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C. S. DARROW

HAYWOOD TRIAL

July 12 - 13, 1907.

	Direct.	Cross.
Flynn. Dominick	4042	
Haywood. William D.	3735-4161	4083-4165
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Haywood

R.R. Tom

R.R. Tom

Hotel

Hotel

Shaw

Book

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Shaw

261 pgs.

Boise, Idaho, Friday, July 12th, 1907.

9 o'clock A. M.

Parties met pursuant to adjournment.

The clerk read the minutes of the session of Thursday, July 11th, 1907, and the same were signed by the court.

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

MR. BORAH: We want to recall Mr. Flynn for a question or two and let him get away.

THE COURT: Is he in the court room?

MR. BORAH: Yes sir.

THE COURT: Mr. Flynn may take the stand.

DOMINICK SWANE, being recalled for further cross examination, on oath testified as follows:

QUESTIONS BY MR. BORAH:

- Q. Do you know a man by the name of Dan Gency? A. No sir.
- Q. Never knew him? A. Not to my recollection I never knew him.
- Q. A man that lived in Millan in 1898 and 1899? A. What was the name again, please?
- Q. Gency, Daniel Gency. A. I don't recollect him.
- Q. He worked with Orchard in the timber up near Shedy's place, near Millan, in '98 and '99. A. He might possibly have worked there but I don't recollect him. I know there was men working with him but I didn't know their names.

Q. Did you have a conversation with a man by the name of Gandy at your cigar store in Mallan, in Shoshone county, Idaho, a few days after the explosion of the Bunker Hill & Sullivan mine, and on or about the 4th of May, '99, no one being present except yourself and Gandy, in which this conversation was had, in effect: Gandy said "Flynn, what has become of Harry Orchard, has he left the Coeur d'Alene entirely?" You answered "No, I haven't seen Orchard here in Mallan since he quit his job in the woods, but I saw him in Burke about a week after he went away from here and had had a talk with him, and he said he was working in the Tiger-Poorman; I was playing poker at the time I was talking to him." Then you said to him, you said to Gandy, "Why do you want to know, did he get into you?" And Gandy said, "No, but I want to know where he was, and I thought if anyone would know you would."

A. I don't recollect any such conversation whatever.

Q. Never had any such conversation either in substance or effect there at that time or any other time or place to your recollection? A. No sir.

MR. BOLSHI: That is all.

MR. DARNOW: That is all.

WITNESS WILLIAM D. HAYWOOD on the stand.

DIRECT EXAMINATION (Continued)

BY MR. DARROW:

- Q. Mr. Haywood, there are one or two matters I want to call your attention to, or have you call mine to, before we go on to the last question. I asked you yesterday whether Harry Orchard was ever at your house: You said he was? A. Yes sir.
- Q. Do you know when? A. He was at my house during my absence, so I have been informed by my wife, while I was in Chicago. He was also at my house during the spring or winter months of 1905.
- Q. Do you know how many times? A. I couldn't say how many times, not more than two or three I don't think.
- Q. Do you know whether he had any business or how he happened to be there? A. No, I don't, more than any other man that was acquainted with me. Nearly everybody that came to Denver that knew me generally called at the house.
- Q. How was the custom as to the miners and those interested in the organization visiting you or calling to see you?
- A. They did very frequently, both at the office and at home.
- Q. Was Harry Orchard ever upstairs to your bedroom that you know of? A. No sir.
- Q. I asked you something about the Belmont rooming house: I believe you said you had been there? A. I have.
- Q. Where was that in relation to Pettibone's store?
- A. Right over Pettibone's store, in the same building; that is, the store on Stout Street, whereas he was on Stout Street.
- 4044 Q. What was the custom or practice, if there was any, of miners

- from out of town stopping there? A. The Belmont, when it was run by Mrs. Garon, was a sort of headquarters for the miners, especially those attending the convention -- delegates.
- Q. Do you know how often you have been there? A. I have been in the Belmont a number of times.
- Q. Do you know whether you ever saw Harry Orchard there or not?
- A. Not to my knowledge.
- Q. Do you recall any time that you saw him? A. No, I do not.
- Q. Do you know whether you did or not for certain?
- A. I couldn't say for certain, Mr. Darrow.
- Q. Do you know whether you were there at any time when the convention was on? A. Yes sir, I think likely at every time the convention met.
- Q. Do you know whether you were there in 1904 when the convention was on? A. I couldn't say; I think so.
- Q. What floor was that rooming house on? A. On the second floor. That is, I think they had two floors, but I never was only on the second floor.
- Q. Do you know the construction of it? A. I do. The main stairway ran up from the street and the office was on the right, right at the head of the stairway, and there was a wide hall with rooms opening off on either side, cottages along the hall.
- Q. Do you know whether you went to the back, back down the hall to Harry Orchard's room at any time with him when the convention was in session in 1904? A. No sir, I never went to Harry Orchard's room. I may have went down that hall.
- Q. What is there down the hall? A. A toilet on the right hand

side of the hall.

Q. Whereabouts with reference to the end of the hall?

A. Right at the end, a little hall turning to the right.

Q. Another matter which I overlooked: You heard Orchard's testimony in reference to a horse, didn't you? A. Yes sir.

Q. Did you ever have anything to do, or form any plans, or have any conversation with Harry Orchard or anybody else with reference to buying a horse and buggy for Harry Orchard to go out on killing expeditions against Governor Peabody, Sherman Bell or anybody else? A. No sir.

Q. Did you ever have anything to do with buying a horse for him, or a horse and buggy? A. No, I never had anything to do with buying a horse and buggy for him.

Q. Did you ever see him when he had a horse and buggy?

A. Yes sir.

Q. Go along with him anywhere? A. I did.

Q. Where was the horse and buggy? A. He brought the horse and buggy down to the headquarters of the Western Federation of Miners.

Q. Anybody else with him but the horse and buggy? A. The colored man that was here on the stand.

Q. Where did you see him? A. I saw him down -- well, he came up in the office and he said, "Haywood, come down and see my rig," or "See this rig." I went down. He said, "George wants to know if you will trade the gray mare for this horse and buggy."

I got in the buggy -- that is, the colored man got out and I got in and we drove one block west on Larimer Street, passed the city hall, police station, fire department, onto the

14th Street viaduct, and I told him no -- in the course of the conversation I told him no, I wouldn't trade the gray mare, that I didn't want to split that team, and that this rig wasn't worth a hundred dollars; that we had been offered \$250 for the span of mares, could sell them in Cripple Creek for \$275, that I wouldn't split the team under any circumstances. Pettibone wanted to get the gray mare then out of a team that had been brought down from Cripple Creek.

Q. What was this team? A. This was one of a number of spans of horses that was used in the Cripple Creek district at the time we were running the stores there and had been sent for by me through Mr. Harper, I believe. He was manager of the Viator store and had been sent up into the district to settle up accounts, to pay what debts we owed, and if I remember correctly, Mr. Harper wrote to Tommy Baine, who had been one of his drivers, and told him to gather the horses together and bring them down to Denver. I had spoken to Mr. Roper, who ran a corral on the corner of Blake, I think, and 15th, and asked him what kind of a deal he would make with me in regard to purchasing the horses, wagons and harness --

Q. How many horses did you have at that time? A. I think there were nineteen head.

Q. How many did you have in Denver? A. He started with three, that is, with a saddle horse and this span of mares. Roper asked me what kind of horses we had. I told him that we would bring down a span and he could see them. We did, and he said that he would send a man up to look over the entire outfit. Either Mr. Roper himself or his partner went up into Cripple

Creek and looked over all the horses and wagons and harness that we had and made us an offer for it, which wasn't satisfactory, and I sent the team back to Cripple Creek and we disposed of them there.

Q. Is there anything more to this horse story that you know of with reference to buying any horse for Orchard? A. I think I have told you all in connection with that story, more than Mr. Pettibone was anxious to get this gray mare to work in one of his wagons, and I wouldn't split the team for him. Now I might say in connection with that, that we had an opportunity to make sell that team to a man by the name of Joe O'Brien.

Q. Whereabouts? A. In Denver -- a member of the organization.

Q. You needn't go into that. Mr. Haywood, did you ever have any conversation arrangement or negotiation of any sort with Orchard to hire him, employ him, ^{or} combine with him to kill Governor Peabody or Sherman Hall or Moffat or any judge of the Supreme Court or James F. Hearne or anybody else in Denver?

A. No sir.

Q. Or anywhere ~~where~~ else? A. I did not.

Q. Did you ever know of any conversation or any plan in reference to that until you heard it after your arrest? A. That was the first knowledge that I ever had of such a conversation.

Q. When did you first see Steve Adams? A. I first saw Steve Adams in the spring of 1903.

MR. BORAH: Nineteen hundred and what?

THE WITNESS: 1903.

Q. Do you know what month or about that? A. No, I don't know what month it was.

Q. Where do you think you first saw him? A. At headquarters.

Q. Do you recall the occasion of his visit? A. I do.

MR. DUNAY: Excuse me, Mr. Darrow, but I don't get that date right yet: 1903?

THE WITNESS: 1903, in the spring; I rather think early spring, Senator.

Q. Do you know what was the occasion of his coming to the office?

A. He came to the office in company with Ed. Minster and told me that they were going on a prospecting trip.

Q. Had you known Ed. Minster before? A. I had.

Q. How long? A. I met him the first time at the convention of the Western Federation of Miners; he was a delegate to the Western Labor Union in 1902.

Q. Had he ever held any local positions or anything of that sort in the organization? A. I don't know that he had; probably he had.

Q. Had you met him any other time but that time when he was a delegate? A. No sir.

Q. Where was he a delegate from? A. From the Cripple Creek district. Now he was representing the Western Federation of Miners in the Western Labor Union, with which we were affiliated at that time.

Q. That is the time you met him? A. Yes sir.

Q. How long did that convention last? A. I couldn't say, but probably ten or twelve days.

Q. How you say they came there together? A. Yes sir.

Q. Did they say where they were going on this tour?

A. They spoke of going to Tonopah.

Q. How was it at that time with reference to the excitement in that vicinity? A. There was some excitement in the vicinity of Zenepah, that was about the first excitement.

Q. How was the fact as to the number of people -- as to whether other people went from Colorado at that time, about that time?

A. I couldn't say. I believe that there were other people went.

Q. What else did they say about this prospecting expedition, if anything? A. Well, they stayed in the office there for a little while, and we went down I think at noon -- went down to Curtis Street, stopped into Watrous' place and I believe had a cigar or a drink, and I was bidding them good-bye, and one of them remarked, "Now, if we find anything, Bill, we will locate you in."

Q. You mean you went down there with them at that time?

A. I did, yes sir.

Q. Had you ever had any such offer made to you as that before while you were connected with mining, in the organization, or since? A. Yes, I have.

Q. Well, when did you next hear of Steve Adams? A. The next I heard of him was when I got a telegram from Ogden saying that he was in jail, and him \$75.

Q. You thought then he had got located in, didn't you, somehow. Did you send him away for any purpose at all? A. No sir.

Q. What did you do when you got this telegram? A. I sent the money by wire.

Q. Whose money was it? A. Mine.

Q. Do you remember about the date of that? A. No, I don't, but I think it was in the early summer, probably not more than two

months, two or three months after they left.

- Q. Do you know what company you sent it by? A. I think the Western Union.
- Q. Well, when did you hear of him again? A. I saw him afterwards at the picnic at Pinnacle park.
- Q. When was that? A. That was August 15th of the same year.
- Q. What was he doing at the picnic? A. He was in charge of one of the stands, on a committee.
- Q. Do you know when you saw him again or about when? A. I next saw him in 1904, June, 1904.
- Q. Where was that? A. At headquarters.
- Q. When was that with reference to the Independence depot matter? A. Immediately afterwards.
- Q. When you say "immediately" do you know about when, about how long? A. I think it was two or three days. He came up with the other men that were deported.
- Q. About how many other men were there who drifted around Denver and into your place at that time that were deported? A. There was a great many of them. The office was crowded with men, so much so that the landlords requested us to keep the halls clear, if we could.
- Q. Did you move the offices after that? A. Yes sir, right away after that.
- Q. Where to? A. 15th and Larimer. We were then in the Mining Exchange Building.
- Q. Did the new offices have more room or less? A. More room.
- Q. Any different arrangement of offices as to reception room and outside offices? A. We had one large reception room separate

from the offices proper.

Q Do you know what became of Adams after that? A I found out afterwards.

Q Did you find out then definitely what he was going to do or where he was going? A No, I did not.

Q Did you meet Mrs. Adams at that time? A I met Mrs. Adams shortly after, yes sir.

Q Where? A In Denver. She was one of the women that came from the Cripple Creek District.

Q Do you know whether she had any children -- did she have any children, do you know? A I believe she did have a little boy, it seems to me.

Q Where did you meet her in Denver? A At headquarters.

Q Did she have any business with you? A Not any more than the other women who were there to.

Q Getting relief? A Yes sir.

Q That was, the business was to get relief? A Yes sir, to get relief and get established.

Q How long was she getting relief? A Well, I think the last relief that Mrs. Adams got was in 1905.

Q And first? A The time of the commencement of the strike.

Q Had any relief been given them in Cripple Creek, or don't you know? A Why, I presume there was; all the men on strike received relief. I could not say definitely as to them any more than any other member.

4052 Q How was this relief generally given her -- where and in what

form? A In the Cripple Creek district --

Q Well, we will cut that out, about Cripple Creek; in Denver, when she moved to Denver? A It was given in cash, given in orders on the different stores, given in check, and we also paid the room rents.

Q Whereabouts was it delivered to her? A Do you mean to her particularly?

Q Yes, to her. A It would be delivered at headquarters.

Q Do you know where she was living, did you learn where she was living? A No sir.

Q Do you know about how often you saw her? A No, I was not in charge of the relief, -- that is, only generally.

Q Did you see her some times when she came there? A I think I did, yes sir.

Q Well, do you know when you saw Steve again? A I saw Steve in the fall of 1904.

Q Whereabouts? A In Denver.

Q And whereabouts in Denver? A At headquarters.

Q Do you know how he came there, or why? A No, he had returned from -- well, he said he had been to the tall timber, that he had been up in the Coeur d'Alenes.

Q And you know what name he was going by in the meantime?

A Well, I always knew him as Adams, but I think he was going by the name of Dixon.

Q And when he came back was he alone or was anybody with him?

A He was alone as far as I know.

- Q Did he have any business with you at the time? A Well, just the same business.
- Q Well, what do you mean by that? A Getting relief.
- Q Do you know what relief they were drawing, Steve and his wife?
- A I do not.
- Q Do you know about what? A I could not say, Mr. Darrow, as to what relief they received; but I believe a single man got three and a half a week, a man and a wife five dollars a week, and if I remember correctly there was one dollar added, or one and a half added, for each child.
- Q It was in that neighborhood anyway, was it? A Yes sir.
- Q Did you see him at any other time that you recall? How often did you see him? A I don't recall any other time particularly except one in the following spring when he was leaving.
- Q Did you ever give him any money outside, -- or send him any money outside of the \$75. you spoke of and the relief that he got? A No sir, never at any time other than when he was leaving. I suppose he got the regular travelling stake that was provided the men.
- Q Did you ever get your seventy-five back yet? A I did not. I might say in connection with that, Mr. Darrow, that when I saw them in the Cripple Creek district, both he and Minster spoke about that money; they said the strike was on, but as soon as they got work they would straighten it up with me.
- Q That is still coming, is it? A I have never received that.
- Q Now, when was this time he was leaving, that you speak of?

A I believe that was in April, 1905.

Q Do you know where he was going? A He and Joe Mahalich were going to Park City.

Q Were you sending him off on any expedition of any sort?

A No, they were going to look for work.

Q Did you ever send him off on any expedition? A Never at any time.

Q What did you do toward helping them out of town, if anything?

A Well, I could not say positively, but I am satisfied they got their travelling stake, either five or ten dollars at that time in addition to the relief they had been receiving.

Q Why do you think that? A That was the custom for any man that was leaving to go in search of work, we doubled up the amount of relief he was getting and gave him two or three weeks and stopped his relief if he went in search of employment.

Q Do you know when you heard from him again, if at all? A I think the next time I heard from him was --

Q Either he or his wife, we will say? A Well, it was his wife. They were then in Oregon.

Q Whereabouts? A Haines.

Q Haines, Oregon? A Yes sir.

Q And about when was that? A That was along in September or October of 1905, as nearly as I can remember. I haven't anything to fix that date, -- I could fix it too, but I cannot remember it.

Q Well, it was about that time, was it? A Yes sir.

Q Now you are speaking of 1905? A Yes sir.

Q What information did you get from her at that time?

A I got a letter from Mrs. Adams saying that --

MR. BORAH: Wait a minute. Have you the letter?

Q Have you got the letter anywhere? A I don't know that I have the letter.

Q You have not got it around your clothes anyway? A No sir.

MR. DARROW: Well, I don't believe I have a right to go into it if you don't want it.

MR. BORAH: No, but I would like to have the letter.

Q Do you know whether you have got any such letter? A I don't know that I have.

Q Anyhow, you have not got it in Boise, have you? A No sir.

Q Well, I will ask you in substance what was in it? A Mrs. Adams told me that Steve had located a homestead and that they were going to do pretty well, but just at that time they were hard up and asked if I could send them a little relief and help them out, and she ended up by saying that some time we will pay you back in butter and eggs, as I remember the letter.

Q Did you send her any relief? A I sent her \$30.

Q Have you ever got the butter and eggs yet, so far? A Not any from Mrs. Adams.

Q How was this relief, as to whether it was personal or a matter for the union? A That was relief from the organization.

Q Have you ever sent them any money since? A I never did.

Q When did you next hear anything of Steve Adams? A I think the next time I heard of Steve Adams was when he was arrested on the charge --

Q After the Steunenberg matter, I will say. A Yes.

Q Now, did you ever know a man named Art Baston? A I did.

Q How long did you know him? A I met him in the fall of 1904.

Q How well were you acquainted with him? A I was not very well acquainted with him.

Q Was he a member of the union, or connected with the union in any way? A I think he was a member of one of the unions in the Cripple Creek district.

Q Did you ever have any business dealing with him? A He was on relief.

Q Did you ever employ him to do any work of an illegal character -- the killing of anybody or anything of that sort?

A I never employed him for any kind of work.

Q Did you ever employ Ed. Minster? A No sir.

Q Lets see, did you ever send him or anybody else, the two of them together, \$25. apiece at a certain point? A No sir.

Q In connection with any prospecting matter? A No sir.

Q Very well, now -- A Minster, you refer to?

Q Yes, or Art Minster-- Art Baston? A No sir.

Q Very well, now the last time that you ever saw Harry Orchard before the Steunenberg assassination was when? A It was in

August of 1905.

Q A letter has been introduced in evidence that you wrote to Mrs. Orchard; you have seen that letter, have you? A Yes sir.

Q Do you remember now the date of that letter? A I remember the date of it as I read it here, yes sir, November 18th, 1905.

Q November 18th? A Yes sir.

Q Do you know how you came to write that letter? A I received a letter from Mrs. Orchard in which she asked me --

MR. BORAH: I would like to have that letter if you can produce it.

Q Have you got that letter? A I don't think so.

MR. DARROW: We will wire to the office if you want.

THE WITNESS: It was merely a note inquiring of me --

MR. BORAH: We would like to have some efforts made to get it.

MR. DARROW: We will wire today noon and try to find it.

THE WITNESS: It may be on file.

Q Do you know whether it was kept? A I hardly think so.

Q Do you know about the date of it? A I think I answered it at the same time I got it,-- it occurs to me that I did.

Q Well, what did that contain, generally, what was it about?

A An inquiry if I knew anything about her husband.

Q And your letter was written in reply to it, was it? A Yes sir.

4058 Q And did you give her what information you had about him?

A Well, I had no information, but I recalled the conversation I had had with him and I did not want to tell her what he had said, so I gave her the next best information that I could.

Q Had you any information at that time other than what he had given you as to where he was? A No sir.

Q And how long had it been since you had heard from him? A I had never heard from him since the time he had left Denver, about the middle of August.

Q Did he ever ask you at any time -- A That is, I say the time he left Denver, Mr. Darrow, now I did not see him when he left Denver.

Q No, the time you learned of it, I suppose? A Well, the time I saw him, it was about the middle of August, and if I remember rightly just the last time I saw him was when he brought the horse and buggy to the office.

Q Well, you had not heard from him excepting as you have related here, is that what you mean? A No sir.

Q When did you next hear anything about Harry ^Uronard or Thomas Hogan? A I next heard of him in connection with the assassination of Governor Steunenberg.

Q And in what way -- ~~is~~/what medium? A I think first through the press.

Q Had you ever heard or known that he had anything to do directly or indirectly with any plan to assassinate ex-Governor Steunenberg? A I never had -- never had heard of it.

- Q How long had it been since you had given any attention to Governor Steunenberg? A I don't think that I had thought of Governor Steunenberg after I left the State of Idaho.
- Q Had he in any way taken any part or hand in the matters connected with the unions to your knowledge since he ceased to be Governor? A He never had, I don't believe.
- Q And so far as you know had he taken any hand in an attempt to get into politics or position or anything of that sort since? A I never learned of it after he failed to be nominated. I don't know that he ever tried to get office afterward.
- Q Did you ever hear of his being in any way connected with any mining business? A No sir.
- Q Or dealing with the Federation in any way? A Never in any way to my knowledge.
- Q Now, what was the first information you got in reference to the assassination of ex Governor Steunenberg? A I heard of it the next morning.
- Q You mean through the newspapers? A Yes sir.
- Q Were any charges made through the newspapers or otherwise in reference to the Western Federation of Miners?
- MR. BORAH: We object to that as leading.
- Q Well, what was said, if anything, generally as to who was connected with that, in the public press? A Well, the first intimation we had was that this man Thomas Hogan and some

others had been arrested, and it was said, if I remember rightly, that they were members of the Western Federation of Miners. I believe that the press intimated that the assassination was the culmination of the trouble in the Coeur d'Alenes, and within a day or two the press announced that in the trunk, or the suit case or valise of this man Hogan, had been found a card addressed to Charles Meyer, Denver.

Q How much space was given to this matter in the newspapers during that time? A There was some considerable space.

Q How much comment was caused by it through the country generally? A There was very general comment.

Q Did you discuss it? A Yes sir.

Q Who with? A I discussed it the very morning we learned of it. I went to the office -- that was Sunday morning and there was some of the members of the board there, I believe Mr. O'Neil and Mr. Meyer, and it was very generally discussed. The union men that visited the office, discussed it.

Q How soon did you anticipate that there would be an effort made to connect the Federation with it, or the officers of the Federation? A I think it was within two or three days that it was announced that the Federation was responsible and that it was the outcome of the Coeur d'Alene trouble.

Q Was the question discussed as to who Thomas Hogan was?

A Yes sir.

Q After reading the accounts of it and the discussion that took place, did you make up your mind who he was? A I believe

that we did.

Q When was the next information you got that was in any way definite about it? A I think the very next information of a definite character was the telegram that was signed, "L. J. Simpkins" from Spokane.

Q When you got that telegram what did you do? A When I received the telegram I looked it over and saw that it was a cipher message, and I took it into Mr. Moyer's room and we attempted to decipher it, but it was received very late in the evening and I had some mail to get ready to post, and he took it home that night and brought it back the next morning and read it as he had deciphered it.

Q And practically as it was deciphered here -- as it was read here? A Not exactly as it was read here.

Q Now, how long before that had you seen Jack Simpkins?

A I saw Jack Simpkins at the meeting of the executive board in December.

Q What time in December? A The board met, if I remember rightly, on the 30th of November, and adjourned on the 13th or 14th of December.

Q Did Jack Simpkins get any money while he was in Denver?

A Yes sir.

Q Do you know how much? A \$221.35.

Q And what was that paid for? A Per diems and transportation expenses.

Q Did he do anything with any part of that money or ask you to do anything with any part of it? A Yes sir. When he got

his check he went and got it cashed and came back and counted out \$100. and asked me to send it to him and send it by draft to Spokane, saying he was going to Index, that he did not want to take all the money with him, and he expected to arrive home about Christmas.

Q What did you do with it? A I took the money and put it in the safe. I afterwards --

Q You had a safe in the office? A Yes sir. Remembering Jack's request along a few days before the holidays, I took the hundred dollars and wrote out a slip and got a draft at the First National Bank of Denver.

Q With what did you pay for the draft? A With the currency that Jack Simpkins had left with me.

Q Did you buy that draft yourself, do you know? A Well, I would not be sure about that, Mr. Darrow; I did not often get drafts myself. It was generally arranged so that at noon one of the girls would take the slips to the bank and get them on the way back from lunch.

Q How many girls were there in the habit of doing that? A

A There was not any particular one; all of them done it.

Q How many of them were there? A I had four stenographers.

Q Do you now know whether you got this individually or whether one of them did it? A I could not say, Mr. Darrow, for certain.

Q Do you know whether you ever told anybody about it? A I don't think I did.

Q Well, have you thought that over as to whether you ever did or not -- whether you ever gave out any information about it?

A No, I have not.

Q Did you give any consideration to the matter one way or another at the time? A No sir.

Q Do you know who mailed it? A Well, I could not say as to who mailed it, because after my letters were prepared for posting, the girls -- it was according to the number of letters we had, and mail, or the amount of mail I was sending out, some times it took two or three of them -- they divided them up and carried them to the box in the Railroad Building adjoining, and deposited the letters in the box and generally the packages and supplies we were sending by mail were put either on top of or under the box.

Q Yes, a letter was introduced here which was sent -- purported to have been sent from Denver on the 30th, to Caldwell, addressed to Thomas Hogan; do you know anything about that letter? A I have no knowledge of it whatever. I never heard of it until I heard it testified to here on the stand.

Q Now, when is the last time you saw Jack Simpkins? A I last saw Jack Simpkins after the meeting of the executive board in December-- the meeting that I referred to.

Q This telegram you say came on the 4th and Mr. Meyer brought it down the morning of the 5th? A Yes sir.

Q When Mr. Meyer brought that down, what did you do? A We talked the matter over and it seemed to us of some serious

import and we concluded the best thing to do was to consult with our attorney. Acting on that idea we called up the office of Mr. Murphy and was informed that he was at home confined to his bed.

Q How was Mr. Murphy in those days and since as to his condition of health? A He was very ill at that time and has been since.

Q Were you any exercised over this telegram and the matters that were arising at that time? A Yes sir, we were.

