrian League and the Bohemian League, -- so to say, three more groups. Finally, it is easily seen that our influence with the trade organization is steadily growing. We insert our meetings in the Tr., and cannot notice that they are worse attended than at the time when we got through, weekly, \$1.50 to \$2. into the mouth of the N. Y. V. 2. Don't forget to put yourself into communication with Drury in reference to the English organ. He will surely work with you much and well. Such a paper is more necessary as to truth. This, indeed, is getting more miserable and confused from issue to issue, and in general is whistling from the last hole. Enclosed is a fly-leaf, which recently appeared at London, and is perhaps adapted for reprint. Greeting to Schuch, Mrs., and to you.

Yours,

Johann Most.

\* P. S. -- In English I will, of course, write for the present only in general terms.

"A. Spies, No. 107 Fifth Avenue, Chicago, Illinois."

The postal card, as translated, reads as follows:

"L. S. Dear Spies,-- I had scarcely mailed my letter yesterday, when the telegraph brought news from K. K. One does not know whether to rejoice over that or not. The advance is in itself elevating. Sad is the circumstance that it will remain local, and, ~~thus~~ therefore, might not have a result. At any rate these people make a better impression than the foolish people on this and the other side of the ocean. Greetings and a shake.

"Yours

J. K."

Then, there are some things I won't read here. This is written in the opinion:

"The articles in the Alarm were most of them written by the defendant Parsons--

THE COURT: Were these articles written by the defendant?

MR. RICHARDSON: Yes sir; there were articles written by three of the defendants. The Alarm was published by Parsons, and the Anarchist, another paper published in Chicago, had articles written by the others.

"The articles in the Alarm were most of them written by the defendant Parsons, but some of them by the defendant Spies. The articles quoted from the Arbeiter Zeitung were written by the defendants Schuch and Spies. The single extract from the Anarchist was written by the defendant Spies.

"The articles and speeches as collected are of the most violent and incendiary character. They seek to inspire a feeling

of hatred among the workmen against the police and militia and the property owning classes. They not only recommend the workmen to arm themselves with dynamite and rifles, but they give specific instructions how to handle and use dynamite, and how to make bombs, and how to procure weapons. They recommend the workmen attend the meetings of the International Arbeiter Association and read its organs. They advise the formation of special groups for committing deeds of violence, which are called "revolutionary actions," and point out the means of avoiding discovery after such deeds are committed. In the Arbeiter Zeitung articles will be found such expressions as these: "Each workman ought to have been armed long ago"; "Bombs and revolvers are easily to be gotten, hand-grenades are cheaply to be produced; explosives too, can be obtained"; "the workmen ought to take aim at every member of the militia"; "your passport to it-- Bismarck-- is that hammer which calls to you in flaming letters the word 'anarchy'"; "therefore, workmen, do arm yourselves with the most effective means"; "there is no other way than to become immediately soldiers of the revolutionary army and establish conspiring groups and let the rains fall on the houses of such"; "we wonder whether the workmen-- will at last supply themselves with weapons, dynamite and prussic acid"; "workmen arm yourselves"; "enough is said about the importance of being armed. . . . We are to go to work to supply ourselves as quickly as possible with these useful things. ✓ / / / /

Dynamite bears several names here in America; among others it is known in trade also under the names of Hercules powder and giant powder; "there marched a strong company of well armed comrades of the various grades; . . . the nitro-glycerine pills were not missing"; there exists today an inviolable network of fighting groups; "Every trades union should make it obligatory to every member to keep a good gun at home and ammunition"; "If we do not beatir ourselves for a bloody revolution, we cannot leave anything to our children but poverty and slavery. Therefore prepare yourselves in all quietness for revolution".

The following expressions will be found in the extracts from the Alarm:

"One man, armed with a dynamite bomb, is equal to one regiment of militia," etc.; "Every man who is master of these explosives cannot be approached by an army of men;" "How can this be done? Simply by making ourselves masters of the use of dynamite; then . . . administer instant death, by any and all means, to any and every person who attempts to continue to claim personal ownership in anything. . . . Our war is not against men, but against systems; yet we must prepare to kill men who will try to defeat our cause. . . . The rich are only worse than the poor because they have more power to smash well the infernal 'property-right'; "Dynamite is the emancipator! In the hands of the enslaved it cries aloud, 'Justice or annihilation.' But, best of all, the workmen are not only learning its use;

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they are going to use it. They will use it, and effectually,  
until personal ownership, property rights are destroyed, etc.  
. . . . Hail to the social revolution! Hail to the deliverer  
"Dynamite"; "Nothing but an uprising of the people and a bursting  
open of all stores and store houses to the free access of the  
public and a free application of dynamite to every one who opposes  
will relieve the world of this infernal nightmare of property  
and wages"; "Seeing the amount of needless suffering all about  
us, we say a vigorous use of dynamite is both human and economical.  
. . . . It is upon this theory that we advocate the use of  
dynamite; it is clearly more human to blow ten men into eternity  
than to make ten men starve to death"; "Dynamite! of all the good  
stuff this is the stuff. Stuff several pounds of this sublime  
stuff into an inch pipe, gas or water pipe, plug up both ends,  
insert a cap with a fuse attached, place this in the immediate  
neighborhood of a lot of rich loafers who live by the sweat of  
other peoples brows and light the fuse. A most cheerful and  
gratifying result will follow"; "the next issue of the Alarm will  
begin the publication of a series of articles concerning revolu-  
tionary warfare, viz. 'The Manufacture of Dynamite Made Easy,'  
'Manufacturing Hints,' 'How to Use Dynamite 'properly,' etc;  
"All governments are engineering powers, etc. . . . Assassina-  
tion will remove the evil from the face of the earth. . . .  
Assassination properly applied is wise, just, human and brave.  
For freedom, all things are just"; "though everybody nowadays

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speaks of dynamite, . . . few have any knowledge of the general character and nature of this explosive. For those who will sooner or later be forced to employ its destructive qualities in defense of their rights as men, and from a sense of preservation, a few hints may not be out of place. Dynamite may be handled with perfect safety, if proper care is used," etc. (Then follow a series of minute directions.) During the months of December, 1888, January, February and March, 1889, the following notice appeared in the Arbeiter Zeitung--

"Exercise in Arms." Workmen who are willing to exercise in the handling of arms should call every Sunday forenoon, at half-past nine, at No. 53 Clybourne Avenue, where they will receive instructions gratuitously."

In the Alarm from August 17, 1888, to April 24, 1890, appeared the following notice:-

"The armed section of the American group meets Monday night, at No. 54 West Lake Street."

One Harry Hunt had prepared a treatise or book, entitled Revolutionary Warfare, containing instructions that entered into the minutest details as to the best mode of preparing dynamite and other explosives, and of making bombs and other weapons. From time to time, in 1888 and 1889, the Alarm and the Arbeiter Zeitung published translations and extracts from this book, for the evident purpose of communicating the information in it to the members of the groups and to their other readers among the

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workings. Specimen extracts from this treatise are set out in the statement which prefaces this opinion.

In the extract from the Anarchist will be found the following expressions: "All government we hate . . . Complaints should be sent to G. Magal. . . . Workmen and followers . . . he who would war successfully must equip himself with all implements adapted to destroy his opponents. . . . We strive towards the overthrow of the existing order," etc.

The defendant Schaub, in a speech delivered on April 30, 1888, about a week before the Haymarket meeting, said: "Everywhere police and mariners are employed to grind down workmen. For every workman who has died through the pistol of a deputy sheriff, let ten of these executioners fall. Are yourselves?"

The defendant Spies, in a speech made in October, 1888, said that "there were nine millions of people engaged in industrial trades in this country; there were but one million of them as yet organized, while there were two millions of them unemployed; to make a movement in which they were engaged a successful one, it must be a revolutionary one; don't let us . . . forget the most forcible argument of all,— the gun and dynamite."

In speeches made by him, the defendant Parsons said, in February, 1885: "We need no President, no congressmen, no police, no militia, and no judges; they are all leeches sucking the blood of the poor, who have to support them by their labor; I say to you, rise, one and all, and let us exterminate them all."

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Use to the police or the militia when they send against us!"

In April, 1888, he said: "The only way to convince these capitalist and robbers is to use the gun and dynamite." Again, he said in April, 1888: "If we would achieve our liberation from economic bondage, and acquire our natural right to life and liberty, every man must lay by a part of his wages, buy a Colt's navy revolver, a Winchester rifle, and learn how to make and to use dynamite. Then raise the flag of rebellion, the scarlet banner of liberty, fraternity, equality, and strike down to the earth every tyrant that lives upon this globe. Tyrants have no rights which we should respect. Until this is done, you will continue to be robbed, to be plundered, to be at the mercy of the privileged few; therefore agitate for the purpose of organization, organize for the purpose of rebellion; for wage-slaves have nothing to lose but their chains." And in August, 1888, referring to the street car strike, he said: "If but one shot had been fired, and Hanfield had happened to be shot, the whole city would have been deluged in blood, and the social revolution would have been inaugurated."

The defendant Fielden, in speeches made by him, said, in March, 1888: "I want all to organize; every workman in Chicago ought to belong to our organization; it is of no use to go and beg of our masters to give us more wages or better times. When I say 'organize,' I mean for you to use force; it is of no use for the working people to hope to gain anything by means of the ordinary weapons; every one of you must learn the use of dynamite,

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for that is the power with which we hope to gain our rights."

In October, 1885, he said: "You must all organize and use force; you must crush out the present government, as by force is the only way in which you better your present condition." He said,

in January, 1886: "It is quite true that we have lots of explosives and dynamite in our possession, and we will not hesitate to use it when the proper time comes. We care nothing either for the military or police, for these are in the pay of the capitalists"

Again, in March, 1886, he said: "We are told that we must attain our ends and aims by obeying law and order. Don't law and order? We have obeyed law and order long enough. The time has come for you, men, to strangle the law, or the law will strangle you."

The defendant Engel made a speech in German, in February, 1886, to a crowded hall of workmen, of which one witness says: "He advised everybody,--'every man wants to join them, to save up three or four dollars to buy revolvers to shoot every policeman down'; he says he wants every workman whom he could get to join them, and then advise everybody you know,-- you save up three or four dollars to buy a revolver that was good enough for shooting policeman down"; and again, in the same month, he made a speech to the North Side workmen at Hoff's Hall, 24 Clyburne Avenue, where the North Side group met, as already stated, in which he said "that those who could not arm themselves, and could not buy revolvers, should buy dynamite; that it was very cheap and easily handled; he gave a general description how bombs

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could be made, how gas-pipes could be filled; that a gas-pipe was to be taken, and a wooden block put into the end, and it was to be filled with dynamite; then the other end is also closed up with a wooden block, and old nails are tied around the pipe by means of wire; then a hole is bored into one end of it, and a fuse with a cap is put into that hole; that the nails should be tightened to the pipe, so that when it explodes there will be many pieces flying around; that gas-pipe could be found on the West Side from the river, near the bridge."

The utterances by printed and spoken words, of which the quotations above made are specimens, were addressed to workmen, of whom the defendant Spies says that they were "stupid and ignorant." While the members of the International groups were reading and hearing the appeals thus made to their prejudices, they were discussing their condition in weekly meetings, and very many of them participating in weekly drills with arms.

The time when the war against the police was to be inaugurated was not an indefinite period in the future. The evidence shows that the date fixed for the inauguration of the social revolution was the 1st of May, 1886.

Two years before May 1, 1886, the working people had "resolved that the eight-hour system should be introduced in the United States" at that date. The defendants in this case and the more radical members of the International groups had no faith in the eight-hour movement. This abundantly appears from the testimony in the record. Grumbert swears that Spies did not

consider the movement as amounting to anything; that he regarded it as "only a palliative measure, not radical enough." A want of confidence in it on the part of the defendant Spies is apparent from the language of some resolutions introduced by him on October 11, 1888, at a meeting at the Twelfth Street Turner Hall, one of which began in this wise:--

"RESOLVED, That while we are skeptical in regard to the benefits that will accrue to the wage-workers in the introduction of an eight-hour work-day," etc. At a speech made at the same meeting, Fielden said: "The eight-hour law will be of no benefit to the workman." An article in the Alarm, dated April 3, 1888, in which the defendant Parsons gives an account of a speech made by him to the American groups, shows that he only valued "the attempt to inaugurate the eight-hour system" because he thought it "would break down the capitalistic system and bring about such disorder and hostility that the 'social revolution' would become a necessity."

Engel said in the Journalist: "To reject reformatory measure as useless play. . . . All antagonists of the working classes not aiming at the overthrow of existing conditions of ownership . . . are to us reactionary," etc.

The 1st of May was fixed upon as the date for the inauguration of the "social revolution" because of the strikes and disturbances which were then expected to grow out of the demand for the eight-hour working-day. It was anticipated that many workmen would

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then be out of employment, and that their discontent and sufferings would drive them into an adoption of the revolutionary plans of the International groups.

The witness Johnson says that at all meetings of the "armed section" of the American group "the first day of May was frequently mentioned as a good opportunity" for the revolution.

In a speech in December, 1898, at Twelfth Street Turner Hall, Fielden said:—

"The 1st of May will be our time to strike the blow; there are no more strikes, and there will be fifty thousand men out of work."

Spies said that the conflict between the police and the "Syndicates" would probably occur, when there should be a universal strike for the eight-hour law.

The International groups and other associations of workmen were frequently urged to prepare to demand the eight-hour law on the 1st of May, 1898, with arms in their hands. They were told that such demand would be the more readily accepted to if made by armed men.

In an article published in the Arbeiter Zeitung on the afternoon of Tuesday, May 4, 1898, only a few hours before the Haymarket meeting occurred, the defendant Spies said: "Six months ago, when the eight-hour movement began, there were speakers and journals of the I. A. A. who proclaimed and wrote 'Workmen, if you want to see the eight-hour system introduced, arm your-

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alive! If you do not do this, you will be sent home with bloody heads, and birds will sing lay songs on your graves!"

Looking into some of the statements made by the journals and speakers referred to, we find the following:--

The Arbeiter Zeitung said, on January 22, 1886: "With empty hands, the workmen will hardly be able to cope with the representatives of the club, in case, after the 1st of May of this year, there should be a general strike; . . . but if the workmen are prepared to eventually stop the working of the factories, to defend himself with the aid of dynamite and bombs against the militia, which will, of course, be employed, then, and only then, can you expect a thorough success of the eight-hour movement." It said, on January 25, 1886: "Therefore, comrades, stand to the teeth, we want to demand our rights on the 1st of May; in the other case, there are only blows of the club for you." It said, on March 2, 1886: "He wants to attack capitalism in earnest must overthrow the body-guards of it, the well-drilled and well-armed 'men of order,' and kill them, if he does not want to be murdered himself. But for this is needed an armed and systematically drilled organization"; and on the same page are these words: "The time up to the 1st of May is short. Look out!"

The Alarm said, on September 5, 1885: "Now, in regard to the proposed strike next spring, a few practical words to our comrades. . . . Will the manufacturing kings grant the



modest request? . . . . No, sir; . . . . they will then draw from the army of unemployed; the strikers will attempt to stop them. Then comes the police and the militia. . . . Sir, workmen, are you prepared to meet the latter? are you afraid?"

The defendant Spies, on October 11, 1906, at the meeting at Twelfth Street Turner Hall already referred to, introduced, in a speech made by him, the following resolution:--

"Whereas, a general move has been started among the organized wage-workers of this country for the establishment of an eight-hour work-day, to begin May 1, 1906; and

"Whereas, a general move has been started among the organized wage-workers of this country for the establishment of an eight-hour work-day, to begin May 1, 1906; and

"Whereas, it is to be expected that the class of professional idlers, the governing class, who prey upon the bones and marrow of the useful members of society, will resist this attempt by calling to their assistance the Pinkertons, the police, and the state militia,--

"RESOLVED, That we urge upon all wage-workers the necessity of procuring arms before the inauguration of the proposed eight-hour strike, in order to be in a position of meeting our foe with his own argument,-- force."

A little over two months after this resolution was introduced, to-wit, on December 29, 1906, the North Side group, to which Schwab, Lingg, and Roche belonged, held a meeting at No. 53

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Glyburne Avenue, and adopted the following resolution: "This assembly declares that the North Side group, I. A. A., pledges itself to work with all means for the introduction of the eight-hour day, beginning on the 1st of May, 1886. At the same time the North Side group cautions the workmen not to meet the enemy unarmed on the 1st of May", etc.

Besides the publication of extracts from Herr West's book in the Alarm and Arbeiter Zeitung, the book itself was extensively circulated among the groups and other workmen. The Arbeiter Zeitung inserted with without charge, on March 2, 18, 18, and 26, 1886, the following notice: "'Revolutionary Warfare' has arrived, and is to be had through the librarian, at 107 Fifth Avenue, at the price of ten cents." Hirschberger, the librarian here referred to, sold this book at picnics, where the defendants Fielden, Parsons, Spies, Schanz, Fischer, and Hesse were present. It was distributed at meetings of workmen. It was seen at such meetings in the Twelfth Street Turner Hall, at Greif's Hall, and at 103 Randolph Street, at all of which places Fielden and Parsons made speeches, and where the American group to which they belonged held meetings. The "books were sold there. The chairman had charge of the books."

It is shown that prior to the time that the meeting occurred which resulted in the killing of the policeman Matthias Degen on May 4, 1886, there was an article appeared in the Arbeiter Zeitung, edited by Spies, regarding the actual sections of the groups to meet at their hall to go out where the police could be

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collected at their police patrol stations for the purpose of striking down the workmen in case of any disturbance. There was a series of publications attacking the police because there had been a strike at McCormack's factory and in the rush there two or three workmen had lost their lives. Now, upon the strength of that, the publications being directed to the specific thing which did occur at practically the specific time when it occurred, and precisely where at the place where it was directed to occur, these publications were held pertinent by the Supreme Court of Illinois. I say, they represent the ultra doctrine in any other case. Now, here are a series of publications which are as consistent with the innocence of this defendant in the matter of the death of Governor Stansbery as they are with his guilt. They were written by some one who condemned Stansbery's position as exhibited in his office as Governor in 1870, but they were not more, other, or greater than the course of criticism which we daily see in the public print. There was neither a time, nor a place, nor a suggestion in any of these articles of the killing of Governor Stansbery or of the killing of any other of these other men, or of the putting them out of the way, and the only object and purpose that we can see in reading these articles to the jury is for the purpose of exciting their passion and prejudice so that they may be allowed to guess, if they should have the mind to so guess, that probably Mr. Haywood knew about the publication of the articles and mentioned

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them and therefore he probably might have known and sanctioned what happened to Governor Steunenberg on December 30th, 1893. I say there is no direct or implied connection between the articles and the event which happened upon which Mr. Haywood is now on trial. That Mr. Haywood condemned the course of the Governor with respect to what was done in 1893 will never be attempted to be denied. Thousands, tens of thousands and hundreds of thousands of people all over the United States condemned that course, and on the other hand thousands approved it. Now, it does not follow that as Governor Steunenberg is dead and was killed-- it does not follow that those who condemned him are in anywise guilty of his assassination, and I say that these articles neither show nor tend to show any connection whatever of the defendant Haywood with the offense charged in this indictment, to-wit, the murder of Governor Steunenberg.

MR. BORAH: If your Honor please, it is a little difficult to present this matter without calling attention to some of the articles which I presume it would not be proper for me to do in the presence of this jury.

THE COURT: You can call those matters to the attention of the jury and it will necessarily take time to examine those exhibits which have been offered.

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MR. BORAH: It occurs to me that counsel in presenting this matter has argued upon the effect of this testimony rather than upon its admissibility. As to the directness of the articles which are involved here or as to the directness of the articles which were involved in the Spies case, and as to how far these articles or these articles would tend to prove a certain condition of affairs is a matter for the jury to pass upon in case it is deemed legally admissible; and the fact that the articles there might have been more definite with reference to the matter designated by which they should accomplish their purpose was not the ground upon which the court admitted or refused to admit the articles which were there introduced in evidence. The question which the court was called upon there to pass upon and which the court did pass upon was whether or not these articles tended to show hatred or ill will or bad feeling upon the part of those who were charged with this crime toward the people who suffered death upon that occasion; and that is the specific object and purpose of introducing these articles here in controversy. Now we do not contend, in your Honor please, that these articles alone would be sufficient upon which to base a conclusion with reference to the guilt or innocence of the defendant; but we contend, just as the Supreme Court of Illinois said, that this is a circumstance which, in this kind of a case is to be taken into consideration to enable the jury to develop the proposition of whether or not the party charged had the hatred or ill will and back of it the motive which it is incumbent upon the State to prove in order to prove every element of this case.

And it does not make any difference, if your Honor please, whether that hatred or ill will is disclosed by the vocal statements of the defendant, by letters written by him or by newspaper articles published under the authority of the organization of which he is the dominant spirit and figure. We contend that this controversy arose not between Governor Staunenberg and the defendant ~~individually~~ individually, not because they had ever come in contact personally, but because there was an inherent conflict between the duties which Governor Staunenberg performed as governor and the rights of this organization as viewed by this defendant, Mr. Heywood; and that by reason of that conflict an enmity arose between them and this enmity was expressed through the official organ of this organization. And if your Honor will look at these articles you will see that while they do not advise or directly countenance actual personal attack upon Governor Staunenberg, there could be no language found, I apprehend, in the English language which would more thoroughly disclose the feeling which the organization of which this party is a prominent member and was at the time most of these articles were written, had toward Governor Staunenberg; and it is for the purpose of showing the hatred or ill will and the feeling upon the part of these officers, all of whom are here charged in court as members of this conspiracy, toward these parties that these are introduced.

Now I call your Honor's attention to the language of the court in the *Spies* case:

"We do not wish to be understood as deciding that the influence of these publications in bringing about the

crimes at the Hypanthet could be considered by the jury if they were the only evidence of that crime. We only hold that the jury is at liberty to consider the publication in connection with all the other facts and circumstances of this particular case and as a part of those facts and circumstances, with a view of determining whether or not the defendants were responsible for their issuance or did not belong to the conspiracy now under consideration."

Now these articles which were published in the Spion case were not published, as disclosed by the evidence, as the official statements of this organization. That is, the evidence did not go so far as to disclose that fact. The evidence did not bring the publications so closely home to the defendants in that case as the evidence does in this case. The fact that they disclosed was that one or two of the parties were working upon one or two of the papers, but they introduced a vast amount of literature which they brought so close to the defendant than the fact that it had been circulated in public gatherings where the defendants were present and at which they were making speeches. There was no attempt to connect the defendants in that case with the Herr Most publication other than the fact that the Herr Most publication had been advertised in their papers, other than the fact that the Herr Most publication had been circulated at the picnic; but the fact that they had countenanced it, the fact that they had given it recognition either one way or the other was sufficient so that the court said that it might go to the jury for the purpose of enabling the jury to determine among all the circumstances whether or not they recognized the doctrine as put forth in that book. Now in this particular case we have shown that this is the official organ of the

Western Federation of Miners; that it was used for the purpose of carrying whatever message they desired to carry to their constituents or to their members, and that it is published under the auspices of that organization and put forth as the declaration of that organization. Secondly, we have shown and will show as this is introduced that Mr. Hoyer was always during all of these publications a prominent member of this organization; that Mr. Heywood shortly after the first publication and within a few days but a very ~~small~~ few of these were published, became a very prominent member of this organization. A number of the articles or two or three of the most important articles are signed by Mr. Heywood. So we bring directly home to the organization, to the membership, to the official head these declarations and they are the declarations of these parties and they are responsible for them just as much as if each and every one was over the individual signature of these parties.

Now what was the purpose of introducing these articles in the Spies case? The court said :

1st. Because they were the organs and mouthpieces of the organization.

2nd. Because these articles expressed the feeling and intention of the organization of which the defendants were members.

3rd. That they tended to show malice, hatred and ill will toward a certain class and those who directed that class.

Now the evidence in the Spies case disclosed that a man



by the name of Lingg, I believe, manufactured the bomb which killed Deagan. It did not disclose that he threw it or that he was a party to the throwing of it or that he was upon the ground, but he was simply a member of the organization or the conspiracy. When they arrived at that point in the testimony the Supreme Court of Illinois said: It became necessary now to determine why Mr. Lingg manufactured the bomb which killed Deagan. That is practically the language of the court. Then they said: "In order to determine that question it is necessary for the court to go back fully into a complete history of the organization of which he was a member," and in order to go back into a complete history of that organization and determine its characteristics they permitted the introduction in evidence of all these publications, and that was one of the grounds upon which they admitted it, in order to get at the exact history of the organization.

Now counsel say that there is nothing in here as suggesting force: Now if I say be permitted to go thus far, I will say that the language here is that they should arm themselves and prepare for force, and that they should arm themselves with rifles and by such means prepare for the work which is before them; and in connection with these very articles there is designated in this magazine the particular parties against whom the organization addresses its hatred, and there could be no fuller or more complete proof before a court and jury of the <sup>motive</sup> ~~subject~~ of the taking away of these men than the very one which is designated by these articles which we are

published in this magazine. Are they responsible for it? Can it be said here that they are not? Do they not represent their views? Is there any question about this representing their expressions, whatever it may be, hatred, ill will or otherwise? Do they disclaim or dissent that this was published by their authority? Is there any more reason to deny it than if it was a letter or a spoken word? Does it <sup>say the same</sup> ~~represent~~ represent their feelings, their hatred or their ill will than if it was spoken? Certainly not. It is the means by which they addressed their entire constituency and expressed to them their hatred and ill will toward those particular parties. And we claim that based upon the Spies case and based upon the Till case, although it did not go to the Supreme Court of that state, these articles are admissible for the purpose of showing the feeling of those particular individuals toward the parties who were assaulted and some of whom suffered death.

MR. RICHMOND: If your Honor please, an examination of the Spies case will show I think that counsel is in error. The sole theory upon which the evidence was allowed to be admitted in the Spies case was because it designated a class, a particular class against whom force should be used. It designated a particular method by which that force should be used. It designated a particular time when the force should be used, and it designated a particular place where the force should be used.

MR. BROWN: Let me ask you a question -- if the Harriest

book designated any place when it was written a few years before?

MR. RICHARDSON: The Herr Most book was only taken in connection with the manufacture of bombs by Louis Lingg, because it was shown that Louis Lingg got his knowledge for the manufacture of bombs from that book. Now I will give you the history of that, if your Honor please. Louis Lingg was a member of this revolutionary association organized for the express purpose of overthrowing society, organized for the express purpose of antagonizing the law, organized for the express purpose of annihilating the government. The society itself was anarchistic in character and in practice, which is entirely different from an organization which is organized for the purpose of bettering the condition of the working man at the ballot box. Now that is the difference between the two organizations. Now these were the circumstances: Louis Lingg, being a member of that organization, and being provided with Herr Most's book, which came to the defendant Aples and was distributed at a picnic where Aples himself was a speaker, started in with the manufacture with these bombs. They traced the manufacture up to the very day of the time when Matthew J. Degan was killed. They showed that Louis Lingg and other brothers of the organization of which he was a member carried these bombs to a certain saloon in the vicinity of the Haymarket Square in the evening of that day. They showed that members of the same organization took these bombs from that place and carried them into the vicinity of the Haymarket Square where

the occurrence took place at the time that the occurrence took place; Spies had just ceased speaking to the multitude there assembled and Shanks or Fielden, I have now forgotten which one of them, was addressing the audience at the very time that the occurrence took place. Now it was because there was an avowed purpose, a set time, a specific class, one of whom was killed, and the occurrence itself that these papers and publications were allowed in evidence, and the Supreme Court of Illinois expressly says so, if your Honor please, and it is the key note to the entire decision in that case. Now here we are, if your Honor please, starting in with a publication that commenced with this organization in 1900. He talks about this being the official organ of the Western Federation of Miners. Agreed. But it is only the official organ of that portion of the Western Federation of Miners who see fit to subscribe to it and who see fit to read it. It is just as much the organ of any other man who subscribes to it as it is a member of the Western Federation of Miners. The articles are just as consistent with the innocence of Mr. Hywood or anybody else, as far as the specific act is concerned, as they are with his guilt. And I say that there is not in an article there, when it is read, a single invitation to anybody to arm themselves or to provide themselves with weapons in any way, shape or form except as a matter of defense, and that is nothing more nor less than what the constitution of the United States guarantees to you, to me and to every member of the Western Federation of Miners as well. There isn't a single indication there that any of these instruments should be used for any

unlawful purpose whatsoever, nor a single indication in any of the publications that there is to be any unlawful purpose. It is true that they resolved to defeat men at the polls and asked the organization to help them do it. It is true that they criticized them for their decisions, as they have a perfect right to do. They are bound by the decisions so far as the effect of it is concerned as law, but I apprehend that if we are to be sentenced, tried, found guilty for the death of Governor Stearns, then everyone of us, if your Honor please, because of the fact that there has been a criticism of Governor Stearns's course, then everyone of us would be liable in the same way for being one who had criticized. There are probably people in this room who have criticized and who have failed to agree with the course of Governor Stearns in 1899. It does not follow from that that they have murder in their hearts, or that they would <sup>plot</sup> plan or hire an assassin to kill him. And I say where the articles are of that character, even under the ultra-doctrine laid down in the Spies case, and it is not denied that it is ultra-doctrine, that it represents the furthest limit to which the courts have ever gone, that these articles are not, if your Honor please, admissible in evidence in this case.

THE COURT: Mr. Borah, I want to call your attention to two of these articles which you offer, one under date of January 11th, 1906, and one under the date of January 20th, 1906.

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MR. BORAH: These are the articles after the death?

THE COURT: Yes sir.

MR. BOWEN: If your Honor will look at those articles when you come to examine them you will see the reason why we introduce them, and that is for the purpose of showing the feeling of hatred or ill will which we say existed upon the part of this organization and therefore upon the part of its leading members.

THE COURT: Upon the part of the defendant himself?

MR. BOWEN: In the fact that he was the secretary-treasurer of the organization ~~Montgomery~~ of which this was the mouthpiece. Now Mr. Richardson has the clause of this discussion and I do not care --

THE COURT: I am simply calling your attention to those two articles.

MR. BOWEN: My opinion is that your Honor will see that the reason why we seek to introduce them is because they express the feeling of these parties, this being the mouthpiece of the organization, and that is the only reason -- the hatred and ill will upon their part towards this particular individual. But I was going to call your Honor's attention to the fact that the counsel is in error when he says that the Herr Host book was introduced because this man got his knowledge of making bombs out of it. The authority says, in no way words, that it was introduced because it was calculated to excite hatred and ill will toward this particular class, and that is the language which I have here from the authority itself; and it goes further and says the articles and speeches are of the most violent and incendiary character, they seek

to assist a feeling of hatred among the workmen against the police and militia. Now we say that the very object and purpose of these articles was to express and to carry the idea of hatred and ill will of everybody who was concerned with the Western Federation toward these particular individuals, and they did come within a class, that is a class who was called upon in an official way to act in contravention to the attacks of the Western Federation of Miners.

MR. RICHARDSON: There is neither a time mentioned, nor a place mentioned, nor ways mentioned, nor means mentioned by which there should be anything carried out against the governor Stannenberg or any person who is mentioned there. It is nothing but the limit of literary criticism, which is indulged in in these modern days by all newspapers with regard to any man who runs counter to the course you would like to have him run if you have got a newspaper to go after him.

THE COURT: Before ruling, the court will examine these offers carefully, and if necessary will also examine the cases cited by counsel for both sides.

MR. RICHARDSON: I want to call your attention, in making the examination, if your Honor please, some of these are re-published articles written by other people entirely and simply published in this magazine.

THE COURT: I would like to have you hand the court a schedule of all these exhibits by letter and page so there will

be no mistake by the court.

MR. BORAH: I have the citations.

THE COURT: Mr. Borah, have you any oth or witnesses that you can go ahead with and let the court hold this matter in abeyance? It is apparently going to require considerable time, considering the number of these articles and the apparent length of some of them, for the court to make the examination.

MR. BORAH: The testimony which we are waiting on, if your Honor please, are these telegrams; and the other testimony in the case, aside from this, is the matter which follows this <sup>and connected.</sup> in case it is relevant. The telegrams have not yet been produced. We are sure they will be here tomorrow. But I do not know of anything that we could do to make any headway until this matter is determined, because it will determine our course one way or the other.

THE COURT: The court will take this matter under advisement until two o'clock, and if the court is not ready to make a ruling at that time we will take whatever course is necessary.

MR. RICHARDSON: I call your attention to the fact that the Spies case may be found in either the 122nd Illinois or the 3rd American State report.

Thereupon the jury were given the statutory admonition, the bailiffs were sworn and the jury retired in the custody of the sworn bailiffs.

A recess was hereupon taken until two o'clock this afternoon.



Boise, Idaho, Wednesday, June 19, 1907.

2 o'clock P. M.

Parties not pursuant to adjournment.

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

THE COURT: With reference to those offers that were made this morning the court has only had time to make a hasty examination of them and some of them are quite lengthy. From the examination I have made I have decided some of them would be admitted and some of them would be rejected but I am not able to state at this time just what ones will be admitted because the memoranda that was handed me by counsel is rather indefinite and I will wait until the stenographer can hand me the record showing the exact offers. My recollection is that some of the articles that were offered were not offered in full and the memoranda handed me does not show exactly what portion of the articles was offered. The court will before passing upon the matter finally have the record as made up by the stenographer and will be prepared at the opening of court in the morning to pass upon all of them.

Now, gentlemen, can you go ahead with some of the witnesses and use what time you can this afternoon?

MR. BOWEN: We can go ahead for a while. Mr. Starnes!

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

THROUGH EXAMINATION

BY MR. BORAH:

- Q. What is your full name? A. John L. Stearns.
- Q. Where do you reside, Mr. Stearns? A. Denver, Colorado.
- Q. What is your business? A. Life insurance.
- Q. What company? A. The Mutual Life Insurance Company of New York.
- Q. How long have you been the agent of that company at Denver?
- A. Since Christmas, '92.
- Q. 1902? A. '92.
- Q. What kind of an agent are you, that is, what <sup>is</sup> your jurisdiction, your agency cover, the entire state?
- A. Covers Colorado and Wyoming.
- Q. The general agent for that company in those two states?
- A. Yes sir.
- Q. Did you ever have any business as such agent with a man by the name of Thomas Hagen? A. I did.
- Q. Can you refer to the date when your business with Mr. Hagen commenced?

MR. RICHARDSON: We object to that as immaterial, irrelevant, incompetent; not sustaining nor tending to sustain any issue in this case, not binding upon Mr. Hagen nor tending to connect him in any way with the death of ex-governor Stearnsberg.

MR. BORAH: This is the matter, if your Honor please, of which Mr. Graham testified with reference to securing

certain letters from Pettibone and others to cover him as a life insurance agent while he was at Canon City.

MR. RICHARDSON: Suppose he did, if your Honor please, it would have absolutely nothing to do with this case, would not corroborate Orchard upon any material point in the case, nor anything that would be of any use in the case, suppose it is all true.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

MR. BORAH: Read the question, please.

(Question read).

- Q. Can you give us the date? A. It was in April, 1905.
- Q. Where did you first meet Hogan? A. He called at my office.
- Q. Where was your office at that time? A. Cooper Bldg., Denver.
- Q. Was he alone or with someone? A. Mr. Vaughn was with him.
- Q. You may state whether or not Mr. Hogan gave you the name of any parties for reference at that time? A. He applied to me for a position as agent and, as I always do, I asked him for references, and he gave me the names and I jotted them down in pencil and when I was dictating letters that morning I called in my stenographer and dictated letters of inquiry to these different parties.
- Q. Can you recall the names of the parties which he gave you as references?

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent; neither sustaining nor tending to sustain any issue in this case; nor connecting nor tending to connect the defendant Hayward with the murder of ex-governor or

Staubenberg.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A. I can't remember the full names.

Q. Well, have you any memoranda to which you can refer made at the time so you can give us the names? A. Yes sir.

Q. You may refer to it.

MR. DANFORD: Why not suggest the names. It will be all right.

MR. BORAH: All right; I was afraid I would get in trouble if I did.

MR. DANFORD: Oh, no, not at all.

Q. You may refer to the memoranda and state the names, Mr. Starns. A. Henry Cohen, 418 E. & C. Bldg., Denver. G. A. Pettibone, 1634 Court Place. J. C. Sullivan, Exchange Bldg., Denver. Horace H. Hawkins, 401-407 E. & C. Bldg., Denver.

Q. Is that all? A. That is all.

Q. How do you give you these names? A. Thomas Hogan.

Q. Did you write to these different parties? A. I did.

Q. Have you a copy of the letter which you wrote to each of them?

A. I have.

Q. Do you know that that is a true copy of the letters which you wrote? A. This is the carbon copy which was struck off at the time the original letter was written.

Q. Was the letter the same to each one of them except the name and address? A. It was.

Q. Let us have it, please. (Paper handed to counsel).

Did you get any response to these letters? A. I did to each of them.

Q. Have you the letters in your possession which was in response to these letters of inquiry? A. I have.

Q. You may state from whom you received letters in answer to these?

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent, neither sustaining nor tending to sustain any issue in this case, nor connecting nor tending to connect the defendant in any way with the death of ex-governor Stansberg.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A. The letters are from Henry Cohen, Horace H. Hawkins, J. C. Sullivan, G. A. Pettibone.

Q. Let me have those letters, Mr. Starns. (Letters handed to counsel).

MR. DONAH: I will ask the reporter to mark for identification letter purporting to be from Henry Cohen.

(Marked for identification State's Exhibit R-1).

I will ask to have marked for identification letter purporting to be from Horace H. Hawkins.

(Marked for identification State's Exhibit S-1).

I will ask to have marked for identification letter purporting to be from J. C. Sullivan.

(Marked for identification State's Exhibit T-1).

Also letter purporting to be from George A. Pettibone.

(Marked for identification State's Exhibit U-1).

Q. Were there two letters from Harry Cohen? A. There were. I pinned the whole thing together.

Q. The same individual? A. Yes.

MR. BROWN: I will ask to have marked the second letter purporting to be from Harry Cohen.

(Marked for identification State's Exhibit W-1).

I will ask to have marked a carbon copy of a letter to George A. Pettibone.

(Marked for identification State's Exhibit W-1).

Q. As I understand, the letters of inquiry were all the same except the name and address as this one to Pettibone?

A. They were.

Q. I will ask you to state what this memorandum in which appears to be attached permanently to that letter, and when was it made?

A. When Thomas Hogan came in to see me. I just took down his name and address and wrote "References" underneath and put down the name of the parties whose names he gave me.

Q. When did you get that letter to which it is attached with reference to the time that he came in? A. This letter is dated April 5th; I must have received it on the 6th.

MR. BROWN: We will offer in evidence these letters and one copy of the carbon copy.

Q. Do you know who Thomas Hogan is with reference to Harry Orchard?

A. I do.

Q. Who is he? A. They are one and the same person.

Q. Have you seen Thomas Hogan otherwise known as Harry Orchard since you came to the state? A. I have not.

Q. Did you see him in the court room? A. No sir.

Q. You know it is the same party, do you? A. I do.

MR. RICHARDSON: If your Honor please, we object to the State's Exhibits B-1 to W-1, both numbers inclusive, for the reason that they are irrelevant, incompetent, immaterial, not connected with this defendant nor pretend to be connected with him in any way, nor do they pretend to connect him in any way with the death of ex-governor Stearnberg. I call your Honor's attention especially to one of these which purports to be a letter to "Dear Mr. Booth," signed by Henry W. Cohen -- "My Dear Booth; This will introduce to you Mr. Thomas Hogan", etc. That is not a letter to Mr. John L. Stearns, the man who has been identifying the balance of these letters.

Q. Who is Mr. Booth, Mr. Stearns? A. I don't know. It is probable that Hogan --

MR. RICHARDSON: No, if your Honor please, he is not here to testify to probabilities.

MR. BORAH: I did not notice that that was to Mr. Booth.

Q. Did Mr. Hogan present that letter to you when he came in?

MR. DANEON: If you remember.

A. I don't remember, no.

Q. Do you know how you got possession of that letter? A. That would be my only explanation, that he gave it to me as an endorsement.

MR. RICHARDSON: We move to strike out his explanation.

MR. BORAH: Omitting the Booth letter for the present, (that is covered by that memorandum, I supposed it was the same

party) I simply offer the others at present.

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

THE COURT: There is a motion there to strike out. The motion will be allowed to strike out the answer of the witness in reference to that letter.

MR. RICHARDSON: Now I object to the balance of the letters for the reasons stated, after the other one is left out; and the one which has been omitted should be designated so the record will show what it is.

MR. BORAH: We withdraw the offer of Exhibit S-1.

THE COURT: The objection will be overruled as to all of these.

MR. RICHARDSON: Note our exception.

Q. Did you give Mr. Hogan a contract to write insurance?

A. I did.

Q. After receiving these return letters? A. I did.

Q. MR. BORAH: I will read State's Exhibit W-1, and have them marked as Exhibits admitted.

Thereupon Mr. Borah read to the jury in the following order the following exhibits, namely, W-1, U-1, S-1, T-1 and V-1, and the same are in the words and figures following, to-wit



STATE'S EXHIBIT W-1.

April 7, 1905.

Mr. G. A. Pettibone,  
1634 Court Place,  
Denver, Colorado.

Dear Sir:-

A gentleman by the name of Thomas Hogan has applied to me for position as agent, and has given me your name as reference. I would esteem it a favor, if you will kindly advise me, in the strictest confidence, what you know of this gentleman, both as regards his integrity, ability and the general character of his habits and very much oblige.

Yours respectfully,

Manager.

STATE'S EXHIBIT U-1.

Household Specialties

Phone Gump 2752

GEO. A. PETTIBONE.

Successor to Specialty Department of  
THE AMERICAN WINDER CO.

Eclipse Wringers  
Parlor and Store  
Clocks, Lamps, Rugs,  
Parloras, Lace  
Curtains, Covers.

1725 Stout Street  
Reserved to  
1634 Court Place.

Albums, Bibles,  
Musical Grammons,  
Carpet Sweepers,  
Silverware, etc., etc.

Denver, Colo., Apr. 2, 1905.

John L. Stearns,  
City.

Dear Sir:

In reply to your letter of 7th in reference to Thos. Hogan.

Yes, I am acquainted with Hogen and I am also getting acquainted with you. If any more of my agents apply to you for position you would do me a favor by showing them the nearest way to the sidewalk as I can use all these fellows very handy myself.

Yours truly,

G. A. Pettibone.

STATE'S EXHIBIT S-1.

Richardson & Hawkins,  
Denver, Colorado.

April 8, 1908.

John L. Stearns, Manager Mutual Life Ins. Co. of New York,  
Denver, Colorado.

Dear Sir:- Responding to your inquiry with reference to Mr. Thomas Hogen, will say that I have known him for a considerable period of time and esteem him in every way as a man of integrity. His habits so far as I have had occasion to observe them, are of the best, and in general I know nothing whatever detrimental to his character. I am glad to recommend him for the position.

Yours truly,

Hercos H. Hawkins.

STATE'S EXHIBIT 2-1.

J. C. Sullivan,  
President,  
Victor Miners' Union  
No. 32, W. F. of M.

H. B. Waters, Secretary-  
Treasurer  
Journeymen Coopers' Union  
No. 18, U.A.M. of A.E., Denver.

OFFICE: 504 Mining Exchange Bldg.,

Denver, Colo.

P.O. Box, 1408  
Phone 3333

HEADQUARTERS OF  
COLORADO STATE  
FEDERATION OF  
LABOR  
(SEAL)

R. E. Croskey, First  
Vice-President  
Cripple Creek Nat.  
Trades and Labor Assem-  
bly, Cripple Creek,  
Joseph Oliver, Second  
Vice-President, Cigar-  
makers' Union No.  
129, C.M.I.U. of A.,  
Denver.

Wheatstrawing,  
Fannie Kline, Third Vice-  
President, Garment  
Workers' No. 129,  
I.G.V. of A., Denver.

H. F. Gourley, Fourth  
Vice-President, Mill  
and Shoemakers' Union  
No. 125, W.F. of M.,  
Colorado City.

Bert Lynch, Fifth Vice-  
President, Sunlight  
Miners' Union No. 805,  
U.M.W. of A.,  
Sunlight, Colo.

Denver, Colo., April, 5th, 1906.

Mr. John L. Stearns,  
Cooper Bldg.,  
Denver, Colorado.

Dear Sir:-

Yours of the 7th instant regarding one "Thomas Hogen" was received this morning and contents carefully noted, and in reply will say, that I know a man by the name of Thomas Hogen (which I presume is the man you refer to) for three or four years, and so far as I know his integrity is unquestioned, and regarding his general character, I consider it good, but regarding his ability as an agent, I feel that I am unable to pass on that point, from the fact that I have not had any experience in that line of business.

Yours respectfully,  
J. C. Sullivan.

STATE'S EXHIBIT V-1.

HENRY COHEN,  
Attorney at Law,  
418-419 Grant & Grammer Bldg.,  
Denver, Colo.

Phone Main 679

April 12, 1905.

Mr. John L. Stearns,  
Mutual Life Insurance Company,  
432 Cooper Bldg., City.

Dear Sir:

Your letter of the 7th regarding Mr. Hogan was received during my absence.

I have known Mr. Hogan for something over a year, and as far as I know, his integrity is of the best. His habits are good, and I think he can ably perform the duties as an agent of your Company if you should see fit to appoint him.

Yours very truly,

Henry Cohen.

MR. BURMAN: That is all.

MR. RICHARDSON: We move to strike out all of the testimony of this witness as immaterial, irrelevant, incompetent, neither connecting nor tending to connect Mr. Hayward in any way with the killing of ex-governor Stannenberg.

THE COURT: Motion denied.

MR. RICHARDSON: Note our exception.

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q. The very first time that you saw Thomas Egan, Mr. Vaughn was with him? A. Yes sir.
- Q. He and Vaughn came to the office together? A. Yes sir.
- Q. And solicited employment? A. Yes sir.
- Q. They came together at that time? A. They did.
- Q. And both of them solicited employment together at that time? A. They did.
- Q. And both of them gave you references? A. Yes sir.
- Q. And you wrote to the names which they had given you and received those letters in reply so far as Mr. Egan was concerned? A. Yes sir.
- Q. Now you had had other agents -- had employed other agents who had theretofore worked for Mr. Pettibone, had you not? A. I had.
- Q. On at least two different occasions, hadn't you? A. I had.
- Q. Any more than that? A. Not that I remember.
- Q. And so you understood readily what Mr. Pettibone referred to when he spoke about showing them out onto the sidewalk? A. I did.
- Q. Because you had taken other agents from him was the way you understood it? A. Yes sir.
- Q. And they had gone to work for you because you could give them a better job than Mr. Pettibone could give them? A. That I don't know, I am sure.
- Q. That is the way you understood it, was it not? A. No, I don't think I did.

- Q. At least you got the agents and they had theretofore worked for Mr. Pettibone and that is what he was referring to when he wrote that joke in the letter, is it a joke? A. Yes sir.
- Q. You understood it as a joke, didn't you? A. I did, yes sir.
- Q. Did Vaughn go to work for you at the same time Orchard did? A. He did.

MR. RICHARDSON: That is all.

MR. BENTZ: That is all, Mr. Stearns.

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THE COURT: Mr. Powell, the son of one of the jurors, is here and desires an interview with his father on a business matter after the adjournment. I will make the order if there is no objection.

MR. RICHARDSON: There is no objection.

THE COURT: The interview will be allowed in the presence and hearing of two of the bailiffs.

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MRS. FLORENCE ELIZA BOWARD, a witness on behalf of the  
People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BOWEN:

- Q. What is your full name? A. Florence Eliza Boward.
- Q. Where do you reside, Mrs. Boward? A. My home is in Berkeley,  
California? A. Alameda county, California.
- Q. Where were you residing in the fall of 1904? A. At 1304  
Washington Street, San Francisco.
- Q. There was your place of residence with reference to F. W.  
Bradley's place of residence? A. We lived four doors above  
the Linfroth flats.
- Q. Four doors above the Linfroth flats? A. Yes.
- Q. Where did Mr. Bradley reside in the Linfroth flats?  
A. In the Linfroth flats on the corner of Washington and  
Leavenworth, the northwest corner of Washington and Leavenworth.
- Q. Did you know Mr. Bradley at this time? A. I did not.
- Q. You may state whether or not you became acquainted with a party  
in the fall of 1904 who resided at your house by the name of  
Berry? A. Well, he applied for a room at my house in my flat.
- Q. About that time, if you can tell me, did he come to your  
house or apply to you for rooms in your flat? A. About Oct-  
ober, about the first week in October.
- Q. Did he get a room at your house? A. He did.
- Q. Under what name was this party passing at that time? A. Well,  
I know him by the name of Berry, though he might have intro-  
duced himself as Dery.

MR. RICHARDSON: No objection to what he might have done.

What she knows about it, if your Honor please, is all.

Q. Under what name did you know him? A. Berry, Mr. Berry.

Q. How long did he remain at your place of residence or your flat?

A. Between five and six weeks.

Q. Have you seen Mr. Berry or Berry since you came down to this city? A. I have seen him here in the court room.

Q. Under what name is he passing here in the court room?

A. Mr. Orchard.

Q. Where was this room which Berry occupied in the flat, on what floor of your flat?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant; neither sustains nor tends to sustain any connection of Mr. Heywood with this case, nor is it corroborative of any evidence of Mr. Orchard which is material to this case.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A. I had a middle flat and he occupied a room in about the center of the flat.

Q. Was his room an outside room or an inside room? A. The rooms were all outside rooms.

Q. How was his room with reference to Mr. Bradley's residence?

A. He could see into Mr. Bradley's window.

Q. Did you observe anything in Mr. Berry's room which attracted your attention particularly which you can now recall? If so, you may state what it was.

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



THE COURT: Objection overruled.

MR. RICHARDSON: An exception.

A. I found shavings of lead and some of wood.

Q. Where were these shavings which you found of lead and wood?

A. They were on the floor.

Q. In the main part of the room? A. In about the center of the room near the table.

Q. Did you find any shavings anywhere else in the room or near the room where he was living? A. I found shavings of wood in the closet in a newspaper.

Q. In a newspaper? A. Yes sir.

Q. Did you find anything else in his room that you can now recall either at that particular time or at any other time prior to his leaving? A. I found two or three bottles in the bureau drawer, and a large pistol; and on the door leading into the closet I saw a small steel hook; attached to that was a cord and on the end of the cord was a cork.

Q. How did you come to find this cord and cork? A. The floor was carpeted with straw matting and as I opened the closet door the cork dragged on the matting and attracted my attention, made a rucking sound.

Q. What kind of a cord was this which was fastened to the screw-eye or steel in the door? A. It was a small stout cord which resembled a fish line.

Q. Did you ever observe anything with reference to a suit case?

A. Yes, it was very, very heavy. I could scarcely lift it.

Q. Was Mr. Orchard away at any time during the period between the time he first came and the time he left? A. Yes, he was at

my house about three weeks and then he went away and was gone about ten days.

Q. Did he return to your house after his leaving this first time?

A. Yes sir.

Q. When was it that you found these things in his room with reference to the time of his return? A. It was the last time he was there.

Q. Did you know of an explosion at Mr. Bradley's residence?

A. I do.

Q. How long was it before this explosion that you found these things in his room? A. Before I found the cork attached to the door?

Q. Yes. A. It was just a day or two before the explosion.

Q. When did Mr. Barry leave your place of residence with reference to this explosion? A. The very morning of the explosion, I believe, November 17th.

Q. When did he settle with you? A. The night before.

Q. What time did he leave that morning of the explosion, if you know? A. About half past — I think seven or half past; between the hours, I think, of seven and half past, possibly a little earlier. I didn't hear him when he went out.

Q. Was he gone when you got up? A. Yes sir.

MR. BROWN: You may cross examine.

#### CROSS EXAMINATION

BY MR. NICHAMSON:

Q. How then do you fix the time if he was gone before you got up?

THE COURT: Do you want to make your usual motion here?

MR. RICHARDSON: Yes, if your Honor please, we move to strike it out as immaterial, irrelevant and incompetent, neither connects nor tends to connect the defendant Haywood with this case in any way, nor with the killing of Governor Stansbury.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

- Q. How do you know that Mr. Graham left about half past seven if he was gone when you got up? A. One of my daughters heard him go out and she judged it was about that time; it might have been earlier.
- Q. You are testifying then to what your daughter has told you about it with reference to the time that he went out rather than any knowledge that you have of the fact yourself? A. He told me he would leave very early in the morning.
- Q. I am asking you if you are testifying to what she told you about it? A. No, I am testifying to what I know.
- Q. You know then, do you, that he went out? A. I know that he left very early. I couldn't tell you the exact time.
- Q. But you did tell us the exact time or about the exact time that he left? A. I think it was about that time.
- Q. That was because your daughter told you it was about that time, wasn't it? A. I know that he left early.
- Q. You didn't hear him at all? A. No.
- Q. And you didn't know of your own knowledge when he went because you were asleep when he went, weren't you? A. Well, I can't tell you whether I was asleep or not.
- Q. You didn't hear him? A. I didn't hear him.

- Q. Then you really don't know of your own knowledge when he went away? A. I know he left early.
- Q. Did you make any complaint to Mr. Orchard about this string and cork and fish line and screw-eye, or whatever it was, which you found in the door? A. I never mentioned it to him.
- Q. Nor to anybody else? A. Yes, to my family, my girls.
- Q. Mentioned it to your girls; didn't you mention it to the police department? A. I did not.
- Q. Nor mentioned it to him as a suspicious circumstance? A. I did not.
- Q. Nor asked him what he was putting hooks in furniture for or in the fixtures? A. I didn't think it was any of my affairs to speak to him about it.
- Q. You didn't think anything about this lead or these shavings either, did you? A. I thought he was inventing something. I had no idea what it was.
- Q. Had no idea what it was and you didn't ask him anything about it nor try to find out? A. I did not.
- Q. And there wasn't anything about that which he did which caused you to pay any attention to the event, was there, or the various doings? A. No.
- Q. You are simply testifying from a general recollection upon the subject, aren't you? A. Well, I realize what I am saying; I am sure of my answers.
- Q. What day was it that he came there to your place? A. He came about the first of October, the first part of October.
- Q. And stayed until along about the 17th of November? A. He left the morning of the explosion, yes.

Q. Was that the 17th of November or the 18th of November?

A. The 17th.

Q. The 17th of November. Did he take his grip that morning?

A. I think he removed it the night before.

Q. Do you know whether he did or not? A. I am not sure.

Q. What makes you think he took it away the night before?

A. Well, because I heard he did.

Q. Well, you heard him say so here on the stand, didn't you?

A. No, I didn't hear him say so.

Q. Did you read it in the newspaper that he had said so?

A. I think Mr. Gubiny told me that he helped him to move it down to the Ferry.

Q. Gubiny said that he helped him to remove it down the night before. So that is the reason you think it went the night before. Personally you know nothing about it, do you, is that right? A. I told you that I wasn't sure that he moved it the night before but I think he did.

Q. I am asking you now, personally then you know nothing about whether he moved it the night before or not? A. I am not positive.

Q. Except what you have heard about it. You take Mr. Gubiny's statement on that? A. I think Mr. Gubiny should know.

Q. And you take his statement and testify to it here because he has stated that to you, is that the reason?

MR. BROWN: The witness did not testify to it. She simply said she thought so and he told her so.

Q. That is the reason that you testify that you think so, because Mr. Gubiny told you so, isn't it? A. I am quite positive

he moved it out the night before.

- Q. Why? A. He occupied the room that night --
- Q. What makes you positive that he moved it out the night before?
- A. Because I believe what Mr. Gubiny told me.
- Q. It is because Gubiny told you so, isn't it? That is the only reason you have to know about it, that is right, isn't it? A. I presume that is right.
- Q. Do you know where he went when he was gone those ten days that you speak of, Mrs. Howard? A. Well, he told me that he was going to Sater Creek.
- Q. Do you know where that is? A. No, I don't know just where it is; I think in Amador county.
- Q. A considerable distance from San Francisco? A. I don't know how far.
- Q. You know Amador county is a long way from San Francisco, it is up above Sacramento, isn't it? A. I don't know.
- Q. Now Mr. Orchard after the time he stopped in this room about three weeks and then went away about ten days, came back and stopped two weeks longer? A. About two weeks longer I think.
- Q. Did you say your flat was a center flat? A. It was the middle flat.
- Q. Was there a flat on either side of it, on each side of it?
- A. Sure was the outside, all the rooms were outside rooms.
- Q. And yet it was a center flat? A. Yes.
- Q. That is to say, you went into a door the same as going in at the end of this table? A. There were four doors along in a row.
- Q. You went in the same as going into a door, say, in the center

of the table? A. Not in the center, no. The two center doors led to the upper flat.

Q. Were you upstairs or downstairs in the flat? A. We were in the middle flat, one of the middle flats. There were two middle flats.

Q. What do you mean by the middle, between the sky and the earth, or the middle between the two edges of the building? How many stories high was it? A. The building was three stories and a basement.

Q. How which story were you on? A. We were on the second.

Q. On the second story. Now how many flats were there on the right hand side of your flat? A. There was one.

Q. And how many on the left hand side? A. Ours was on the left hand side.

Q. Was there any on the left hand side of your flat? A. No.

Q. Well, what you mean then in it in the middle flat from the top to the bottom? A. Yes, that is what I mean.

Q. And it was an outside flat? A. It was an outside flat.

Q. Did it face on the street? A. The front windows did.

Q. And did the side face on the side street? A. Yes, on Leavenworth.

Q. And was Orchard's room on the side or on the front?

A. It was on the side.

Q. So that he could look over in the direction of Bradley's flat?

A. Our windows had a western exposure.

Q. When you looked from your western exposure over toward Bradley's, did you see the front or the rear or the side of Bradley's flat? A. He could look right into the side windows.

- Q. Into what? A. Into his windows.
- Q. Into his side windows? A. Yes.
- Q. He had the corner flat, did he? A. It was a large flat.
- Q. Was it a corner flat, did he have a corner flat? A. No, I don't think so; his windows faced Levensworth opposite our windows.
- Q. Opposite yours? A. Opposite our windows, yes. His windows had the eastern exposure, ours the western.
- Q. And you looked out of your front windows then over into his front windows? A. Oh, no. We were on the same side of the street, on the same street, the north side of Washington.
- Q. Was your flat higher or lower than his? A. I think just about the same height.
- Q. Then you could look out of the side of your flat over into the side of his flat? A. We could.
- Q. Was he in the top flat? A. I think no.
- Q. And were there any flats or buildings between your flat and his? A. There were buildings, but none of them projected out far enough to obstruct the view.
- Q. That flat set up high enough so that you could look right over these buildings? A. No, there were no buildings in between.
- Q. They didn't come back far enough? A. Not far enough; they didn't project far enough to obstruct our view.
- Q. And these flats that Bradley was in, there was no other flat in the Linforth flats which was nearer to you than Bradley's? A. No sir.
- Q. Bradley's was the nearest flat to you, was it? A. Well,



- There were others just as near, the flat under him of course.
- Q. Well, you, but I mean of the up and down was there any between you and him or was he the nearest to you, taking the three that were one above the other they were the nearest to you, were they? A. There was the side of the building, the whole side; of course others occupied flats.
- Q. Above Bradley? A. Well, under him; I think that he was in the top flat.
- Q. You live in Berkeley now, do you, Mrs. Seward? A. We do.
- Q. Have since the earthquake? A. Yes sir.
- Q. How did you come to come here, Mrs. Seward? A. Well, I was urged to come.
- Q. By whom? A. By Mr. Wilson (Wilking).
- Q. Who is Mr. Wilson? A. He is assistant superintendent of the Pinkerton agency.
- Q. At San Francisco? A. Yes sir.
- Q. And after he had urged you sufficiently to come I suppose you agreed to come? A. I did after meditating a long time about it.
- Q. How many times did Mr. Wilson come to see you? A. Mr. Wilson, he came about a dozen times I guess.
- Q. How many times did any other Pinkerton come besides Mr. Wilson? A. Mr. Reeves called three times.
- Q. Is he another Pinkerton? A. He is.
- Q. So you had fifteen calls, did you, to get you to come? A. I think about that many.
- Q. Were you living at Berkeley at the time of all of those calls? A. We have been living there ever since the earthquake.