Q Then what did you do after you called up Mr. Murphy and found he was at home? A We took the street car and went out to Mr. Murphy's home and we were taken into his bed room and we laid the matter before him, and Mr. Murphy advised us not to act hastily; he did not think there was anything serious about the matter, and the best thing we could do was to wait a few days, await developments and give him an opportunity to think it over.

Q When did you next have any communication with Mr. Murphy about it? A I heard from Mr. Murphy, if I remember rightly, on Saturday or Sunday morning -- Sunday morning I think, by telephone, in which Mr. Murphy advised me to get some good attorney in Idaho who would look after the interests of the organization.

Q Did you call him up or did he call you up? A He called me up.

Q Then what did you do? A After discussing the matter with

him and talking over the different attorneys with whom I was acquainted, I told him I knew Mr. Nugent in Silver City and I believed he was as good a man as I could get in this immediate vicinity, that is, with whom we were acquainted, and he advised me to wire to the secretary to secure Mr. Nugent.

Q Was all this talk over the telephone, or did you meet him personally? A It was all over the telephone.

Q And then you sent the telegram that has already been read?

A Yes sir, that is, the first telegram that has been read, that was sent on I think the 7th, if I remember rightly, wherein I requested the secretary to employ Mr. Nugent to look after the interests of the organization in Boise.

Q What day of the week was it that you sent it? A I don't remember; I think it was either Saturday or Sunday.

Q When did you write to -- A I did not write for some time after that. The next day Mr. Murphy came to the office, I believe. I had called him up and told him I had a reply to the telegram I had sent, and he came to the office and dictated the second telegram that has been introduced.

MR. DARROW: Mr. Clerk, will you give me that letter from Mr. Murphy that was identified and not introduced?

Q He dictated the second one, did he? A Yes sir.

MR. DARROW: Senator, may I read from this copy that was introduced of this telegram?

Q The second telegram was the one reading as follows, was it:

"R. J. Hanlon, Financial Secretary, Miners' Union, Silver

City, Idaho. Dated, Denver, Colorado, January 8th, 1906.

As dispatches indicate there is another conspiracy entered into to connect the Western Federation of Miners with grave crime. Several persons in Caldwell, Idaho have been arrested in pursuance of the conspiracy. The Western Federation of Miners defends no member guilty of crime, but in the past it found ~~practically every~~ every one of its members accused of crime innocent and they would have been the victims of conspiracy had we not aided in defense. So have Mr. Nugent take up the investigation, so if they are innocent they may be discharged." A That is the telegram.

Q That is the one Mr. Murphy dictated, is it? A Yes sir.

Q You sent that? A Yes sir.

Q And then followed the rest of the correspondence we have already read? A Yes sir, my letter to the secretary enclosing a letter from Mr. Murphy.

Q Your letter to the secretary enclosed Mr. Murphy's letter, did it? A Yes sir.

Q I will show you defendant's exhibit 24 for identification and ask you if that is a copy of Mr. Murphy's letter? A This is the copy of that as I remember it, and I have read it.

THE COURT: What is the answer?

THE WITNESS: This is the copy of Mr. Murphy's letter.

Q And is that what was sent? A Well, this is the copy of the letter that he wrote to Mr. Nugent and this is the one I sent to the Secretary.

Q Yes, at Silver City? A Yes sir.

MR. DARROW: Your Honor, it seems to me that this letter is competent and I am going to offer it now.

MR. BORAH: Have you offered it?

MR. DARROW: I am going to offer it at this time. I will offer defendant's exhibit 24 for identification -- I offer it in evidence.

MR. BORAH: We object to it as incompetent, immaterial and irrelevant, and as a self serving declaration, and its authenticity has not yet been sufficiently established at this time. I don't care to argue it, but I think it is apparent that the letter is inadmissible.

THE COURT: I read the letter yesterday, and I will hear from Mr. Darrow.

MR. DARROW: The other letter, your Honor, was introduced and read without objection, -- the letter of Mr. Haywood. That was a letter to employ counsel, and it was doubtless competent, and it was introduced and read without objection and admitted. The letter makes this a part of the communication. It is referred to and is a part of it, and just as much a part of it as if written out in this letter. The letter we have already introduced, as I understand, says: "I enclose you copy of letter directed to Mr. Nugent by attorney J. H. Murphy, and would also call your attention to articles under caption enclosed which appear in the last issue of the Miners' Magazine." Now, the Murphy letter is a part

of that correspondence and part of the whole transaction, and it seems to me just as competent as any other part of it. Now, as to the identification, there surely can be no question about that. Mr. Haywood has examined it and identifies this as being a copy that was sent to the secretary with his letter.

THE COURT: The court will not base its ruling upon the question of the authenticity of the matter, but it appears to the court that under no possible circumstances can the information contained in that letter be proper evidence to be submitted to this jury on behalf of this defendant. For that reason the court will sustain the objection.

MR. DARROW: You sustain the objection on the ground of competency alone and materiality.

THE COURT: I place my ruling on that ground.

MR. DARROW: I want to save an exception.

Said defendant's exhibit 24 for identification so offered in evidence is in words and figures as follows, to-wit:

1
"Defendant's exhibit 24.

C O P Y.

Denver, Jan. 2/08.

Mr. John F. Nugent,
Attorney at Law,
Silver City, Idaho.

My dear Sir:-

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Owing to the newspaper reports indicating that there was a determination to connect the Western Federation of Miners with the murder of Ex-Gov. Steunberg of Idaho, and also with the blowing up of a railroad depot in the Cripple Creek district a couple of years ago, and my attention having been called to these reports, I advised the officers of the Association here that it was their duty to employ a reputable lawyer in Idaho to look after the defense of these men, so that they might not be the victims of a conspiracy, which I have reason to believe exists. First of all, I wish to state that I do not believe there is any association of men in the world that is freer from criminal designs than the Western Federation of Miners. Its officers understand that no organization can or should live, that commit unlawful acts; or to accomplish lawful things by unlawful means. Every day the organization is aiding widows and orphans. It is burying the dead who are killed in the discharge of their duties in the mines, and other dangerous places in which it is necessary for men to work for a livelihood. It is taking care of the sick, building hospitals and the like; and in all of its

councils I have never heard any of its officers advocating crime; but, on the contrary, they have expressed themselves in a vigorous manner against its perpetration, and anywhere that it was known that the members of the organization might be likely to violate the law, a warning for them to desist from doing so, and staying within the law, has been sent. In Colorado large numbers of their members were arrested and thrown into prison and charged with heinous crimes. For the time being I was stunned and shocked at the terrible charges, and they came from such a high source that I thought there must be some foundation for them. And yet knowing the attitude of the organization against crime, I was compelled to believe that at least the organization itself would be found wholly disconnected with any evil doings of individual members. The result has been that out of all of these horrible and terrible charges, not a single conviction occurred; but, on the contrary, some of the accusers of the members of the organization have found their way to the penitentiary on account of their own evil doings. The district attorney admitted to me that the attorney for the Mine Owners' association requested him to make a number of arrests and when the district attorney called for the information, he insisted that they had it and in due time time would produce it but that the arrests should be made and charges all the way from murder to assault and battery were made, and men were imprisoned upon the charges. In dismissing a large number of cases the district attorney admitted to me that he had

4071 no evidence but took the word of the attorney for the mine owners,

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that he had original evidence against the men so charged. The mine owners' attorney was at that time Mr. S. B. Crump; I think he is yet the attorney, and I am told he is on his way to Idaho in connection with the charges made against the members of the Miner's union arrested at Caldwell. Now, of course, I am very reluctant to say anything about the integrity of an attorney, but if Mr. Crump did such things here, it is natural to suppose when he is working in the same interest, that he will endeavor to do similar acts there. His going there causes me to believe that a conspiracy has been formed, or the carrying out of a conspiracy a long time ago formed, is about to be consummated, and therefore the men arrested deserve the counsel and assistance of one of the best attorneys in the State. Whoever murdered Gov. Stuenkel was a cold, cowardly rascal, and he deserves the full penalty of the law, and the Western Federation of Miners will have nothing to do with his defense. But when it is attempted to fasten black crime on this organization, that helps the widows and orphans of deceased members, aids their sick members, builds hospitals, and endeavors to raise the moral and intellectual plane of their members,--then it is the duty of the organization to step in and prevent any man being convicted by reason of the conspiracy existing. So, the purpose of defending the innocent has been the sole object of my suggestions of employing an attorney in Idaho. If I were led to believe for a moment that the officers of the Western Federation of Miners were encouraging any of their members to commit crime, I would sever my connection

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with it in an instant; but everything that I have seen since my connection with it as an attorney, has been in the opposite direction. And of course, if it were otherwise, then these accusations against its members would have shown its true character; but the most stringent inquiry always showed the organization absolutely disconnected with any offense charged, and also showed that the members were the victims of a conspiracy, and that the charges were made only for the purpose of inciting hatred and the ill-will of the public against the organization, and its members, for the purpose of accomplishing the evil designs of the accusers.

So, kindly see the defendants, give them such advice as it is proper for an attorney to give to a client, and such a defense as the law warrants in their case.

Yours very truly,

(Signed) John H. Murphy.

Q After this correspondence did you keep in touch with the situation through the newspapers? A Yes sir.

THE COURT: That was your No. 24, was it?

MR. DARROW: Yes sir, 24 for identification.

Q Did you learn that any attorney had appeared for Hogan at the preliminary examination? A Yes sir.

Q Did you learn who it was? A I did.

Q Who was it? A Fred Miller of Spokane.

Q When did you hear anything more directly from it, outside of newspaper or reports? A The first direct information we had was when Mr. Miller came to Denver.

Q In the meantime, did you keep track through the press of the preliminary examination? A Yes sir, to some extent.

Q And when did Mr. Miller come to Denver with reference to the preliminary examination? A Shortly afterward.

Q Did you learn how Mr. Miller was first sent to the case?

A I did.

Q Did you know how he happened to get into it? A I did.

Q Through whom? A At the instance of Mr. Simpkins.

Q When he came to Denver to see you did he bring anything with him? A Not that I know of.

Q Well, did he bring anything in reference to the evidence?

A Yes sir.

Q What? A The transcript of the preliminary examination.

Q Did you go over it? A Yes sir, we did.

4074 Q Did you discuss with him the case? A Yes sir.

Q And the probabilities of the guilt or innocence of the man?

A We did.

Q And did you discuss with him as to what had been said as to the connection of the Federation with it? A Yes sir, we went into the matter fully.

Q Went into it fully? A Yes sir.

Q Who did he first see, as far as you know, in Denver? A Mr. Murphy.

Q And then where did you see him? A At Mr. Murphy's office.

Q Did you advise with Mr. Murphy as to what you had better do in the matter with Mr. Miller? A Yes sir.

Q And what did you finally do as to paying him any money?

A We finally agreed to employ him to prepare the preliminary work and we paid him \$1500.

Q Was this the first money that the Western Federation had paid for that matter? A No sir.

Q I mean in the matter of Mr. Miller's defending Orchard?

A No sir.

Q What other money had you paid? A We had paid a number of retainer fees in similar cases where men were charged with crime growing out of --

Q You did not understand that question. I said, was this \$1500. you paid at that time the first you paid in defense of Hogan for the assassination of Stamenberg? A Oh yes, that was the first.

Q Yes, that was the first? A Yes sir.

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Q Do you know how long Mr. Miller stayed in Denver? A No, I don't. I did not see Mr. Miller only at the morning conference.

Q About what time in the month was this? A I think the latter part of January.

Q Did you stay in Denver the rest of the time until you were brought here? A Yes sir.

Q In the meantime, what was the condition of the public in reference to this matter, whether it was discussed more or less all the while? A Oh, yes, it was.

Q Did you learn of anybody coming here -- or coming here who had been connected with the prosecution of miners, or connected with the mine owners association in Cripple Creek?

A Yes sir.

Q Who? A Samuel D. Crump, the attorney for the mine owners association, and Sheriff Bell.

Q And who? A Sheriff Bell, and Floyd Thompson, the secretary of the mine owners association.

Q Do you remember when you learned of their coming? A I think that was the time we sent the second telegram.

Q Had you known Crump -- Samuel D. Crump? A I never knew him personally.

Q How often had he appeared against the Western Federation of Miners? A Well, a great many times in the Cripple Creek district.

Q Where was his home at that time? A In Cripple Creek.

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Q What was his position? A He was an attorney employed by the mine owners association.

Q Well, when did you first learn that anything was on foot definitely to arrest you in connection with the Steunenberg matter? A When I was arrested.

Q About what time were you arrested? A At 9:30 in the evening.

Q Where were you taken? A On 15th street near Larimer.

Q Where to? A Taken to the county jail.

Q How many people were in charge of you when they took you to the county jail? A Two.

MR. DARROW: Now, your Honor, I will assume that the court will rule the same here as he did with Mr. Moyer.

THE COURT: With reference to the extradition proceedings?

MR. DARROW: Yes, and I don't want to ask unnecessary questions.

THE COURT: Yes sir.

MR. DARROW: I don't suppose it is necessary to save an objection to that, and I will state that I will not go into that for I know what the court has ruled.

THE COURT: The court's ruling will be the same as when Mr. Moyer was on the stand.

MR. DARROW: I will follow along the line that your Honor permitted before.

Q When you got to the jail who did you meet? A I met the jailer.

Q What other men were arrested and taken there to? A I did

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not meet any others, not at that time.

Q Where did you meet Moyer and Pettibone? A I met them in the office of the county jail at 3:00 A. M. that morning.

Q That was the first you saw of them, was it? A The first I saw of them. I spoke to Pettibone.

Q Did you make any attempt to communicate with your attorneys?

A I asked the officer to notify Mr. Richardson, and Mr. Delais told me that he had been notified, and I requested them to tell Mr. O'Neil, and have him tell my family, and I also requested the jailer to call up Mr. Murphy or Mr. Hawkins or Mr. Hynes and tell them that we were under arrest and in the county jail; and about eleven o'clock that night I asked the guard to tell warden Duffield that I would like to see him, and he came up to the corridor where I was locked up.

MR. BORAN: Just a moment, if your Honor please. I object to this detailed conversation. I won't object to the fact that they were not notified.

Q Well, were any of your friends or counsel notified? A No sir, although Mr. Duffield promised me that he would.

Q When were you taken away from Denver? A We were taken away from the jail at three o'clock in the morning and taken to the Oxford hotel and confined there in separate rooms and under guard and in irons, and we were then taken from that hotel at 5:40 o'clock in the morning and placed on a special train at the Union depot where we were under a guard of Bob Meldrum, detectives -- Pinkerton detectives Watson and Fisher,

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Bulkley Wells, military officer Strickland, an officer of the militia and Mr. Mills the deputy warden of the penitentiary, leaving the depot that morning at six o'clock on that special train.

Q All of those men came with you? A Yes sir.

Q Where did you come to? A We came to Boise.

Q And you have been here ever since? A No, we were in the penitentiary part of the time, and part of the time in Caldwell.

Q Part of the time in Caldwell? A Yes sir.

Q But you have been imprisoned ever since? A Yes sir.

Q I don't know but I omitted to ask you specifically, how long have you known Mr. Pettibone? A Since 1900.

Q How well have you known him? A Very well.

Q What has been the custom and habit of the miners as to going to his place of business and being on friendly relations with him? A Oh, they have made his store sort of a headquarters.

Q What has been his relations to the union? A He is an honorary member of the Western Federation of Miners.

Q Was he formerly a miner? A He was.

Q I think --

THE COURT: What was that answer?

THE WITNESS: He was.

Q He was formerly a miner? A Yes sir.

Q Has he been on any of your committees? A No, he never was on a committee of the Western Federation of Miners that I

know of, but he was on a number of entertainment committees -- that is, entertaining the delegates of the Western Federation of Miners, acting in conjunction with the City Council of Denver who have a number of times appropriated \$300. or such a matter for the entertainment of visiting delegates.

Q That is, at the time of your conventions held there? A Yes sir.

Q And during your living in Denver how near him have you lived?

A I lived next door to him for a while and afterwards right across the street.

Q You have been in his house? A I have.

Q How was it as to the frequency of it? A I have been in his house a number of times.

Q Has he been in yours? A Yes sir.

Q You have seen him very frequently the last year, I take it?

A I have lived with him in the same room the last seventeen months. Mr. Darrow, there is one statement that I made yesterday that I would like to add to.

Q Very well, what is it? A In speaking of the times I have been absent from headquarters, I forgot to mention that there was one occasion that I went to the Black Hills.

Q When did you go to the Black Hills? A That was in June, and previous to that I had not been out of the office for some little time.

Q Following the explosion in Cripple Creek? A Yes sir, that was June, 1904.

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Q June, 1904? A Yes sir.

Q How happened it you did not go to the office? A Well, there were indictments out against me -- against a large number of men, and I was named among the number.

Q Were you indicted? A Yes sir, we were indicted for riot and conspiracy and murder.

Q Riot and conspiracy and murder where? A In Victor on the 6th of June.

Q Oh yes, you were in Victor on the 6th of June? A No sir, I was in Denver attending the convention.

Q Well, were those indictments or informations? I don't know as it makes any difference. A I don't know whether they were indictments or informations.

THE COURT: What date was it the witness says he was in the Black Hills?

MR. DARROW: I think it was --

Q What date was it you say you was in the Black Hills? A I was there about a week. I spoke at Deadwood and Lead, Terry, and I spoke at Terry Park on the 4th day of July.

Q That would be about the 4th of July, 1904, then? A 1904, yes sir. It was the latter part of June that I left Denver, and I came back immediately following the 4th, bonds having been fixed.

Q Did you give bail in these riot and conspiracy and murder cases down there? A Yes sir, for Sheriff Bell came up to Denver and bonds were arranged for those boys that were at

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headquarters.

Q So you were released? A Yes sir.

Q Were you ever tried on those cases? A No sir, I have never been in the Cripple Creek district since. They were nolle prossed by Mr. Hamlin who was afterwards elected attorney, if I remember correctly.

Q Who was Mr. Hamlin before that? A He was secretary of the mine owners association.

Q He was not a member of your organization? A No sir.

Q And he was afterwards elected district attorney, was he?

A He was elected district attorney after the riot in Cripple Creek.

Q And that is the last you ever heard of those cases?

A I have never heard of those cases since.

MR. DARROW: That is all.

THE COURT: Just a moment, I would like to see you, Mr. Borah, and Mr. Darrow, before you proceed with your cross examination.

CROSS EXAMINATION

BY MR. BORAH:

- Q. What date did you become an officer of the Western Federation of Miners, Mr. Haywood? A. I was elected on the executive board in May, 1900.
- Q. That was about a year after the troubles in the Cour d'Alenes? A. Yes sir.
- Q. And you have been a prominent officer of that organization in some capacity ever since? A. Yes sir, having been elected as secretary-treasurer in the following year, I have been in that office continuously ever since.
- Q. During the troubles of 1899 you were working in the Silver City district, in that vicinity? A. Working at the Elaine mine in Silver City.
- Q. You had been a miner for some little time prior to that, practically off and on all your life, I understand? A. Yes sir.
- Q. And when did you join a local union? A. I joined a local union of the Western Federation of Miners, at Silver City, August 10th, 1896.
- Q. You had been then an active member of the local union some three years prior to the troubles in the Cour d'Alenes? A. Yes sir.
- Q. The Silver City camp became greatly interested in the troubles in the Cour d'Alenes? A. Yes, to a considerable extent.
- Q. There were meetings of the union having the object and purpose of discussing these matters and acting in regard to these matters alone, were there not? A. I don't think that there was

ever a special meeting held on that matter alone.

- Q. They were matters which were taken up and discussed quite often in the meetings, I suppose? A. Yes sir.
- Q. And the matters that occurred in the Coeur d'Alenes were matters which were discussed continuously among the miners when they were not in meetings? A. Yes sir, very generally.
- Q. You became entirely familiar, I presume, through newspaper reports and through personal accounts and otherwise with those troubles up there? A. Yes sir, fairly well acquainted.
- Q. Some of the men who left the Coeur d'Alenes went into the Silver City district, didn't they? A. I think there were.
- Q. And a few of the men started from Silver City at one time to the Coeur d'Alenes during the trouble, did they not?
- A. There was a committee of two.
- Q. Were there some parties that left the Silver City district to go to the Coeur d'Alenes who were not on a committee, to your knowledge? A. No sir, not to my knowledge.
- Q. You had no knowledge of that? A. No sir.
- Q. But at any rate the matter was one in which you became interested -- appointed a committee to discuss the matter, passed resolutions, and so forth, concerning it? A. Yes sir.
- Q. You became familiar with the particular property which received the injury upon the 29th of April, 1899? A. I knew it by name.
- Q. That was the Dunker Hill & Sullivan mill? A. Yes sir.
- Q. Of which Mr. Bradley was manager? A. I believe that he was.
- Q. And you became familiar with the attitude of that mill and that mine with reference to the unionism? A. To some extent.

4084 Q. I think either you or Mr. Mayer in your testimony referred to

a strike in the Coeur d'Alene at that time: Do you know of any strike in the Coeur d'Alene on the 29th of April, or which was in progress at that time, or which had been called?

A. I don't believe, Senator, that a strike had been called in the Coeur d'Alene at that time.

Q. As a matter of fact, you know from your information received at the time and since that there was no strike, was there, Mr. Haywood? A. As I remember it, the Bunker Hill & Sullivan mine and mill were paying a less wage, fifty cents to a dollar a day less, than other properties in the district, and it was that that the grievance was about.

Q. And the injury to the property was by people who were not working for the company, wasn't that true? A. I couldn't tell you as to that.

Q. You didn't learn as to that fact? A. Not of my own knowledge.

Q. You never did learn that there was any strike upon the part of the employes of the mill or the mine, did you, at the time of the trouble? A. I don't think there were.

Q. Now of course you became entirely familiar with Governor Steiensenberg's attitude in regard to that matter up there, what he did and so forth? A. Yes sir.

Q. With the fact that he caused to be erected what was called a bull pen or improvised prison? A. I know of that.

Q. And that a great number of the members of the Western Federation were incarcerated in that prison? A. A great number of the members of the Federation, and also a great many other people.

If your Honor please, may the shutters be closed on that window.

While I will be talking most of the time to the jury, I cannot

see the Senator's eyes with the shutters open.

THE COURT: Yes.

- Q. A great number of the members of the Western Federation, with other people, you say, were incarcerated in that prison?
- A. I think so, yes sir.
- Q. And a number of the members of the Western Federation, as you learned, were indicted and prosecuted? A. I understood that there were some indicted, eight I think.
- Q. How? A. Eight I believe.
- Q. And that Mr. Corcoran was tried? A. I know that he was.
- Q. You also learned at the time of the attitude of the governor and his representatives with reference to the permit system?
- A. Yes sir.
- Q. Had you ever had any knowledge of a permit system similar to that prior to that time? A. No personal knowledge.
- Q. This was the first conspicuous instance of what was known as the permit system in regard to anyone's actions as to the Federation itself? A. How do I understand you?
- Q. I say this was the first conspicuous act with reference to the permit system that you had knowledge of, wasn't it -- the action of Governor Steunenberg? A. Yes sir.
- Q. He was recognized among your people then really as the author of what was known as the permit system, was he not?
- A. No, I never heard of Governor Steunenberg being responsible for the permit system.
- Q. You didn't read his testimony before the Congressional Investigation? A. Well, of course I knew that he assumed the responsibility, but it was Barrett St. Clair, if I remember

rightly, that inaugurated it.

Q. And he stated, did he not, that it was upon his authority that Bartlett St. Clair acted? A. Yes sir, he so stated.

Q. Now the Western Federation of Miners came to look upon Governor Steunenberg then as a pronounced opponent of organized labor? A. Well, I think they did.

Q. And he was so characterized in your literature, articles in the magazine, and so forth? A. Yes sir.

Q. Prior to Governor Steunenberg's action in the Coeur d'Alenes his relationship to organized labor was that of a friend, so considered, was he not? A. I understood that he was an honorary member of a local union at one time.

Q. But after that time he was considered and treated by your organization, through the articles published in the magazine, and so forth, as a pronounced enemy of the organization?

A. I think so, as an officer of the state.

Q. And, as you stated yesterday, that he was regarded as the representative of the capitalists and swayed by capitalist interests? A. Yes sir.

Q. And that reflected your views with reference to it?

A. It did.

Q. And you always regarded him in that light, did you not, Mr. Haywood? A. As an officer, yes sir.

Q. Did you visit the Coeur d'Alenes some time after the troubles there? A. I visited the Coeur d'Alenes in November, 1900.

Q. And after you visited the Coeur d'Alenes you wrote an article for the Miners' Magazine in which you made some statements with reference to the matter? A. Yes, that is, I reviewed very

my trip into the Coeur d'Alenes.

Q. And you became interested in the matter of the conviction of Paul Corcoran and his party? A. Yes sir; I visited his family at that time, if I remember rightly.

Q. Then you were entirely familiar with all the history which one could get who was not actually a participant in the troubles in the Coeur d'Alenes? A. I think so, as a member of the organization that was not involved in them.

Q. You had a great many acquaintances, I presume, in the organization who had experiences in those troubles? A. Not very many.

Q. You had some, did you? A. I don't remember of any personal acquaintances at that time, Senator.

Q. Did you talk with any of the members of your organization either at the time or immediately thereafter with reference to the troubles, bull pen experiences, and so forth?

A. I did at the convention in 1900.

Q. And you expressed yourself and your personal views with reference to those matters on different occasions? A. I think at that time the members from this state, all of us, signed a resolution that was introduced and adopted at the convention urging the people of Idaho to vote against Governor Staunberg's administration.

Q. And you expressed yourself individually on different occasions with reference to the matter aside from the resolutions, did you not? A. I presume that I have.

Q. You say that you became familiar with the publication known as the Miners' Magazine immediately after its first issue or at the time of its first issue? A. Yes sir.

Q. And you seldom missed a copy? A. I have seldom or never missed a copy.

Q. And wrote some articles for the magazine yourself?

A. Yes, occasionally.

Q. And read them very generally? A. Yes sir.

Q. And the Miners' Magazine in that respect reflected the views of yourself and the organization? A. Well, sometimes it reflected my views.

Q. Did it reflect your views with reference to these matters we have been talking about, particularly the Coeur d'Alene troubles? A. In some instances, yes sir; I was opposed to the bull pen, and I was opposed to the permit system, I was opposed to the outrages that were perpetrated against the women there by the negro soldiers.

Q. And you regarded that Governor Steunenberg and those that represented him there were really the cause of all those things? A. I did not regard Governor Steunenberg in any different light than I did you, Senator, or Bartlett St. Clair, or anybody else that was involved there.

Q. Yes, I have learned that fact. Now, after you have come to understand these matters in the Coeur d'Alenes they were discussed considerably in this Miners' Magazine with which you was connected officially, were they not? A. Yes, we published any number of affidavits that were given by different people in the Coeur d'Alenes --

Q. And you published --

MR. RICHARDSON: Let him finish his answer.

THE WITNESS: I say we published any number of affidavits

that were given by men and women detailing the outrages that were perpetrated and the indignities that they suffered. We also published the investigation in Congress and the result of the whitewashing at that time.

Q. The whitewash by Congress? A. Yes sir, by the investigating committee of Congress.

Q. Is that all? A. Well, that is not all that we published, no.

Q. I mean is that all of your answer? A. That will do for the answer, yes sir.

Q. Now you became entirely familiar with those publications?

A. Yes sir.

Q. And in publishing those matters, whatever they were, they reflected your individual views as well as your official views of the organization? A. Well, now, I had nothing to do with the preparing of the affidavits.

Q. I am asking they if they reflected your views upon the situation? A. Do you mean to say that or do you wish to know whether or not I approved the publishing of those affidavits?

Q. Yes. A. And the recounting of the conditions of the Coeur d'Alenes in the magazine?

Q. Yes sir. A. I most certainly did.

Q. And such criticisms as were made of the officers, including Governor Steinenberg, St. Clair and others, they also reflected your views? A. To a certain extent.

Q. Do you mean they were not strong enough or too strong?

A. No, I am not speaking as to the strength of them. I don't know which particular articles you refer to, Senator.

Q. Some of them have been read here in your presence -- with

reference to the article which was entitled "The Passing of Steunenberg", some year and a half after these troubles, did that reflect your views with reference to Steunenberg and his character? A. You mean the article that has been published since Mr. O'Neill was editor?

Q. No, I mean the article that was entitled "The Passing of Steunenberg", which was published in 1900, in which he was referred to as a traitor, and so forth.

MR. DARROW: Senator, I think you ought to show him that.

MR. BORAH: Very well. I think you have got the article, haven't you?

MR. DARROW: No, we returned them all.

(Mr. Borah procured from the clerk a pamphlet containing the article referred to, which was handed to the witness).

Q. I will call your attention to the article on page 7: Just glance over it and see if you have seen that before or read it before? A. Yes, I have seen this. I remember it.

Q. And you were familiar with it at the time it was published?

A. I don't remember it now as at the time it was published, Senator.

Q. But you regarded that as the proper expression of feeling of the Western Federation of Miners as an organization toward the Governor at that time, did you not? A. I couldn't say now as to how I regarded that particular article at that particular time.

Q. Can you say now, after reading that article or looking over it, as to how you felt toward Governor Steunenberg in harmony

with that article at that time? A. Well, I rather think if it reflects anything against Governor Steunenberg personally that it does not agree with any of my ideas.

Q. Well, you have looked over it, have you? A. I haven't read it now. I mean as a man, you know, Senator. As an officer of the state and as far his part in the administration and the conduct in the Occur d'Alencos I would say that it reflected my opinions then and now.

Q. This statement appears in it: ~~Miner's~~ "How this villain has risen in four years from editor of a weekly paper on the Snake River desert, to a wealthy sheep owner, mine owner and stockholder;" Do you regard that as an expression with reference to his personal character or as to his official character? A. Well, I should say that referred to his official character.

Q. The article closes with these words: "Here lies a hireling and a traitor." Now that is the way in which the prominent officers of the Western Federation of Miners, including yourself, looked upon Governor Steunenberg at the time he retired to private life in 1901? A. I would say, Senator, that a great many other people looked at it in the same way; that the lieutenant governor under Steunenberg wrote an article that was very much in line with that as to --

Q. How does this reflect your views and the views of the Western Federation of Miners, concerning which we are now interested?

A. Politically I would say that that reflected my views at that time.

Q. These words "hireling" and "traitor" have reference to his

- attitude toward the organization, you looked upon him as one who had not been true to the organization? A. No, nor true to his oath of office.
- Q. When did you first become acquainted with Jack Simpkins?
- A. I think I first met Jack Simpkins in 1902.
- Q. In 1902? That was about three years after the ~~struggles~~ difficulties up there? A. Yes sir.
- Q. Where did you meet him? A. At a convention of the Western Federation of Miners.
- Q. Where? A. In Denver.
- Q. Was he then a member of the official board? A. No sir.
- Q. When was he elected, at that time? A. At that time?
- Q. He was elected in 1902, was he not? A. I believe that he was.
- Q. And you were at that time a member of the official board?
- A. Ex-officio member.
- Q. Of the executive board. And you had been elected the year before secretary-treasurer, had you not? A. That was the time.
- Q. In 1902? A. Yes sir -- no, I beg pardon, 1901.
- Q. And Simpkins came there as a representative from the Cocur d'Alene, a delegate from the Cocur d'Alene? A. Yes sir.
- Q. And was there anyone else there as a representative from the Cocur d'Alene district that you can now recall other than Simpkins? A. I believe there were other members.
- Q. Simpkins became rather a prominent member of the organization, did he not, thereafter? A. He was appointed as an organizer in that district previous to being elected on the board.
- Q. And he was one of the men whom you understood had been incarcerated in the bull pen? A. I heard so.

Q. Did you ever talk with him about that matter? A. I think I have.

Q. He has recounted to you his experiences in regard to those matters, has he? A. No, he never went into it in detail. In fact, it seemed to be a matter that he didn't talk about very much.

Q. In a general way did he do so? A. Probably in a general way.

Q. Did you ever have any talk with him with reference to Steunenberg and how he felt toward him? A. No sir.

Q. Never heard him mention his name? A. I never did that I can recall.

Q. And Mr. Boyce was president at that time, was he not?

A. Yes sir. Mr. Boyce appointed Mr. Simpkins as organizer in the Coeur d'Alenes.

Q. You did not know anything then at all at any time with reference to Mr. Simpkins' feeling toward Steunenberg? A. No, I did not.

Q. You continued to be an associate official with Mr. Simpkins from 1902 until up practically within the last year or so?

A. Yes, if it was 1902 that he was elected. I would say from the time that he was elected as a member of the executive board.

Q. And was associated with him more or less during all that time?

A. Yes sir, as he came and met with the executive board, as other members of the board.

Q. Pretty generally an attendant, was he, at the board? A. I don't think that he ever missed a meeting of the executive board.

Q. A pretty active member of the Federation, was he not?

A. No, he was not very active. I think he did less work on the

board than any other member on it.

- Q. Was he active in his home jurisdiction with reference to organizing, and so forth? A. No sir, he was not.
- Q. He did do some organizing for you, did he? A. Some, yes.
- Q. His home was at Wardner? A. At Wardner.
- Q. The last time I believe that you saw Mr. Simpkins was in Denver in the middle of December, 1905? A. Yes sir.
- Q. You have never seen him since? A. I never have.
- Q. And don't know where he is? A. I do not.
- Q. He is still a member of the executive board, is he?
- A. I believe at the last convention that he was continued as a member.
- Q. There was an alternate elected to perform his duty while he was absent? A.-J. W. Callahan of Index, Washington.
- Q. When he met you in December, 1905, did he have any talk with you with reference to what he had been doing or his whereabouts in organizing unions, and so forth, immediately prior to that?
- A. I believe that he did.
- Q. Where did he tell you he had been? A. He said he had visited Silver City, that he had been at Halley, and that it was his intention to take up the work in the southern part of the state in accordance with the article and the request of the officers of the Silver City Miners' Union.
- Q. Did he state to you that he had seen Mr. Masterly at Silver City? A. No sir.
- Q. He told you he had been at Silver City? A. Yes sir.
- Q. Did he organize a union there at that time or was he simply visiting a union already organized? A. Well, he didn't organ-

ise the union there, no; simply visiting that union.

- Q. He was simply visiting the union which existed there at that time? A. That is all.
- Q. But he organized a union, you understood, at Healey?
- A. I don't believe he did.
- Q. He was up there, as you understood? A. I think he was.
- Q. Did he tell you about having been at Caldwell immediately prior to his coming to Denver? A. No sir.
- Q. Or a short time prior? A. No sir.
- Q. Did he say anything about having seen any of the Colorado members of the organization out in Idaho? A. No sir.
- Q. Didn't refer to Mr. Orchard in any way? A. He did not.
- Q. You didn't ask him about the whereabouts of Mr. Orchard?
- A. No sir.
- Q. Nothing was said about him at all? A. No sir.
- Q. His name was not mentioned at his visit there? A. In no way.
- Q. You didn't know that he went to Denver upon Mr. Orchard's ticket? A. I did not.
- Q. You had no talk about that at ~~Minot~~ the time that his expenses were being considered or anything of that kind?
- A. No sir. I paid his bill just as he submitted it.
- Q. Did you know that Mr. Simpkins knew Orchard? A. No sir.
- Q. He had never been to headquarters at any time when Orchard was there? A. Not to my knowledge.
- Q. You had no knowledge of any acquaintanceship upon the part of Orchard and Simpkins or Hogan and Simpkins? A. No sir.
- Q. Now you didn't hear from Mr. Simpkins again after he left there until you received this cipher telegram? A. Yes, we

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- had received some letters from him previous to that telegram.
8. With reference to any matters other than the general business of the organization? A. The first letter that we got was from Salt Lake wherein he stated that he had neglected to take his credentials, which credentials were for the purpose of authorizing him to turn over the property of the Index Miners' Union to the Federation on a mortgage. The next letter that we got from him was from Seattle, I think, wherein he stated that he had closed the business at Index and was forwarding the mortgage and the insurance papers.
9. And were those the only letters or words which you received from him from the time that he left until you received this telegram? A. I think so.
10. Those letters had reference entirely to the subject matter which you have mentioned, and nothing else? A. That is all.
11. Now you hadn't received any telegram from him prior to the January 4th telegram? A. None whatever.
12. And no word of any kind, either by personal communication, or by messenger, or by letter, other than that which you have mentioned? A. The telegram was the first word that we received after the letter.
13. When did you first get acquainted with Steve Adams, did you say, Mr. Haywood? A. The first time I met Mr. Adams was in the spring of 1903.
14. Where? A. At headquarters.
15. Who was with him? A. Ed. Minster.
16. Was Ed. Minster the same man who was with Orchard under the name of Williams at Ogden at the time you sent the the

- Q75? A. You mean with Adams?
- Q. Mr with Adams? A. I don't know. I think he was.
- Q. You learned that fact after they got home to a certainty, didn't you? A. He didn't give that same name at that time.
- Q. Didn't tell you about his name down there? A. No sir.
- Q. Well, did you become well acquainted with Adams when you first met him or was it simply a passing acquaintance? A. Well, I got very little acquainted with him at that time.
- Q. You say he was at headquarters? A. Yes sir.
- Q. And he came with Minster? A. Yes sir.
- Q. Had you known Minster before? A. I had.
- Q. Knew he was a member of the organization? A. Yes sir.
- Q. Altman No. 19? A. I think so.
- Q. The same that Adams was? A. I didn't know at that time what union Adams belonged to.
- Q. Did you afterwards ascertain? A. Yes sir.
- Q. That he was a member of Altman No. 19? A. Yes sir.
- Q. The same as Davis belonged to? A. Yes.
- Q. And Masterly? A. Yes.
- Q. Parker? A. Yes.
- Q. And Orchard? A. Yes.
- Q. How long did he remain at headquarters at that time?
- A. Not very long. He was up there only a short time.
- Q. What did you say their business was there, Mr. Haywood?
- A. I don't know that they had any particular business, Senator, more than it is seldom that a miner comes to Denver but what he calls at headquarters.
- 4098 Q. Did Minster introduce him to you? A. I think no.

- Q. Did Minster have any business there? A. No particular business.
- Q. What time in the month was that? A. I couldn't say as to that and I am not certain as to what month.
- Q. You couldn't tell me the month? A. No sir.
- Q. Could you give me your best recollection as to the month?
- A. Well, that would be rather indefinite, Senator; probably March.
- Q. You think probably March? A. Yes sir.
- Q. Was there anyone in the office at the time, do you recall, except those two gentlemen and yourself and the stenographers or employees? A. No, I don't recall.
- Q. There is nothing connected with the affair by which you can fix definitely the month or the day of the month? A. No sir.
- Q. Well, did they call at headquarters more than once about that time or was it a single visit? A. I think they were up twice the same day. The second time they came up was when I went down with them.
- Q. And was that the time when they were going on this trip?
- A. Yes sir.
- Q. And you went with them to the train, did you? A. No sir.
- Q. You simply went down on the street with them? A. I went down -- our headquarters were then in the Minign Exchange -- I went down to 15th Street, up to Sam Curtis and down to Watrous' place; that is about half a block down Curtis Street from 15th.
- Q. And then they told you that they were going upon a trip, prospecting trip, and they would likely locate you in if they found anything? A. They didn't put it just that way.

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- Q. That was the substance of it? A. Yes, that was about the substance of it. We had had a drink or a cigar there at the bar, and when I bid them good-night, they said, "If we find anything, Bill, we will locate you in."
- Q. Did you advance them any money? A. I did not.
- Q. Did they ask you for any? A. No sir.
- Q. They didn't seem to have any particular business there at all except simply a casual call? A. That is all.
- Q. When did you next see Adams, if you can recall? A. I next saw Adams in the Cripple Creek district at the Pinnacle park.
- Q. That was after you had sent him this money by telegram?
- A. Yes sir.
- Q. And did you learn at that time that Minster was with him at the time you sent him the money? A. Yes sir.
- Q. And talked with them some about their experiences, did you, as prospectors, where they went and so forth? A. Yes sir.
- Q. Where did they tell you they had been? A. They just told me they had been in Nevada.
- Q. Anywhere else? A. No sir.
- Q. Did they tell you about whether they found any prospects or not? A. No sir; they hadn't had any luck they said.
- Q. And did you have any extended conversation with them about their trip, details of it, where they went, and so forth, where they stopped and who they saw, if anybody? A. No, I did not. That was a very large gathering -- just talked to them a few minutes, long enough for them to say that they hadn't been able to return that money, that they were then on strike; when they got it they would pay me back.
- Q. Were Adams and Minster together at the time you were there?

- to them? A. They were working behind the same counter, yes.
- Q. What became of Minster finally? A. I don't know, I am sure.
- Q. When did you last see Minster, if you know? A. That was the last time that I ever saw Minster.
- Q. The last time you ever saw him? A. Yes sir.
- Q. Did you learn that he afterwards left that vicinity?
- A. Yes sir.
- Q. Did you learn where he went? A. I did not.
- Q. You don't know now where he is? A. No sir.
- Q. Now when did you next see Steve after this Pinnacle Park meeting? A. I think I next saw Steve in June the following year.
- Q. Had you seen him in the meantime? A. No sir.
- Q. Heard from him? A. Yes sir.
- Q. Where was he when you heard from him? A. He was under arrest in the Cripple Creek district.
- Q. About what time was it that you learned of his arrest in the Cripple Creek district? A. I believe in November.
- Q. 1903? A. 1903, yes sir.
- Q. That was about what time in November? A. The latter part of November.
- Q. The latter part of November? A. I think it was immediately following the Vindicator explosion.
- Q. And you did not go down into the district at that time so you didn't see Mr. Adams? A. No, I did not.
- Q. You simply learned of this by hearsay? A. That is all.
- Q. The next time you saw him you say was what day? A. After the Independence explosion he came to headquarters with a number

of other deportees.

- Q. About what time did he get to headquarters with reference to that explosion? A. Well, I couldn't say exactly, Senator? I think probably two or three days.
- Q. And did he come alone, do you know? A. He didn't come alone to headquarters. There was a big crowd there.
- Q. Did you have any talk with him about conditions in Cripple Creek at that time? A. Some I believe. I wouldn't say positively that I had a conversation with him personally.
- Q. Do you remember of talking with him about the explosion?
- A. No sir, no definite conversation.
- Q. That subject was not referred to by Adams or yourself?
- A. Not that I can recall.
- Q. That was the principal subject of discussion I presume just at that time, was it not? A. Well, that and the manner in which the men and women were being treated in that district was the matter under discussion.
- Q. Your recollection is that the subject matter of the Independence depot was not mentioned by you to Adams nor by Adams to yourself? A. Not that I recall.
- Q. If it had been mentioned you would likely remember it, wouldn't you? A. Well, I think probably it was mentioned by nearly every man that I spoke to in some way or other.
- Q. Well, you didn't talk with Adams anything with reference to what he knew about it? A. No sir.
- Q. Did he remain around headquarters for some little time at that time? A. Well, now, as to that I couldn't say because I wasn't at headquarters very much myself following that time.

- Q. Do you know where he was living in Denver at that time, where he was stopping? A. No sir.
- Q. Do you know whether or not his wife was there? A. I believe that she was, yes sir.
- Q. She came shortly afterwards, didn't she? A. Yes sir.
- Q. You say you don't know where their address was? A. I do not-- did not.
- Q. Did you see Orchard about that time? A. No sir.
- Q. Wasn't Orchard there about the time, a little after the explosion? A. No sir.
- Q. Didn't hear of him at all? A. Not to my knowledge, not at that time.
- Q. When did you next see Adams after the Independence depot explosion? A. In the fall of that year.
- Q. That is the first time you saw him? A. Yes sir.
- Q. Was he at headquarters again? A. Yes sir.
- Q. What did he come to headquarters for at that time?
- A. For relief as I remember.
- Q. How long did Adams continue on the relief roll?
- A. Until the spring of 1905.
- Q. How long did his family, his wife, continue on the relief roll?
- A. I think the last relief that Mrs. Adams got of any kind or description was what I sent to her at Haines, Oregon.
- Q. Then at this time that Adams ^{called} ~~went~~ the time you saw him after the Independence depot explosion, he was ^{simply} ~~just~~ there to get relief? A. I think so, yes.
- Q. You don't recall any other business that he had there?
- A. No sir.

- Q. And his wife came occasionally for relief, did she? A. Yes sir.
- Q. She generally called for the relief, did she not?
- A. Well, now, as to that, Senator, I couldn't say, because I wasn't handling the relief any of the time.
- Q. Well, do you know that Mr. Adams was going under the name of Dixon at this time? A. I know he was part of the time.
- Q. Do you know when he began to use the name Dixon? A. No, I do not.
- Q. Do you know when it was with reference to the Independence depot explosion? A. Afterwards, I think.
- Q. About how long afterwards? A. I couldn't tell you.
- Q. Pretty shortly afterwards, wasn't it? A. Well, now, to me, that is, in speaking of him I always spoke of him or to him as Adams.
- Q. Certainly, but publicly, that is generally to those who didn't know him personally he was going under the name of Dixon, was he not, shortly after the Independence depot explosion? A. Well, I didn't see him much shortly after the Independence explosion.
- Q. Did you hear much of him? A. No sir.
- Q. You didn't know then with reference to his name? A. Yes, I know that he was going under the name of Steve Dixon.
- Q. But you couldn't tell me about the time that you learned that he assumed the name of Dixon? A. No, I couldn't.
- Q. He had the name of Dixon there in Denver? A. I believe he did, yes sir.
- Q. Well, now, there wasn't -- was he seeking employment there in Denver at that time, do you know? A. No sir, I don't think so.

Q. There was no occasion for Mr. Adams having the name of Dixon by reason of being blacklisted in Denver at that time, was there? A. I rather think the occasion, Senator, of men changing their names in Denver at that time was more on account of the informations that were filed in the Cripple Creek district than anything else.

Q. The blacklisting proposition was not the controlling reason certainly in Denver at that time, was it? A. No, not at that time.

Q. When did you next see Steve Adams after this time that you have just referred to? A. Well, I have no definite recollection.

Q. Was he in the habit of coming sometimes to headquarters?

A. Yes sir.

Q. He was seen around headquarters then, I suppose, on different occasions during that time? A. I rather think so. We had --

Q. The last --

MR. RICHARDSON: Let him finish.

THE WITNESS: (Continuing) I was going to say we had a reception room fixed up at headquarters and it was a sort of a lounging place for the miners that were in Denver.

Q. When was the last time you saw Adams? A. The last time I saw Adams was previous to his leaving for Utah.

Q. He left for Utah about what time, Mr. Haywood? A. If I remember rightly, it was in April, 1905.

Q. Did you have any conversation with him immediately prior to his leaving about any money matter? A. No sir, other than to provide him with the necessary travelling stake that we were giving to all members of the Federation that were leaving.

Q. Do you remember of giving Mrs. Adams \$40 a few days before

he left for Park City? A. A few days before he left?

Q. Yes. A. I think not.

Q. Do you recall giving Mrs. Adams \$40 and of Mr. Pettibone coming to your office for some additional money for Steve a few days afterwards and your refusing it? A. No sir; though, if Mrs. Adams, if she was leaving at that time, could also have got travelling expenses.

Q. Mrs. Adams was not leaving at that time; as I understand, Mrs. Adams remained with Mrs. Mahalich for a time after Steve left and this is an incident prior to the time that Mrs. Adams left. Do you recall of her coming and getting \$40 some few days before Steve and Mahalich left? A. No, I don't recall that; but if she and Mrs. Mahalich were leaving they could have got money.

Q. And you don't recall of Pettibone coming to your office a short time after she received that \$40 and asking for some additional money? A. No sir.

Q. And you refused it? A. No, I have no knowledge of such a matter.

Q. And you don't recall of talking with Steve the next day after Pettibone's call? A. No, I do not.

Q. You don't recall having any words with Steve with reference to money matter in which some feeling was expressed between you?

A. None whatever, no sir.

Q. Did you ever have? A. Never did.

Q. That was the last time you ever saw Steve Adams? A. That was the last time until I saw him here.

Q. How when was his name taken off -- A. I say that was the last time, Senator. Now I saw him up in the penitentiary.

Q. I mean with reference to any time prior to these arrests.

When did Steve, you say, go off the benefit list?

A. I think at that time.

Q. That was the last that you know of his being upon the list?

A. Yes; the only other relief that they got was money that I sent to Mrs. Adams in Haines, Oregon.

Q. Now a word or two with reference to the permit system which you have referred to in the Colorado district, or in the Cripple Creek district. The Cripple Creek district was a union district up until the strike of 1903, was it not?

A. Not altogether, Senator.

Q. Well, it was considered as a union district, was it not? That is, a great majority of the mines were union mines.

Q. What mine was operating there prior to the strike that was not a union mine? A. Well, there was no mine but what employed some union men. There was some mines that in a manner discriminated against union men.

Q. Which mines were those that discriminated against union men?

A. I recall at this time the Ajax and the El Paso.

Q. Any others? A. I could n't mention any others.

Q. How many mines were there in the district? A. Well, there is a great number of mines. Not being very well acquainted with the district, I couldn't name them.

Q. It was practically a union camp then, was it not? A. Yes, it was a well organized camp.

Q. In some of the mines men could not get employment unless they were union men? A. Well, no, that condition does not exist anywhere in the jurisdiction of the Western Federation of

Miners. There is no place where a man can't get work because he is not a union man.

Q. Did you know a man by the name of John Curry? A. John Curry?

Q. Yes. A. Yes, secretary of the miners' union at Victor.

Q. He was president, wasn't he? A. I think that he was -- yes, he was president, too, if I remember correctly.

Q. What time did he serve as president of that organization?

A. I don't remember what time; previous to the strike, however.

Q. Do you remember of a notice being posted by Curry, or did you have any knowledge of a notice being posted by Curry in the district requiring all men working in the mines to join the union before they would be permitted to work? A. Not before they would be permitted to work.

Q. Well, in which it said if they didn't join the union they would be considered as a scab and an enemy, ~~to himself~~ enemy to himself, the community at large, and would be treated as such: What did you understand by that? A. That all men working in the camp were requested to join the union.

Q. And if they didn't join that they would be considered as an enemy of the community and treated as such? A. That they would be considered as an enemy to themselves and to the community, yes sir, I understood that. But I would like to explain that, if I may, Senator.

Q. I will permit you to do so. A. At that time there was an endeavor being made by a good many of the companies to reduce the wages in the Cripple Creek district. There was a meeting of the mine owners held in the office of James Burns where an effort was made to bring him into line to reduce the wages

in the Cripple Creek district. That notice, if I remember correctly, was issued at that time for the purpose of thoroughly organizing the district so that wages could not be reduced.

Q. Well, I will read the notice to you, Mr. Haywood, so that you may have a full opportunity to explain it: "Hence take notice: That on and after September 15th, 1901, anyone working in or around the mines, mills or power plants of the Cripple Creek district, who cannot show a card of membership in good standing of some local union of the Western Federation of Miners, will be considered a scab and an enemy to us, himself and the community at large and will be treated as such. By order of the Cripple Creek executive board of the Western Federation of Miners. John Curry, president." Now that is the full notice as we have it, and the explanation which you have given is the explanation which you desire to stand? A. Yes sir.

Q. Now do you recall another notice being posted under authority of the executive board: "To all non-union miners of the Cripple Creek district: You have no doubt read and thought about our circular which was posted pretty thoroughly throughout this district about five weeks ago. This notice is issued for the purpose of reminding you that the 15th of September is near at hand; that the time of grace has about expired. You have had two pay days in which to decide whether you are for us or against us -- there is no middle ground. While a majority of the men working in and around the mines, mills and power plants have responded to the call, there are still some outside our ranks. To these this notice is addressed if you are working in or around the mines, mills or power plants

of this district this means you. Now don't throw this to one side and say, 'Only another bluff.' If you are 'from Missouri', come into some of the unions of the Western Federation of Miners and we'll 'show' you that we are trying to help you as well as ourselves, and as the 15th is only about six days away, 'you'll have to hurry'. The Cripple Creek district executive board of the Western Federation of Miners. September 9th, 1901. By John Curry, President." Did you have knowledge of the posting of that notice? A. I think I did through the officers of the local union.