- Q. They came over to Berkeley to see you upon each one of these occasions, did they? A. Recently they came.
- Q. Did they commence to see you before the earthquake occurred?
- A. No, they didn't come.
- Q. Did any Pinkerton come before the earthquake, any other Pinkertons? A. Well, I can't tell you. I don't know.
- Q. Other people came, did they? A. Some men came. I don't know who he was.
- Q. Don't know whether he was a Pinkerton or not? A. No.
- Q. So counting him as one you had sixteen calls, did you, in all?
- A. I beg your pardon.
- Q. I say counting him, if you count him as a Pinkerton, you had sixteen calls from the Pinkertons before you concluded to come? A. I couldn't tell whether he was a Pinkerton or not.
- Q. You can't tell a Pinkerton by looking at him then?
- A. I never have had any experience.
- MR. BORAH: I object to the question as incompetent, irrelevant and immaterial, and on behalf of time.
- Q. How much did you get for coming, Mrs. Seward? A. I got my expenses.
- Q. Just come for your expenses, did you? How much money did you get before you started? A. I got my expenses.
- Q. How much money did you get before you started? A. \$30.
- Q. Have you had any since that time? A. No sir.
- Q. \$30 in all that you have gotten so far? A. They paid my expenses of course.
- Q. And \$30 buys your ticket one way, does it, or part of the way?
- A. I can't tell you. I don't know the price of the tickets.

- Q. You were furnished a ticket besides the \$30, were you?
- A. Yes sir.
- Q. And a Pullman ticket besides the railroad ticket? A. Yes sir, a Pullman ticket.
- Q. And got \$30 in cash? A. Yes sir.
- Q. Have you gotten any since you came here? A. No sir.
- Q. Have you applied for any? A. I have not.
- Q. Have you talked with any of the Pinkerton people since you have been here -- Mr. Parland? A. I haven't.
- Q. Mr. Thiele or any of the others? A. I haven't seen Mr. McParland to speak to him, I don't know him.
- Q. Seen Mr. Thiele, have you? A. No sir.
- Q. I suppose you intend to draw your mileage and per diem before you go home? A. I think I should be entitled to it.
- Q. I should think so. I would draw it if I was in your place. You know that there was a case in San Francisco, did you not, with regard to that explosion, a civil case between the Gas company and Mr. Liefroth? A. Yes sir.
- Q. Were you called on to test try in that case? A. No.
- Q. Did anybody interview you about it and try to get you to testify? A. No.
- Q. Or talk with you about what you know with respect to that case at any time? A. No, not in respect to that case.
- Q. Did they try to get you to make an affidavit on the motion for new trial in that case? A. No; I made an affidavit, but it was in regard to this, what I found in the room.
- Q. Well, you made it on a motion for a new trial, didn't you?
- A. No, I think not.

- Q. For the Gas company, didn't you? A. No, I don't think it was for that purpose.
- Q. You don't think so, but you did make an affidavit in that case and it was filed in the case, was it not? A. Well, I signed it before a notary. I don't know just --
- Q. You didn't know what they did with it. At whose instance did you make that affidavit? A. Well, I don't know who it was that came to the house. We were living at the Holland at the time.
- Q. An attorney for the Gas company, wasn't it, in San Francisco? A. I don't know who he was.
- Q. And you made an affidavit and let him have it with respect to that matter? A. He took it away with him.
- Q. You don't know what has been done with that affidavit, do you? A. Yes; I have seen a copy of it since I was here.
- Q. Seen a copy of it since you have been here, have you? A. Yes.
- Q. Well, you know then now that you made it for the Gas company, don't you? A. Why, no, I don't know that it was for the gas company.
- Q. Where did you see that copy of your affidavit? A. In Mr. Hawley's office.
- Q. When did you see it? A. Yesterday.
- Q. Did you tell anybody in San Francisco at the time that this suit was pending that you had any knowledge which would affect the suit in any way? A. I told this gentleman who called upon me.

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Q. When was it that he called on you?

A. Oh, it was about a year and a half ago.

Q. About a year and a half?

A. It was before the earthquake, some time before the earthquake.

Q. Did you make your affidavit at that time --

A. Yes s'r.

Q. -- or since? A. At that time.

Q. Made it at that time, so that before the Linforth suit was tried, or after it was tried and the judgment rendered against the Gas company?

A. I think it was before it was tried, but I am not sure.

Q. Before it was tried. A. I am not sure, but I think it was before.

Q. But you were not called as a witness in the case?

A. No, I was not.

Q. And did not testify? A. I did not.

MR. RICHARDSON: That is all.

MR. BOWEN: That is all.

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

DEFOXY EXAMINATION

BY MR. BORAH:

Q. What is your name? A. Riley Harris.

MR. HENRY: I don't think his name was endorsed on this indictment.

MR. RICHARDSON: Yes, it has been endorsed.

MR. BORAH: While the matter has been called to my attention, if your Honor please -- we filed an affidavit on the 17th, a copy of which was presented to counsel, and we desire to have the names of A. B. Anderson, E. J. McCartney, Alfred Hoff, Walker and Luther M. Goddard put upon the indictment. Mr. McCartney, I will say to your Honor, is a witness with reference to some telegrams, whom we just learned of a few days ago. We have had some trouble getting those telegrams. Mr. Hoff is the president of the Postal Telegraph Company locally; Mr. Walker is secretary of the Postal Telegraph Company, and Mr. Goddard is one of the justices of the Supreme Court of Colorado. The reason why his name was not upon the indictment is stated in the affidavit, and that was an oversight at the time, it was intended to be placed upon the indictment. I think counsel had full knowledge, however, of the fact that Mr. Goddard was cognizant of some of these facts.

MR. RICHARDSON: We object, if your Honor please, to the endorsement of any new names upon the indictment at this time as coming too late; for the further reason that it does not appear from the affidavit that the names of these witnesses

and the facts to which they will testify were not known to some of the counsel who appear here for the State; for the further reason that there is no showing in the affidavit as to how this knowledge did come to the district attorney, who verifies the affidavit --

MR. BORAH: No, Mr. Hawley made the affidavit.

MR. RICHARDSON: Strike out that last part then.

And that there is nothing stated therein as to whether or not the other counsel for the State did not know of the materiality of these witnesses and what they would testify to; nor is there anything shown as to when or why or where they found out this testimony, in any part of the affidavit. And, as to the witness Luther U. Goddard, if your Honor please, it comes altogether too late, because it appears affirmatively from the affidavit that they have known of Mr. Goddard's testimony all along.

THE COURT: The objection will be overruled and the names will be endorsed.

MR. RICHARDSON: Note our exception.

MR. BARNOW: Mr. Borah, there is another name there, Anderson; You did not tell us who he was.

MR. BORAH: He will not be called.

MR. BARNOW: All right.

(Examination of witness Riley Harris continued)

EXCERPT BY MR. BORAH:

- Q. Mr. Harris, where do you reside? A. Greeley, Colorado, at present.
- Q. What is your business? A. Tailor.

Q. Where were you residing in the spring of 1905? A. 1661 Court Place, Denver.

Q. Where is that with reference to Mr. Pottibone's store at that time? A. Outcornering across the street, it isn't directly straight across from his place.

Q. Did you have any business transaction about that time, in the spring of 1905, with a party wherein you were delivering for Mr. Reach some merchandise or some articles of sale?

A. Yes sir, it was a lead shell.

MR. RICHARDSON: He asked you if you did -- you or no, we submit is all that can be asked on that subject.

A. Yes sir.

Q. What was that transaction?

MR. RICHARDSON: We object to that as immaterial, incompetent and irrelevant, as not binding upon this defendant, not tending to connect him in any way with the death of Governor Stearnsberg.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. DARROW: They have not shown who that party is, have you?

MR. BROWN: I have shown Reach, I will show the other in a moment. I can only show one thing at a time.

MR. DARROW: Yes, but he might have had it with any number of parties.

MR. BROWN: I can ask the questions back end first if they want me to.

MR. DARROW: I insist you cannot ask it. He says



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"What transaction did you have with some party?"

MR. BORAH: I am going to ask it with what party.

THE COURT: There is no objection before the court.

MR. BARNOW: I am objecting, your Honor.

THE COURT: On what ground?

MR. BARNOW: On the ground he does not give it with anybody. He says he had a conversation with a party and he says what was the conversation. Now if Mr. Borah is going to change it to help himself out, that is all right.

MR. HASLEY: To help counsel out.

- Q. You may state, if you know, with whom this transaction was had, between what parties. A. Well, there was a gentleman come in there and give an order for a lead can to Mr. Roach and I was present at the time.
- Q. Did you afterwards deliver that lead can? A. Yes, Q. It was in the morning when he give the order and I delivered it to him about four o'clock in the afternoon when he come for it; Roach was out.
- Q. Do you know to whom you delivered that tin can? A. Well, I saw the man since.
- Q. Where did you see him? A. I saw him in here yesterday.
- Q. Under what name is he passing? A. Mr. Orchard.
- Q. Did you collect any amount? A. Yes sir, \$1.50.
- Q. About when was this, if you know? A. This was in May, 1908, because he went out of business in June and it was just before that; I would say about the middle of the month.

MR. BORAH: You may cross examine.

MR. RICHARDSON: I move to strike out all of the

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testimony of this witness as immaterial, irrelevant and incompetent, not binding upon this defendant, not connecting him nor tending to connect him in any way with the death of ex-governor Stearnsberg.

THE COURT: Motion denied.

MR. RICHARDSON: And for the additional reason that it does not tend to corroborate Harry Orchard upon any matter which is material in this controversy.

THE COURT: The motion is at all denied.

MR. RICHARDSON: Note our exception.

MR. BURAH: You may cross examine.

#### CROSS EXAMINATION

BY MR. RICHARDSON:

- Q. What time was it in June that you moved away from that place and closed up business? A. The first of June.
- Q. About the first of June? A. The first we quit; Roach went on the lot and I went on the 3rd.
- Q. So that the business was closed up so far as Roach was concerned about the 1st day of June? A. Yes sir.
- Q. And it was just shortly before that that this lead case was made by Roach? A. Well, I should say it was about a couple of weeks before as I remember, yes sir.
- Q. Your idea is then it was about the middle of May when you made this case? A. Well, I didn't make it. I delivered it. Mr. Roach made it.
- Q. I mean when you took the order? A. Yes sir, when Roach made it for him.

- Q. Some where between the middle of May and the 1st day of June, would be your best judgment? A. I don't think it would be any later than the middle of May.
- Q. Don't think it would be any later than the middle of May?
- A. No.
- Q. Your best judgment would be it was about the middle of May?
- A. Yes sir.
- Q. Have you got any way of fixing the date that the lead case was made? A. No, only I remember it pretty well, because it sat there all day and everyone who come in was asking about it, was looking at it.
- Q. You are satisfied then that it could not have been earlier than the first of May that it was made? A. No, I don't think it could be. Of course I can't give the date, you know.
- Q. Well, you say it was about two weeks, that is the best you can do with it, is it? A. Yes, that is my opinion.
- Q. Your best judgment is it would be not earlier than the first of May nor later than the 15th day of May that this was made?
- A. Yes sir.
- Q. And all you know about it is that the man whom you say you have seen here came in and described the kind of a leaden case he wanted made and Mr. Roach made it, and about four o'clock in the afternoon that day he came in there, you delivered it to him and collected the pay for it? A. Yes sir, I give it to him and he wanted me to wrap it up.
- Q. Well, you wrapped it up? A. Yes; he helped me wrap it up.
- Q. That wouldn't materially change the matter any?
- A. That is all I know about it.

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MR. RICHARDSON: That is all.

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

DIRECT EXAMINATION

BY MR. BORAH:

- Q. What is your full name? A. Luther M. Goddard.
- Q. Where do you reside? A. In Denver, Colorado.
- Q. Do you hold an official position in that state?
- A. I am an associate justice of the Supreme Court of the state of Colorado.
- Q. How long have you been an associate justice during your last incumbency in office? A. I took the office on the 5th of April, 1905.
- Q. Had you prior to that time occupied a place on the bench?
- A. I did for something over eight years.
- Q. On the Supreme bench? A. Yes sir.
- Q. Of Colorado? A. Yes sir.
- Q. Were you a member of the Supreme Court of Colorado on the 17th of July, 1897? A. Yes sir.
- Q. Were you a member of the Supreme Court on June 6th, 1904? ✓
- A. I was.
- Q. Who were your associates at that time, in the first instance, in 1899, if you recall? A. Mr. John Campbell and Mr. W. H. Gabbart.
- Q. Who were your associates on the last date, on June 6th, 1904?
- A. No, I misunderstood that date. I went on April 5th, 1905, under the second appointment -- or under the appointment.
- Q. You have named your associates in the first instance? A. Yes.
- Q. I will ask you if Judge Gabbart was on the bench in 1904? A. Yes.
- Q. During the entire year? A. Yes.

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Q You may state where you reside in Denver? A On the corner of 27th and Humboldt Streets.

Q How long have you resided there? A Since 1892.

Q I will ask you, Judge, if you observed the uncovering of what purported to be a bomb at your gate?

MR. RICHARDSON: We object to that as incompetent, immaterial and irrelevant, and not connecting the defendant in any way, nor does it tend to connect him with the killing of ex Governor Steiensenberg, and is not corroborative of the testimony of Harry Orchard upon any material point.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A I did.

Q About what date? A It was the 14th day of February, 1906.

Q Who did the work? A General Bulkley Wells.

MR. RICHARDSON: We object to that for the same reason.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

THE WITNESS: The State Adjutant General, General Wells.

Q Had you been residing at that place right along, and been at home? A Yes sir.

Q You may state now, Judge Goddard, just what took place, what you observed, and what you saw with reference to the uncovering of this bomb at your gate.

MR. RICHARDSON: That is objected to as incompetent, immaterial and irrelevant, not connecting the defendant in any way, nor does it tend to connect him with the killing of ex Governor Stearnsberg, and is not corroborative of Harry Orchard upon any material point.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A On the 13th of February I observed for the first time-- I observed a little eyelet screw, a little screweye in the bottom of the gate frame, about an inch, or from a half an inch to an inch from the bottom. On the next day at about eleven o'clock I met General Wells at my house and he proceeded to uncover a box. He used a large cleop knife to do it. The ground was solid and slightly depressed, and he cut it with his knife blade and he finally uncovered a box something over eight inches in length, eight inches and something in width, and about five and half inches in depth,-- a pine box. On top of it, the first I discovered was some burlap-- a piece of burlap; on opening the burlap there was discovered a little vial in a slanting position with a rubber cork partially drawn from it; the lower part of the cork still sticking in the bottle, the upper part being corroded by something. The bottle had a sediment-- sort of a brown sediment; otherwise it was empty. That was fastened to this box, or had been by a wire; the wire was rusted and I think one end was even off with the rust,--anyhow it was loose, and that was the condition

of the box when I saw it in the ground. After it was thoroughly uncovered I examined it and found that the top of the box came up within just three inches from the top of my stone walk out to the sidewalk and about three inches in front of the gate post to which the gate latched. The box was then taken out of the ground. I procured a valise in which we put the box and got into a hack and rode down to Mr. McFarland's office, and there in the presence of several parties, Mr. Laidner, Mr. Frettyman, Mr. Bulkley Wells and myself, the box was sealed up exactly as it was taken out of the ground, not opened or disturbed in any way. The viol was sealed up with the cork put back in and sealed in an envelope, and the little screw eye was put in an envelope and sealed. One wrapping of paper was sealed with sealing wax and we all present wrote our names witnessing the sealing. Then there was a second brown wrapping paper put on and that was tied and sealed and again witnessed. I am not absolutely sure whether we wrote our names on the box or not; it is my impression that we did, but I am not sure. That was sealed up in that manner and was taken by Mr. Bulkley Wells, and the next time I saw it was-- I am not positive about it, but I think about a year ago, I think he called me and the other parties that witnessed the sealing to his office then in the Capitol Building and took us to a vault they had there that had I think, five seals on it; the key hole was sealed over by a notary public's seal and then the others had sealing wax on the edge of the door so that

these seals were all intact at the time we went in there.

MR. DARROW: What is this question the Judge is answering now?

MR. BORAH: I told him to just tell what he knew about this matter.

MR. DARROW: You asked him in reference to finding this box.

MR. BORAH: Very well, I will ask him another question.

Q Then, after you got to this place where this was sealed up, what did you do next? A The seals were broken, the door was unlocked and the sealed package taken out as I saw it last before that.

Q Well, before we go further at the present time, envelope handed to the witness, you may state if you identify that-- if you ever saw it before? A I did.

Q State whether or not your signature is on that envelope?

A Yes sir.

Q What does that contain, if you know? A I know from the endorsement-- the bottle from the box.

Q You may open that envelope? A Break the seal?

Q Yes, break the seal. A This is the vial, and there is my signature (indicating same on the envelope).

Q You may state if this vial which you have taken from that envelope is the vial which was taken from the box or bundle found at your gate? A Yes sir.



Q You know that by reason of the identifications on the envelope? A Yes, and the nature of the ~~xxxx~~ viol. I say it is the viol, and it is witnessed.

MR. BORAH: I will ask to have this marked as an exhibit.

Exhibit was marked Exhibit X 1.

MR. BORAH: I am going to offer this in evidence.

MR. RICHARDSON: We object to the introduction of the State's Exhibit X 1 as incompetent, immaterial and irrelevant, as having no connection with this defendant or with the Steunenberg murder and is not corroborative of any point in Harry Orchard's testimony which tends to connect this defendant with the killing of Steunenberg, of Judge Goddard or anybody else.

THE COURT: The objection will be overruled.

MR. DARROW: We object especially to the introduction of the paper which purports to have the names of certain gentlemen on it.

THE COURT: That was not contained in Mr. Richardson's objection.

MR. RICHARDSON: Note our exception.

MR. BORAH: The only thing on herein what the witness had identified. Now, if the counsel objects to that we will have it remarked by the clerk.

MR. DARROW: We object to that.

MR. BORAH: I wish you would remark that, and mark it for

identification, Mr. Reporter.

Judge Goddard, I wish you would separate that portion of the paper which you people placed upon that bottle from it; take your knife and separate the string.

MR. DARROW: It is not necessary to bring a Judge of the Supreme Court of Colorado away out here to do that. Anybody can do that.

MR. BORAH: That may be, but I would prefer that the Judge should do it, for they may be another trial of this case.

THE WITNESS: I can do this, for I am accustomed to mental labor.

MR. BORAH: Now, we ask the clerk to identify the paper just covered from exhibit X 1.

THE COURT: You desire the clerk to preserve that identification mark?

MR. BORAH: Yes sir.

The paper was marked exhibit Y 1.

MR. BORAH: We now desire to offer exhibit Y 1 for the purpose of keeping this exhibit Y 1 in the record, which was taken from exhibit X 1.

MR. DARROW: We object to its going into the record on the ground that it is incompetent, immaterial and irrelevant.

THE COURT: The court will admit it, and overrule the

objection, for the purpose of identification only.

MR. DARRON: We will take an exception to that. As I understand it,-- it is limited, it is not to go to the jury.

THE COURT: If the matter had been pressed the court would have admitted it in the first instance.

MR. DARRON: We will save an exception.

Q Did you ever see that envelope before (handing witness an envelope)? A Yes sir.

Q Do you know what that contains? A Yes sir.

Q Is your name upon that envelope? A It is.

Q Was it placed there at the time the seal was made? A Yes sir.

Q You may open the envelope.

The witness did as requested.

Q Is that screw eye which you hold in your hand, that is placed in this envelope-- was that placed in this envelope by any one to your knowledge? A Yes sir.

Q Who? A General Wells was putting these things together and this screw eye is the screw eye that was taken from my gate, out of near the bottom.

MR. DORAN: I will ask to have this marked as an exhibit-- this envelope.

The envelope was marked exhibit E 1.

MR. DORAN: Now, if you will fasten a paper on that and mark it as an exhibit?

A paper was fastened to the screw eye and marked exhibit A 2 for identification.

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Q The screw eye to which you have referred in marked exhibit A 2 for identification; where did you find that screw eye?

A In the frame of my gate about half an inch to an inch from the bottom.

Q What would you say as to the time it had been there?

MR. RICHARDSON: He can describe the condition of the screw eye, and the jury can make the inference from that.

Q You may describe the condition of the screw eye? A It was rusted about as it is now.

Q I call your attention to State's exhibit Z 1, and ask you if this is the envelope in which you placed the screw eye?

A Yes sir.

MR. BORAH: We now offer in evidence State's exhibit A 2 and Exhibit Z 1.

MR. RICHARDSON: If your Honor please, I object to the introduction of State's exhibit A 2 and State's exhibit Z 1 for the reason that they are incompetent, immaterial and irrelevant, not connected with this defendant in any way, nor tending to connect him with any offense charged in this indictment, nor are they corroborative of anything in this case of the character noted by the statute.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q You may state, Judge, if you ever saw that envelope before and where, and under what circumstances? A My name is the

bottom name entered on it and that was sealed up and entered  
in McFarland's office.

Q You may open that envelope? A There is a bunch of giant  
caps (taking some from the envelope).

MR. BORAH: I would have this marked for identification.

The caps were marked exhibit B 2.

Q I call your attention to State's exhibit B 2 for identification  
and ask you what it was that you placed in this envelope?

A A dozen giant caps.

Q After you found them? A Yes sir, they are here.

Q MR. BORAH: Now, we ask, for convenience, that these  
giant caps be inserted again in this envelope and we will  
offer them all together as exhibit B 2.

MR. RICHARDSON: We object to the reception in evidence  
of the State's exhibit B 2 for the reason it is immaterial,  
incompetent and irrelevant.

THE COURT: What is your evidence as to where these  
caps came from?

Q Where did these caps come from?

MR. RICHARDSON: I will withdraw the objection for the  
present.

A They were in this box. There was a hole cut in the top of the  
box and the end of three sticks of giant powder cut off and  
in that place these giant caps stood with a rubber band around  
them as it is now.

Q You are speaking of the bomb you found at the gate? A Yes sir.

Q And you know these to be the same caps which you found there in that bomb, do you? A Yes sir.

Q Where were they with reference to this ~~stick~~ bottle exhibit X 1? A Right under the bottle-- the mouth of the vial. There was other material over these caps, some cotton and one thing and another, and some combination, and they were right immediately under the mouth of this vial.

MR. BORAK: We now offer these in evidence.

MR. RICHARDSON: We object to the reception of this exhibit for the reason that it is incompetent, irrelevant and immaterial in this case, it doesnot connect the defendant with the killing of ex Governor Steunenberg, nor is it corroborative of any material testimony of Harry Orchard in this case in connection with the death of Governor Steunenberg.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q I will ask you to examine this which I hand you and state what it is with reference to the bomb you found at your gate?

A That is a cover off a stick-- there are two of them-- of sticks of giant powder.

Q Did you find some giant powder in this box? A Yes sir.

Q How much? A Forty sticks; thirty-seven full sticks and three with the ends cut off.

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Q Now, what do you say this is that you held in your hand?

A These are the wrappers of two of these sticks of giant powder taken out of that box.

Q Did you see them taken out of that box? A I did.

Q MR. BORAH: I have had the wrappers identified, put in an envelope and marked State's exhibit C 2 and we offer that in evidence.

MR. RICHARDSON: We object to the reception of this exhibit for the reasons stated in our exception to State's exhibit No. 2.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q What became of this giant powder which was found in that box or bomb at your gate? A The box as we found it sealed, and taken out of the vault, was taken out away in the suburbs of the City of Denver, probably a mile and a half, out where they dump refuse, and there it was opened and the giant powder sticks taken out and counted. Then three of them were tied together, a cap was put in one and a fuse attached and it was planted in one of these refuse heaps, and I stepped away a hundred paces or three feet, I aimed to step, a hundred yards distant, and they were exploded.

Q What was done with the rest of it if you know? A Then there were five sticks tied together and exploded and then thirteen sticks, I think, and I believe that all the balance except the

three were finally exploded.

Q Did you observe the ground around your gate prior to the time when General Sells went to digging for this? A Yes sir.

Q What was its condition? A It was solid, hard, and a little depressed,-- perfectly solid.

Q Had there been any digging about the gate, to your knowledge, at any time prior to this for some months? A No sir.

MR. BORAH: You may cross examine.

CROSS EXAMINATION

BY MR. BARRON.

Q You have been twice on the Supreme Court, I believe you said?

A Yes sir.

Q When were you first elected? A In the fall of 1902-- 1903, I took the office the 1st of November; there was a vacancy.

Q How long were you on the bench then? A Eight years and two months.

Q Elected by the Democrats? A Yes sir, by the Democrats and Populists and white wing Democrats.

Q There are white wing Democrats down there in Colorado, are there? A A very few, the Cleveland Democrats.

Q The Cleveland Democrats were the white wings? A That is what they called them.

Q You mean that that is what they called themselves?



A Yes sir, probably no.

Q And you served eight years? A Yes sir.

Q And two months? A Yes, I served from late in November, 1902 until the 14th of January 1901.

Q And then you went off the bench? A I did.

Q And went back to practice? A Yes sir.

Q Whereabouts? A In Denver.

Q You lived in Denver during the time that you were not on the bench? A Yes sir.

Q At this same place? A Yes sir.

Q You were in general practice? A Yes sir.

Q Then, when did you go on the bench again? A I was appointed in January 1905, and took the office on the 8th of April, 1905.

Q Who appointed you? A Governor Feabody.

Q And you are still holding by virtue of that appointment of Governor Feabody's? A Yes sir.

Q How long was that before-- that was before Adams had taken his seat, or afterwards? A Yes sir, before.

Q How long before? A Well, it was before the time of the change of the Governors that the Governor appointed me, before the end of his term.

Q Adams had been elected, however? A I don't think so. He claimed to be elected.

Q I did not mean to put it that way; I mean the election had been held? A Yes sir.

- Q You were appointed after the election and before the Governor, the new Governor, whoever he was, would naturally take his seat? A Yes sir.
- Q I guess we can safely say that the result of the first canvass was that Adams was elected Governor? A It appeared to be.
- Q And as a matter of fact he did serve for a time? A Yes sir, he did.
- Q Now, do you remember about how long you were Governor before-- how long you were Judge before Governor Adams took his seat? A I had not taken the office at all, but I was appointed under the amendment, Mr. Darrow; under the amendment, it provided that the court should go into existence as re-organized on the 3th of April, 1905. Governor Peabody appointed me after the election.
- Q What was the exact date of your appointment, do you recall? A I cannot recollect.
- Q It was previous to the date for changing Governors? A Yes sir.
- Q But not very long previous, I take it? A No, not very long; I don't know how long.
- Q Not much more than 24 hours, was it? A Oh, yes, considerably longer than that.
- Q A week? A Oh, excuse me--
- Q Just get it as near as you can. A I will. The appointment was made the night that an arrangement was made permitting

Mr. Adams to take the seat. It was made-- the arrangement was made that night, and my name went before the Senate that night for confirmation.

Q And Adams took his seat the next day? A Yes sir.

Q And your appointment was made by Governor Peabody and Governor Adams took his seat the next day? A Yes sir, it went before the Senate for confirmation that night.

Q And then after your appointment, very soon after, the matter came before the court, I think? A No, it did not.

Q Didn't it ever come before the court? A It did not.

Q Were you judge in any of these election cases about that time?

A No, the first case of an election that I had anything to do with was on the spring election following.

Q That is, following this appointment? A Well, no, the spring election of 1904. You see under the amendment they elected county officers at the spring election-- the city elects them.

Q Did any part of the contest between Governor Adams and Governor Peabody come before you? A No sir.

Q But the contest that did come before you was the spring election? A Yes sir.

Q And that was an election which took place about the time you were appointed? A Oh, no sir.

Q The election I mean, not the contest? A The election took place, didn't it, in May, 1904?

- Q Do you remember the date of the contest? A Well, the date of the contest was during the first year of my term under the appointment-- some time during 1905.
- Q Early in the period of your appointment, was it not?
- A Before June, yes, before the adjournment in July.
- Q Now, that was a case that involved the title of the officials in Denver? A Yes, the county officers.
- Q And any state officers too? A No sir.
- Q The officers there were county and city both, were they not?
- A The 18th amendment provided for city and county officers; that is, one set of officers to fill both offices, and the county officers-- the county treasurer and sheriff and clerk were elected at that city election, and the following November there was another general election held and officers were elected to the same offices, other parties were elected, the same people running again, for the same office. Now, the question before the court was as to which set of officers was entitled to the county offices; that was the question.
- Q Yes, and that was decided in favor of the Republican side?
- A It was decided in favor of the fall, November election.
- Q That was a Republican event, was it not? A Yes.
- Q Had the others taken office already? A Yes sir, they were in office.
- Q And they were ousted? A Yes sir, they were ousted.
- Q We will not discuss that. How many judges were on the bench

at that time? A There were seven of us.

Q Who were they? A There was Judge Gabbert, Campbell, Bailey, Maxwell, Gunter, Steele and myself.

Q Yes, there was some division in the court, I take it?

A Yes, Judge Gunter and Judge Steele dissented from the opinion.

Q Judge Gabbert had been elected as a Populist before, had he not? A Yes sir, both as a Democrat and a Populist, on a fusion ticket.

Q Yes, and the last time he ran as a Republican? A He was nominated by the Republican party.

Q And he was with the major opinion, you and he both? A Yes sir.

Q A good deal of discussion about the contest, wasn't there?

A You mean that election contest?

Q Yes. A Oh, there was considerable said in the newspapers.

Q And a good deal about the court and its opinion, wasn't there?

A Yes.

Q Everybody has a right to say something about the court when it has decided against them? A Yes, that is the right of an American citizen I think.

Q And that fact was discussed in the papers as you know? A Yes sir.

Q Can you give us the date of that decision? A I think it was soon after June, 1905.

Q Can you give us the title of it? A There were half a dozen cases. The People on the Relation of—

MR. RICHARDSON: This is what is known as the Toole case, isn't it?

THE WITNESS: No, this is not the Toole case.

MR. RICHARDSON: The Ham Armstrong case? A Yes, the Alexander case.

Q Alexander took his position as Assessor, hadn't he?

A Yes.

Q He was the Democratic candidate who took this position as assessor? A Yes sir.

Q And Ham Armstrong had taken his position as Sheriff? A Yes sir.

Q They had held the offices for about a year or thereabouts before the decision was rendered? A Yes, just about.

Q And naturally a great many people were interested in these decisions and these cases? A Yes, certainly.

Q And there was a great deal of language used by individuals and newspaper's editor less vigorous and perhaps intemperate, was there not? A I never heard any individual expression but I saw a great many newspaper expressions.

Q And very likely some language was used that you did not hear? A I guess likely; I think that is true.

Q And in the case Senator Patterson, the publisher of the Rocky Mountain News and the Evening Times was fined a thousand dollars for contempt of court.

Q By the Supreme Court? A Yes sir.

Q It was taken to the United States Supreme Court and affirmed

with two dissenting opinions? A Yes sir, Justice McKenna was one who dissented.

Q You have had some warm times down there over political matters? A Yes sir, we have.

Q And necessarily these questions have many of them come before the courts?

MR. BORAH: We object to this as not proper cross examination.

MR. DARROW: I have gone as far as I am going, so it is not worth while to object.

THE COURT: The question is withdrawn then?

MR. DARROW: Yes, that last one.

Q Judge, you told us about going up to your house and excavating for a box? A I saw it excavated, yes.

Q Where did you go from? A I went from McFarland's office.

Q That is the Pinkerton office there? A Yes sir.

Q You and Mr. Bulkeley Wells and General McFarland?

A No, he did not go.

Q Didn't he go? A No, Mr. Prettyman and Mr. Londener went up. I went by myself and they came up later.

Q They were not present at the resurrection there? A Yes sir.

Q You had talked with Mr. McFarland previous to that? A I had met him on Tuesday morning, the 13th, when I received my first information in a certain way about this bomb.

Q And you received it from him? A I received it from what pur-

ported to be a confession or statement by a man named Orchard.

Q That came through McParland? A Yes sir.

Q So you got it by the way of both Orchard and McParland?

A I saw it read-- I read it.

Q You got Orchard's confession by way of McParland? A I got it through Mr. McParland.

Q And that, as you recollect it, was on the 13th? A Yes sir, the 13th.

Q And what was the date when all of you went up there and did this digging? A The 14th.

Q About what time of day was it on the 13th that you got there?

A Well, I learned during the forenoon-- I got certain information that induced me to examine my gate and I found a screw eye in there that I had never observed before, and after lunch I went back.

Q That information came from the same source? A Yes sir.

Q And that is what caused you to look for the screw eye? A Yes, and caused me to examine for the bomb too, or had it examined.

Q You had been going in and out of the gate there for upwards of a year and had not noticed the screw eye? A Yes sir, I presume so; I did not see it put there but I understand it was put there in May some time.

Q When was the date? A The 14th of February.

Q St. Valentine's Day? A Yes, I thought it was a valentine and so expressed myself to the gentleman present.

Q You had been going through the gate regularly from May to



February? A Yes.

Q And you had not seen the screw eye? A No.

Q Nor anything wrong with the earth? A No.

Q And before you uncovered it could you notice any difference in the earth? A No more than I noticed it was slightly depressed and very hard; I examined that particularly.

Q Before you uncovered it? A Let me state that after I received the information that I mentioned as to where the bomb was, I made an examination that day to see if I could see any indication of it, and I noticed that the ground was solid and hard.

Q Was there any grass around there? A It was in February and I think the grass was dead.

Q Do you know whether naturally in grass time there is any grass around there? A Yes, there was grass there.

Q All over that place? A Yes, it was irrigated all summer and some grass grew.

Q There was a soil there? A Yes, the soil was there.

Q So in the summer time there was grass? A Yes sir.

Q And you kept it covered with a lawn mower? A That is the way the grass is cut, with a lawn mower.

Q At that particular place? A That is a little corner close to the gate post.

Q That is inside, wasn't it? A No, it is outside.

Q There is a space between the fence and the walk? A Yes, a

1780

little corner in there, and the stone walk going out to the sidewalk is one side of that corner, the street sidewalk is the other and the side sidewalk is the other and then the fence.

Q Now, this was the 14th day of February; do you remember whether the snow had gone off the ground or not? A I think it was.

Q And do you remember whether there had been considerable snow that winter? A I don't remember about that. I do remember that there was frost in the ground and frost on this box when it was dug up.

Q And had the snow gone off? A I think it had, yes.

Q How was it as to their being snow and a considerable amount of it at different times during the winter? A I don't remember about that.

Q Do you recollect how it was as to rain? Have you any remembrance now as to whether it was an open winter or not? A I have no recollection at all.

Q Well, how far down in the earth did you say this box was?

A The top of it was just three inches below the top of the stone walk.

Q Just three inches? A Yes.

Q It was not under the stone, of course? A No, it was flush with the edge of the stone.

Q And dirt and grass on top of it? A Yes, and about three inches in front of the gate post.

1780 Q And was the dirt loose? A No sir, it was quite solid,

hard, packed.

Q Any stone there, or don't you recollect? A No sir, there was no stone.

Q And you cannot now recall anything about the ~~time~~ kind of winter you had had? A No sir, I cannot.

Q Of course vegetation had not started up there in the spring?  
A No, it had not started.

Q Do you recollect where there was any snow on the ground?  
A No, I think there was not.

Q When did you say you took that out to explode it? A It was later, I think— my recollection is it was about a year ago; I am not quite positive about it.

Q About a year ago? A I can tell you the circumstances. It was presumed that the case was going to be tried and it was necessary to—

Q Give it as near as you can? I am afraid to have witnesses make speeches, and you probably know how that is? A I am not going to make any speech.

Q Can you tell about when it was that you went out to explode that? A Will you give me that large envelope, the last one? The envelope indicated was then handed to the witness.

THE WITNESS: I think it was May 22nd, no, that is not the one; no, there is nothing to refresh my memory there.

Q Give me your best opinion and we will consider it subject to your doubts about it? A It was either—

- Q And about how long afterwards, which ever way you care to get at it, was it? A It was several months afterwards; whether it was in the fall or about a year ago now I can't tell.
- Q Yes, well, did you— lets see, did you remove the sticks of dynamite, or were they removed in your presence from the box?
- A Yes.
- Q And those were put in what? A They were taken out and counted and laid upon the ground.
- Q Were those sealed up by you? A No, the three that were preserved in the safe were taken back down.
- Q That is the three that you have brought here? A The two— there were two covers; there were three saved.
- Q Now, what I want to have you help me out on are the ones you exploded; what was done with those on the first day when you put them ~~more~~ away? A What do you mean?
- Q The ones you went out on the vacant lot— A Oh, out there in the suburbs.
- Q Yes, out there in the suburbs and exploded, the first day you took those out of the box? A That was the first time— we did not open the box before that; we sealed the box up as it was taken out of the ground and we took it out in the suburbs and at that time the most of the sticks was exploded.
- Q Who were with you? A General Bulkley Wells, my son, a man named Lavigne, Mr. Londoner and Mr. Prettyman.
- Q Do you remember who carried them out? A Yes, General Wells.

- Q And how did you say this was sealed-- who did the sealing?
- A Well, it was this heavy wrapping paper was wrapped around and a string put around and tied and sealed with sealing wax.
- Q What kind of sealing wax? A Red wax. Red sealing wax.
- Q Where did you get that? A It was there in the office.
- Q In the Pinkerton office? A Yes.
- Q And when this box came out it had red sealing wax on it?
- A Yes sir.
- Q Did not have your name on it anyway? A On the paper.
- Q I believe you say you don't remember whether your name was on the paper or not? A Oh no, it was on the paper, but I say I don't know whether my name was on the wooden box or not.
- Q Didn't you say that you did not remember whether your name was on the outside wrapping paper or not? A No sir.
- Q It was on there? A Yes sir.
- Q What other names was on it? A These names: There was Londoner, Prettyman, Bulkeley Wells,-- well, I don't remember any more unless you let me look at the endorsements.
- Q Yes, if they are there; you did not bring it, did you? We may be talking about a different one, or you mean one of the others with the endorsements? A I think I have named them all. One of the papers is witnessed as to the seal by Londoner, Cary, Bulkeley Wells, Prettyman and myself; another is signed by James McFarland, Londoner, Prettyman, Goddard and Wells.
- Q That would indicate that they were not all sealed up at the

- same time? A They were not. These caps were not sealed until after the giant powder was exploded.
- Q There seems to be no date on this? A No, but I know when it was done.
- Q And you are sure that these were sealed up on that date? A On the day that the powder was exploded.
- Q I am wrong, there is a date on there; you will see it at the top? A Yes, but that is not right, May 22nd, 1906-- it may have been-- that is right.
- Q You think that is the date of the fireworks? A Yes, that is the date of the fireworks.
- Q Now, do you remember when you sealed up the bottles? A Yes.
- Q When was that? A The 14th of February, 1906.
- Q Do you remember when you sealed up the other articles?
- A The same day, all except the giant caps.
- Q Everything but the giant caps were sealed up on that day?
- A Yes sir.
- Q You have not seen the outside wrapper, have you? A No.
- Q Have you got that here?

MR. BORAH: What is that?

MR. DANBOW: The outside wrapping of the box.

MR. HANLEY: I think I left the outside wrapper in the office.

MR. DANBOW: Will you bring it down?

MR. HANLEY: I will if it is there; I doubt if it is there.

THE WITNESS: I think you will find the original seals  
cut out and put in that box; the entire wrappers were not  
saved, I think.

Q Were the dates saved? A Yes, I think the date was saved  
too.

Q But you think the wrapper was destroyed? A I think the  
balance of it. There may be-- I know the seals and names were  
cut out and kept in the box separately in order to preserve  
them.

MR. BARROW: That is all, Judge.

THE COURT: We will stop here.

Thereupon the bailiffs were sworn, the jury retired in  
charge of the bailiffs, the defendant was remanded to custody,  
and court adjourned until 9:30 o'clock A. M., Thursday, June  
30th, 1907.

Adjourned.

Boise, Idaho, Thursday, June 20, 1907.

9:50 o'clock A.M.

Parties met pursuant to adjournment.

Minutes of the session of June 19, 1907, were read by the clerk and the same were signed by the court.

(Jury not present).

THE COURT: The court deemed it advisable, gentlemen, not to bring the jury in until the question involving the admissibility of the exhibits was decided by the court. I have examined the several offers that were made yesterday morning, gentlemen, and have reached a conclusion in the matter. The evidence in this case, I think, gentlemen, shows that there is a considerable difference between this case and the case that was cited by counsel for the defendant, the one generally known as the Anarchist case of the State vs. Spies. In that case the State relied almost entirely upon a chain of circumstances connecting the defendants with the offense that was charged, and many of the publications were publications -- or some of the publications were publications by the defendants themselves. Now it is apparent to the court that those were admitted or may have been admitted for two purposes, particularly so far as they included the commission of the offense, the offense that was afterwards committed. In other words, it showed their intention to commit the offense; and then admitted for the purpose of showing the feeling of the defendants or the animus of the defendants toward the police. Now in this



case the evidence of the State is by one or purporting to come from one of the parties to the offense. A witness has been introduced here that testified that he actually committed the particular crime charged here but that he committed others relied upon to show the conspiracy, and that he committed them or attempted to commit them at the direct instance and request not only of this defendant but other defendants connected with the Western Federation of Miners or the managing officers of the Western Federation of Miners. Now the testimony further shows that this magazine, articles from which are offered to be introduced, was published by and under the control and management of those who were officers, and the court is thoroughly satisfied that the articles appearing in that magazine during the period of the commission of these alleged offenses or attempts, so far as it shows the attitude of the organization or of the several managing officers thereof, is admissible as showing the animus and feeling towards the parties upon whom crimes were committed or attempted to be committed. In other words, so far as it shows the animus and feeling of the controlling officers of this association and the defendant in this case against Governor Steunenberg, Governor Peabody, Judge Gabbart, Judge Goddard and other parties against whom it is testified crimes were committed or attempted to be committed, I am satisfied this evidence is admissible as a circumstance to corroborate the witness that has been introduced by the State, and for that purpose and to that extent these articles will be admitted. Some portions of some of them as they are presented the court will exclude.

Now with reference to the articles that are presented following the commission of the offense, I have examined them carefully and the court has some doubt about their admissibility and the court will resolve that doubt in favor of the defendants unless there is something more offered to connect them more directly with the defendant.

There were one or two pages I believe that were not offered. I do not know, Mr. Borah, just what you stated in regard to that. I believe you stated before you offered them you wanted to examine them a little further.

MR. BORAH: Yes, I perhaps will not offer them at all. But if we do I will make a further examination and make a specific offer of the articles.

MR. RICHARDSON: To which ruling of the court we desire to preserve an exception.

THE COURT: Perhaps in order to make that ruling specific, Mr. Richardson, I presume it will be necessary for the court to rule upon each offer. The ruling so far is simply general.

MR. BARROW: It will stand to each one as it comes in then.

MR. RICHARDSON: The objection being made I suppose your Honor will declare then that as the articles are presented, that that article may be read?

THE COURT: Yes sir.

MR. RICHARDSON: Then we may preserve our exception.

THE COURT: I have made a note of the different articles that will be admitted and those that will be rejected. Some

of them the court will admit in part.

MR. RICHARDSON: I suppose the court will indicate the extent to which they will be admitted?

THE COURT: Yes sir.

MR. RICHARDSON: I suppose we may ask an instruction in accordance with your Honor's ruling that this is limited to the sole purpose stated?

THE COURT: This evidence will be admitted and then it will be controlled later by instructions of the court.

MR. DANKOW: I take it from the position of the court in this matter that these articles are admissible to prove the feeling and attitude of the defendants and all the members of the organization toward these various people to whom your Honor has referred.

THE COURT: So far as the members control the publication of this paper.

MR. DANKOW: That ought to be fair, and I take it there will be no objection, if it comes to that phase, to read into the record anything that we see fit out of these same publications.

THE COURT: The court will pass upon that when it is presented, gentlemen. It cannot at this time.

MR. DANKOW: We think the ruling would clearly cover that and it ought to be in it.

MR. DANKOW: If there is anything in there which would meet these propositions, then we will meet that when we get to it.

MR. DANKOW: If part of it is admissible we think it

all in.

THE COURT: If the court admits portions of these articles, and then if counsel for the defense insist upon the whole article, the court will probably admit it. There are one or two instances where it has occurred to the court where there were portions of the articles that have no bearing upon the case.

MR. BARROW: We think wherever we deem anything important in these magazines that go to explain or to show the right attitude we ought to be permitted to have it.

THE COURT: The court will pass upon that when it is presented, Mr. Barrow. You may take these, Mr. Borah. Bring in the jury.

I think, gentlemen, the court should take these matters up in their order and indicate consecutively those that can be admitted and those that cannot be admitted, and then the court will make the ruling on the objection and the exception may be noted.

MR. RICHARDSON: Without restating the objection?

THE COURT: Without restating the objection. I have the record before me as furnished by the stenographer.

(Thereupon the jury were brought in, the clerk called the names of the jurors and announced all present.)

THE COURT: Gentlemen, the offer of the State's, pages 16, 17 and 18 of Exhibit B-1, will be admitted.

The objection of the defendant will be overruled thereto and an exception will be noted.

Mr. Borah then read pages 16, 17 and 18 of Exhibit B-1,

and the same is in the words and figures following, to-wit:

(Exhibit B-1 being Vol. 1, No. 1, of "The Miners' Magazine" of January, 1900.)

"SALUTATORY".

With the rise of the new year's sun of 1900, the Miners' Magazine enters the arena of journalism as the official organ of the Western Federation of Miners, to battle for the rights of its members against the concentrated power of wealth, which, in the hands of the privileged classes, is being used in a supreme attempt to destroy that organization, and reduce the members to a state of abject slavery from which they dare not offer a protest against their oppressors, who are banded together in combinations known as corporations, trusts and syndicates, that flourish by means of their financial influence in legislative halls and court chambers, whose doors are barred against the laboring people with glittering gold.

The magazine will go into the home of every member of the organization as a new year's gift filled with words of encouragement and hope, to invite them to bravely battle on for a higher standard of living.

We will endeavor to more closely unite the members of the organization and point out to them what we believe to be their duty to themselves and to their families, that they may enjoy the fruits of their labor.

But we shall not confine ourselves to the advocacy of the Miners' cause. We will at all times and under all conditions espouse the cause of the producing classes, regardless

of religion, nationality or race, with the object of arousing them from the lethargy into which they have sunk, and which makes them willing to live in squalor, while their masters revel in the wealth stolen from labor.

Labor being the producer of all wealth, is entitled to all it produces, but the privileged class upheld by the politicians have robbed it of nearly all its product, thus forcing it into a condition of helplessness and dependence. This is the gloomy condition in which we find it, and the way out seems scarcely illumined by a single ray of hope. This is particularly true of American laborers. Their rights and liberties are disappearing before the sacred right of property like an iceberg in the tropics. All the machinery of government is continuously in motion to crush them, whenever they make a stand for even a portion of their rights.

In this new field of labor we know there is much work before us, but the magnitude of the task does not discourage us. We will do our duty, free and untrammelled from all influences, and shall be guided only by the light of our own intelligence wherever it may lead. We will leave nothing undone to unite the laboring people for their protection against the vast combinations of organized capitalists, who believe that the laborer has no rights that they need respect.

Though far from agreeing with the views of many labor organizations, we extend the hand of friendship, with all it implies, and stand ever ready to cooperate in any movement that will rebound to the advancement of the laborer.

most robber system of oppression and greed; those whose eyes are blinded and their lips sealed by the almighty dollar, we say: Turn on your current of vituperation and abuse, and do not fail to end them with cheap appeals to patriotism. Conceal yourselves under the folds of the stars and stripes to disguise your true motive, as the robber conceals his identity behind his mask when he emerges from his lair, bent upon robbery and murder. We still remember Johnson's saying:

\*An appeal to patriotism is the last resort of a scoundrel\*.

As you are without argument, take up your stereotyped epithets of Agitator! Foreigner!! Socialist!!! Anarchist!!!! We have heard them all before.

We hope the day will never come when we will be compelled to stand before our fellow-workingsmen who have had sufficient confidence to unanimously place us in a position of such responsibility and apologize to them for the praise bestowed upon us by their enemies.

With the purposes here outlined, we trust the magazine will meet with a hearty reception by our members and fair consideration by organized labor in general to insure its success.

With the desire to benefit the producers of wealth, we greet you all.

Edward Hayes.\*

THE COURT: The offer of page 42 of the same exhibit showing the officers of the organization will be admitted. The defendant's objection thereto will be overruled and an exception to the ruling will be noted.

Said portion of said page 42 which is in the words and figures following, to-wit:

"THE WESTERN FEDERATION OF MINERS.

Headquarters

Owsley Building, Butte, Mont.

EDWARD BOYCE,  
President.

JOHN F. McDONALD,  
Vice-President,  
Virginia City, Nevada.

James Maher,  
Secretary-Treasurer.

EXECUTIVE BOARD.

James B. Hursey, ----- Butte, Montana.  
William Walsh ----- Butte, Montana  
E. P. McGinley ----- Alamosa, Colorado  
Charles Meyer ----- Deadwood, South Dakota  
Chris Foley ----- Roseland, British Columbia.



THE COURT: The State's offer of pages 2 and 3 of State's Exhibit P-1, being Vol. 1, No. 2, of "The Miners' Magazine" will be admitted. Defendant's objection thereto will be overruled and an exception to the ruling will be noted.

MR. BORAH: This is under date of February, 1900.

THE COURT: What is the title of that?

MR. BORAH: "Another Outrage".

Said pages 2 and 3 of State's Exhibit P-1, being Vol. 1, No. 1, of the Miners' Magazine of February, 1900, are in the words and figures following, to-wit:

"ANOTHER OUTRAGE"

We are in possession of information from the Coeur d'Alene saying that Governor Steunenberg, in conjunction with the mine operators, have a petition in circulation, to be forwarded to the secretary of war to continue the troops in that district permanently.

This petition did not meet with the approval of the people of the district, who naturally objected on the ground that such a procedure was unnecessary and was an insult to the people living in the county.

To the governor's surprise, when his deputies took the petition to the miners, even the permit men, who are allowed to work by the governor's permission only, refused to sign it. When this news reached the governor at Boise he immediately shipped the notorious Sinclair to the Coeur d'Alene with instructions to carry out his orders.

When Sinclair reached Wallace he issued an order that

all people who refused to sign the petition should leave the county. He then obtained the names of the men employed at the mines who refused to sign the petition and instantly revoked their permit and had them discharged immediately. Twenty-five men at the Tiger mine at Burke were discharged for refusing to sign, and a larger number at the mines in Millan and Wardner were discharged on this account. Some of them were afterwards told that they could return to their employment if they would sign the petition. This is American freedom with a vengeance.

It is doubtful if such arbitrary acts as this were ever perpetrated upon the people of any country; not even in Russia.

This petition will be sent to the secretary of war and of course it is very easy to surmise that he will not favorably upon it, for the national administration from the day General Morriam arrived in Idaho have worked hand in hand with the Democratic governor of Idaho in the interest of the Standard Oil Trust and the other rich mining corporations.

This act proves conclusively that the military are to be used by the mine operators to reduce wages in the Conur d'Alencas when the proper time arrives. This precedent, once established, will never be abandoned.

Knowing Governor Steunenberg as well as we do, we have no hesitation in saying that he is well paid for persecuting the miners and destroying their unions.

Upon close observation and careful study you can see the Hessian in every line of his countenance and in all his actions.

There is nothing too vile for this man to descend to; he is utterly unscrupulous in all his acts, and from personal knowledge we can truthfully say that we have never known him to articulate the truth. His sole and only ambition is money, no matter how he obtains it. "

THE COURT: The State's offer of pages 17 and 18 of the same Exhibit will be admitted, and the defendant's objection thereto will be overruled and an exception to the ruling will be noted.

MR. RICHARDSON: Your Honor, I suggest in reading these articles that we are entitled to the entire article.

MR. BOWEN: So far we have read the entire article.

MR. RICHARDSON: Some of them there you have marked in part. We would like to have the entire articles.

MR. BOWEN: These articles, most of them that were marked were not marked by me. We will read the entire article or else call your attention to it so we can discuss it.

Said pages 17 and 18 of Exhibit B-1, are in the words and figures following, to-wit:

"It is eminently proper that the portrait of Paul Garretson should embellish the frontispiece. This loyal comrade deserves first place not only in the magazine, but in the heart of every manly workman in the land. He has won his laurels, and his name will be loved and honored long after such Christless whelps as ~~Shuman~~ Stannenberg, Herries and Sinclair have gone back to their native hell.

Be it known that these dastards will not escape the penalties of their crimes. The outrages perpetrated by them in servile obedience to their mercenary masters will be remembered, and in good time they will find themselves in the pillory where every honest man can scorn them and every decent dog bark at them.

A thousand times rather would I be honest, manly Paul Corcoran, or any of his associates, in penitentiary and reformatory stripes, than any criminal, scoundrel or other vile official creature who had any connection with the monstrous outrage that placed them there.

Paul Corcoran, the honest workman, the loyal and loving comrade, the manly man, towers aloft in all his majesty, while the degenerate creatures who struck down his liberty are crawling serpents of loathsome reprobation.

Be therefore patient, comrades all, for your brethren are organizing and deliverance is bound to come. And know ye, also, Steinberg and Sinclair and Herrick, and the rest of ye, that we have an account to settle with you, nor will we forget until you stand at the bar and answer to the indictment of outraged humanity.

All hail to the Western Federation of Miners, an army of veterans, hale of heart and brave of soul. In every fight they have proved their fiber. Unyielding as adamant, they stand monumental in defense of the working classes and in defiance of their enemies.

It has been my good fortune to stand close to Hayes and Maher and their colleagues in the hour of sternest trial, and

not a flicker could have been discovered in one of them with a microscope.

In closing let me bid right hearty welcome to the magazine, the shining messenger of the Western Miner, and let me urge each member to support and labor for it with all the zeal and energy he can command.

Rogers V. Debs.

Terre Haute, Ind., Jan. 18, 1900."

"FROM OPHIR CAMP

Ophir, Colo., Jan. 18, 1900.

Editor Miners' Magazine:

The first issue of the magazine at hand, with which we are well pleased and wish it success, and hope that with the assistance of the many labor organizations its circulation will be greatly enlarged.

Our union, though not large, is growing and in a good, healthy condition. All members are good union men and interested in the good and welfare of the order.

The history of Paul Corcoran and the labor troubles of Labe contained in the magazine is very interesting, and suggests the fact that laws that will not bring to justice such monsters as Staunenberg, Sinclair, Merriam and others are very defective. We should have laws enacted that would punish the guilty, not the innocent, as in the case of Corcoran.

President McKinley must have known his man when he sent Merriam to Labe to fill a position that none but a car

would have filled. Such outrages are unparalleled.

"BRYAN UNION NO. 31."

THE COURT: The offer of the State of page 42 in the same exhibit, so far as it contains the names of the officers of the Western Federation of Miners, will be admitted, the objection of the defendant will be overruled and an exception will be noted.

The portion of page 42 admitted in evidence is in words and figures as follows:

"THE WESTERN FEDERATION OF MINERS,

EDWARD BOYCE,

President.

JOHN F. HEINZMANN,  
Vice-President,  
Virginia City, Nevada.

JAMES HARRIS,  
Secretary-Treasurer.

EXECUTIVE BOARD.

- James R. Pursey.....Butte, Montana
- William Walsh.....Butte, Montana
- D. P. McKinley.....Alamosa, Colorado
- Charles Hoyer.....Deadwood, South Dakota
- Eric Foley.....Kamloops, British Columbia"

1801

THE COURT: The State's offer of a paragraph from page 42 of exhibit G 1 for identification, being volume 1, No. 4, of The Miners' Magazine, dated April, 1900, will be admitted, the defendant's objection thereto will be overruled and an exception will be noted.

MR. BORAH: Now, this is a speech delivered by Mr. Boyce, and the portion that I intend to read is simply a paragraph. The entire speech is not there, but portions of it are there which are apparently matters of business.

THE COURT: The court has indicated that it will admit all these articles, and the record will show the portion that is offered so that it will show what portion is read at the request of the defendant.

MR. RICHARDSON: We will have it all read, and the balance of it may be noted as being at the request of the defendant.

THE COURT: Yes sir, you may read first, Mr. Borah, the portion that is offered by the State and then you may read the entire article.

MR. BORAH: The paragraph which we offer is as follows:

"Governor Stannenberg and Attorney General Hayes are its pliant tools and are well paid for carrying out its instructions. They should go down in history as the Benedict Arnolds who sold their honor for Standard Oil beets. Some people will say that

1801

such a condition of affairs will not prevail while the President of the Copper trust is a western man. How long is a western man liable to be president of the trust? He may at any time sell his interest, resign or die, then the hopes of these people are dashed to the earth and they are placed in the same category as millions of others whose lives depend upon the will of the trusts."

The entire article is as follows:

"MINERS UNION AT BUTTE, MONTANA.

Speech delivered by Edward Boyce on June 15, 1899.

(Continued from last month.)

The railroad corporations own 311,000,000 acres of land; foreign land owners own 38,000,000 acres of the finest agricultural land on the American continent. A few corporations own the entire coal fields of the east. They have gone a little farther and organized a coal combine, through which they raise and lower the price of coal, shut down their mines, and reduce the wages of their white slaves whenever they so desire.

In addition to this, they have their corporation stores, where their wage slaves are compelled to trade. If they object they are discharged, blacklisted, and if necessary shot down by deputy sheriffs, for which there is no redress in any court of the nation.

The Standard oil trust, the cruelest of all, under the supervision of that pious old fraud and religious hypocrite, Rockefeller, controls the oil industry of the nation and makes it impossible



1803

for any individual to compete with it in the market. The Standard Oil Company has, in many instances, put oil on the market for nothing in order to freeze out its competitors. When the competitor has been driven to bankruptcy or absorbed by the Standard oil trust, the price of oil has been increased from one to four cents a gallon, and the public is made to pay for the free oil it placed on the market while freezing out its competitor. It also controls the lead industry of the world, as it owns the controlling stock in the lead trust. It owns nearly all the large lead mines of the United States and pays its wage slaves whatever wages it wishes, regardless of organized labor, and sells lead at the maximum to the consumer; in both of these industries the people have no voice. They are at the mercy of one trust which can shut down every lead mine and close up every oil well in the country in twenty-four hours.

Recently a smelter trust has been organized which appeals to the miners and small mine owners in the west more directly than any of the other great trusts, because in a short time the trust will set a certain price on ores, and if the mine owner will not sell it at the trust price he must keep his ores or build his own smelters. Soon the trust will begin to cut down the wages of the miners and the smeltermen of the wage to the same wage schedule as those engaged in similar occupations in the east. Soon this trust will suggest to the mineowner that a cut in wages will enable him to continue to make profits in spite of the extortions of the trust. Should he refuse to heed this suggestion he is

1803

1804

noticed that the trust has no more use for his ore, consequently he will be compelled to choose between a reduction in wages or closing down his mine.

Inside of a few years the trust will shut down its smelter works in different localities and concentrate them into one at some central point easy of access, and pay the lowest wages possible, and whenever practicable, follow the example of the railroad corporations and employ Japanese and Mongolian labor.

With the miner will suffer the merchant whose business depends upon mining; the laborer who is engaged in other occupations at fair wages will find his occupation menaced by the trust, and the farmer whose market is the mines will suffer from its effect. Entire communities will be placed at the mercy of this trust, which will prove as cruel as the numerous other trusts which oppress labor, shut down their factories, crush out small competitors and rob the people that a few unnatural tyrants may roll in luxury and revel in wealth.

The recently organized copper trust is of more importance to the people of Butte than any of the other great trusts because the entire business of this community depends upon the production of copper. Let us see how this trust will operate. These people who organized the copper trust have done so with the same object in view as all the other great trusts and syndicates-- to make money.