- Q. Well, then the Western Federation at the time had a little permit system of its own, didn't it? A. No sir, not to the extent of being a permit system.
- Q. Well, it was to such an extent that it was impracticable to go up against it, was it not? A. I would say, Senator, that wherever a miner is working in a mine and receiving the benefits of the organization that we expect him to belong to the union. That prevails not only in the Western Federation of Miners but in all other organizations, and to some extent—well, you know that in most trade unions they have what is known as a closed shop and a man can't go to work unless he has a card. Now that is not so with us. Anybody could go to work, that is, anybody that desired work, Senator, can go to work in a mine and work until he gets a pay day, or as set forth in that notice, ten pay days; but then we expect him to join the union. Now we ~~attempts~~ don't attempt to dictate to the bosses who they shall employ, but we do say to the men that if they accept benefits that accrue from the organization

that they should join with us and help to maintain it.

- Q. Of course when they don't or did not join with you, you regarded them just as you state in this notice, as enemies to themselves, the community, and will be treated as such?
- A. Now I will give you an instance of that, with the witness Stewart who testified here on the stand --
- Q. Stewart? A. Stewart. He worked in Silver City, and he worked there for a long while. He was receiving good wages and we endeavored to have him join the union. He wouldn't do it and he was the only man in the camp that didn't belong to the union, and we requested the superintendent to either have Mr. Stewart join the union or get a mechanic that would, as we didn't want to have any ill feeling or disharmony in that camp, and I would say in connection with that that there never has been any kind of trouble in Silver City.
- Q. Was this notice which was posted by Curry one which was posted pretty generally throughout the camp at that time? A. I couldn't say. I wasn't in the camp.
- Q. Well, the president -- who was the Cripple Creek executive board of the Western Federation of Miners? A. They were the -- the Cripple Creek district union, the executive board was delegates elected by the local unions.
- Q. And what authority did they have to act in this matter? From whom did they get their authority, from the local unions?
- A. From the local unions.
- Q. And the local union had what representation in the general organization of the Western Federation of Miners, how were they represented there? A. They were represented by delegates

entitled to one vote for each one hundred members.

Q. Well, I presume such matters as this were matters which were known to the organization as such before action was had in regard to it, was it not? A. No, not necessarily -- that is, you mean to the general organization?

Q. Yes. A. I rather think not, Senator. Such matters are entirely under the jurisdiction of the local unions.

Q. Well, if it was contrary to the policy of the general organization would the general organization have any supervision or control over it? A. If it was contrary to the general policy they would; but as a rule, each local union has home rule, home jurisdiction.

Q. Were you acquainted with the county officers in Cripple Creek during the years 1902 and 3? A. Not very well acquainted.

Q. Did you know the sheriff, H. M. Robertson? A. I did. I remember a conversation I had with him after the strike.

Q. He was a member of Miners' Union No. 32 was he not?

A. Yes sir.

Q. Did you know the under-sheriff, Jim Gaughn? A. Jim Gaughn, yes, he was with the sheriff at the same time.

Q. He was a member of Miners' Union No. 19, was he not?

A. I couldn't say as to that.

Q. Do you know that he was a union man? A. I do not.

Q. Did you know the coroner, M. J. Darns? A. No sir.

Q. You didn't know him? A. No sir.

Q. Did you know that he was a member of Miners' Union No. 32, or a man by that name? A. No, I did not.

Q. Did you know any of the officers except those whom you have

mentioned, Roberts and his deputy? A. I think those are the only ones that I know personally. I would say, Senator, that that was the first time that I had been in the Cripple Creek district for quite awhile, and I wasn't very well acquainted with any of the men personally.

Q. Do you know any county officer who was in office during those years who was not a member of the union? A. Oh, yes, there was.

Q. 1902 and 37? A. Yes, I should say that there was very few members of the union -- if you would give me access to this reply to the book that you are reading from I think I can tell you.

MR. RICHARDSON: That is the red book that you have, Senator.

THE WITNESS: We have got a green book in reply to that red book.

MR. BURAH: I am not reading from a red book.

MR. RICHARDSON: There is a red book that contains that matter.

MR. BURAH: Yes, I think perhaps it is.

THE WITNESS: I think it mentions here the local officers who were not members of the union. Mentioning other mines where there was discrimination, I would say there was the Strong, the Ajax, the Elkton and the El Paso.

Q. Ajax, El Paso -- A. Elkton and the Strong.

Q. Well, go ahead with the officers. A. (Witness looks at book headed him).

4110 Q. Well, you can look that up later, Mr. Haywood.

THE WITNESS: All right. I rather think now it was in the statement we made to the Senate. It is in the statement to the United States Senate.

Q. You testified yesterday with reference to one Frank J. Hearn. When did you first become acquainted with Hearn?

A. The first time I ever saw Mr. Hearn was at a conference in the assembly hall at the capitol building, state of Colorado, at a meeting that was held before the committee on mines and mining.

Q. That was a meeting in reference to the eight hour law?

A. Yes sir, if I remember that committee rightly.

Q. And at that time Mr. Hearn was representing one side of the controversy, or with other people, and yourself with other people the other side? A. He was representing the Rockefeller interests, the Colorado Fuel & Iron Company.

Q. And some feeling arose there between Mr. Hearn and yourself at that time, some words passed between you? A. I don't think that I spoke to Mr. Hearn at that time?

A. Did not? A. No sir, not that I recall.

Q. Did you at a later time? A. No sir.

Q. You didn't have any discussion with him? A. No sir. He was sitting with Mr. Osgood and after I got through speaking Mr. Osgood came over and shook hands with me and he says, "Well, I will give you credit for being sincere, anyway, Mr. Haywood."

Q. Was Mr. Hearn and yourself indulging in any controversies there at any time? A. I never spoke to him.

Q. Then the questions which were asked by your counsel of Mr. Orchard with reference to the controversy between Mr. Hearn

and yourself did not exist? A. As to a controversy --

MR. RICHARDSON: I didn't ask any such thing.

MR. DARROW: I don't believe I asked anything of that kind.

MR. BORAH: No, you didn't, but Mr. Richardson did.

MR. RICHARDSON: I would like to have you point it out to me.

MR. BORAH: I will. I have got my memory fixed on it.

THE WITNESS: I wish you would state what the controversy was.

Q. Mr. Richardson asked Mr. Orchard if you did not denounce Mr. Hearne there as the representative of those organizations and tell him to his face what you thought of him; Did you?

A. No, but I told -- I didn't denounce him, I told them what they were endeavoring to do with reference to the eight-hour legislation. I told them it was just such men as were congregated there representing the capitalist interests that was corrupting legislation and corrupting the courts of that state. I had no hesitancy in telling Mr. Hearne, Mr. Grant and Mr. Osgood exactly what I thought of their endeavors to defeat the eight-hour law over the heads of the people that had by a tremendous majority voted it for us.

Q. Now then, getting down to the question which I asked you, did you indulge in any controversy there with Mr. Hearne in which you expressed your feeling toward Mr. Hearne? A. Not to him personally, no sir.

Q. Did you include him so that he would know that you were including him, either by name or personal reference in your

conversation? A. I don't think so more than I was talking to all of them.

Q. Then there was no controversy there which could be considered as being between Mr. Hearn and yourself at that time personally? A. No sir.

Q. You are certain of that, are you? A. I am quite certain.

Q. You had no personal controversy with him and no personal feeling was expressed either upon the part of Mr. Hearn or yourself toward each other? A. I would say that I spoke very openly and very frankly, and I gave them my opinions about it, but not applying to any person or individual. Now at that same meeting I recounted the conditions at the millers in the city of Denver and I compared the palace of Governor Grant with the hovels that the miller men were living in, and I did it in such a ^{vivid} ~~graphic~~ way that the tears rolled down the cheeks of ex-governor Grant and he said he was going to move out of that state. Now I was not talking to him personally but I was talking to all the capitalists and their representatives that were there congregated.

Q. But this conversation did not take place between Mr. Hearn and yourself? A. No sir.

Q. This was a general talk which you were making? A. Yes sir.

Q. And the court that you referred to as being corrupted was the court upon which Goddard and Gebbert -- of which they had been members? A. The Supreme Court, yes sir.

Q. And the court of which these two men at different times had been members? A. Yes sir.

4116 Q. And the other representatives of the capitalist class with

whom they were being classed were Peabody and Bell?

A. Well, it was not confined to Peabody and Bell alone. They were merely acting for the Colorado Fuel and Iron Company and the American Smelting and Refining Company.

Q. You regarded Peabody and Bell as two of the corrupt representatives of the capitalist class which you were there denouncing?

A. I regarded them as part of the administration that was under the absolute control of the corporations in Colorado at that time.

Q. And you regarded Goddard and Gobbert as the corrupt representatives of those organizations upon the Supreme Bench?

A. I regarded the Supreme Court as being in the control of those corporations.

Q. You will answer my question, Mr. Haywood. You regarded Mr. Goddard and Mr. Gobbert as the representatives of that corrupt class or organization upon the Supreme Bench of that state?

A. Now, Senator, I wouldn't like to say that I regarded them in a personal way. I regarded them, just as I have said -- that the Supreme Court was under the influence of the corporations in that state.

Q. You regarded the Supreme Court as having been subject to corruption by this influence? A. I would say not.

Q. I will ask you again, Mr. Haywood, if you did not regard Mr. Goddard and Mr. Gobbert as the representatives upon the Supreme Bench of this corrupt organization and this corrupt influence which you say you denounced there that night?

A. Well, to be frank with you, Senator, I would say that I regarded them as a part of that corrupt administration, yes sir.

MR. RICH BISHOP: A little louder, Mr. Haywood.

THE WITNESS: Does the jury hear me?

MEMBERS OF THE JURY: Not entirely, speak a little louder please.

Q. And you regarded them, Mr. Hearne, Mr. Goddard and Gilbert and Peabody and Bell and former governor Stansbury all as the representatives of this corrupt organization or influence which you say you were fighting and which you were denouncing there that night? A. I would say, in a general way, that I regarded those men as a part of the system.

Q. How you heard about the Vindicator explosion.

THE COURT: Before taking up another subject -- it is now half past eleven -- I will say to counsel that in taking this recess the recess will be until two o'clock; and, Mr. Borah, if you find at half past three that you cannot get through with this cross examination by four, the court will continue that time; but if not, you will please indicate to the court, and we will take a recess at half past three until seven. I intend to conclude this cross examination today.

MR. BORAH: I feel very sure I will get through by four o'clock under those circumstances.

Thereupon the statutory admonition was given to the jury, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was removed, and a recess was taken until two o'clock in the afternoon.

RECESS.

Boise, Idaho, Friday, July 12th, 1907.

2:00 o'clock P. M.

Court convened pursuant to adjournment.

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

THE COURT: You may proceed, Mr. Borah.

Witness William B. Haywood, on the stand.

CROSS EXAMINATION, Continued

By MR. BORAH.

Q Mr. Haywood, at what time was the difficulty at Colorado Springs which you mentioned in your testimony of yesterday?

MR. HUGHES: Colorado City, you mean.

Q Yes, Colorado City? A The strike?

Q Yes? A November 14th.

Q What year? A 1903.

Q Was that the time that Mr. Copley, one of the members of the executive board, was arrested with reference to these matters in some respect? A In Colorado City?

Q Yes. A I don't think Mr. Copley was ever arrested in Colorado City.

MR. BARNOW: That was in Idaho Springs.

Q Well, where was the difficulty in which Mr. Copley was interested? A In the Cripple Creek district, but not -- he never was interested in any difficulty in Idaho Springs other than being arrested there.

Q He was arrested there? A Yes sir, he was.

Q And about what time was that? A It was some time after the 29th of July, 1903.

Q And do you know what he was arrested for, what the charge was?

A I don't know what the charge was against him.

Q Do you know of some trials at that place, at that time in which some of the members of your organization were interested?

A Yes sir.

Q About when was that? A It was shortly after that time. I remember this particular date as being the date that fourteen men were taken from their homes and deported.

Q And about what time was it that these charges were lodged against your people? A Some time after that.

Q And was there a trial, or a preparation for a trial?

A Yes sir.

Q Did you know that Lyte Gregory was a witness in those cases?

A I have learned it.

Q Since you have been here?

MR. RICHARDSON: I don't want him to testify to that because as a matter of fact Lyte Gregory was not a witness in those cases.

MR. BORAH: You may be sworn.

MR. RICHARDSON: You asked the question and I have told you the fact about it.

MR. BORAH: I asked the question and the witness answered it, and he is responsible for the answer.

MR. RICHARDSON: That is not fair, for the witness did not attend that trial.

THE COURT: The witness has answered the question and you will have the privilege of examining him in regard to it.

Q Where was the Vindicator mine located? A In the Cripple Creek district.

Q About where with reference to the Cripple Creek depot -- how far from it? A I don't know just how far.

Q Where was the Hindley mine located? A I could not tell you that.

Q Could you approximate it? A No sir.

Q Do you know where Steve Adams was living at the time of the Independence depot explosion? A In the Cripple Creek district.

Q Was the Vindicator mine a union mine prior to the strike?

A Yes sir.

Q One of the first mines that crawled out? A I think so, among the first -- now I don't know, whether I should say the first or among the first; they were all called out on the same day.

Q They all came out about the same time? A Yes sir.

- Q And under the same call? A Yes sir.
- Q And after that the mines in the district were all non-union mines practically excepting the Portland? A Yes, for a time.
- Q And for what length of time? A Well, there was a number of leases that were on the fair list.
- Q For what length of time did the Vindicator to be a non-union mine? A As to that I could not say.
- Q For some considerable length of time? A Yes sir.
- Q And did you know Mr. McCormick or Beck? A No sir.
- Q What was the Findley mine at the time of the Independence depot explosion with reference to being on the unfair list?
- A It was an unfair mine.
- Q Did you know any of the men killed at the Independence depot explosion? A No sir.
- Q You know they were men coming from the Findley mine, do you?
- A Not of my own knowledge.
- Q Did you know any of them as non-union men? A No sir.
- Q Were there any of them union men that you know of? A I don't think so.
- Q You say you first met Harry Orchard at the labor convention in the spring of 1904, I understand? January 2nd, 3rd and 4th, 1904.
- Q That was a general labor convention? A A mass convention called by the President of the Colorado State Federation of Labor.
- Q And Orchard was there as a delegate from Altman No. 19?

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A I believe so.

Q Did you see him upon more than one occasion during that convention? A I don't remember, Senator, with any degree of certainty of having seen him at all at that convention.

Q Your recollection is, however, that you did see him there?

A Yes sir, I have an idea that I saw him there. I know he was there, as a matter of fact.

Q You recall the fact that he was on the committee of ways and means with Mr. Meyer? A Yes sir.

Q And did you meet with that committee at any time? A No sir.

Q Have anything to do with them -- report to them, or have any consultation with them? A No sir.

Q Were you at the Belmont rooming house at any time during the holding of that convention? A No sir.

Q Was W. E. Davis in attendance upon the convention? A Davis, if I remember rightly, was in jail at that time.

Q And is that your best recollection? A Yes sir.

Q Was Sherman Parker there? A I think he also was in jail; I don't believe they had got out on bond at that time.

Q Was Hesterly in jail? A I don't remember.

Q The second time you saw Mr. "Robert" was when he came to Denver at the time he went with Mr. Meyer to Curay? A Yes sir.

Q Did you see him at headquarters at that time? A Yes sir.

Q With whom was he accompanied to headquarters? A I did not

see any one with him.

Q Did you see him when he first came in from Cripple Creek?

A No sir.

Q Do you know how long he had been in the city before you did see him? A No sir.

Q Did you have any conversation with him? A I was introduced to him in Mr. Moyer's office.

Q Was that your first introduction to him? A Yes sir, that I can remember.

Q Was you introduced to him as Orchard? A Yes sir.

Q And Mr. Moyer introduced you? A I think so, yes sir.

Q Did you hear the remarks between Mr. Moyer and Orchard with reference to the trip to Ouray? A Only a part of it.

Q What part of it did you hear? A I hear them figuring on how they should prepare themselves to make this trip.

Q With reference to protecting themselves, etc? A Yes sir.

Q You heard them talking about getting some shotguns? A Yes sir.

Q And who should be called to get them? A No, I think Mr. Pettibone dropped in about that time.

Q Now, isn't it true that Mr. Moyer telephoned to Mr. Pettibone? A So I heard him say.

Q What is your recollection of it? A I have no recollection of it.

Q Your recollection is that the trip -- A He may have telephoned him, or he may not; I don't remember about that.

- Q Your recollection is that he dropped in, you say? A He may have.
- Q And did you hear the conversation between Pettibone and Moyer and Orchard in regard to the fire arms? A I don't want you to understand that he casually dropped in; he came into the office but it may have been in response to Mr. Moyer's telephone.
- Q And the last question was, did you hear the conversation between Pettibone and Moyer there, over the phone, or when he was present in reference to the fire-arms? A I heard them talking about it, and measuring the suit cases there.
- Q Had you known of Pettibone purchasing any fire arms prior to that time for members of the organization? A Not of my own knowledge.
- Q Did you know of his shipping any fire arms for the Western Federation to any point from Denver? A No sir.
- Q At any time prior to that? A No sir.
- Q Or after that? A No sir,-- you say after that? I believe one time after that at the instance of the Federation, Pettibone purchased some guns for the Interstate Mercantile Company.
- Q And what kind of fire arms did they get finally at this particular time I am talking about? A I think they got take down shotguns.
- Q And had they sewed off to put in their suit cases? A Yes sir.

- Q You say Mr. Orchard exhibited a revolver? A He did.
- Q And you told him that the men would not wait down there for him to make use of that revolver carrying it the way he was carrying it? A I remember making that remark, yes sir.
- Q And you thought it would be more expeditious to have sawed off shotguns in their suit cases? A No, I did not say that Senator.
- Q I took it from that? A No, I meant he might carry this revolver in a handier place than he was carrying it at the time; that is independent of the shotguns.
- Q Then the shotguns were not purchased for the reason that they were handier for use? A No, not particularly, but they had figured that they could leave their suit cases unlocked and open and they might be able to get them together before they were beaten up.
- Q Were you at the headquarters when he started away? A I don't think I was. I believe they started away late in the evening and I don't remember of being there.
- Q I will ask you if Pettibone, yourself, Moyer and Mr. Orchard, or Orchard, were present at any time together during that particular preparation? A Yes sir.
- Q There at headquarters? A Yes sir.
- Q Was there any one else present other than those I have just named at that particular meeting? A That particular meeting took place in Mr. Moyer's office which connected with mine,

and as I remember they had their suit cases -- we had a wide ledge at the window, and they had their suit cases on it measuring them, and I stood just inside the door from my office.

- Q And were there any parties present other than those I have named, Orchard, Pettibone and Meyer and yourself? A Not in the room at that time, no sir.
- Q How long was this before they started on their trip -- this particular meeting that I am speaking of now? A I think it was the day before, -- possibly on the 23rd.
- Q Did you see Orchard prior to his starting on that trip with Meyer? A No sir.
- Q Did you have any further conversation with him than those held in the presence of Meyer and Pettibone? A I think not, -- no private conversation, anyway.
- Q You became fairly well acquainted with Orchard at that time? A No, not very well acquainted, because I paid but very little attention to the arrangements that were being made.
- Q You know he was going down there on the trip with Meyer, wherein Meyer expected some possible difficulty? A Yes sir.
- Q And naturally you gave enough consideration to the matter to reflect upon who the party was? A Oh yes.
- Q And what he was, etc? A I knew who he was.
- Q Now, when did you next see Orchard after that trip? A Some time in the early part of April.

- Q That was upon his return from the Cury trip? A Yes sir.
- Q He came back to headquarters? A Yes sir.
- Q Who was with him? A He was alone.
- Q Did you talk over with him the experiences of Moyer?
- A Very briefly.
- Q Do you recall what was said by him and what was said by yourself? A I recollect a part of it at least. He told me he thought Mr. Moyer could have evaded the authorities there; he told me that in this room there was either a trap door or another door that he could have made his way out of, and could have got away from the sheriff if he had had wanted to. He also told me that Mr. Malone had sent up a specimen for Mr. Moyer and I to be used in two.
- Q Who was Mr. Malone? A He was the secretary of the Cury miners union No. 15.
- Q Did you talk with him about the particulars of the arrest, the charge made against Moyer or anything of that kind?
- A No, I did not go into details with him.
- Q Did he bring back the shotgun? A No sir.
- Q Neither one of them? A Not to me.
- Q And nothing was said about it? A I don't think he mentioned it.
- Q The next time you saw him, I understand, was in May, 1904?
- A Yes sir, I think I saw him at that time.
- Q Where was it you saw him at that time? A I believe in the

Q How long was it prior to the Independence depot explosion that you saw him in May, 1897? A Probably in the early part of the convention; we convened on the fourth Monday in May.

Q And it was some time during the early days of the convention?

A I think so.

Q Was he there as a delegate? A Just as a spectator, the same as a great many others were.

Q Was Mr. W. F. Davis present at this convention? A Yes sir, and acted as Vice President of it if I remember rightly.

Q And was Mr. Parker there? A He was.

Q Can you fix with any degree of certainty the day of the month when you last saw Orinard prior to the Independence depot explosion? A No, I could not, not with any -- not to be certain.

Q It would be within the range of a week or ten days, I presume? A Well, the explosion having taken place on the 6th of June, we met on Monday -- it may be a week or probably a little longer.

Q Did he stay around the convention any length of time? How many days did you see him there? A I am not very positive about having seen him there. He may have been there. There was a great many men in attendance and some who were attending the convention, and I did not pay any more attention to him than to any other visiting men.

- Q You had become fairly well acquainted with him? A Oh, I know him, but no more than any other man attending the convention.
- Q But the next time you met him was at this convention? A I think I stated it is about the same words before.
- Q And that was the next time you saw him? A Yes sir, I think so.
- Q And if you did see him it was within a week or ten days of the Independence depot explosion? A Yes sir.
- Q And you do not recall how long he remained there? A No sir.
- Q And you do not recall any conversation with him? A I did not have any conversation with him in particular. I may have greeted him equally as any other member.
- Q Then I understand you that you saw Steve Adams a day or two after the explosion? A A few days after.
- Q You did not see Orchard within a few days after? A No sir.
- Q When was the next time you saw Orchard after this convention meeting in 1904 in May? A The next time I saw him was about the middle of January, 1905.
- Q You did not see Orchard or know of his whereabouts from the time of the Independence depot explosion until January, 1905?
- A No sir, I think after I returned from Chicago.
- Q Was he about the headquarters at any time during that period, to your knowledge? A I think not, no sir.
- Q Did you hear of his being in Denver at any time during that

period? A No sir.

Q Do you know under what name he was passing after the Independence depot explosion? A Only as he told me at the time.

Q What was that? A Hogan.

Q Do you know when he took the name of Hogan? A No, I do not.

Q Did you ever hear of his being called Hogan prior to this particular time? A No sir.

Q When did you first hear of his being called Hogan? A At that time he told me that he had taken the name of Hogan.

Q Did you ever see him at the Belmont rooming house? A I may have done so, but I don't remember of it.

Q Do you remember of seeing him in company with Miss Lottie Day there at one time? A I don't recall that meeting at all.

Q You don't recall having gone into a room with Mr. Orchard at any time? A I know I never was in his room at any time.

Q Do you recall whether you were in a room -- some other room with Orchard at any time in the Belmont rooming house?

A No sir.

Q You were not there? A No sir.

Q You are quite certain of that? A Yes sir.

Q And did you ever meet Orchard at what is known as the Virginia rooming house? A No sir, I did not go there to meet him, I went there with him.

Q About when was that? A I think that was in the early part of August of 1905.

- Q In the early part of August,— this was later than the time we are talking about then? A Yes sir.
- Q Then you say he came to headquarters in January, 1905, for relief? A Yes sir.
- Q Was he on the relief roll at that time? A Well, a miner being there and out of work, he could get relief at that time, one of the Cripple Creek men.
- Q And he was really on the relief roll,— that is, he was one whom you regarded as entitled to relief? A Yes sir.
- Q And he came there for that purpose? A Yes sir.
- Q Do you remember whether you gave him any relief yourself in the way of a check, or did he get it from some one else?
- A If he got it, he got it from some one else, for I did not have charge of that.
- Q You don't know of your own knowledge that he was there for relief? A I am quite satisfied that that is what he came for.
- Q Did you have any conversation about it with him? A Yes sir.
- Q And you remember the conversation? A I do,— that is, I remember that as I remember that he and Adams came up for relief.
- Q Did Adams come with him at this time? A Yes sir.
- Q And Orchard and Adams came there in January, 1905, for relief?
- A Yes sir.
- Q And had some talk with you about the matter so it is fresh

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in your mind so that you are able to testify to it? A Yes sir.

Q And who was with you -- any one? A I think not.

Q What? A I think not.

Q What had become of Ed. Minster -- was he still in the country at that time? A I had not seen him since I saw him in the district.

Q Was Art Boston in the country at this time? A Not to my knowledge.

Q Do you know where Billy Aikman was? A I think he was in Denver.

Q Now, Aikman, Steve Adams and Gerhard were all there in Denver about that time? A I believe they were.

Q Do you know where they were living? A No sir.

Q You don't know that they were living together? A I do not.

Q Neither one of them informed you of that fact? A No sir.

Q Do you know Jimmie Lafferty? A No, I don't know Jimmie Lafferty.

Q You know Mr. Easterly? A Yes sir.

Q Was he about headquarters during this period in the fore part of 1905, or had he left the country? A He was not there at that time.

Q When did William F. Davis leave Denver, if you know?

A I don't know exactly when he left, but I think some time about the middle of June.

- Q It was within a few days after the Independence depot explosion? A Yes sir.
- Q Did he leave from headquarters, was he at headquarters immediately prior to his going? A I could not say as to that.
- Q Do you recall any conversation immediately prior to his going? A No, I do not.
- Q But you know he went away about that time? A Yes sir.
- Q Now, Mr. Haywood, as I understood you yesterday, you stated that Orchard was treated through the newspapers as a suspect in regard to this Independence depot explosion some few weeks after it happened? A Some few weeks?
- Q Yes. A Did I say that, Senator Donah?
- Q I understood that. A I said a few days after.

MR. JARROW: I am not sure that he understands your question; you referred to --

THE WITNESS: The Independence depot explosion I understood you to mean.

MR. DONAH: Yes sir, that is what I meant.

- Q How long was it after the Independence depot explosion until you saw in the newspaper that this man was suspected of the deed? A I don't think it was more than three or four days.
- Q And was there some considerable comment in the paper on the matter? A Yes.
- Q And it was noted that he had left the country? A Yes sir.
- Q In company with John Deville and his son? A Yes sir.

- Q And it was noted that he had left Cripple Creek immediately prior to the explosion? A I think that was a part of the story.
- Q And he had gone into the Wyoming country some where? A They seemed to know where he had gone.
- Q Did you know where he had gone? A No sir, other than what was stated.
- Q When he came back did you talk with him about the matter of his being suspected? A I believe I did.
- Q And he was still on the relief roll at the time and you knew he was a suspect? A That is -- how is that?
- Q That he was on the relief roll? A No, not during the time he was away.
- Q But when he came back you put him on the relief roll? A Yes.
- Q And after the matter of his being charged with this matter he came back to headquarters and again got his relief? A Yes sir.
- Q And did the paper say anything about Steve Adams being connected with it? A I don't think so. I don't remember of seeing Steve Adams name connected with it.
- Q Well, it was connected with it in the matter of public discussion and print, was it not? A Not to my knowledge.
- Q You never heard of that, Mr. Haywood? A No sir. Now, there was -- going back to that, I think perhaps there may have been; I know that Mrs. Adams -- the manner in which she was treated, leads me to believe that perhaps there was something

in the press at that time.

- Q As a matter of fact there was a discussion in the press in which Orchard's name was used quite considerable and Adams to some extent in regard to this Independence depot explosion? A I would not say that as a matter of fact, but I am satisfied from the manner in which Mrs. Adams was treated that probably Steve Adams name was connected with it at that time.
- Q When did Steve Adams commence to pass under the name of Dixon? A I am not sure as to that.
- Q When did you first know of him as Dixon? A I could not say.
- Q Wasn't it shortly after the explosion, when he came into Denver? A It may have been, but I would not be positive as to that.
- Q You did know of his being called Dixon? A Yes sir. Now, immediately after the explosion, or a very short time after the explosion I was not at headquarters myself.
- Q But you knew of the fact that Adams was passing under the name of Dixon? A I did.
- Q Did you know that W. F. Davis had taken the name of Jones? A No, I did not know he had taken the name of Jones, but I did know that he took the name of Morris.
- Q Then it seems that Adams, Orchard and Davis had taken assumed names some time after this explosion, while they were still there in Denver? A No, Mr. Davis -- I heard from him some where in Encampment.
- Q In Encampment, Wyoming? A Near Encampment, Wyoming. I am

not certain just where it was. He had organized a local union, present in a number of names of a union at large, and I think he was using the name of Morris.

Q About what time was this, Mr. Haywood? A Well, that was some time in the summer of 1904.

Q As near as you can recollect? A Probably in September; I would not be positive as to that.

Q When was it you saw Orchard at Pettibone's store in which he referred to the matter of life insurance? A I think that was in the early part of May, 1908, just previous to my going to the Salt Lake convention.

Q That was after this time that you saw him in January that we have just been talking about? A Yes sir.

Q And was it the next time you saw him? A No, I think I had seen him at other times, but I don't recollect any particular time.

Q Did you ever see him more than once at Pettibone's house or store? A Yes, at the house I have seen him more than once.

Q And he was staying at Pettibone's house later, a part of the time? A Yes, later he was.

Q What time was it that he was at Pettibone's house? A I saw him at Pettibone's house after I returned from Chicago.

Q And it was at Pettibone's house, and in the kitchen of his house that you had the talk about his going to Alaska?

A That was the time he told me about going to Alaska, and he was talking about his wife.

- Q Can you tell me about the date you had this conversation with him? A I think that was in the early part of August.
- Q In 1905? A Yes sir.
- Q And was Pettibone present? A He was not present, but he was in the house.
- Q That was during the time that Mrs. Pettibone was absent, visiting in the east? A Yes sir.
- Q Did you see him more than once that summer there at Pettibone's? A Yes, two or three or four times.
- Q Were you over at Pettibone's a good deal? A I think probably two or three times.
- Q Did Pettibone live far from your place? A Immediately opposite, not quite but almost so, on the same street.
- Q And did Pettibone and Orchard ever come over to your place? A Not at that time.
- Q Did Orchard come later? A No sir.
- Q Then they were never at your place? A No sir, I don't think they were ever there together. Although, Senator, I don't want you to understand that they have not both been at my house.
- Q Yes, but I mean at the same time? A No sir.
- Q Now, the next, I will ask you if Mr. Meyer was in California during the summer of 1905 to your knowledge? A Yes sir.
- Q When did he return -- about the time of his return? A Well, I would not have known to a certainty if I had not heard him testify to it.

Q What is your recollection as to it? A It is on the 11st of August.

Q When was the last time you saw Orchard in Denver? A The last time I remember was the time he brought the little black mare and buggy down to the office.

Q When was the last time you knew of his being there from the conversation of your wife that you referred to yesterday?

A That was some time later, probably the latter part --

Q Of August? A The last week of August.

Q Some time between the 25th and 30th of August, would you say? A Yes, I should judge so, -- about the 25th of August.

Q How, how long prior to this had it been since he was down at your place of business with this horse and buggy? A I should say it was ten days or such a matter.

Q Did you recognize the colored man who was on the stand here as a witness as the party who was with him? A Yes sir.

Q And they drove to your place and Orchard came up to your place of business and you came down and got in the buggy with him? A Yes sir.

Q And drove around for a while? A Yes, we drove a block and a half, or a little more.

Q And came back? A Yes sir.

Q You understood from him that Mrs. Pettibone wanted to trade to get this gray mare that you owned? A Yes sir.

Q It was Pettibone that wanted to do the trading? A Yes sir.

Q But Pettibone was not here? A No, he was not there. He

wanted to buy the gray mare.

Q Who did this animal belong to that Orchard was driving --
to the colored man? A I think so.

Q Did you have anything to do with buying the animal afterwards?
A No sir.

Q Did you ever see the animal or the buggy afterwards to
recognize or identify them? A I am not sure as to that.

Q Did you ever see Orchard driving it afterwards? A No sir.

Q Or Pettibone? A No sir.

Q You never saw or heard anything more of the matter after
Orchard drove away that day? A Not that I recollect.

Q When your wife told you that Orchard had gone that was the
last you heard of him? A Yes sir.

Q Had he been at your house before that so that Mrs. Haywood
knew him? A Yes sir.

Q When was he at your house? A Well, in the -- she told me he
had been at the house while I was in Chicago.

Q He was never there when you were there? A Yes sir, he was.

Q Oh, was he? A Yes sir.

Q When was he there when you were there? A Some time in the
spring of 1905.

Q On more than one occasion? A I think so.

Q Was Steve Adams with him? A No sir.

Q Anybody with him? A No sir.

Q Did anybody accompany him to your house at any time?

A I think not, no sir.

- Q He came alone whenever he was there? A Yes sir.
- Q Now, you wrote to Mrs. Orchard a letter which you have referred to; did you ever see Mrs. Orchard and get acquainted with her personally? A Yes sir.
- Q Where did you first see Mrs. Orchard? A In the city of Denver I think.
- Q Where was she, at headquarters? A It must have been, you sir.
- Q What was she doing there? A Now, I don't recollect, Senator.
- Q How many times was she there that you recollect? A I could not say as to that.
- Q Did you know of anything of Orchard asking Marion Moore to mail a letter in Alaska, at the time you wrote this letter to Mrs. Orchard? A No sir.
- Q You had not heard of that? A No sir.
- Q Whatever information you had then in reference to his being in Alaska was not by reason of any conversation you heard between Marion Moore and himself? A Not to my knowledge, no sir.
- Q Now, you say in this letter, the last information I got was from Alaska? A Yes sir.
- Q As a matter of fact, I understand, the only information you had with reference to his being in Alaska was that he told you in this conversation that he was going to Alaska? A That is all.

- Q You never learned he was in Alaska? A No, not as a matter of fact.
- Q And as I understand you wrote this letter to her because you did not care to convey to her the actual facts in your possession? A I think that was my feelings at that time.
- Q Did you know that Mr. Moore had gone to Alaska during the month of August and September to organize some unions in Alaska? A I think he left on the 30th of July.
- Q And did you know that he returned to Denver upon the 24th of September? A I don't remember when he returned.
- Q You know he did return? A Yes sir.
- Q Did you have a talk with him after his return? A More than likely.
- Q Did he say anything about Orchard being in Alaska? A I think not, no sir.
- Q No reference was made to Orchard in any conversation that you had with Mr. Moore upon his return? A Not that I remember of.
- Q You say you have not the letter which Mrs. Orchard wrote to you with reference to which you were making answer at this time? A I have not got it with me.
- Q Do you know whether or not you have it in your possession? A No sir, I could not say.
- Q Was it your habit or custom to keep files or otherwise? A Yes sir.

Q You would more than likely have the letter? A It is the custom of the office to keep all letters connected with the business transacted between the local unions and the Federation.

Q Then according to the custom it should be in the files of your office? A It not being a matter connected with the business of the organization, it might not.

Q Have you made any search for it? A No sir. I understand there is a --

MR. RICHARDSON: We have telegraphed for it since this forenoon, Senator, as I told you I would do. We telegraphed to Mr. Kirwan to make a search for it and send it.

Q Mr. Haywood, do you know a man named Pat Maloney or Maloney, or Paddy Maloney? A I guess you mean Paddy Maloney.

Q Yes, Paddy Maloney? A I know him, P. J. Maloney.

Q Where is he now? A I think he is in Goldfield.

Q Goldfield, Nevada? A I believe so.

Q What employment had he with the Western Federation in 1908, if you know? A I don't remember of him being employed by the Western Federation at that time.

Q Do you remember of his having anything to do with the affairs of the Federation at Gripple Creek during that time? A He may have been in charge of the buildings. We had one or two men looking after the property of the Federation there.

Q Did Mr. Graham ever arrange through you or through the or-

ganization, to your knowledge, for the maintenance of his wife during any of his absences? A No sir.

Q She was entitled to no relief, or you had no arrangement with reference to her affairs other than what she might be entitled to by reason of being the wife of a member of the organization? A That is all.

Q Did you ever transmit to her any money by reason of her being the wife of a member of the organization? A I think she got her relief.

Q Did you have anything to do with that or was it simply put out in the regular course of distribution? A It would be put out in the regular course of distribution.

Q You never had any special arrangement with Mrs. Orchard about her having any particular benefit while Orchard was absent at any time? A No sir.

Q Did you know at any time of the fact that money was to be sent to Mrs. Orchard through Mrs. Adams? A No sir.

Q You had no knowledge of that? A No sir.

Q Mr. Haywood, did you ever have any talk with Orchard about Governor Stansenberg in any way? A I don't think so.

Q Do you recall that the name of Governor Stansenberg was ever mentioned in any conversation between Orchard and yourself?

A I don't believe so.

Q Did you ever hear him make any threats of any kind against Stansenberg? A I don't think I ever did.

- Q Did you ever hear of his having made any threats prior to the time you were arrested? A No sir.
- Q Did Mastery, or Copley, or Harris, or any of these members ever convey to you, or Mr. Moyer to your knowledge, anything with reference to these threats which Orchard had made? A No sir.
- Q You had no knowledge then that Mr. Orchard had any personal grievance against Governor Stannenberg by reason of any troubles in the Cocur d'Alonso? A No sir.
- Q Did you know he was once an owner in the Hercules mine?
- A Yes, I have heard him speak of it.
- Q Did you ever hear him speak of it in connection with the name of Governor Stannenberg? A I think not.
- Q The first time you heard of the killing of Governor Stannenberg was about the morning after it happened upon the night of the 30th of December, 1906? A I am quite sure that is the time.
- Q Did the press dispatches when they first appeared commence mentioning any names in connection with it? A I don't believe they did. I don't think anybody was arrested for a day or two after that, according to the dispatches.
- Q The first news you had of any name being suggested in connection with the affair was upon what day? A I think probably it was the second of January.
- Q And the name was that of Thomas Logan? A He among others.
- Q And you recognized, did you, this name as being the name of Harry Orchard in fact, or did you -- A I don't know that I

recalled it at that time.

Q Did you reflect upon the matter that you know the man who was going under the name of Thomas Hogan? A I might have done.

Q Did you have any conversation with Mr. Hoyer or any one else in regard to that matter? A I cannot say as to that.

Q Was there anything that directed your attention to the fact that Thomas Hogan was Harry Orchard in connection with this affair until you received the telegram from Jack Stephens?

A Yes sir, I believe there was.

Q What was that? A I believe the statement of the fact that Thomas Hogan was registered from Denver, and there was a postal card, if I remember correctly, a leather postal card, found in his trunk or valise addressed to Charles Hoyer.

Q That was one of these leather souvenir cards? A I would judge so.

Q That brought to your mind immediately the proposition of your having known Harry Orchard as Thomas Hogan previous to that? A It immediately connected us, that is, in a personal way with this man who was arrested, that would naturally bring that idea to our minds.

Q Then you recalled it of course and immediately identified Harry Orchard as Thomas Hogan in your own mind? A To some extent.

Q Did you receive any news at all during the day of January 3rd

as to Thomas Hogan, other than the newspaper accounts? I don't think so. I have no recollection of it.

Q Had you taken any steps or made any movements toward looking into the proposition of whether Thomas Hogan was Harry Graham?

A No sir, not at that time.

Q Did the fact that he was a member of your organization and that you remembered that Thomas Hogan was Harry Graham cause you to take any steps to look after him as a member of your organization? A We had not yet done it, no sir.

Q Did you take any steps in that direction until you received the telegram from Mr. Simpkins? A No sir.

Q How, you received the telegram on the evening of the 4th of January, 1906? A I think about 4:30.

Q Late in the evening? A Or later than that -- or what date did you say, January what?

Q 4th. A Yes, January 4th.

Q And that telegram was in cipher? A Yes sir.

Q And in the cipher which was used in the ritual of the Western Federation? A Yes sir.

Q Had you ever received a cipher telegram from Mr. Simpkins prior to that time? A No, never from Mr. Simpkins. We had received one from James Baker, I think, in cipher, -- well, I know it in fact.

Q Did you recognize this telegram or believe it to be from Simpkins at the time you received it? A We did not know whether it was or not.

Q Did you telegraph to Simpkins to satisfy your mind on that question? A No sir.

Q Was there any reason why you should not telegraph him?

A No, I know of none.

Q You believed it to be from him sufficiently strong to act upon it before you heard from him? A Yes sir, and before we would wire him.

Q Now, he said in this telegram as it is now translated, cannot get a lawyer to defend Hogan. Answer. Did you answer?

A No sir.

Q Never did answer? A No sir, not to Simpkins.

Q What did you understand, cannot get a lawyer to defend Hogan? A Well, I might add that I had in mind this man at Caldwell.

Q You understood the telegram, both sent from Spokane, referred to the affair at Caldwell? A Yes sir, but I would say, Senator, that the manner in which the telegram is deciphered is not the manner in which we translated it.

Q Do you recollect the language in which you translated it?

A I rather think it was "Can get."

Q Can get? A Yes, or "I can get," or, "Can I get?" I am not just certain as to the language but I am satisfied it was not just as it is now deciphered.

Q Well, did you have any idea as to what he was driving at, what he meant when he said, "Cannot get a lawyer to defend Hogan?"

A I thought he had in line this man who had been

arrested at Caldwell.

- Q But did you understand that he could not get a lawyer in Spokane and for you to send one from Denver? A I am not certain as to that. I don't believe we had arrived yet at any understanding in regard to it.
- Q Now, Mr. Simpkins, as a member of the executive board, would have been authorized to have employed an attorney if he had seen fit? A Yes sir.
- Q There was no reason for his sending a telegram to you, "Can I get a lawyer to defend Hogan"? A No, I think the question with Mr. Simpkins, and in fact every other member of the executive board was that they could act upon their own authority in their own district subject to the sanction of the President or the rest of the members.
- Q When he said, "Can I get a lawyer to defend Hogan," did he make himself plain? A No sir.
- Q It was a matter you did not understand? A We were not satisfied as to whether that telegram was from Simpkins.
- Q Mr. Miller afterwards came to Denver, as I understand, to get some compensation for services performed with reference to Orchard? A For services performed?
- Q And to be performed? A Yes sir.
- Q Did he tell you at the time he came to Denver that he had started down to Caldwell upon the 3rd of January, 1906?
- A I don't recollect that.

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Q You remember, and I believe you stated in your direct examination that Mr. Miller had gone over the matter with you?

A Yes sir.

Q He brought the preliminary examination papers? A Yes sir.

Q And discussed the question of Orchard's probable guilt or innocence? A He did.

Q And went into the details of the matter generally and informed you people in Denver so you could know as to your rights?

A Yes sir.

Q But he did not tell you that prior to the sending of the Simpkins telegram he had started for Caldwell upon January 3rd, 1906, did he? A I don't think he mentioned it.

Q And did he tell you that he got as far as Walla Walla and was called back? A No sir, not to my recollection.

Q Did he tell you he was in communication with Jack Simpkins on the 3rd of January with reference to his trip? A He mentioned Simpkins and I think he made the arrangement with him.

Q This telegram which has been introduced in evidence here, to F. Hogan, care of Sheriff, Caldwell, Idaho, is sent upon the 3rd day of January, 1906, and it says, "Attorney Fred Miller will start for Caldwell in morning," signed, E. Now, taking that telegram which was sent upon the 3rd, in connection with the telegram you got and also, cannot get a lawyer to defend Hogan, have you any question as to what Simpkins had in mind when he sent this telegram? A Well, putting the two telegrams together it would be a hard matter

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for me to define what Mr. Simpkins was intending.

Q It does not convey to your mind anything with reference to the attempt of Fred Miller to get to Caldwell upon the Srix? A I would judge from the first telegram that it was the intention of Mr. Miller to go to Caldwell at that time.

Q And did Simpkins send any written report to you in reference to the affair when Mr. Miller went down in January? A No sir.

Q Did he ever write you a letter? A No sir.

Q Did you ever get any further telegram from him? A No sir.

Q Or any further letter? A No sir.

Q Have you ever had any explanation from him to this day as to these affairs? A No sir.

Q. When Mr. Miller arrived in -- came to Denver upon the 30th of January, 1907, to get his first compensation, did he tell you about what he had been doing with reference to Orchard's defense? A. Yes sir.

Q. Told you that Mr. Simpkins had employed him? A. I think so.

Q. And you endorsed that employment as a representative of the Federation by paying the fee? A. Yes sir -- now how do I understand you, Senator? That we endorsed it by paying the fee?

Q. Paying a fee? A. Yes, by paying a fee.

Q. That was not all that Mr. Miller was to get then? A. No sir.

MR. RICHARDSON: A little louder, Mr. Haywood. A little difficult to hear you from here when your face is turned that way and I suppose it is difficult for the jury to hear you.

Q. Do you know Mr. Jim Sullivan, the chief attorney? A. Yes sir.

Q. Did you know of his going to Caldwell in the fore part of January, 1907? A. I did.

Q. Did you know who sent him? A. No sir.

Q. Was Mr. Pettibone called into consultation at any time with reference to this defense of Orchard? A. No sir, not to my knowledge.

Q. His knowledge of Orchard or his whereabouts was not sought? A. No sir.

Q. Did you prior to the time that you paid Mr. Miller his fee upon the 30th of January, 1907, send anyone to Caldwell to make any investigation with reference to Orchard's previous whereabouts, where he had been, what he had been doing, and so

forth? A. No sir.

Q. 1906. There was no investigation made, was there, Mr. Haywood, upon the part of the organization to satisfy themselves as to the previous whereabouts of Orchard prior to this killing, was there? A. No sir.

Q. You accepted then the action of Mr. Stephens and the statement of Mr. Miller and proceeded to the defense of Orchard upon that line? A. Yes sir, that was the only things that actuated us as I remember. I would say in connection with that, however, that you must take into consideration the fact that we had the counsel of our attorney in the matter.

Q. The counsel of your regular attorney, Mr. Murphy? A. Yes sir.

Q. The telegram which you sent to Mr. Hanlon, as I understood you to say this morning, was dictated by Mr. Murphy?

A. One of them.

Q. That was the last one? A. Yes sir.

Q. The first telegram which you sent was dictated by yourself, was it? A. Yes sir.

Q. The telegram of January 7th, 1906, "R. J. Hanlon, Secretary Miners' Union, Silver City, Idaho. Reply John F. Nugent at the expense of the Western Federation of Miners to protect the interests of the Federation at Boise. Answer. William D. Haywood." That was dictated by yourself? A. That I sent myself.

Q. And who was present when you sent it, anybody? A. Yes sir, I think no; I believe I was in the office -- I believe that was on Sunday, and in all probability Mr. O'Neill was there. He usually went down to get the papers and the mail.

- Q. Then you received in answer to that: "William D. Haywood. Wire at length in what manner you wish Nugent to proceed." --
- A. Well, now, I want to say in connection with the first telegram that I received -- or the first telegram that I sent, while I sent the telegram myself it was after talking with Mr. Murphy over the telephone, and he urged me to send that telegram, asked me whom I knew in this vicinity who was a good attorney.
- Q. And you received in answer to that "Wire at length in what manner you wish Nugent to proceed" -- A. Yes sir.
- Q. -- "He wants full particulars to what is the attack on the organization and what is the complaint" -- A. Yes sir.
- Q. -- "R. J. Henion." Then the next telegram, which was sent in answer to that, was the telegram which Mr. Murphy dictated himself? A. Yes sir.
- Q. Had you read in the newspapers prior to the time that you sent the telegram, the first telegram on the 7th, that Mr. Orchard had stated in the court room that if the matter was published in the Denver papers a lawyer would be sent him? A. I think not.
- Q. Wasn't that published in the Denver paper? A. I don't remember of seeing it in the Denver papers.
- Q. You don't recall any such thing in any of the papers which you read concerning the matter? A. Not that I remember, at that time.
- Q. Or about that time? A. No sir.
- Q. Did Mr. Orchard make any request of the organization in any way to send him an attorney? A. No sir.
- 4154 Q. Did you hear from him either directly or indirectly, through

Miller or in any other way? A. Mr. Miller may have said I think did talk of some talk with Orchard.

Q. Did Mr. Miller present an order from Orchard, a written order for any money that might be due him? A. A written order to us?

Q. Yes. A. No sir.

Q. A written order to anyone, that is stating generally, to whom it may concern? A. I know of no such order.

Q. You had no knowledge of such an order? A. No sir.

Q. Then you had no request from Mr. Orchard in any way, either directly or indirectly, unless it was by reason of Miller's visit, that he wanted any help from the Western Federation of Miners? A. That was all.

Q. Had there been any charge against any member of the Western Federation of Miners except Orchard in regard to this matter, that is, any charge lodged in court, any criminal complaint, or anything of that kind? A. No; the charges were general and you might say specific through the press.

Q. How did you -- when you came to the conclusion that this was Hogan, of course you recognized at once that it was the same party who had been suspected for a long time of blowing up the Independence depot? A. How is that?

Q. You recognized at once that it was the same party who had been suspected for a long time of blowing up the Independence depot? A. Oh, yes, we knew it was the same man.

Q. And you recognized of course -- you know that Simpkins was the man, the one who sent the telegram upon January 4th, was the man who was in the Coeur d'Alene at the time of the troubles

with Governor Stinsonberg? A. Yes sir.

Q. Now if Mr. Simpson and Mr. Orchard had been there on any personal affair of their own, under no rule of the organization which permits you or authorizes you to employ counsel, would they have been entitled to send to you for counsel for their own personal affairs? A. No sir.

Q. They would have no right to call upon you for counsel or send any telegram with reference to employer counsel if it was a personal affair of their own? A. No sir, we don't employ counsel only for members and for matters connected with the organization.

Q. Did you hand this telegram which you sent to Hamilton, the last one I read a moment ago -- or the one which was dictated rather by Mr. Murphy, you handed to the Associated Press, at the same time you sent it to Mr. Hamilton. It was given out to the Press, wasn't it? A. Yes sir.

Q. It was given out in Denver before it was delivered to Mr. Hamilton? A. I don't know how long it took it to be transmitted, but it occurs to me the press got that telegram.

Q. Now there was no reason, whatever, Mr. Haywood, that you know of, why you should not have proceeded to the defense of Mr. Orchard without any secrecy or without any cover, if you understood him to be innocent? That was one of the rules of the organization, that you should proceed whenever you knew that a man was innocent and charged? A. That was the general understanding of the organization.

Q. It was the open, notorious policy of the organization?

A. We had never turned our back on a man that was being pro-

scouted if we believed him to be innocent.

- Q. You had always proceeded in an open way to defend any member whom you believed to be charged and innocent whenever his act was in any way connected with the Western Federation or represented them in any way? A. As a rule, yes sir.
- Q. And it was upon this theory that you were proceeding to defend Orchard? A. Yes, I think I might be safe in saying that.
- Q. And you say Mr. Pettibone was not called into this matter at all? A. No sir.
- Q. You didn't know anything about his sending Mr. Sullivan out there to see Orchard? A. If he did, I had no knowledge of it.
- Q. He has never to your knowledge -- or, he has never stated such a fact to you? A. No sir.
- Q. Do you know that Mr. Sullivan from Denver did go to Caldwell to your knowledge? A. Yes, I heard of it afterwards. I heard he went to Baker City and stopped at Caldwell.
- Q. And did your private secretary go to Baker City about the same time? A. One of our stenographers went to Baker City, but it was not at that time.
- Q. It was shortly after or shortly before, wasn't it?
- A. No, it was in November, if I remember rightly. She went to Baker City with Mrs. Kennison, whose husband had died in Tonopah, and Mrs. Kennison had two small children, and she was feeling very badly, badly broken in health, and we let the stenographer go with her to Baker City, and she went on to Portland and returned through here about that time.
- Q. Returned about what time? A. About January some time. I don't remember the date when she got home.

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- Q. Do you know whether or not she met Mr. Sullivan at Baker City while he was on his trip out here at the time he saw Orchard?
- A. I don't remember as to that.
- Q. When did the Western Federation cease its defense of Mr. Orchard, at any time prior to his confession? A. Well, now, I don't know as to that, Senator. I don't know just when his last confession was made -- or when his first was made.
- Q. Well, do you know when you ceased to defend him, when the Western Federation withdrew its defense and support?
- A. No, I couldn't say that, as to the exact date.
- Q. Could you give me about the time? A. I think probably it was when Mr. Miller returned here and he told him he had no further use for his services.
- Q. Did you hear from Miller by letter in regard to it? A. I did not and I don't know whether Mr. Moyer did or not.
- Q. You have had information from Mr. Miller himself as to when he ceased to act for him? A. No, I have not, other than I have stated; that I think it was at the time Mr. Miller returned here and Mr. Orchard notified him that he had engaged -- that he had no further use for him in the case.
- Q. Did you know, Mr. Haywood, at the time you paid Mr. Miller his fee, or at any time previous to that, that Orchard had been up in the Occur d'Alamosa in the fall of 1905? A. No sir.
- Q. Did you know that he had been up there in company with Mr. Simpkins? A. No sir.
- Q. Did you know that Simpkins and Orchard had been to Caldwell?
- A. No sir.
- Q. Did you have any personal knowledge of the association of

Simpkins and Orchard during the fall of 1905 at all?