The Standard Oil Company is one of the heaviest owners in this trust, and beyond the question of a doubt will resort to its

1804

well known tactics. It will establish its stores and eating houses, and when the opportune time arrives it will say to its employes, as it has at Gardiner, Idaho, where it paid underground men \$1.50 per day less than any mine in the district, we will not pay \$3.50 per day when we can hire men on Lake Superior for \$2.00 per day; we will not pay laborers \$2.00 per day when we can hire men at Sudbury for 90 cents; we will not pay smeltermen \$3.50 per day. We will ship our ore east, where we can smelt it for half; we will not pay the mechanic \$4.00 per day while we can hire mechanic's in the east for \$2.50.

At a meeting of the board of directors held in some palatial mansion on the Hudson it will be decided to make a uniform rate for all the slaves working for the copper trust. The morning papers will come out in a double-headed article saying that owing to the heavy expenses the trust was compelled to establish a uniform wage schedule; hereafter the miners of Butte will be paid the same wages as the miners at Lake Superior and elsewhere under the trust and advise them to accept; if not, they will ridicule them as anarchists, socialists and foreigners. There is no foul name in the English language that will not be applied to them if they do not accept the offer of the trust. Should organized labor refuse to accept a reduction the trust will order its mines in Butte closed indefinitely. It will then raise the price of copper, reinstate its force on the mines of Lake Superior and supply the copper market, continue its dividends and force the miners of Butte into submission by starvation.

Should it decide to operate its mines in Butte at reduced wages it will not be necessary to shut down; the usual procedure of applying to the courts for an injunction and the governor for militia is all that will be necessary. Should that time come while the present incumbent fills the gubernatorial chair he will find as little trouble in turning a hand-spring to the side of the trust as he did in jumping from the Populists to the Democratic platform in one bound. I have not attempted to picture the dark side to you; I am speaking from actual experience with the methods of the Standard Oil Company at Wardner, Idaho, where it has paid \$1.50 a day less wages than any other mines in the Coeur d'Aleneas.

It now appeals to the public for sympathy through the subsidized press over the destruction of its concentrator, which it values at \$300,000, while the manager appeared before the board of equalization less than one year ago and under oath valued it at \$82,000 and refused to pay taxes upon a higher valuation. This corporation has done everything in its power to disrupt organized labor in this state. In this it has the unqualified support of the entire state government, which is composed of Democrats and Silver Republicans.

Governor Stansberg and Attorney General Hayes are its pliant tools and are well paid for carrying out its instructions. They should go down in history as the Benedict Arnolds who sold their honor for Standard oil bonds. Some people will say that such a condition of affairs will not prevail while the President

of the copper trust is a western man. How long is a western man liable to be President of the trust? He may at any time sell his interest, resign or die, then the hopes of these people are dashed to the earth and they are placed in the same category as millions of others whose lives depend upon the will of the trust.

Inside of two years the Standard oil trust, the lead trust and the copper trust will be merged into one great trust or syndicate under one management, with headquarters in Wall street. In the hands of such an enormous syndicate the people will be as putty, unable to help themselves because the syndicate will have the support of every department of the government, backed by the strong military arm of the law to enforce the execution of its claims.

For such purposes the standing army has been increased.

Upon all sides we can see the wealth of the nation passing into the hands of a rich money oligarchy whose avaricious greed is never satisfied; nothing less than the complete subjugation of the American people will ever satisfy it.

1807

Today less than a quarter of a million of persons own more than 90 per cent. of our wealth; the middle class is being rapidly eliminated. The business man who 20 years ago found profitable fields for his energy, now finds himself bankrupt by the operations of the department store, where the wage slaves of the large corporations are compelled to trade or else seek employment elsewhere. The average business man in the large cities

1808

Archives  
University of Colorado  
at Boulder Libraries

has found it utterly impossible to do business under such conditions, consequently he has been forced with his family to enter the ranks of labor and with millions of others depend entirely on the large combines of organized capitalists for a living.

(To be continued next month.)\*

1808

MR. RICHARDSON: Since your Honor has stated, or permitted the entire speech to be read, we desire the record to show that we asked that it might be read as explanatory of what had been read.

THE COURT: You may show that.

MR. DARROW: That is not all the speech, you say?

MR. BORAH: No, it is all that is in this magazine.

MR. DARROW: Have you got the preceding one?

MR. BORAH: No, I think I have not.

MR. DARROW: You might find that interesting too. I think we ought to have it all.

THE COURT: I don't think we will take time in going outside these exhibits.

MR. DARROW: This is only a part of it.

MR. BORAH: I will look for it and if I find that we have it I will give it to you if you want, and read it.

MR. DARROW: There is some of it that I would kind of like to read.

THE COURT: The next offer was page 14 of exhibit K 1 for identification, being volume 1, No. 6, and that will be admitted and the objection of the defendant will be overruled and the exception noted.

MR. BORAH: This is as follows:

**\*EIGHT HOUR LAW.**

As will be seen by the following resolution, the convention of the U. F. of M. has called upon the miners of Colorado to

do their duty at the polls next election. If they prove untrue and lick the hand that has encouraged them they deserve the condemnation of every member of the organization. From this day forward, miners of Colorado, you must do your duty and spare no effort to defeat Judge Goddard for any office to which he may aspire, and the political party that nominates him.

It is your duty to do it.

Whereas, our worthy president has called attention to the insidious method by which the Colorado eight-hour law was lost to the miners and smelter men of the State through the decision of the Supreme Court; and

Whereas, an aggressive fight against the re-election of the present judges of the Supreme Court is urged; and

Whereas, the term of one of the judges-- Luther M. Goddard-- is about to end, and his successor will be elected next November; now therefore, be it

Resolved, that the Western Federation of Miners in convention assembled, do most solemnly protest against the re-nomination of said Luther M. Goddard by any political party to succeed himself as supreme judge; and be it further

Resolved, that should Mr. Goddard be re-nominated for said office that the members of the Federation throughout the state of Colorado be requested to do all in their power to bring about his defeat, and also the defeat of the party which stands sponsor for his re-nomination."



THE COURT: The State's offer of page 15 in the same exhibit will be admitted, the objection of the defendant will be overruled, and an exception to the ruling may be noted.

The article on page 15 is in words and figures as follows, to-wit:

**"IDAHO VOTERS DO YOUR DUTY.**

It will be seen by the following resolution that the people in southern Idaho, Governor Steunenberg's home, intend to relegate the obnoxious tool and his associates to political obscurity. We trust their efforts will meet with success in routing this disgraceful band of boodlers from the state to where they belong-- in the penitentiary.

Whereas, on the 31 day of May, 1899, Frank Steunenberg, governor of Idaho, declared martial law in Shoshone county of said state, which has been continued and still continues arbitrarily and without reason; and

Whereas, the said governor arbitrarily and without reason decreed that each person seeking employment in said county must make application for a permit to do so to one of the agents of said governor; and

Whereas, in making such application, the applicant must denounce all unions of the Western Federation of Miners; and

WHEREAS, the said governor of Idaho has by such arbitrary decrees violated those fundamental principles of right, justice and humanity guaranteed to the people, by the Constitution of the

United States, which is the right to pursue, life, liberty and happiness without dictation from any one whomsoever; therefore, be it

Resolved, by the Western Federation of Miners, in convention assembled, that we condemn such arbitrary action of the said governor of Idaho as usurpation worthy of the tyrants of the Middle Ages, and that such a man is unworthy of the respect and support of all liberty-loving people; and it is further

Resolved, that we urge the voters of Idaho to refuse to support said Frank Steunenberg or any one who may give support to him, to the end that the state of Idaho may be purged of the unjust, inhuman and freedom-subverting administration of said Frank Steunenberg, Bartlett Sinclair and all who have supported said administration in its unjust and illegal actions in said Shoshone county.

H. S. Stowe, Silver City, Idaho.

F. H. Davis, Silver City, Idaho.

William H. Haywood, Silver City, Idaho.

Jos. P. Langford, De Lamar, Idaho.

G. A. Sawyer, Custer, Idaho.

T. A. Martin, Gibbonsville, Idaho."

THE COURT: The next offer of the State being the offer of pages 18 and 19 of exhibit H 1 for identification will be admitted, and the objection of the defendant is overruled and the exception to the ruling may be noted.

The article on pages 18 and 19 is in words and figures as follows:

**"SOVEREIGN AT THE CONVENTION.**

J. B. Sovereign addressed the convention of the Western Federation of Miners upon the Cosur d'Alene outrage, and the attitude of the republican members on the military committee in Washington.

His rebuke of the military despots, though scathing, was the most logical argument we ever listened to, as he proved conclusively that it was the intention of the money power to shield themselves behind the guns of an increased army in their enslavement of the people.

His description of the perjurer, Steunenberg, was laughable throughout, as he pictured the ignorant despot in his true colors.

No man is better qualified to picture this inhuman treatment of working men than Mr. Sovereign, as he is a man of great intellectual ability and well able to handle the subject. We trust he may have an opportunity of presenting it in its true light to the American voters."

**THE COURT:** The State's offer of page 44 of the same exhibit, containing the names of the officers of the Western Federation of Miners will be admitted, the objection of the de-  
. will be overruled, and an exception may be noted.

The portion of said page 44 being admitted, is in words and figures as follows, to-wit:

"THE WESTERN FEDERATION OF MINERS.

+++++

EDWARD BOYCK,  
President.

JOHN F. McDONNELL,  
Vice President,  
Virginia City, Nevada.

JAMES MAHER,  
Secretary-Treasurer,  
Box 307, Butte, Montana.

-----  
EXECUTIVE BOARD.

John C. Williams.....Grass Valley, California  
W. D. Haywood.....Silver City, Idaho  
James B. Furey.....Butte, Montana  
W. H. Burns.....Gruy, Colorado  
Charles H. Hoyer.....Lead City, South Dakota  
Orie Foley.....Vancouver, British Columbia."

THE COURT: The state's offer of page 60, in exhibit I 1 for identification, volume 2, No. 6, of the Miners' Magazine so far as it contains the names of the officers at that time will be admitted, the objection of the defendant will be overruled and the exception will be noted.

The portion of page 60 so admitted is in words and figures as follows.

"THE WESTERN IMMIGRATION OF MINERS."

EDWARD BUCKE, President.

JAMES HARRIS, Secretary-Treasurer, Box 307, Butte, Mont.

EXECUTIVE BOARD.

John C. Williams.....Gross Valley, Col.

W. D. Hayward.....Silver City, Idaho.

James E. Troy.....Butte, Montana

W. H. Burns.....Gruy, Colorado

Charles H. Meyer.....Lead City, S. D.

Chris Polay.....Dundas, B. C."

THE COURT: The State's offer of pages 7 and 8 and the top paragraph of page 9 of exhibit J 1 will be admitted, the objection of the defendant will be overruled and an exception may be noted.

The said article so admitted is in words and figures as follows:

"THESE AND HARRISON.

"Chicago V. Debs of Terre Haute, Indiana, and Job Harrison of Los Angeles, California, are the only logical candidates for President and Vice-President that working men can conscientiously support and be true to themselves.

The working man who advocates the election of William McKinley and Theodore Roosevelt was born too late; he should have lived 2,000 years ago, when a working man was perhaps the

most despised creature on earth. He had no rights that his master need respect, and this is what the candidates on the Republican ticket represent; neither of them have any regard for the working man; all their associations are with the moneyed classes and their sympathies are with the aristocracy that rob and plunder labor. The candidates upon the Democratic ticket, Mr. Bryan and Mr. Stevenson I believe are good men, but they are candidates of a party that is so thoroughly dishonest, so far as the interest of labor is concerned, that it equals its rival in every respect. Neither of these parties have been true to labor, and I see no reason why working men should continue either party in power. Of the two, the Democratic party is by far the most inconsistent; it has the brazen audacity to say that it is the party of the people because it has passed away from the influence of Cleveland boucheism and is reconstructed under the influence of Mr. Bryan. This is false in every particular. To be a good Democrat today you must prove that you were a good Democrat in the reign of Grover and always voted the Democratic ticket. The political bosses who controlled the party machine under Grover are the men who manipulate it today, and not one of them has any sympathy with labor. Let us take the temporary chairman of the Democratic national convention, Governor Thomas of Colorado. I will say unhesitatingly that there is not a man holding a political office in the United States-- Mark Hanna not excepted-- who is so thoroughly opposed to labor. Then turn to

Governor Steunenberg of Idaho, who sold himself to the Standard Oil Company to plunder, rob and murder the working men who elected him to office.

After carefully studying the history of other nations, I am convinced that we will follow in their foot steps and in the end be forced to adopt other methods than political to preserve the Republic; nevertheless, it is our duty to discourage such a solution of the grave crisis that confronts us.

Mr. Debs and Mr. Harriman have, under the most trying ordeal, proved their loyalty to the interests of labor, their record is clean and they believe the principles of government they advocate will, if adopted, free the people from the grasp of the pocket-pickers and place each individual on an equality. When the miners of Leadville were struggling for their rights in 1896 Mr. Debs unhesitatingly responded to their appeal, and when McKinley's soldiers, at the behest of the Standard Oil magnates and Governor Steunenberg imprisoned 1,500 men in the Hardner bull pen Mr. Harriman was the only man who went upon the field and wrote the true history of the miners' struggle.

I shall, with pleasure, cast my vote for men who have always been true to the interests of the laboring people.

EDWARD BOYCE."

THE COURT: The State's offer of page 60 of the same exhibit, so far as it contains the names of the officers of the Western Federation of Miners will be admitted, the objection of the defendant will be overruled, and an exception may be noted.

The said portion of page 60 so admitted is in words and figures as follows:

**"THE WESTERN EMIGRATION OF MINERS.**

**EDWARD BOYCE, President.**

**JOHN F. McDONNELL, Vice President, Virginia City, Nevada.**

**JAMES MARR, Secretary-Treasurer, Box 307, Butte, Montana.**

**EXECUTIVE BOARD.**

John C. Williams	Grass Valley, California
W. D. Haywood	Silver City, Idaho.
James S. Hurry	Butte, Montana.
W. H. Burns	Guy, Colorado
Charles H. Meyer	Lead City, South Dakota
Chris Foley	Vancouver, British Columbia."

**THE COURT:** The State's offer of Exhibit K 1, being volume--I think that is volume 2, No. 1,-- it is in the record as volume 1, No. 1; it is volume 2, No. 1, pages 7 and 8, containing an article entitled, "The Passing of Steunenberg," will be admitted, the objection of the defendant will be overruled, and an exception may be noted.

The said article on pages 7 and 8 so admitted, is in words and figures as follows:

**"THE PASSING OF STEUNENBERG.**

On the 10th of January, 1901, Frank Steunenberg, Governor of Idaho, will sink into obscurity from public view, where he shall forever lie buried, damned for the outrages he committed



upon the working men of the Coeur d'Alene during the past twenty months.

For twenty months this Russian descendant that would disgrace Lazar Ananias, resorted to deeds from which Nero would shrink, even in the zenith of his glory, and all was done for the greasy dollars of the Standard Oil Company. Four years ago, when the President of the Western Federation of Miners helped make this manstrosity governor of Idaho, believing that he was a member of the International Typographical Union which he declared himself to be in the presence of witnesses on the streets of Boise, which was a deliberate lie, he said he did not have \$20 in cash; and two years later, when he was renominated for Governor, he was unable to pay his campaign expenses. But four years later, in 1900, he was able to spend \$4,000 to manipulate the Democratic state convention to secure a third nomination.

In 1898 he was unable to pay his campaign assessment to the Democratic state central committee, but two years later, on a salary of \$3,000 a year, he was able to spend \$4,000 to control the Democratic State convention, and, in addition to this, in less than two years he has bought several thousand sheep and holds bank stock and other valuable property, all of which he is trying to conceal, and well he may; for a scoundrel always conceals his deeds.

Now this villain has risen in four years from editor of a weekly paper on the Snake river desert to a wealthy sheep owner, mine owner and stock holder!

Where did he get the money to make those investments, except from the mine owners whose lackey he was from the day he was elected governor?

When men and women will bless the name of Paul Corsoran, the model husband, the honest man, imprisoned by this filthy reptile, Stansberg's name will be uttered with loathing.

Farewell, Stansberg, once governor of Idaho; your political career is ended.

You have done everything within your power to send the man 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. Your sole ambition was money, which in your estimation was superior to honor, but you are gone and upon your political tombstone shall be inscribed in indelible words, 'Here lies a hiving and a traitor!'

MR. BARRON: What is the date of that?

MR. BARRON: That is January, 1901.

THE COURT: The next offer of the State is volume No. 3 of The Miners' Magazine, being marked Exhibit L 1 for identification; the State's offer being of pages 22, 23 and 24, entitled, Warning against labor's greatest enemy, will be admitted so far as it relates to Stenmenberg; it refers to several other parties that the court does not consider material so far as this investigation is concerned.

MR. RICHARDSON: We would like to have the entire article.

THE COURT: The court has already marked in that article the portion that it considers material and has eliminated that portion referring to Mr. Borah, Mr. Hawley and others mentioned there for I do not consider that that is material to this case. If, however, the defense desire to have, by way of explanation, the remainder of the article read, it may be presented at this time at their request.

MR. RICHARDSON: As explanatory of the balance of the article.

THE COURT: There are parts of the article that relate to Mr. Hawley, Mr. Borah and the members of the Supreme Court, and I do not think that that is necessary.

MR. RICHARDSON: Very well, we will agree on that, your Honor.

MR. BORAH: This is January, 1902.

THE COURT: I notice that you refer to pages 22, 23

and 24 of that volume-- I notice those pages are not numbered consecutively and where the magazine is bound it has no paging.

MR. BORAH: This would be pages 22, 23 and 24 under the Miners' Magazine of June, 1903, as found in the bound volume.

THE COURT: Identify it then in some way.

MR. BORAH: I have it marked.

THE COURT: This portion of this article will be admitted, the objection of the defendant will be overruled and an exception may be noted.

The portion of the article so admitted is in words and figures as follows:

**\*WARNING AGAINST LABOR'S GREATEST ENEMIES.**

Headquarters Western Federation of Miners.

Members of the Western Federation of Miners and friends in Idaho, we appeal to you as members of organized labor and citizens, to protect your rights from men who have in the past proved to be your greatest enemies, resorting to methods unknown in history to deprive people of their liberty, in defiance of law and justice, at the bidding of corporations. These men are aspirants for office and it remains with you to say whether they shall be elected to positions where they can in the future carry on their work of persecution against the miners and other working men in Idaho and elsewhere who are members of organized labor. Working men everywhere are watching your movements to see whether you will elect any of these men to office now or in the future,

and we trust you will prove to them that no enemy of labor will be elected to office by your votes.

We believe it is your imperative duty to use your influence morally, financially and politically, against those men who have been in the employ of the mining corporations of Idaho, carrying out their diabolical schemes to destroy organized labor in the state.

We invite you to make a thorough investigation of the acts of these men in their official and private life, and learn how antagonistic they have been to the interests of working men, and when you are satisfied with the truth of our statements we call upon you to do your duty at every opportunity, and bury these uncompromising enemies of yours with your ballots, regardless of party or political influence.

In substantiation of this appeal, we herewith submit for your consideration the record of these men to show cause why we ask you to take this action.

Beginning with ex Governor Stoumenberg, who was on account of his false assertions that he was a member of organized labor, nominated and elected by the votes of the working people of the state. When he was nominated he publicly declared that he would do justice to all people regardless of their position or calling in life. How he regarded this statement is well known by his imprisonment ~~of~~ 1,200 men in the bull pen. When nominated he stated that he could not pay his campaign assessment, but in four years afterwards his property and holdings increased sufficiently

to place him among the rich men of the state.

We appeal to you, to unite and do your duty at the polls.

W. D. HAYWOOD, Sec'y-Treas. W. F. M.

EDWARD BOYCE, President W. F. M.

Denver, Colo., May 1, 1902."

THE COURT: The next offer of the State is a copy of the Miners' Magazine under date of August, 1904, State's Exhibit X I for identification, wherein they offer the paragraph at the bottom of the second column on page 6 and the caricature on the same page. This will be admitted, the objection will be overruled, and an exception will be noted.

MR. BORAH: The counsel desire that I read the entire article and I presume I might just as well begin at the beginning.

THE COURT: You may read first the part that is offered and admitted by the court, and then at request of counsel you may read the entire article.

MR. RICHARDSON: Wasn't it to appear also that that is an article that was republished from some other publication, or a speech delivered elsewhere?

MR. BORAH: No, this is an original article.

MR. RICHARDSON: All right, go ahead.

The article offered and so admitted is in words and figures as follows: The paragraph offered by the State being as follows:

"Roosevelt, Peabody, Bell and the gang of robbers whom they represent, evidently imagine that God is dead and that eternal

justice has gone to sleep. Thus did their predecessors think when they hung old John Brown. When they saw his body consigned to the grave they imagined they were rid of that old agitator. Little did they think that within three years a million of his avengers would be marching to the destruction of the cursed institution in whose defense the free slave holders had slain the martyr. The robber classes as arrogant today as were the slave holders just before their downfall. But they are fools as well as knaves. For every one of the above enumerated outrages which have been perpetrated upon the working people of Colorado, a thousand votes will be turned against the Republican party at the coming election. Let them not forget these words of Lowell:

"Right forever on the scaffold  
Wrong forever on the throne,  
But that scaffold sways the future  
And behind the dim unknown  
Standeth God within the shadow,  
Keeping watch above his own."

The caricature on said page is a picture supposed to be of Governor Peabody seated on a throne with a royal robe over his shoulders, on his head a crown with the words "Gover of Colorado." The picture is entitled, "Peabody's Iron-- 'I am the supreme law of the state.'"

The entire article was then read to the jury, and is in words and figures as follows:

## "THE COMING DESPOTISM."

Hon. Freeman Knowles of Deadwood, South Dakota, in a lengthy article in the Central City Register, gives expression to his thoughts upon "The Coming Despotism" which is destined to place in jeopardy of the tolling millions. Mr. Knowles has been a member of congress, and is now the candidate for Governor of South Dakota, on the socialist ticket. As a writer in the field of journalism, as an orator and logician, he stands in the front rank with the ablest men of the west. Mr. Knowles' article is as follows:

"The military despotism in Colorado has become a matter of world wide importance. Not only the press of this country, but that of Europe is largely devoted to its discussion and this is not strange. When we consider the solidarity of the race, we know that what happens to one, must sooner or later happen to all. The awful crimes now being perpetrated upon American citizens in Colorado by the Republican administration of that State, with the approval of the President of the United States is exactly as much an offense against the people of South Dakota as though our own citizens were being dragged from their homes and deported from the state and our wives and children left to starve. Indeed, the Denver Post recently attempted to break the force of outside criticism by saying that Colorado is now only doing what every state in the Union will be doing in five years. That the Post told the truth there is no shadow of doubt, if present con-



ditions continue. It was for this exact purpose that the Dick military bill was enacted. We see the preparations going on in every state of the Union to carry out the purpose of that measure. In our own state we see \$70,000 of the people's hard earned tax money expended in equipping and drilling 3,000 state troops. We have just witnessed an encampment of these troops at Center under the instruction of the regulars from Fort Meade. What is this for? Have we any enemy in this quarter of the world against whom we expect to need these troops? No, citizens of South Dakota, these troops are being raised, equipped and drilled to deprive you YOU of your citizenship and to reduce YOU under an absolute despotism to plutocracy. This very thing is now going on in Colorado, where peaceable law abiding citizens are being deported from the State, for the express purpose of depriving them of their votes at the coming election. And this is what the Post, an ~~open~~ apologist of Peabody, says is to take place in every state in the Union inside of five years. How do the people of South Dakota like the prospect?

That this is the object and purpose of the militia in South Dakota, is conclusively proven by the fact that when Andrew Lee was Governor of this State, no appropriation was made for the militia, and the organizations were permitted to lapse into innocuous desuetude. Why was that? If there was necessity for an armed force in this state before and since Lee was governor, why not during his administration? Simply because word was sent out

from Wall street that Lee could not be depended upon to use the militia for the purposes for which it was intended, and that he might even use it for the defense of the people instead of for their subjugation. They had had a lesson to this effect in Governor Waite of Colorado. It is notable that in every instance where there has been any question about the executive of any state being in touch with the robber classes, no appropriation has been made for the militia.

And this is the most vital issue before the people of South Dakota. With the machinery of both old parties in the control of the robber classes, who doubts the course their candidates, if elected, will take? We all know that the Republican party is the open and avowed ally of plutocracy, and may be depended upon to do its bidding. Parker is Cleveland's candidate and worthy successor, and will certainly follow in the foot steps of the man who invaded a sovereign state against the protest of its governor, to bind the chains upon enslaved labor. The Dick military bill was enacted by the representatives of both old parties, without a single protest on the part of any of them, and was enacted for the express purpose of reducing labor to absolute serfdom. What have we to hope from the representatives of either of these parties?

Roosevelt, Peabody, Bell and the gang of robbers whom they represent, evidently imagine that God is dead and that eternal justice has gone to sleep. Thus did their predecessors when they

hang old John Brown. When they saw his body consigned to the grave they imagined they were rid of that old agitator. Little did they think that within three years a million of his avengers would be marching to the destruction of the cursed institution in whose defense the slave holders had slain the martyr. The robber classes are as arrogant today as were the slave holders just before their downfall. But they are fools as well as knaves. For every one of the above enumerated outrages which have been perpetrated upon the working people of Colorado, a thousand votes will be turned against the Republican party at the coming election. Let them not forget these words of Lowell:

'Right forever on the scaffold,  
Wrong forever on the throne,  
But that scaffold sways the future  
And behind the dim unknown  
Standseth God within the shadow,  
Keeping watch above his own.'<sup>10</sup>

THE COURT: The next marked exhibit is exhibit H 1. The court understands that that was withdrawn and the offer was not completed.

MR. BORAH: Yes, and I will not complete it at present.

THE COURT: Mr. Borah, will you hand the court exhibits marked O 1, P 1 and Q 1.

MR. BORAH: Exhibit O 1 was withdrawn for the present.

THE COURT: The State's offer of the first paragraph on page 8, second column in The Miners' Magazine of June 6th, 1906,

the article being headed, "The Death of Steinberg."

MR. BORAH: That is rejected?

THE COURT: That is rejected. And the same ruling will be made with reference to the other offer, *Q 1*, *Miners' Magazine* under date of January 25, 1906. This is an offer from the editorial page. That concludes the offers that were made yesterday, Mr. Borah.

MR. BORAH: Yes sir, that was all that we offered.

THE COURT: Do you care to continue the examination of Mr. Boyce?

MR. BORAH: Do you care to cross examine him?

MR. DAWSON: No.

MR. BORAH: Then I think there is no more examination of Mr. Boyce.

THE COURT: Are you through with Mr. Boyce?

MR. BORAH: Yes sir.

THE COURT: No cross examination?

MR. DAWSON: No sir, no cross examination.

THE COURT: Let the record show that there is no further examination of Mr. Boyce and no cross examination.

MR. BORAH: I now desire to offer in evidence the decision of the Supreme Court of Colorado in the case of *In re L. Morgan*, made July 17, 1899; and we offer this for the sole purpose of showing that a decision to this effect was rendered, and not for the purpose, of course, of having it appear that any decision by that court is binding upon the defendant, but simply to show

that a decision was rendered upon this subject.

THE COURT: And the general nature of the decision?

MR. BORAH: The general nature of the decision and that a decision was rendered.

MR. RICHARDSON: If it is offered for any purpose and is received by your Honor after we make our objection to it, we desire that the entire opinion shall be read. The court can limit the effect of it by instruction, but it is either evidence or it is not evidence.

MR. BORAH: That is true, and it may be evidence for a certain purpose. We would not be permitted to introduce this to show what the law was, but we offer it to show that a decision was rendered.

MR. RICHARDSON: We object to the introduction of the opinion for any purpose whatsoever, as immaterial, incompetent and irrelevant, as not binding upon this defendant, as not connecting or tending to connect him in any way with the killing of ex Governor Steiensen which is the charge under which he is now on trial, and as not corroborative of any evidence given by the State's witness in this case, who claims to be an accomplice, within the meaning of the statute of this State.

THE COURT: What was the testimony of Judge Goddard as to how the Supreme Court was constituted at the time of this decision?

MR. RICHARDSON: I think he said that he and Gabbert

and Campbell were the justices, as I remember it. Your Honor can readily tell by looking at the front of the book there.

MR. BORAH: That is what he testified to.

THE COURT: Campbell was Chief Justice and Goddard and Gabbert were associate justices?

MR. RICHARDSON: Yes sir. Now, if it is received for any purpose it is all to go in.

MR. BORAH: I will offer this decision generally.

MR. RICHARDSON: To which we object as heretofore stated.

THE COURT: Will you read that question and the objection that was made to it.

The question and objection were then read.

THE COURT: The court will admit it for the purpose of showing the position of the court as to the eight hour law.

MR. RICHARDSON: Note our exception.

MR. DAWSON: There is a dissenting opinion there too?

MR. BORAH: Yes sir, I think so.

MR. DAWSON: Let that go in too, then.

THE COURT: There is no dissenting opinion.

MR. BORAH: Will you please read that objection again.

The objection was again read.

MR. BORAH: I don't understand-- you don't mean that this shall not be offered from the Pacific reporter?

MR. RICHARDSON: No, I don't object to its authenticity.

MR. BORAH: Do you want this read?

MR. RICHARDSON: Yes sir.

MR. BORGAN: All of it?

MR. RICHARDSON: Yes sir; you are a very entertaining reader and I enjoy hearing you.

The opinion was then read and is in words and figures as follows, to-wit:

"In re Hergen.

(Supreme Court of Colorado. July 17, 1899.)

Constitutional law-- class legislation-- bill of rights --  
police power -- public health.

1. In the absence of a constitutional provision authorizing the legislature to single out workmen in underground mines and smelters, and restrict them as to the number of hours they shall work, such a law (Sess. Laws, 1899, c. 103) is unconstitutional, as being class legislation.

2. It also violates the bill of rights (Const. art. 2, sec. 3), guarantying to all persons the right of acquiring and possessing property.

3. It is not a valid exercise of police power to protect the public health, since the health of the miner alone, and not of the public at large, is its object.

~~IN RE MORGAN~~  
~~IN THE SUPREME COURT OF COLORADO~~

~~Supreme Court of Colorado, July 27, 1909~~

Original application by Thomas A. Morgan for writ of  
habeas corpus. Petitioner discharged.

"At a preliminary examination before a justice of the  
peace upon a charge of contracting to labor in a smelter in  
excess of eight hours per day, the defendant was committed to  
jail, in default of giving the required bail, and, to secure his  
liberty, has filed in this court his petition for a writ of habeas  
corpus. The prosecution was under section 2 of 'An Act regulating  
the hours of employment in underground mines, and in smelting and  
ore reduction works, and providing penalties for violations  
thereof', passed by the Twelfth general assembly, the material  
provisions of which are embraced in the first two sections:

'Section 1. The period of employment of working men in  
all underground mines or workings shall be eight (8) hours per  
day, except in cases of emergency, where life or property is  
in imminent danger.

'Sec. 2. The period of employment of working men in  
smelters, and in all other institutions for the reduction or  
refining of ores or metals, shall be eight (8) hours per day,  
except in cases of emergency, where life or property is in  
imminent danger'.

Section 3 makes the violation of the foregoing provisions  
a misdemeanor, and provides the proper penalty therefor. Cons.  
laws, 1899, c. 103. The following sections of the constitution  
are referred to in the opinion.

Article 3:



'Section 1. That all political power is vested in and derived from the people; that all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.'

'Sec. 2. That all persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoining and defending their lives and liberties; that of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness'.

'Sec. 23. The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.'

Article 5:

'Sec. 25. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: \* \* \* (Sub-division 23) granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever. (Subdivision 24) In all other cases, where a general law can be made applicable, no special law shall be enacted'.

Walcott & Valle, John M. Waldron, C. W. Waterman, C. H. Toll and E. W. Field, for petitioner. Booth M. Malone, Dist. Atty., Daniel Prescott, Asst. Dist. Atty., David H. Campbell, Atty. Gen., Calvin E. Reed, Asst. Atty. Gen., Dan E. Carey, Asst. Atty Gen., Thomas M. Patterson, and John H. Murphy, for respondent.

The petitioner challenges the validity of the statute, as inhibited by the foregoing clauses of the organic law. The position of the attorney general is that it was passed as a health regulation, and may be vindicated as coming within the range of the police powers of the state. Four years before it became an act, this court, to an inquiry of the house of representatives of the Twelfth general assembly as to the constitutionality of a bill reading, 'Eight hours shall constitute a legal day's work for all classes of mechanics, workmen and laborers employed in any mine, factory or smelter of any kind whatsoever in the State of Colorado' replied that it was 'not competent for the legislature to single out the mining, manufacturing, and smelting industries of the state, and impose upon them restrictions with reference to the hours of their employes from which other employes and of labor are exempt.' And it was further said that the section 'violates the right of parties to make their own contracts, -- a right guaranteed by our bill of rights'. In re eight-hour bill, 21 Colo., 29, 39 Pac. 323. The Twelfth general assembly must have been aware of this, and another decision concerning the power of the legislature to pass what is called a 'coal-screening bill,' -- the opinion being reported in 21 Colo. 27, and 39 Pac. 431 (in re house bill No. 203,) -- in which this species of legislation was condemned as hostile to the constitution. But, wholly disregarding these decisions, binding alike on all departments of government, it proceeded to enact the measure now before us. Though it affords no justification for such legislative action in defiance and against the solemn decision of this court, we presume the excuse that might be offered therefor is

that, after these decisions were handed down, in a sister state an act in the same language was passed and approved by its highest court, and, as is claimed, sanctioned by the Supreme Court of the United States. Following the rule of *Staire decisis*, we might content ourselves with the mere affirmance of our previous announcements, made, as they were, upon full consideration; but, in view of the importance of the questions involved, we have thought it best fully to discuss the principles by which this act must be tested.

The question presented for our determination is, does the act under which the petitioner is being prosecuted violate any constitutional provision? In this resolution the provisions of our own constitution must govern. Decisions of other jurisdictions, defining the limits of legislation under their constitutions, are not always to be followed elsewhere, upon the supposition that the same limitations everywhere prevail. This is illustrated in the answer of the judges of the Supreme Judicial court of Massachusetts in response to an inquiry by the House of Representatives as to the validity of a proposed bill. In the course of the opinion, after referring to the fact that legislation similar to that proposed had been held by the courts in some states unconstitutional on different grounds, and without expressing an opinion as to the correctness of those decisions, tested by the respective constitutions, the Honorable judges said: "The legislative power granted to the general court by the constitution of Massachusetts is perhaps more comprehensive than that found in the constitutions of some of the other states." In re House Bill No. 1,250, 163 Mass. 590, 40 N.E. 713. A similar

observation was made by the Supreme Court of Illinois in the *Ritchie* case, 2 155 Ill. 98, 40 N.W. 454. It is peculiarly appropriate, we think, to our organic act. A comparison of many other constitutions with ours shows that the latter probably contains more restrictions upon the power of the legislature than are to be found in any other instrument; and whether measured by the decisions of the courts of that state, or as the result of our own construction, we think it clear that the general court of Massachusetts has, in the field of legislation under review, much wider latitude, and is hampered by fewer restrictions, than is our general assembly.

The extent and meaning of the act in question are not difficult of ascertainment, though it is not a model of statutory composition. That it operates as a limitation both upon the employer and the employe seems clear. It forbids a certain kind of employment. There can be no employment without the concurring acts of him who contracts for employment and of him who contracts to be employed. Both are within the inhibitions of the enactment, and, if it is valid, each is liable to the penalty for making the forbidden contract. The petitioner, therefore, as a laboring man, is prohibited from entering into a contract to work in a mill more than eight hours in any one day. If, in our constitution, there was, as there seems to be in that of Utah, a specific affirmative provision enjoining upon the general assembly the enactment of laws to protect the health of the various classes of workmen therein enumerated, it might be that acts reasonably appropriate to that end would not be obnoxious to that provision of our constitution forbidding class legislation;

for it could hardly be said that a classification made by the constitution itself was arbitrary or unfair, or that it clashed with another provision of the same instrument inhibiting class legislation. The two provisions should be construed together, so as to harmonize, if that be possible under sound canons of construction, and the general clause forbidding class legislation might be regarded as qualified by the special one which authorizes such legislation in respect to the enumerated classes. Article 16 of our constitution is devoted to mining and irrigation, and Section 2 directs that 'the general assembly shall provide by law for the proper ventilation of mines, the construction of escapement shafts, and such other appliances as may be necessary to protect the health and secure the safety of the workmen therein. These regulations manifestly embrace only such reasonably necessary mechanical appliances as will secure the end in view, and do not include other kinds of health regulation. Whether this command, addressed to the legislature, to protect the health of these workmen by requiring the mines to be furnished with the appliances specified, does not restrict the law making power to the things named, on the principle that when authority to do a particular thing is given, and the mode of doing it is prescribed, all other modes are excluded, might be a material inquiry where the validity of the act was challenged by a miner. But as that question relates to workmen in mines, and not in smelters, we prefer to put our decision upon impregnable grounds that cover both cases. Be that as it may, we have no constitutional provision which authorizes the legislature to single out working men in underground mines and smelters and impose upon them re-

restrictions as to the number of hours they shall work at these industries, from which working men in all other departments of industry are exempt. To this effect is our decision in the Eight-hour Bill, *Supra*; and we have heard no argument in the case at bar, nor have we been cited to any authority, that leads us to a different conclusion.

The act is equally oblivious to the provisions of our bill of rights, set out in the statement, which guarantees to all persons their natural and inalienable right to personal liberty, and the right of acquiring, possessing, and protecting property. Liberty means something more than mere freedom from physical restraint. It includes the privilege of choosing any lawful occupation for the exercise of one's physical and mental faculties which is not injurious to others. The right to acquire and possess property includes the right to contract for one's labor. The latter is essentially a property right. The arbitrary classification of rights into rights of persons and rights of things, made by Blackstone and other jurists for purposes of convenient treatment, has been the occasion for hostile criticism by those favoring socialistic or paternal legislation. Employing the argument *ad hominem*, they say that these decisions in which courts have carefully guarded rights of property put property above the man. A moment's calm reflection will show the falsity of this charge. Property, as such, has no claim upon the protection of the law. When a property right is spoken of, the right of some person over or concerning the property is meant. All rights recognized by the law pertain to persons, natural or artificial. The absolute rights are commonly designated as

personal rights. They are such as are annexed to the person, like life and reputation, while property rights are those unconnected with the person, but which none the less belong to some person. All rights, both those spoken of as personal and those denominated as property rights, belong to the individual citizen; and, when it is said that property rights must not be infringed, what is meant is merely that the right of some person to or concerning property must not be interfered with. That this act infringes both the right to enjoy liberty and to acquire and possess property seems too clear for argument. While not considering that this limitation is not permissible, counsel for respondent, as we understand them, recognize the fact (but, if they do not, the same is only too apparent) that these natural rights are violated by the provisions of the act. The limitation is plain to be warranted on the ground that these and all other constitutional guarantees must yield to the paramount and sovereign right of the state to exercise its police power to protect the public health; and to this, the principal question in this proceeding, we now address ourselves.

The protection of the public health is mentioned neither in the body of the act nor in its title, as is usually the case in similar acts of other states. When it is clearly perceived from the terms of an act that the thing prohibited necessarily affects the public health, it may not be necessary expressly to declare therein what the object of the act is; but, where the result is doubtful, the object of the act ought, somewhere and somehow, to be stated, and, in accordance with some decisions, may be thus proclaimed, else the act will be held

invalid on the ground that it is deceptive in not expressing its real object. Possibly such declaration would not be conclusive that its real character is what it is expressed to be, any more than the absence of a declaration would be that such was not its true nature. When there is a mandatory requirement in the constitution (Const. Colo. art. 5 Par. 31) that no bill except the general appropriation bill shall contain more than one subject, which shall be clearly expressed in the title, the title of this act is at least questionable. Certainly, unless 'regulating the hours of employment' is synonymous with or equivalent to 'protecting the public health,' the title would seem to be deviously stated. But, as counsel have not made this point, we pause only to mention, but not to decide, it. It is upon the hypothesis, however, that it is the duty of the judiciary to sustain every act of the legislative department, if it can be done on any conceivable rational constitutional ground, that, for the present purpose, we assume with counsel for the respondent that the object of the legislature was the enactment of a health measure, and that in effectuating the same it has complied with the clause of the constitution just referred to.

Starting, then, with the premise, which is practically admitted to be true, that this act contravenes the constitutional provisions quoted in the statement, let us see if, notwithstanding this conflict, it can be justified as a valid exercise of the police power. It is difficult to define, or with precision to describe, the police power. It has rarely been attempted by the courts, and the attempt has never been attended with complete success. Following the authorities, we may say that it en-



tends to the protection of the public health. It is upon the specific ground that limiting the time a workman may labor in a week or month to eight hours a day conduces to and preserves the health of the laborer himself that this act is sought to be upheld. With sincere respect for the ability of the courts in whose opinions the remarks are found, but with a profound conviction of their erroneous conception of the nature and limits of the police power, we submit that such loose reasoning has been indulged in, and some decisions rendered that cannot be defended upon principle. As we understand it, the 'police power' is the name given to that function of government by which is enforced the maxim, 'Sic utere tuo ut alienum non laedas'. In Cooley, Const. Lim. (6th Ed.) 208, we read that this maxim 'is that which lies at the foundation of the power'. Prof. Tiesman, in his work on the Limitations of Police Power, in section 1, says: 'The object of government is to impose that degree of restraint upon human actions which is necessary to the uniform and reasonable conservation and enjoyment of private rights. \* \* \* The conservation of private rights is attained by the imposition of a wholesome restraint upon their exercise,—such a restraint as will prevent the infliction of injury upon others in the enjoyment of them.' He further quotes with approval the language of Judge Redfield in the case of Thorpe v. Railroad Co., 27 Vt. 140: 'This police power of the state extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the state according to the maxim, 'Sic utere tuo ut alienum non laedas', which being of universal application, it must, of course, be within

the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others.' And Prof. Tietmann immediately follows this quotation with the statement that: 'Any law which goes beyond that principle -- which undertakes to abolish rights, the exercise of which does not involve an infringement of the rights of others, or to limit the exercise of rights beyond what is necessary to provide for the public welfare and the general security -- cannot be included in the police power of the government.' It thus appears that, in proceeding under this power, the legislature must choose proper subjects for its exercise, and must observe constitutional limitations just as closely as when it enacts laws pertaining to the public revenue, or provides for the exercise of the power of eminent domain. In our form of government, unlimited power does not exist in any department (Front. Police Powers, 207; Loan Ass'n v. Kopska, 20 Wall. 635), and whenever the constitutionality of an act of any department is challenged the judicial department is the final arbiter.

Notwithstanding this general rule, we are here met with the argument, and the assertion is baldly made, that in the exercise of its police power the legislature is subject to no restriction except its own unbridled discretion as to what subjects it may select for regulation, and the kind of regulation it may prescribe. We cannot assent to this doctrine. It may find apparent sanction in unguarded expressions of text writers or in judicial opinions, but it is contrary to every well-considered decision. It is for the legislature to determine the exigency (that is, the occasion) for the exercise of the power; but it is clearly within the jurisdiction of the courts to

determine what are the subjects upon which the power is to be exercised, and the reasonableness of that exercise. Fed. Lim. Police Power, par. 3; People v. Jackson & K. Plank-Road Co., 9 Mich. 225; Town of Lake View v. Rose Hill Cemetery Co., 70 Ill. 121; 12 Am. & Eng. Enc. Law, 745 et seq.; People v. Gillson, 109 N.Y. 289, 17 N.E. 243. In that great repository of constitutional learning, Cooley, Const. Lim., Judge Cooley, at page 206 (5th Ed.) well says: 'The maxims of Magna Charta and the common law are the interpreters of constitutional grants of power, and acts which by those maxims the several departments of government are forbidden to do cannot be considered within any grant or apportionment of power which the people in general terms have made to those departments.' This observation, as we take it, is as pertinent to the general police power vested in, though not expressly conferred upon the legislature under written constitutions, as it is to some express power therein delegated. At page 711 of the same work is quoted with approval the following language of Judge Christiancy, found in his able opinion in People v. Jackson & K. Plank-Road Co., supra: 'Powers which can only be justified on this specific ground (that they are police regulations), and which would otherwise be clearly prohibited by the constitution, can be such only as are so clearly necessary to the safety, comfort, and well-being of society, or so imperatively required by the public necessity, as to lead to the rational and satisfactory conclusion that the framers of the constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the

language of the prohibition would otherwise include it.\* The opinion in *Palmer v. Tingle*, 55 Ohio St. 429, 45 N.E. 313, discusses the nature of the police power. Reserving opinion as to the correctness of the determination of the court in that case with reference to the law before it, which has been repudiated in *Jones v. Hotel Co.*, 20 C.C.A.108, 36 Fed. 370, its remarks, in discussing one phase of the general subject, meet with our approval. In reply to the argument of counsel, who claimed the most sweeping power of the legislature in restricting the right of human contract when the general good requires it, the court said: 'It may be restrained only in so far as it is necessary for the common welfare and the equal protection and benefit of the people. That such restraint of the right and liberty of contract is for the common public welfare, and equal protection and benefit of the people, must appear, not only to the general assembly, by force of popular clamor or the pressure of the lobby, but also to the courts; and it must be so clear that a court of justice, in the calm deliberation of its judgment, may be able to see that such restraint is for the common welfare and equal protection and benefit of the people.' To the same effect, see *Spry Lumber Co. v. Sault Sav. Bank, Loan & Trust Co.*, 77 Mich. 199, 43 N.W.773.

In the light of these principles every act of this character must be tested. While invoking as a warrant for this act that phase of the police power extending to the public health, its supporters do not claim that its real and primary object is to protect the public health, or the health of that portion of the community in the immediate vicinity, or affected by the operation

of smelters. If that purpose is present at all, it is only so inferentially, and the means employed to secure it are neither adequate nor appropriate. The smelting of ores is a continuous process, night and day, the year through. It is not claimed that the business is injurious to public health. It would be absurd to argue that, while the process itself is continuous, limiting the hours of those laboring in a smelter in any wise conduces to preserve the health of any portion of the public. That is to say, three shifts of laborers, working eight hours each, would affect the public health to the same extent, if at all, as would two shifts at twelve hours each. It is not contended that the business of smelting is unlawful; nor is it claimed that the act was passed to prevent employers from perpetrating fraud upon employes, or to protect the latter from trespasses. Indeed, the only object that can rationally be claimed for it is the preservation of the health of those working in the smelters. Were the object of the act to protect the public health, and its provisions reasonably appropriate to that end, it might be sustained; for in such a case even the constitutional right of contract may be reasonably limited. But the act before us is not of that character. In selecting a subject of the exercise of the police power, the legislature must keep within its true scope. The reason for the existence of the power rests upon the theory that one must not use his own as not to injure others, and so as not to interfere with or injure the public health, safety, morals, or general welfare. How can one be said injuriously to affect others, or interfere with those great objects, by doing an act which confessedly visits its consequences on himself alone? And

how can an alleged law, that purports to be the result of an exercise of the police power, be such in reality, when it has for its only object, not the protection of others, or the public health, safety, morals or general welfare, but the welfare of him whose act is prohibited, when, if committed, it will injure him who commits it, and him only? The maxim does not read, 'Do not use your own right or property as not to injure yourself or your own property.' Perceiving the inconsistency that must follow an attempt to vindicate a law on the principle that underlies the police power, a counsel adroitly invokes the maxim, 'Salus populi suprema est lex.' So far as we can ascertain, no commentator and no judge has ever sought to borrow this wholesome maxim and use it as a prop to uphold a law whose object is to protect a man against himself. The welfare of the people is indeed the supreme law, but this maxim cannot be twisted to sustain a law violating private rights, which contemplates the promotion of the welfare of less than the entire people. Our bill of rights expressly says that government is instituted solely for the good of the whole.

In this we must not be understood as limiting the legislature, where the facts justify apparent discrimination, in passing health laws affecting only certain classes. Indeed, laws having for their object the protection of small portions of a community have been upheld, as in *Fertilizing Co. v. Hyde Park*, 97 U.S. 659, where a nuisance, obnoxious probably only to part of a village, was abated; but what we mean to decide is that in a purely private, lawful business, in which no special privilege or license has been granted by the state, and the carrying on of which is attended by no injury to the general public, it is

beyond the power of the legislature, under the guise of the police power, to prohibit an adult man who desires to work thereat from working more than eight hours a day, on the ground that working longer may, or probably will, injure his own health. *An Lin v. Territory*, 1 Wash. St. 156, 24 Pac. 522, held void an act of the territory granting providing that any person who smoked or inhaled opium was guilty of a misdemeanor, notwithstanding the object, or at least one object, of the act was to protect the smoker or inhaler himself from the effect of his own act. This regulation was thought by three of the five judges to be warranted by a provision of the organic act of the territory (no question of conflict with a state constitution being in issue) extending, as they said, 'the power of the territorial legislature to all rightful subjects of legislation; and, when once we concede the rightfulness of the subject, the extent and character of the legislation on that subject cannot be called in question by the courts.' Possibly some courts would uphold such legislation, if confined to appropriate cases, on the ground that smoking or inhaling opium was necessarily demoralizing to society, degrading to public morals, and injurious to the general welfare. But the position taken by the Washington tribunal, that courts cannot inquire into the character of an act or question legislation, finds no sanction in any well-considered case or standard text-book. In the dissenting opinion the true doctrine is recognized. In none of the other cases are found such expressions (disto, it is true) as that the state has such an interest in each citizen that it may protect him against the consequences of his own rashness, and, upon the theory that the state is made up of the

sum of all its parts, it may, for each individual, and for his supposed good, prescribe any regulations that are appropriate and suitable for the whole. In other words, this theory is based upon the proposition that each part making up the whole includes the whole itself, in the same sense that the whole includes each part. This, in principle, is the same as the theory that would authorize the state to prescribe any regulations it saw fit for keeping a citizen out of its jails, hospitals, or poor houses, because it is a legitimate function of government to levy and collect taxes to build such institutions. The argument in support of such a theory is specious, and, while in one sense (but to a limited extent only) true, yet, like all argument from analogy, it is dangerous, and should be carefully circumscribed. If the theory is correct, the state would be justified in prescribing the most minute details for the regulation of the personal conduct of individual citizens, as to things in no wise affecting the great public interests. Whenever a man fails in business, or loses a fortune by some great calamity, or droughts or floods destroy his crops, the legislature could levy a tax or make an appropriation, and therefrom establish him in business or make good the loss. The practical application of the theory would destroy the fundamental principles upon which our government is founded.

Let us make some further application of this principle, and see to what such legislation would lead. It is, of course, no objection to this act to say that hereafter the legislature may pass another act that is invalid. But if the principle of the decision by which the present one is saved, in its own logical



extension, will protect others; that every rational mind will declare void, it is well to stop for reflection; for it is a question of power, and not discretion, we are now considering. The business of operating smelters and working underground mines is purely a private business. It is not affected with a public interest, or devoted to a public use. Even here the general and better rule is that regulations of such business are confined to their public side, and do not descend to interference in contracts and strictly private dealings between employers and employees. Hence smelting does not come within the operation of the principle of those decisions in which have been upheld reasonable regulations of a business affected by a public interest. If, to protect the health of workmen engaged in these two occupations, the legislature may limit them to 8 hours' labor per day, it may hereafter, upon the ground that idleness, resulting from short hours of labor, leads to drunkenness and gambling, and industry, promoted by longer hours, to happiness and health, enact that workmen must labor at these occupations 14 or 16 hours per day; and, by extending the same principle to other occupations, it may say, to use an illustration employed in argument, that a man weighing 120 pounds or less shall not work in a stone quarry, because only large and powerful men can safely work therein; that only men free from a tendency to tuberculosis shall work at indoor occupations, because those so afflicted need more pure air and sunshine than they can get if excluded from the open air; that only persons not needing the aid of eye-glasses shall become makers or repairers of watches, because labor, with such mechanical aids, upon delicate mechanisms, tends to destroy

vision; or that those suffering from sluggish livers shall not engage in sedentary occupations, because their health demands active muscular effort. Then it is only one step further to provide by law the style and quality of garments the citizen may wear, the quantity and quality of food he may eat, and the beverage he may drink. And, because one cannot support and properly educate his family for less than a certain amount of money, the legislature may declare that, to promote the general welfare, no employer shall contract to pay, or pay, an employe less than an arbitrary wage, so fixed as to produce the required sum. Such and other illustrations that readily suggest themselves are germane, and each and every supposed act could be sustained upon the same principle that would make the act before us valid. If counsel's contention be sound, that, to promote the general welfare and protect the public health or safety, the legislature is above the constitution, and breaks no restraint; if it is the sole judge, not merely of the exigency, but also of the subjects, for the exercise of the police power and its reasonableness, -- then, indeed, all these, and almost all other conceivable, regulations of private affairs are permissible. If we stop to consider the form of government under which we live, and what pains the framers of our organic acts took to protect the rights of the individual citizen, we would naturally expect to find that measures passed for the alleged protection of the citizen against the consequences of his own acts would clash with constitutional safeguards inserted therein to conserve the inalienable rights of man. This maxim, like many others, has been much abused; but restricting

legislation to measure clearly within its scope is not abusing, but merely giving proper effect to, it.

In this connection we notice -- what has already been suggested -- an argument pressed upon us in support of this species of legislation. We are told that the law is, to a large extent, a progressive science; that during our national existence many changes and reforms, both in procedure and in substantive law, have been made; and that to conform to the complex conditions of modern society, and to solve the many problems arising out of the industrial relations, many more such will likely take place, and the law ~~will~~ will be forced to adapt itself to these new conditions, if society is to be kept together and government preserved. We are not disposed to dispute the accuracy of these observations, or the correctness of the prediction made, but we fail to perceive the force of the application to the statute in hand. Such legislation does not denote an advance in the law of the domestic relations. On the contrary, it is a distinct and emphatic return -- a retrogression -- to that period in English history when parliament busied itself in passing numerous acts interfering with the freedom of conscience in religious matters, and in prescribing minute regulations of the personal conduct of the individual, against which our ancestors rebelled, and which was one among other causes that prompted them to found here a government under which it would be impossible thus to interfere with the purely private affairs of the citizen.

Our conclusions as to the invalidity of this act is grounded upon principle. Let it now ~~have~~ be tested by the

authorities. Except as to the penalty, the act is identical in terms with a law of Utah, which, in three cases in the supreme court of that state, has been held valid; and in two of the cases, on writ of error from the supreme court of the United States, the judgment of the state court has been affirmed. *State v. Holden*, 14 Utah, 71, 45 Pac. 755; *Id.*, 14 Utah, 95, 45 Pac. 1105; *Short v. Mining Co.* (Utah) 57 Pac. 720; *Holden v. Hardy*, 169 U.S. 355, 18 Sup. Ct. 322. They are the only authorities directly in point that are cited as sanctioning our act, and the only additional cases which may fairly be considered either in the reasoning of the opinions or in the principles involved, as tending to uphold it, are *Com. v. Hamilton Mfg. Co.*, 130 Mass. 353; *State v. Fuel Spint-Coal Co.*, 25 W. Va. 302, 15 S.W. 1000. In the Massachusetts case the act construed provided that 'no minor under the age of eighteen years, and no woman over that age, shall be employed in laboring by any person, firm or corporation in any manufacturing establishment in this commonwealth more than ten hours in any one day', etc. This enactment, under some authorities, might be held valid, applying, as it does, only to women and minors, since the former class, on account of sex and supposed physical infirmities, and the latter, because of their tender age, are under the guardianship of the state, and, not standing on an equality with adult men, are subjects of restraining regulations. But it is not clear whether the act was justified on this ground, or that it was a valid police regulation. Probably not the latter, for the court remarked that such legislation might be maintained either as a health or police regulation, if it were necessary to resort to those sources for power. If

the former, the case would not be apposite. Whatever the basis for the decision may be, the reason of the court in support of it is not satisfactory; for, in answer to the argument that the prohibition of the act violated the right of an adult woman to labor as many hours per day as she chooses, the court said: 'The obvious and conclusive reply to this is that the law does not limit her right to labor as many hours per day or per week as she may desire; it does not in terms forbid her laboring in any particular business or occupation as many hours per day or per week as she may desire; it merely prohibits her being employed continuously in the same service more than a certain number of hours per day or week, which is so clearly within the power of the legislature that it becomes unnecessary to inquire whether it is a matter of grievance or which this defendant has the right to complain.' We may apparent digress to remark that if this construction is correct, and if the real object of the act be to protect the health of a certain class of working women by shortening the hours of labor, that object is frustrated, since, if the act permits one of the designated class, after working the eight hours, to engage in any other than the forbidden kind of labor for as many additional hours as she chooses in any one day, practically there is no limit at all upon the length of time that she may work, provided she can get employment. But the disposition made of the case evades the real question. To one who desires to devote her entire time and energies in laboring at one particular occupation,

in which the legislature seeks to restrict her, it is no answer to say that her right to make contracts for her labor is not curtailed because she may work as many additional hours as she pleases at some other occupation. The value of the right consists in freedom to labor in any lawful business she may select, for as many hours each day as she chooses. This case is the only authority cited in some of the text books for legislation of this extreme character, but we cannot follow it. Its doctrine, as applicable to adult men, at least, is materially weakened, if not overthrown, by the subsequent decision in *Com. v. Perry*, 188 Mass. 117, 28 N.E. 1126, where an act providing that no employer shall impose a fine upon an employe engaged at weaving, or withhold his wages, in whole or in part, for imperfections that may arise during the process of weaving, was held to be in conflict with the constitution of that commonwealth, as interfering with the right of acquiring, possessing and protecting property; and in the latter case are cited with approval several authorities hereinafter to be discussed, which are squarely in conflict with the former.

In the constitution of Utah there is an entire article (16) devoted to the rights of labor. For our present purpose sections 1, 6 and 7 only need be here reproduced. They are:

'Section 1. The rights of labor shall have just protection through the laws calculated to promote the industrial welfare of the state.'

'Sec. 6. Eight hours shall constitute a day's work on all

works or undertakings carried on or aided by the state, county or municipal governments; and the legislature shall pass laws to provide for the health and safety of employes in factories, smelters and mines.

'Sec. 7. The legislature, by appropriate legislation, shall provide for the enforcement of the provisions of this article.'

While disclaiming any expression of opinion as to whether the act in question might or might not be upheld as an exercise of the police power, which, though unexpressed in the constitution, resides in every sovereign state, the Supreme Court of Utah clearly grounded its decision upon the mandatory nature of the foregoing section 6. The imperative command thereof was thought to operate both upon the legislature and the courts,— upon the legislature as an express injunction requiring the enactment of legislation to protect the health of the classes enumerated, and upon the courts as an implied restriction, withdrawing from them an inquiry into such legislation as should be passed in obedience to that command, upon which investigation, in the absence of the constitutional limitation, and with respect to such legislation as comes within the range of the general police power, the court might enter to ascertain if it accords with the constitution. This extract from the opinion of Lane, C. J., bears out our statement: 'The provision of the state constitution quoted makes it the duty of the legislature to "pass laws to provide for the health and safety of employes in factories, smelters and mines."

And we are not authorized to hold that the law in question is not calculated and adapted in any degree to promote the health and safety of persons working in mines and smelters. Were we to do so, and declare it void, we would usurp the powers entrusted by the constitution to the law making power.\* State v Holden, 14 Utah, 95, 46 Pac. 762. And the remark of Mr. Justice Brown in Holden v Hardy, supra, further corroborates it, when he said: "The supreme court of Utah was of opinion that, if authority in the legislature were needed for the enactment of the statute in question, it was found in that part of article 16 of the constitution of the state which declared that "the legislature shall pass laws to provide for the health and safety of employes in factories, smelters and mines." As the question is not necessarily before us, perhaps we properly withhold opinion upon it; but we are not prepared to say, with counsel for petitioner, that this provision of the Utah constitution is so far different from ours that the former instrument will, and the latter will not, permit of such legislation. Rather we may say that we are impressed with the able argument of counsel appearing amici curiae in behalf of the law, wherein they maintain, with strong reasoning, that the presence in the Utah constitution of article 16, on which the Utah court founded its decision, adds nothing to the power which the legislature would have without it, unless it be, as we are disposed to concede, that its presence removes the objection that otherwise might be made to an act on the ground that it is class



legislation. However this may be, upon the claim that the decision of the state court in the Utah cases is a precedent for us, it is sufficient now to say that no effort was there made, as there is here, to vindicate the law as a valid exercise of the general unwritten police power, and for this reason the cases cannot be treated as authority. And since we are entitled to presume that the court there chose the strongest, if not the only, ground on which to rest its determination, but little, if any, weight is to be given to the claim that the reasoning of the opinion supports respondent's contention that our act is in harmony with our own constitution.

It is chiefly on account of the authoritative character of decisions of the supreme court of the United States that we are asked to uphold this act. It goes without saying that if a federal question were involved in the case at bar and had been passed upon by that tribunal, our duty in the premises would be clear. But the petitioner does not invoke the protection of any provision of the national constitution. He maintains that his sacred rights of liberty and freedom of contract embraced in his right of property and his exemption from arbitrary and unjust discriminations, all of which are guaranteed to him in the sections of our constitution above quoted, are violated by this act. It is a mistaken notion that the 14th article of amendment to the national constitution created any civil rights or entitled citizens of states to transfer from the states to the federal government their security and protection. In a long series of decisions,

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beginning with the Slaughter House cases, 16 Wall. 36, and, among other great cases, in Patterson v. Kentucky, 97 U.S. 801; Butchers' Union Slaughter House Co. v Crescent City Livestock Landing Co., 111 U. S. 746, 769, 4 Sup. Ct. 652; Barbier v Connolly, 113 U.S. 27, 5 Sup. Ct. 357; Yick Wo v Hopkins, 115 U. S. 356, 6 Sup. Ct. 1064; Powell v Pennsylvania, 127 U.S. 678, 683, 8 Sup. Ct. 982, 1257; and Allgeyer v Louisiana, 17 Sup. Ct. 427,-- the supreme court of the United States has held as well expressed by Miller, J., in the Slaughter House Cases: 'The constitutional provision there alluded to did not create those rights which it called "privileges and immunities of citizens of the states." It threw around them in that clause no security for the citizen of the state in which they were claimed or exercised. Nor did it profess to control the power of the state governments over the rights of its own citizens.' Its sole purpose was to declare to the several states that "whatever those rights, as you grant and establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."'

And by Field, J., in the Barbier case: 'Neither the amendment-- broad and comprehensive as it is,-- nor any other amendment, was designed to interfere with the power of the state, some times termed its "police power," to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the

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state, develop its resources and add to its wealth and prosperity.\* See, also, 118 U. S. 365, 6 Sup. Ct. 1064. And so long as any state observes the requirements of the 14th amendment, and, in its legislation, gives to citizens of other states the same privileges and immunities that are enjoyed by its own citizens and provides that no person shall be deprived of life, liberty or property without due process of law, and affords to all persons within its jurisdiction the equal protection of its laws, the federal courts cannot interfere therewith, even though the policy of the state be unwise, and its laws arbitrary and oppressive, and flagrantly in violation of the state constitution. And so it might well be that a law is valid so far as a clause of the federal constitution is concerned, and yet be expressly inhibited by the constitution of a state. It does not necessarily follow, therefore, that because an act has met the approval of the Supreme court of the United States as not infringing any provision of the federal constitution it is not for that reason free from a prohibition contained in a state constitution. This distinction is not always observed, and some confusion exists on account of the loose talk about it. It should be said that counsel for respondent recognized it. Nevertheless, they would have us sustain this law on the authority of a decision, which when rightly considered under the facts of this case, is not an authority at all. In many of its own decisions the supreme court of the United States has clearly indicated the extent and scope of its jurisdiction in cases like that before it in the Holden case. In the Barber case,

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supra, Mr. Justice Field, speaking for the court, said: 'In this case we can only consider whether the 4th section of the ordinance of the city and county of San Francisco is in conflict with the constitution or laws of the United States. We cannot pass upon the conformity of that section with the requirements of the constitution of the state. Our jurisdiction is confined to a consideration of the federal question involved.' And in *Yick Wo v Hopkins*, supra, Mr. Justice Matthews, speaking for the court, says: 'The question whether his imprisonment is illegal under the constitution and laws of a state, is not open to us. And although that question might have been considered in the circuit court in the application made to it, and by this court on appeal from its order, yet judicial propriety is best consulted by accepting the judgment of the state court upon the points involved in that inquiry.'

In *People v Budd*, 117 N. Y. 1, 22 N. E. 670, 682, we find, both in the majority and dissenting opinions, admirable statements of what consideration should be given by a state court to a decision of the supreme court of the United States on a question of constitutional law, where the point relates to the validity of a state statute claimed to be void because it deprives a citizen of life, liberty, and property without due process of law, and the decision sustains the validity of the law. Mr. Justice Andrews, speaking for the majority, thus states the rule: 'Since the 14th amendment, the question whether a state statute infringes the constitutional guaranty protecting life, liberty and

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property, where it arises in a state court, involves the consideration of both the federal and state constitutions, although the ground of construction and decision is identical under either instrument. But whether the decision of the state court presents a federal question reviewable on appeal to the supreme court of the United States depends on the nature of the decision of the state court; that is to say, whether it affirmed the validity of the statute or held it to be unconstitutional and void. If the state court decides that the statute does violate the constitutional guaranty its decision is now, as before the 14th amendment, final and conclusive, and no appeal can be taken to the federal court, as in that case no right under the constitution and laws of the United States has been denied. If, on the other hand, the state court sustains the statute and denies the right asserted the federal jurisdiction attaches, and an appeal may be taken to the United States Supreme court. It cannot be maintained, we think, that a decision of the federal court sustaining a state statute *in res adjudicata* and binding upon a state court, even the same question subsequently arises there under a similar statute. It would still be the duty of the state court to examine the question and decide it according to its interpretation of the constitutional guaranty.' Peckham, J., *Tersely* and to the same effect, on page 35, 117 N.Y., and page 682, 22 N.E., says: 'In construing a clause in our state constitution similar to one in the federal instrument, should we follow the interpretation of

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such clause as given by the federal court, which interpretation compels us to deny to these defendants the relief they ask for, although otherwise we are satisfied that they are justly entitled to that relief? If any right, privilege, or immunity claimed under the federal constitution or laws be denied by this court, its decision is reviewable in the supreme court, and in such cases it is our duty to follow in the foot steps of that court, and to be guided and controlled by its decisions. But in this case the right is claimed under our state constitution, and in matters pertaining to its proper construction our decision is final, excepting that if, as construed by us, the constitution or our laws deny the existence of some right or privilege claimed by a party by virtue of the federal constitution or laws, our decision is reviewable by the federal court, not for the purpose of reviewing our construction of our own constitution or laws, but to see whether, under the constitution or laws as construed by us, any right or privilege existing by virtue of the federal constitution or laws has been violated or denied, and, if so, to give it effect, notwithstanding the state law or constitution. But where we deny no right or privilege claimed, and, on the contrary, assert and protect it, there is no review by the federal court possible.' In *City of Indianapolis v Harvin*, 151 Ind. 133, 47 N. E., 525, and 51 N.E. 80, the same rule is laid down, and numerous authorities are cited.

for the reason that they furnish a complete answer to the contention of respondent's counsel that the decision of the supreme court of the United States in the *Hollan* cases is, in the circumstances here present, a binding authority, or any authority, upon this court. In all such questions when it is once determined that no federal question is involved, that is the end of the inquiry by the federal court. For the sake of brevity, we desire, in this connection (though the reference might be equally pertinent elsewhere) to notice what Mr. Justice Brown, who wrote the opinion of the majority, said of those decisions of the various state courts declaring unconstitutional eight-hour statutes: 'We have no disposition to criticize the many authorities which hold that state statutes restricting the hours of labor are unconstitutional. Indeed, we are not called upon to express an opinion upon this subject. It is sufficient to say of them/<sup>that</sup> they have no application to cases where the legislature had adjudged that a limitation is necessary for the preservation of the health of employes, and there are reasonable grounds for believing that such determination is supported by the facts.' The last sentence, removed from its proper setting, in its literal signification might seem to support respondent's contention that in exercising police power the legislature may over ride all constitutional limitations. If it be conceded, as it is not, that in the pending cause it was competent for that tribunal to make an announcement as to the power of the legislature in this connection that would bind the state courts, we think it clear that none such as is

claimed here was made; for when this sentence is read, as it should be, with what immediately precedes and follows, it is not susceptible of the interpretation put upon it. What follows is a declaration that, if the legislature has exercised a reasonable discretion, its act will be enforced, but if its action is a mere excuse for an unjust discrimination or the oppression of a particular class, it is a nullity. What precedes indicates, in the view of the court, that no criticism could be made upon the decisions of these state courts. These considerations coupled with the closing words of the opinion, in which it is said "that the act in question was a valid exercise of the police power of the state," are persuasive that the learned justice intended his language to have only the scope to which language in an opinion must always be restricted, viz. the facts of the particular case, and that therefore this language, which would seem to be general in its application was intended to be restricted to a case in which there was express constitutional authority, as in Utah, for the enactment of legislation like that then and now challenged. But, if we should be wrong in this construction, we must still for ourselves determine whether acts of our own legislature are or are not in contravention of our constitution. If the language used by that august tribunal in *Halden v Harty* is to be understood as limiting or defining how far a state legislature may go in the exercise of the police power without transcending any of the limits prescribed by the federal constitution, we agree with counsel for



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petitioner that it was needful to the ascertainment of the question before the court. But if it is not to be thus restricted, and if it was employed with the view to determining what are the true limits of the police power of a state under the provisions of the constitution of that state, the remarks in that connection are wholly obiter, and not authority in that court itself, much less in any other jurisdiction. *Walsworth v Railway Co.*, 18 Colo. 600, 610, 38 Pac. 518; *Carroll v Carroll's Lessee*, 16 How. 275, 287; 2 Black., Judgm. sec. 611. In other words, as to whether a given act of a state legislature does or does not violate the federal constitution, the decision of the supreme court of the United States is supreme, to which all other tribunals must yield obedience. On the other hand, upon the question as to whether or not a state law is valid or invalid under a state constitution, the decision of the supreme court of that state is supreme and binding upon the federal as well as the state courts, with well recognized exceptions, not applicable here, as illustrated in *Burgess v Seligman*, 107 U. S. 20, 33, 2 Sup. Ct. 10.

In the light of these authorities it is clear—First, that the decision of the supreme court of Utah in construing the Utah statute is not an authority here, for the reason that the decision there was based entirely upon the mandatory nature of a provision of the Utah constitution which is not present in our organic act; second, in affirming the judgment of the Utah court, the decision of the supreme court of the United States in the *Halden* cases is

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not a precedent for this court in construing our act, for the reason that the sole question before the federal court was whether or not the Utah act violated the federal constitution. If, however, it could be maintained that this affirmance was in effect a determination that the Utah law was in harmony with the Utah constitution, the decision of the federal court would not be an authority here, because we have no such constitutional provision.

In *State v Peal-Splint Coal Co.*, 36 W. Va. 809, 18 S.E., 1000, the court construed two acts,-- one prohibiting any corporation or person engaged in any business from paying its employees wages in anything but lawful money; the other providing that persons operating coal mines should weigh and measure coal at the place where mined, before the same is screened; the former being generally known as the 'Scrip Act,' and the latter as the 'Coal Screening Act.' Both were held constitutional. It appears from the majority opinion that the decision, as stated by the court, was based upon two propositions: First, that defendant was a corporation which, under the laws of West Virginia, enjoyed unusual and extraordinary privileges, which enabled it to surround itself with a vast revenue of laborers, who needed to be protected against all fraudulent or suspicious devices in the weighing of coal or payment of labor; second, that the defendant, as a licensee was pursuing a vocation which the state had taken under its general supervision for the purpose of securing the safety of employes

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by ventilation, inspection and governmental report; and the defendant therefore must submit to such regulations as the sovereign thinks conducive to the public health, morals or public safety. Two of the four judges dissented, and in vigorous opinions, fortified by cogent reasoning, held both acts to be unconstitutional. Considering the grounds upon which the decision was based, it is so manifestly not against our conclusion, under the facts of this case, that we need not stop to analyze the opinion. We now proceed with cases squarely condemning such enactments.

In *Lowe v Hess Printing Co.*, 41 Neb. 127, 59 N. W. 382, an act providing that for all classes of mechanics, servants and laborers, except those engaged in farm or domestic labor, a day's work shall not exceed eight hours, was held unconstitutional--first because the discrimination against farm and domestic laborers is special legislation; and second, because by the act in question the constitutional right of parties to contract with reference to compensation for services is denied. In *Millott vs People*, 117 Ill. 294, 7 N. E. 631, an act providing for the weighing of coal at the mines and requiring owners of mines to furnish and place upon the railway track adjacent thereto a track scale of the standard measure, was held to be unconstitutional, both upon the ground that it was class legislation, and that it prohibited persons sui juris from making their own contracts. The opinion of Mr. Justice Schalfeld is a very able and instructive one. In *Drofer v People*, 141 Ill. 171, 21 N. E. 325, an act directed against the truck system, which sought to pre-

hibit persons engaged in the mining or manufacturing business from keeping a triak store, was held to be unconstitutional on the ground that it was class legislation; and in discussing the limitations upon the police power the following is pertinent: 'And it can hardly be admissible that the legislative determination that the facts are such as to warrant this discrimination is conclusive; for that would make the general assembly omnipotent, since, if they were so, there could be nothing but its own discretion to control its action in regard to every liberty enjoyed by the citizen.' See, also, *Ramsay v People*, 142 Ill. 380, 32 N. E. 364; *Braceville Coal Co. v People*, 147 Ill. 66, 35 N.E. 63; *Harding v People*, 160 Ill. 459, 43 N. E. 634. In *Ritchie v People*, 155 Ill. 93, 40 N. E. 454, is an exhaustive discussion of the scope and limitations of this power. The act there construed provided that no females shall be employed in any factory or workshop more than 8 hours in any one day, or 49 hours in any one week. In a lucid opinion by Mr. Justice Magruder this measure was held void as violating those clauses of the Illinois constitution against class legislation, and prohibiting the enactment of laws which deprive a person of life, liberty, or property without due process of law. The reasoning of the opinion goes beyond anything we have said respecting these limitations. Though many others equally pertinent might be made, we take the liberty of making therefrom the following extracts: 'The legislature has no right to deprive one class of persons of privileges allowed

to other persons under like conditions. The man who is forbidden to acquire and enjoy property in the same manner in which the rest of the community is permitted to acquire and enjoy it is deprived of liberty in particulars of primary importance to his pursuit of happiness. If one man is denied the right to contract as he has hitherto done under the law, and as others are still allowed to do by the law, he is deprived of both liberty and property to the extent to which he is thus deprived of such right.\*

'But the police power of the state can only be permitted to limit or abridge such a fundamental right as the right to make contracts, when the exercise of such power is necessary to promote the health, comfort, welfare, or safety of society or the public; and it is questionable whether it can be exercised to prevent injury to the individual engaged in a particular calling.\*' In this connection may be cited a leading case in the court of appeals of New York (In re Jacobs, 93 N. Y. 98), in which was nullified a pretended health law that sought to prohibit the manufacture of cigars and preparations of tobacco in any form in tenement houses, in certain cases. Mr. Justice Earle, in the course of the opinion, says: 'To justify this law, it would not be sufficient that the use of tobacco may be injurious to some persons, or that its manipulation may be injurious to those who are engaged in its preparation and manufacture, but it would have to be injurious to the public health.'

Mr. Tilden, at section 66 of his work, says: 'In so far as the employment of a certain class in a particular occupation

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may threaten or inflict damage upon the public or third persons, there can be no doubt as to the constitutionality of any statute which prohibits their prosecution of that trade. But it is questionable, except in the case of miners, whether the prohibition can rest upon the claim that the employment will prove hurtful to them. Miners are under the guardianship of the state, and their actions can be controlled so that they may not injure themselves. But when they have arrived at majority they pass out of the state of tutelage and stand before the law free from all restraint, except that which may be necessary to prevent the infliction by them of injury upon others. It may be, and probably is, permissible for the state to prohibit pregnant women from engaging in certain employments, which would be likely to prove injurious to the unborn child; but there can be no more justification for the prohibition of the prosecution of certain callings by women, because the employment will prove hurtful to themselves, than it would be for the state to prohibit men from working in the manufacture of white lead, because they are apt to contract lead poisoning, or to prohibit occupation in certain parts of iron smelting works, because the lives of the men so engaged are materially shortened.' And at section 178: 'laws, therefore, which are designed to regulate the terms of hiring in strictly private employments, are unconstitutional, because they operate as an interference with one's natural liberty, in a case in which there is no trespass upon private right, and no

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threatening injury to the public. And this conclusion not only applies to laws regulating the rate of wages of private workmen, but also any other law whose object is to regulate any of the terms of hiring, such as the number of hours of labor per day which the employer may demand. There can be no constitutional interference by the state in the private relation of master and servant, except for the purpose of preventing frauds and trespasses.\* Judge Cooley, in his standard work on constitutional limitations (5th Ed.), at page 436, says: 'If the legislature should undertake to provide that persons following some specified lawful trade or employment should not have capacity to make contracts, or to receive conveyances, or to build such houses as others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be doubted that the act would transcend the due bounds of legislative power, even though no express constitutional provision could be pointed out with which it would come in conflict. To forbid to an individual or a class the right to the acquisition or enjoyment of property in such manner as should be permitted to the community at large would be to deprive them of liberty, in particulars of primary importance to their "pursuit of happiness," and those who should claim a right to do so ought to be able to show a specific authority therefor, instead of calling upon others to show how and where the authority is negative.'

And at page 746: 'The general rule undoubtedly is that any person is at liberty to pursue any lawful calling, and to do so in his

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own way, not encroaching upon the rights of others. This general right cannot be taken away. It is not competent, therefore, to forbid any person or class of persons, whether citizens or resident aliens, offering their services in lawful business, or to subject others to penalties for employing them.' In his work on Torts, the same learned author, at page 356, remarks: 'Every person sui juris has a right to make use of his labor in any lawful employment on his own behalf, or to hire it out in the service of others. This is one of the first and highest of civil rights.' And at page 337: 'Every man controls his own property as he pleases, puts it to such use as he pleases, improves it, or not, as he may choose, subject only to the obligation to perform, in respect to it, the duties he owes to the state and to his fellows. The state cannot substitute its judgment for his as to the use he should make of it for his own advantage.' In his work on Constitutional Law, at page 213, Mr. Black, in speaking of laws limiting the hours of labor, after stating that they might be held valid as to women and children, and as to occupations affected with a public interest, thus proceeds: 'But, where none of these circumstances apply, it is very doubtful whether such laws do not unwarrantably interfere with the right of contract.'

Loep v Railway Co., 58 Ark. 407, 25 S. E., 78, contains a valuable discussion of this subject, which is in line with our own decisions; and in the course of the opinion it is said that



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the Peal Splint-Coal Co. case, supra, is against the weight of authority. At page 431, 23 Ark., and page 79, 23 S. E., of the opinion, it is said: 'We think it is obvious that the right to contract cannot be limited by arbitrary legislation which rests on no reason upon which it can be defended; for, if it could, the right would cease to exist, and become a license revocable at the will of the legislature, and the government would become a despotism in theory, if not in fact. Such a power cannot exist; for, if it could, it would be subversive of the right to enjoy and defend liberty, to acquire and possess property, and to pursue happiness, declared to be inalienable by the constitution of this state.' 'When the subject of contract is purely and exclusively private, unaffected by any public interest or duty to person, to society, or government, and the parties are capable of contracting, there is no condition existing upon which the legislature can interfere for the purpose of prohibiting the contract or controlling the terms thereof.' State v Loomis, 110 Mo. 307, 22 S. W. 280, in discussing a scrip law, held that it was violative of the constitutional guaranty of due process of law, and void. Godcharles v Wignam, 113 Pa. St. 431, 6 Atl. 354, in passing upon the same sort of an act, held it unconstitutional, as infringing the right of persons sui juris to make their own contracts. The Supreme court of West Virginia, in State v Goodwill, 23 W. Va. 179, 10 S. E. 338, held a scrip law unconstitutional on the ground that it was class legislation.

In *People v Hudd*, *supra*, while the court held constitutional an act regulating elevator charges, on the ground that elevators were affected with a public interest, and their owners had received special benefits from the state canal, yet the act itself was distinguished from the one regulating a strictly private business. In respect thereto the court said: 'That no general power resides in the legislature to regulate private business, prescribe the conditions under which it shall be conducted, fix the price of commodities or services, or interfere with freedom of contract, we cannot doubt. The merchant and manufacturer, the artisan and laborer, under our system of government, are left to pursue and provide for their own interests in their own way, untrammelled by burdensome and restrictive regulations, which, however common in rule and irregular times, are inconsistent with constitutional liberty.' In the dissenting opinion of Peckham, J., now a member of the supreme court of the United States, is one of the most masterly discussions of the police power to be found in the books; and while it is a matter of regret that in dissenting from the decision of the majority of the court in *Holden v Hardy*, in which he was joined by Mr. Justice Brewer, he did not state anew the grounds thereof, yet a careful reading of his dissenting opinion in the case to which we now refer discloses his objections to the doctrine announced in the *Holden* case; and prior decisions of Mr. Justice Brewer upon the same subject attest his reasons for such dissent. The late

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case of People v. Garden of City Prison, 137 N. Y. 118, 51 N. W. 1906, holding invalid an act prohibiting all persons except the agents of a transportation company from engaging in the passenger ticket brokerage business, is in line with the current of authority on the limitations of the police power. State v. Julian, 139 Mo. 163, 21 S. W. 781, condemns as void a law making it unlawful for an employer to prohibit an employe from joining, or to require an employe to withdraw from, a trade or labor union, or other lawful organization, upon the ground that it is special legislation, and that it deprives the employe of property without due process of law. The following excerpt from the opinion places for greater restrictions upon the legislature in the exercise of the police power than it is necessary for us to do in the case at bar. After citing with approval the authorities which we have considered in this opinion, the court, by Mr. Justice Sherwood, says: 'Nor can the statute escape censure by assuming the label of a "police regulation." It has none of the elements or attributes which pertain to such a regulation, for it does not, in terms or by implication promote, or tend to promote, the public health, welfare, comfort, or safety; and, if it did, the state would not be allowed, under the guise and pretence of police regulation, to encroach or trample upon any of the just rights of the citizens, which the constitution intended to secure against diminution or abridgement. In re Jacobs, 98 N. Y. 98, and cases cited.' Ex parte Kuback, 85 Cal. 274, 24 Pac. 737, was a case in which was construed a municipal ordinance making it a

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misdeemeanor for any person, when having labor performed for the purpose of carrying out a contract with the city, to demand, receive, or contract for more than eight hours' labor in any one day from any one person; and the same was held void as an infringement of the right of such persons to make and enforce their contracts, and could not be upheld as a sanitary or police regulation as it might be if the employment was unfit for certain persons, as, for example, females or infants.

This summary review of the leading authorities shows clearly to our minds that the great weight of authority, as well as reason, supports the conclusion which we have reached. The result of our deliberation, therefore, is that this act is an unwarrantable interference with, and infringes, the right of both the employer and employe in making contracts relating to a purely private business, in which no possible injury to the public can result; that it unjustly and arbitrarily singles out a class of persons, and imposes upon them restrictions from which others similarly situated and substantially in the same condition are exempt; and that it is not, under our constitution, a valid exercise of the police power of this state, either in the subject selected, or in the reasonableness of the regulation. We cannot do better in conclusion, than to quote from the opinion in the case of *Coleman v Lisk*, 153 N. Y. 166, 47 N. E. 302, construing an act authorizing summary destruction, without a jury trial, of beets used by one person in interfering with oyster beds, etc., belonging to another; for, in one respect, it so fitly character-

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izes the act before us: 'It is to be observed that the statute does not relate to the health, morals, safety, or welfare of the public, but only to the private interests of a particular class of individuals. Nor can it be fairly said that the means provided for the protection of these interests are reasonably necessary to accomplish that purpose. But, on the contrary, they are plainly oppressive, and amount to an unauthorized confiscation of private property for the mere protection of private rights. It is in no manner intended by this statute to protect any public interest or defend any public right. Nor is it calculated to accomplish that end, but under the guise of a pretended police regulation, it arbitrarily invades personal rights and private property. \* \* \* \* It is manifest that this extraordinary and extreme statute is not necessary, and was not intended, for the protection of the public. Its sole purpose was to regulate private interests and enforce private rights. In no sense can it be regarded as a police law, and consequently is not within the police power. In this statute we have another example of class legislation, where the legislature has attempted to improperly interfere with the private rights of the citizen. This species of legislation has been so often condemned by this and other courts as to render any further discussion of its impropriety and invalidity wholly unnecessary.' The petition therefore, should be, and the same is hereby granted, and the petitioner should be, and hereby is, discharged from custody.

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THE COURT: I think we will stop here.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded to custody, and a recess was taken until 2 o'clock P. M.

R e c e s s .

Boise, Idaho, Thursday, June 20, 1907.

2 o'clock P.M.

Parties not pursuant to adjournment.

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

MR. BURKE: We now offer in evidence the decision in re Meyer by the Supreme Court of Colorado June 5th, 1904.

MR. RICHARDSON: To which offer of the State we object for the reasons that the case is immaterial, irrelevant and incompetent, not tending upon Mr. Haywood nor tending in any way to connect him with the killing of ex-governor S. S. Chambers, and it is not corroborative of any evidence to that end as given by the accomplice or anybody else.

THE COURT: Does the evidence show that at the time of that decision Judge Gabbert was a member of the court?

MR. BURKE: Judge Gabbert so testified yesterday.

MR. RICHARDSON: Yes sir, Judge Gabbert was a member of the court and he wrote the main part of the opinion, and then Judge Steele wrote the dissenting opinion and then Judge Gabbert wrote still another opinion, and he held that opinion two years before the opinion was printed.

THE COURT: What does the record show with reference to the objection?

(Objection read).

THE COURT. The objection will be overruled. The decision will be admitted for the purpose of showing the action of the Supreme Court of Colorado in the matter involved,

Chief Justice Gabbert at that time being a member of the  
Supreme Court.

MR. RICHARDSON: To which we except.

MR. BORAH: I would like to dispense with the reading of  
this at present until we call some witnesses who desire to get  
away, and we can read it before the close of the afternoon.

THE COURT: Is there any objection?

MR. RICHARDSON: No sir.

MR. BORAH: We will call Mr. Kirwan.

(See decision offered above commencing on page \_\_\_\_\_.)

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

DIRECT EXAMINATION

BY MR. BORAH:

- Q. Where do you reside, Mr. Kirwan? A. At present in Denver.
- Q. How long have you resided in Denver? A. Since about February  
the 20th, 1905.
- Q. Where did you reside prior to that time? A. In the Black  
Hills, Terry, South Dakota.
- Q. Do you hold an official position in the Western Federation  
of Miners' organization? A. Yes sir.
- Q. What position do you hold? A. A member of the executive board  
and acting secretary-treasurer at the present time.
- Q. How long have you been a member of the executive board?
- A. Since December, 1903.
- Q. How long have you been secretary-treasurer or assistant



secretary-treasurer? A. Since the time of Mr. Haywood's arrest, and previous to that on two or three occasions that he was absent from the city.

7. Are you familiar with the duties of the secretary-treasurer of that organization? A. Yes sir.

8. What are the duties of the secretary-treasurer of that organization? A. To keep a correct account of the transactions between the local unions and the headquarters; to pay all the accounts that may come in -- well, in fact, have charge of all the finances. Of course I can give you -- if you will let me refer to our constitution I can give you exactly the duties of the secretary-treasurer.

9. I will perhaps do that in a moment, Mr. Kirwan. I will ask you this, which is what I desire to get at, has anyone authority to pay out money for the organization except the secretary-treasurer? A. No one but the secretary and the president.

10. The secretary and the president? A. Yes, the president has to countersign the checks.

11. Each must act then in regard to any particular payment?

A. Yes.

12. Who were the members of the executive board of the Western Federation of Miners in the year 1904? A. -- J. K. Lewis, B. C. Copley, L. J. Simpkins, James F. Markey, James A. Baker and myself, I believe, as far as I can recollect.

13. Marion Moor? A. No, Marion Moor because -- I don't remember whether he was elected in the spring of 1904 or not. He succeeded Lewis anyway.

Q. Is this L. J. Simpkins the party that they call Jack Simpkins?

A. Yes.

Q. Who were the members of the executive board in the year 1905?

A. Marion V. Moor, G. E. Mahoney, Frank Schmeltzer, L. J. Simpkins, Ernest Mills, myself and E. J. Brown.

Q. What is the duty and what authority belongs to a member of the executive board individually, that is, does he represent any particular district or section of the country? A. Yes, at the present time the organization — the jurisdiction is divided into seven districts; previous to 1905 there were six districts, and for a number of years previous to that five districts I think.

Q. Over what district did Jack Simpkins preside or over what district did his jurisdiction extend? A. Oregon, Washington and Idaho I think.

Q. Who are the present members of the executive board?

A. Marion V. Moor, J. C. Lowmy, Frank Schmeltzer, Simpkins, Ernest Mills and myself.

Q. Are the president and secretary-treasurer ex-officio members of the executive board? A. Yes.

Q. Has that been true since your connection with the organization?

A. Yes.

MR. BORAH: You may cross examine.

MR. RICHARDSON: That is all.

Let me ask you if this is all you want of Mr. Kirwan? You know the convention is in session down there and it has been at a great deal of inconvenience that he has been here, and we ask that he may go home subject to our call.

MR. HANLEY: That will be all right.

MR. RICHMOND: I promise we will have him back here again but we will let him go home if you are through with him.

MR. HAWLEY: We are through with him.

E. T. STUART, a witness on behalf of the People, being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. DONAH:

- Q. Where do you reside, Mr. Stuart? A. Baker City, Oregon.
- Q. What is your business? A. I am a machinist, at present mechanical engineer for the Baker City Iron & Supply Company.
- Q. Did you ever reside in Silver City? A. Yes sir.
- Q. How long ago and when? A. About six years in all, in 1904 and 5, and from --
- Q. Do you mean 1904 and 5 or 1894? A. 1894 and 5, and then 1907 until 1908.
- Q. Did you know Mr. Haywood, the defendant, William D. Haywood? A. I did.
- Q. Where were you working in 1899? A. I was chief engineer of the Trade Dollar Consolidated Mining Company.
- Q. Were you acquainted with Mr. Haywood at that time? A. I was.
- Q. Did you ever have any conversation with Mr. Haywood in regard to Governor Steunenberg or hear any conversation between himself and other parties? A. I have heard him express himself in regard to the Steunenberg trouble.
- Q. On more than one occasion? A. Yes sir, I think so.
- Q. What year -- about when was it that you heard these expressions,

about what time? A. I am unable to fix the date beyond the fact that it was at the time of the Coeur d'Alene troubles.

Q. You may state any conversation which you heard upon his part.

MR. RICHARDSON: We object to that, if your Honor please, as immaterial, irrelevant and incompetent, not connecting nor tending to connect W. D. Haywood in any way with the killing of ex-governor Steunenberg.

If your Honor please, I would like to call your attention to the fact that a speech made in 1899 or a statement made in 1899 by Mr. Haywood criticizing ex-governor Steunenberg could not be material in a matter of this kind. If that is true, all that Mr. Orchard has got to do is to mention any man who was connected with the miners' organization and they would be just exactly as guilty as Mr. Haywood. The nature of the evidence must be such that without the aid of Mr. Orchard's testimony it tends to connect Mr. Haywood with the killing of Governor Steunenberg, under the statute; and we submit that any expression of opinion upon Governor Steunenberg or upon his course in 1899 would not be material upon the question which is here before this court, to-wit, who is responsible for the killing of Governor Steunenberg.

THE COURT: The objection assumes that the testimony of this witness will be a criticism of the action of Governor Steunenberg. There is nothing in the examination of the witness so far that would lead the court to infer that that is what the prosecution expects to show by this witness.

MR. RICHARDSON: We never have to wait, in making an objection, if I understand it, to find out what the witness's

answer may be. If the witness's answer shall be different than I have indicated it would be immaterial anyhow; and assuming that the question calls for a conversation which would be of the nature that I have indicated, for the reason that I have stated it would seem to be that it would be immaterial also.

MR. BORAH: The object of the testimony is simply to show the fact that Mr. Haywood took cognizance of the situation in the Cesar d'Alencos and expressed his feeling toward Governor Steunenberg in regard to it, in connection with those articles which we have introduced this morning.

THE COURT: <sup>and prior to</sup> At that time was Mr. Haywood a member of the executive board of the Western Federation of Miners?

MR. RICHARDSON: No sir, he was just simply an ordinary miner at that time in 1899.

MR. BORAH: Yes sir, it was prior to the time he was a member, but it was a manifestation of his feeling in regard to the matter.

MR. RICHARDSON: In any event, if your Honor please, you can readily understand that with the condition existing which existed here in 1899 there were probably thousands of people who expressed an opinion which was derogatory of Governor Steunenberg on account of his course in that year; while thousands of others probably supported him in the course which he took. He occupied a public position. He was engaged in carrying out what he conceived perhaps to be his duty at that time, and, like all people who occupy public positions, he was the subject of criticism and animadversion on the one side and of praise and flattery upon the other. Now I submit,

if your Honor please, that a man who was killed in 1905,  
at the end of the year — that it is altogether too remote  
and improbable and conjectural (of course that goes to the  
weight/of it) and immaterial entirely as to my expression of  
off-hand opinion which this mining man had with respect to  
the course of Governor Stannberg at that time.

THE COURT: The court will overrule the objection.  
The question may be answered.

MR. RICHMOND: Note our exception.

Q. You may state the conversation which you heard, Mr. Stuart.

A: I can't state the whole conversation as it occurred. I can  
only give you that portion which attracted my attention at  
the time.

Q. State your best recollection of all the conversation which  
you heard; state all that you can now recollect and your best  
recollection of it that you can recollect.

MR. DAWSON: I think the witness ought to state when  
and where it was and who was present.

MR. BROWN: We think that is not necessary.

MR. DAWSON: We object to it unless he does state when  
and where it was and who was present.

THE COURT: Objection overruled.

MR. DAWSON: Exception.

A. The expression which called my special attention was that  
Governor Stannberg was a tyrant and a monster and should be  
killed or — the exact expression I am not positive, but I  
think that it was that he should be exterminated. That is the  
consequence or the meaning that it had anyhow.

MR. RICHARDSON: We object to his construction of it, if your Honor please, and move to strike out his construction.

Q. State the language to the best of your recollection that he used. A. He said that he was a tyrant, a monster and should have the particular word -- that don't seem to fit right. I think it is a little difficult for me to state. The idea that I got was --

MR. RICHARDSON: We object to his idea.

Q. State just the language, as near as you can recollect it, that he did use, your best recollection of the language he used.

MR. DAWSON: Haven't he done it?

A. Well, I think the word exterminated is what he said.

MR. BURKE: You may cross examine.

#### CROSS EXAMINATION

BY MR. RICHARDSON:

Q. And yet you think that word "exterminate" don't fit the place? And so you hesitated upon it? A. Slightly.

Q. Where were you at the time? A. This conversation occurred in the timber shed at the Blaine mine, known as the Blaine mine.

Q. Mr. Haywood was a workman in that mine? A. Yes sir.

Q. Kept right on with his work and worked there a long time after that? A. Yes sir.

Q. And you heard a number of the men expressing criticisms upon Governor Steunenberg and his course, didn't you? A. Yes sir.

Q. You didn't pay any attention to it? A. Not so much as to his particular remark.

- Q. Nor make any particular complaint to the authorities in regard to it? A. No sir.
- Q. You didn't think it conveyed any threat of danger from Mr. Haywood at all, did you? A. I didn't regard it as any more than the idea that he was outraged at the condition of affairs.
- Q. There wasn't a man down there who was a miner who was working in the mine but what expressed the same sense of outrage and something of the same language, isn't that true? A. I couldn't say that they did all.
- Q. It was common down there, wasn't it, to criticize the governor's course? A. Yes sir.
- Q. They didn't approve of the fact that their associates had been put in the bull pen up in the Coeur d'Alenes, isn't that the idea? A. Yes.
- Q. And there were at that time a thousand or more of them who were imprisoned in the bull pen under military rule? A. Yes.
- Q. And the military had been called in there at the instance of Governor Stannenberg? A. Yes sir.
- Q. And these men hadn't had any trial nor any complaint made against them on paper nor brought before any court at all? A. No sir.
- Q. And they were kept there month after month in that military bull pen? A. Yes sir.
- Q. Under military authority? A. Yes sir.
- Q. And their families were supported by the public or by the miners' Association? A. I think that is the condition.
- Q. That was the condition? A. Yes sir.
- Q. And they took up a large collection or subscription among the



miners down there of money at Silver City to send up to aid the families of these men who were imprisoned in this military bull pen? A. I think they did.

Q. You know about that, didn't you? A. I don't remember particularly about it.

Q. And all the men down there resented the fact that these men were in that condition and expressed themselves so, didn't they? A. No, not all I don't think; many did.

Q. Well, practically all of them? A. Yes sir, a majority.

Q. You had no trouble with Mr. Haywood or any of your men down there? A. Not with Mr. Haywood.

Q. They had a miners' union down there at that very time, didn't they? A. Yes sir.

Q. And Mr. Haywood continued to work there for several years after that, didn't he? A. Yes sir.

Q. And you took it simply from the way he said it and from all that was said that it was just the expression of his opinion with regard to the course of Governor Stearnsberg? A. Yes sir.

Q. Didn't consider it as any threat against Governor Stearnsberg or against Governor Stearnsberg's life, did you? A. I didn't think any more than the general expression of others, that was about the same.

Q. An emphatic disapproval of Stearnsberg's course, that was all there was of it, wasn't it? That is the way you understood it? A. Yes -- I think it went a little beyond that.

Q. You don't remember the exact language which Mr. Haywood used? A. No, I have always been a little in doubt of the exact words, but that was --

- Q. The fact of the matter is that at the time the occurrence was so common of criticizing Governor Stannenberg's course that there was no particular reason why you should remember Haywood's language over anybody else's language, was there?
- A. Yes sir, there was.
- Q. There was some particular reason? A. Yes.
- Q. Was that because Haywood was a larger man than the rest of them? A. No.
- Q. Because he was a smaller man? A. The reason was that I had always looked upon Mr. Haywood as a model citizen and I looked for him to give a different expression.
- Q. He always had been a model citizen then up to that time?
- A. Yes, he was.
- Q. And was a model citizen after that time? A. Yes sir.
- Q. And that is the only time you ever heard him break loose in your life? A. No, I heard him other times make the same sort of a statement, but this was the first time which impressed my mind in particular.
- Q. How many years in all did you know Mr. Haywood? A. Well, we were there together about five years or nearly six.
- Q. And during all this time you regarded Mr. Haywood as a model citizen in every respect except that he made this criticism upon Governor Stannenberg's course, is that right?
- A. Well, from a legal sense I did, yes.
- Q. And you associated with Mr. Haywood? A. I did.
- Q. How did you come to come here, Mr. Stuart? A. A subpoena was served on me by one of the officers of Baker county.
- Q. In Baker City, Oregon? A. Yes sir.

- Q. Of course you know you didn't have to obey that subpoena if you didn't want to? A. Yes sir.
- Q. But you did come? A. Yes sir.
- Q. Was it a Pinkerton that did serve you? A. No, it was not a Pinkerton that served the notice. It was an officer of Baker county.
- Q. Did a Pinkerton come to see you about it? A. Yes sir.
- Q. How many times did the Pinkerton come? A. Once I believe is all.
- Q. Once? A. Yes sir.
- Q. When was that? A. I presume about five weeks ago, something like that.
- Q. Who was the Pinkerton? A. Mr. Thiele.
- Q. That was the first time that you had ever mixed up in this affair, was it, that is, had anybody talk to you about it? A. Yes sir.
- Q. Mr. Thiele came out there to talk with you about coming down here to test it against Mr. Heywood? A. Yes sir.
- Q. What did he give you for coming? A. Nothing.
- Q. He didn't give you anything? A. Well --
- Q. You came down voluntarily although a subpoena was served on you that you knew had no force or effect? A. Yes.
- Q. And paid your own expenses down here? A. Not entirely.
- Q. I just asked you if you got anything? A. He didn't pay me anything.
- Q. Who did pay you anything? A. Mr. Elmer is the man who gave me the money.
- 1893 Q. That was the officer of that county? A. No.

- Q. Who is Mr. Elmer? A. I understand he is private secretary to Governor Gooding.
- Q. Governor Gooding's private secretary came out there to see you, did he? A. Yes sir.
- Q. And paid you the money to come down here on? A. A portion of my expenses he advanced.
- Q. How much did he pay you? A. \$20.00.
- Q. With that you bought your ticket and came here, and that is all the money you have had, is it? A. That is all.
- Q. Did you talk with Mr. Elmer about your testimony? A. Yes sir.
- Q. And you talked to Mr. Thiele about your testimony? A. Yes sir.
- Q. Did they refresh your recollection or you refresh theirs?  
A. Not a particle.
- Q. Did they tell you that they had heard that you would be a good witness in this case? A. No sir.
- Q. They did not? A. No sir.
- Q. Just came and asked you if you had had this conversation with Mr. Haywood in 1897? A. No, it has never been stated that I had the conversation with Mr. Haywood.
- Q. They didn't ask you anything about that? A. No sir.
- Q. What did they tell you that they wanted you for?  
A. To give this particular testimony; that I had told someone about it inadvertently, I hadn't done it for the purpose of getting mixed in this case.
- Q. That was the way that they came to see you so far as you know?  
A. I don't know how they got this information.
- Q. But they came and told you that they had heard this matter?  
A. Yes sir.

Q. That Mr. Haywood had criticized Governor Stannenberg in the way that you have stated in 1899? A. Yes sir.

Q. And so you came down here to testify about it.

Q. How long was it that Mr. Haywood remained in Idaho after he made this statement that you have testified to?

A. I am not certain, but I imagine in 1902. I left in 1902, and I thought we had left about the same time, but I am not positive as to that.

Q. Who was present when this conversation occurred -- or this statement was made by Haywood which surprised you because you had always regarded him as a model citizen? A. Well, a group of the miners but I couldn't recall especially who were present.

Q. How many were there in that group? A. I should think six or seven possibly.

Q. And it occurred in what house? A. The timber shed at the Blaine mine.

Q. Can't you give us the name of one of the six or seven men?

A. I don't think I can because I wasn't usually accustomed to mix with the men and talk about that subject and I heard it just as a bystander.

Q. Were you passing along by or were you stopping there?

A. I think passing through. I was a privileged character to go where I chose in the mine and happened to be there at the time.

Q. You were the boss of the mine, were you? A. No sir, I was chief engineer.

Q. And as chief engineer you could go where you pleased?

A. I looked after all their machinery.

- Q. And so while you were passing by this group of men who were there in that timber shed you heard this statement? A. Yes.
- Q. Was it the noon hour? A. I am not positive but I rather think it was.
- Q. Think it was the lunch hour? A. Yes.
- Q. And they were sitting there eating their lunches, were they?
- A. No, I don't recall it that way. I think they were just discussing the question.
- Q. You think their lunches had been eaten probably and it wasn't quite time to go on shift? A. Yes sir.
- Q. And therefore they were discussing the news of the day?
- A. Yes sir.
- Q. And all of these men went back to work? A. Yes sir.
- Q. But you couldn't give us the name of a single one of them?
- A. No, I couldn't with any degree of being positive. I am not sure about them.
- Q. You didn't even call Mr. Haywood's attention to the fact that that sort of language was intemperate? A. No sir.
- Q. Nor think it was of sufficient importance so to do?
- A. I wouldn't have thought anything about it if it hadn't been I had a different opinion of his ideas concerning that particular case.
- Q. You thought that Mr. Haywood probably was approving the course of Governor Steiensenberg and so it impressed you because you found that he was not approving that course? A. I thought he would support any action that was supposed to be legal.
- Q. How are you sure that Mr. Haywood was working in that Blaine mine at that time? A. Yes sir.

- Q. You are? A. Yes.
- Q. It was in the summer of 1899, was it? A. Well, it was at the time of that disturbance.
- Q. At the time, but that time extended over a period of ten or twelve months, didn't it? A. Yes, but I haven't anything to fix the time definitely in regard to it.
- Q. He had a thousand men or so in the hall you up there for a period of more than ten months, didn't he? A. Yes sir.
- Q. What? A. I suppose so.
- Q. And you can't tell whether it was the summer or the winter? A. No sir, I could not.
- Q. Wasn't Mr. Hayward working in what was known as the Dewey tunnel in 1899 while this trouble was going on up there in the Cour d'Alence? A. A portion of the time I think.
- Q. What? A. I think he was a portion of the time.
- Q. Well, the Old Dewey tunnel? A. Yes sir.
- Q. Wasn't he working in that all of the time? A. I am not able to say.
- Q. Well, would he if he had been working in the Old Dewey tunnel at that time have been up in the place where you state he was, up in the Blaine mine? A. He got his steel from there.
- Q. That was a considerable distance, wasn't it, from the old Dewey tunnel? A. Yes sir, nearly a mile, — three-quarters of a mile.
- Q. And every day did he have to go up there and get his steel? A. I am not certain about that.
- Q. You mean by "getting his steel" the drills he used were sharpened up there I suppose? A. Yes sir.

- Q. You think he had to go up there to get his steel a mile?  
A. I am not positive about that; that would be my impression.
- Q. Every shift that he worked? A. Not necessarily.
- Q. That involved a mile's walk up to carry the steel up there and a mile up there to go and get it back, did it?  
A. No, I don't think that was the custom. I am just assuming that to be likely the condition. I don't know that it was.
- Q. Didn't Mr. Haywood sharpen his own steel down at the Dewey tunnel? A. I couldn't say. I believe they had a forge there a portion of the time; I don't know whether they did all the time.
- Q. Didn't Mr. Haywood sharpen his own steel there? A. I don't know about that. It was out of my jurisdiction.
- Q. Who do you think there were among these seven men, give us your best thought on that subject. We want to know who they were, some of them. A. I have tried to think it out and I am unable to think anybody in particular.
- Q. Don't fix anybody but yourself? A. That is all.
- Q. And Mr. Haywood, who made the statement which you have mentioned in your presence? A. Yes sir, that is right.
- Q. Who was the foreman of the mine at that time? A. I don't think I could fix that either. I am not certain. There were a good many changes.
- Q. Could you name another man on the mine except Mr. Haywood, whether he was present or not? A. No sir.
- Q. Don't remember the name of a single man? A. I know a good many that worked there at that time but I couldn't say they



were present.

Q. Give us the names of some of the men that worked in the mine.

A. It would be rather hard to pick out very many of the names.

Q. How many men were working in the mine at that time?

A. I should think about two hundred.

Q. And out of two hundred men who were working in the mine and with whom you worked for a period of five years more or less you are not known able to mention a single one in the mine?

A. I couldn't fix for certain whether they were working at that time. I know men that worked in the mine during different times.

MR. RICHARDSON: That is all.

MR. BROWN: That is all, Mr. Stuart.

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W. V. MACARTNEY, a witness on behalf of the People,  
being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. BURKE:

1. What is your full name? A. Walter V. Macartney.
2. Where do you reside, Mr. Macartney? A. In Cheyenne, Wyoming,  
at present.
3. What is your business? A. I am a bookkeeper.
4. For what concern? A. The Hummel Packing Company and the  
Arg-Hummond Hardware Company.
5. Where were you residing in September and October, 1904?  
A. In Denver.
6. What was your business there? A. I was cashier of the Postal  
Telegraph Company.
7. Cashier of the Postal Telegraph Company of what place?  
A. Of Denver.
8. During both the months of September and October, 1904?  
A. Yes sir.
9. As cashier what were your duties? A. I handled all the  
finances of the office and handled all the money transfers made  
to and from the office between other cities; kept all the  
books of the office.

MR. BURKE: Mark this for identification.

(Paper handed the stenographer marked for identification  
State's Exhibit D-2):

MR. BURKE: State's Exhibit D-2 handed the witness.

10. State if you recognize these papers: Did you ever have anything  
to do with these? A. Yes, I handled them both at that time.

Q. What do these papers purport to be in reference to the transfer of money?

MR. RICHARDSON: Not what they show.

MR. BISHOP: No, but what in a general way do they purport to show and what do they have reference to?

A. This top one is an application made to the Postal to transfer some money and the other one is the telegram which transferred the money.

Q. In whose handwriting is the telegram which transferred the money? A. It is in my handwriting.

Q. Who received that money at the place of transfer for the purpose of transfer? A. I did.

Q. I will ask you to state what would be the first step in the matter of transfer when a party comes in and desires to transfer money over the Postal Telegraph Company's wires?

A. They are required to fill out this application.

Q. That is the first paper? A. That is the first paper they fill out, give me that with the money, and I gave him a receipt in return for the money.

Q. Then what do you do, what is the next step? A. Then I take this application and a blank form of this telegram and send the money, and keep the addresses from the application and use our own code words for expressing the amount and send them to the operating room to be transmitted over the wire.

Q. You may state if the Postal Telegraph Company had a system by which a party could waive identification of the payee?

A. They did, yes; by filling out and signing the waiver on the back of this application the identification is waived.

1. You may state if the identification was waived according to these papers? A. It was.

2. Now I will ask you to state further, from your knowledge of the rules and regulations of the company, and your knowledge of the transfer of the money, whether or not the money was paid upon that transfer?

MR. DASHW: You mean as shown by the document?

MR. BORAH: I am asking if he knows from the rules and regulations of the company and his knowledge of the business of the company whether the money was paid.

MR. DASHW: I submit he cannot do that. If he wants to inquire as to the rule and regulation, that is all right. But as to whether the money was paid at some other place or not because of a rule or regulation, I submit that the witness ought not to be allowed to testify because there is better evidence than that.

THE COURT: I think you are carrying it too far, Mr. Borah.

MR. BORAH: I will change the question.

3. You may state what the rule of the office was when transferring money in case there was a failure to pay at the other end? A. Well, the sending office was notified that the money was unpaid and we notified the sender to call at the office and ~~returned~~ refunded the money to him.

4. What would be upon these papers, if anything, if it was not paid? A. I would have written the word "Cancelled" in red ink on this application.

5. Is there any such cancellation there? A. There is not, no sir.

Q. I see there are some cipher words in this telegram which you wrote, those three words; I will ask you to translate them.

MR. RICHARDSON: We object to his being examined as to the contents of any written instrument unless it is offered in evidence and first shown to us.

MR. BERRY: I desire to have the words translated so as to have them in English when we offer it.

THE COURT: You can do that afterwards, Mr. Berry.

MR. BERRY: Very well. (Hands paper to counsel for defendant).

We now offer in evidence State's Exhibit D-2.

MR. RICHARDSON: We object to the reception in evidence of State's Exhibit D-2, for the reason it is incompetent, immaterial and irrelevant; it does not purport to have any connection with Mr. Haywood nor tend to establish any connection with him in any way, shape or form; nor does it relate to any transaction which we are here inquiring about, or tend to substantiate the charge that is contained in the information in this case, to-wit, the murder of ex-governor Stannenberg; nor does it tend to corroborate the witness Harry Orchard on any point within the meaning of the statute of this state.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

THE COURT: An exception will be noted.

Exhibit D-2 was then read to the jury by Mr. Berry, and the same is in the words and figures following, to-wit:

POSTAL TELEGRAPH-CABLE COMPANY  
TELEGRAPH MONEY ORDER.

(All moneys transferred by this company are made subject to the following terms):

For the accommodation of the general public the Postal Telegraph-Cable Company will make transfers of money in small amounts between its offices. Such transfers will be made upon the following terms and conditions, viz:

To cover clerical and incidental services, a charge will be made of one per cent. on all sums of \$25., or over, and on smaller amounts such charge will be 25 cents in each case.

As the usual telegraphic service necessary for each transfer exceeds two telegrams, a further charge will be made for this service of a sum not exceeding double the tolls on a single message (estimated at 15 cents) between the transfer places.

Payment of the sums transferred will be made at the principal office of the telegraph company at the point designated, upon satisfactory evidence of the personal identity of the payee. When identification is required, the payee must be known to or identified by some one known to the manager.

In case payment is not made to the payee within 72 hours after receipt of the transfer message by the manager of the paying office (exclusive of Sundays and holidays) the transfer will be cancelled and the amount thereof refunded to the sender on application at the receiving office, and in such cases the amount received for services and tolls will be retained by the telegraph company.

It is agreed between the sender of the money, who has signed below, the Postal Telegraph-Cable Company, that said company shall not be liable for delays in the transmission or delivery, or for non-delivery, of the money transferred hereby. The telegraph company is hereby made the agent of the sender, without liability, to forward said money and any messages connected therewith, over the lines of any other company when necessary to reach the destination.

Clarence H. Mackey,  
President.

William H. Baker,  
Vice-President &  
Gen. Mgr.

Edward G. Platt,  
Treasurer.

Boulder, Colo., Oct. 15<sup>th</sup> 04.

No. \_\_\_\_\_

POSTAL TELEGRAPH-CABLE COMPANY:

Pay to H. Green at C/o Peter L. Hoff, 311 Taylor St.,

San Francisco, Calif., Ninety-seven 50 Dollars (\$97.50)  
subject to the foregoing terms and conditions, which we  
agree to.

(Signature) J. Wolff,

(Address) 1725 Stout.

N.B. Personal identification of payee will be not  
required unless identification is expressly waived by sender.  
(See waiver of identification on the back of this form).

(On the back of the telegram is the following):

\*WAIVER OF IDENTIFICATION

Dated at Denver, Sept. 10<sup>th</sup> 1904.

The within named H. Green, payee, need not be identified,  
and I hereby authorize and direct the Postal Telegraph-Union  
Company to pay at my risk, without identification, the  
within named sum of ninety-seven 50 dollars (\$97.50) to  
any person calling for same at the company's office in \_\_\_\_\_  
and representing himself to be the said payee.

(Signature) J. Wolff."

\*TRANSFER MESSAGE

POSTAL TELEGRAPH-UNION CO.

No. 228 P.

Check 22 Transfer 1 Kira.

Denver, Colo., Sept. 10, 1904.

To transfer agent,

At San Francisco, Calif.

Regent --

MR. BORAH: What does "regent" mean?

A. Well, it has no particular meaning. It is a guard word to  
protect the transfer so no one who didn't know the word could

send it. That word was on record in Denver and also in San Francisco so when it reached there he would know it had been sent by a proper authority.

"Pay (name of payee) H. Green C/o Peter L. Hoff  
two eleven Taylor St., San Fran. amount about doubt --

- Q. What are those three words?  
A. Ninety-seven dollars and fifty cents.  
Q. Are those the code words for \$97.50? A. Yes.

"From (name of sender) J. Wolff. (Address of sender)  
Denver. Unidentified.

W. V. Macartney,  
Cashier.

- Q. Where would the commission on that transfer be paid, at Denver or San Francisco? A. Paid at Denver.  
Q. The amount which would reach the party in San Francisco would be how much? A. \$97.50 in that case.  
Q. How much would the commission be upon that? A. It would be \$2.49.

Q. MARRON: Those code words are the code words of the company, are they?

- Q. Those code words are the code words of the Postal Telegraph Company? A. Yes, private code words.  
Q. (Exhibit B-2 handed witness): You may state whether you recognize these papers as papers with which you had to do while you were cashier of that company. A. I did. I handled them both. I wrote one of them.  
Q. In whose handwriting is the second paper, the bottom paper?



A. It is in my own.

Q. What do these papers refer to, generally; what kind of a business transaction? A. They refer to a money transfer between Denver and San Francisco.

Q. Under what date? A. October 15, 1904.

Q. This transaction took place under your supervision as cashier?

A. Yes sir.

Q. The manner of transferring it was the same as you have testified to in regard to D-2? A. Just the same.

MR. BORCH: To offer Exhibit D-2 in evidence, if your Honor please. It is the same as the others excepting different name.

MR. RICHARDSON: To the State's Exhibit D-2 we desire to object for the reasons stated in the objection made to the State's offer of Exhibit D-2 -- just the same thing, if your Honor please, only another amount and date.

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

Mr. Borch then read to the jury Exhibit E-2, which is in the words and figures following, to-wit:

(Exhibit E-2 being upon the same form as Exhibit D-2):

"Denver, Colo., Oct. 15" 04.

No. \_\_\_\_\_

Postal Telegraph-Cable Company:

Pay to H. Green at C/o Peter L. Hoff, 211 Taylor St.,  
San Francisco, forty-eight dollars (\$48 &  $\frac{50}{100}$ )

Subject to the foregoing terms and conditions, which are agreed

to.

(Signature) P. Bowen

(Address) \_\_\_\_\_

(On the back of said Exhibit is the following):

WAIVER OF IDENTIFICATION.

Dated at Denver, Oct. 15<sup>th</sup> 1904.

The within named E. Green, payee, need not be identified, and I hereby authorize and direct the Postal Telegraph-Cable Company, to pay at my risk, without identification, the within named sum of \_\_\_\_\_ Dollars (\$) to any person calling for the same at the company's office in San Francisco \_\_\_\_\_, and representing himself to be the said payee.

(Signature) P. Bowen."

"TRANSFER MESSAGE

Postal Telegraph-Cable Company,

No. 100 P

Check 20 Transfer N

Denver, Colo., Oct. 15, 1904.

To Transfer Agent;

At San Francisco, Calif.

Ribbon ---

Q. That is the guard word? A. Yes sir.

"Pay E. Green, C/o Peter L. Hoff, 212 two eleven Taylor St. among other ---

Q. What are those words? A. That is forty-eight dollars.

"From P. Bowen, Denver.

W. V. Macartney,  
Cashier."

- Q. Now how much money was paid to you at the time the transfer was arranged for? A. Fifty dollars.
- Q. And how much would be paid to the payee? A. Forty-eight dollars.
- Q. The commission was how much? A. \$1.98 was the commission.
- Q. The commission was paid at what point? A. Denver.
- Q. The amount which was paid on Exhibit D-2 would be how much? A. Would be \$100.
- Q. The commission \$2.48? A. Yes.

MR. BORAH: You may cross examine.

MR. RICHARDSON: That is all.

We now to strike out all of the testimony of this witness as incompetent, immaterial and irrelevant, as neither sustaining nor tending to sustain any issue in this case, nor connecting nor tending to connect Mr. Haywood in any way with the killing of ex-governor Steunenberg.

THE COURT: Motion denied.

MR. RICHARDSON: Note our exception.

MR. BORAH: If your Honor please, in the matter of the hotel register of the Pacific hotel at Caldwell, the register was identified and marked for identification. That is the register where it is claimed that Hopkins and Orchard registered together although Orchard did the registering. We now, since Orchard was on the stand, desire to introduce this in evidence. It was not actually offered. The other

registered were offered, but this was not offered at the time the others were.

MR. RICHARDSON: I would like to inquire if this is the hotel register where the cashier from the bank up at Gardner identified the name of J. Simmons as being in Mr. Simpkins' handwriting, which Orchard afterward said was in his handwriting.

MR. BORAH: No, that is an error.

MR. RICHARDSON: How is it?

MR. BORAH: There was one of the hotel registers at Hampa in which it was "J. Simmons" which the cashier identified as the signature. He registered twice, once at Caldwell as J. Simmons, and once at Hampa. That has been introduced in evidence, but this Mr. Orchard registered himself, and we did not attempt to identify that by the cashier from Gardner.