A. No sir, I did not.

Q. Was Mr. Simpkins in full power as a member of the executive board of the Western Federation matters in this jurisdiction at that time? A. Yes sir.

Q. And was it any part of the duty of the member of the executive board of this jurisdiction to report matters of vital importance to the organization when they occurred? A. Yes sir.

Q. Did he ever make any ^{report} ~~representations~~ to you either before the arrest or afterwards with reference to Orchard's affair?

A. He did not.

Q. Now, when Mr. Simpkins was down in Denver in September, 1905, you took a hundred dollars of his money and afterwards sent it to him in the form of a draft? A. He gave me a hundred dollars and requested me to send it to Spokane.

Q. He was entitled to two hundred and some odd dollars from the Federation, and he gave you a hundred of it which you afterwards transmitted to him by draft? A. Yes sir.

Q. You sent a Federation draft for this money? A. Yes sir -- no, not a Federation draft. You had the draft here.

Q. It is signed Secretary and Treasurer, isn't it? A. Yes sir.

Q. That is what I have reference to? A. Yes sir.

Q. You sent it upon the 1st of December, 1905? A. Well, I think probably about that time.

Q. That was the date of it? A. Yes sir; he asked me to send it to him so that it would get to Spokane about Christmas.

Q. Did you authorize -- or state to Pettibone that you had sent this draft? A. No sir, not to my knowledge.

- Q. Did you authorize him to write to anyone concerning the matter?
A. No sir.
- Q. But it is a fact that the draft was sent upon the 21st of December by yourself out of money which was given you by Mr. Simpkins? A. I am not sure as to whether it was sent on the 21st or not.
- Q. Did you know of Pettibone's writing to Orchard at any time while he was absent during the fall of 1905? A. No sir.
- Q. Did you ever have a talk with Pettibone about Orchard or his whereabouts? A. No sir.
- Q. The subject was never mentioned between you as to what had become of him, where he was? A. I don't think so. I hadn't met Mr. Pettibone but very few times that fall.
- Q. Didn't know anything about the relationship of Pettibone and Orchard at any time after Orchard left there? A. No sir.
- Q. And at no time that you met Pettibone was the subject of Mr. Orchard ever mentioned? A. I don't think so.
- Q. How long had it been, Mr. Haywood, since Mr. Orchard had performed any work as a miner to your knowledge prior to the time of the death of Governor Stearnsberg? A. I haven't any knowledge as to Mr. Orchard.
- Q. Did you ever know of his performing any labor as a miner, any manual labor, after the Vindicator explosion in 1903?
A. I couldn't say as to that, Senator. I don't know anything about it.
- Q. Did he keep up his dues in the organization? A. I couldn't tell you as to that.
- 4160 Q. Then at the time you received this telegram, or rather, re-

ceived this news from Caldwell, you had no information as to whether or not he had been a member of the organization for the last year or two, had you? A. More than the fact that every member that was exiled from the Grapple Creek district was kept in good standing until they got into another local union.

Q. Did you regard and respect Graham as a member of the organization? A. I think so, yes sir.

Q. And there had been nothing which had transpired during any period of that time which would cause you to regard him other than as a member of the organization? A. No sir, not that I know of.

MR. BURAN: That is all, if your Honor please.

RE-DIRECT EXAMINATION

BY MR. BARRETT:

Q. Mr. Haywood, do you know Lyte Gregory was a witness down at Idaho Springs -- or Georgetown? A. I didn't know it at that time.

Q. Do you know it now? A. I have read it in the paper within the last two weeks.

Q. You mean read it as coming from where? A. Coming from the papers and coming from an attorney that was connected with the case.

Q. What attorney? A. Ralph Talbot.

Q. That he testified? A. No sir, that he expected to use him in the case.

Q. Well, do you know whether he did testify in that case?

- A. I know that he did not.
- Q. Did you cut people off, or the organization cut people off from relief because they were accused of some criminal matter, without trial, before trial? A. No sir.
- Q. Now in answer to the Senator you say you have heard Orchard speak of the Hercules? A. Yes sir, I heard him speak of the Hercules.
- Q. And had you heard him speak -- what had you heard him say about that matter? A. I heard him tell of his having an interest.
- Q. What else, if anything? A. I think that is all. I do remember about him telling of taking the first car up to the Hercules mine and about the trouble that he had in taking it up on a go-devil.
- Q. Did you ever hear him say anything else about anything that occurred in the Coeur d'Alenes, any difficulties up there about -- when he was there? A. That was during the Coeur d'Alene troubles, just referred to in a general way.
- Q. Well, do you recall what you heard him say? A. No sir, I cannot.
- Q. What did you hear him say in reference to his interest in the Hercules? A. Nothing more than he had a sixteenth interest in the Hercules mine at one time.
- Q. Did he say what had become of it? A. He said that he was -- as I understood him, that he had lost it at the time of the Coeur d'Alene troubles. Now I cannot recall anything definite in regard to that. I have heard a good many tales of woe since I have been secretary of the Federation.

- Q. And it is only as a misfortune that you heard him speak of it, is that what you mean? A. Yes sir, I wouldn't say as to the conversation -- general.
- Q. You were asked about whether you knew of Fred Miller's starting to Caldwell on the 3rd and you were asked in reference to a telegram which purports to have been sent on the 3rd, and in connection with another one from Jack Simpkins on the 4th, that he couldn't get a lawyer: Did you see anything in the paper in reference to whether Fred Miller did go on to Caldwell at that time, on the 3rd? A. No sir, I don't remember that I did.
- Q. Did you learn anywhere whether he in fact did go to Caldwell on the 3rd or whether he went back to Spokane? A. I don't remember of learning at that time anything about it.
- Q. Or have you since? A. Yes sir, I know since.
- Q. From whom? A. From Mr. Miller I think.
- Q. Have you ever seen Simpkins since? A. No sir.
- Q. Of your own knowledge you don't know what day Mr. Miller finally started to Caldwell? A. I do not.
- Q. How often does the executive board meet? A. It meets every six months for about eight or ten days.
- Q. Now when Miller came to see you in Denver did he say anything as to Hogan's desire to have the organization help him financially in his defense? A. I don't remember of any particular conversation in connection with that.
- Q. Well, who did he say desired to have it done?

MR. HOBBS: Now, we object --

- Q. What did he say about it?

MR. BORAN: That is better.

- Q. What reason did he make for going there? A. Well, he came from Mr. Simpkins, came at the instance of Mr. Simpkins.
- Q. What did he say as to Hagan? A. I don't remember as to what he said in regard to Hagan.
- Q. Did he go over his case with you? A. Yes sir, he had the transcript of the preliminary examination with him.
- Q. Do you know when it was that he was dismissed by Hagan?
- A. I do not.
- Q. And have you had anything to do with his case since? A. No.
- Q. How soon after this homicide before charges were made directly and indirectly that the officers and members of the Western Federation were involved in this matter? A. I think a very few days, two or three days.
- Q. You may state what the fact is as to whether any efforts you took in that direction after those charges were made were on your own account as well as on account of the Federation?
- A. Yes sir.
- Q. These charges and efforts to connect you, did they give you any concern? A. They did.
- Q. How was it from the first time you met Mr. Murphy -- or from the first time you consulted Mr. Murphy, which I believe you put on the 5th day of January, whether you consulted regularly on all your acts in reference to this matter? A. Yes sir, at all times.

MR. DANKOW: That is all.

RE-CROSS EXAMINATION

BY MR. BORAH:

Q. Just a question, Mr. Haywood. Did I understand you to say that you had learned from Mr. Miller since that he did go to Caldwell on the 3rd? A. No sir.

MR. DAWSON: He said he had learned about it.

MR. BORAH: About what?

MR. DAWSON: About what was done, whether he did or did not, as I understood.

Q. You have learned then that he did not? A. No sir. The question was not as to whether he went to Caldwell. I was asked whether he started for Caldwell.

Q. Did you learn that he started? A. Yes sir.

Q. Did you learn that he turned around? A. Yes sir.

Q. And went back? A. Yes sir.

Q. From Walla Walla? A. Yes sir.

Q. And that he went back on the evening of the 3rd?

A. Now I don't know what time he went back.

Q. Did you learn when he went back with reference to the time that Simpkins sent the telegram on the 4th? A. No sir.

Q. Did he explain to you why that telegram from Simpkins was sent?

A. He did not.

Q. When he was already on his way to Caldwell? A. No sir.

Q. In reference to this conversation about the Hercules mine with Orchard, there was nothing in the conversation which impressed it on your mind as different from any other tale of woe which you speak of? A. No, not particularly.

Q. If there had been anything said with reference to Steunenberg

- in the nature of a threat you would likely have remembered that, wouldn't you? A. I think I would.
- Q. It is not likely then that you heard it? A. No sir, not that I heard, a threat.
- Q. But this impression of the conversation in regard to that mine -- A. I am quite certain that we talked that matter over.
- Q. That he lost his mine? A. Yes sir.
- Q. His interest in the mine? A. Yes sir, but I would say that that made no great impression, as I heard a large number of miners talking about their mines that they had lost or ones that they could have discovered.
- Q. Most of them could have been rick sometime? A. In their mind.

MR. DAWSON: The same as fishermen that tell about the fish that get away, I suppose.

MR. BURAN: That is all.

QUESTIONS BY MR. DAWSON:

- Q. Just a word now about this matter on the 3rd. Do you know or have you learned whether when Jack Simpkins sent the telegram on the 3rd -- that was dated I believe about four o'clock, four o'clock and two minutes on the 4th, wasn't it? A. Some time after four P. M.
- Q. Do you know whether at that time he had learned by a telegram, telephone, or any other way, that Fred Miller had gone on to Caldwell? A. No sir.

MR. DAWSON: That is all. Now, your Honor, we have one

witness that we think won't take over fifteen minutes, we expect him here this afternoon. If he is not here in the morning we will close without him. It is a very short matter.

THE COURT: Do you expect him on the afternoon train?

MR. HUGHES: Yes, your Honor.

THE COURT: He won't be in time for this session that?

MR. DAWSON: A very short matter.

THE COURT: You will be ready with your rebuttal as soon as this witness is examined?

MR. DONAH: Yes.

THE COURT: I want you to be prepared for a day's session, gentlemen, tomorrow.

MR. DONAH: I would like to inquire what we have had today? I feel like I had had a two days' session.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded, and court adjourned until nine o'clock A. M., Saturday, July 13th, 1907.

ADJOURNMENT.

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Boise, Idaho, Saturday, July 13th, 1907.

9 o'clock A. M.

Parties convened pursuant to adjournment.

The clerk read the minutes of the session of Friday, July 12th, 1907, and the same were signed by the court.

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

MR. RICHARDSON: The defense rests.

MR. HAWLEY: We will call John C. Rice.

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

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q You have been sworn, I believe, Mr. Rice? A Yes sir.
- Q You testified, I believe, in your direct examination that you knew Harry Orchard? A Yes sir.
- Q Did you know him in the latter part of November, 1908?
- A Yes sir, as late as the 30th, -- somewhere along in there.
- Q State whether or not at that time he had a mustache? A He did not.

MR. HAWLEY: Take the witness.

MR. RICHARDSON: That is all.

MR. HAWLEY: We had understood, your Honor, that it would take a short time this forenoon before there would be a conclusion and I suppose that is the reason some of our witnesses are not here.

MR. DARROW: Yes, we expected to put another witness on, but concluded not to.

THE COURT: It was also stated that they might rest.

MR. RICHARDSON: We do not want to take any advantage of them, and we are perfectly willing that Mr. Hawley should

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have all the time. We said we had one other witness if he
got here.

THE COURT: I wish you would notify your witnesses
to be here.

MR. HAWLEY: I have notified all of them to be here
at ten o'clock and there will be no excuse. I will call
Dan Gainey.

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DAN GAINNEY, being called as a witness on behalf of the people, in rebuttal, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q Where do you reside, Mr. Gainney? A In Walla Walla, Washington.
- Q And what is your business at the present time? A Well, I can't say that I have any. I have property there in Walla Walla, rented.
- Q Were you at any time a resident of the Coeur d'Alene country in this State? A I was.
- Q What years? A Commencing with 1898 and continuing on until 1903.
- Q Was you a resident there in the years 1898 and '99?
- A I was.
- Q In what part of that country were you residing? A At Mullan.
- Q That is in Shoshone county? A That is in Shoshone county, yes sir.
- Q What was your business in 1898 and '99? A Well, in the latter part of 1898, beginning with November and continuing until about the 29th of April or the 1st of May, I worked in the timber a mile and a half or two miles above Mullan.

Q At what particular place -- is there any particular name for it? A A place called Sheehy's Siding.

Q Are you acquainted with Harry Orchard? A I am, or I was.

Q Did you know Harry Orchard at that time? A I did.

Q State whether or not you and Orchard were associated together at that time, or at any time? A We were; we lived in the same building, commencing some time in November and continued to live in the same building and worked together until -- I am not clear about that, but it is the last of February or first of March.

Q Commencing with what -- November of what year? A 1898.

Q And continued to what time? A 1899.

Q What was Orchard doing at that time?

MR. RICHARDSON: We object to that as not rebuttal.

MR. HAWLEY: I will withdraw the question.

Q Are you acquainted with Dominick Flynn? A Slightly.

Q You may state whether or not in 1899 Dominick Flynn was a resident of Hullan? A He was.

Q What was his business at that time? A Well, he had a little store there -- a stand or little store, and I am not clear whether he sold anything besides cigars, but it occurs to me he likely had candy and some other trinkets.

Q Was you there in that section of the country at the time of the Duncker Hill and Sullivan explosion? A I was.

Q Were you still living in this same place you have told about?

A Yes, but I was not living with Orchard at that time. Orchard

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had went away. I lived at Sheehy's Siding or above it.

Q I understand you to say Orchard had went away some time before? A He had went away the latter part of February or first of March, to the best of my recollection.

Q Were you present in the town of Mullan on or about May 4th, 1899? A I was.

Q Did you see Domenick Flynn on that day? A Well, I saw Domenick Flynn on either the 4th or 5th of May.

Q State whether or not on or about May 4th, 1899, you had a conversation with Domenick Flynn at his cigar store,-- at or near his cigar store in the town of Mullan, Shoshone county, State of Idaho, you and him alone being present, in substance and effect being as follows: You said, "Flynn, what has become of Harry Orchard, has he left the Coeur d'Alenes entirely?" and Flynn answered, "No, I have not seen Harry Orchard here in Mullan since he quit his job here in the woods here, but I saw him in Burke about a week before he went away from here; I had a talk with him and he said he was working in the Tiger and Peerman's mine; I was playing poker while I was talking to him, and then he said, why do you want to know, did he get into you?" And did you answer, "No, I wanted to know where he was and thought if any one would know you would." Did you have that conversation? A Yes, I had that conversation with him.

MR. HAWLEY: That is all at present. We will call

this witness on another branch of the case in its proper order.

CHOSE EXAMINATION

BY MR. RICHARDSON:

Q How did he come to tell you he was playing poker? A Who?

Q That is in the question there which you just answered?

A Flynn?

Q Yes. A Why, I asked him if he had seen him and he said, no, or I asked him if he had been around Sullivan lately, and he said, no, and then I said, "Then you haven't seen him since he left here," and he says, "Yes, I saw him shortly after he left here, three or four days, or a week, or such a matter," not specifying when it was, "In Burke." He said, "I was engaged in a game of poker," but I am not sure whether Orchard was in the game or not, and he had this conversation in which Orchard told him he was working in the Tiger and Peor-man mine.

Q You remember that from 1899 down to this present time?

A Yes sir.

Q And you communicated it to somebody after Flynn gave his testimony on the stand here the other day? A I wrote Mr. Hawley. I would not have recalled the man's name at all until I saw that man's name in the paper.

Q Then you sat down and wrote to Mr. Hawley after the time you read it in the paper, that Dominick Flynn had testified here that Orchard and he were playing poker together in his place on the day that the Banker Hill and Sullivan was blown

up -- A Yes.

Q And you told Mr. Hawley, I suppose, that you would be glad to come here as a witness and dispute Dominick Flynn's testimony?

A I did not say anything of that kind.

Q And then somebody came to Walla Walla to see you? A No sir.

Q They did not come and ask you to come? A No sir.

Q They sent for you? A No sir.

Q How did you happen to come here? A I came on a telegram that I have here in my pocket.

Q And then you came here to testify to this matter which you had written Mr. Hawley about? A I wrote to Mr. Hawley and told him that Dominick Flynn had told me this.

Q That is what you said a few moments ago, that after you saw Dominick Flynn's testimony in the paper you sat down and wrote to Mr. Hawley about it? A That is true.

Q And you told him you could dispute Mr. Flynn's testimony on the stand? A Yes sir, that is, what he told me.

Q And then you immediately got a telegram to come here and testify? A No sir, not immediately,-- it was some two or three weeks.

Q You are not in business in Walla Walla? A I have property there.

Q How long have you been out of business -- or why haven't you gone into some business? A Because I was dynamited down in Victor.

Q It was because you were dynamited down in Victor -- that

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was the reason you wanted to come here and testify?

A No sir.

Q You know the man who testified here Mr. Orchard? A Yes sir.

Q You have been holding some correspondence with Mr. Orchard for a long time, haven't you? A No, I believe I have written a letter or two, or maybe three or four.

Q So, while you knew about this case and knew about Orchard, you did not see any place to get in on the case to testify until after Dominick Flynn testified in the case? A No, I have not tried to get in on the case; that is wrong.

Q What property have you got in Walla Walla? A Well, I have some 400 acres of land, some six or seven miles north of Walla Walla.

Q What property have you in Walla Walla? A I have money in the bank. I am not speaking of the town, but of Walla Walla county.

Q The county is the same name as the city? A Yes sir.

Q You live there in the city? A I have been since spring.

MR. RICHARDSON: That is all.

MR. HAWLEY: Now, that is all for the present. I will desire to recall you.

THE WITNESS: Today again?

MR. HAWLEY: Yes sir, I will desire to recall you at some time on another branch of the case.

R. E. GRIMSHAW, a witness on behalf of the State, being called in rebuttal and first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q. What is your name, sir? A. -- R. E. Grimshaw.
- Q. Where do you reside, Mr. Grimshaw? A. Deadwood, South Dakota.
- Q. What is your business or occupation? A. I am county tax collector of Lawrence County.
- Q. How long have you occupied that position? A. About two years.
- Q. Have you at any time been connected with the -- do you know one John O'Neill? A. Yes sir.
- Q. How long have you known Mr. O'Neill? A. The first time I met O'Neill was in October, 1880.
- Q. Where?

MR. RICHARDSON: We object to this. This could in no possible way be rebuttal. Mr. John M. O'Neill gave no testimony as to where he was in 1880, was asked no question about that in any way, shape or form, and there was no new matter that could be rebutted in that way by testimony that was given by John M. O'Neill.

MR. HAWLEY: This is simply for the purpose of identification, your Honor, to connect this John M. O'Neill he refers to with the John M. O'Neill who testified here.

MR. RICHARDSON: That makes no difference, your Honor.

MR. HAWLEY: It makes all the difference in the world.

MR. RICHARDSON: We submit it is not rebuttal testimony.

MR. HAWLEY: We have the right always to identify preliminarily.

THE COURT: The objection to this will be overruled.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: What is the last question, Mr. Reporter?
(Question read as follows: "Where"?)

A. Deadwood.

Q. Deadwood, South Dakota? A. Yes sir.

Q. State whether or not this is the same John O'Neill who is now editor of the Miners' Magazine?

MR. RICHARDSON: We object to that as not rebuttal testimony.

MR. HAWLEY: The same purpose your Honor -- for identification.

THE COURT: Overruled.

MR. RICHARDSON: Note our exception.

A. Yes sir.

MR. HAWLEY: Please mark that record as Plaintiff's Exhibit.

(Paper referred to marked by the stenographer as State's Exhibit G-2 for identification).

MR. HAWLEY: We offer that in evidence.

MR. RICHARDSON: I desire to hand this to the court for its inspection, and make an objection.

(Paper handed court)

We object to the state's Exhibit G-2 for the reason that it is incompetent, immaterial and irrelevant, and improper; and neither rebuts nor tends to rebut any evidence

given upon the part of the defense. If your Honor please, there is a well known rule of impeachment. If it is desired to impeach a witness by a record of that kind, if your Honor please, the witness's attention must be called to it the same as it would be if you were going to impeach him in any other way.

THE COURT: Is that the rule?

MR. RICHARDSON: That is the rule.

MR. HAWLEY: We dispute that to be the rule, in toto, your Honor.

THE COURT: The Court don't understand that to be the rule. The court understands the rule to be that the law authorizes the witness to be interrogated upon it.

MR. RICHARDSON: A witness is put upon the stand; if it is desired to impeach that witness, certainly his attention must be called to the subject upon which he is desired to be impeached. Now, there has never been any statement in this case in regard to the matter that is now before the court. There has never been a particle of testimony about it in any way, shape or form. If this is anything at all, it is impeaching testimony, and as impeaching testimony, if your Honor please, it must come in some time in the case not in the shape of rebuttal testimony; if Mr. O'Hall had been called upon to deny the matter it might then have been used as rebuttal testimony, but I do not think it can be used in this way.

THE COURT: If you desire to present authority to the court upon this matter the court will give you an opportunity.

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MR. RICHARDSON: We desire an opportunity to do that, if your Honor please, because you can see Mr. O'Neill's attention was never called to that at all. We will see what we can do with that at two o'clock this afternoon.

MR. HAWLEY: Very well. We think the statute authorizes this introduction. The statute is as follows, section 6082 --

MR. RICHARDSON: Let me see it first before it is read.

(Book handed to Mr. Richardson.)

MR. RICHARDSON: I want to hand it to your Honor first.

MR. HAWLEY: We will say that the latter part or the conclusion of that statute, in the alternative --

MR. RICHARDSON: We have the California annotated code on that, and we can advise your Honor fully at two o'clock.

THE COURT: My recollection is that there are several California decisions upon this particular statute?

MR. RICHARDSON: Yes sir, we have the California code and we will look it up this noon and present it to your Honor at two o'clock.

THE COURT: It is the intention of the court to take a recess at half past eleven until half past one.

MR. RICHARDSON: Very well, we will present it at half past one.

MR. HAWLEY: We will withdraw the witness for the present.

WITNESS WITHDRAWN.

E. M. HEIGHO, a witness on behalf of the plaintiff,
being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HANLEY:

- Q. What is your name, sir? A. Edgar M. Heigho.
- Q. Where do you reside, Mr. Heigho? A. Weiser, Idaho.
- Q. What is your business or occupation? A. Vice president and
general manager of the Pacific and Idaho Northern railroad.
- Q. Did you occupy such position in November, 1905? A. I did.
- Q. And you have been in that position since? A. Continuously,
yes sir.
- Q. Have you the books of your company showing the date of the
arrival and departure of your trains on the P. & I. N. railroad
on November 28th and 29th, 1905? A. I have, yes sir.
- Q. Will you please produce those books. A. What date was it?
- Q. November 28th first. A. Yes sir, I have that here.
- Q. These pages are not numbered, are they? A. No sir. This is
the conductor's train register in which he registers the date
of arrival and departure.
- Q. This is part of the records of your office? A. Yes sir, this
is the official record.

MR. HANLEY: I will ask that this page headed "November
28th" be marked for identification.

(Said page marked by the stenographer State's exhibit
H-2 for identification).

- Q. Will you kindly turn to the record of November 29th.
- A. November 29th is right here, sir.
- Q. On the same page? A. On the same page, yes sir, on the same

page as the 28th.

MR. HAWLEY: Gentlemen, I will ask to introduce that portion of this page relating to the arrival of the trains at Council and Weiser on November 28th and 29th, 1905.

MR. RICHARDSON: That is, those two lines.

MR. HAWLEY: Yes sir.

Q. I believe I asked you whether these books are kept in due course of business by the railroad company? A. Yes sir, they are the official record.

MR. RICHARDSON: We object to it as immaterial, and as not rebuttal evidence. If your Honor please, there was no attempt upon the part of Mr. Elliott -- I suppose that is the object of this introduction?

MR. HAWLEY: That is the object, to rebut John Elliott.

MR. RICHARDSON: There was no attempt upon the part of John D. Elliott to state any particular time when the train departed or arrived at Weiser. His sole statement in regard to that was as near as he could remember he got on at Council somewhere along about noon and came on down to Weiser and then connected with the train that came from Baker City and came on over to Hays.

THE COURT: He also testified that he came on to Hays the same afternoon.

MR. RICHARDSON: Yes sir, he also testified to that.

THE COURT: What is the objection?

MR. RICHARDSON: The objection is that it is not rebuttal evidence to determine when the train starts and when it arrives at a certain place.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: Now, gentlemen, I would like to read this into the record and let Mr. Heighe take the book with him.

MR. RICHARDSON: You may do so. We would just as soon he would read it into the record, if your Honor please. Read it right in. Let the witness read it, if you want to make the record that way.

MR. HAWLEY: We will have a copy made or a photograph made of it.

MR. RICHARDSON: It saves trouble to read it.

THE COURT: It may be read in and a copy may be substituted, Mr. Hawley.

MR. HAWLEY: Please read the record of the starting of the train from Council and its arrival at Weiser on November 28th.

- Q. This doesn't give the starting of the train from Council, Mr. Hawley. This is the Weiser train register.
- Q. Of the arrival of the train at Weiser then ~~immediately~~ on November 28th.
- A. On November 28th, 1905.
- Q. 1905. A. Train B, conductor Fraser, engine 100, engineer Nichols, from the north, carrying no signals, arrived at Weiser at 6 P.M., with two passenger cars, three loaded freight cars and three empty freight cars.
- Q. You may read now the record -- or is that all? A. That is all on that train, yes sir.
- Q. Is there any other train -- you may state whether or not there was any other train upon that day? A. No other train south

bound on November 28th.

Q. South bound? A. No sir.

Q. You may read the record of the arrival of the train on November 29th? A. On November 29th, train 2, conductor Fraser, engine 100, engineman Nichols, from the north, carrying no signals, arrived at Weiser at 8:40 P. M., with two passenger cars, one loaded freight, no empties.

Q. Was there any other train that reached Weiser from Council on November 29th? A. There was, yes sir.

Q. Please state in regard to that train and when it reached Weiser. A. The second train on November 29th was what we term a work train which had been on construction work north of Council, on that extension, which was brought down in the afternoon of November 29th. Shall I read the record?

Q. Yes sir. A. November 29th, train extra, conductor Wylie, engine 101, engineman Jones, from the north, carrying white signals, arrived Weiser 8:45 P.M.

Q. 8:45? A. Yes sir, with three empty freight cars.

Q. Outside of these trains was there any other train from the north over the P. & I. N. railroad on the 29th? A. None whatever, no sir.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Your method of operating that road is to send a train up in the morning, a mixed freight and passenger, and bring it on back in the evening the same day? A. We have such a train.

- Q. And that is the only real genuine train that you had at that time, wasn't it, as a passenger train? A. I should think anything was a genuine train that had an engine and cars.
- Q. I should think so too, but you didn't run your train for passengers, or have any regular train other than the one that went up and back that day? A. We had no regular train other than the schedule train, no sir.
- Q. That is the schedule train that you mark No. 1 going up and No. 2 coming back? A. That is right.
- Q. And it leaves Weiser some time in the forenoon? A. Yes. I have the time card in effect at that time.
- Q. It don't make much difference about that. It gets up there about noon time, turns around and comes back and gets back along toward night? A. At that time, Mr. Richardson, we were running a mixed train, and while it was due to arrive in Weiser at three something, at that time in the afternoon, being a mixed train and being delayed at every station en route to do switching and to load and unload merchandise, it was hardly ever on time. It was generally from two to three hours late.
- Q. And the same thing was true on the main line of the Oregon Short Line, wasn't it? A. I wasn't running the Oregon Short Line and didn't know.
- Q. Don't know as a matter of fact? A. No sir, I don't know as a matter of fact.
- Q. You don't know as a matter of fact as to any particular day but you know as a matter of common knowledge that the trains going east were hardly ever on time, or the trains going west

are hardly ever on time? A. We have all noticed the trains are late, frequently.

Q. And they are more frequently late than on time? A. Not to my knowledge.

Q. Entirely possible for anybody coming down ~~in~~ on your road to catch the main line train at Weiser going east even if your train is several hours late, isn't it? A. If the east bound train was proportionately late, yes sir.

Q. But you can't tell us to what the condition was with respect to that train on any date? A. I could not testify as to the Oregon Short Line on any particular day.

Q. The schedule of your train was so arranged that if it was on time it would connect with the Oregon Short Line train?

A. No sir, it was so arranged that if it was on time it wouldn't connect.

Q. You wanted them to spend all the time that you could have them on your road, did you? A. Not necessarily.

Q. Was that because they would be more apt to connect if it was arranged that way? A. That was for local reasons, the small towns like for the passengers to lay over.

Q. You kept your passengers after you got them as long as you could keep them. Well, now, a train would go through Council, that arrived in Weiser about six o'clock, at what time?

A. The train on that date I think -- I have got the record here, can I testify from the record.

Q. All right, turn to it and tell us about what time that train went through Council on November 23th and 25th. A. Sir, I read it?

Q. Let me look at it first. Perhaps I won't want you to read it after I see it.

THE WITNESSES: Train 2 on the 29th left Council at 2:42.

Q. And how did it leave on the 29th? A. On the 29th train 2 left at 2:40 P. M., and a mixed train left at 5:45.

Q. No passenger would be riding on that extra? A. No.

Q. Do you carry a passenger coach -- A. No, we carry a caboose, we carry passengers on any train in service.

Q. When the train is on time at Council about what time would it pass through there? A. I will have to ask to be permitted to read from the record. I have no recollection of these 1908 occurrences.

Q. Of course, operating an extensive road like that we wouldn't expect you to know generally what time a train went through there, so you may look at your time table. About what time would the train go through Council if it should ever happen to be on time? A. What time would it go through Council?

Q. Yes. A. At that time it wouldn't go through Council. It started from Council.

Q. Well, what time would it start? A. That train would leave Council, if on time, at 12:25 noon.

Q. Now I would like to have you look back four or five days each way from November 29th and state whether or not it ever left on time. A. I think I could state that from general reports.

Q. Your idea would be that it did not, I suppose? A. Yes sir. I never heard of a mixed train leaving any station on time.

4187 Q. On your road or any other road? A. Any road. Now what do you want me to tell you, whether it left on time for four or five

days prior to that?

- Q. Yes, and four or five days after that. You don't need to read, but just give us the result. A. The nearest time to having left on time for six days prior to that would be forty minutes late. That is the nearest it left on time from Council.
- Q. Now look five or six days after. A. Five or six days after-- well, it came within fifteen minutes of leaving on time within the next five or six days.
- Q. Which end of your train do you run the cow catcher on?
- A. Are you asking for information?

MR. HAWLEY: We object to that.

MR. RICHARDSON: All right, we withdraw the question.

That is all.

MR. HAWLEY: That is all.

T. C. COLLOPY, 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. -- T. C. Collopy.
- Q. What is your business? A. Chief train dispatcher of the Oregon Short Line railroad.
- Q. How long have you occupied that position? A. A year ago the 10th of December.
- Q. Have you in your care and under your custody the record of the arrival and departure of trains on the Oregon Short Line railroad? A. There are the records (indicating).
- Q. Have you the record of the arrival and departure in 1905?
- A. Yes sir.
- Q. Please produce that record. A. Of what date?
- Q. November 28th and 29th. I will simply have you point out the record and then I will offer it. A. There is the one of the 28th and the following sheet is the 29th.
- Q. Which is the record of the 28th? A. Right here, this one here, the whole sheet, for the fourth district.
- Q. What is the fourth district? A. This line between Glens Ferry and Huntington, including the Boise branch and the Malheur Valley line.

MR. HAWLEY: I will ask that this record of November 28th be marked for identification as State's Exhibit I-2.

(Paper referred to marked as State's Exhibit I-3 for identification.)

Q. Please take this other sheet, Mr. Collopy, ~~Sticks~~ and state what this is. A. This is the record of the fourth district of November 20th, 1905.

R. HAWLEY: I will ask that this be marked for identification as State's Exhibit J-2.

MR. DARROW: You can use a copy of that, if you wish to.

MR. HAWLEY: Yes, we will want to use a copy of both because these are official records.

MR. RICHARDSON: You may read them right into the record, if you want to, if they are received. Of course we want to object to them.

MR. HAWLEY: Oh, of course we expect that.

(Said paper marked by the stenographer State's Exhibit J-2 for identification.)

MR. HAWLEY: We now offer State's Exhibits I-2 and J-2, your Honor.

MR. RICHARDSON: We want to object to the introduction of these exhibits, if your Honor please, being State's Exhibit I-2 and State's Exhibit J-2, for the reason that they are not rebuttal testimony, and they are immaterial, irrelevant and incompetent. The essential thing in the testimony that we want to call your Honor's attention to is the fact of the conversation; the non-essential is as to the time when the train ran, and rebuttal testimony cannot be introduced upon matters which are simply explanatory of the main event if they do not pretend to rebut the main occurrence that the witness testified to.

MR. HAWLEY: In view of that objection we desire to ask another question or two.

- Q. Are these the originals that are kept in the office?
 A. Yes sir, the original records of the train.
 Q. And kept in the due course of business of that railroad company? A. Yes sir.

MR. RICHARDSON: We don't make any objection on that ground. I didn't object on that ground. I say that you cannot rebut the testimony of the defense upon a matter which is immaterial. The time when a train ran was immaterial.

THE COURT: The court overrules that objection.

MR. RICHARDSON: Note our exception.

- Q. How was the afternoon train, or was there an afternoon train between Walsar and Hampa in November, 1905, running right along every day? A. Yes sir.
 Q. And how was that afternoon train known, what was its number?
 A. No. 6 in the afternoon.
 Q. Was there any other afternoon train except No. 6 running from the west to the east? A. There was a mixed train, No. 25.
 Q. And what was that mixed train known as, what was the common designation of the mixed train? A. Why, it is a local train, way freight.
 Q. Between what points? A. Between Huntington and Boine.
 Q. That is the Cannon Ball? A. Yes, commonly called that.
 Q. Will you please look at the record of November 28th, 1905, in regard to the arrival and departure of train No. 6 at Walsar on that day and read that fully so the jury can hear it and so that it can be put upon the record.

- A. Train No. 6, on November 28th, 1905, arrived at Weiser at 2:50 and left at 3:54 P. M.
- Q. You may state whether on that day any other train in the afternoon left the town of Weiser or within the town of Weiser proceeding easterly toward Hampa? A. No other passenger that afternoon. There were freight trains.
- Q. No other passenger? A. No other passenger.
- Q. Now you may look at the record J-2, the record of the 28th of November, and state when No. 6 reached Weiser and when it departed? A. Train No. 6 of November 28th, 1905, arrived at Weiser at 2:50 and departed at 3:57 P. M.
- Q. Was there any other passenger train upon that day? A. There were other passenger trains that day.
- Q. I mean in the afternoon going from the west to the east? A. No, there was no other passenger train in the afternoon of that day going east.
- Q. What other passenger train was there running from the west to the east? A. Train No. 2 and train No. 4, passenger trains.
- Q. But they were not afternoon trains, either one of them? A. No sir.

MR. HAWLEY: You may take the witness. Gentlemen, do you want a copy of this, a certified copy?

MR. RICHARDSON: I don't see why it can't be read into the record and not have any fuss about it.

MR. HAWLEY: Very well.

CROSS EXAMINATION

BY MR. RICHARDSON:

- Q. Mr. Collopy, of course all you know about this is what appears from the sheet -- you don't pretend to be testifying from any recollection in regard to it? A. No sir.
- Q. Your office is at Pocatello, Idaho? A. At Nampa, Idaho.
- Q. And you are chief train dispatcher from that point?
- A. Yes sir, for this district.
- Q. Now this sheet purports to represent all of the trains going in every direction on your road or within your district on that day? A. Yes sir.
- Q. So far as it applies to the fourth district. And the trains going east you read up on this? A. The trains are marked "Eastward" there at the head.
- Q. You read from the bottom up? A. Yes sir.
- Q. Now let us take Weiser: You had on that day a train that left Weiser at 3:30 -- that is A. M., I suppose? A. In the morning.
- Q. Then you had one that left there at 10:55? A. Yes sir.
- MR. HAWLEY: Is that A. M.
- THE WITNESS: Yes sir.
- Q. That is A. M., I presume, is it? A. Yes sir, so marked. They are marked right beneath the figures.
- Q. Oh, yes, that is right. Then that next train was the one that you speak of, that left at 2:57 P. M.? A. Yes sir.
- Q. And another one that left at 9:25 P. M.? A. Yes sir, freight train.
- Q. And another one that left at 2:30 P. M.? A. Freight train.
- Q. And another one that left at 8:40 P. M.? A. Freight train.

- Q. That takes all of the trains that there were upon that day. Do your freight trains carry passengers? A. No sir.
- Q. Now on November 28th from the same place you have a train that left at 3:10 A. M., and one at 10:50 A. M., and one at 2:56 P. M., and one at 9:30 P. M., and one at 6:30 P. M., and one at 4:50 P. M., and one at 8:10 P. M.?
- A. That 9:30 train you mention there, was that in the morning, A. M.?
- Q. Yes. A. Yes sir. Those are freight trains.
- Q. Now have you examined your record to determine a few days either way from November 28th or 29th? A. No sir. I have the record of the 27th. That is the day before.
- Q. Let us see the one of the 27th and see how it looks with respect to trains. This would register a train, of course, if it was late, and register it according to the actual time it left there? A. Actual time.
- Q. I suppose you didn't bring any more of these because you were not asked to bring any more? A. No sir.
- Q. That is November 27th, is it? A. Yes sir.
- Q. That is not meant for March? A. No, that is November 27th.
- Q. 1905, and you had a train that left at 3:15 A. M., one at 10:50 A. M., one at 2:56 P. M., one at 9:40 A. M., one at 2:10 A. M., one at 9:30 A. M., and one at 7:35 P. M.
- A. I believe that is it. I haven't examined the abstract.
- Q. Well, I guess I read it correctly, and these are all the dates that you have examined along about that time? A. Yes sir.
- Q. It was no uncommon thing on your road to have a passenger train late going east or west, was it? A. No.

MR. RICHARDSON: That is all.

MR. HAWLEY: That is all. Gentlemen, we will have certified copies or a photograph of these made if you desire.

MR. RICHARDSON: No, not at all.

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J. G. STEVENSON, 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. G. Stevenson.
Q. Where do you reside, Mr. Stevenson? A. Salt Lake.
Q. What is your business or occupation? A. Hotel clerk.
Q. How long have you been engaged in that business? A. About ten years.
Q. In what particular hotel in Salt Lake City? A. Cullen.
Q. Been engaged all of that time in that hotel? A. Yes sir.
Q. Are you acquainted with Harry Orchard? A. Why, I know him when he came there, not until.

THE COURT: Leader.

- A. When he came there in 1905, not until.
Q. 1905, you mean? A. Yes sir, 1905.
Q. You knew him then, did you? A. Yes sir, just while he was stopping there.
Q. How long have you been in Boise City on this trip?

MR. RICHARDSON: We object to this as incompetent, irrelevant and immaterial, and not rebuttal testimony. There is no dispute upon Mr. Orchard's being in Salt Lake. As I understand, he testified to his being down there in Salt Lake. He didn't say anything about stopping at this man's hotel. If it is to confirm Mr. Orchard upon it, it is not rebuttal testimony. If it is to dispute Mr. Orchard upon it, it is not competent.

MR. HAWLEY: I think your Honor can readily see that this is merely preliminary, to lay the foundation for something that --

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: What is the question?

(Question read as follows: "How long have you been in Boise City on this trip?")

THE WITNESS: I came -- I got in here the morning of the 12th.

- Q. Have you seen Harry Orchard since you came here? A. Yes sir, yesterday.
- Q. Where? A. At the penitentiary.
- Q. You may state whether or not the Harry Orchard you saw at the penitentiary was the same man that you saw at your hotel in 1905? A. Yes sir.

MR. RICHARDSON: We object to it as not rebuttal testimony.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

- Q. What time was it in 1905 that Harry Orchard was at the Cullen hotel? A. In November.
- Q. Have you the register of that hotel? A. No sir, we have a transfer sheet in all.
- Q. What has become of the register, if you know? A. I don't know. The house has been renovated since then.
- Q. State whether or not you have tried to ascertain the whereabouts of the register of the hotel for the year 1905, month of

November? A. Yes sir, we looked around for them but couldn't find them.

Q. You say you have the transfer sheet? A. Yes sir.

Q. Will you state what particular book or document this transfer sheet is or these transfer sheets are? A. It is our hotel ledger where we keep a record of those that stop at the hotel.

Q. You may state how you kept your transfer sheets there -- these transfer sheets were kept how? A. When a man registers on the register we copy it onto these ledger sheets.

Q. State what kind of a ledger you kept at that time so far as the leaves are concerned, detachable or undetachable? A. We have what we call the loose leaf ledger.

Q. That is, detached when they are full and taken out?

A. And taken out.

Q. State whether or not these leaves that I hand you are part of that particular book? A. Yes sir, these are.

Q. Is there any part of that referring to the latter part of November? A. Yes sir, the 28th of November.

Q. Where are the rest of these sheets if you know --

A. I don't.

Q. -- pertaining to November. State whether or not you made any particular search for the rest of the sheets pertaining to the month of November? A. Yes sir, and this is all that could be found.

Q. This is the only one that could be found? A. The only one, yes sir.

Q. You don't know what become of them then? A. No sir, I do not.

Q. This sheet is from a book kept in the regular course of your

business? A. Yes sir.

Q. And these transfer sheets were kept in the regular course of the hotel business? A. Yes sir.

Q. And this is the original, is it? A. This is the original, yes sir.

MR. HAWLEY: We desire, if your Honor please, to have that portion of this record, being the third subdivision from the bottom, with reference to Harry Orchard, marked as the State's Exhibit K-2.

(Said paper marked State's Exhibit K-2 for identification).

MR. HAWLEY: We will offer it in evidence.

MR. RICHARDSON: We object to the offer in evidence of State's Exhibit K-2 for the reason that it is not rebuttal evidence, and neither proves nor tends to prove any issue connected with this case, and besides it is not the best evidence.

THE COURT: Is this witness relying upon this record alone?

MR. HAWLEY: No sir, he is relying upon his recollection besides. It is to refresh his recollection.

THE COURT: Does your evidence show that, does the evidence so far show that?

Q. You have a recollection, you recollect the time Mr. Orchard was there independently of the record, do you? A. Yes sir.

Q. And that it was in November, 1905? A. Yes sir.

THE COURT: Whose handwriting is this sheet in?

THE WITNESS: That is mine.

Q. Kept in the regular course of business by you? A. Yes sir.

Q. As a part of the regular books of the hotel? A. Yes sir.

THE COURT: The court will admit it.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: This record, gentlemen, this part introduced in evidence is under the head of room 32, Harry Orchard, 11/25, then marked "R" -- I will ask the witness what this means.

Q. You may state what this means, after the word 32 and Harry Orchard, the word "R" is put underneath there, what does that mean? A. He registered with other C.S.L. men and dittoed.

Q. You mean may state what 11/25 means? A. That means that he arrived there the 25th of November for a room.

Q. And the word "R" or the letter "R" there means room?

A. Room.

Q. And I notice on the last line "75" and "75" repeated.

What does that mean? A. That is a 75-cent charge and 75 cents paid.

Q. You may state, Mr. Stevenson, how long Mr. Orchard stayed there at your hotel? A. I believe about three weeks.

Q. What was his habit and custom so far as paying for his room was concerned while he stayed there? A. He paid every night in advance.

Q. And state whether or not he continued to have this same room.

A. No, I don't believe he did.

Q. He changed rooms, did he? A. Yes sir.

Q. You may state where he was on the 28th and 29th of November,

1908? A. I believe at the hotel.

Q. In Salt Lake City? A. Yes sir.

MR. HAWLEY: Take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. You couldn't find any record of Mr. Orchard in the hotel at all except this one sheet? A. No sir.

Q. No register? A. No sir.

Q. No transfer sheet? A. No sir.

Q. And nothing else but this one sheet of paper? A. That is all.

Q. Where did you find that? A. Why, it had been left with some of the old sheets.

Q. Nothing in November preceding this or in December succeeding it? A. No sir.

Q. It appears from this that room 32 was assigned to Harry Orchard with the Oregon Short Line on the 25th day of November? A. Yes sir.

Q. And that he departed on the 25th day of November also, doesn't it? A. Yes sir, after room that means.

Q. After what? A. After lodging, after room.

Q. After using the room? A. Yes sir.

Q. He arrived on the 25th and the room was assigned to him and he departed on the 25th after using the room that was assigned to him? A. Yes sir.

Q. That would indicate that he probably came there some time in the night? A. Yes sir.

Q. That would be some time after twelve o'clock and prior to

six o'clock on the morning of the 25th? A. Well, it would mean most any time during that day.

Q. And it would mean that he used the room and left on the same day? A. Yes sir.

Q. And that is all of the record that you have with regard to it?

A. That is all.

Q. Now you say that, from independent recollection, he stayed there three weeks or more? A. About three weeks.

Q. Was it more or less than three weeks? A. I think it was about that.

Q. So that he was there until, say, the middle of December?

A. About.

Q. In your judgment was he? A. Yes sir.

Q. And there continuously? A. I believe he was.

Q. And yet you haven't got anything to show in writing for it except something showing that he came there and went away the same day? A. Yes sir.

Q. And this is all in your handwriting? A. That is my hand, you sir.

MR. RICHARDSON: That is all.

MR. HANLEY: The word "departed" does that mean he left town or simply paid for the room?

A. No, just simply paid the room.

MR. HANLEY: That is all.

MR. HAWLEY: Please mark this State's Exhibit L-2 and this paper State's Exhibit M-2.

(Said papers marked by the stenographer respectively State's Exhibit L-2 and State's Exhibit M-2 for identification.)

MR. HAWLEY: Gentlemen, we will offer these papers marked for identification. The only portion we care about is the upper part.

MR. RICHARDSON: We object to these, if your Honor please, state's Exhibits L-2 and M-2, for the reason that they are not rebuttal evidence.

MR. HAWLEY: I will state, if your Honor please, that we don't claim that the entire record would be rebuttal, were it not for that portion which is included in the finding of the court or the order of the court. We are simply introducing that portion of it, and we are desiring to introduce that portion of it. Perhaps it is necessary, in order to make a complete record, to introduce it all. That is rebuttal, as your Honor will see, in that it absolutely shows that his testimony in regard to the matter is incorrect. I don't know that it would be proper to state what he did swear to.

MR. RICHARDSON: We object to it as not rebuttal testimony, for the reason that the witness on the stand did not deny the substance and effect of it. If any of it goes in we want it all to go in.

MR. HAWLEY: We are perfectly willing to have it all admitted, but he stated expressly both upon direct examination -- or upon his cross examination, and if I recollect right, upon his re-direct examination --

THE COURT: Of course the rule is that a witness can only be impeached upon a material matter, and not upon a matter that is immaterial. The question in the mind of the court is whether this is such a material matter that he can be impeached in regard to it.

MR. HAWLEY: I urge that in any matter affecting the defendant (witness) in connection with the charges, where he had been questioned with reference to them, it would be proper, and it would be material, and even if not material for any other purpose it would be material to show whether his recollection or his memory could be depended upon.

THE COURT: The court will hear you, gentlemen, upon this objection, and will hear you in the absence of the jury.

MR. HAWLEY: Very well, your Honor. We will keep this until later.

THE COURT: The court will withhold action upon this until you argue it, and further, the court will hear from Mr. Hawley.

MR. HAWLEY: When does your Honor desire to hear us upon it, now or later?

THE COURT: Later, in the absence of the jury.

J. H. MOSER, 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, sir? A. -- James H. Moser.
- Q. Where do you reside? A. Denver, Colorado.
- Q. How long have you been a resident of Denver? A. Over twenty-one years.
- Q. Were you residing there in 1904, in the summer of 1904?
- A. Yes sir.
- Q. What was your business at that time? A. Keeping a rooming house.
- Q. Do you know Harry Orchard? A. I do.
- Q. Were you acquainted with him in 1904? A. Yes sir.
- Q. Did he stop at any time in your hotel? A. Yes sir.

MR. DARROW: What is the name of his hotel?

- Q. Please state. A. The Kettle Block.
- Q. Have you the register of your hotel or rooming house?
- A. We have had, but my wife died a little over a year ago and another lady assumed control, having charge, and has mislaid it or destroyed it and I cannot find it.
- Q. Do you remember when it was that Orchard came to your hotel to stay in 1904?

MR. RICHARDSON: We object to this as not rebuttal evidence.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

MR. HAWLEY: Squarely rebuttal, your Honor, I think. These are preliminary matters.

MR. DARROW: Suppose you tell us what it is rebuttal of.

MR. HAWLEY: If you desire me to make the statement, gentlemen, I will do so but I don't want to make a statement that might prejudice.

MR. DARROW: I mean tell us privately.

(Mr. Hawley consults with attorneys for defendant).

MR. HAWLEY: What was the question, please?

(Question read).

- A. It was from about the 20th of July until about the first of August.
- Q. That he stopped there? A. Yes sir.
- Q. Of course you are not professing to give the exact date?
- A. The exact date, I wouldn't do that.
- Q. Did he stop there continuously during this time that he did stay, this week or two weeks? A. So far as I know he stopped there continuously.
- Q. What name did he go by at that time? A. He went under the name of Dempsey.
- Q. Do you remember the first name, the given name that he went by? A. I don't believe that I can give it.
- Q. You knew him as Dempsey? A. Dempsey.
- Q. How long have you been here in Boise? A. About two weeks.
- Q. Since you have been here have you seen Harry Orchard?
- A. Yes sir.
- Q. When and where? A. On a week ago last Monday I visited the

penitentiary and saw him.

Q. For the purpose of -- A. Of identifying him.

Q. -- of identifying him. What do you say with reference to Orchard and the identify of this man Damsay? A. It is the identical same one.

MR. HARKLEY: Take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. You haven't any record whatsoever of any kind or character of his stopping there at this time? A. Not at this time.

Q. When was your attention first called to the time that he stopped there? A. My wife had charge of the books --

Q. No, I asked you when your attention was first called, in connection with this trial, as to that? A. Well, it has been probably three or four weeks.

Q. After reading his testimony? A. No, nothing to bear upon that.

Q. Did somebody come to call on you about it? A. Yes sir.

Q. Who was it? A. I can't give the name.

Q. A Pinkerton detective? A. I don't know that. I never asked him.

Q. Never asked him? A. No.

Q. Somebody came to your place and asked you if Orchard was stopping there at a certain time? A. Yes sir.

Q. Where is the Kettle rooming house? A. It is located on 8th and Broadway.

Q. And you are very confident that this man stopped there two weeks

A. In that neighborhood

Q. In the summer of 1904? A. Yes sir.

Q. Well, would you put it two weeks or three weeks?

A. Well, I can't recollect as to the length of time, in all probability ^{about} ten days or two weeks.

Q. What did you say in your direct examination as to the length of time, two or three weeks? A. I said from the 20th to the first of August -- 20th of July to the first of August.

Q. You are satisfied that he stopped there at least ten days at that time? A. Yes sir.

Q. And yet you have no register with respect to it? A. Not at this time.

Q. And didn't know that you were going to be a witness until this man came to see you about it? A. Yes sir, he showed me the picture.

Q. Had you been reading of this trial? A. I had been reading some.

Q. At the time that this man came? A. I don't say but what I had, yes.

Q. And he came to you and told you what he wanted to prove and asked you if you remembered it and that was the first you thought about it? A. He asked me whether I knew the man, and I *thought he was* from the picture.--

Q. How many people had you rooming in your rooming house?

A. Well, there are sixteen rooms.

Q. And it is a transient rooming house, isn't it? A. Yes sir.

Q. People coming and going all of the time? A. Yes sir.

Q. What other person was there besides Mr. Orchard between the 20th of July and the first of August? A. Well, I might name quite a number. I could name Doctor Kent.