MR. RICHARDSON: We object to the introduction of this hotel register as incompetent, immaterial and irrelevant in this case, as not binding upon Mr. Haywood nor tending to connect him in any way with the killing of ex-governor Stannenberg. It might be competent, if your Honor please, against Simpkins. I couldn't say to that. We can tell that whenever he is tried, but we object to its competency as against Haywood.

THE COURT: The objection will be overruled and it will be admitted.

MR. RICHARDSON: Note our exception.

MR. BORAH: If your Honor please, I guess I might read

this authority now. The Western Union matter has not arrived yet and won't be here until morning I apprehend. It left Denver on the 17th, the night of the 17th, but it isn't here yet.

MR. RICHARDSON: That is quick for the Western Union.

THE COURT: No more witnesses you can put on this afternoon?

MR. BORAH: No more witnesses. I think if we can get that matter in the morning we will close by tomorrow noon.

MR. BARROW: Your witnesses are all in excepting that, are they, now?

MR. BORAH: No, there is another witness in connection with that matter, but we haven't any other witness here this afternoon. But whatever we have are very short and we will close by tomorrow noon.

MR. RICHARDSON: I suggest that Senator Borah might read another decision to us this afternoon, if your Honor please.

MR. BORAH: I am very willing to go ahead.

THE COURT: That decision is short?

MR. RICHARDSON: There is a dissenting opinion. We want it all, if your Honor please, all that was said on the subject.

THE COURT: The only thing that is before the court to rule upon is the original opinion of the court.

MR. BARROW: We want it all, your Honor.

MR. RICHARDSON: We ~~like~~ insist, if your Honor please, that it all go in.

MR. BORAH: Of course all lawyers know the great benefit

of a dissenting opinion.

THE COURT: We will pass upon that after we get through with what has been offered.

MR. RICHARDSON: That is all a part of the record in that case.

MR. BORAH: (Reads the opinion of the court, as follows:)

"In Re MOYER.

(Supreme Court of Colorado. June 6th, 1904.)

1. HABEAS CORPUS -- WRIT -- NATURE.

The purpose of proceedings in habeas corpus is to determine whether or not the person instituting them is legally restrained ~~in~~ of his liberty.

2. NAME -- RETURN -- PURPOSE -- SCOPE.

As the return to a writ of habeas corpus is not treated as an answer to the application, but is merely a response to the writ itself, the sufficiency of such return is to be determined by the allegations thereof, without regard to the statements of the petition for the writ.

3. CONSTITUTIONAL LAW -- DEPARTMENTS OF GOVERNMENT -- EXECUTIVE POWERS.

Const. art. 4, par. 5, provides that the Governor shall be the commander in chief of the military forces of the state, except when they are called into actual service of the United States, and that he shall be empowered to call out the militia to suppress insurrections. Section 2 vests in him the supreme executive power of the state, and Laws 1897, p. 204 c. 63, par. 2, declares that when an insurrection in the state exists

the governor shall order out the National Guard to suppress it.  
Held, that the governor having declared that a state of insurrection existed in a county, and having ordered out the militia to suppress it, his determination of the existence of such insurrection was not subject to review by the court.

4. HABEAS CORPUS -- ARREST PENDING INSURRECTION.

The governor of a state having lawfully declared that a state of insurrection existed in a county, and having directed the adjutant general to suppress the same with the aid of the National Guard, a person arrested by such military force for aiding and abetting in insurrection was not entitled to his discharge on habeas corpus for failure of such military authorities to surrender him to the civil authorities of the state for trial pending the insurrection; it being the intention of the adjutant general to deliver him to the military authorities for trial as soon as the insurrection was suppressed.

5. CONSTITUTIONAL LAW -- DEPARTMENTS OF GOVERNMENT --  
INFRINGEMENT.

The governor of the state, in employing the militia to suppress an insurrection, acts in a civil capacity merely as the chief civil magistrate of the state, so that the arrest of an insurrectionist by the military and its refusal to surrender him to the civil authorities for trial prior to the suppression of the insurrection was not a contravention of Bill of Rights, art. 2, par. 22, providing that the military shall always be in strict subjection to the civil power.

Steele, J., dissenting.

Application for a writ of habeas corpus by Charles H.

Moyer.

Writ denied.

On behalf of Charles H. Moyer a petition was presented, representing that he was illegally restrained of his liberty in the county of San Miguel, by Sherman Bell and Buckley Wells. A writ of habeas corpus was issued, directed to these parties, who, on the day it was returnable, produced the petitioner in court, and at the same time made a return to the writ, whereby the jurisdiction of this court to further proceed in the matter was challenged. The averments upon which the claim of want of jurisdiction is based are to the effect that prior to the detention of petitioner, his excellency, Gov. Peabody, by proclamation, had determined and declared the county of San Miguel to be in a state of insurrection, and that by reason of lawlessness, disturbances, and threatened acts of violence, the civil authorities of the county were unable to cope with the situation. In pursuance of this proclamation, the governor directed the respondent, Sherman H. Bell, adjutant general of the state of Colorado, to forthwith order out such troops as in his judgment might be necessary, and report to the sheriff of San Miguel county, and that he use such means as in his judgment might be right and proper to restore peace and good order in the county, and enforce obedience to the Constitution and laws of the state. In pursuance of this order General Bell proceeded to the county of San Miguel in charge and command of members of the Colorado National Guard, and ever since has been, and now is, actively engaged in quelling the disturbances which called forth the proclamation and the



executive order above referred to; that in the discharge of these duties he became convinced that petitioner had been, and if discharged from arrest would continue to be, an active participant in cementing and keeping alive the condition of insurrection existing in the county; that he was and is a prominent leader of those engaged in the acts of insurrection and crime to suppress which the National Guard was called into requisition; that for these reasons he caused the arrest, apprehension, and detention of the petitioner in the county of San Miguel, and does now restrain, detain and imprison him for the reasons and upon the grounds above set forth; that it is his purpose and intention to release and discharge petitioner from military arrest as soon as the same can be safely done with reference to the suppression of the existing state of insurrection in the county, and then surrender him to the civil authorities to be dealt with in the ordinary course of justice, after such insurrection is suppressed. It is further stated that the Governor has issued orders and instructions to General Bell not to surrender or release the military custody of petitioner during the existence and continuing condition of affairs in the county of San Miguel, as mentioned and set forth in the proclamation and executive order of his excellency. It is also stated that the respondent Buckley Wells is a subordinate military officer, under the direct command of Gen. Bell, and that his acts in the premises with reference to the arrest and detention of petitioner have been by virtue of express commands in that behalf issued to him by his superior officer. To this return is appended the certificate of Gov. Peabody to the effect that the matters and things set forth in

The return are true, and that the arrest and present detention of petitioner were had and done in pursuance of the authority conferred upon him by the Constitution of the state; that the acts of Gen. Bell in arresting and detaining petitioner were done by his express sanction as governor of the state and commander in chief of its military forces; and that the insurrection recited in his proclamation has not as yet been fully suppressed. To this return a reply was filed by petitioner in the nature of a general demurrer, to the effect that it is wholly insufficient in law to constitute any justification whatsoever, either for the arrest, imprisonment, or further detention of petitioner. The reply also alleges that neither on the date of the proclamation and order of the Governor, nor at any other time, has there been a state of insurrection in the county of San Miguel.

Richardson & Hawkins, for petitioner. H. C. Miller, Atty Gen., and John H. Waldron, I. B. McVilvie, and H. J. Harney, Asst. Atty Gen., for respondents.

GABRIEL, C. J. (after stating the facts).

Counsel for petitioner contend that on the facts above stated he is entitled to his discharge, because the Governor has no power to suspend the privilege of the writ of habeas corpus or declare martial law, or that, if he has such power, he has not assumed to exercise it. Special counsel representing the respondents controverts these propositions, and further contends that this court is without jurisdiction to proceed further than to deny the relief demanded, or remand the petitioner to their custody. The Attorney General claims that the Governor,

independent of the questions of his power to declare martial law, suspend the privilege of the writ of habeas corpus, or the question of the jurisdiction of this court, is fully authorized, under the Constitution and laws of the state, to suppress insurrection and lawless conditions through the power of the military under his command, and that his subordinate officers actively engaged in suppressing such insurrection by seizing and holding those engaged in acts of violence or in advising and aiding such acts to suppress which the military was called out cannot be interfered with so long as conditions exist which require the action and the presence of the military to correct. Counsel amici curiae, in their views on these several questions, are divided.

The purpose of proceedings in habeas corpus is to determine whether or not the person instituting them is illegally restrained of his liberty, and we shall proceed to determine whether or not, under the facts stated and the laws of this state, the petitioner is entitled to his discharge, without attempting to pass specifically upon the questions raised by his counsel. Before proceeding, however, to a discussion and determination of this question, two propositions are presented which should be disposed of. It is urged by counsel for petitioner that certain averments in the petition for the writ are not controverted by the return. The latter is not treated as an answer to the application, but rather as a response to the writ itself. The averments of the petition are made for the purpose of obtaining the writ, and the respondent, in his answer thereto, simply seeks to relieve himself from the imputation of having imprisoned

petitioner without lawful authority, and this he does, or rather, is required to do, under the law by statements in the return from which the legality of the imprisonment is to be determined, without regard to the statements of the petition for the writ. In short, he is not required to make any issue on the petition for the writ, but to answer the writ. In re Chipchase, 58 Kan. 357, 43 Pac. 254; ex parte Durbin (Mo. sup.) 14 S.W. 821; Simons v. Georgia Iron & Coal Co. (Ga.) 43 S.R. 780, 61 L.R.A.;

By the reply it is alleged that, notwithstanding the proclamation and determination of the Governor that a state of insurrection existed in the county of San Miguel, that as a matter of fact these conditions did not exist at the time of such proclamation or the arrest of the petitioner, or at any other time. By section 5, art. 4 of our Constitution, the Governor is the commander in chief of the military forces of the state, except when they are called into actual service of the United States, and he is thereby empowered to call out the militia to suppress insurrection. It must, therefore, become his duty to determine as a fact when conditions exist in a given locality which demand that, in the discharge of his duties as chief executive of the state, he shall employ the militia to suppress. This being true, the recitals in the proclamation to the effect that a state of insurrection existed in the county of San Miguel cannot be controverted. Otherwise, the legality of the orders of the executive would not depend upon his judgment, but the judgment of another co-ordinate branch of the state government. In re Boyle (Idaho) 57 Pac. 706, 45 L.R.A., 832; Luther v. Borden, 7 How. (U.S.) 1, 13 L. Ed. 581; ex parte Moore, 64 S.C. 802; Martin v. Mott,

12 Wheat. (U.S.) 19, 6 L. Ed. 537.

By the constitution the supreme executive power of the state is vested in the governor, and he is required to take care that the laws be faithfully executed. Sec. 2, art. 4. To this end he is made commander in chief of the military forces of the state, and vested with authority to call out the militia to execute the laws and to suppress insurrection. Section 5, supra. This authority is supplemented by Laws 1867, p. 204, c. 63, par. 2, whereby it is provided that when an insurrection in the state exists or is threatened, the governor shall order out the National Guard to suppress it. These are wise provisions, for the people in their sovereign capacity, in framing the Constitution, as well as the General Assembly, recognized that an insurrection might be of such proportions that the usual civil authorities of a county and the judicial department would be unable to cope with it. Through the latter, parties engaged in such insurrection might be punished, but its prompt suppression could only be secured through the intervention of the militia. Being vested with authority to employ the militia for a specific purpose, and it appearing from the return to the writ that the Governor has called it into requisition for that purpose, his action through his subordinates cannot be interfered with, so long as he does not exceed the power, which, under the fundamental law of the state and the acts of the Legislature in conformity therewith, he is authorized to exercise. *People v. District Court*, 39 Colo., 182, 205, 68 Pac. 242.

The crucial question, then, is simply this: Are the arrest and detention of petitioner under the facts narrated

illegal? When an express power is conferred, all necessary means may be employed to exercise it, which are not expressly or impliedly prohibited. 2 Story on the Constitution, par. 434. Laws must be given a reasonable construction, which, so far as possible, will enable the end thereby sought to be attained. So with the constitution. It must be given that construction of which it is susceptible which will tend to maintain and preserve the government of which it is the foundation, and protect the citizens of the state in the enjoyment of their inalienable rights. In suppressing an insurrection it has been many times determined that the military may resort to extreme force as against armed and riotous resistance, even to the extent of taking the life of the rioters. Without such authority the presence of the military in a district under the control of the insurrectionists would be a mere idle parade, unable to accomplish anything in the way of restoring order or suppressing riotous conduct. If, then, the military may resort to the extreme of taking human life in order to suppress insurrection, it is impossible to imagine upon what hypothesis it can be successfully claimed that the milder means of seizing the persons of those participating in the insurrection or aiding and abetting it may not be resorted to. This is but a lawful means to the end to be accomplished. The power and authority of the militia in such circumstances are not unlike that of the police of a city, or the sheriff of a county, aided by his deputies or posse comitatus in suppressing a riot. Certainly such officials would be justified in arresting the rioters and placing them in jail without warrants, and detaining them there until the riot was

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suppressed. Hallet, J., in *Re Application of Sherman Parker*, (no opinion for publication). If, as contended by counsel for petitioner, the military, as soon as a rioter or insurrectionist is arrested, must turn him over to the civil authorities of the county, the arrest might, and in many instances would, amount to a mere farce. He could be released on bail, and left free to again join the rioters or engage in aiding and abetting their action, and if again arrested the same process would have to be repeated, and thus the action of the military would be rendered a nullity. Again, if it be conceded that, on the arrest of a rioter by the military, he must at once be turned over to the custody of the civil officers of the county, then the military, in seizing armed insurrectionists and depriving them of their arms, would be required to forthwith return them to the hands of those who were employing them in acts of violence, or be subject to an action of replevin for their recovery, whereby immediate possession of such arms would be obtained by the rioters who would thus again be equipped to continue their lawless conduct. To deny the right of the militia to detain those whom they arrest while engaged in suppressing acts of violence and until order is restored would lead to the most absurd results. The arrest and detention of an insurrectionist, either actually engaged in acts of violence or in aiding and abetting others to commit such acts, violates none of his constitutional rights. He is not tried by any military court, or denied the right of trial by jury; neither is he punished for violation of the law, nor held without due process of law. His arrest and detention in such circumstances are merely to prevent him from taking part

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or aiding in a continuation of the conditions which the Governor, in the discharge of his official duties and in the exercise of the authority conferred by law, is endeavoring to suppress. When this end is reached, he could no longer be restrained of his liberty by the military, but must be, just as respondents have indicated in their return to the writ, turned over to the usual civil authorities of the county, to be dealt with in the ordinary course of justice, and tried for such offense against the law as he may have committed. It is true that petitioner is not held by virtue of any warrant, but, if his arrest and detention are authorized by law, he cannot complain because those steps have not been taken which are ordinarily required before a citizen can be arrested and detained.

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Nor do these views conflict with section 22, art. 2, of the Bill of Rights, which provides that the military shall always be in strict subordination to the civil power. The Governor, in employing the militia to suppress an insurrection, is merely acting in his capacity as the chief civil magistrate of the state, and, although exercising his authority conferred by the law through the aid of the military under his command, he is but acting in a civil capacity. In other words, he is but exercising the civil power vested in him by law through a particular means which the state has provided for the protection of its citizens. No case has been cited where the precise question under consideration was directly involved and determined, but in cases where the courts have had occasion to speak of the authority of the military to suppress insurrection and the means which may be employed to that end, it has been stated that



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parties engaged in riotous conduct render themselves liable to arrest by those engaged in quelling it. In re Kemp, 16 Wis. 383, 415; Luther V. Borden, supra; Johnson v. Jones, 44 Ill., 143, 92 Am. Dec. 159.

The same rule necessarily applies to those found in the zone of the disaffected district who are aiding and abetting the insurrectionists; for such conduct, unless repressed, would result in the continuation of the insurrection, or at least render it more difficult to suppress. We therefore reach the conclusion that, independent of the questions of the authority of the Governor to declare martial law, or suspend the privilege of the writ of habeas corpus, that the petitioner, on the showing made by the return, is not illegally restrained of his liberty. In reaching this conclusion we are not unmindful of the argument that a great power is recognized as being lodged with the chief executive, which might be unlawfully exercised. That such power may be abused is no good reason why it should be denied. The question simply is: Does it exist? If so, then the Governor cannot be deprived of its exercise. The prime idea of government is that power must be lodged somewhere for the protection of the commonwealth. For this purpose, laws are enacted and the authority to execute them must exist, for they are of no effect unless they are enforced. Neither is power of any avail unless it is exercised. Appeals of a possible abuse of power are often made in public debate. They are addressed to popular fears and prejudices and often given weight in the public mind to which they are not entitled. Every government necessarily includes a grant of power lodged somewhere. It would be incredible without

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it. One Story on the Constitution par. 426; 1 Bailey on Jurisdiction, p. 309, par. 296.

Many authorities have been cited by counsel for petitioner or which it is not necessary to attempt to review. They are not in conflict with the conclusions reached in this case. They treat of the power of the President to declare martial law; to suspend the privilege of the writ of habeas corpus; of the authority of the military to arrest, try, and punish persons not actually in the military service; and when the military may or may not temporarily supersede the usual civil authorities. None of these questions are involved in the present case. In fact, counsel for petitioner practically concede that the questions of the authority of the Governor to declare martial law and suspend the writ of habeas corpus are not involved, because, they say, if he has such authority, he has not assumed to exercise it; but it is immaterial what power in this respect may be vested in the Governor, or whether he has, in fact, attempted to declare martial law or suspend the writ of habeas corpus. The petitioner was lawfully arrested by the military authorities while the work of suppressing the insurrection in San Miguel county was in progress. Such arrest being lawful, his restraint by respondents until it is suppressed, is not illegal.

The writ is discharged and the petitioner remanded to the custody of the respondents.

~~Writ~~ Writ discharged and petitioner remanded.\*

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MR. RICHARDSON: If your Honor please, we want the other decision read.

THE COURT: It I will hear you upon that.

MR. RICHARDSON: There is another decision after that, rendered two years after it. We submit, if your Honor please, here is something which under the ruling of the court becomes evidence for the consideration of the jury. True, it is expected to be limited by an instruction to some certain point with respect to it, but notwithstanding that fact it is read to the jury --

THE COURT: At that time Judge Gabbert was a judge of the court and rendered that decision, and that makes it admissible to show the action of the court, and to show Judge Gabbert was a member thereof, with reference to one of the defendants in this case.

MR. RICHARDSON: But there were three judges of that court and those three judges took part in what was the work of the court. One of them wrote the main opinion, another one adopted that opinion as his own, and another one wrote a dissenting opinion; and it seems to me, if your Honor please, if it goes before the jury for any purpose whatsoever, they should know the entire situation. Now, of course, we know the instruction limits it to what the object and purpose of it was, nevertheless if the jury hear any of it they should hear it all.

MR. BORAH: Of course, if the court please, this authority is introduced and could be introduced for one purpose, and that is to show that a decision was rendered at a certain time and this particular party participated in that decision.

THE COURT: That is, Judge Gabbert?

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MR. BROWN: Yes, Judge Gabbert. It doesn't make any difference whether he was right or wrong, or how erroneous it might have been, or anything of that kind, because it is simply a question that he participated in it and that it affected one of the parties to this suit. Now the dissenting opinion would not have that effect and could not reach that question at all because it did not take that view of the matter, and I apprehend that the court in its instruction will limit this, and that is the only purpose for which we offered that. We offered to confine it, when we offered it in the first instance, to the sole question that a decision was rendered and that this particular judge participated in it and that it affected one of these defendants, and that is the only object of introducing it in this case.

THE COURT: And the court is admitting it limits it to that one purpose.

MR. BROWN: May I say one word about that, if the court will permit?

THE COURT: Yes, sir.

MR. BROWN: The opinion is not a part of the record of any case. So far as proving that an opinion was rendered, a decision of the Supreme Court was rendered in a case where Judge Gabbert was a member of the court, nothing but the record of the case is admissible. An opinion is simply the essay of the judge showing how he arrived at his decision, and it is nothing else; it has no binding effect of any sort. It is simply the final order that is a part of the record in the case, and an opinion of one judge is no more than the opinion of any other judge. If the opinion of a court --

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THE COURT: This purports to be a decision of the court.

MR. DAWSON: No, it purports to be the reason of the court for making the decision. The judgment is the only thing that is valid. The court might render a judgment without rendering any opinion whatever, just simply decide a case, and very often that is the safest way to decide one, but that is all there is that has any valid, binding effect upon anybody. Now it is customary for the court to give their reasons for doing it.

The opinions of the other judges are just as much a part of the case as the opinion of this judge. / Of course the only reason that any part of this could be admitted would be that it might furnish some inducement to somebody who was a defeated litigant to go out and kill the judge. That is a very long -- far-off reason; but if it was a reason for him it was a reason for any other judge, any other member of the court, anybody else who delivered an opinion at that time likewise a reason for any other party who might be defeated in any case to act the same in the case in which he was defeated; but the opinions of any other judge in this particular court are just as competent to show motive on the part of this defendant as this one, and so far as any other of them is connected with the record in the case it seems to me that every opinion should be read, one is as much a part of it as another; if any one is read, they should all be read.

MR. BOWMAN: If the Court please, as I suggested a moment ago, this is, under our statute, when we go to prove the decision of another supreme court, with the exception that we should have had the original volume of the Colorado reports, which was waived. But when we go to prove the decision of a supreme court of

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another state we simply take that decision as it is printed in the volume and that is the decision, that is by our statute; there is no doubt about this being the only thing which we have to introduce in order to show that a decision was rendered. Now the only thing that we ever wanted to show in this case was the fact that a decision was rendered. We don't care what the law is nor what their reasoning is, but only to know that a decision was rendered. It was necessary to read the decision.

THE COURT: What has been already read that is what was offered, as I understand you.

MR. BORAH: Yes sir, what was offered.

THE COURT: This was admitted. If there is anything further either by way of explanation of this decision that counsel for the defense wants read here, they may read it at this time. I will not, however, direct counsel for the State to do so.

MR. RICHARDSON: That is on a similar ruling your Honor made this morning, that when they introduce a part of an article we could have it all read.

THE COURT: Yes sir.

MR. RICHARDSON: We will ask to read this in the morning.

THE COURT: Very well.

Hereupon the bailiffs were sworn, the jury cautioned and retired in the custody of the bailiffs, the defendant was remanded, and the court adjourned until 9:30 o'clock tomorrow morning.

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Boise, Idaho, Friday, June 21, 1907.

9:30 o'clock A. M.

Parties met pursuant to adjournment.

The clerk read the minutes of the session of Thursday, June 20th, 1907, and the same were signed by the court.

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

MR. BORAH: If your Honor please, in reference to the draft purchased in December, 1905, which is among the exhibits of exhibit Q, one has been destroyed, or a part of it.

THE COURT: Which one is that?

MR. BORAH: It is the draft purchased in December, 1905, and the only one among this group purchased in that month.

THE COURT: Which is it in its order?

MR. BORAH: It is the third draft in the bunch.

MR. RICHARDSON: It is the fifth in the order in which you named them.

MR. BORAH: It is agreed that the records shall show that that date is December 21st, 1905, subject to the right of the defense to check up on the matter.

MR. RICHARDSON: Mr. Borah informs me that he has a wire from Mr. Houston that the date was December 21st, and I will wire Mr. Hawkins today requesting him to go to the bank and

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check it up.

THE COURT: That is the draft that you spoke of?

MR. RICHARDSON: Yes, as having the date out out, and  
I referred to it as being between the 20th and the 30th.

THE COURT: Yes, I remember that.

MR. BORAH: I will recall Mr. Hancartney.

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W. V. Macartney, a witness called on behalf of the people, being recalled for further examination, and having been heretofore duly sworn, on oath testified as follows:

RE-DIRECT EXAMINATION

BY MR. BORAH:

Q When you were on the stand yesterday, these exhibits D 2 and E 3 were presented to you and you stated that the second, I believe, or the first papers are in your handwriting, did you?

A The second paper.

Q The second paper is in your handwriting? A Of each exhibit was in my handwriting.

Q Was the first paper of each exhibit in your handwriting?

A It is not, no sir.

Q Whose handwriting is it in with reference to the party who would send the money, or apply to send the money?

MR. RICHARDSON: If he knows?

Q Yes, that is to say, did you have anything to do with making out the first papers? A No, they were made out when they were presented to me.

Q They are not in your handwriting? A No sir.

Q Do you know yourself who wrote the first papers? A No, I don't.

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MR. BORAH: That is all, Mr. Macartney.

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

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What is your name? A Charles S. Kingsley.
- Q Where do you reside, Mr. Kingsley? A In this city.
- Q How long have you resided here? A 26 years.
- Q What is your business or occupation? A Attorney at law.
- Q Any other business besides that? A I have no other business; I have some times been called upon to testify as to hand-writings.
- Q Have you had experience in the comparison of handwritings?
- A Some considerable, yes sir.
- Q To what extent-- please state what that experience has been, as a matter of study and as a matter of practice?
- A As a matter of study having had my attention-- or having been engaged or directed to the fact that a comparison of signatures was some times an important one in the affairs of the world, so long ago as the case of the will of William Sharin, I began to compare signatures. As register of the United States Land Office in this district for 15 years I gave some attention to the comparison of signatures, having the opportunity of seeing many men sign several times their signature to papers;

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- again, as the clerk of the district court of this judicial district I was placed in a position where my attention was called to signatures, following all of which I studied D. T. Innes somewhat in his work on forgery and have been called upon to testify as to signatures in the federal and district courts of the state and in committing magistrate's courts.
- Q How long have you been engaged in this effort to, or in this study, and in the practice of the comparison of signatures and handwritings-- how many years has it been? A I could not say as to that; I don't remember when my interest was first aroused.
- Q About how long? A More directly during the last ten or twelve years.
- Q Mr. Kingsley, was your attention, or has your attention been called in the past three days to some papers said to have been connected with this case? A Yes sir.
- Q I will call your attention to plaintiff's exhibit Exh U 1 and you may examine that and see if that is one of the papers to which your attention has been directed? A Yes sir.
- Q I will ask you to look at plaintiff's exhibit E 2 and state whether or not that is also one of the papers.
- Q The outside in paper of E 2? A My examination included the outside paper of E 2 both upon the front and reverse.
- Q Upon both sides of the outside paper of E 2? A Yes sir.
- Q I will call your attention to exhibit D 2 and state whether or

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not that is one of the papers involved in your investigation?

A It is.

Q Have you made sufficient investigation to testify, Mr. Kingsley, -- investigation and comparison with reference to their being the same handwriting or different handwritings?

MR. DARRON: Just before you ask him the final question, please let us look at those.

MR. HAWLEY: Yes, in just a minute.

A Yes sir, I have made such an examination of the three exhibits.

Q You need not answer this question until counsel has had a chance to object. State whether or not the papers in D 2 and E 2 are in the same handwriting, in your judgment, so far as the written part of both back and front is concerned, with the outside paper, with the handwriting in exhibit U 1? You need not answer that until counsel has a chance to object.

MR. DARRON: Go ahead, Mr. Hawley.

Q You may answer the question. A Will you please read that question.

The question was then read to the witness.

A It is my opinion from an examination made by me of the writing in State's exhibit U 1, and in their exhibits D 2 and E 2, both upon the face and reverse of the paper, which is the telegraph money orders, were written by one and the same hand.

Q That includes the body of the writing, does it, in U 1, as well as the signature? A It does.

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MR. HAWLEY: You may take the witness.

MR. RICHARDSON: That is all. We move to strike out the testimony of this witness as immaterial, incompetent and irrelevant, as neither tending to show nor showing that Mr. Hayward had any connection whatever with the matter, and as neither tending to show nor showing that he had anything to do with the killing of Mr. Steunenberg, which is the matter here on trial.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

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

DIRECT EXAMINATION

BY MR. BORAH:

- Q What is your full name? A Jim Seaborn.
- Q Where do you reside? A Denver, Colorado.
- Q How long have you resided in Denver? A 25 years.
- Q What is your business? A Some horse man. I have been running a stable there for several years.
- Q Where is your stable located in Denver? A 2541 Champa, in the rear.
- Q Do you own a stable? A No sir, I don't own the property at all I rent it.
- Q What kind of a stable do you run? A A boarding stable.
- Q A livery boarding stable? A Yes sir, a boarding stable.
- Q How long have you been located at that particular place, did you say, running this stable? A I have been there about 18 years, that one place.
- Q Do you know a man named Vance? A Yes sir.
- Q What does he do? A He runs a livery stable.
- Q He owns a livery stable? A He did, but don't now. He sold it out about a month ago.

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Q How long have you known Mr. Vance? A I don't know exactly,-- about seven or eight years.

Q Did you have a business transaction in the way of selling a horse and buggy with Mr. Vance some time ago? A Yes sir.

Q You may state just what occurred.

MR. RICHARDSON: We object to that as immaterial, incompetent and irrelevant, not binding upon this defendant or tending to connect him in any way with the killing of Governor Stearnsberg.

THE COURT: Do you expect to connect this?

MR. BORAH: I expect to, but I think it has been. It is a transaction that Orchard testified to in reference to purchasing a team there.

THE COURT: I recall the testimony. The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q You may state, Mr. Seshorn, what the first-- state the transaction beginning with the matter as it was taken up with Mr. Vance and tell of the sale, just what took place, as near as you can recollect it.

MR. RICHARDSON: We object to that because we are not bound by anything that Mr. Vance did or said.

THE COURT: He is asking what he knows about the transaction. The court will overrule the objection at this time.

MR. RICHARDSON: Note our exception.

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Q Go ahead. A I met him, Mr. Vance, down on the street one morning and told him I had a cheap horse and buggy to sell.

MR. DARROW: I object to this conversation between this witness and Mr. Vance.

Q Was your attention called to the fact, or did you state in substance that you wanted to sell a horse? A Yes sir.

MR. DARROW: We object to that.

THE COURT: The objection is overruled.

MR. DARROW: Save an exception.

Q After that was made known Mr. Vance, state just what you did? A He said he knew where I could sell it.

MR. DARROW: Wait a minute. Now, it may be a very slight and immaterial matter, but to say that he can go on and relate a conversation between Vance and this witness --

THE COURT: He may state what was done, but not what was said.

MR. DARROW: I move to strike out the question --

THE COURT: Yes, that may be stricken out.

MR. DARROW: And also the answers, the statements that were made.

THE COURT: I will not strike out the statements made to Mr. Vance.

MR. DARROW: Save an exception.

Q What did you do, without stating what was said? A I just drove the horse and buggy down there and he got in with me



and took me up to Mr. Pettibone's place, and he got out and went in and there was a gentleman come out and got in the buggy with me and we drove around on Larimer street.

Q Down to what point on Larimer street? A 15th and Larimer, two or three doors from the corner, something like that, and he got out and went upstairs and another man come down with him and they got in the buggy and he said, "We will be back directly;" and they drove off for a little while and come back and I got in the buggy with him and we went back up to Mr. Pettibone's place.

Q As I understand, when you first hitched up the buggy, you went to Vance's place? A Yes sir.

Q And from there to— A Mr. Pettibone's.

Q What place was this on? A Mr. Vance was on Lawrence street.

Q And what place was this place on you went to second?

A It was on Court Place, I think.

Q And what was the third place you went to? A The corner of 15th and Larimer.

Q Now, when you got to the place on Court street what did Vance do? A He got out and went in the house— in the store.

Q Who come out, if you know? A Mr. Orchard was the man.

Q Have you seen him since you came to town? A Yes sir.

Q And after this party got in at the Pettibone place, or on Court street, then you drove to what place? A Drove to 15th and Larimer.

Q Who was with you in the buggy when you drove down there?

A Mr. Orchard.

Q After you got to 15th and Larimer did you go direct to the corner? A No sir, I drove a little the other side of the corner, one or two doors.

Q And after you arrived at that point what was done? A He got out and went upstairs and I sat in the buggy until he came down, and this other man was with him, and he says, "I will be back with this buggy in a few minutes;" and they went away.

Q Do you know who it was that came downstairs with Mr. Orchard?

A No sir, but I know the man when I see him.

Q Can you point him out? A Yes sir.

Q Where is he? A The gentleman sitting over there, one of them (nodding at Mr. Haywood and his counsel).

Q Did you know his name at that time? A No sir.

Q Did you know Orchard's name at that time? A No sir.

Q Was any names mentioned? A No sir, there was not a name mentioned at all.

Q Any introductions? A No sir.

Q Did you afterwards sell the horse? A Yes sir.

Q What kind of an animal was it? A It was a little black mare and a light top buggy.

Q What was the price paid for it? A \$110.

Q MR. BORAH: You may examine, or just a moment. Yes, you may cross examine.

MR. RICHARDSON: We move to strike out the evidence of this witness as immaterial, irrelevant and incompetent, as neither connecting nor tending to connect the defendant with any crime whatsoever, much less the crime with which he stands here charged, and not corroborative of any evidence in the case within the meaning of the Lohm statute.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

#### CROSS EXAMINATION

BY MR. RICHARDSON:

- Q You say you were paid \$110? A I got that.
- Q Where did you get it from? A I got it from Mr. Graham.
- Q How did you come to come up here, Mr. Eschorn? A Oh, some Pinkerton detective come after me.
- Q Came after you? A Yes sir.
- Q Paid you for coming? A Yes sir.
- Q How much? A I was to get \$2.00 a day and my expenses.
- Q \$2.00 a day and your expenses? A Yes sir.
- Q From the time you left Denver until you got back? A Yes sir.
- Q And how much for your mileage? A Yes sir, something, I have forgotten now.
- Q About how much? A I think it is 25 cents a mile.
- Q 2500 miles? A 25 cents a mile, something like that.

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- Q How many miles? A I don't know.
- Q Whatever the distance is from here to Denver that is what you are going to get 25 cents a mile for, is it? A I don't know, sir, exactly.
- Q You don't know? A No.
- Q Where did you see Orchard since you have been here? A Out to the jail.
- Q You went out to the jail, did you, to see him? A Yes sir.
- Q How long have you been here? A I got here Wednesday evening.
- Q You identify him as being the man that rode with you in the buggy? A Yes sir.
- Q You went there, to the jail, expecting to see this man, didn't you, and was told in advance that you would see the man who had ridden with you in the buggy? A I went out there to see him.
- Q You are selling horses all the time? A Once in a while.
- Q You gave a bill of sale? A Yes sir.
- Q Who did you give the bill of sale to? A Mr. Orchard.
- Q And where were you when you were paid the \$110. for the horse? A Right in the barn.
- Q Right in your barn? A Yes sir.
- Q Was that before or after this ride you have spoken of? A It was after that. It was the last time I ever saw him.
- Q About how long after the ride? A About an hour.
- Q He came to your barn and gave you the money and you gave him

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the bill of sale? A Yes sir.

Q And the bill of sale was made out to Harry Orchard?

A No sir, it was made out to Mr. Pettibone.

Q What was the first name? Do you remember what the first name was? A No sir.

Q It was made out to Pettibone at Orchard's request? A I don't know about that. Mr. Vance made out the bill of sale.

Q You did not make it out? A No sir.

Q You did not see the bill of sale? A Yes sir, he read it off to me.

Q Did you write your name on the back of it? A I have forgotten whether I did or not.

Q It was your horse and buggy? A Yes sir, but I cannot write any.

Q Do you read writing readily? A No sir, I cannot read a bit.

Q Can you read? A No sir.

Q Can you write? A No sir.

Q And all you know about it is what Vance told you? A Yes sir.

Q He told you what its contents were? A Yes sir.

Q And you are testifying to what Vance told you as to its contents? A Yes sir.

Q In any event, you had no deal or talk with anybody but this man Orchard in regard to the horse? A That is all.

MR. RICHARDSON: That is all, Mr. Vance.

MR. BOSAN: That is all, Mr. Vance.

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MR. BORAH: If your Honor please, we are ready to close this case as soon as we can introduce this telegraphic matter from the Western Union which your Honor made an order to have produced here several days ago. As I told your Honor, the matter has been sent here and we again have a telegram in our hands stating the matter has been mailed and it surely ought to be here tonight. I don't understand this delay. We have done everything we could to get it and it is very much of an annoyance to us that we do not get it. So far as we are concerned, we would be glad to have the Western Union pay for these delays if it can be done. But we do not feel that we can close this case without it.

THE COURT: Is it sure that the evidence will be here tomorrow morning?

MR. DARNOW: Let us see what it is. Is it that seventy-five dollar matter?

MR. RICHARDSON: That one, you purport to have a telegram from Haywood to Steve Adams at Ogden sending him \$75 in 1903, is that what you want?

MR. BORAH: Let me see as to the date. That is the transaction. We want to have a few moments' consultation, if your Honor please.

(Consultation between Mr. Borah and Mr. Hawley).

MR. RICHARDSON: If you get your telegram you can put it in any time. Of course we are going to object to the competency, relevancy and materiality of it; but we won't put you to any trouble in making the proof.

MR. BORAH: With the record showing that upon the date

testified to by Mr. Pender, or Cherebouts, Mr. Adams sent a telegram to Mr. Haywood stating in substance that he was in jail and to send him \$75, and that in response thereto Mr. Haywood transmitted to him over the Western Union telegraphic service, \$75, which he received, we will close our case.

MR. RICHARDSON: We will admit that they have furnished competent and satisfactory proof upon that so far as its authenticity is concerned and gave them the trouble of sending for the telegram. Of course we desire to object to it as being immaterial, irrelevant and incompetent, as not connected with this defendant, or connecting the defendant or tending to connect him in any way with the killing of ex-governor Stannenberg, which is the only matter he is here on trial for, and as not corroborative of any testimony that has been introduced in the case upon any issue in the case.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Of course this decision we want to read. You can formally close, but we want to have that decision read so the jury may be advised of it.

MR. HAWLEY: Do you want us to read it?

MR. RICHARDSON: We would enjoy hearing you read it.

THE COURT: The Court said if they insisted upon it being read it should be read by the defendant.

MR. RICHARDSON: We have a good reader here. Mr. Bugent will read it. This is really the best literature we have had yet, if your Honor please, and I am sure the jury will enjoy it.

MR. BOWMAN: I have a suspicion Mr. Richardson wrote that dissenting opinion.

MR. RICHARDSON: I have been accused of it, but it isn't true. It sounds something like a brief I wrote, but it doesn't follow that I wrote the decision and I did not.

THE COURT: How many pages are there?

MR. RICHARDSON: It is in columns, if your Honor please.

MR. HUGHES: This dissenting opinion is written by Steele, Judge --

THE COURT: I understand there is no objection on the part of the state to the reading of this opinion?

MR. BOWMAN: We objected yesterday but I understood the court said if they were going to offer it as an explanation of the former they could do so.

THE COURT: I did not so understand.

MR. BOWMAN: Did not so understand?

MR. RICHARDSON: I understood your Honor said we could read it in explanation just the same as in the case of the other articles where only a part of them was offered.

MR. BOWMAN: We thought we made an objection. It was discussed here. Perhaps we did not formally put it in the record, but we will.

THE COURT: This opinion here seems to be a dissenting opinion and is not the opinion of the court. There seems to be some other additional suggestions by Chief Justice Gabbert after the filing of the dissenting opinion. Considering the purpose for which the decision is admitted, the court will



sustain this objection. I do not see the necessity of taking up the time of this jury with reading fifteen pages of closely written dissenting opinion, which is not the opinion of the court. The decision of the court has already been read.

MR. RICHARDSON: Note our exception.

(The matter which the defendant offered to read in evidence is the dissenting opinion by Steele, J., in the case of "In Re Mayer," found on page 194, et seq. 65 Pacific Reporter, which is made a part hereof by reference).

MR. RICHARDSON: Now, in order to save the record, we move to strike out all reference to the original opinion which was read here yesterday, and to the reading of it as well.

THE COURT: The motion will be denied.

MR. RICHARDSON: Note our exception.

THE COURT: I understand this is the close of the State's case?

MR. HAWLEY: Outside of the reading of that telegram when it comes. It has already been passed on.

MR. RICHARDSON: I suppose the one or two impeaching questions that I want to ask of Mr. Orchard will be considered as a part of the State's case as quick as we get ready to ask those questions.

MR. HAWLEY: When will your witnesses be here?

MR. RICHARDSON: I cannot possibly tell. I am expecting the witness here every day that I am informed knows about it, and he will probably be here by tomorrow anyway.

MR. HAWLEY: That will be all right.

THE COURT: Then if your witnesses are here before you commence taking your testimony I suppose Mr. Orchard can be recalled for that purpose and of course the State will have the right to re-examine upon that.

MR. RICHARDSON: Oh, of course; I suppose that testimony will be considered as being taken just before the State rests.

THE COURT: Yes sir, as part of the case of the state.

MR. MORAN: Yes, the record may show that.

MR. RICHARDSON: Well, if your Honor please, so far as I am concerned, we would like to present this motion at two o'clock this afternoon, if you have no objection. We can occupy the afternoon with it I think.

THE COURT: It is now only half past ten, and in order to be sure to get through with it, Mr. Richardson, suppose we say 1:30?

MR. RICHARDSON: Very well.

THE COURT: Will it be necessary that the jury be brought in at the filing of your motion?

MR. RICHARDSON: I think not.

THE COURT: If you have a motion to make, consider it filed at this time.

MR. RICHARDSON: We will either prepare a written one or state it orally. It don't really make much difference which.

THE COURT: We will consider it as filed at this time. We will have the jury brought back at half past one and as soon as your motion is made we will excuse them. Swear the bailiffs.

Thereupon the bailiffs were sworn, the court gave the statutory admonition to the jury, the jury retired in the custody of the sworn bailiffs, the defendant was reexamined, and a recess was thereupon taken until 1:30 P. M. today:

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R E C E S S .

Boise, Idaho, Friday, June 21, 1907.

1:30 P. M.

Parties met pursuant to adjournment.

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

THE COURT: Have you filed your motion?

MR. RICHARDSON: We have filed our motion, if your Honor please.

THE COURT: Let me look at it a moment, please.

(Motion handed to court).

THE COURT: Mr. Sheriff, are the bailiffs all here?

THE SHERIFF: All here, your Honor.

THE COURT: Swear the bailiffs, Mr. Clerk.

There upon the bailiffs were sworn, the jury was given the statutory admonition by the court, and the jury retired in the custody of the bailiffs.

MR. RICHARDSON: If your Honor please, we have filed a motion in this case, which is as follows:

"Now on this 21st day of June, A. D. 1907, comes the above named defendant, William D. Haywood, by his attorneys, and moves the court to advise the jury in the above entitled cause to acquit the defendant, William D. Haywood, in accordance with section 7577 of the revised statutes of the state of Idaho, for the following reasons and each and every of them, to-wit:

First: Because the only testimony which tends to connect the defendant, William D. Haywood, with the homicide

charged in the indictment herein is that of Harry Orchard, who testified that he was an accomplice in the commission of said offense.

Second: Because the testimony of the alleged accomplice in this case is uncorroborated by any 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 charged.

Third: Because the corroboration of the accomplice witness in this case is not sufficient, since it fails to show the commission of the offense or the circumstances thereof in any way which either connects or tends to connect this defendant therewith.

Fourth: Because the testimony in this case is wholly insufficient to warrant the rendition of a verdict, or the pronouncement of sentence thereon, as under section 7871 of the revised statutes of the state of Idaho.

Fifth: Because the evidence received in the case is immaterial, irrelevant and insufficient upon which to found a verdict or to sustain one if found.

Sixth: Because the evidence wholly fails to disclose that the defendant is in any wise connected with or had knowledge of the perpetration of the offense charged in the indictment.

Seventh: Because, while it is charged in the indictment that this defendant was personally present and did commit the crime therein charged upon the body of one Frank Steunenberg on or about the 30th day of December, A. D. 1905, nevertheless, the evidence fails to disclose that he was present, or that he

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was either an aider, abettor or procurer or adviser of anyone connected therewith, or who committed the alleged offense which compassed the death of the said Frank Stamenberg, in this, to-wit, that the evidence which tends to connect the defendant on trial therewith is given solely and wholly by one Harry Orchard, who admits that he himself was guilty of the actual perpetration thereof, and without the aid of the testimony of the said Harry Orchard, the self-confessed perpetrator of the said offense, there is no testimony or evidence which in any wise tends to connect the defendant with the commission of the said offense, and the said testimony and evidence of the said Harry Orchard is wholly uncorroborated, within the meaning and intent of section 7871 of the Revised Statutes of the state of Idaho.

Wherefore, the defendant William D. Haywood, asks the court to advise the jury to return a verdict in favor of the defendant."

It is signed by the counsel for the defendant William D. Haywood.

If your Honor please, the question which is involved here very naturally divides itself into two parts: First, is the consideration of what the law is applicable to a case of this character; and the second is an analysis of the facts to determine whether or not they fit the law as it has been pronounced in the statute and as it has been construed and determined by the courts in this and in other jurisdictions in analogous cases. The language of this state, if your Honor please, represents the outgrowth of the common law upon this subject of the testimony

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of accomplices. There was a time, and perhaps that time exists in some jurisdiction yet, where the testimony of an accomplice uncorroborated may result in a conviction. But the experience of mankind caused the courts long before the enactment of the statute which is now under consideration to declare that upon the uncorroborated testimony of an accomplice alone there could be no lawful conviction and no lawful sentence. It was found that injustice was perpetrated so many times in cases of that character that finally it became crystallized into a statute; and of all the statutes there are upon this subject there is probably none, although there are others as broad, that are any broader than the one which is in course and in effect in this state. I read from Section 7871 of the Revised Statutes of the State of Idaho:

"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."

I have emphasized the words "without the aid of the testimony of the accomplice", for I propose to show your Honor at the outset in the construction of these words that we are obliged, for the purposes of this action, to absolutely eliminate from our consideration the entire testimony of Mr. Orchard. We can get no aid in the determination of this question by applying to the testimony of Mr. Orchard for any fact whatsoever, as I

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shall presently proceed to show you. I shall then analyze the testimony in this case, both documentary and oral, other than that which has been given by Mr. Orchard, to show to your Honor that there is no corroboration within the meaning of this state; that there is no single piece of testimony which, standing alone, tends to convict this defendant; that it is only when that testimony is taken in connection with and construed in the light of the testimony which is given by Mr. Orchard that there is any tendency to establish a connection between this defendant and Mr. Orchard in the perpetration of this offense.

It has been written in a text book as follows:

"Where by statute it has become necessary to the validity of the verdict that the testimony of the accomplice should be corroborated, the charge of the court constitutes an instruction and not mere advice, and must be followed."

I pause to observe, if your Honor please, that you have a statute here which uses this language:

"If at any time after the evidence on either side is closed the court deems it insufficient to warrant a conviction, it (the court) must advise the jury to acquit the defendant."

But the jury are not bound by the advice.

In other states having similar statutes, if your Honor please, I will show you what the force and effect of such a statute as that has been declared to be in a case like the one at bar.

In *Taylor v. the Commonwealth*, 10 Ky. Law, 169 (8 S.W. 461), wherein conviction was had principally, if not wholly, upon the testimony of an acknowledged accomplice, the court



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instructed that a conviction cannot be had upon testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the commission of the offense, but it did not instruct, as required by section 241 of the Criminal Code that "the corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof." It was held that the defendant was entitled to an instruction given in the language of the Code.

In *Craft v. Commonwealth*, 80 Ky., 349, it was held error not to give the following instruction:

"A conviction cannot be had upon the testimony of an accomplice, unless corroborated by other evidence tending to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows that the offense was committed and the circumstances thereof."

These readings are preliminary to what now follows.

"Where there are no corroborating circumstances it is the duty of the court to instruct the jury to acquit, thereby determining, as a matter of law, that, standing alone, the evidence given by an accomplice is not entitled to any weight, and shall not be considered by the jury. If there is evidence tending to support the statements made by the accomplice, such evidence is competent, and should be permitted to go to the jury for their consideration, as in ordinary cases; but the permission that such evidence may go to the jury is not a determination by the court that it is

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credible, or that it, in fact, establishes the existence of corroborating circumstances, and the fact of the admission of such evidence does not add to nor detract from the positive declaration of the Code that no conviction shall be had upon the uncorroborated testimony of an accomplice. Before the jury can consider the evidence of an accomplice as a factor in the problem of the guilt or innocence, they must first determine that the other evidence heard proves the existence of corroborative facts, for without their existence a conviction might be had upon the evidence of the accomplice alone. If the evidence claimed to be corroborative does not tend, when its truth is admitted, to this end, it is the duty of the court to exclude it, and to direct an acquittal."

In the light of that decision we shall analyze this evidence presently.

"It is necessary, however, that the evidence corroborating an accomplice shall connect or tend to connect the defendant with the commission of the crime. Corroborative evidence is insufficient where it merely casts a grave suspicion on the accused. It must not only show the commission of the offense and the circumstances thereof, but it must also implicate the accused in it. Hence, corroboration relating exclusively to the corpus delicti and the circumstances thereof will not sustain a conviction.

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12 Cyclopaedia, 456.

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"The corroborative evidence 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; and independent evidence merely consistent with the main story is not sufficient corroboration if it requires any part of the accomplice's testimony to make it tend to connect the defendant with the crime."

There is an illustration: Take the evidence of Miss Cora Peabody, who was on the stand in this case. It tends to corroborate Orchard's testimony to the effect that he, Orchard, and another man were present at a time when she got out of her carriage. That is all that it tends to show, unless possibly it may be that by reason of the nervousness of this man to her she became frightened and called up the detective department on the telephone when she got into the house. Now that sort of evidence, if your Honor please, falls right squarely under the doctrine of this authority. "It is not sufficient if it requires any part of the accomplice's testimony to make it tend to connect the defendant with the crime."

This is case 1 Encyclopaedia of Evidence, 104.

THE COURT: What is the decision you are citing?

MR. RICHARDSON: I will give you that a little later, if your Honor please, and will read from it. I haven't it right before me or of course I would comply with your request now.

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"There must be some fact derived to, independently altogether of the evidence of the accomplice, which, taken by itself, leads to the inference, not only that a crime has been committed, but that the prisoner is implicated therein."

People v. Plath, 100 N.Y., 590.  
(3 N.E. 790)

In State v. Odell, 8 Oregon, 50, the Court says:

"The court should have given the instruction asked by the defendant's counsel as follows: 'A conviction of the defendant, Odell, cannot be had upon the evidence of the accomplice, George, unless he is corroborated by other evidence tending to show the connection of the defendant, Odell, with the commission of the crime alleged in the indictment, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances of the commission.' "

"It makes not the slightest difference how thorough the corroboration of the accomplice may be in regard to facts related by him, such -- such, for instance, as his movements; such, for instance, as his own acts; such, for instance, as the testimony of Vaughn who was with him in Canon City. "It makes not the slightest difference how thorough the corroboration of the accomplice may in regard to facts related by him, yet, unless there is some proof, independent of his testimony, tending to connect the defendant with the commission of the crime, there is no sufficient corroboration."

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Chambers vs. State, Texas Criminal Appeals, 1898.  
(44 S. W. 495).

"The law is emphatic that the accomplice must be corroborated by evidence which tends not only to show the commission of the offense, but it must further tend to connect the defendant with the offense committed. That is the corroborating evidence; and we shall presently see whether there is any of that here or not.

"This is certainly not accomplished when the testimony offered to corroborate the accomplice goes no further than merely to raise a grave suspicion that the accused committed the crime in question."

Taylor vs. State, 110 Ga., 150.

"In the case made by this record, which is a felony, the sole witness connecting the defendants with the transaction is one who admits that he was one of the robbers, and there are no such circumstances proven by other witnesses corroborating his statement that the prisoners were with him, or that they were connected, in any way, with the commission of the crime. It is contended, however, that as other witnesses do prove there was a robbery, and that the time, place and circumstances were such as stated by the witness, this amounts to such corroborating circumstances as fulfill the terms of the Code, leaving the weight of these circumstances to be determined by the jury.

I shall submit for your Honor's consideration in this case before I take my seat, if your Honor please, that the corroboration in this case goes to the fact that there has been a crime

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committed in this case; that the time, the place and the circumstances of the crime might be such as were stated by the witness who was introduced as an accomplice.

"This amounts to such corroborating circumstances as fulfill the terms of the Code, leaving the weight of these transactions to be determined by the jury."

That is what is said by the court below:

"A majority of the court are of the opinion that such circumstances, however numerous and detailed, are not corroborative circumstances in the sense of the Code. That the witness himself, who comes forward before the court as a perpetrator of the crime, should be able to tell the time of night, the manner of the crime, that more than one were engaged, the amount stolen, and so forth, is corroborative of his own guilt, and is involved in the very admission that he is an accomplice. But that he tells the truth about such things as ~~these~~ these is, as it seems to us, nothing going to show that the prisoners are guilty, and do not at all corroborate his story implicating the defendants."

Childers vs. the State, 32 Ga. 106.

Middleton vs. The State, in the same volume, 327.

I believe the two cases, if your Honor please, grew out of the same transaction where there was convictions in both of them, and both of them were reversed for the reason that the corroborative circumstances all depended upon and were connected with the testimony of the accomplice in the case.

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In People vs. Ames, 39 California, 403, under a precisely

similar statute, the court, in construing the statute says:

"As we construe this provision, the corroborating evidence 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."

In this case the defendant was Charles G. Anon, and it was held that the fact that at the time of the robbery of the stage coach one of the robbers was addressed by another as "Charley", did not tend to connect the defendant with the crime.

In *People vs. Compton*, 128 California, 403, the trial court instructed the jury:

"that, while it is true that a conviction cannot be had on the testimony of an accomplice, unless he is corroborated by other evidence tending to connect the defendant with the commission of the offense, yet I charge you that such corroborative evidence need not tend to establish the precise facts testified to by the accomplice. It is sufficient if such corroborative evidence tends in any way to connect the defendant with the commission of the crime charged."

But the Appellate court said:

"This instruction fails to take account of the essential character necessary to the corroborative evidence which is that, standing alone, or, as is phrased by the Code, 'without the aid of the testimony of the accomplice,' it must tend to connect the defendant with the commission of the crime. Here the jury was told

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that it is sufficient if such corroborative evidence tends in any way to connect the defendant with the commission of the crime. Such is not the law. It could tend to connect him with the crime, by considering it with the testimony of the accomplice; yet, if it is necessary so to consider it, it would not be legally sufficient. It is legally sufficient only if, standing alone, it tends so to connect him."

"It is needless to add that evidence sufficient to raise a suspicion of guilt could not alone be a corroboration under Section 1111" -- that is of the California Code, which, as I have said, is precisely the same as the Idaho Code -- "nor would it justify a conviction."

People vs. Hoagland, 138 Cal., 358.

"Testimony that tends to connect the defendant with the commission of the offense charged only when supplemented by certain testimony of the accomplice, is not such corroborating testimony as the statute requires."

State vs. Conditte, 7 N.D., 109.

"The corroborating evidence in this case tended merely to show that an offense had been committed, and the manner and circumstances of its commission; but it had no tendency to connect the defendant therewith, unless it should be held sufficient to convict a man of ~~guilt~~ burglary ~~guilt~~ that he is seen drunk and in company with a burglar at or near the time and place when and where a burglary is committed. However well founded a suspicion this

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may justly authorize, we do not think it affords the corroborating testimony contemplated by the statute," and the case was reversed.

State vs. Willis, 9 Iowa, 592.

"Where the circumstances when proved, taken separately or collectively, are consistent with the innocence of the accused, there is no corroboration, and a verdict of conviction based thereon will be set aside."

Let me call your Honor's attention specifically to that language, for when I come to analyze the facts in this case your Honor will see how appropriate it is. "Where the circumstances when proved, taken separately or collectively, are consistent with the innocence of the accused, there is no corroboration." Take, for instance, a writing that occurs here, if the writing standing alone is consistent with the innocence of the accused, and in order to connect him with the guilty party who confesses to the crime it is necessary to resort to his evidence to aid that writing, so as to establish the connection, it is not the corroboration which is required by the statute of this state.

"Corroboration of an accomplice upon the facts and circumstances of the corpus delicti when these facts and circumstances have no more tendency to fix guilt upon the accused than anyone else, will not dispense with corroboration of that part of the testimony of the accomplice which goes to identify the accused as the perpetrator, or one of the perpetrators, of the crime. In the present case all the facts and circumstances, taken separately or collectively, relied upon as

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corroboration, were consistent with innocence on the part of the accused, and were therefore insufficient to satisfy the rule of law which requires the evidence of a single witness, who is himself an accomplice, to be corroborated, and forbid conviction on a charge of felony upon the evidence of an accomplice.\*

*Blois vs. State*, 92 Ga. 524.

We shall presently take up all of these facts and circumstances and we shall see whether when they stand alone, all by themselves, they are as consistent upon the face of them with the innocence of the accused as they are with his guilt. If they are consistent with that innocence, and it is only because of the aid which they received from the testimony of the accomplice, then that testimony of the accomplice must be set aside, and these facts being as consistent with the innocence as they are with the guilt of the accused, the corroboration required by the statute and upon which only a conviction can rest must, if your Honor please, control; and it will be your Honor's duty, however disagreeable it might be, it would be your Honor's duty, I take it, under the statute, to say that there has been no corroboration here which would permit this jury to return a verdict of guilty, or permit your Honor, if they did return a verdict of guilty, to pronounce sentence upon it or to carry that sentence into execution.

Citing the case of *State vs. Moran*, 34 Iowa, 453; and  
*State vs. Graff*, 47 Iowa, 284.

Now, if your Honor please, if there is anything which could  
1981 be urged with respect to any of the testimony here upon the part

of Mr. Pettibone that is taken in connection -- or outside of the connection with Mr. Orchard that would be, according to the testimony of the main witness, an accomplice also, and one accomplice cannot corroborate another. If there be anything with regard to the testimony which has been taken with respect to the telegram which was sent to Steve Adams, that man, according to the statement of the informing witness here, was also an accomplice and it could gain no force and no strength from that proposition. I throw that in, however, as a side-weight, because I stay with the original proposition that the evidence, when taken alone, affords no corroboration under the statute of this state; And I briefly call your attention to that fact in passing that if you multiply nothing by one you still have nothing; if you multiply it by two you still have nothing, or by any other number; and if Mr. Orchard's testimony for the purposes of this motion, counts as nothing, it would make no difference how much other evidence there might be here which would be of the same character.

"The testimony of one accomplice cannot be accepted as sufficient corroboration of the testimony of another."

12th Encyclopedia, 458.

In Johnson vs. State, 4 Greene (an Iowa case) page 65, the court says:

"It is just as necessary that the corroborating witness should be strengthened and confirmed as that the principal one should be, and however abundant their kind of testimony, the accomplice first called in is still uncorroborated, and his

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testimony entitled to no credit. The law regards accomplices in cases of felony, when called to testify, as impeached witnesses, and hence their testimony is of no effect unless confirmed by other testimony. As one impeached witness cannot support the testimony of a witness previously impeached, it follows that one accomplice cannot be a witness to corroborate the testimony of another accomplice in the same crime."

"When an accomplice gives evidence against two persons jointly tried, the corroboration of his testimony, as to the guilt of one of them, does not obviate the necessity for corroboration of his testimony against the other."

Now, if your Honor please, I will call your attention to certain specific cases which govern in this jurisdiction and under statutes which are precisely similar to the one at bar.

I will read these cases in the order --

THE COURT: Have you seen whether there are any Idaho cases?

MR. RICHARDSON: Yes sir, I have got them here and I am going to read them to your Honor or such parts as are competent upon this subject. There are Idaho cases and I will show you exactly what they say before I get through. I think I have all the Idaho cases, at least all of them which we deem pertinent upon this issue.

I read first, if your Honor please, from the case of

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State vs. Jarvis, which was decided by the Supreme Court of Oregon on January 30th, 1890, and is found in the 23 Pacific Reporter at page 351. I read from the second column on page 352:

"Many authorities on this subject are collected in note 2 to section 351, 1 Greenleaf on Evidence. Speaking of the evidence of an accomplice, it is there said: 'But the source of this evidence is so corrupt that it is always looked upon with suspicion and jealousy, and is deemed unsafe to rely upon without confirmation. Hence the court will even consider it their duty to advise a jury to acquit where there is no evidence other than the uncorroborated testimony of an accomplice.' And this principle is sustained by numerous common law citations. In such cases the common law practically requires an acquittal if the accomplice was not corroborated; our statute has made it imperative. The guilty may sometimes escape punishment under the operation of such a statute, and the innocent might be convicted under the operation of the common law rule, if jurymen proper to disregard the charge of the court. But the statute has made corroboration of an accomplice necessary, so that the court has no control over the subject except to apply the statute. The court has no discretion, but is bound to apply the statute indiscriminately to all cases where an accomplice appears as a witness, and the state's case depends solely upon his uncorroborated testimony.

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If we were now engaged in making the law, no doubt we would declare a different rule; but the principle is already established and fixed by the authorities, and we would only add to the uncertainty of the law by disregarding them,-- a thing which we have no right to do. This point plainly marks the distinction between legislative and judicial power. The binding force of the authorities on this subject is fully recognized by the able editor of the Albany Law Journal, who says: 'It might be well to provide for the case of incest en sui generis, but we think accomplices in general should be corroborated as provided for in this section.' "

There was an exceedingly hard case. There was a case where any court would have been reluctant to have applied that statute. There was a case where perhaps nearly everyone who heard it would condemn the court for upholding the statute. But there was nothing left for the court to do but to obey the law precisely as it was written.

In 34 Pacific Reporter, if your Honor please, I read from a case which is found at page 514, which was decided by the Supreme Court of California on a precisely similar statute. The case being of some length I will content myself with reading the syllabus, which is fully sustained by the case.

"There the only evidence to convict defendant of a robbery is that of an accomplice, who testifies that defendant planned the robbery, and received part of the proceeds, and that of two witnesses, that they had

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seen defendant and the accomplice together on two occasions before the robbery, there is no such corroboration of the evidence of the accomplice, as required by penal code, paragraph 1311, as to justify conviction."

I call your Honor's attention to this fact: There are two hundred thousand people in the city of Denver, as it is claimed by those of us who live there; by the census returns we have something less than that. And out of all of those people for a period of nearly two years when Orchard says that he was intimate with these people, a policeman on the beat has come here to say that he has seen Mr. Haywood with this man not to exceed three times in the entire period of his existence as a policeman upon that beat, covering something like the last seven or eight years, and that is one item in their corroboration. There is the case which is precisely analogous, if your Honor please, upon that point; and outside, as I say, of the testimony of Mr. Orchard himself, out of all of those people, the intimacy that existed between these men, there is the only man who has ever seen them together. I will make one exception -- the colored man who was on the stand testified this morning that Mr. Orchard drove out in a wagon and was gone a few minutes with Mr. Haywood -- any one of those circumstances exactly as consistent and more consistent with innocence than with guilt, and yet they say, if your Honor please, that that sort of evidence is the kind of evidence which tends to corroborate Orchard when he says that this man is as guilty of the offense of killing Governor Stearnsberg as he is himself.

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I read from the case of *The State vs. Geddes*, decided by the Supreme Court of Montana, and the case is printed in 55th Pacific Reporter at page 984:

"It is conceded that Dixon was an accomplice, and upon his testimony the State chiefly relied for a conviction."

This state has relied absolutely for a conviction, I should say, upon the testimony of Harry Graham, under this testimony,

"Section 2089 of the Penal Code provides as follows:

"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. Whatever difference of opinion formerly existed as to what particular facts should be corroborated, and the extent of the corroboration required, where convictions were asked for upon an accomplice's testimony, it is settled in this state, by the statute quoted," --

which is precisely the same as the statute of the state of Idaho -- "that the corroboration must be evidenced from an independent source, and it must be such that this independent evidence in itself, without considering the testimony of the accomplice at all, tends to connect the defendant with the commission of the crime charged. Furthermore, it is not a satisfaction of the statute to corroborate an accomplice upon immaterial

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matters, or to prove merely that the crime charged has been committed, or the circumstances under which it has been committed; for there may be all such proof, and yet the additional essential evidence be lacking, which, independently of the evidence of the accomplice, leads to the inference that the defendant is connected in a criminal way with the commission of the crime. The statute is conformable to the rule laid down by Roscoe's Criminal Evidence, page 122: "That there should be some fact deposed to, independently altogether of the evidence of the accomplice, which taken by itself leads to the inference, not only that a crime has been committed, but that the prisoner is implicated in it." State vs. Spencer" -- a Utah case -- "49 Pacific, 302; People vs. Plath" -- a case that I read an excerpt from -- "100 N. Y., 800. Now, by the law, Geddes could not be convicted of advising and encouraging the murder of Winnie Brown upon the uncorroborated evidence of Dixon; nor could he be convicted upon corroborative evidence merely going to show motive to murder." ~~Now~~ It is that that I had in mind, if your Honor please, when I objected to these magazine articles. "A man may be shown to bear malice in his heart towards another who is subsequently murdered, but that alone falls far short of proof sufficient to justify the conviction of one who bore the malice of the murder of the other. It was indispensable that there be corroboration which legitimately tended to show the

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material facts necessary to authorize a conviction of Geddes as an accessory to the murder of Brown. To validate the testimony of the accomplice, Dixon, it was also requisite that the corroboration must be to the person of the accused. 'Any other corroboration would be delusive,' says Wharton's Criminal Evidence, paragraph 442, 'since, if corroboration in matters not connecting the accused with the offense were enough, a party who, on the case against him, would have no hope of escape, could by his mere oath transfer to another the conviction hanging over himself'."

Which is precisely, if your Honor please, the condition which confronts us in this case. "To apply these rules accurately, we must eliminate altogether the evidence of the accomplice, Dixon. Doing so, we have the following independent facts and circumstances: (1) Geddes was informed against by the county attorney for an assault upon Winnie Brown, committed several months before the homicide, and was sued in damages by Brown for the assault. (2) Geddes, in conversation with certain persons weeks before the killing, admitted that he had whipped Brown, and said he was sorry he did not kill him. (3) Geddes had his trial for the assault postponed, and stated in a conversation that he had not yet presented his side, but that, when he did, the case would appear in a different light. (4) Geddes said that, if Brown did not stop talking about him, 'there would be something happen'. (5) Geddes said that,

by serving papers upon him in the civil suit for damages upon the eve of his departure for Chicago, they were taking unfair advantage of him, and added: "Never mind. I will get even with the \_\_\_\_\_."

(6) Brown was shot and killed by Dixon. Fully conceding the law to be that the corroborating evidence required, where an accomplice is the main witness for the state, need not be sufficient of itself to prove the guilt of an accessory, still, after a close examination of this record, we are forced to conclude that, unless resort be had to the testimony of Dixon, there is not sufficient evidence tending to connect Gaddes with the crime of advising and encouraging this murder. Gaddes was away in Chicago when Dixon killed Brown, having left Miles City nearly three weeks before November 4th. There is no evidence of a conspiracy or union of purpose to kill Brown between Gaddes and Dixon. — Millone here outside of Orchard's testimony. "The remarks of Gaddes do not of themselves prima facie establish a conspiracy; nor is there a scintilla of evidence that Gaddes ever communicated with any person in the time of his absence, or did any act or made any declaration in furtherance of any concerted plan to do Brown violence; nor do we find a word of independent testimony that Gaddes intended to have Brown killed by Dixon or anyone else, or that he was killed by Dixon at Gaddes' instigation or direction; — all of which is concerned to, if your Honor please,

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by Mr. Dixon. "And, finally, there is no evidence whatever, apart from Dixon's, which goes to connect Giddes with the murder or with having advised or encouraged it. Three of the several statements of Giddes to others than Dixon, included in the six independent bits of evidence as set forth above, coupled with the fact that he was charged with an assault, do show an ill will towards the deceased, and might furnish motive for murder; but they utterly fail to corroborate the material statements of Dixon, as required by the law heretofore discussed, assuming that Dixon's testimony implicates Giddes at all. The measure of proof is insufficient, under the statute. There is not enough to sustain a reasonable inference that Giddes is implicated. Wherefore the conviction is against the law, and this court must set aside the judgment and award the defendant a new trial, and it will be so ordered."

I call your Honor's attention to a case reported in the 73rd Pacific Reporter at page 609. I shall read commencing on the top of page 611. The title of the case is "People vs. Morton," and the decision is by the Supreme Court of the State of California:

"It would be a hard rule that would equally implicate Morton whether he was silent or denied his guilt. In Childers, et al., vs. The State, 52 Georgia, 106, it was said, speaking of the defendants convicted

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on the testimony of the accomplice: 'It may be these men are bad, guilty men, but if they are convicted it ought to be under the rules of law. To justify this verdict would be, in our judgment, to make the best men in the land subject to the danger of conviction by any guilty scoundrel who might attack them.' '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. Corroboration as to matter having no tendency in his direction, however thorough and complete, will not suffice.' In that case-- that is the Texas case that I read from -- 'the court further said: 'We suggest this mode as a proper test: Eliminate from the case the evidence of the accomplice, and then examine the evidence of the other witness or witnesses with the view to ascertain if there be inculpatory evidence-- 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.' In Sims vs. State, 3 Texas Appeals, 230, the rule is thus stated: 'The evidence must tend directly and immediately to connect the defendant with the commission of the offense.' In New York, under the same Code provision it was said: 'The corroboration, however strong in all other respects, must point to the connection

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of the defendant with the commission of the crime to be of any avail." *People vs. Ryland*, 28 Min. 588.

"It may be conceded that Morton had an opportunity to participate in the robbery, that is, that he, with others, was with Hickling at the saloon, and might alone, or with Stokes, have committed the crime; but opportunity alone is not sufficient, especially where others had the like opportunity. If Hickling, Stokes, and Morton had met at some wayside saloon where there were no other visitors, and Stokes and Morton had left together shortly after Hickling left, and soon afterwards returned to the saloon together, without Hickling, it might be contended with some degree of force that such circumstances "tended" to connect Morton with the commission of the offense, "without the aid of the testimony of the accomplice." Hickling only testified that he was robbed by two men, neither of whom he recognized. This corroborated the testimony of Stokes that he and another committed the robbery; but, the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof," and that is all that was shown by the testimony of Hickling, or anyone save the accomplice. The corroboration of the testimony of the accomplice must be made without the aid of his testimony. If we strike out from this record the testimony of the accomplice, we have no evidence tending to connect Morton with the commission of the offense.

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"In *People vs. Compton*, 123 California, 403, 411, the jury was instructed: " I read that instruction to your Honor, which I will not reread, also a case in 3rd Texas Appeals that they quote from. Then "In *People vs. Keenig*, 99 California, 574, the defendant was convicted as an accomplice of one Sarah ~~Franklin~~ Brady, who admitted she committed the offense. She and the defendant were acquainted, and had lived together more or less for a year or two. She testified that the defendant advised her to steal the money, and said, 'If you don't get that money, you are no good.' When she was arrested defendant went to the jail and requested to see her, and upon being refused said to the sheriff he had the wrong woman, and that he did not know or have anything to do with her. Defendant was temporarily employed at the saloon where the larceny was perpetrated, but this court said that that circumstance was of no significance beyond the fact that he had the opportunity to advise the commission of the offense; that his inquiry at the sheriff's office was not of sufficient importance to warrant a conviction; that at most it could raise a fair suspicion, and fall short of such corroboration as can safely be relied upon to support a conviction" -- citing a large number of cases.

"By the express language of the Penal Code, the corroborating evidence must, without the aid of the testimony of the accomplice, tend to" -- in some

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degree -- "tend to connect the defendant with the commission of the offense, and we find in the record no such evidence. Hickling testified to all the circumstances of the robbery, but he did not recognize either of the men. Stokes' testimony was wholly unnecessary to prove the fact or the circumstances under which the act of robbery was perpetrated.

What was there outside of the testimony of the accomplice to fasten even a suspicion upon Morton? He was one of a dozen men drinking and dancing and visiting various saloons, and we are pointed to no act of his indicating his connection with the crime until Stokes, several days afterwards, delivered the watch to an officer and pointed to Morton as one of the two men whom Hickling failed to recognize, it may be for the purpose of shielding another and a closer friend who was his companion in the commission of the crime. The ease with which an accomplice can substitute an innocent person for the guilty companion led the judges, in the absence of a statute such as ours, to advise the jury to acquit in the absence of independent evidence connecting the defendant with the commission of the crime."

I invite your attention to a decision in the case of State vs. Welch, 85th Pacific Reporter, at page 927. I read from the second column on page 929.

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"The principal witness for the state was the negro, Dixon, the self-confessed murderer of Brown. That Walsh



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was not present when the murder was done is admitted. He was approximately fifty or sixty miles distant from the scene of the murder at that time."

THE COURT: What state is that, Mr. Richardson?

MR. RICHARDSON: Montana.

"It follows, therefore, that unless he aided and abetted, or advised and encouraged, its commission, he is not guilty."

That state of facts is very applicable right here, if your Honor please.

"Dixon testified that in a conversation between himself and Welch held about August 28th, 1897, Welch, in answer to the remark of Dixon that the former was riding a fine horse, said, referring to decedent: 'Yes; that is the horse that I rode down here to rope that son of a bitch on. I am going to get him to run him, and rope him, and take my dillies, start the other way, and jerk him off.'"

Maybe that is "dillies"; I don't know. "Dullies" it is printed.

"This item of evidence, of itself, tends in no wise to connect Welch with the murder committed by Dixon in November, 1897." 22

We have a Montana man here (Mr. Breen), perhaps he can interpret that language, if your Honor wants to know what a "dally" is. I don't know.

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"It does not tend to prove, in itself, that Welch aided,

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abducted, advised, or encouraged Dixon to commit the crime; and there is no other competent testimony given by this witness which by any reasonable interpretation can be deemed to implicate Welch. It does not appear that defendant was an intimate friend of Geddes and his wife. That he visited their home at unusual hours; that he corresponded with Regina Geddes; that two days after the homicide he sent a check to her for \$50, which on November 8th, while in company with him, she cashed at a bank in Miles City; that on the 6th of the same month he asked for a letter written by him to Mrs. Geddes, and deposited in the postoffice; and that, after receiving it from the postmaster, he destroyed it, as was his custom in respect of other letters. It further appears that the negro, Dixon, disliked Welch, and that Welch entertained a hatred of him. Manifestly, these facts fall far short of establishing or tending to prove the guilt of the defendant."

And what else have we here, if your Honor please?

"Assuming, however, that the evidence of Dixon, his supposed accomplice, tends to show that Welch encouraged him to do the murder, still the declaration of section 3080 of the Penal Code, that a conviction cannot be properly 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 accomplice

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sion of the offense, or the circumstances thereof, would effectually prevent a conviction which could withstand the scrutiny of the courts, for the reason that the evidence other than that of Dixon fails to connect Walsh with the commission of the murder. But it is unnecessary to place the determination of this question upon the absence of evidence corroborating the accomplice. The record consists of more than 600 pages. We have read it with the greatest degree of care. In the effort to discover the existence of some reason which may have led the jury to return a verdict against the defendant, the evidence has been analyzed, and it has been accorded every fair, and even liberal, inference against him. Mindful of the rule that the jury had the opportunity, not enjoyed by this court, of seeing the witnesses, of hearing them testify, and of observing their bearing upon the stand; appreciating, also, the fact that the jury are the judges of the weight of the evidence and of the credibility of the witnesses, and that their determination of an issue of fact ought not lightly to be disturbed -- our earnest attention has been devoted to a painstaking examination of the testimony, the further recital of which would serve no useful purpose. We have searched the record in vain for proof of the defendant's guilt. It is the deliberate opinion of this court that there was no competent evidence whatever upon which to base a conviction. There was not even a scintilla of evidence having a tendency to

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induce reasonable and unprejudiced men to believe that Welch aided, abetted, advised, or encouraged the murder of Brown, or that he conspired with either the actual murderer or with any other person to that end. The verdict was clearly the result of passion and prejudice, doubtless caused, or at least inflamed, in some degree, by the incompetent hearsay declarations testified by to by the negro as having been made to him by Regina Golden. The record presents, not a case of mere insufficiency of the evidence to warrant a conviction, but one of utter failure of proof, and therefore the court should have granted the motion to instruct the jury to find the defendant not guilty."

There is an Idaho case coming up now, I think -- it is the case of the State vs. Knutson, decided by the Supreme Court of this state on December 2nd, 1905, 33rd Pacific Reporter, page 226 -- reading from the second column on page 227:

"Defendant's second assignment of error is that 'the instructions given by the court which were accepted to at the time by the defendant, in that the same were misleading, as they did not relate to the corroborative evidence which was necessary in aid to the defendant Hennings's testimony to support the corpus delicti.' The instruction on the question of the necessity of evidence corroborating the testimony of an accomplice is in conformity with the provisions of section 7871, Revised Statutes of 1887, and, while quite lengthy and going into considerable detail, is

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as favorable to the defendant as the law would authorize. Section 7871 provides: '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.' The authorities are not entirely harmonious as to the extent of the corroboration necessary in such cases under a statute similar to ours. While some authorities have held that such corroboration must be upon all the material facts, others have held that corroboration upon any one material fact would be sufficient. This question received consideration by Mr. Underhill on Criminal Evidence at sections 73, 74, and 75, and, after some discussion of the subject and citation of many authorities, he says: 'But the corroborative evidence, whether consisting of acts or admissions, in itself and without that of the accomplice, must at least tend to prove the guilt of the accused by connecting him with the crime.' It is clear to us that under the provisions of section 7871, supra, the corroboration must be upon some material fact or circumstance, and that, standing alone and independent of the evidence of the accomplice, it must tend to connect the defendant with the commission of the offense."

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I don't know but there is another case in that -- no. I will give you another Idaho case, I believe, which is found in 85th Pacific Reporter, at page 48, and is entitled State vs.

Band, the decision being rendered on June 19, 1905.

I read from Page 48:

"Counsel for appellant may attack many of the instructions given by the court on its own motion, as well as refusal to give requests of appellant and the modification of other requests of appellant. We find that instruction No. 31 is in the following language: 'The jury should act upon the evidence of an accomplice with great care and caution, and subject it to careful examination in the light of all other evidence in the case, and the jury might not be convicted upon such testimony alone, unless, after a careful examination of such testimony, they are satisfied beyond all reasonable doubt of its truth.' This instruction is clearly erroneous and should not have been given, as it does not state the law; neither is it in harmony with instructions 29 and 30. Instruction No. 29 reads: 'Under the law of this state 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 or the circumstances thereof'. No. 30 reads: 'Under the provisions of the statute of this

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state the corroborating evidence must, in itself, without the aid of the testimony of the complainant, 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 element in the crime charged.\* The last two quoted instructions correctly state the law on the subject of corroboration. The question to be determined is: Was the jury misled and could have it have been directed to its final conclusion by instruction III? If so, the judgment should be reversed and a new trial ordered.\*\*

I think there is nothing further in the Idaho authorities, at least nothing which we are advised of which would change the rule as laid down in these statutes at least, and our understanding is that all of the decisions have been in conformity with it.

I propose now to take up and discuss with you the nature and effect of the evidence exclusive of that which was given by Harry Orchard. I shall in the course of these remarks, of course, refer to Harry Orchard's testimony, but I shall only refer to it to show that the testimony which has been given, standing alone, is only useful or could only be considered when and by reason of the fact that Harry Orchard has said something which tends to connect it with the offense which is here charged in this indictment.

I suppose that there will be no contention and that I need not pay any attention to the proposition of the first witnesses which were called upon this stand. They were witnesses who lived in Caldwell and in the surrounding country, if your Honor please, there, and who were advised of the commission of the offense itself. There is of course no evidence that Mr. Haywood was present at the time of the commission of that offense or that he took any part directly in its commission, and so we may leave out of consideration the testimony of Mr. Wayne, Mr. Gao, Mr. Rice, Mr. Ellis, Mr. Belantyne, Mrs. Young, Mr. Steunenberg, Mr. Bowman, Mr. Russell, Mr. Dempsey, Mr. Brunell, Mr. Kinsey, Mr. Comers, Mr. Wanta and Mr. Feight. These witnesses if your Honor please, all of them, came from the vicinity, as I have stated, of Caldwell. They do not know or pretend to know of any fact or occurrence in connection with this case which tends in the remotest degree to implicate Mr. Haywood, and so I pass them out of our consideration and proceed to take up some of the other witnesses for discussion. The first one is Mrs. Sadie Swan. Mrs. Sadie Swan purports, if your Honor please, to testify



to having met Mr. Orchard in the city of San Francisco. She was an inmate of the house of Mr. Bradley under the name of Bill and became acquainted with Mr. Orchard when he claims to have been there in the year 1904. She corroborates Orchard upon the fact that he was in the city of San Francisco, upon the admission of guilt by him in poisoning the milk, upon the commission of the offense by him of causing a bomb to explode at the door of Mr. Bradley. Now all that she says with reference to that tends to corroborate Mr. Orchard. It has no tendency whatsoever to connect Mr. Heywood with the commission of that offense, which under one theory of this case is a part of a general conspiracy, which was broad as the land, to visit death and destruction upon all those whom Mr. Orchard sought to come in contact with. So her evidence must be excluded because it has no tendency to connect Mr. Heywood at all.

The next witness was Oliver Cook. ~~Frank~~ Oliver Cook's testimony is found at page 1310, and, if your Honor please, he is a San Francisco witness, who is a dairyman. His evidence tends to show that somebody put some poison in the milk at Mr. Bradley's house, and it therefore tends to corroborate Mr. Orchard to the fact testified to by him, to-wit, that he, Orchard, put the poison in the milk. There is nothing that tends to connect Mr. Heywood in any way with that.

The next man is Mr. P. L. McGleary, who, if your Honor please, is the assistant postmaster in the city of San Francisco.

MR. BISHOP: No.

MR. HIGHTHOORN: McGleary -- oh, he was the chemist --  
The other man was a "bo"  
it isn't the same man. I will not misstate the evidence even if

I do get mixed up on these names. That commences with "Ma". McHenry was the chemist, if your Honor please, that testified that one of the Bradley family, or rather the dairyman, Mr. Crook, submitted to him a sample of the milk which had been delivered to the Bradley family, and which he analysed, and which he found to contain large quantities of strychnine. No connection with Haywood, no tendency to connect Haywood until you add to it that the testimony of Harry Orchard, that he, Haywood, had directed him to commit that crime. Eliminate Orchard from it, as you are compelled to do under these authorities, and there is nothing in that testimony which is corroborative of Harry Orchard--corroboration, as we have seen, upon an independent fact or independent circumstance, or any number of such facts and circumstances, is not that kind of corroboration which is contemplated by the very just and the very salutary statute of the state of Idaho.

Now the next witness, if your Honor please, is Mr. Gubiny of San Francisco. Gubiny was the grocer. Gubiny knew Orchard. Orchard came to his saloon. Orchard told him certain things, but outside of the things which Orchard told Gubiny, Gubiny had no knowledge of the commission of any offense other than the fact that there was an explosion at Bradley's household, and no evidence in the remotest degree whatever tending to implicate Mr. Haywood in the matter. If there is some repetition on this with respect to these witnesses it will be because I desire to impress upon your Honor beyond the shadow of a doubt that there is no basis for saying that this testimony in any wise tends to connect Mr. Haywood with the

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offense.

The next is Bill McLaughly. He was, if your Honor please, the assistant postmaster of San Francisco, and he testifies to an independent fact or circumstance. Now let us see what that independent fact or circumstance was. A registered letter or package, unknown to him which, came through the mails purporting to be from Denver and connecting up with San Francisco and purporting to pass through the regular channels of the post-office department to the persons whom it was addressed. That is an independent fact and circumstance, in this, to-wit, that such a registered package was sent from Denver, that somebody sent it, from Denver, and that it was delivered to somebody in San Francisco. Now that is where the evidence stands upon that subject. The written record with regard to it shows that the man who sent it was J. Wolff, if the record is true; it shows that the man who received it was H. Green, if the record is true. I may get mixed up on those names, but they will answer. I think those are correct. They will answer in any event for our purpose. Now that is what is shown by the independent record. Now, then, does Haywood become connected with that transaction? By the mouth of Harry Orchard, in that Haywood, as Orchard said, directed him when he wanted money to apply to Pettibone and Pettibone would get it from him and deliver it to Harry Orchard. Eliminate the testimony of Harry Orchard with respect to that and you have simply a registered letter or package sent from Denver to San Francisco which is in no wise connected with Mr. Haywood at all under the State's showing, and you must eliminate that testimony of Harry Orchard, it is your bounden duty under

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this statute, precisely the same in Montana, precisely the same in California, and both of them construing it, and this court of Idaho not changing the construction which has been placed upon them. And if Mr. Haywood did send the money, if it had been shown that Mr. Haywood was the man who sent that registered letter and that there had been money in it, and that it was money for Harry Orchard, and it was accompanied by a letter to Harry Orchard stating that "here is the money which I send you", there would not then be any connection except you add to it the statement of Harry Orchard that that money was pursuant to a certain purpose which had been agreed upon between him and Mr. Orchard; you would still have to resort to and supplement the testimony as it existed with the testimony of Harry Orchard before you would have any connection between Mr. Haywood and the transaction which occurred in San Francisco.

The next testimony, if your Honor please, is the testimony of Mr. Frank Linnas. He was the postoffice clerk at San Francisco who had charge of the registered incoming and outgoing mail at a certain branch postoffice in that city. He had no personal knowledge upon the subject and only testified to the regular course of business, and what I have said with reference to the testimony of Mr. McLaughly is equally applicable to his testimony.

The next is the testimony of Miss Pearl Moore of the Denver Postoffice department, who testifies to the regular course of business, and of course what I have said upon the two preceding witnesses is equally applicable to her. No pretense that there is a connection with Mr. Haywood in any way, shape or

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form unless your Honor supplements that testimony and adds it with the testimony of Harry Orchard that there was a preconceived arrangement, a general plan, and that this letter was forwarded or continued, whatever it was, in accordance with that general plan.

The next testimony is that of Mr. C. L. Harrah, found at page 1373. There are so many of these that I have to -- 1373, yes, Mr. Harrah is the man who testified that he was operating the cage at the Vindicator mine at some time prior to the 21st day of November of 1903, that upon one occasion when he was about to go out of the shaft and had sent for the cage to make its last trip a man was seen by him in the drift whom he approached with directions to get into that cage because it was the last cage that was going up, the man retreated into the drift and he followed him and when he was close to him the man shot at him. He did not identify the man, and if he had, it would not make any difference. Mr. Harrah's testimony corroborates Mr. Orchard. Upon what? Upon the fact that Mr. Orchard testified that he was in that drift at a certain time and that he took a shot at a man who had directed him to get into the cage. No pretense that it was connected with Mr. Haywood in any way, shape or form; and, if your Honor please, even Orchard don't pretend that Haywood or Mayer or Pettibone were connected with the matter that occurred at the Vindicator mine at any time except by way of paying for it. Your Honor will remember that he had never met either Haywood or Mayer or Pettibone, according to his own testimony, until December of 1903, long after the Vindicator explosion. But whether he had or not, in order to

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connect Mr. Haywood with the transaction as an aider, a counsellor or accessory after the fact, which was all that he could do with reference to that. You have got to reach over and put your fingers into the testimony of Harry Orchard to connect it up with Mr. Haywood, and that under this statute and the law your Honor is not at liberty to do.

The next testimony is that of Charles Johnson, found at page 1400 of the testimony, and as I remember it, is another Vindicator man. But I am not quite sure about that. Are you sure, Mr. Darrow?

MR. DARROW: Yes sir.

MR. RICHARDSON: Yes, Mr. Johnson is the man who found a part of the body, as I now remember it, or parts of the body of the two men who were there and was the first man who was there after the explosion occurred or among the first men who were there. There is no pretense of any connection by that man. The next man is J. H. McIntire, page 1415. Can any of you tip us off on that?

MR. DARROW: He is the special policeman.

MR. RICHARDSON: Yes, page 1415. Mr. McIntire, if your Honor please, is the special officer of the Southern Pacific railway company and was on duty in Ogden in 1903 at a time when Steve Adams was arrested there on his way back from Pocatello as it is claimed, I believe, wherein it is said that he had been sent to commit a felony of some kind by Haywood. Not a word or a syllable in this testimony which connects Adams even with the commission of any offense except Orchard's testimony himself; and

then, if your Honor please, if there is any word that connects Mr. Haywood with it, who is the man on trial here, it is the testimony of Mr. Orchard having a talk with Mr. Haywood, and if you disbelieve Orchard's testimony I submit that there is no connection in that matter at all.

The same is true of H. F. Snyder, and of J. F. Pender, who are also officers, as your Honor will remember, one of them being the jailer and another a detective -- not a Pinkerton detective, but just a plain, ordinary detective from the town of Aspen. None of these men pretend that there was any connection of Mr. Haywood with the commission of any crime. It is true that there is some evidence received which tends to show that a telegram was sent to Haywood that Mr. Adams was in jail and in trouble and that Mr. Haywood was requested to send him \$75, and it is true, and we admitted it here this morning and saved the State the trouble of getting their testimony here to prove it, that Mr. Haywood responded to that telegram and sent the \$75. All of that was a perfectly innocent transaction on its face. It is just as consistent with innocence as it is with guilt, and it is more so, because generally speaking men do those things which are innocent; generally speaking, men do not commit crime, if your Honor please; generally speaking we most of us remain within the law or somewhere nearby within the law, and the presumption always is that we are within the law, that we are always innocent until our guilt is established beyond a reasonable doubt, and there is no scintilla of evidence which connects that transaction with anything harmful except the uncorroborated statement of Harry Orchard. Why, if your Honor please, if this court

of testimony is to prevail, if they could show that Adams sent to Denver to anybody else for a dollar of money upon that occasion and it had been sent to him, he would have been just as liable under this testimony for the killing of Governor Stearnsberg as is Mr. Haywood.

The next witness, if your Honor please, is Mr. G. H. Hackett, page 1436. I will only bother you a minute -- there are so many of these witnesses that --

MR. BARNOW: I think he is superintendent of the Postal here.

MR. HONAN: Western Union.

MR. RICHARDSON: I have got it right here. He is the local manager of the Western Union Telegraph Company at this point. My recollection is that he testified to certain rules and then your Honor issued an order on him to produce a certain telegram which he had some difficulty in getting and which we admitted this morning. There is no pretense that he knows or has any knowledge whatsoever of Mr. Haywood's connection with any transaction that is improper.

Mr. Charles E. Baldwin is the next witness, and he has testified, if your Honor please, that he lived in Denver, Colorado; that he works for the Denver company; that he was running an express wagon and he identified -- he remembers the death of Lyte Gregory. Now he was in the saloon that night when he saw these men go and shortly after that time Mr. Lyte Gregory was killed. There is no pretense even in the testimony of Harry Orchard that Haywood knew or had any connection with the killing of Lyte Gregory other than, as he says, he had a general roving



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commission to go out and kill. This man, if your Honor please, tends to corroborate Harry Orchard with respect to the fact that he, Orchard, killed Lyte Gregory and perhaps ~~that~~ <sup>that</sup> another man named Foster Meliron, or Milburn, which I believe is his correct name, and Steve Adams might have had something to do with it. There might be some tendency in his testimony to connect them if he would identify Milburn and Steve Adams; but there is no pretense, if your Honor please, that you can connect Haywood with it until you add to it the evidence of Orchard that he had a roving commission to go out and kill and destroy whomever he pleased and he got pay from the Western Federation of Miners by drawing on them for whatever he wanted. Eliminating Orchard's testimony there is nothing left.

The next man is Mr. Joseph C. Houston, who is the teller of the First National Bank of the city of Denver. Mr. Houston brings here and identifies, if your Honor please, a large number of drafts. There were twenty-one drafts which your Honor will remember were identified which have not yet been sought to be introduced. I suppose you had them identified for the purpose of cross examination or something of that kind when the defendant's case was put on. You didn't offer them anyway.

THE COURT: They are not in.

MR. RICHARDSON: They are not in, and therefore there is no occasion now to talk about them. They establish nothing. I shall therefore confine my attention, if your Honor please, to the drafts which were offered in evidence and which were six in number and which were identified by Mr. Houston. Houston had no personal knowledge of the matter in any way, shape or form,

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and neither connects nor assumes to connect Haywood with any unlawful or improper transaction of any kind or character. Now here is what happens with respect to these drafts: We find that these drafts, I think without exception, are all drawn to the order of William D. Haywood, secretary-treasurer -- with the exception of one, which is drawn to the order of James Kirwan. The first one is dated January 7th, 1904. There is no pretense that at that time there was any connection whatsoever between Simpkins and Haywood with respect to any unlawful transaction so far as Orchard was concerned. But if there was, again it would depend upon Orchard's testimony. Here is a draft which upon its face appears to be for \$98.30. It is drawn by Haywood. It is forwarded evidently to Simpkins and by Simpkins endorsed and deposited. Upon the face of it, standing alone, it is a perfectly innocent transaction, and even Orchard doesn't attempt to say that there is anything that is improper or criminal in the connection of anybody with that draft or with any other of these drafts. Now bear that in mind. It is only because of this general condition of affairs whereby he claims that there is any connection. Now that is precisely true, if your Honor please, of each one of the six drafts which I hold in my hand. The last one is said to be ~~Strawmuck~~ -- the next to the last one, the fifth one, is said to be the draft which has some tendency to establish a connection. Well, let us see how it is about that. This draft is for a --

THE COURT: Is that the fifth one?

MR. RICHARDSON: No, it is the third one as it is put  
1946 in here. But my recollection is it was the fifth in order of its

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date, if your Honor please, and that is the way I handled it when I made my objection to it. It is third in this bunch I now hold. That draft is one for the even sum of \$100. We will assume for the purpose of this argument, and it is probably true although we don't absolutely know, that it is dated December 31st, 1904--

MR. BURAH: 1905.

MR. RICHARDSON: Or 1905, yes, and it appears, if your Honor please, to have been a draft which was forwarded to Simpkins and which was by Simpkins endorsed and deposited in a bank in Spokane, Washington, on the 4th day of January of 1906, and by that bank evidently forwarded to the bank on which it is drawn in New York City and cashed on the 9th day of January, 1906. Now, standing alone and by itself, if your Honor please, that is a perfectly innocent transaction -- clearly and absolutely an innocent transaction. It neither connects nor tends to connect Haywood nor anybody else with anything which is improper. It is said to receive its virus by reason of the fact that Orchard testified that while he was in the Occur d'Alene country he wrote a letter to Moyer, who was at Butte, Montana, asking him to have forwarded to him \$100, and he says that afterwards there was \$100 which was paid to him as a result, as he supposed, of that request by Simpkins who had gotten the money from Haywood for that purpose. Now that is Orchard's testimony, which has got to be eliminated, but without eliminating it, let us stop to analyze that for a minute, if your Honor please. This draft could not have been the draft. Harry Orchard was in jail on the 4th day of January of 1906, if your Honor please. He had been arrested upon the 31st day of December of 1905 for the killing of Governor

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Steinberg, and he himself says that he never had a cent of money after the time of that arrest. So that the draft in and of itself is perfectly innocuous. It is perfectly consistent with innocence. But it is said that there is probably some relation between that draft and a letter which purports to have been in the handwriting of Pettibone and sent from Denver and dated on December 30th of 1905. That letter is in the following language: "December 30th. Friend Tom. Your letter received. That was sent to Jack December 31st for you. But he 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." Then there is the postmark and so forth, which I need not stop to bother with. Now there is an independent piece of evidence. Of course we assume on an argument of this kind that your Honor having received it that it purports to be just what it is stated to be by Orchard, purporting to be a letter from Pettibone to Orchard referring to something whether it was money or something else, that was sent to Jack, without saying what Jack, on December 31st; and it is said that that piece of evidence probably refers to that draft of \$100 because the proof as it now stands shows that ~~that~~ the draft was issued on December 31st. Well, how does it appear that it refers to it? What does it appear from? It appears because of that testimony of Mr. Orchard that this letter, a copy of which purports to be introduced here in evidence, is a letter from George A. Pettibone. That is the only way it can appear. You have got to dip into the testimony of Mr. Orchard again and take that testimony and put it in connection with this letter and then put the letter in connection with the draft before you have anything

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which tends in the remotest degree to connect Mr. Haywood with that transaction. But, if your Honor please, assume that the letter was written by Pettibone; assume that Pettibone made inquiry and found that a hundred-dollar draft had left the office of the Western Federation of Miners for Jack Simpkins of December 31st; assume that Orchard had written Pettibone in regard to it; assume that Pettibone had written this letter in reply after making the inquiry; assume that Haywood had gotten the money, had bought the draft, and had forwarded it to Simpkins! On the face of the transaction it is perfectly innocent, perfectly consistent with innocence -- inconsistent upon the face of it with guilt; requires aid, requires assistance, requires explanation, requires corroboration before there is any connection with Mr. Haywood as far as anything criminal is concerned, and where do you get it? Where is the connection? Is it at any other spot or any other place except by this man who every law that ever has been written has declared as unworthy of belief, and which testimony cannot be brought to the aid of the State in the action which is now presented to this court for its consideration. So much, if your Honor please, for that species of testimony.

Going from J. C. Houston, I pass, if your Honor please, to the consideration of some of the other witnesses. The next one is Mr. Major H. A. Naylor. Where in the testimony of Naylor, who your Honor will remember with remembrance was a major of militia in the Cripple Creek disturbances, who comes here and advises your Honor of the condition of affairs that existed there, where is the testimony of Naylor that shows that this man is any but a law abiding citizen? Nowhere. No tendency to connect Haywood

with the commission of any crime, much less the commission of the crime with which he stands charged at the bar of this court. And I want to say to your Honor here, that your Honor's mind must be directed, if it has not already been, to this phase of the question, that if Higwood were guilty of the blowing up of the Vindicator mine, which he is not; if he were guilty of the derailment of the Florence & Cripple Creek train, which he is not; if he was guilty of the attempt upon Gabbert, which he is not; if he had conspired and attempted and had carried out the assassination of Goddard, which he did not; if he had acted in connection with Peabody, which he has not; if he was responsible for the death of Walley, which he is not; if he engineered a plot and countenanced and aided and abetted the assault which was made upon Bradley, which he did not, all of that would be insufficient to convict him in Idaho of a crime on the body of ex-governor Steunenberg of this state. These things are limited, if your Honor please, to the single and the sole purpose of throwing some light upon the proposition of whether or not this man is guilty of the crime which he stands charged with at the bar of this court and not of crimes which were committed in some other state. So, if your Honor please, even if all of those things were true, we come back to this proposition, where is he connected by anybody, except by the mouth of the man who sat in that chair and whom the statute of the state declares unworthy of belief, as having any connection with him in any transaction anywhere at any time or under any circumstances? You will look in vain in this testimony for any such condition of affairs.

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The next one, if your Honor please, is Mr. V. H.

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Schulenburg. Schulenburg, as I remember it, is a fireman of Wallace, Idaho, and who testified to finding a bomb in the Comar d'Alene river at or near that city. Does that tend to establish, in your Honor please, as an independent circumstance, that Haywood was connected with that bomb? No. Or that that bomb was designed for the assassination of Governor Steunenberg? No, not at all. It is only when we add to Schulenburg's testimony, which is to the effect that he found a bomb and that he helped to dismantle it that bomb or caused it to be dismantled, that you put Orchard's testimony alongside of it that that bomb was designed originally for the assassination of Peabody and the design was afterwards changed into an assassination of Governor Steunenberg with the same bomb -- again you have got to apply to Mr. Orchard to make the connection, and you are solemnly forbidden by the statute of this state, which you have sworn to uphold, to consider that testimony for any purpose or to any degree upon a motion of the character which is now addressed to this court.

The next witness is James Guthrie, who took a bomb found by somebody else, if it was a bomb, down to Denver and showed it to the Pinkerton detectives. Of course I need spend no time upon testimony of that character as not connecting nor tending to connect this defendant with the killing of Governor Steunenberg.

Alfred J. Dunn likewise is from Wallace, Idaho, and

Alfred J. Dunn's testimony is limited to the fact that fifteen minutes after a bomb purports to have been taken out of the Comar d'Alene river he saw a part of it unloaded in the county building in the town of Wallace. Of course there is nothing in that.

Then comes Charles T. Roach, if your Honor please.

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Charles T. Roach testifies to making a leaden case at the instance of a man whom he identifies as Orchard; but that leaden case can be connected in no manner with the defendant Haywood, and again you are compelled, to some extent, to rely upon the testimony of Harry Orchard. No one saw that bomb go to Haywood. No one testifies that Haywood ever said a word in regard to it. No one claims that Haywood had any knowledge of it. Roach never saw any man in connection with it except Mr. Orchard and the witness who followed him some time later who was a tailor in the same store, testified to the same effect.

Then we come to Miss Cora H. Peabody and James H. Peabody. Miss Peabody testifies that at some time, when, she don't remember, except that it was between the 1st of June and the 1st of July, she got out of her carriage on Grant Avenue and saw a man there who looked so suspicious to her that it frightened her. As I said, that corroborates Harry Orchard in the fact that he was there, but it does not corroborate him to the fact that he was there by the procurement of Mr. Haywood. He was there of his own volition so far as her testimony is concerned, and there is nothing, if your Honor please, that can be predicated upon it unless you take in connection with the testimony of Mr. Harry Orchard as to his operations, and purposes, but not as to who sent him there upon that occasion.

The next witness is James H. Peabody. It would not be proper to allude to the fact and I shall therefore refrain from another word by saying that that man has been interviewed in the newspapers



of the United States, from one end to the other, in which he has expressed himself as to the grave importance of the testimony which he would deliver upon this stand.

THE COURT: This court is going to consider his testimony only as it is delivered, and not the newspaper interviews.

MR. RICHARDSON: Well, it amounted to this, that when he went out of office in 1905, about the 1st of May, he moved back to the town of Canon City and went to repairing his house, and some one pointed out a man to him by the name of Logan, and he saw this man Logan there-- no connection with Haywood-- no pretense that he was seen with Haywood. It would not amount to anything if he had been seen with him. And upon that testimony, if your Honor please, there is the only thing it tends to corroborate Crohart in, is in this fact, that in the spring of 1905 he was in the town of Canon City. It would make no difference if he was there; it has no tendency to show a connection of this man with the perpetrators of any offense until you add to it the testimony of Harry Crohart.

He goes to the testimony of Mr. E. S. Raymond at page 1849. I am not quite certain what that man's testimony was by name, but I will catch it in a minute. He was the special police officer to whom I have heretofore referred. In all the period that he had been upon that beat on South Evans street there, in the night time, as a special police officer for that purpose, he had never seen anything suspicious in all his wanderings upon

the streets of Denver; he had never seen the three defendants in this case together at any one time that he could designate. He did see Orchard and Pettibone and Haywood on one occasion sitting on the front door step, I think, at Mr. Pettibone's house, and it is possible that he saw two of them in the back door yard-- I am not quite certain about that, but in any event there was no claim upon his part that there was anything suspicious about that-- that they were doing anything more than neighbors would ordinarily do; and again, if you are going to give that testimony any force or effect of showing any connection between these men and Orchard, you have got to add to it the testimony of Orchard to the effect that they were there for an improper purpose. Can it be thought if I am seen frequently or infrequently, repeatedly or just a few times in the city of Denver with a man who afterwards commits a crime and accuses me of aiding and assisting him, that I am to be put on trial for my life where he has murdered a man, because, forsooth, I have been seen with him a few times? I say no, not if I have been seen with him a hundred times, a thousand times, or ten thousand times. The rule would remain the same, if your Honor please, there would be no presumption of guilt from any such connection as that, and the testimony of the man who committed the crime, that I was connected with him, would be rejected and absolutely rejected, if your Honor please, if it depended upon his testimony to establish the connection. Certainly, the policeman, if your Honor please,

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does not attempt to do it.

The next is the testimony of Mr. Vaughn. Now, Vaughn was the partner of Orchard. Vaughn knows and testifies to nothing with respect to this defendant or any of his co-defendants. He, Vaughn, worked with this man and never knew, if your Honor please, even from him, that he had any unlawful purpose except when he one day jocularly remarked at Canon City that he had a bomb which he was going to put under Peabody if he had a chance; and Vaughn considered, in his own language, that he was "tughouse." There is all the connection with Vaughn. Vaughn does not suggest even that there was any thing criminal in connection with Mr. Orchard at that time or that he had any knowledge of it.

The next man is George W. Rich. Rich, as I remember it, is a hotel keeper down at Fort Collins, who ran a hotel there, if your Honor please, in the fall or summer, or fall of 1903. Orchard says that Adams told him, and that Haywood afterwards confirmed it, he had some conversation about it, that he was there in Fort Collins in 1903 for an unlawful purpose, and Rich establishes the fact that Adams stopped at his house for a period of two nights at that time. Again no connection, nor no unlawful purpose shown, and nowhere, unless you take to your aid the testimony of Mr. Harry Orchard, which you cannot do on this motion. So much for these men.

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So now come to Mr. Nichols, Mr. Jasper Nichols, the sheriff of the county of Canyon. Mr. Nichols testifies to copying a letter. There is no knowledge upon his part of whose handwriting

the letter was in. He copied it as nearly as he could and he has produced it as he copied it, and what I have said upon that shows that there is no pretense upon the part of Mr. Nichols that there is any connection between Mr. Haywood and that transaction,-- not in the slightest degree does it militate against Mr. Haywood until you couple it with the statement of Mr. Harry Orchard, that pursuant to that purpose he received a hundred dollars from Mr. Hopkins, but according to this check, if it is claimed, that this check is the check which belongs to Harry Orchard, or this draft, he could not have received a hundred dollars at all under the draft.

The next witness that we have, if your Honor please, is Mr. Edward Boyce. Mr. Boyce declared that the Miners' Magazine of the Western Federation of Miners was a magazine which was the official document of the organization, and that the organization was responsible for its utterances. Now, I have this to say with respect to these articles in the magazine, because that is all that Mr. Boyce testified to. There are articles which declared a malicious feeling toward Governor Steunenberg. They are not in any sense articles which contained any crime or violence threatened against Governor Steunenberg, or which declared that he should be the subject of violence, or that he should die any but a natural death; in fact there is no reference to his death in any of the articles other than a political death which he was expected to be consigned to, and which, as a matter of fact, he was consigned to when he went out of office in 1901. Now,

we have already seen, if your Honor please, that the articles, or declarations of motive, or of malice or of intent to commit crime even is not sufficient in a case of this kind unless it is followed up by a showing that the party who made the declaration himself absolutely participated in the crime. A remote declaration like this of an expression of an opinion, and, if your Honor please, there is not an expression of an opinion in that magazine with respect to Governor Steunenberg later than the year 1902,-- an expression of an opinion of that kind would have nothing to do with a case of this character, and it is not evidence which tends to sustain any charge which is connected with this man in his trial upon the death of Governor Steunenberg. You have got to go to Orchard to establish his connection with the offense. Now, if your Honor please, I don't <sup>say</sup> ~~say~~ you have got to establish his connection with the offense beyond a reasonable doubt, but you must establish it upon some material matter contained in that charge, and you must establish it without the aid of Mr. Orchard's testimony. Let those articles stand there alone by themselves in that magazine, commencing with January of 1900, and ending in the early winter of 1902,-- let them stand there as they do, if your Honor please, and say whether or not any man would be put upon trial for his life because he had given vent to those utterances? I want to correct one thing. I think there is a reference, perhaps later than 1902, to Steunenberg in connection with some other men, but it is not in the nature of a threat at all; there is sort of a review of the previous situation, and I

strictly correct when I say there is no article that has appeared directly pointing to Steunenberg later than 1903. Put these articles in-- stand them up by themselves, one after the other, without the aid of Orchard's testimony, and do they tend in any degree to establish a connection of this man with the death of Steunenberg? It is only when they are aided by the statement of Orchard that he with Haywood conspired and agreed and planned upon the death of Steunenberg, that they become material at all. And on a notion of this character without other connecting evidence, they are not material even, and they cannot be considered.

The next was the offer of some exhibits; these were in regard to the bombs, etc., and it is needless to say that there never has been shown any connection except through Orchard of Mr. Haywood with the construction of any bombs or any other matter.

Then John L. Stearns came on the stand, who testified that he was an insurance agent, that Orchard worked for him, and lo and behold Haywood is to be held responsible for the murder of Governor Steunenberg because, if your Honor please, Orchard went to my office and received the endorsement of my partner, Mr. Hawkins, at the request of John L. Stearns to write him a recommendation upon which he could secure a job to act as a life insurance agent. I say, if your Honor please, that that sort of testimony has no force or effect in a case of this character. I believe that upon mature consideration your Honor will say that it is not even a circumstance. Suppose Orchard was recommended,--

suppose that Pettibone told him that he believed-- and you have  
got to depend on Orchard's word for that,-- suppose Pettibone  
went him there to get the job; suppose Pettibone, Hawkins,  
Sullivan and Cohen all recommended him to Stearns; what of it?  
Does it show them at that very time, or tend to show that he was  
engaged in a conspiracy to kill Peabody? I say that if it tends  
to show anything, standing by itself, it tends to show that the  
man was out of work and wanted a job; it tends to show, if your  
Honor please, that there were people who in the goodness of their  
heart were willing to recommend him, and notwithstanding the fact  
that they knew he was travelling under an assumed name because he  
was supposed to have been driven out of the Cripple Creek mining  
districts, that they gave him letters of recommendation without  
any knowledge that there was anything wrong about him. How does  
it connect Haywood, if your Honor please, how would it connect  
Haywood if Haywood himself had given Orchard a letter of recom-  
mendation? It would not connect him in any way unless you go to  
the testimony of Orchard and add Orchard's testimony to that which  
has been introduced by Stearns, and then rely for the criminal  
part of it entirely upon Mr. Orchard. There is nothing upon the  
papers, nothing upon the face of them, upon any testimony given  
with reference to that that even tends to mix connect anybody,  
even Orchard himself with the commission of a crime.

Then, we have Mrs. Florence Eliza Seward of San Francisco,

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who kept the rooming house at San Francisco in which Mr. Orchard

resided. Of course what I have said with respect to the other San Francisco witnesses is equally applicable to her. She does not know Haywood, or Meyer, or Pettibone, or never had any connection with them or with any of them.

Riley Harris was the next man. I don't place him-- Riley Harris--

MR. DARRON: Wasn't he the man who delivered the bomb to Orchard?

MR. RICHARDSON: Oh, yes, I spoke about him when I spoke of Mr. Roach; he was the tailor who had a bench in Mr. Roach's shop and who delivered the bomb to Harry Orchard after Roach had made it, and collected a dollar and a half for the payment of it. He never saw anybody but Orchard. He identified Orchard as the man who came and ordered the bomb and as the man who came and took it away.

Then comes Luther H. Goddard. His testimony is confined to the digging up of a bomb and reading Harry Orchard's confession, and to the sealing up of that bomb, and to the explosion of the contents of the bomb a little later on in the summer of that year. He pretense that Goddard, if your Honor please, connects Haywood with the transaction, or anybody else, in any way, shape or form. He corroborates Orchard, but what does he corroborate him on? Upon the fact that he, Orchard, planted a bomb at Goddard's gate. Does that tend to connect Haywood with it in any way, shape or form? If that is true Orchard might as well name



Darrow of Chicago or Richardson of Denver, and made Goddard's testimony competent as to one of them as one of the murderers of Governor Steunenberg. It is only when you go back and add Orchard's testimony to it. And I call attention to the fact that there was a roving commission given him as far as Goddard was concerned. It is true that at one time there was some talk of an attempt upon Goddard's life, but you will remember that the attempt which was testified to, that Orchard himself said that he had no talk with Haywood or Moyer about the Goddard bomb or about the explosion of it at all, so that, if your Honor please, cannot be considered.

Next comes Mr. Kirwan. Kirwan is the present acting secretary and treasurer of the Western Federation of Miners and was put upon this stand to show that Jack Simpkins, as a member of the executive board of the Western Federation, had jurisdiction of Federation matters-- whatever business matters the Federation had within the State of Washington, Oregon and Idaho, were under Jack Simpkins immediate control. I submit, if your Honor please, that before you can connect him with this matter, absent though he is, you have got to resort to the testimony of Orchard. Before you can connect Haywood with any unlawful purpose you have got to resort again to the testimony of Orchard. Every transaction he had with Simpkins upon its face is a perfectly innocent transaction. Apparently, in the regular course of business, as is shown by the long period of time that these checks were issued, from time to time, to Jack Simpkins, Kirwan testifies

that he was the organizer of the Federation, that that was a part of his business for the Western Federation of Miners within this portion of his jurisdiction, and you have got to go back through all the testimony of this case and again apply to Mr. Crohart before you establish any connection whatsoever.

Now, E. F. Stuart testified this morning to the handwriting -- no, it was not Stuart; I have those mixed up. Mr. Stuart, if your Honor please, was a man who was connected with Mr. Haywood, as with Boyce, or as some superior officer in the mine in which Mr. Haywood was working in 1899. At that time there was a considerable strife on here in this State between capital and labor. Here then one thousand men, according to his testimony, -- just such men as Mr. Haywood himself then was, mining men, mining laborers, were in the bull pen in the northern part of this state. They had been kept there for months and months at the behest and command, the control of the administration where Mr. Steunenberg was the Governor of this state, and Haywood at that time expressed perhaps hatred and ill will toward Governor Steunenberg as the head of that administration on that account. I submit, if your Honor please, that if that is cause or reason to charge Mr. Haywood with the death of Governor Steunenberg, there are a thousand and probably five thousand men within the confines of the State of Idaho who are just as guilty as he is. That evidence standing alone without the aid of Harry Crohart's testimony has not the remotest tendency of any kind or character to show that this man

who was regarded as a model citizen of this State both before and afterwards, had any part in the transaction which ultimately resulted in the death of Steunenberg, -- not in the slightest degree does it tend to show it. We all express our animosities toward those against whom we have some feeling; we submit criticisms upon them which are violent to a greater or less extent. How constant the sounds in our ears, on the streets, and at gatherings, anywhere, of the condemnation of our fellow-men for some course they have adopted! Why, the thing is true, in every single spot and place that a man moves and has his being in this life. There is not any audience that hears a man speak, generally speaking, but that half of them will agree with him -- one half will condemn and the other half will praise for the same purpose upon the part of any given party. Here was Mr. Haywood, at a time when his brethren in labor were confined in the bull pen, and he regarded it as improper and unlawful that they should be detained there week in and week out, month after month, without any semblance of a trial, without any court to try their cases, without being confronted with any witnesses against them, and he, with others, declared that it was an outrage and that those responsible for it were subject to the severest criticisms. You have got to again go to the testimony of Harry Orchard, -- You cannot get it from Stuart before you can declare that Haywood was in any sense responsible for the death of Steunenberg. Aided by Harry Orchard, applying his testimony, you may say that there is a remote connection between the two things.

But take away Harry Orchard's testimony from it and the testimony of this man whom the law condemns, whom all right thinking citizens condemn, abolish it as the law declares upon a man of this kind, and where is the connection which shows that this man is in any degree responsible for the death of ex Governor Steunenberg.

The next witness was W. D. Macartney. Mr. Macartney was a man that— I want to be quite sure about it— who was connected with the Postal Telegraph Company, and he brings here for our consideration certain exhibits, which exhibits are afterwards identified by a witness, who for the purposes of this motion we do not attempt to dispute, as being in the same handwriting as a letter which was unquestionably written by Mr. Pettibone to John L. Stearns. He says that Mr. Pettibone has written two applications to the Postal Telegraph Company, one dated September of 1904, and the other dated in October of 1904, wherein he transferred \$97.50 to Harry Green of San Francisco under the name of J. Wolff, and \$43.00 to the same party in San Francisco under the name of Bowen. Now, if your Honor please, these two papers must stand in evidence here upon this motion without the aid of Harry Orchard. What is there in that, independently and outside of the testimony of Harry Orchard, which tends to connect Pettibone even with any crime or with the killing of ex Governor Steunenberg, or of blowing up Mr. Bralley, either one? I submit that any man, woman or child can take those two applications

for telegrams, consider them as made by Mr. Pettibone, consider them as transmitting money to this scoundrel who testified here on the stand,-- admit all of it, and until you accept with it the testimony of Orchard and give credence to that testimony, there is not a thing testified to by anybody which would implicate even Mr. Pettibone as being in a conspiracy with Mr. Orchard,-- let alone Mr. Haywood. No attempt to show that this money came from Haywood other than by Orchard's statement; that the understanding was with Pettibone that he would get money from Haywood whenever he wanted it and transmit it to him-- a man starting off on a murderous expedition of more than 3,000 miles, there and back again, if your Honor please, with \$240. in his pocket, expecting to be gone two or three months and longer if necessary, and with his very partners in crime, openly and above board, making a record which could be identified after, without even an attempt to disguise the handwriting that would last for all time. Why, if your Honor please, of course it is just the thing exactly that a man would not do under those circumstances. It is the last thing he would think of doing. He had better get on the train and carry the money to San Francisco himself. But, assume that he did it and you have got to add to it the testimony of Orchard before there is any testimony there which implicates Mr. Pettibone or Haywood or any one else. It is not an independent fact or circumstance, separate and apart, and considered without the testimony of Orchard which tends to show the admission of any crime upon the part of any person whatsoever.

Now, if your Honor please, we have had here testimony of two witnesses this morning: One is the handwriting expert, and I never spent any time on that, and the other is the man who testifies that he once saw Mr. Haywood get into a wagon and ride away for a few minutes while he stood on the corner waiting for them to come back. Haywood got into a buggy and rode a little way with Harry "Robert" behind a horse which Orchard subsequently bought, and for which a bill of sale was made to Mr. Pettibone. Is that an independent circumstance which connects this defendant with the killing of any person whatsoever? Is it an independent circumstance which even connects him, if your Honor please, with the avowed object and purpose for which the horse was bought, to-wit, the assassination of General Sherman Bell? Not until you call to your aid the testimony of Mr. Orchard.

Now, if your Honor please, I have shown you what the law is upon this subject, if you did not already know it. I have shown you that a corroborative circumstance must not be one which corroborates simply the story of the commission of the crime by the self confessed criminal, but it must be a corroboration which, independent and exclusive of his testimony, tends to connect the accomplice charged with the commission of the crime. I submit there is no such testimony in this case, and I make this motion with such force as I am capable of making it for the reason that there has never been probably in the history of the world a case which has been so widely advertised, so thoroughly discussed, so much talked about, every phase of which has been the subject not

only of conversation, but of editorial comment throughout our  
land. No place where there has been so many charges of bias  
and prejudice as exists in the case at bar, where the newspapers  
have prevented us from getting a jury here for a period of four or  
five weeks, when in an ordinary murder case such as was had  
shortly preceding this one, a jury was gotten in the space of a  
day or a day and a half. To leave such a case to a jury in a  
community that has talked practically of little else, that has  
discussed probably this case more than any one else during the  
past year,-- to leave a case of this character to a jury is to  
invite the consideration of it upon the grounds of passion and  
prejudice, when and where a settled rule of law rightly applied,  
as it seems to me, ought to dispose of the case right here and  
now. I say if this case had never attracted any attention, if  
it was tried as an ordinary case, in the ordinary way, that I  
believe any court of this country would not be slow to uphold  
and maintain this contention, and I know from experience that  
your Honor has got the courage of your convictions, but your  
Honor is a man the same as the rest of us; all of us have been  
influenced to some degree and we are bound to be influenced by  
all the discussion, all the thought and all the calumny which  
has surrounded the publications which have taken place with refer-  
ence to this case, and so, your Honor, in disposing of this motion,  
has got to be careful to separate the judge from the mere manhood  
which exists in the man and determine in the light of this

evidence and under the law what application shall be made to this testimony; and it does seem to me as though you cannot single out one spot or one place in this testimony where, unaided by the testimony of Orshard, it tends in the remotest degree to connect this defendant with the murder of ex Governor Steunenberg. Here is a case which is the flattest case outside, if your Honor please, of the testimony of Orshard, that was ever placed before a court for its consideration. Here is a criminal who testifies against this defendant, who is the peer of any criminal of all the ages which have gone before, and without his shocking story with all of the people-- the 40,000 members of the Western Federation of Miners, the numberless members of the Mine Owners' Association, the securing of this country by Pinkertons from end of the continent to the other, and with the work that has been done by them constantly for the last year and a half on this case alone, and for more than three years prior to that time for the purpose of catching these men in the commission of some offense, they are unable to produce the testimony that merits the consideration of any right thinking person without the aid of the testimony of this foul fiend of murder and crime, according to his own statement, who is the only production that the Pinkertons have been able to place before us, with all the investigation that they have made during all the months which have preceded. And I submit, if your Honor please, as candidly as I am capable of stating it, in all the 23 years in which I have been engaged in



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the practice of law, this motion ought to be sustained and this jury should be told that as a matter of law and on the evidence there is nothing for them to do but to sign up a verdict acquitting this defendant.

THE COURT: Mr. Borah, you may proceed.

MR. BORAH: It is not our intention to go into detail to the extent that learned counsel for the defendants have in this matter or to discuss at length either the authorities or the facts further perhaps than to state generally the position of the State and what we believe the evidence in this case shows as far as this action is concerned. And I may say in answer to the very eloquent and moving sentences of the counsel for the defense in his closing in reference to the fact that this case is being tried under peculiar conditions, I think it would be safe to say that if all parties who have known anything about this case or read anything about it or heard anything about it were called upon to testify in regard to the matter of these parties having a fair and impartial trial and selecting a place where they could have that, that Boise City would be selected for that particular place, because there has been one consensus of opinion from all sources, and that is that this place is less prejudiced, less excited, less concerned about this trial of any place where it has ever been discussed or considered so far as we can hear of that fact; and I apprehend that as they have been treated in a fair and impartial way they will continue to be, I know they will be so far as the court is concerned, and will be so far as the prosecution is concerned if we understand ourselves.

Now, in your Honor please, the contention in this case of the counsel is in effect that there must be sufficient evidence here to disclose the connection of the defendant with this crime

outside of any testimony upon the part of Harry Orchard.

We are not going to find fault a bit with the law which has been cited by the counsel but rather with the logic which has been used in the construction of the law. The statute speaks for itself and is in plain and simple language and would really need no construction either by the supreme court of this state or any other state, because the language used is such that it is very easy to determine precisely what the legislature meant when it used the language with reference to this class of testimony. We concede, if your Honor please, that there must be some evidence here tending to connect the defendant with this crime standing separate and alone from the testimony of Mr. Orchard. But that need not arise, if your Honor please, in the consideration of that testimony and in arriving at the question of whether or not it tends to connect Mr. Haywood with the offense that the statements of Mr. Orchard cannot be considered in any sense whatever. The authorities do not go to that extent and that is not the law, and as I said a moment ago, the authorities if they are examined, the law laid down by the decisions will not be found objectionable under this rule. But I desire to call your Honor's attention to some few of the authorities which we have collated hurriedly which are cited in connection, not in contravention nor not as against the principle of law enunciated by counsel, but in connection with the principle and in elucidating the principle which has been discussed by the supreme court of California.

The supreme court of California has said:

"The defendant should not be discharged at the close of

the testimony for the prosecution if the accomplice's testimony has been corroborated in some particular."

Citing the 9th California, 623; and

16th California, 113.

"The corroborating evidence 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. It should not of course be sufficient to show his guilt; for in that event, the testimony of the accomplice would not be needed, but it must in some slight degree at least implicate the defendant."

That is a quotation from the California case which the counsel cited. 39 Calif. 404.

"The corroborating evidence may be slight and entitled to but little consideration; nevertheless, the requirements of the statute are fulfilled if there be any corroborating evidence which of itself tends to connect the accused with the commission of the offense."

Citing again the 39 California, 616.

"Corroborative evidence need not go to the whole case. It is sufficient if it corroborates some of the material part of the accomplice's evidence tending to connect the defendant with the commission of the crime."

State vs. Jones, 88 N.W. 193.

There are two authorities cited in that authority, which

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"Corroborating evidence need not be direct. Circumstantial evidence is sufficient if it tends to connect the person with the crime charged."

Citing again from the same authority, and

31 L. R. A. 630.

"Neither the doctrine hitherto declared by the courts nor the rule embodied in the statute requires that the whole case should be proved outside of the testimony of the accomplice. Such a rule would render the testimony of the accomplice in some cases unnecessary and would defeat the policy of the law which permits accomplices as witnesses in aid of and in the interest of public justice."

Citing 96 N.Y. 162.

"The corroboration necessary to convince need not be founded upon facts connecting directly the defendant with the offense. It may be founded upon circumstantial evidence"

State vs. Miller, 21 N.W. 133.

Each circumstance taken by itself is quite inconclusive, but when considered together they furnish some corroborative evidence. It is not necessary that the corroborative evidence of 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, not need corroborative evidence be inconsistent with the theory of the defendant's innocence."

Citing People vs. Elliott, 12 N.W. 602.

Now, there are some other authorities discussing this proposition, if your Honor please, some of which have been cited by counsel, quite a number of them, but as I will hand the brief to your Honor and it is getting late, I am not going to read extensively from these authorities.

Now, if your Honor please, the contention of the State in this case is that some years ago there was formed or grew up what we may call and what we should call a conspiracy. It was not a conspiracy which originated in a night nor by reason of a single meeting or coming together of certain individual minds. It was a conspiracy which grew out of and arose by reason of a certain condition of affairs, and we contend that the nucleus of that conspiracy were the leading members of the Western Federation of Miners, the official members of that organization -- the kernel of the original conspiracy was the leading officers of the organization.

Now, in answering the proposition of counsel with reference to Orchard we may say that in accordance with a contention of the State is the testimony of Mr. Orchard. But we may leave out of the consideration of this case, as suggested by Mr. Richardson, for a few moments or for a time the consideration of Orchard's testimony. And we will consider the proposition of the evidence which the state has introduced here for the purpose of showing that a conspiracy did originate, did exist and continues to exist among the leading members of the Western Federation of Miners for the purpose of taking out those whose duties brought them in con-

list with that organization. Leave out of the consideration of this case for the time that we are discussing this conspiracy the testimony of Mr. Orchard in its entirety, and consider the facts and circumstances which the state has introduced here for the purpose of showing the existence of that conspiracy and measure the right of their motion upon that theory alone.

Now, there are two ways, if your Honor please, by which to prove a conspiracy, but I may say before going to that that if we do show a conspiracy, if we show the existence of the criminal organization around the nucleus of the leading members of the Western Federation of Miners, then the act of one was the act of all, the knowledge of one was the knowledge of all. It is not necessary, if we prove the existence of that conspiracy, to show that this defendant in this case was ever in Caldwell. It is not necessary to show that he was in connection with the man who actually committed the crime at the time he committed the crime. It is only necessary to show, after we have shown the existence of a conspiracy, that some of the members of that conspiracy went to Caldwell and committed the crime, although every other member of the conspiracy might have been in Europe at that time. And if the evidence in this case tends to show that the existence of that conspiracy, every particle of evidence that tends to show the conspiracy tends also to corroborate the testimony of Harry Orchard. It is not necessary either in order to show the corroboration of Orchard's testimony to show it as the corroboration of his testimony nor viewed in the light of a single transaction upon the part of Mr.

and  
Haywood himself. But if we have shown the existence of the conspiracy we have also during the time that we are showing that shown the corroboration which it necessary to show in order to sustain Mr. Orchard.

Now, in order to prove a conspiracy, as I say, there are two ways in which to prove it. The first case by the testimony of some one who is a member of the conspiracy who will come in and testify to the agreement, to the combination, to the understanding and testify to the acts done in pursuance of the agreement, and the declaration made in pursuance of the agreement, and understanding. That is the unusual way, because it is seldom that we can secure a party who will come in and testify to the agreement. There is another way by which to prove a conspiracy, and it is the usual way the way in which the state is ordinarily compelled to prove it, and that is to show a combination of circumstances, a number of acts tending to one general motive or purpose, showing the act of "A" here, of "B" there, and of "C" there, of the declaration of "D" here and of "E" there, and so forth, of having for their object and purpose apparently the accomplishment of one design or the one purpose, and that is the manner in which ordinarily these conspiracies are proven. Now, leaving out the testimony of Mr. Orchard for a time, let us see what the state has proven here in the nature of a conspiracy upon the part of the leading members of the Western Federation of Miners with reference to this -- and when I say the leading members I can name here at this time the defendant, Mr. Meyer, and Mr. Siskins, and as their co-operators,



Mr. Orchard, Mr. Steve Adams, Ed Minster and Mr. Pettibone, whom I will class with Mr. Orchard and Mr. Minster for the purpose of the argument. Now, if your Honor please, taking that view of it, we are not to forget the fact that while the defendant is upon trial alone he is indicted in connection with Mr. Siskine, Mr. Pettibone, Mr. Moyer and himself, the parties all four being defendants in this case, and as stated, the state contends that these leading officials came together from time to time, formed and it were, as they viewed it from the conditions and environments which surrounded them, and finally determined as we claim upon a criminal course for the purpose of taking care of those who came in conflict with their policy. The beginning of that, as shown outside of the testimony of Mr. Orchard entirely, was upon the 25th of April, 1899. There was a conflict in the Cour d'Alamosa. It appears, not from the testimony of Mr. Orchard, but from the language used in the Miners' Magazine and from the numerous articles there published that upon that day a number of men, some thousand in number, went down to Hartner, blew up the Bunker Hill and Sullivan mine, and killed Jim Shayne and a man by the name of Smith. Now, it does not make any difference in this case, if your Honor please, whether the union was at fault in that matter or not. That I am not going to argue because it is not necessary. But it followed from the conflict that Governor Stearnsberg as Governor of this state came in conflict with the Western Federation of Miners and took active measures to prosecute some of their members. It appears that he declared martial law. They

erected what they call a bull pen, an improvised prison, and proceeded to prosecute and punish some of the members of that organization. By reason of that fact there arose a deadly conflict apparently between the ex-governor Stansberg and the Western Federation. There arose that hatred, that ill will, that feeling which is the basis of motive, as we claim, in this case when carried out along the lines of the continual growth of this industrial organization, the Western Federation of Miners. Now this is not proven by the testimony of Mr. Orchard at all but by the language of their own official organ. And it further appears that at the time of these disturbances Mr. Moyer was a member of that organization. Mr. Haywood was not at that time a prominent member although he soon afterwards became a prominent member. In addition to this it is shown that that conflict continued for some time. That as a result of it the Western Federation of Miners, the leading members thereof, came to look upon the governor as their conspicuous and uncompromising enemy, and when he retired from public life they put upon him not only the brand of a hireling but that of a traitor; and, as we claim the circumstances in this case show, when they are followed down to the incident of the 5<sup>th</sup> of December, 1908, from that time until that time, that the brand of traitor is only wiped out, when it is placed by that organization, by blood. Now it is said that Mr. Haywood was not a member of that organization at that time, but we have shown outside of the testimony of Mr. Orchard that a short time thereafter he became a member of that organization and that

immediately after he became a member of that organization he took into himself the feeling which possessed the organization at the time that this disturbance occurred, and over his own signature and by his own declaration expressed as a representative of his organization the fact that Mr. Steunenberg was an uncompromising enemy of the organization and that his success meant the failure of the Western Federation of Miners. Therefore, there continued after Mr. Haywood became a member of the organization that deadly feud between the official representative of the ex-official representative of the state and the Western Federation. Now leave for a moment this fact which is proven alone by the articles in this magazine and go to another incident. A few days before the death of ex-governor Steunenberg what do we find outside of the testimony of Mr. Orchard? We find that one of these parties who is charged as a co-conspirator, the supreme representative of the Western Federation of Miners, is at Caldwell; that he is in company with an obscure member of that organization, the accomplice in this case; that he is there not, if your Honor please, under such circumstances as Mr. Richardson says should be considered wholly innocent upon its face, but this man who was present at the trouble in Gardner, who was a member of the organization at that time and who was the chief representative of the organization in the state of Idaho, was in the fore part of November, 1906, in the city of Caldwell at the home of ex-governor Steunenberg in company with this accomplice, and that is all proven outside of the testimony of Mr. Orchard, by Mr. Holman,

Mr. Russell and Mr. Deepsay and the other witnesses who were there. Now what was his purpose there? A Here is a man who represents a great labor organization; a man above all men who ought to travel in the open light of day and under his own name. But he goes to the home of Governor Steunenberg not under his name as J. L. Simpkins, the chief representative of the Western Federation of Miners, but he goes as a criminal under an assumed name and hibernates with another criminal the accomplice in this case. Is that proven by Orchard? It is proven entirely outside of the testimony of Mr. Orchard. What next happened? He leaves, and in a day or two or a few days goes to Nampa when he leaves the home of Governor Steunenberg. This assumed name which the leader of this organization assumes in Caldwell is changed back to his right name. Is there no indication of crime, of wrong doing, of unlawful purpose? The great leader of a labor organization in the home of the murdered man with the accomplice and the criminal under an assumed name and occupying the same room? That is all outside of the testimony of Mr. Orchard in this case. That J. L. Simpkins, the chief representative of this organization, leaves Caldwell as it happens not according to the testimony of Mr. Orchard, but according to the testimony of Rice and the other parties who was Mr. Orchard, this man who had been sleeping with Mr. Simpkins, who was there under an assumed name as Orchard was, also stays in Caldwell, sleuths upon the governor, spies upon his house and tracks him

until finally he is blown into pieces the same as the Bunker Hill & Sullivan mill was blown before which he undertook as governor of this state to protect. This is not a part of the testimony of Mr. Graham. It tends to show that that feud which began upon the 25th of April, 1892, and which had its nucleus around the official members of that organization was carried on and down to the date when the chief representative of the organization landed in Caldwell in company with a man who had twenty scalps hanging to his belt, sleeping with him and left him there to do the deed while he got out of the country to protect himself.

Now who was Jack Simpkins? He was the avowed official associate of this defendant. He was the representative of the state of Idaho of this organization. What happened, outside of the testimony of Mr. Graham, while they were there? Why, Mr. Jay Nichols intercepts a letter and he keeps that letter. It comes from the office of the Western Federation of Miners, the city of Denver. Innocent, they say, upon its face. Unsigned! Addressed to whom? Harry Graham? No, addressed to Thomas Hogan, the name of the criminal while he was in Caldwell with Jack Simpkins. Not addressed to the man who passed in Denver in company with these parties by the name under which he was passing there at the time he left, but the name which he assumed when he registered at Caldwell with the other man, Mr. Siemens, the chief representative; and that letter comes to Thomas Hogan unsigned. Another intention -- another evidential fact that

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they did not propose to show their connection with Mr. Orchard except when they had to do so. They copied that letter, and what does the letter say? Why, it says that upon the list "That was sent to you Jack." Jack Simpkins, I presume. We have a right to assume as a circumstance that that is true, the man who was in company with him, and we find afterwards that something was sent to Jack, whether it reached the party or not. We have a right to assume as a piece of independent testimony that that was a part of the conspiracy and combination when they were sending this money in a round about way to write not Harry Orchard but Thomas Logan, the assumed name which he was carrying in connection with Mr. Simpkins at that time. So the accomplice stays there and the crime is committed, and we will go a step further in this conspiracy because we are undertaking now to show what the evidence is here with reference to a conspiracy which we will claim in a few moments encompasses the individuality of this defendant in this case, and therefore the act of Mr. Orchard was his act, and the act of Pettibone was his act, and the act of Jack Simpkins was his act just the same as if he had been personally present. Go a step further, go back to the San Francisco scene and see whether or not that is also proven as a part of this conspiracy outside of the testimony of Mr. Orchard. Witness after witness came upon the witness stand and testified that the same party who had been proven by other witnesses to be at Caldwell with Mr. Simpkins under the name of Orchard was down in San Francisco looking for another conspicuous character

in the troubles of 1899, hunting out his house, sleuthing around his place of living under the name of Mr. Barry. They testified that he came there in the month of October, that he hunted a room which overlooked the house of Mr. Bradley, that he inquired as to his residence and familiarized himself with the way by which he could get into the house, and as Mr. Guibinny said, made himself familiar with the situation with reference to Mr. Bradley's residence, took every opportunity to get into the home-- Mr. Amos Bradley being one of the conspicuous characters of the trouble of 1899 and standing within the same class as Governor Steunenberg precisely. Now what is the result after this man Barry under an assumed name has been there a time? We find in the house that the milk had been poisoned and a few days afterwards there is an attempt to send Mr. Bradley out of existence in precisely the same manner in which the Banker Hill & Sullivan mine was blown up and Governor Steunenberg was afterwards killed. What else happened? Again we find our way back to Denver. Take what path you will, follow what trail you may, from the time Harry "Robert" started upon his expedition of crime until the close of it, take any path you will and it leads back to Denver. They sent a registered letter under the name of whom? Why, of Jack Dempsey. They sent him a Postal telegram conveying him money at the time that he is hunting out this house, at the time he is sleuthing upon this man, he is being sustained by a party whom we claim was a member of this conspiracy, as the evidence will further show, and Mr. Pettibone sends him money

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over the Postal Telegraph Company. Now? Not as Harry Orchard; not even as Thomas Hogan, but as Jack Dempsey.

MR. HAWLEY: Green.

MR. BORAH: No, the registered letter was Jack Dempsey, and afterwards by the Postal telegraph to Harry Green. Now we say that that is evidence -- and I am not getting Orchard now at all -- and we have shown that Orchard is there under the name of Harry and we have shown that he is there in that business and we have shown further that a Postal telegram carried money to a party there and that that came from Mr. Pettibone. The testimony here of Mr. Kingsley show that the handwriting was that of Mr. Pettibone. It was signed in the name of J. Wolff. He committed the crime of forgery in order to convey that money to San Francisco. Again it was signed as Pat Downen, assuming another name just as Mr. Simpkins and Hogan assumed another name in Caldwell. These parties in dealing always deal under cover, under assumed names, which discloses the criminal motive or the criminal purpose upon the part of the parties in these different transactions. Without leaving the city of San Francisco where this crime had apparently been committed as shown by other evidence than that of Mr. Orchard, we go from there back into the events in Colorado, and we find another condition of affairs there all denounced by the Miners' Magazine and particular parties named who are supposed to be unfriendly to the organization, the same as Governor Chamberberg and Mr. Bradley, and we find a crime occurring at the Independence depot. Now they say that there



is no evidence except that of Mr. Orchard. But we have shown as a circumstance that the crime occurred and that at the time that it did occur every party upon that platform was one who was supposed to be unfriendly to the interests of the Western Federation of Miners; that they were non-union men, men who were there for the purpose of interfering with the union men and who were proceeding to work the mines which they desired to remain unworked unless they were permitted to work them. In addition to that we show that but a short time before a crime had been committed against two other non-union men in the Vindicator mine, and this is shown outside of the testimony of Mr. Orchard. We have a right to assume, when we show that there was a conspiracy here, we have a right to reason from the proposition that each and every one of these offences were committed against parties who this Miners' magazine and other evidence shows were looked upon as the enemies of this organization, and each party who has been either attacked or upon whom the crime has been committed has been shown to be, outside of the testimony of Mr. Orchard, a party upon whom they look as their common enemy in this industrial war which had been going on since 1899. Now, if your Honor please, take the transaction with reference to the letter of Mr. Stearns. There is an independent transaction, one which is wholly separated from Mr. Orchard's testimony and which was not innocent upon its face as suggested by these parties. Mr. Peshody had just retired from office. He had been the conspicuous enemy of the organization also. He had gone to Canon City. All

at once it appears that Mr. Hagan, not Mr. Graham, desired to go to Canon City, and what does the evidence show? Mr. Stearns' testimony alone shows that Hagan went and submitted certain names and that one of those was that of Mr. Pettibone, the same party who we have shown was sending money to him under an assumed name to San Francisco, one of the parties who was in connection with these defendants as shown from time to time, and in close association with them. Mr. Pettibone gives him a letter of recommendation not as Harry Graham but as Thomas Hagan to go down to the home of Governor Peabody and write insurance. We show this by the testimony of Mr. Vaughn. That when he arrived at Canon City he not only writes insurance or undertakes to, but he carries with him a bomb; that he has there something by the means of which he proposes to take the life of Governor Peabody. Now why was he sent down there by Mr. Pettibone -- because his letter shows the recommendation -- or why did he suggest it under the name of Hagan to go to Canon City at that particular time, and why was it that he carried with him the instrument of death? We have traced him from Governor Stenmenberg's home under an assumed name down to San Francisco and back to Colorado, and each and every time he is in close connection in the city of Denver with Mr. Pettibone or some of the other parties there who are interested, as we claim, as members of this organization. When he gets to Canon City Mr. Vaughn undertakes to beguile him away from his place of crime and takes him to Rocky Ford; but nevertheless it appears that he went there upon a criminal purpose, with a

criminal design, and it appears outside of his testimony that he went there upon the recommendation in part of one of the members of this organization, and you may take each and all of these offenses and you will find that in each and every instance where Mr. Orchard was connected with any of the parties or attempted to commit a crime upon any of these parties they were known as the enemies of this organization. Now they say that all of this does not connect Mr. Haywood with this offense. It is shown in addition to this that at a certain time Mr. Orchard was writing a letter to his wife through the headquarters of the Western Federation of Miners. The letters disclose that fact themselves. And it is shown that Mr. Haywood at this particular time was doing what? At this very time when this matter of Peabody's was attempted to be carried out on the part of the accomplice it appears that Mr. Haywood over his own signature was undertaking to make his wife believe that this party was in the territory of Alaska.

MR. DARROW: Haven't you got your dates mixed a little?

MR. BOSMAN: No, I have not.

MR. DARROW: Haywood's letter was November 18th.

MR. BOSMAN: But the time that he was writing to his wife in the first instance was when he was after Peabody and when Haywood wrote the letter he was after Governor Stearnsberg.

MR. DARROW: The letter of Haywood was November 18th.

MR. RICHARDSON: 1904.

MR. BORAH: Well, upon the 17th day of November, 1908, according to the evidence in this case, Jack Simpkins, the representative of the Western Federation of Miners for Idaho, and Mr. Orchard planted a bomb for Governor Steunenberg in Caldwell, and upon the 18th, the next day, Mr. Haywood writes to his wife and tells her that he is in Alaska.

MR. RICHARDSON: You stated he was at Peabody's at that time.

MR. BORAH: What I said was at the time of the letters he was writing to his wife through the Western Federation of Miners' headquarters that he was at that time upon the trail of Governor Peabody.

MR. RICHARDSON: You don't mean Haywood, you mean Orchard himself?

MR. BORAH: I think it would apply to either one, but I was referring to Orchard. At the time he wrote the letter to his wife stating he was in Alaska, Mr. Orchard was upon the trail, in company with Mr. Simpkins, of Governor Steunenberg; and it shows that at all times, that when he was in pursuit of these different individuals who were known as the enemies of the Western Federation of Miners that he was in touch with headquarters receiving money from the members of the Western Federation of Miners and was being sustained while he was carrying on these criminal doings by the money which came directly from that source.

Now, if your Honor please, as I said, I do not propose--

it is half past four and my associate has some remarks to make --  
I do not propose to go into the details of this matter and argue  
this case as fully as I would to argue it before the jury. The  
question is whether or not there are corroborating circumstances  
which show this general conspiracy because when it is shown that  
the fact that Mr. Heywood was not present or did not participate  
directly in this particular crime by his personal presence or by  
a letter or direction or by any act or word outside of the  
testimony of Mr. Orchard would not be material upon this motion.  
The question which the court has to consider is whether or not  
the State is correct in its view of the proposition that there  
was a general conspiracy and whether or not the evidence in this  
case tends to show that general conspiracy and that the defendant  
in this case was a member of that conspiracy.

MR. BARNETT: Your Honor, it is not necessary for me to go over this evidence because I think Mr. Richardson has gone carefully over the evidence of all the witnesses in this case. I shall only attempt to notice what Mr. Borah has said in reference to connecting this defendant with this case. I take it that the reading of the authorities is of very little use here. The statute is just about as plain, it seems to me, as the remarks of the court upon the statute, possibly plainer. The statute explains itself and when it is enlarged upon it is possibly obscure.

Before anybody can be convicted where the evidence of an accomplice is used there must be other evidence which directly connects the defendant with the commission of the crime. I can't know how any language could make it much plainer. Before the defendant in this case can be convicted there must be corroborating evidence which directly connects him with the murder of ex-governor Steunenberg. Now, where is it? We have had a list of one hundred and fifty witnesses presented to us. We have listened to some fifty of all sorts. And in summing this up counsel only draws attention to a letter addressed to Caldwell in connection with a draft which he cannot claim by the wildest flight of imagination tends to connect this defendant directly with the commission of this crime. What is there to show that this defendant, William B. Hayward, had anything to do with the murder of ex-governor Steunenberg? What is there that will,

standing alone in this case, if the evidence of Harry Orchard was not admitted? Now, let us see: It takes something besides general statements and intemperate charges to make a case of murder against a citizen, especially with the court. Some of these things might go with a jury, but when it comes to connecting a man with the crime of murder there must be something specific, something definite to show that the defendant is guilty of a peculiar act charged. First we are told there is a conspiracy, and the word "conspiracy" covers a multitude of sins and it always has -- especially the sins of the State. As a general rule it has been somewhat discarded in more enlightened times. It always was a convenient way to get rid of some one whom the particular people in charge wished to get rid of at the time. They charged him with conspiracy and then the court had to let him go when that charge was made. If there is a conspiracy in this case, what is it? When was it born and who were the parties to it? Is it claimed there was any conspiracy to murder ex-governor Steiensenberg? If so, when and where and who? Is it claimed that there was a general conspiracy to murder governors? Who was engaged, and when and where and what? Was there a conspiracy to kill everybody or any body or any particular class or any particular person? If so, when and where and who, and what if the evidence upon which any such conspiracy is urged or charged in this case? Senator Borah says away back in 1898 the

governor of this state got into some difficulty with the organization of the Western Federation of Miners. Assume that is true, and for the purpose of this argument I concede with him, that it is not necessary to go into the question of who was right or who was wrong. There was some difficulty between ex-governor Steunenberg and the Western Federation of Miners, a thousand of them, of the miners, according to the evidence so far in this case, were put in the bull pen. It may have been entirely justifiable or it may not. Does it follow from that that every man who was in the bull pen, or every member of the Western Federation of Miners, or every miner, or any other large class of people entered into a conspiracy to kill a governor seven years later? It is absurd upon the face of it. Do you suppose a miner could be brought into this court and because he happened to be in the bull pen, and because he happened to use intemperate language in 1899 or in 1900 over a political matter upon which all sorts of people expressed their opinion in the freest possible way, that he could be charged with conspiracy? If so, there isn't a member of Congress, there isn't a senator who could not be charged with conspiracy upon the one side or upon the other. I undertake to say there was not a political speaker who went up and down the state of Idaho and throughout the United States who could not be charged with being a party to a conspiracy upon the one part or the other. It takes something besides intemperate



language, something besides feeling, something besides a  
cause for prejudice to make out a conspiracy to kill, and  
there has been nothing else in this case. That is followed  
up with reading from the Miners' Magazine certain articles  
showing that those who were then in charge of the Miners'  
Magazine used intemperate language against ex-governor Steun-  
enberg. Now, what is there of that? Only one or two arti-  
cles have been read from the Miners' Magazine since Mr. Hay-  
wood had anything to do with it, and I submit they are the  
most temperate of any. You could not compare them for one  
single moment with one single issue of the Statesman of this  
city or pretty nearly any other newspaper that pretends to  
discuss the issues of today, not once for a minute.  
There were many of them, and the only one that had any vigor  
in it was a quotation from a congressman containing a piece  
of a poem from James Russell Lowell that we used to recite  
loudly and vigorously when we went to school years ago.  
Now, that is the conspiracy and that is all there was of the  
conspiracy. Just think of it a moment! At that time Mr  
Boyce was at the head of the organization. The most vehem-  
ent of these articles bore his signature. Almost everyone  
of them was printed when this defendant was an obscure miner  
working down in the bowels of the earth over here in Silver  
City. Not a single word from him. Not a single line from  
him. The articles introduced are written by some one else and  
and are clearly in the line with the articles and with the

speeches that were delivered and written all over the United States at that time and with which he was in no way connected and still we are told that every one of those miners -- every one of those miners and every one of those people then entered into some conspiracy to commit murder.

Why, it is of a piece with the statement of one witness in this case, and just think of it! Here is a man who has been followed for years; a man whose every act and whose every word, spoken and written, has been noted for years, and able men have been following his footsteps, and able people have been collecting from the four corners of the United States every scrap of evidence they could get, and they brought one man here who in 1899, at the very height of this excitement here, may have used some intemperate language in reference to ex-governor Stearns, but not a single individual has been brought upon this stand who ever heard him say a word in the seven years; and for four years there is not a scrap of evidence in this record that the Miners' Magazine ever mentioned the name of Stearns and yet we are told, with the possible exception of ones when they were found to have had a certain check, and that was in 1903, I think, but I am not very certain, it was one of the presidential campaigns, and yet we are told that all these men were in conspiracy to murder. Supposing these men had been running a great newspaper and had made frequent charges against men high in political life or industrial life, and

had published editorials day after day and cartoons day after day in reference to political men and men engaged in industrial affairs; and supposing they are killed, does that prove a conspiracy to murder? Does it prove that they had anything to do with the murder? If it has any effect whatever in fastening any crime upon them, it would be safer to shut down the printing presses and forbid public speaking, forbid the discussion of public questions. If because of any intemperate word of political discussion some one is liable to lose their lives on a charge of conspiracy, it would be far better to follow that policy. There can be absolutely nothing upon any theory, even upon the idea that a great labor organization in 1900, or in the years thereafter, soon thereafter, entered into any conspiracy against the life of ex-Governor Stoumenberg. Nothing happened long after to establish the evidence as to what happened to show that a number of men entered into a conspiracy. That may be the theory of the case to bring a verdict from the jury where there is no evidence, but that will not do. That was not the evidence of this self-confessed criminal. His evidence was that this defendant and Mr. Hoyer and Mr. Pettibone hired him and gave him directions to kill this man, that man and the other man, and he went here and there to execute those commands just as those commands were given, for hire. He did it for so much money, but not that a large number of men or a small number of men were in any general conspiracy to do

any illegal acts, but that certain specific individuals had employed this one to go and do their bidding wherever they saw fit. One man directed him, one man told him to go here, another told him to go there, -- and of these three men it was generally -- almost always, only Haywood or only Pettibone.

Now, that is the only theory upon which any of this evidence, I take it, was presented to this court, or could have any bearing with this jury. If there was any such general conspiracy, your Honor, I want to know why it is that just these three men, or these four men, have been singled out to be indicted and tried before this jury. If there was any general conspiracy at the time, and these men were in the ball pen in 1899, and while other men were in charge of this organization, men whose words have been read and for whom we are to be held responsible, why is it, I ask you, that only these men who at this particular time were in active charge of this organization, why have these men been singled out for slaughter if your conspiracy is as broad as you say, why not reach out and get them? It was not presented upon the theory that this man, confessing himself to be an assassin, confessing himself to be hired, that he was employed to do this work and that work and the other work, and that the men who hired him were responsible for the acts as they would be if there was any legal evidence to connect them. Now, it is perfectly plain that if Hazy Orchard

confesses that he committed a crime in San Francisco, and then when you produce from San Francisco evidence that some such thing was done, that in no way connects this defendant or any one else with the commission of that crime, and so far as that is concerned there is no evidence of crime in San Francisco if his testimony is left out of this case. There is no evidence of any attempt to compass the death of Governor Peabody if his evidence is left out of this case. There is no evidence that any members of the miners' organization ever had anything to do with the Vindicator mine, or with the explosion at the depot, if his evidence is left out of the case, and as to that the first specific charge that is made that these men ever had anything to do with any of these affairs after 1893 was at the time of the explosion of the Vindicator just in the last end of 1903.

In 1893 it was not pretended that Graham had anything to do with the organization whatever excepting that he had and carried a card for thirty days. He knew none of these defendants. He had nothing to do with any of them, he had nothing to do with any of the active members of the organization. He simply held a card for thirty days and got on the train with those other men and went down to this mill, and you hear nothing more of him until the last days of 1903, and then he tells this court and this jury that he went into the Vindicator mine at that time, not even acquainted with any

any of the parties charged in this indictment, at that time having nothing whatever to do with a single one of them, and did something which not one of them knew anything whatever about; and without his evidence there is not any connection whatever to show that any crime was committed at the Vindicator mine at that time, and if so, not one of these men knew anything about it. The next he says, or while he was a miner there at Cripple Creek, in the midst of a great strike that had been lasting for months, without any specific directions from any one of these defendants, without being hired, he put some powder under the depot at Independence, but as to what he did there is nothing in this record whatever excepting his testimony; and he does not swear that he did it at the bidding or behalf of one of them. And what follows followed? He says that he killed Lyte Gregory. What sort of a conspiracy could exist, or what sort of a conspiracy has been proven or could be imagined to get rid of him? If there was one, where and when was it, and how was Gregory connected with it? According to his own testimony he went out with one or two other men, and everything in reference to Gregory rests upon the testimony of Harry Orchard alone. Not another man saw him, not another person even recognized him, much less connecting this defendant or any other man indicted with him, with the commission of that offense or that crime. And when it comes to the question

of Bradley, where he himself has sworn that he attempted to commit a crime, or attempted to commit the crime of murder, there is no evidence in this case that could for one moment even connect Harry Orchard with it excepting the statement of Harry Orchard alone,— nothing else, and much less connect any other individual with it whose name has been mentioned.

As to Jack Singhine, the evidence in this case has shown that he was in the bull pen in northern Idaho in 1899. If he had anything whatever to do with the Caldwell matter, his motive was plain, his reason was plain, but without the testimony of Orchard there is nothing to connect him excepting that he went down to Caldwell and registered under some other name upon the hotel register. I trust we have not got to where a man can be convicted of murder merely on the false registry of your name on a hotel register. There might be any number of reasons falling far short of murder, and there is no presumption whatever because a man registers some other name than his own that he is present in a town to commit murder, but if he were there and there for that purpose, what is there that directly connects this defendant with him or with Orchard? Why, your Honor, it is said that he was one of the executive board of the Western Federation of Miners. Well, now, is it possible that any one could say for a single moment that because a certain member of the board, whether it is an industrial organization or a <sup>business</sup> political organization, that because one of the members was guilty of a crime that every member of the board was in a con-

spirecy with him to commit that crime? I take it that there is nothing in this case to show that the main purpose, or certainly the sole purpose in this case was murder. Their membership consisted of some 40,000 men; it was a regular labor organization formed like any other and operating like any other for the benefit of the class to which they belonged. It might be true that some member of the organization would be guilty of crime, that he might have committed murder, but it could not follow from that that every member of the organization, or even every director of the organization was in a conspiracy with him to do it. There is there a scrap of evidence that could tie "Aywood" to it — directly tie him to it? Why, it is a strange thing, if true. Suppose Senator Borah's statement is true, or his theory is true, that here was an organization that for several years was bent on murder, and that these men who have been indicted here were the leading spirits of that organization, that they had killed some twenty people and committed crimes without end, and yet in what year — in what year were these men who were connected with this organization — were they engaged in this business? Not one person ever saw one of these men with a stick of dynamite; ever heard them use a single word by way of making a threat, have listened to a single syllable connecting them with any one of these crimes. There is there one single witness in this case who has ever heard a liep connecting "Aywood" with it? And yet we are told that for ten years, or for eight years at least,



he has been an active member in this plot of assassination, and we have got nothing excepting the statement of a man who is testifying against the lives of three other men to save his own as coolly and deliberately as he ever tried to murder any human being in his life, according to his own statement, and who is testifying for a bigger reward than he ever received for any murder before.

When they sum up this testimony, out of the whole mass of passion and feeling and prejudice, out of the whole detective-work case from the beginning to the end, after five years of following these men for the purpose of getting incriminating evidence, and are then asked to lay their hands upon it, they say what? That Haywood sent a draft to Jack Simpson on the 21st day of December, and that on the 3<sup>rd</sup> day of December Pettibone wrote a letter to Orchard in Caldwell saying that something had been sent to Jack for him.

Now, for the purpose of this motion, we will construe that the strongest it could be construed in favor of the State, without discussing the question of whether Pettibone wrote the letter, without discussing why it was that Haywood sent the draft, without discussing why the letter was written, let us make it just as strong as the State could possibly imagine, and then see if there is a single thing in that evidence which could connect Haywood with killing ex-governor Steiensenberg in Caldwell, and that is all there is in this case, and they have not been able to lay their hands on a scrap of evidence that they could argue

could directly connect him with it. Now, what they would argue as to this circumstance seems to be something like this,-- and I put it as strong as I think they would dare to put it even if we put in no evidence whatever,-- that on the 21st of day of December Mr. Haywood sent a hundred dollars to Jack Simpkins, that a little later than that time Harry Orchard wrote a letter to Pettibone asking about some money, asking for a hundred dollars -- put it as strong as Orchard put it, and that is as strong as could be imagined,-- that thereupon Pettibone either went to or called up by phone and found that a hundred dollars had been sent, and he wrote Harry Orchard telling him that the money had been sent. Now, what of it? Suppose, your Honor, that Mr. Haywood had sent a hundred dollars direct to Harry Orchard at Caldwell while he was there to murder ex-governor Steunenberg, is that evidence against him? And could that by any possible means connect him with the crime? Gus Paulsen gave Harry Orchard the three hundred dollars with which he went to Caldwell to murder Steunenberg. Is there anybody in Idaho or anywhere else that believes that Gus Paulsen was guilty of murder because of that? He took dinner with him; he gave him \$300; he took that and bought a ticket to Caldwell and paid his hotel bill with it, and he murdered Governor Steunenberg. Does any inference follow from that? Suppose he had bought the ticket and given it to him,-- does any evidence of guilt follow from it? How far is it, your Honor, between giving a man a hundred dollars and making him guilty of murder, because the man who receives that hundred dollars commits

a crime. Why, I like it, your Honor, that no person could be safe under the law of the land if a circumstance like that could incriminate him. And yet, with all their watching and work, they have not had a liep, they have not had a line or a letter, they have not had a word to connect him with it.

One mere circumstance which the Senator seems to think was worth arguing to this jury: A letter, or two letters, were supposed to have been written by Harry Orchard in April or May to his wife. These are Orchard's statements. But, in November, after Orchard had been away from Denver since August, two months after Orchard had disappeared from Denver, Mr. Haywood writes a letter to his wife saying that he had heard that Orchard was up in Alaska. Could you hang him on that evidence? Suppose that Orchard had been at his elbow, and had asked him to write-- but he didn't-- is it evidence of murder? Is it anything whatever? Suppose he knew it was a lie; what of it? And yet there is not a scrap of evidence in this case that he knew it was a lie. At the most, under my inference in this case, he had written a letter to Orchard's wife because Orchard wanted him to do it. The chances are that he wanted to get away from her -- that is perfectly plain under his evidence -- and he asked somebody to help him do it. Now, what of it? The evidence in this case does not even show that, when Orchard's testimony is stricken out. A man writes to a woman who has made an inquiry about her husband, and he says, "The last I heard of him he was in Alaska;" and it is perfectly plain he had not heard of him for

three months, and that is presumed to be direct evidence connecting Haywood with the commission of this murder.

Now, your Honor, it seems to me that it is perfectly plain in this case that from the beginning to the end there is nothing of this case but "Robard"; that in a case where every eye has been opened and every ear alert to catch something, to see something, that after months of arrest and imprisonment and waiting for trial they come into this court with nothing but "Robard,"-- not one incriminating circumstance, not one fact that could rise to the dignity of evidence if it was unconnected with anything else, and when these scraps and odds and ends were introduced into this court, counsel says, we will connect them, we will connect them, we will connect them; Connect them with what? With the rotten thread of "Robard's" testimony and nothing else,-- and not one of them would be competent without it.

The statute of the State of Idaho ought to mean something, and it does. It means that the legislature of this state has crystallized into a statute that which every lawyer and every judge and every well informed student of history knows is what ought to be. No man's life can be taken from him, no man's liberty can be taken from him upon evidence which comes from such a polluted source as this-- an informer, a traitor, an assassin, an accomplice,-- and can take away the life or liberty of any man. There must be some other evidence, something which stands alone, and standing alone directly connects the defendant with the commission of the crime. From the beginning to the end I

insist there is not a syllable of evidence in this case which does not connect this defendant with this crime excepting the statement of Orchard, and that for this reason this case should not be submitted to the jury. This case should not be submitted to the judgment which naturally and inevitably must be largely influenced by the passions and feelings and prejudices of the day, but if ever in any case the court should insist upon the clear letter of the law being obeyed, in order to preserve its principle and its intent and purpose, it should be done in a case as clear as this case is, and your Honor should take this case from the jury at this time.

THE COURT: Gentlemen, the court is clearly satisfied that this case should be submitted to the jury. I have felt that I should have no hesitation in directing a verdict. Ordinarily it would be the duty of the court to give its reasons for its conclusion in a matter of this importance but it will be impossible to do so at this time without reviewing the testimony. If no one was involved except this defendant it would be proper for the court to review the testimony, but there are three others indicted with this defendant, two of whom are now in jail awaiting trial immediately following the conclusion of this case, and for that reason the court will refrain from commenting upon the testimony and pointing out the reasons for overruling the motion. The motion, gentlemen, will be overruled.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted. Now, Mr. Darrow, do you want until Monday morning?

MR. DARRON: Yes, I prefer to wait until Monday morning to make my opening statement.

THE COURT: Very well, we will then continue this case until Monday morning at half past nine o'clock.

Thereupon the bailiffs having been sworn, the jury having received the statutory admonition from the court, and having retired in charge of the bailiffs, the defendant was remanded to custody, and court was adjourned until Monday morning, June 24th, at 9:30 o'clock.

Boise, Idaho, Monday, June 24, 1907.

10 o'clock A. M.

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Parties met pursuant to adjournment.

Minutes of the session of June 21st read by the clerk and the same were signed by the court.

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

THE COURT: Gentlemen, Mr. Russell of the jury wishes an interview between now and tomorrow morning with his foreman. I presume there will be no objection under the same limitation as heretofore.

MR. DARROW: We are willing.

THE COURT: Mr. Sebern desires an interview with Mr. C. V. Sebern of this jury during the noon recess. Will there be any objection under the same limitations as heretofore?

MR. DARROW: We are willing.

THE COURT: Are you ready, gentlemen?

MR. DARROW: Yes sir.

THE COURT: You may proceed.

MR. DARROW: If the Court please, and gentlemen of the jury: You have been sitting here a long while, several weeks, and I suppose you would like to have us be as brief as we possibly can. However, sometimes it is a little difficult for lawyers to be brief as you have got to know by this time.

You have listened to the statements of the prosecution

and you have listened to the evidence on the part of the state; and the court has told you, what you twelve men already know, that you should be careful not to come to any conclusion upon any of this evidence until you hear everything that there is in this case, and listen to both sides; and, while it is sometimes difficult, I am certain that each member of this jury will do everything in his power to keep his mind perfectly free from bias until the last word has been spoken and then take it all together in your jury room and decide this case. You have heard the evidence of the state and the theory of the state. It has now come our time to tell you our side of this story. This case, like most everything else, has two sides to its story, and I have no doubt that you twelve men will listen with the same care, attention and honest endeavor to our side that you have given to theirs.

Nominally, William Haywood here is on trial charged with the murder of ex-governor Steunenberg of this state. There must be some nominal charge, and that is it. The state has gone over a broader field, and, as you know, the charge considerably wider than that. Mr. Hawley laid out their work when he opened this case to this jury and told you what he expected to prove and they have travelled over all that ground; and, of course, we will have to follow over all that ground so far as they have taken us to these different points of the compass. Mr. Hawley told you that they expected to prove that these people, the members and officers of the Western Federation of Miners, from the beginning of their organization had entered into a terrible conspiracy to kill -- from the very inception of the



organization, as he said, to kill almost anybody, because, he said, the killing of the late Governor Steunenberg was simply an incident in this great conspiracy, whatever it was. He says they had entered into a conspiracy to kill; they had entered into a conspiracy to control politics or take a hand in politics; that they had entered into a conspiracy by means of which large amounts of money were set aside to hire lawyers, and other criminal purposes. Part of this is true, part of it isn't. It is true that there is a labor organization called the Western Federation of Miners which was nominally organized 1903 (1893) and made up of the local unions, that before that time had existed in all the industrial centers of this great mining region. It is true that they spent money for lawyers -- unfortunate, but most everybody has to do it, and that is where we come in. This organization was really born in 1893 and 1893. It was born down here in the cell below this court room, in the very room where these three men are waiting now for the judgment of the jury; when Ed. Boyce and some other leading spirits ~~were~~ were here in jail they planned the organization of the Western Federation of Miners, which is the organization which is on trial before you twelve men. And of course they hired a lawyer and paid large fees, and they hired the best they could -- they hired Mr. Hawley; and he laid it out for them and advised them and was the godfather of them, and they thought it was innocent. He was its first attorney and attorney for a long time afterwards. And if there was anything criminal in the appropriation of money for the attorney the miners didn't know it. They formed this organization in 1893. It was an industrial organization not a

murder organization, and we will show by the evidence what was its purpose. The purpose was to organize the men who did the work so that they might have better wages, that they might have shorter hours, that they might have cleaner mines, that they might have better machinery, that they might have better conditions in the smelters, that their widows and their orphan children might be looked after. It was organized for the benefit of the working men and for the families dependent upon them, and they paid some money for lawyers and they are paying some still. They did take some hand in politics. I trust, gentlemen, that there is no organization that is going to be hanged for taking a hand in politics. If so we probably will have to get after pretty much all of the corporations there are in the United States. This labor union was interested in passing laws and they did all they could to pass the eight-hour laws in Utah, in Colorado, in Montana, and they went down into their treasury to hire lawyers to defend those laws in all the courts of the United States against the Miners' Association who tried to defeat them. They endeavored to elect the judges who could look at these questions from the standpoint of the men with the pick and the shovel digging down into the earth, and to elect a United States senator -- among the rest, they tried to elect Mr. Hawley and unfortunately failed on that, and here and there they have taken a hand in politics, to which we plead guilty, gentlemen. The organization then was formed practically as Mr. Hawley says. It has paid money for lawyers, as he says. It has taken an interest in politics, as he says. But it has never been in any criminal conspiracy to do any unlawful act. I don't mean by that that all

of its members have always been angels. Angels don't work in the mines. They are mine owners. But as an organization they have had no other purpose, as we will show by this evidence, except the benefiting and uplifting of their class. It was long after this organization was put together that the defendant, Mr. Haywood, had anything to do with it, or the defendant Mr. Moyer had anything to do with it, years after; it stumbled along from 1893 up to 1902 before Mr. ~~Haywood~~ Moyer became president of the organization, nearly ten years, and up to 1901 before the defendant in this case became secretary-treasurer of this organization. One of its first presidents was Mr. Boyce, whom they have called upon the stand. When he became president some ten thousand men were banded together in this organization. When he left it, after about six years of struggle, after six years of constant warfare and fight, as the evidence will show in this case, it had some twenty-five or thirty thousand members, and then he turned over the burden to Mr. Moyer and Mr. Haywood and those who have carried it since. This organization, as the evidence will show, was practically born in jail and a good many of them have been there ever since, and it has led a troublous career from the beginning, and we make no effort to conceal it or dispute it. Whatever else we may do in this case, we are not here to apologize for anything that the Western Federation of Miners has ever ~~been~~ done. It has been a fighting organization from the beginning, and if it does it will die a fighting organization. Their purposes and their objects were such as I have sketched, and they had no sooner begun than they met the enmity and the opposition and the force and violence of every kind of

the ~~miners~~ mine owners' association, which was organized before they were born. We will show the reason for this organization and that it was not the criminal conspiracy that counsel told this jury in the beginning was its purpose; that before the organization was born men worked from twelve to sometimes fourteen hours in the mines; that in the smelters they worked the same length of time -- on an average of only six or seven years to a man; their teeth fell out, their bones twisted, they became helpless, crippled and paralytic; that if they bought anything they had to buy it at the company store. That if they needed a doctor they got a company doctor; if they went to a hospital they went to a company hospital where it was pretty sure they could get a release from any injury that they suffered in a mine; that everything they used, needed, ate and wore, came in contact with generally, was furnished by the mine owners. The machinery was unsafe, the smelters vomited forth poison and death and they set to work as best they could as a great organization to correct these evils, to shorten the hours, to increase the wages, to lengthen their lives, to care for the men who were injured and to take care of the widows and orphans of the dead. There was one union up here, the Butte union, that since its organization has paid out more than a million dollars to widows and orphans, ~~increasing benefits~~ accident benefits and burial benefits, and the lead union has paid out half as much more while this criminal conspiracy was on. They set to work to form a practical organization that they might get better wages. They set to work to pass legislation that would provide for inspection, for safety ~~appliance~~ appliances, for doing away with some of the dangers of

the miners, for making an eight-hour work day, for improving conditions generally, just the same as any other labor organization on the face of the earth; and they were met, as is usual, by the employers. Now, gentlemen of the jury, we will show you that these men have done something since 1903, we will show that they have sometimes been associating with somebody besides Orchard; we will show that they were the head and front of every political movement in Colorado, in Utah, in Montana, for the adoption of the eight-hour day or the eight-hour law, and to amend the constitutions of those states so that the Supreme Court could not set aside these laws after they were passed. We will show that they have raised the wages of their men; that they have shortened the hours from about twelve to eight; that they have looked after the widows and orphans and taken care of the sick and the maimed. That they have established hospitals in these great camps; that they have established halls and libraries, in many of the mining camps have some of the best property there is in the town. They have done these things since Mr. Hawley organized them into one compact mass of men. They have met a great deal of opposition and difficulty and the evidence will show, as I have said, that they have been in trouble all the time, as they are in trouble now. Wherever they have gone to form their organizations, with a very few exceptions, and there are exceptions, but we will show that in most instances whenever an organizer or an officer of the organization would go into a mining camp to form an organization of the Western Federation they would be met by the most stubborn

resistance by the owners and the bosses. The men would be ordered not to attend their meetings. They would be discharged if they attended. Over and over again their jobs have been taken from them, as we will show, because they simply affiliated with the Western Federation of Miners, and they have been blacklisted and sent out into the world to tramp because they saw fit to unite their destinies with this organization. We will show that in some instances when the president would go to a mining camp that he would be refused food in the camp, could get nothing to eat in the company boarding house or in the town and be forced to go to some more friendly town before he could get a mouthful to eat or a night's lodging, and arrests, ~~subsequent charges~~ following charges and crimes, real and imaginary, have come thick and fast from the day of their birth until now -- in ~~ninety~~ ninety-nine out of a hundred they have not even had the grace of a trial, of which we cannot complain in this case. That as soon as this organization was born the mine owners set to work to destroy it, and that as one of their chief means of destroying it they hired the Pinkerton detective agency, with one McFarland at the head in the West. That from the beginning until now that agency has been busy, stealthily following, scheming and working and lying to get these men. We will show that amongst other things they repeatedly hired detectives and placed those detectives in positions of responsibility as secretaries and presidents of local unions, and they sent these detectives out amongst the union men at their meetings to advise strikes, and whenever there was a strike to advise violence and bloodshed and dynamite and

murder. We will show that they did it in Telluride, that they did it in Cripple Creek, that they have done it from one end to the other of this mining region, and that most of the talk and most of the inciting to violence and crimes has come from their hired men through the Pinkerton detective agency, which has been the chief factor in this case. They have also regaled themselves with a campaign of slander, abuse and villification against the organization. Every deed of violence in the west almost has been charged to them indiscriminately. We will show that when in Cripple Creek a cage with sixteen men fell to the bottom because the company did not have proper machinery and the sixteen were killed it was at once charged to the Western Federation of Miners that they had tampered with it and killed the men. When the Moscow university was burned that was the Western Federation of Miners. That wherever there was a man killed -- Lyte Gregory -- anybody -- it was the Western Federation of Miners. That since they were organized every illegitimate child that was born west of the Mississippi has been bundled up in its swaddling clothes and hurried up to Denver and laid on the front door step of the Western Federation of Miners -- for a purpose. That these are a piece of many of the statements that Mr. Orchard has detailed to this jury upon the witness stand. That they, after they organized this Western Federation, did establish a magazine, gentlemen. No doubt about that, and it is running still -- at least it was last week. The Miners' Magazine -- you have heard some extracts from it and we will read you more. It has been running for ten years and it is possible that some foolish things have crept into it -- different from any other newspaper or magazine that was ever published for that

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length of time, Mr. Boyce wrote a considerable number of the first articles, but they had a regular editor. Mr. Haywood paid little attention to it. He was busy. Mr. Moyer paid little attention to it. He was busy. These articles are not all as polished as my friend Borah might write or even as my friend Hawley would pen, because there are a lot of these miners who haven't got a college education, some of them haven't even been to high school. So they wrote the best they could. Sometimes possibly intemperate, but we are willing to show you all there are, and we will read you some that have not yet been read. This magazine that they have introduced in evidence was a magazine published for its members and published for its organization, published to help along the cause which some of them at least thought they were working for. We, as I have said, will wish to offer and will read to you we think some of the other matters that were not introduced by the State. We will show they did not counsel violence, that they had a fair understanding of the economic questions and what was necessary to be done, and that their appeals were appeals to their men and appeals for political acts which they had a right to make. X

Now, that brings us down to the Coeur d'Alenes. There was some trouble in 1902, which they have not gone into and perhaps it won't be necessary in this case.

MR. HAWLEY: 1892.

MR. DANNOW: 1892, I mean. They began with the Coeur d'Alenes in 1899. At that time Governor Steunenberg was governor of Idaho. The organization was getting along all right. Its men were at work in the Coeur d'Alenes. It was having its usual

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amount of difficulty everywhere, but it was prospering and flourishing. A strike occurred in the Coeur d'Alenes and some difficulty arose. Some men did get together on a train, a thousand strong, without a leadership, the organization composed of miners, merchants, and hangers on, lawyers, possibly preachers, everybody wanted a free ride, and they went down there without any purpose or intention by the most of them at least, possibly by none of them, and the mill was blown up, and the powder, as we expect, as we believe, was furnished by a rival company. What was the condition at that time? At that time Harry Orchard, who in this case, was in the Coeur d'Alenes. For thirty days Harry Orchard had been carrying a union card. Jack Simpkins was in the Coeur d'Alenes. After the mill was blown up there was a call for the military. Governor Staunenberg sent the military to the Coeur d'Alenes. Now I am not going to discuss to this jury whether that action was right or wrong. Governors have difficulties as well as other people. But at least with the miners and with large numbers of others it was condemned, as the military occupation of a place in times of peace is always condemned; whether rightfully or wrongfully, that is not necessary in this case. Jack Simpkins was sent to the bull pen with some thousand other men. He laid there for several months suffering all sorts of indignities, amongst other things he was stood up to a post by a colored soldier and a bayonet run into his breast. As I say, he was there for months. We do not deny or dispute it, and we could not if we would. Harry Orchard had been seen a few years before. Harry Orchard was a cheap soldier of fortune, a shoe-string gambler, who never degraded himself by work for any great

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length of time. He stayed in the Coeur d'Alene longer than anywhere else since he collected his insurance on somebody's cheese factory down in Ontario. He got up to the Coeur d'Alene. He went to prospecting and, as he thought, he struck a mine, and as some of the others thought. A number of them, poor men all of them, worked together for a number of years, brought their savings together to bore a hole into what is now the Hercules mine, and Harry Orchard stayed there and he got a sixteenth interest; but he liked to loaf and to gamble so well that he borrowed money on it and put it up and borrowed again, and finally in 1897 Cordova, from whom he got the first money as we understand it, or from whom he got the money to pay another loan, took a deed. The mine then was worthless. Cordova didn't want it, but he didn't see anything else because Harry wasn't lucky at that time gambling. He kept going to him for money. The mine wasn't valuable in 1897, 1898, or 1899, or 1900. But ore was struck in 1901 or about that time. But Harry Orchard, like everybody else who has anything felt as if it was worth something -- I don't know whether as a ranch or how -- put a higher value on it than anybody else and he wanted to get it back and he expected to get it back, and so he stayed around the Coeur d'Alene to get this mine, and on top of that he had another interest which was stronger even than the mine. He had left his home down in Ontario with another man's money and another man's wife, and she had come up to western Canada with him and he couldn't take care of her and she got tired of living in the style in which a shoe string gambler could support a woman and had gone back promising to return if he ever got any money, and

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he had clung to this mine and hoped from that what he hadn't from anything else and had expected that as quick as that was struck this woman, whom he has said is the only one he ever cared for -- that may be doubtful -- that she would come back; and he stayed there and was there in 1899. We don't think he ever went to the Bunker Hill & Sullivan mill at all. He had been a member of the union for thirty days. We will show by the evidence that no such speech was ever made by Paul Corcoran or anybody else at the Miners' Hall. We will show that Harry Orchard never went to the Bunker Hill & Sullivan mill, he had nothing to do with blowing it up, but was at that time probably pursuing his ordinary vocation of gambling with the easiest mark he could find in the camp. We will show that he wasn't present and had nothing to do with a number of the crimes of which he boasts to this jury. I feel great regret to take any of the glory from his hard earned fame that he made through several days of testifying on this witness stand. I don't like to take any of the bloom off a peach like that, but still everything has its compensation, and while we may show that he is not the phenomenal murderer that he claims we will console him some by showing him as the most monumental liar that ever lived on the face of the earth. Gentlemen, I want to say in all candor and sincerity that before the first witness leaves the witness stand we will convince even Mr. Hawley that he has lied and perjured himself on important issues in this case; and then before we are done we will bring at least twenty-five or thirty witnesses who will absolutely and unqualifiedly dispute the statements of Harry Orchard upon the witness stand, and all of these won't be miners. Some of them

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are miners but not all of them. We will bring eminently respectable people here who never did a day's work in their lives. We will do that for you, gentlemen. Now Harry Orchard was up there in the Coeur d'Alenes. The Bunker Hill & Sullivan mill went up and he heard of it and of course he was the fellow who did it. Maybe he thinks he did, just as he thinks he blew up Bradley's house, just as he would have thought that he started the earthquake if he had been out in San Francisco at that time. Governor Steunenberg ordered in the militia. Harry Orchard, thinking that he was a very important man, thought that was the time to get out, and he started over the hills past the old Hercules mine as the nearest way for him out of the camp. Before he started he met a stage driver from Wallace, I think driving from Wallace to Mullen, and he told him he had got to skip and he offered to sell him his interest in this mine for \$400, one or two days after the Bunker Hill & Sullivan mill was blown up by Harry Orchard as he says. He started over the hills past the Hercules mine where Gus Paulson was working. Still they hadn't struck ore -- stated there that he had got to leave or the soldiers would arrest him and put him in the bull pen, and he went on down to Missoula, as I recall it, from there to Butte and I believe he was sick a long time in the hospital after that time. Left the day after; that was in 1899, and he never came back with possibly the exception of a few days in 1904, until late in the fall of 1905, just before he ~~was~~ killed Governor Steunenberg. When he left he commenced travelling again. This man has always been a traveller. He left Ontario and went to western Canada. He came back to Wallace. He got interested in

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this mine and on that account he stayed, the longest he has ever stayed, until he was driven away. Then he hit the trail again, as the miners say, started, and he went to Utah, California, Nevada, everywhere -- a few days at a time, a few months at a time, a few weeks at a time, a gentleman miner who mined the miners, and he finally turned up in Cripple Creek in 1902. From 1899 to 1902 this important personage in American history has been pretty ~~xxx~~ nearly lost travelling, but you can be pretty sure that you would find him in the back room of some saloon somewhere in the West playing cards. In 1902 he turns up in Cripple Creek. Now we will leave him there a minute and get back to some of the more specific things ~~xxxxxxx~~ that have been charged in this case. They have taken us over such a wide area and so many different people and things that we get dizzy running from one place to another, but we will try to take it up at another place now. While Harry Orchard was trying to get the sixteenth interest in the Hercules mine, which would be worth about a half million dollars, I think, if he had it now, -- but I rather think he would prefer to have what he has got because there is more about him in the newspapers -- while he was trying to hang onto that and was driven out of the Coeur d'Alenes by the military, and while Jack Simpkins was languishing in the bull pen under Governor Steunenberg's administration, where was Bill Haywood? And Pettibone? And Moyer? -- to see the connection in this case and what this case is really about, gentlemen of the jury. For, so far as there are any roots to this case it is rooted back to 1899. There is the motive, and we will agree with the State on that proposition, there is a motive. We don't

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dispute anything that we don't need to dispute, gentlemen, so as to make it easy for them. In 1899 Mr. Haywood was a plain, ordinary miner. I don't suppose he knew a jack from an ace. He hadn't travelled with Orchard and didn't know his gait. He was a plain, ordinary working miner over here in Silver City, Idaho, where he lived during the largest part of his working life, over in these mountains in sight of this court house where we are trying this case. He was born down here in Utah. He isn't even a foreigner. He was born here and his ancestors came here before the Revolution and got here pretty near as quick as anybody. His people were poor and he was a miner. He worked in Utah, he worked in Nevada, he worked in Idaho. He didn't know how to make a living any way only to work, poor fellow. Well, he hadn't reached any celebrity at that time. He joined the union. He became a secretary, I believe, of a local union -- once in awhile would write a resolution on a pack of a powder case down in the mine, but that is about the most so far as the union business was concerned. Like everybody else, he didn't believe in the martial law in the Coeur d'Alene-- like everybody else, I mean the miners; I don't say "everybody" because that would not be correct, and if there is anything I want to be it is to be truthful. He didn't believe in it, the miners didn't believe in it. Now you know that is correct.

MR. HAWLEY: I will vouch for your good character in that regard anywhere.

MR. BARNOW: Thank you. Haywood got to be secretary, and I don't know but president. But still he stumbled along drilling in 1893, 1894, 1895, 1896, 1897, 1898 and 1899 also

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up to 1901, when he got the highly lucrative office of secretary-treasurer of the labor organization. Everybody knows there is money in that excepting the fellows who hold the offices, like being senator or mayor. Well, he was elected in 1901 and that was his first intimate connection with this great conspiracy, which included the forty thousand men. In 1893, his partner in this crime of ten years later, was slow on the trail -- Moyer -- he was working down in Lead, Dakota. He was a miner, too. But he was a man of some force, possibly some gift of talk, I don't know, but he got elected secretary and finally president of his union. George Pettibone was not a miner at all. He was selling wringers and lace curtains and Bibles and rugs and other novelties down here in a store in Denver in 1899, selling them on installments.

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George Pettibone had been a miner. He used to work in the Casar d'Alencas up in 1892 and he had been interested in his local union -- had been a friend of the miners -- something like me. He had been there in 1892 and had been arrested and thrown into jail, and my friend Hawley got him out, and he quit mining like a wise fellow after that. It was too dangerous, -- I don't mean the rocks and stones; I mean the jail. Well, after he stopped mining he opened a "novelty store" as I have said, down in Denver. He was the agent of the American Wringer Company. I hope you won't hold that up against him, although some people might. He sold wringers and all sorts of things of that kind, and he was in that business in 1899 when Governor Steunenberg laid the foundation, as the State says, for his assassination by these men ten years later, or five years later, or six years later, whatever it was. Neither Meyer, Haywood or Pettibone were in any way connected or had anything whatever to do with the troubles of 1899, but Mr. Orchard was a part of it, and Jack Simpkins was a part of it. Whether Simpkins had anything to do with it or not, I don't know; I have never seen him; Mr. McFarland has not turned him up yet; but Orchard and Simpkins was there. Now, they have yoked together Orchard who was there, and whose connection I have explained, and which we will show in the evidence as far as it has not been shown, and Simpkins who was there and who was in the bull pen, and these three men whose connection or disconnection I have outlined to you. But why these three men that here on trial? Here is Haywood. As I have said, he spent all his life



up to 1901, since he became a man, and before, as a miner, doing his first work when he was nine years old, and keeping at it pretty steadily until he got to be Secretary-Treasurer of a labor organization in 1901, when, of course, he stopped. A plain, blunt, courageous, able fighting man, as the evidence in this case will show you. If he had anything to say he said it, and if he had anybody to fight, whether it was a regiment of soldiers or anybody else, he fought them and they knew it before and after. That is Haywood.

Meyer, a miner for years, born here and his parents here -- here for generations; a blunt, vigorous, resolute, honorable man. He fought for the organization of which he was the President, and fought every conceivable battle that men like him have to fight. Meyer was president, Haywood was secretary, in 1901, and 1902, and president and secretary in 1906 -- in December, when Governor Steunenberg was assassinated, which we think accounts for their presence here; and Pettibone was the other, and who was he? He was never a member of the union -- never a member of any local union. On account of his residence down here in the jail, I suppose, at one of their conventions he was made an honorary member, or as Pettibone would say in his droll way, "An onery member," having power to sit in lodges and attend meetings because they liked him. Pettibone too, and his ancestors have lived in this country since the revolution, so they are not imported agitators, -- there are plenty of agitators without importing them. He was running a little store down in Denver,

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a happy, careless, sunny man, who loved a joke and had a good word for everybody. There was not a man, a woman, or a little child on the street who was not his friend, or a lame dog or cat that could not find a home in his wood shed. He had not ever been connected in any intimate way with this organization, or especially with the officers of this organization.

Now, these were the men and this brings us down to the time that Harry Orchard got into Cripple Creek. The first that we see of Harry Orchard in Cripple Creek was in old manix Neville's saloon,-- the saloon that afterwards caught fire. He got in there in 1902. He stayed around for some months pretending to work,-- did work some -- played cards and a high grader. I don't know whether high grading has been explained to you, gentlemen of the jury, or not; but they are the fellows that take the best ore only, go down into the mines and up around the dumps and pick out the best pieces and put it in their pockets,-- that was his business. He is a versatile fellow and could turn his hand at anything. No danger of losing that kind of a man. A little later there was some trouble over at Cripple Creek; there had been trouble all over Colorado, wherever there was an organization. There is another thing we will agree on. There was a smeltersmen's strike down at Colorado City. They were striking because of a discrimination against the union, as they claimed. As fast as a man joined the union he was fired, as they claim, and they struck, and after they struck and were losing the strike, then the miners over at Cripple Creek, which at that time was

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one of the most thoroughly organized camps in the whole west,-- they made up their minds that they would not mine ore to be smelted by the men who were fighting their brothers on the strike in Colorado City. I am not going to argue whether that was right or wrong, they is according to the way you look at it, and I have not got time to try and convert all of you, but they thought it was right any way and they struck, and the Cripple Creek strike was called in sympathy with the smelters strike in Colorado City, all of them belonging to the same union, and it dragged along and along, running along the tedious course of almost all strikes. Harry Orchard was there. Now, we will get some more of his history.

We will give you a chance to find out whether he told you the truth or not. He was there and the next we see of him he had got into the union over in Cripple Creek. He had got in there,-- other men had got in there who were working for the Finkerton detective association. After a while there was a charge made that some union men were trying to derail a train, and then a charge was made that somebody had tried to blow up the Vindicator mine, and afterwards a charge was made, which has not even risen to the dignity of it,-- they give it in this case that somebody had swamped a cage killing sixteen men,-- what mine was that?

MR. RICHARDSON: The Independence.

MR. DARRON: At the Independence mine. Harry Orchard was there during all this time; not prominent in the union especially, but still more active there than anywhere else

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excepting around the card table somewhere. A little later than that the Independence depot was blown up. Now, where do we catch Harry Orchard first? The first time that Moyer and Laywood and Pettibone remember seeing him he was over from Cripple Creek to Denver on a pass issued by the detective of the Florence and Cripple Creek railroad, and brought there with a detective of the railroad company during this strike; that is the first time he comes to this defendant or to anybody connected with him as the evidence in this case will show. Before that we get some trace of him. The struggle was fierce up there in Cripple Creek. Cripple Creek had become the Waterloo of the Western Federation of Miners in the state of Colorado. They had a fine hall in Cripple Creek, and another at Goldfield, and another at Victor, which is all together; they had cooperative stores in every town; they had fine halls, and good buildings in the place, and owned them; they had a library, they were flourishing, they were doing something and they took a chance in going out with the smelterman down at Colorado City. Then was when Harry Orchard came up.

We next see him consorting with his enemies -- his nominal enemies. Soon after this strike was called the mine owners had succeeded in getting the militia in there and getting martial law declared, and they sent soldiers down to Cripple Creek to take charge of things. That was in the fall of 1903, -- I am liable to get some of these dates mixed, there are so many of them, and I am quite a hard to get dates mixed anyway, but they will all be straightened out in the evidence. There was a rumor that a train

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was to be derailed during the strike; the train carrying what was called -- and generally called at such times -- a train load of scabs to the mines. Martial law had then been suspended, but there were many people who wanted to get the troops back. Now, it is possible that the troops were there, and I think they were.

MR. RICHARDSON: Yes, they were there until April of 1904. They came there in September of 1903 and stayed until April of 1904.

MR. DARROW: Yes, April of 1904, was the time they were taken away and September 4th, 1903, they were sent there. Harry Orchard had been constantly consorting with the miners. Davis, <sup>Parker</sup> who is here, ~~Kennison~~ who is dead, Kennison who is dead, Masterly who is here, and others were the leaders of that strike, and Orchard had been consorting with them, but not an important man in any particular.

While he was consorting with the miners he was doing something with the other side. Now, upon the other side a man named K. C. Sterling, whose name has already appeared in evidence here, was the chief detective of the Mine Owners' association and doing the work of the Mine Owners' association and the citizen's alliance which was organized also to get rid of the Western Federation of Miners. K. C. Sterling was their head detective, a slimy, oily, insidious, -- I cannot strike just the word -- I will call him, fellow, for short. Scott was the chief detective of the Florence and Cripple Creek railroad running to Cripple Creek, and whose business was chiefly in handling the ores of those mines.

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Scott and Sterling were constantly working together. Just at the time that this plot was being hatched with reference to the train derailing, we will show you Scott and Sterling and Orchard and one or two other railroad men together in a house at night; we will show you Orchard with them right at that time. And later than that when these cases were on trial, we will show that Orchard was present day after day in the court, and in the communications of the other side, but never called by them as a witness. We will show that McKinney who admitted that he did this work was placed upon the witness stand; his wife was taken care of in the house,-- in a room next to Sterlings, and when he got out of jail he came to that room too. We will show where Sterling lived, that he lived at what is called "The Star rooming house," in Cripple Creek, and that for six months at least preceding the Independence depot catastrophe that this man Orchard was sneaking into his room by night and by day,-- generally by night, and up the back stairs, and through the back door where he thought nobody would see him, and staying there with him some times hours at a time. We will show you, gentlemen of the jury,-- I think I am safe to say at least fifteen or twenty times when he was seen to go into Sterling's room up to almost the very night of the explosion at the Independence depot. We will show that upon a number of occasions he was seen to go to the office of Scott, and at one time at least to stay three or four hours during the time that these matters occurred. We will show some of his declarations -- some of them, that he was connected with a detective association

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and with them. We will show that while miners, honest miners who worked, could not go through the mines while the soldiers were there, and while their houses were searched and they were arrested and transported that this leper went in and out when and where he pleased, and that there was a general order that "Harry Orchard should go and come as he wanted to. For every once that they will show him associating with any one of these men we will show two or three of theirs, and leave an inference that is infinitely stronger than theirs by the evidence that we will produce in this case.

A number of our men who were arrested at Florence and Cripple Creek for the attempt to wreck the Florence and Cripple Creek train, -- Parker, Davis, Kennison, every man whose head got up above the rest so they could hit it, -- they were held, first without bail, afterwards bail reduced, and finally some of them discharged without a trial, and at last every one of them acquitted, and we will show by a fair inference that it was simply a trick of Sterling, of Scott, of Orchard, of the association, that they never meant to wreck any train at all, and did not wreck any train at all, but they wanted to wreck the union.

Then the Vindicator explosion. We cannot say positively whether it was an accident or a crime, -- I don't pretend that we can. But we will produce evidence which leads very strongly to the conclusion that it was a pure accident. We will show, I think, that a few minutes before this explosion occurred there was a quantity of powder on the eighth level. This elevator went

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down; Beck and McCormick went down, and they came back up, and the explosion occurred, and twenty minutes later there was no powder on the eighth level. We will show that when they were blown, they were blown apart; that the powder was probably between them, and that is about all we can show of it.

About that time Harry Orchard began to go to Denver to get acquainted with Meyer, Haywood and Pettibone. He had seen Meyer in February, in Cripple Creek at the trial, but he came to Denver once or twice before that thinking to become acquainted; he got himself elected a delegate to a general labor convention to go to Denver to take action upon the Cripple Creek strike, and in that way he got up to their offices and met them. We will dispute by Meyer and Haywood and Bill Easterly that he was ever present at any such conversation as he claims took place after he blew up the Vindicator mine, if he ever did blow it up; but he did come up there; he came up there as a delegate and made the acquaintance slightly of these men and of George Pettibone. Then Meyer went down to Cripple Creek to attend the trial in February, for the attempt to wreck the Florence and Cripple Creek train, and there he met Orchard again, and Orchard did everything he could to become acquainted, to talk with him, to apparently help about the trial, and ingratiate himself into the affections and the feelings of Mr. Meyer and succeeded to some extent, and of course Meyer trusted him,-- and did trust him, no doubt about that,-- but he will deny emphatically that any such conversation ever took place there or anywhere, as Harry Orchard relates.



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Then Harry Orchard came again to Denver and he happened into the office of the Western Federation of Miners in March, and Moyer was about to go to Ouray over some disturbance in that mining camp and the rumors had spread abroad that a number of men had been beaten up, that the special agents and detectives and so on shot, maimed and abused union men, and Moyer did not like to go down there alone. Orchard was there and he asked him to go along to help take care of him if he needed him,-- as a guard. They did get a couple of sawed off shotguns and they got them from Pettibone. Everybody always got everything from Pettibone. He was one of those sort of Happy McEligan fellows that if anybody wanted anything they would rush in and tell him about it and he would say, "I will help you," and he did, and if a poor miner or any man wanted anything else they would go to Pettibone, and aside from that they all traded with him and all knew him and all loved him. Pettibone of course was in trade,-- pretty near the only miner in trade, and he could buy at wholesale so that though he probably did not make any money himself he gave the others the benefit of it.

Mr. Hawley in his opening statement said that this sawed off shotgun, or a sawed off shotgun was an indication of murder, a gun cut off so that you could carry it concealed under your coat or vest, or carry it where you please, put it in your valise. Now, I think he is mistaken,-- I think he is dreaming. We will show that the sawed off shotgun has been known ever since there were stage coaches and ever since government messengers traveled

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through the west. They were not invented by the Western Federation of Miners any more than the San Francisco earthquake was,-- not at all. Miners have used them, to be sure, and everybody else has used them ever since there was shotguns sawed off so you could put them in a valise or anywhere else. He went down to Ouray with Moyer, and when Moyer got to Ouray they seized him and put him in the bull pen and they kept him there until what date?

MR. RICHARDSON: Until the 6th of July.

MR. DARROW: They kept him there until the 6th of July, so he could not conspire murder during that time. He was in the bull pen at Telluride--

MR. RICHARDSON: They arrested him in Ouray and carried him over the hill to Telluride.

MR. DARROW: How far apart are those places?

MR. RICHARDSON: By rail they are probably about sixty miles apart. They put him in jail in Telluride because there was martial law over there.

MR. DARROW: Yes, civil law was too safe for those fellows, and they took him over to Telluride where there was martial law. You can see how it was. Then Orchard came back and he made a report, and he went back to Cripple Creek again to see what mischief he could start up at Cripple Creek. In the meantime the strike was going on the same as before, not much doing. Men who were employed to sow dissention and get them into trouble, were urging activity as they had at other places.

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He went back there and stayed around a while and then he again went to Denver, at the general meeting of the Western Federation of Miners, in May, 1904. And then, after he had been there a while, he went back to Cripple Creek, and on the 5th day of June this depot was blown up.

Now, gentlemen of the jury, I don't know whether he did it or not, and I cannot tell you; he says he did,-- that makes me think he did not, but I cannot tell and shall not pretend to, but I will tell you a few facts about him which we will prove, and you just watch and see whether we prove them, and don't charge them up to me. Orchard, of course, was getting ready to leave town on what he said was a hunting and fishing expedition; he had to go back and do a few chores; he had to burn down Neville's saloon first and collect the insurance,-- clear up a few little matters before he started off on his fishing trip so they would have plenty of money and so on. He got those things attended to and they got a team and wagon, and Orchard and Neville and the boy loaded in with a tent and started off on Sunday afternoon the 5th day of June, driving down the Colorado Springs road from Cripple Creek to Denver and on up to Cheyenne and the promised land for hunters and fishing,-- did not come to Boise, perhaps, anyhow, though they started. The explosion took place along about two o'clock on Monday morning. Perhaps he did and perhaps he did not; I am not going to discuss that except incidentally. This depot was an old unused building; it was not worth anything;

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it was not worth a white chip, if you know, any of you, what that is worth. Nobody ever went to it or took a train there except to go on the platform, and no agent was there, it was boarded up at the windows and doors; it was really abandoned, and has been completely abandoned since Crocker blew it up. It was a depot which anybody could afford to lose. The troops went away and had been away since April, and all the mine owners and bankers and lawyers and other good people wanted them back; everybody that was good wanted the troops, and everybody that was not, did not; they were asking for them and calling for them and the other fellows were protesting. We will show that some people at least who were connected with the local militia were told to be in readiness, that something was going to be doing at that time, or about that time. I don't want to be misunderstood about this matter; I don't think the mine owners intended to kill a lot of those people, not for a minute, nor even the detectives. Killing people is too messy for them; but the depot was worthless and unused and if this powder, this powder was just touched off a little ahead of the train and just before a number of men come down there, -- if it had been touched off a minute or two sooner, nobody would have been hurt, but it would have been an attempt in the line of the Western Federation of Miners to destroy a lot of scabs.

Now, what else happened? After this depot was blown up, tremendous excitement prevailed. The marshal of the town came immediately to the scene, he followed this wire down about 200

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feet and he found where the wire was fastened to a chair arm, and he immediately concluded that the man who pulled it off had used that wire and pulled on chair arm and in that way accomplished it; and he brought the dogs from town, or somebody did; the Mine Owners' association were active, the citizen's alliance was active, the Western Federation of Miners was active, and the Western Federation offered \$5,000 reward I believe it was, to find who did it. Orchard has not claimed it yet. They brought the hounds to the chair arm and they gave the hounds the scent of the man's hands who had pulled off this wire that had pulled off the explosion, and the dogs took that scent and started; first they circled around a little and then ran directly to a cottage occupied by Al Benore, and ran to the back door; and then they called them back because that was not the way they wanted them to go, and they ran again to the cottage of Al Benore. First they were going to take some other dogs, but they refused, because they were owned by union men, and so they got these dogs; they came mostly on a special train from Canon City and they went twice directly to this cottage.

Al Benore had formerly been a deputy sheriff and was in the employ of the Mine Owners' association and was one of their guards and watchmen at the time. But that is not all the dogs did. Afterwards they started off down the Cripple Creek road in the direction which Harry Orchard said he went; so, if you could get him corroborated by the dogs there might be something to it, but they followed the trail down toward Colorado Springs, the

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direction in which he says he went, and a man named Ira Blizzard who does not belong to the union, a nice man,-- he was with the dogs and he followed them down the road a half a mile or so towards Colorado Springs, and it was getting dark and he made up his mind that he ought to have a horse and buggy and some money because he did not know how far they would take him, so he went into the pumping station down in that direction, in the neighborhood of the mill, just in the direction Orchard said he went, and he called up the Mine Owners' association and asked for Mr. K. C. Sterling, over the telephone, the chief detective, and Mr. K. C. Sterling answered, and he says, "I am following the dogs upon a sure trail, and they are going down toward Colorado Springs and I want you to send me a team and some money so I can follow them." Sterling says, "No, don't follow them;" he says, "Call the dogs back; we know who did it." Now, I am not dreaming. We will prove it. He called the dogs back off of Harry Orchard's trail, and Harry Orchard went on to Denver, Cheyenne and lived around in the full light of day and night and detectives, and was never bothered.

Now, we cannot prove exactly who did it, or how, but these facts we will show you. After the Independence depot was blown up pandemonium broke loose and the soldiers did come, and the soldiers got into the field early the next day, or early on a Monday, I think, about noon, and the people called together a meeting at Victor; they placarded the community and they called together a meeting at Victor,-- something has already been said,

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and we will show you about this meeting. There were soldiers there, there were clerks there, there were lawyers there; the lawyers, as usual, were doing the talking; they stood up on a wagon that was run up in the center of the square, and Mr. Hamlin who is a lawyer, and was also secretary at that time, I believe it was, of the Mine Owners' Association, and Mr. Crump who was the attorney of the Mine Owners' Association mounted the wagon and commenced to make speeches. Everybody came from the country round; they brought guns, and I guess they were loaded. Most of the people were citizen's alliance men, clerks, and mine owners, congregated, and there were some Western Federation of Miners there too, and I think they were loaded, some of them were there, and some of them gathered up in the union hall, some 30 or 40 of them, which was a couple blocks away. Mr. Hamlin commenced making his speech in which he said amongst other things,-- I cannot repeat it quite his way because I am of such a peaceful turn of mind, but anyway, "This was the time to get rid of the Western Federation of Miners, and they should be hanged and driven out of the district; that all their tribulations had come through them," and that was about as far as he got when somebody fired a shot. We will have evidence to show that it was K. C. Sterling, and possibly some others fired shots about the same time; any how, the firing of the shot was the signal for a general skirmish and everybody who had a gun pulled it and a great many shots were fired, and when the smoke had cleared away

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two men were lying dead and the two lawyers, I believe, were lying under the wagon but they were not harmed.

MR. HAWLEY: Do you mean laying down or making utterances that werenot true?

MR. DARROW: No, they were not saying a word. The miners began to scatter. A number of them went to the union hall. This was a great big hall, two blocks away, the largest in the town. They gathered there in a little group. Some of them had guns and they waited, and the militia and the people marched up and ordered them to surrender, and commenced firing on the hall, and when they got through the front of it looked something like Bradley's house. Any way, after a time they came out and surrendered and they took them, and then the real trouble thickened, or perhaps began. Before this time and before the Independence depot affair, a number of men had been brought before the militia on the charge of being agitators and sent out of the country. In December, a man by the name of Baker who was a member of the executive board had come to Victor to start another cooperative miners' store, and they brought him in before the military authorities and told him they did not need any more stores in that community, that they had enough, and they would give him until the next train time to leave the town or go to the bull pen, and he left, and a number of others were driven out in the same way, even before this time and after this meeting had occurred, and the riot at Victor. Then they began to search the town and the mountains and the hills looking for Western Federation

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of Miners' men, and they grew scarce around there. All sorts of threats were indulged in and violence offered and the men began to scatter. On the night after the riot the leading men ran away. Davis was already in Denver; Parker was away; Bill Masterly left in the night. He is not running yet though,-- he is here. Orchard had got started the day before, so he says; Steve Adams went over the hill; everybody left. They went in passenger trains and they went by freight, and they went in wagons and they went afoot; and they gathered where? They were dispersed more rapidly and thoroughly than the Jews, in the Cripple Creek district and then they commenced coming into Denver. These men day after day would reach Denver or the headquarters, until the headquarters was full and the rooming houses were full and Pettibone's store of course was full. Orchard came there-- everybody changed their names as they were going. Orchard's name was Orchard when he left Cripple Creek but it was Hogan when he got to Denver. Steve Adams had changed Adams to Dixon in the route. Parker had got his name changed to Jones. They matched the first name they could get hold of when they started off on their travels. They came to headquarters and were looked after; went to the rooming house above Pettibone's store and filled up the store. No miner ever went there that did not go and see Pettibone, and if he had any money and they needed it they got it; so they came to Denver. And after they came to Denver and stayed a few days they scattered in various directions, Orchard going one way and somebody else another.

But back of that let us go to Cripple Creek again. When the crowd got a taste of blood they started for the stores, and in the few days following, the three fine stores, one at Cripple Creek, one at Victor, and one at Goldfield, and another perhaps, not quite so valuable, at Anasconda, these were looted. They picked up men-- anybody who had ever expressed any sympathy with any union man, amongst the rest one of Colorado's ablest lawyers, who had formerly been attorney general of the state, Engley,-- General Engley, and they arrested him on the street and marched them to the depot, and in some instances they marched them several miles up the mountain and shot and told them never to return to Cripple Creek or they would be hanged. In other instances they loaded them on to freight cars, a hundred in a gang, and took them down onto the desert where there was not a house for miles or a green blade of grass for miles, and they dumped them off on the Kansas line to shift for themselves in a desert, in the night. And then they came back to Denver, and the militia and men in the Cripple Creek district-- the militia and mine owners' association thugs, Sterling, Scott and the rest of them, and they went after the stores. They went into the Goldfield stores; they smashed their counters and showcases; emptied their flour barrels in the street; took away everything there was in the store, scattered it amongst themselves and utterly destroyed it. They went up to Cripple Creek later and a number of men at that time were gathered-- were going for a train, and Mr. Carlton, the president of the Mine Owners' association, and

Mr. Franklin, one of his chief members, started in at their head, and they went to the Cripple Creek store and broke into it and carried off everything they had, and looted it, and destroyed it, and they did the same thing at Anaconda, and the same thing at Goldfield. Not always the same men, but the same result, and before they had done there was not a man left in the district, or a store left in the district, and the Victor hall, the stores, stand there empty today.

In all these things General Bell was general of the soldiers, and a day or two later they got together an army of a hundred or two, and they heard that some of these union miners had fled into a canon seven or eight miles away and had gathered together prospecting, and they went down there, General Bell at the head, and the soldiers on a train armed, as they got off the train they commenced to shoot, and these men began scrambling up the mountain and they killed one poor fellow who was unarmed and who had never committed any act or thought of anything,-- a poor simple prospector; and then they made a raid to see what they could capture, and they captured a frying pan and a pair of shears and a few little things like that and they loaded the dead man on a car and the living together and carried them back and put the living men in the bull pen, and I don't know what they did with the dead man. This was Duranville.

THE COURT: We will stop here, Mr. Barrett.

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Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was returned to custody, and a recess was taken until 2 o'clock P. M.

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Boise, Idaho, Monday, June 24, 1907.

2 o'clock P. M.

Parties get pursuant to adjournment.

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

Mr. BARROW: (Continuing). If the Court please, and gentlemen of the jury:

Return a moment to Cripple Creek. I may not have made it quite clear as to these stores that were looted and as to the time. Some of the were looted immediately after the riot, and from that time up to the middle of August. They were large cooperative stores established by the Western Federation of Miners, stores selling everything that were used by miners and their families, and established under a system that they were then pushing through the mining regions of having their own stores in all these mining towns. They had their stores in a building, on the lower floor, where they had their halls, miners' reading rooms, library and matters fixed up for the enjoyment, accommodation and education of all the members of the organization.

I made some reference to Mr. Moyer going down to Ouray and Telluride and being arrested. I made that as a part of the history of this case and the history of this time and showing that as to Moyer at least he was where he could not participate in these matters during several months and the time covered by the explosion at the Independence depot. Mr. Moyer went down to Ouray and there he was arrested by the military and taken over to

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Telluride. He was arrested first upon the charge of having desecrated the American flag, because some reading matter had been printed on various parts of the flat illustrative of the Miners' point of view as to what had been done in Colorado. They discharged him on that and then they arrested him as a matter of military necessity, Bulkeley Wells still held him in the bullpen, although through the district all of this time everything was peaceful, the civil courts were in full operation, not a single Western Federation man at that time or at any other time had disobeyed the process of any court, and we will show that they offered to go and surrender themselves into any court, without a guard or without an officer, if a charge was lodged against them. He was then taken as a matter of military necessity, and Judge Stevens issued a habeas corpus for him and brought him into court or asked to have him brought into court and finally ordered his discharge. This writ of habeas corpus was ignored and the order of the judge defied and the military authorities still held him in the bull pen. Then there was a proceeding ~~which~~ brought ~~him~~ into the Supreme Court of Colorado for a writ of habeas corpus and after a time the Supreme Court denied it, and then they applied to the United States district court, to Judge Thayer at St. Louis, for a writ of habeas corpus and he granted it, set it down for a hearing and thereupon the governor ordered him turned over to the sheriff after he had been seventy days in the bull pen, and immediately they lodged a charge of murder for killing someone in San Miguel county, and no one had been killed even in San Miguel county, and his counsel or nobody could ever find a complaint upon that charge, and afterwards he

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was released upon that, and then a warrant was sworn out charging him with having murdered the two men who were killed in the riot at Victor on June 6th while he was lying in the bull pen, and he was taken over to Cripple Creek upon that charge; and after staying there awhile upon that and not being tried he was arrested for having murdered Beck and McCormick in the Vindicator mine, the case which Orchard has already told you about, and of which he knew nothing, as the evidence in this case will show. In the meantime the deportations were going on. Men were driven from Cripple Creek and landed in Kansas, and Mrs. Steve Adams was driven out of Independence and compelled to walk to Colorado Springs carrying her babe in her arms, until there was nothing left in the district of the miners' organization or of any human being that have ever given them comfort or consolation or aid and then when the husbands had left and the fathers were gone out on the plains of Kansas and the union was doing the best they could to feed the children and the wives that were left behind the Colonel in charge of the military affairs arrested the members of the relief committee and put them in the bull pen and refused to allow a single bit of food to be given out to the wives and the children who were left starving behind. Gradually, as I say, these men who had been driven out of Cripple Creek came to Denver. They came out of the woods and out of the hills and through the valleys and any way they could to get through to Denver, like pilgrims going to Mecca in the olden times. They visited the headquarters. Orchard came. He went there in pursuance of his game to get as well acquainted as he could. He went to Pettibone's store. With some of the money he had gotten

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through burning Neville's saloon and money gathered otherwise he followed his usual occupation of gambling, in the meantime had got fairly well acquainted with Pettibone -- it wouldn't take anybody but about fifteen minutes to get acquainted with Pettibone, he used to hang around the store and the rooming houses -- Pettibone's store. He had, with the rest of them, told of his troubles. These men who were driven out of Cripple Creek were driven out practically at the point of a bayonet. Cards were posted over the district that no man could work in the district any longer unless he got a permit from the Mine Owners' Association, and to get the permit he had to forever relinquish membership in the Western Federation of Miners. No man could work unless they told them so. And then, and after, and before, -- these men's names were known and they couldn't get into a mine of anybody in sympathy with the mine under their own name and get a job, and so, being fugitives, driven out by the militia and the Mine Owners' Association, looking for work, nothing else to do, almost every one of them changed their name and went east and west and north and south and scattered all over this western country, and the Western Federation was no more for a long time in the whole Cripple Creek district. Not only did they refuse -- not only did they post their notices that no person could have employment in that district unless he renounced allegiance to the Western Federation of Miners and took a permit from the Mine Owners' Association, but there was one mine there, the Portland, with Jim Burns as the president and at the head -- he, like the rest, had always employed union miners and he continued it and he continued it all through the strike, and one

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bright day the militia came down there and took charge of the mine and drove out everyone of his eight hundred men and refused to allow Burns and the owners of the mine to run it any longer. Another administration was appointed, another board appointed, and after that they could not run that mine even though the present wanted to and the main owners wanted to, without they got a permit from the Mine Owners' Association to go to work. When these men came to Denver Harry Orchard landed with Neville and his boy. Harry Orchard had money. He laid around, gambling. He got acquainted with Pettibone. He told Pettibone that he wished to leave, that he was a fugitive and he would change his name. He didn't know where he would go, that he had some money, that he wished to leave a part of it with him to be sent for when he wished. Pettibone had a large safe. He was in the habit of keeping things of all sorts for all sorts of men. He gave him some money in a package. He gave him a Masonic charm. He gave him his membership card in the Western Federation of Miners, some other trinkets. Pettibone went out with him, helped him to buy some guns, some fishing ~~knives~~<sup>tackle</sup>, some other supplies, and Orchard and Neville and Neville's son drove away. They drove to Cheyenne, camping by the way. They reached Cheyenne and went to the saloon of an old friend of Pettibone's who was known to all the miners of the West, one Fat Moran. In the saloon they met Bill Davis, who likewise had left Cripple Creek, who had buried his wife and his child in Denver just before starting, and abandoned what was left and gone out into the world to start over. They met Copley, another Cripple Creek member of the Western Federation of Miners and one of the Board. Davis had changed

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his name to Jones. He was going off into Wyoming somewhere to get a job in the mines. Copley had been a railroad man before he was driven out, and his home had been in Iowa, so he started to Omaha to get a job at railroad work after the exodus from Cripple Creek. Orchard went to Pat Moran's saloon. He stayed around there a day or two. He never asked Pat Moran to go and get him any money at Pettibone's store, and Pat Moran never went after any money and never brought him any money, as we think the evidence will show in this case. Then Orchard and Neville and the son got into their wagon and started off on their fishing expedition. I think before that time there had been some talk of going to a dam some twenty-five miles out of Cheyenne, and Pat Moran and Bill Davis got a buggy the next morning and they drove to this dam, and Orchard and Neville and Neville's son got there that night and Davis and Pat Moran also got there. They put in one day fishing at this dam and then Davis and Pat Moran drove back to Cheyenne and they left Orchard, they left Neville and they left Neville's son. We heard no more of Orchard for a long time after. If he ever came back to Denver that year nobody in connection with this case ever knew it or heard of it. He was heard of in various points in the west, I think once at Wallace, Idaho, and finally drifted around to California. But one thing before that. It has been charged that the Western Federation of Miners killed a man in Denver named Lyte Gregory, a man of whom Orchard told. The evidence in this case will show that the Western Federation never had any grievance in the world against Lyte Gregory, knew nothing about him. There had been a strike of coal miners. The United Mine Workers, of which John Mitchell is

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the head, in the coal fields of Colorado -- in no way connected with this organization; that Lyte Gregory had been there as one of the handy gun men to look after the strike and had incurred the enmity of that large organization, whether he had anything to do with it or not is more than I know or more than I can pretend to tell. But as a matter of fact, as we expect the evidence will show, the Western Federation of Miners had no grievance against him, neither Meyer nor Haywood nor Pettibone ever heard of any such thing and I think never knew him; and as far as going to the sheriff of the county, Ham Armstrong, and asking him about the killing of Lyte Gregory, Mr. Haywood never went near him and of no promise of any sort and there was no charge of any such kind made against them at the time, except as everything was laid to their door. Later on then Orchard turned up in California. When he went away he took a different name. None of them went by their own names, or were not supposed to, and Orchard with the rest. He told Pettibone that he would write him from time to time as he needed to. This was some time in July that he left Cheyenne. He did write him at different times. He did get some word from Pettibone -- never by his own name and seldom perhaps by Pettibone's name, because these men, as we will show, were all fugitives. At once upon Orchard's leaving this territory, leaving Denver, he was charged with having committed this crime. The papers scattered broadcast that he was implicated in blowing up this depot. The Detectives and the officers started for him. They captured old man Neville and took him back to Cripple Creek, but they never did get Orchard; whether they looked for him or not is a matter that you will have to judge, if you think it material

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in this case, from all the evidence before you. Later than that he turned up in California. Where he came from or why I cannot tell. But a few months later he was there, reaching there perhaps in October, possibly in September, possibly in August; I think September was the month as far as we know. In the meantime Copley had gone to Omaha. Not getting the employment he wanted there they had gotten up a sort of a magic lantern or moving picture show illustrating the scenes of Crispie Creek and he started west giving these lectures and these illustrations in all the towns through the West, meeting Orchard in San Francisco later, as I will tell you in a few moments. Orchard went to San Francisco, lying around there and plying his usual trade of gambling and playing cards with the soldiers and with anybody he could meet. He was near the Bradley house at the time of the explosion, and now I am going to tell you what I think the evidence will show as to that. We have taken depositions in San Francisco. I haven't yet read them. I may be somewhat mistaken as to the details when we come to read them, but we think that the evidence will show about this: Mr. Orchard never blew up any house in San Francisco. This is another of Mr. Orchard's pipe dreams, told to make him the greatest criminal of the age. We have taken the deposition of Bradley. We have taken the depositions of others. We think the jury will be satisfied that no such thing ever happened in San Francisco. As a matter of fact, we expect the evidence will show that Bradley, who had for years been a miner and a mine owner, was going out of his front door that morning; that there had been gas in the house before; he smelled the gas; he lighted a cigar, and immediately

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upon the lighting of the cigar there was a gas explosion which blew the front of the house out into the street; that it was absolutely impossible that this house could ever have been blown down or shattered or affected by ten pounds of giant powder. We expect to show by experts that not only if they had put ten pounds of giant powder there would they have blown the front of the house to pieces, but you couldn't have found a square inch of Bradley and you could scarcely have found one stick of timber or one stone standing upon another in the house and you wouldn't have found anything but a hole in the block. Immediately before this explosion a Jap was cleaning the steps right at this point within just a very few seconds of the time. That no such thing was there, was ever there. We expect the evidence will show at least create the fair inference from the evidence, that this man was there and he heard of the explosion; that he heard of some milk being poisoned while he was in the grocery across the street, and out of his imagination and his dress he wove this story -- never any such a thing happened and he never did this thing, although I am not especially interested in defending Harry Orchard. He met Copley in California right at that time. We expect Copley will say that he was delivering a lecture on Cripple Creek, illustrating it with stereoptical views, and Harry Orchard came into the lecture. He had known him slightly at Cripple Creek. He had talked with him often about the Casuar d'Alenes, and Harry Orchard asked Copley for the meeting -- I believe went to Harry Orchard's room, and he asked Copley whether he had read about the explosion at Bradley's house. Copley told him he had, and he said to him -- not quoting his

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exact description of the man -- but that one had got what was coming to him, he is one of the men that was interested up in the Cosur d'Alencas that was the cause of the military and the cause of my leaving the Cosur d'Alencas, and there is another one of the same kind, Governor Steunenberg; if it hadn't been for him I would have been rich today and I will kill him if it is the last act of my life. Gentlemen, we will show the feeling of Orchard against Steunenberg. We will show his threats against his life. We will show his charge that Steunenberg was responsible for his being a pauper instead of a millionaire -- not by Copley alone but by not less than twelve men and women, and not near all of them miners or members of the Western Federation of Miners at that. We will establish the cause of the actions of Mr. Orchard, we think, gentlemen of the jury, by evidence that cannot ~~fail~~ fail to convince you of what that cause was. While Orchard was there with Copley he had several meetings with him. He got this uniform. He put it on and said he was going back to Denver. He got the uniform as a disguise. He could not go back to Denver under the name of Harry Orchard, as he supposed, or he could not go back to Denver if he was recognized because he was still wanted and always wanted for the Independence depot explosion. Some weeks later he turned up in Denver. In the meantime he had written to Pettibone from California, almost as soon as he got there, and had told him that he wanted to meet the fellows of the union and he wanted him to send him his masonic charm and he wanted him to send him his union card and his masonic badge and perhaps some other trinkets which he had, and they were sealed up and sent him and registered -- the registered letter by Wolff,

who was a clerk in Pettibone's store. He wired him for money on two occasions, possibly three, but 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, -- use Wolff or Pat Bowen, which he was often called among the boys, and to wire the money to be released so that it could be paid without identification and giving him strict instructions about it, and he did it, and that is all there is about it. He came back to Denver. He came again to Pettibone's store, probably dropped ~~in~~ into Federal ~~in~~ headquarters a few times. In the meantime Adams was on the blacklist. The union was giving out some strike benefit to Annie Adams, Mrs. Steve Adams. Steve Adams and Annie were living in a few rooms, I think three, in a little modest house over at Globeville, and having hard work to live at that. I think they were drawing \$10 relief fund from the union; whatever they were drawing they were drawing what was provided for by the regular custom of the union as to those out on strike or who were boycotted or blacklisted. Orchard came back. He had known Adams and he went there to board. He kept himself closely under cover. He was scarcely seen in Denver. He scarcely went to Pettibone's store once a month, and I think in the whole time not more than once or twice to the office of the Western Federation of Miners. He was doubtless pursuing his usual vocation by night, sleeping a good share of the time by day. So far as these defendants are concerned, and all of them, there never was any arrangement or agreement or knowledge or understanding or a word passed with one of them in reference to Governor Peabody. Governor Peabody, Sherman Bell, Goddard, Judge Gobbert, all these men, were living right in Denver in the

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presence of each one of these defendants, and not a one of them ever raised their hands against them or authorized Orchard or any other human being to do it, not a one; and everyone of them are safe and sound, that is safe, today -- I don't say anything about the "sound"; of that I am not certain. He stayed around Globeville until some time perhaps in April, and then he was around town, I don't know where -- some of the lodging houses. We have had introduced in evidence here the decisions of the Supreme Court in two cases to show that the Supreme Court decided some cases against Moyer and against the eight hour law, and that might furnish a motive for hiring this man to blow his head off ~~any~~ or any other part of him. We expect to show, gentlemen, that during the years 1903 and 1904 especially the Supreme Court of Colorado and Governor Peabody were more roundly and generally abused perhaps than any other tribunal were ever abused; that during the political complications of that state every county official and most every state official had been ousted; that Judge Gabbert and Judge Goddard had both been elected as Democrats; that after the election the Democrats had been seated in all these offices and then upon a suit being brought by the Republican officers or the ones who wished to be officers, these Democrats who had held their offices for a year were ousted and the Republicans seated in their place, and they were openly charged with having betrayed their party and their friends, and all sorts of vituperation and abuse were indulged in by political gentlemen not members of the Western Federation of Miners at all, and then when the campaign came on for the election of a governor there was a warmer time in Colorado than ever before in its political

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history, and, after the most strenuous campaign, upon the face of  
he returns the Democratic governor was elected, Alva Adams, by  
some ten thousand majority. He took his seat, kept his office,  
the matter was ~~carried~~ carried to the Supreme Court and enough votes  
were thrown out in Denver (I am not saying whether rightfully or  
wrongfully) but anyhow to oust Governor Adams and put Governor  
Peabody in for one day, and Judge Gabbert took a hand in this,  
and on the night before -- and he was put in with the agreement  
that after he was put in he should resign his office and the  
lieutenant governor take his place.

MR. RICHARDSON: Made him resign before he went in,  
had it in writing.

MR. DARROW: Didn't want to trust him with it and so  
they got the writing in advance; but the agreement further  
provided that in the few minutes that he should be governor this  
old Democratic judge, Judge Goddard, should be appointed by the  
Republican governor to an office which had not then been fully  
created, and he took his place on the bench.

MR. RICHARDSON: No, he had appointed him just before  
he went out in January.

MR. DARROW: Just before he went out the first time.  
Anyhow, just before, a few months before he went out of office  
to give way to Adams, and the evening before he appointed him to  
fill an office created by the legislature and there was to be no  
such office for four months after the governor's time expired  
and this Republican governor appointed the white wing Democrat  
Goddard to that office. Now then immediately after all of this  
had been done the Democrats gathered throughout the city, they

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held their meetings, their banquets, and as great a man as ex-governor Thomas said, there was nothing to do but to resort to force, and in certain store windows they exhibited nooses, they cartooned the Supreme Court, they openly declared they were corrupt and venal, and upon every street corner they and the governor were denounced. The feeling of the Western Federation of Miners in reference to the Supreme Court was like a mild zephyr to a tornado compared with this political feeling at that time.

MR. RICHARDSON: The flags.

MR. DARROW: At the time that the decree went into effect all over Denver the flags were displayed at half mast as a fitting token to the death of law and the triumph of order. Gentlemen, if anybody was trying to reach Goddard, Gobbert, Peabody, Bell, not one man that is down below in jail, or Mr. Haywood, ever knew it or heard of it or had any part in it; and if anybody hired Orchard it was someone else. Orchard stayed around there until some time in August. He used, as I have said, to go frequently to Pettibone's store, sometimes at least he liked to go down to Pettibone's house to get a square meal. Pettibone would feed him, the same as he would a hungry dog, or any other member of the union. Mr. Pettibone's wife went East for a few weeks. Pettibone said it was kind of lonesome and he could come down there and stay, and so he moved in his valise-- I don't know whether it was the same one that he talked about or not, but he brought it over to the house, where he could get board and lodging cheap for awhile. Mr. Haywood lived nearly across the street from Pettibone's. Haywood might have visited

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him once or twice or three times, although it is doubtful if he did that many times. There was no intimate, close relations. Orchard has been in Haywood's house, but very seldom, and never upstairs in his bedroom as he says, we expect to show. He stayed at Pettibone's house for a few weeks, and they began weaving their pipe dreams of clams and chickens on the Sound up in Seattle, where the tide would deposit the clams when the tide was high and the chickens in the back yard would go out and eat the crabs and the clams when the tide was out, and then they would eat the chickens. They were going to have a ranch. It had always been a favorite topic with Orchard, as it is with all the miners, and for that matter with almost anybody who hasn't got one, and Orchard was going to start out to get one. He bought a return ticket I think to Portland or Seattle. The Exposition was in progress. It was about time for him to get busy anyway, time for him to travel. He bought the ticket in August and I think it was a three months' ticket that would expire some time the last of November, could take him there and bring him back; before he went there was never one single word said by Moyer, by Haywood, by Pettibone in reference to Governor Stearnsberg, not once -- neither then or any other time. He was going away to look up a ranch, to see his old friends in the Occur d'Alence, perhaps to go to Alaska, -- at least was going to travel again. He left and came up to the northwest. So far as we are concerned, we didn't hear of him coming through Boise or to Boise, or coming through Caldwell. If he tried to put a bomb under Stearnsberg's bed at the Idanha hotel I don't know of anybody that knows it yet. Whether he tried to put a bomb under Stearnsberg in the

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cars, we don't know anything about that one way or the other. But after awhile he did go to Portland, he did go to Seattle, and he drifted back to his old stepping ground at Wallace. It was a place where he had been rich -- pretty near, and poor entirely. He came back to Wallace, perhaps the first time that he had been there since he was driven over the hills in front of the militia in 1899. He came back and he found Paulson, the Swede who used to work with him down in the mine. He found Hatton, who had run an engine and kept his savings and put in the mine. He found Barber and Ed. Boyce and all of these men who were with him and who had been as poor as he and who had owned the Hercules mine with him, and they were all rich and he was a tramp. Paulson was rich, Hatton was rich, Boyce was rich, they were all rich out of the Hercules where he had owned a one-sixteenth interest. He stayed around Wallace while in his old business of gambling and confidence man. He went to Paulson's house. He tried to get some money out of Paulson and tried to find out the best scheme for stealing Paulson's baby. He went to Jack Simpkins, whom he had known in the Coeur d'Alene time and whom he had known since, and he was the member of the Executive Board for Idaho, and he went up in the woods with Jack Simpkins on Jack Simpkins's tree claim up toward the headwaters of the St. Joe river, and he came back down to Wallace and he stayed around Wallace for several weeks; and amongst others, he went in to see Dave Coates, who will testify to you gentlemen as to one story he has told. Dave Coates was formerly lieutenant governor of Colorado, a pretty high office. Of course it doesn't follow that because a man has a high office he is a first class

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or the highest toned citizen in the world -- I am not personal in that, Mr. Borah, don't look at me that way. It doesn't follow, but he was lieutenant governor of Colorado. He went to the Cocur d'Alencas. He established a newspaper in Wallace and he was then publishing a paper that was issued twice a week -- a man without a blemish on his name -- a fellow has to be pretty careful to live that way, and Orchard talked with him. Coates had met him before at Denver, talked about the Cocur d'Alencas, and Orchard would ask to be remembered to Paulson, which he had done, and he went into Coates' newspaper office. You know there couldn't anything happen in a newspaper office. Well, he went in there and he said to Coates, amongst other things, "I think I will steal Paulson's child." Coates asked him what he was doing first and he said he was up there to see his old friends and spend a few days, and he said he thought he would steal Paulson's child. Coates, thinking that was a joke, said "I think that would be a good thing to do", and they had some more conversation of that kind and he went away. And he came back in a few days and Orchard said "Well, now, what do you think about that question of stealing Paulson's child?" He says "I have been up there to dinner, I have been playing with the children and I know I can do it, we will steal the child -- or I will steal the child, and right write him a letter that we will give it up for \$60,000 if he will pay the money to you." Coates looked at him a minute and said "Are you in earnest?" "Why," he says, "Yes, of course, I am in earnest," and he said "I never dreamed you were in earnest when you mentioned that to me the other day; I never thought of it; but, first, it would be impossible, if you ever took that child

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into these mountains it would die, but if you ever undertake to do it, I am running a paper here and I will have a publication on the streets in five minutes and I will denounce you." He says, "Never mention such a thing as that to me," and he went away. When you gentlemen bear him and see him, if you want to believe Orchard in preference, all right. He stayed around there some few days longer. He told Mr. Coates in that conversation that he was going to try to get some money out of Paulson, and within a day or two before he left he met Coates on the street near the bank and Orchard had a smile on his face and said he was going to ask for \$500 and then his courage failed him and he only asked for three, and he got it, and now he wished he had asked for five. He stayed around there awhile visiting his neighbors and his acquaintances, and disappeared, and he was not heard of by them again until after this matter happened down here at Caldwell. He and Jack Simpkins came to Caldwell. In his trip Jack Simpkins went to Silver City. He went to some other places for organization work. Jack Simpkins was the member of the board for this territory. He was a regular organizer for this territory. He, like every other organizer for this organization, was entitled to a certain amount per diem for each day spent for the organization and for his expenses. Every single draft he got and every check he got, as we will show, was for services rendered in organization and expenses, and the money he received I think was the smallest of any member of the executive board for a year or two past before he went away. He came down to Caldwell and then to Silver City. He spent some time there, I think at Hailey, and he came on down to Denver, reaching Denver a day or

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two before Thanksgiving. They have introduced in evidence here several checks -- several drafts rather, sent to Jack Simpkins. We will show what those drafts were for, the reason they were sent, and that they were sent in the regular course of business. He came down here -- to Denver, rather, in November. He came down on Harry Orchard's ticket. Harry Orchard had bought a ticket good for three months, which is in the office of the railroad company now. That ticket would expire about the 26th or 27th of November. Jack Simpkins bought the ticket, perhaps got some money of Paulson and perhaps not, but we think there is some evidence to show it at least. He came a few days ahead of the meeting of the Western Federation of Miners so that he could make use of the return portion of that ticket that was issued on account of the Portland Fair and issued to Harry Orchard. Jack was living up in the woods, always poor, needing to save all the money he could, all that came his way. When he got ready to go back he figured up his expenses and his bill and it amounted to \$218.00 and a resolution was passed that he should go from there to some mining camp that I don't just recall, but we will show you in the evidence. He said something about the ticket and some other matters connected with Orchard, and he took the check himself for \$218. --

MR. RICHARDSON: \$221.35.

MR. DARROW: Or \$221.35, I got that a little mixed -- \$221.35, took the check himself, went over to the bank and drew the money and came back to the Western Federation office and he gave a hundred dollars of it to Haywood. He told him that he had to use that for some other purpose, mentioned the ticket with the

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rest, and that he didn't want to take it out with him organizing  
to the mining camps and to mail him that money to his home,  
which he did. Haywood mailed his check to him, this draft,  
on the 21st day of December, and he mailed it to Spokane where  
he supposed he was.



The draft was never cashed by him until the 4th day of January, which might indicate-- which we don't know-- at least it was not cashed by him until the 4th day of January, and was mailed on the 21st day of December. Not a cent was taken from the treasury for it or for anything else excepting upon regular vouchers and for legitimate purposes, and we will show that this was just like every other case of paying money to a regular organizer of the organization.

Jack Simpkins came to Denver and stayed there a few days and then went away. At the time that this matter happened-- the killing of ex governor Stearnsberg, he was somewhere out in Washington. I am not certain whether we will show-- be able to show exactly where he was all of this time, but anyway we take it that is not material; he was not there. So far as his case is concerned it is not on trial at this time, and we will show the facts in that as far as I have said.

Moyer, Pettibone and Simpkins are in this indictment. To show you, we will produce these things and what we will prove in regard to these four who are indicted. Mr. Haywood will take the stand and tell you his full connection with the Western Federation of Miners and everything he has ever done in reference to it. Mr. Moyer who is yet to be tried for murder will himself likely take the stand. I don't want to promise this jury, or say anything, that we do not perform; for every lawyer knows about the difficulties and doubts and dangers of putting a man on the stand

who is to be tried for his life at some future time, and I won't promise, but as he was an officer of the union, and connected with it, the head, connected with Haywood and the Union's affairs, I believe he will testify and tell this jury everything he ever knew.

As to Pettibone he is not connected with the Union. And he is waiting trial for murder. I doubt very much whether we will put him on the stand to testify in this case or to testify in this trial,-- I would not say for sure.

Whether the letter that Orchard got at Caldwell-- how it was written and by whom, we may or may not be able to show excepting by argument, and this is not the time for argument. Whether it referred to the hundred dollars sent on the 21st, it will be for you to determine upon the argument and the evidence that you do hear in this case. Both sides will doubtless give you what they have got or what they can upon that proposition.

Orchard came down to Caldwell. He had been pursuing Governor Steunenberg and swearing vengeance upon him for years; that we will show you. He had, during all those years, been connected with a detective association-- more with them than with us. Now, again gentlemen, I don't want you to make any mistake. I don't believe for a moment that the detective association or the mine owners association had anything to do with killing or governor Steunenberg, but we will show that so far as this man is concerned he was more their agent in everything than he could ever

by any possibility have been ours, and that this act he did in pursuance of this old private grudge which we will prove by ten or a dozen people. He fixed this bomb and it was exploded in the most cowardly way that a coward could kill a man. He was arrested, was thrown in jail,-- he stayed around Caldwell without any excuse for being there; he was caught redhanded. He was thrown into jail and brought from there to the penitentiary and turned over to McFarland the head of the western branch of the Pinkerton detective association, and after manipulations with McFarland for a sufficient length of time he was persuaded that the easiest thing for him to do was to lay his crimes onto somebody else, and so he did it; and this is the biggest reward he is getting-- he is going to get the biggest reward for killing these men, if he lands them, than he ever got for anything in his life. He is going to save his own miserable neck. After the manipulations of McFarland he gave out a confession in which he confessed to everything in Colorado and this in Idaho, and implicated these three men in some fifteen or twenty murders in Colorado where they lived, and where they were fighting and had been living and fighting for years, and ~~that~~ <sup>that</sup> was delivered over to a Pinkerton detective who lived in Colorado and where a judge <sup>other</sup> of the supreme court and several of the officers stay. If the confession is true that they killed one man here and fifteen or twenty there,-- Orchard was kept in the penitentiary until one day when the state's attorney of Canyon county drew up a perjured

affidavit swearing that these men were here at the time of this crime. They got a requisition from the Governor who knew the affidavit was a perjury. They kept it from the newspapers and from the light of day. They went down to Colorado and presented it to another Governor who knew it was perjured because they knew they were there. The business was all done in the Pinkerton office, and while the governor of Colorado, if he believed the story at all, knew that these men were under his jurisdiction and were responsible to that commonwealth for twenty crimes, he allowed the requisition to be issued in secret and in private. It was issued on Thursday; they could not get their men bunched until Saturday, and ~~went~~ Saturday night about ten o'clock they grabbed three men and took them to the jail. They denied them the right to go to their lawyer to get a writ of habeas corpus to keep them in that state; denied them the right to consult with their families or their friends; lodged them on a special train in charge of the militia and the Pinkerton detectives and went through Cheyenne at forty miles an hour, passed through every town on the way, changed engines at obscure places, took on coal and water in obscure places, and kidnaped them and brought them here where they are for trial, and where they have been waiting down here in this jail for a year and five or six months until a jury might pass upon their case.

Gentlemen, one circumstance that has not yet been shown by the state, and which we will show, if they have forgotten it,--

which they have not: When Cochard was arrested it was freely given out in the papers that he was a member of the Western Federation of Miners, and like everything else, they were responsible for this. Mr. Haywood was the secretary and treasurer and a charge was at once brought directly to his door. He at once took steps to wire and to write to an office at Silver City, the nearest place, to have the interests of the Western Federation protected in any charges that might be made against the organization, and likewise to look after any member of the organization who might be arrested, saying in this communication, in this letter, that ever and over again in their troubles, men had been arrested without cause, and to look after this case. We will show that it has been the policy of this organization from the beginning to defend every one of its members however obscure and unknown; that it is a part of the purpose of its organization, and they behaved toward him as they would toward any other or under any other charge, and defend him. That after Mr. Miller had come down here and consulted him a few times, and after he had been visited a number of times by McFarland, that he concluded that McFarland could do him more good than Miller, and I presume he is right, and that is the last our people had to do with him.

Gentlemen, many names have been mentioned by Mr. Cochard,-- names of members of the Western Federation of Miners whom he has said were connected with some things he has done. Gentlemen, in Cripple Creek these lodges were broken up and the members were scattered throughout the length and breadth of the land after the

riots at Cripple Creek,-- some of them to Montana, some to California, some to Idaho, some to Nevada, some to Utah, and taking all sorts of names that they could find, but, gentlemen, we will bring before you here most of those whose names he has given; we will bring you Davis, and Masterly, Malich, nearly all the men whose names have been given, have taken their chance and come here to Idaho to tell their story. There may be some we cannot find, but I think before we get done you will say we have had most of them and that ~~they~~ we have had enough of them.

MR. RICHARDSON: Mention the two or three who are dead.

MR. DARROW: Parker, Kennison, and a few others are dead, as we will prove to you; we will account for them, but most of the rest will come.

Gentlemen, we will show you that Moyer, Haywood, Pettibone, not one of them ever had any connection with this man in any criminal act. Moyer and Haywood were the leading officers of the labor union, doing their best and all they could for that organization, and we will tell you, straight to this jury, that this is not a murder case, and Bill Haywood is not on trial, but that the State of Colorado has sent these men to Idaho thinking that conditions and the people were different here,-- they have sent them here, the mine owners' association of Colorado, that they might try and hang and execute and kill forever the Western Federation of Miners, and it is that organization and through that all organizations, and not Haywood, that is on trial in this court.

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MR. BORAH: If your Honor please, I believe that the statement made by the court at the close of Mr. Hawley's argument should be made to the jury at this time also.

THE COURT: You mean the statement that the statement of counsel is not evidence?

MR. BORAH: Yes sir.

MR. DARROW: Your Honor, I do not think that we would be called on to put on our proof today. I suppose I could have had some witnesses and perhaps I have some here now if your Honor thinks we better proceed.

THE COURT: You may satisfy yourself, Mr. Darrow,-- if you prefer to wait until morning.

MR. HAWLEY: I think you might take your time and arrange the order, and time will be saved by it.

MR. DARROW: It might be better and save our time by beginning to-morrow morning; and I might say, gentlemen, that you will remember when you close your case that there were several impeaching questions still to be asked of Mr. Graham, and if you want to bring him in the morning we will ask him at that time.

MR. HAWLEY: We will try and get him in the morning. We will have him brought down to-morrow anyway.

THE COURT: Let him be brought in in the morning.

MR. HAWLEY: Can you give us any idea as to the length of time that will be taken?

MR. DARROW: I don't believe we will take over seven or eight days for our proof, and maybe not that long.

THE COURT: It depends something on the cross examination.

MR. HAWLEY: We are not very long winded.

MR. DARROW: Yes, I should think that unless their cross examination is very long we will get through with our proof in seven or eight days. We will try to arrange to have our witnesses all here.

THE COURT: We will commence at half past nine in the morning, and if the weather gets warm as it did two or three weeks ago, we will commence at nine o'clock, but for the present we will commence at half past nine.

MR. RICHARDSON: And hold until 11:30.

THE COURT: We will probably commence at 9:30 and hold until 12:00.

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., Tuesday, June 25th, 1907.

Adjourned.