- Q. Was he a transient? A. He was permanent.
- Q. Name some of the transient ones? A. Well, Mrs. Ducl.
- Q. How long did she stay there? A. Well, perhaps a month or more.
- Q. You called them a transient when they stayed there a month?
- A. Yes.
- Q. When did Mrs. Ducl come there? A. I can't remember the exact time.
- Q. When did she go away? A. Well, I think I haven't any recollection to that.
- Q. Would it aid you any if somebody would show you her photograph? A. Why, no, not necessarily.
- Q. But it did aid you in Orchard's case, didn't it?
- A. Yes sir.
- Q. They told you that they wanted to show that Orchard was not some place else between the 20th and the 30th days of July?
- A. I have other circumstances to show that he was there.
- Q. What has become of Mrs. Ducl? A. She has moved back since my wife died. She has charge of the rooms now.
- Q. She is the one who runs the rooming house? A. Yes sir.
- Q. Now give us the name of any other transient. A. That roomed about what time?
- Q. That time? A. I don't know as I can.
- Q. Don't know as you can. And you can't give us Mrs. Ducl's name but the fact that she has since become the mistress of the rooming house? A. I don't know as it is necessary for that.
- Q. I don't know as it is either, but I asked you if that is not the fact, you couldn't name her if she was just an ordinary transient and had been there ten days and gone away and you

- Q. Hadn't seen her since, could you? A. I might have.
- Q. Yes, you might have. Will you swear that you could?
- A. I don't say whether I could or not.
- Q. Well, now, can you give us the name of any other transient who came to your place and stayed there for ten days at any time and then went away, for a period covering the year 1904?
- A. Well, I know of a great many but I can't name them at this time.
- Q. No, I thought not. You are sure that Mrs. Ducl was there during the time that Mr. Orchard was there? A. Yes sir.
- Q. In 1904? A. Yes sir.
- Q. You have no record, however, of that? A. I haven't at this time, no.
- Q. Was you acquainted with Mrs. Ducl after she went away, did you keep up your acquaintance with her? A. No sir.
- Q. But she came back shortly after your wife died and took charge of the rooming house? A. Yes, she was there before.
- Q. And you are still staying there? A. Yes sir.
- Q. She was there before your wife died? A. Yes sir, she was the nurse during the --
- Q. Is the nurse. Then Mrs. Ducl came to your place as a transient, stayed there a couple of weeks or perhaps a month, and went away, and shortly returned there and has been there ever since? A. Yes.
- Q. And that is the reason you are able to name her as the transient? A. That is all.
- Q. Your wife died you say about a year ago? A. Yes sir.
- Q. And Mrs. Ducl lived with your wife for a long time before she

died? A. Yes, she was the nurse.

Q. How long did she live with her? A. Well, probably a month or more.

Q. Did you know Mrs. Ducl before she came to room transiently at that time in July of 1904? A. No sir.

Q. She was a stranger to you at that time? A. Yes sir.

Q. How long was she gone from your place after that transient rooming before she came back there permanently?

A. I couldn't say.

Q. A month? A. Yes, more than that.

Q. Two months? A. Perhaps more than that.

Q. Well, perhaps three months? A. Yes.

Q. Would that be your best idea about it, that it would be about three months.

Q. So that she was a transient roomer in July, and after being gone three months she has been a permanent roomer there ever since? A. Yes sir.

Q. And she is the only one you can remember outside of this man Harry Orchard? A. That I can name.

Q. Did you get any compensation for coming up here from this man?

A. Not a bit.

Q. Came without any compensation at all? A. Nothing more than my jury fees.

Q. Your jury fees? A. Yes sir.

Q. What do you mean by "jury fees"? A. Witness fees, excuse me; witness fees.

Q. Did he arrange for your witness fees? A. Yes sir.

Q. How much did he arrange to pay you for your witness fees?

A. \$2.00 a day.

Q. \$2.00 a day and all your expenses while you are here? A. Yes.

Q. And 25 cents a mile from Denver up here? A. No sir, I don't get it.

Q. How much money do you get in all?

MR. RAWLEY: Speak louder.

THE WITNESS: I don't get it.

Q. How much money did you get in all for coming up here?

A. I haven't got a cent except my expenses.

Q. Well, I asked you how much money you got? A. I drew \$75 with my ticket paid out of it.

Q. And that is all you have drawn so far? A. Yes sir, well, except the \$90 which I hold in my pocket for the party that is due them.

Q. What do you mean by that? A. As the mileage.

Q. You hold \$90 in your pocket as mileage that is due who?

A. The party who subpoenaed me or had me come here.

Q. Well, that is \$90 for your own use then? A. No sir.

Q. Who was the party who subpoenaed you or had you come here?

A. The detective, Pinkertons.

Q. A Pinkerton detective? A. Yes sir; it was from the office, I don't know who he was.

Q. Didn't you tell me that you didn't know who the man was that talked with you about it or subpoenaed you? A. No sir, I don't.

Q. You don't know? A. No sir.

Q. Didn't I ask you if he was a Pinkerton detective and you said no? A. I don't know that.

Q. You now say that it was a Pinkerton detective? A. I don't

say that he was, I don't know that he was.

Q. Who is the Pinkerton detective? A. I was phoned to report at the office.

Q. The Pinkerton detective office? A. Yes sir.

Q. And you went to the Pinkerton detective office and \$75 was given you for expense money? A. No sir, that mileage or the railroad fare was to be taken out.

Q. Well, they gave you \$75 less railroad fare? A. Yes sir.

Q. You were allowed to go and buy the ticket, I presume?

A. Yes sir.

Q. Then you got \$75? A. Yes.

Q. Then you got \$90 besides? A. Yes sir.

Q. Well, why didn't you tell me that in the first instance?

A. I have repeated it.

Q. After this Pinkerton detective talked with you about -- is it was a Pinkerton detective -- and showed you the photograph of Orchard, did you and Mrs. Duell talk over the proposition of whether Orchard was there at that time or not? A. No sir.

Q. You knew right instantly that that was the man who was there and you knew the exact time that he was there? A. I thought it was from the picture.

Q. Although you hadn't a book or a scrap of paper or a writing of any kind to fix the date? A. No sir, not at this time.

MR. RICHARDSON: That is all.

MR. HAMILLY: You speak about having received \$90 as mileage; that is the mileage from the state line to Boise, is it not?

A. Yes sir.

MR. HAWLEY: And you are holding that to reimburse the man that made the advancement of the money to come up here on, are you? A. Yes sir.

MR. HAWLEY: That is all.

W. J. BAILEY, a witness on behalf of the People, being first duly sworn, on oath testified as follows.

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q. Your name is W. J. Bailey? A. Yes sir.
- Q. Where do you reside, Mr. Bailey? A. In Wallace, Idaho.
- Q. What official position, if any, do you hold? A. I am sheriff there at the present time.
- Q. Sheriff of Shoshone county, Idaho? A. Yes sir.
- Q. Where was you living in the summer of 1904? A. In the summer of 1904 I was living at Mace, Idaho.
- Q. And where is Mace situate with reference to Wallace?
- A. It is about six miles up the canon.
- Q. Up the canon and about how far from the town of Burke?
- A. About three-quarters of a mile.
- Q. Really connected with Burke? A. Yes, pretty near all one town.
- Q. What was your business at that time? A. I was working at the blacksmith work at that time.
- Q. Was you present at the Republican county nominating convention in 1904? A. I was.

Q. Where was that convention held?

MR. RICHARDSON: We object to that as being entirely immaterial and irrelevant and as not being rebuttal testimony.

MR. HANLEY: We insist, your Honor, that it is squarely in rebuttal of the testimony of Dr. McGee, as square as rebutting testimony can be made.

MR. RICHARDSON: I couldn't understand how it was connected with Dr. McGee, but I suppose it was on account of the testimony of Dr. McGee that he remembered a certain event which occurred because it was in connection with a political campaign, and that certain event occurred somewhere near the time that a certain event occurred in that political campaign. Now I submit, if your Honor please, that you cannot impeach a witness nor can you introduce rebuttal testimony upon a matter of that character. It is purely collateral in character. I believe your Honor has already announced the rule with respect to that.

THE COURT: The court thinks it can see where this is material.

MR. RICHARDSON: We object to it.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: We take an exception.

MR. HANLEY: What is the question, Mr. Stenographer?

(Question read).

A. It was held at Wallace, Idaho, in Masonic Temple, or at the opera house -- in the same building.

Q. On what date? A. The 21st of September, 1904.

Q. State whether or not you was a delegate to that convention?

A. I was.

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent and as not rebuttal testimony.

MR. HANLEY: It is rebuttal. We are not confined in rebuttal -- these preliminaries are not excluded in rebuttal any more than they are in any other examination.

THE COURT: The court will permit it as fixing the date, showing the knowledge of the date on which the convention was held.

MR. RICHARDSON: Note our exception.

Q. Do you know who was chairman of the Republican county convention or of the Republican county committee prior to that convention? A. Yes sir, I do.

Q. Who was it? A. Charles Beck.

Q. Do you know who was chairman of the Republican county committee after that convention? A. Yes sir.

Q. Who was it? A. Frank Johnson.

Q. How long afterwards did he become the chairman? A. Well, he was nominated -- or elected chairman at that meeting.

Q. Who was the chairman of that convention? A. You mean the temporary chairman at the convention?

Q. Both temporary and permanent. A. Well, Beck was the chairman.

MR. RICHARDSON: We object to ~~ask~~ this, if your Honor please, as not rebuttal testimony. He never testified to the chairman of any convention.

THE COURT: I do not see the materiality of this, Mr. Hanley.

MR. HANLEY: We will bring that up in another way after-

wards.

Q. Did you live there at Gen right through the summer and fall of 1904? A. I lived at Masso, yes sir.

Q. Were you acquainted at that time with Harry Orchard, in 1904?

A. No sir.

MR. HAWLEY: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. Politicians were on there in the latter part of July and fore part of August for the convention, weren't they?

A. I guess they were.

Q. They stay on pretty nearly all the year round up there, too, don't they? A. Sometimes.

Q. That was a vigorous campaign? A. Oh, I don't know -- not necessarily more than any other.

Q. Doctor McGee was active in politics there that year, wasn't he?

A. He was for the Populist party I guess.

Q. Well, I say he was active in politics there at that time?

A. He generally is, yes.

Q. And Johnson was a candidate for the chairmanship of the county central committee, wasn't he? A. No sir.

Q. Wasn't he working at that time in connection with the Republican county politics? A. No sir, I hadn't heard his name mentioned prior to that.

Q. Prior to convention time? A. Prior to the convention time.

Q. You didn't live at Wallace at that time? A. I had been there quite frequently.

Q. You were up at Gen attending to your blacksmithing most of the time, weren't you, or up at Macoe? A. I was a little interested in politics at that time.

Q. Macoe and Gen and Burke are practically the same, aren't they?

A. They are pretty close.

Q. You went down to Wallace pretty frequently? A. Yes sir.

Q. But you didn't have much to do with Dr. McGee because he wasn't of your brand of politics? A. I was in his hospital for a couple of weeks.

Q. You were in his hospital? A. A short time previous to that.

Q. You do know then, Mr. Bailey, that he was having considerable to do with politics that fall? A. Well, I don't know that he was that fall so very much.

Q. And Johnson was having considerable to do with politics that fall? A. After the convention.

Q. Wasn't Johnson a prominent man before the convention?

A. He generally was a delegate to the Republican conventions, yes.

Q. Always took an active interest in politics and generally had something to do with handling the funds, didn't he -- the sinews of war? He was a banker, wasn't he? A. No, he wasn't -- well, he was a banker, yes, but he wasn't the treasurer of the Republican --

Q. Wasn't he the fellow that generally handed the funds up there, sometimes referred to as the "slush" fund? A. I haven't heard of the slush funds in Wallace.

Q. Maybe they don't call it by that name up there, but the sinews of war, we will call it the slush, the bag --

MR. HAWLEY: We object to that as irrelevant.

MR. RICHARDSON: There was a reference to Johnson by Dr. McGee in that connection.

MR. HAWLEY: I submit this isn't the latitude that is permissible, it is simply going into outside matters, into matters that could not pertain to the direct examination in any shape.

THE COURT: The subject matter is proper cross examination in view of the testimony of Dr. McGee.

Q. You may answer the question, Mr. Bailey.

A. I don't hardly understand your question, Mr. Richardson.

Q. Well, then, before the time that he became the county chairman did he have charge of any funds that were being used for campaign purposes, now I don't mean a regular campaign fund, but a subscription fund, say, funds from any source that were to be used to promote the political purpose of his party?

A. Well, now, Mr. Richardson, these funds are not generally collected until after the convention, until somebody is elected to take care of these funds.

Q. That is the reason I don't refer to it as the campaign fund. There is generally a sort of a preliminary fund that is used where you can do the most good with it, isn't there?

MR. HAWLEY: They are getting Idaho politics mixed up with Colorado politics.

MR. RICHARDSON: Possibly so, but I have observed a decided similarity in the way they handle it.

THE COURT: Go on, Mr. Richardson.

Q. How about that, Mr. Bailey? A. What is that.

- Q. Wasn't Johnson recognized as the man there who was handling funds in the interest of the Republicans? A. Well, now, Mr. Richardson, I don't know that he was any more than anybody else.
- Q. You don't know that he was not, however? A. I think Stan. Easton was elected treasurer.
- Q. I know, but I wasn't getting at the regular officers.
- A. Well, if there was any irregularities about it I don't know about it.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. HAWLEY:

- Q. DID Dr. McGee have anything to do with Republican politics of the Republican convention? A. In 1904?
- Q. Yes sir. A. No sir.
- Q. He was not a Republican at that time then, a Populist, wasn't he?

MR. RICHARDSON: That is not re-direct.

MR. HAWLEY: I think he brought it up. I want to deny it.

MR. RICHARDSON: That Dr. McGee was a Republican? Never in the world.

MR. HAWLEY: He is certainly not a Democrat. We won't have that.

THE COURT: Are you through with this witness?

MR. RICHARDSON: We are through.

THE COURT: Step aside. Call your next.

AUGUST PAULSON, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q Have you been sworn, Mr. Paulson? A Yes sir.
- Q What is your name, sir? A August Paulson.
- Q Where do you reside, Mr. Paulson? A Wallace, Idaho.
- Q How long have you lived in that vicinity? A I have claimed Wallace my home since April, 1895.
- Q Are you interested in the Hercules mine? A I am.
- Q How long have you been interested in that mine? A Since 1895.
- Q And all of the time since 1895 have you been an owner in the mine? A Yes sir.
- Q Was Harry Orchard at any time an owner in that mine? A He was.
- Q Who was it, if you know, that succeeded to the Orchard interest? A Dan Cordner.

MR. RICHARDSON: One moment, we object to that as not rebuttal testimony. Mr. Orchard had his say upon that subject and we had our say upon that subject and that is all there is to it. When they come to a proposition they must

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put in all the testimony they care to on that matter, and if Mr. Orchard testified to it and went as far as he wanted to, that is as far as they can go.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Please note an exception.

Q Please read the question.

The last question and answer were then read.

Q Do you recollect the date that Corbioner purchased the interest from Orchard?

MR. RICHARDSON: We object to that as not the best testimony, and as not rebuttal.

THE COURT: There is no question about it being rebuttal testimony.

MR. HAWLEY: I am asking that as an absolute fact.

THE COURT: The second portion of the question --

MR. HAWLEY: I am asking him if he recollects the date.

MR. RICHARDSON: That is not the best evidence.

THE COURT: He may answer the question.

MR. BARRON: You mean, by yes or no?

THE COURT: Yes, that can be answered by yes or no.

Q You may answer the question? A I don't do, or, yes, rather.

Q What was that date?

MR. BARRON: To that we object. It will take something besides a third party to prove any such fact as that, either

the time or the parties themselves; this witness has shown no knowledge on that subject at all.

MR. HAWLEY: Counsel is either misunderstanding intentionally or otherwise the effect of this. We don't pretend to say but that oral evidence can explain the evidence of the deed, but we have the deeds themselves and propose to introduce them in evidence, and the object of asking this witness is different from that, because if he knows the date of this deed and knows from that time on Mr. Cordner exercised the rights of an owner in that mine and Orchard did not, we are establishing a point of rebuttal that we are entitled to make. I don't suppose it is necessary to go into the nature of the point.

THE COURT: The witness may answer the question.

MR. DARRON: May I make a suggestion first?

THE COURT: Yes sir.

MR. DARRON: In the first place it could not be rebuttal anyhow, because the question of the time when the title passed could not have anything to do with this case, and if it could, why, then this witness could prove what Cordner did with reference to this mine, that Cordner was there and exercised acts of ownership over it, and Orchard did not, but does not follow from that that this witness can say when Cordner purchased it. He cannot testify to anything that will take the place of the deed and a contract between the two parties.

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MR. HAWLEY: We don't do pretend. It is merely preliminary to these other questions.

MR. DAWSON: It is preliminary, but you might just as well ask if you know when a deed was made to a house. It could not be told by a third party. The deed itself must be shown. Whatever this witness may tell as to what Corlener did might be competent, but for this witness to give a date when a transaction occurred when that transaction was witnessed by a deed, that cannot be done.

THE COURT: If this witness knows, he may answer the question.

MR. DAWSON: Then I ask to find out how he knows?

THE COURT: You may cross examine with reference to that matter.

CROSS EXAMINATION

BY MR. DAWSON:

Q Mr. Paulson, you have not any certified copy of the deed in your possession? A No, I have not, but I looked on the records recently.

THE COURT: What is that answer?

THE WITNESS: I have not, but I have seen the records.

Q You have gone and looked at certain records in Cheyenne county? A Yes.

4224 Q And that is the way you know? A Yes sir.

MR. DARROW: Now, I object. We have got to go and look at the records.

MR. HAWLEY: Now I desire to reiterate what we have heretofore said,-- we are not attempting to prove the date of the deed by this witness, but as a mere preliminary question showing that certain events happened after this assignment was made. We are offering it as a preliminary question.

MR. DARROW: We are afraid of your preliminary question.

MR. HAWLEY: No sir, I am not afraid of it.

MR. DARROW: No, I say that we are afraid of them.

THE COURT: Does this witness know as to when Corlener purchased the property from Orchard?

MR. HAWLEY: Yes, that is what we think he knows.

Q You know when Orchard sold to Corlener, do you?

MR. DARROW: Now, wait, I object to this question. The court said I might cross examine on that, and I asked this witness and he said that he had examined the record and that is how he knows.

MR. HAWLEY: I presume the privilege of cross examination gives the privilege of re-direct examination?

THE COURT: Yes sir, when you have cross examined, if Mr. Hawley desires to further examine, he may do so.

MR. DARROW: Then I may want to make further cross-examination.

THE COURT: You may proceed with your cross examination, Mr. Darrow.

Q You stated to the court that the way you knew was because you had gone to the recorder's office? A Yes, that is the way I know positively the date when the title changed hands.

Q Have you any other knowledge excepting what you may have heard Cordener say, or Orchard say? A My general impression was --

Q Now wait. Have you any other knowledge outside of your general impression excepting such statements as Cordener or Orchard may have made? A No, I heard that both make the statement that --

Q Wait, wait, wait. Have you any knowledge outside of what Orchard may have said or Cordener may have said? A Well, I have the knowledge that Cordener --

Q Wait a minute. Now, I did not ask you that.

THE COURT: He may answer the question.

MR. DARROW: That is true, but he cannot answer any other question.

THE COURT: If the answer is not responsive the court will strike it out.

MR. HAWLEY: I submit that counsel may formulate his questions, but he cannot formulate the witness's answer.

MR. DARROW: Now, that is fundamental. I asked this witness if he had any other information.

MR. HAWLEY: The court has ruled upon that.

7

THE COURT: What was that last question.

The question was then read to the court.

MR. DARROW: I will withdraw that question.

MR. HAWLEY: We object to the withdrawal of the question.

MR. DARROW: I can withdraw my own question if I want to.

Q Now, I want a specific answer to my question. Outside of what Cordener had said and what Orchard has said, and your examination of the records, have you any information as to when this transaction was made?

THE COURT: That can be answered yes or no.

Q Yes, that can be answered by yes or no. A I would say, no.

MR. DARROW: That is all.

DIRECT EXAMINATION Continued

BY . MR. HAWLEY:

Q Now, Mr. Paulson, you talked with Cordener and Orchard with reference to this transfer of interest? A I did.

Q Do you remember the dates on which you talked to them in regard to it? A No, I don't.

Q About what time was it? A It was in the spring of 1898.

Q In the spring of 1898? A Yes sir.

Q And you knew from then that a transfer had been made?

MR. DARRON: Wait, I object.

MR. HAWLEY: We insist it is proper.

Repeat

MR. DARRON: To ~~relate~~ a conversation between Gordoner and Orchard?

THE COURT: That objection will be sustained.

MR. HAWLEY: We submit that where a party is a partner in a mining claim the information he gets from the other partners in regard to the interests or ownership is a matter of knowledge that he can impart.

THE COURT: The court will rule against you on that proposition, Mr. Hawley. You may proceed.

Q After the spring of 1898, you may state whether Mr. Orchard exercised any control of the Hercules mine or any part of it in any manner whatsoever.

MR. RICHARDSON: We object to that as calling for a conclusion and not rebuttal testimony.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Save an exception.

A What was that question?

Q Read the question.

The question was then read to the witness.

A He did not.

Q State who after that did exercise the control of the interest formerly owned by Orchard?

4228 MR. RICHARDSON: We object to that as not rebuttal and as calling for a conclusion.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A Dan Corlener.

Q Was Orchard ever at the mine at any time engaged in any employment after that? A He was.

Q What year? X ~~MR. RICHARDSON~~

MR. RICHARDSON: We object to that as not rebuttal testimony. Mr. Orchard testified on that same subject.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q Please answer the question. A What was the question.

Q Read the question please.

The last question was then read.

A He was engaged in the summer and fall of 1893.

Q In what capacity? A He used to pack our supplies from Burke up to the mine, or the prospect we called it then.

He also dragged our mining timbers from the mountains down to the workings, in the fall of the year, that we would use during the winter.

Q As an employe of the company? A Yes sir.

Q In the year 1904,-- in the summer and fall of 1904, where were you residing, Mr. Paulson? A At Wallace.

Q That entire summer? A I was there with the exception of going out for a few days occasionally to different points.

Q How long had you known Orchard at this time? A I have known Orchard since April of 1897.

Q Upon what terms -- had you been intimate or otherwise?

A Quite intimate, yes.

Q State whether or not in the summer or fall of 1904 you saw Graham in Wallace, or in that vicinity?

MR. DARROW: Just a minute, we object to that. He cannot rebut anybody by a witness who did not see him.

MR. HAWLEY: We say that we can prove a negative in certain events.

MR. DARROW: I take it the purpose of this is probably, the thing is plain, that this witness would be supposed to testify that he did not see him in 1904, isn't that right? I would infer that from your other witness, and therefore Mr. McGee's statement that he saw him in Wallace could not be true. Now, I insist that you cannot prove that.

MR. HAWLEY: We insist that we have a right to prove that where a person is upon such intimate terms to another person, as to suggest the reasonableness of his being in his locality and calling upon him, it is proper evidence to show that he did not see him and you can take that kind of evidence for what it is worth before a jury; and that is often done in cases, -- that would be the only way of meeting the statement of a witness.

THE COURT: What have you shown by this witness as to where he was?

MR. HAWLEY: That he was living there in the summer

and fall of 1904.

MR. RICHARDSON: Except when he was away.

- Q Where was you in the latter part of July and first part of August, 1904? A I was living in Wallace. I could not say I was there all the time because I go away considerable from home.
- Q Do you go away for any length of time? A I did not at that time. I don't remember being away for any length of time.
- Q Your mine is situated where? A The closest point is Burke.
- Q And would you go up to the mine often? A Oh, I used to go up oftener a few years ago, than I do now.
- Q I mean in 1904? A I probably went up once in ten days or two weeks.
- Q And stay for how long? A I generally go up and come back the same day.
- Q In the latter part of July and first of August, 1904, was you away from the town of Wallace except to the mine? A I could not say -- I could not say if I was or not. I was not away for any length of time.
- Q Do you mean by that that you could not have been away for more than a day? A I may have been away for three or four days, or even a week.
- Q You don't recall in regard to that? A No.

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MR. HADLEY: We will withdraw that question for the

present, your Honor.

Q Did you see Harry Orchard after the trouble at the Duncker Hill and Sullivan mine in 1899? A After the trouble?

MR. RICHARDSON: We object to that as not rebuttal evidence. Orchard testified on that subject.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q Go ahead? A I did see Harry Orchard after the mill was blown up, yes.

Q How long after? A The mill was blown up on the 29th of April and I seen Orchard there on the morning of the 4th or 5th of May.

Q And where? A At --

MR. RICHARDSON: Wait a moment. We object to that as not rebuttal evidence.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

Q You may answer? A I seen him at the Hercules prospect.

Q Who was with him, if you know? A Well, there was a man with him, but I don't remember his name.

Q Do you know W. F. Davis? A I know a man that I know now is W. F. Davis, but I never knew him by that name.

Q What name did you know him by? A I always ~~had~~ know him by Bill Davis or Big Davis.

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Q The same man that testified here, is it? A Why, I did not

hear him testify, but I have seen Mr. Davis here.

Q You have seen him since you have been here? A Yes sir.

Q A large man? A Yes.

Q State whether or not this W. F. Davis, or Bill Davis, or Big Davis, was at your place in the Hercules mine after the explosion?

MR. RICHARDSON: We object to that. Mr. Davis did not say he was not there.

THE COURT: The objection will be overruled.

MR. RICHARDSON: Note our exception.

A He was there, yes.

Q What time did he come there? A Well, he came up on the evening of the 3rd or 4th of May; I could not say which it was.

Q How long did he stay? A He stayed in the neighborhood of two weeks.

Q Was he working there, or state what he was doing there?

A Well, he was there principally --

MR. DARROW: We object to that. How is that competent in rebuttal?

THE COURT: The objection will be overruled. Go on.

MR. HAWLEY: Those objections are made for a purpose and I claim the right to answer them.

THE COURT: The court has ruled, and you may proceed.

MR. DARROW: May I be heard upon a question of law?

THE COURT: The court has ruled, Mr. Darrow.

MR. DARROW: I desire to save an exception to the ruling.

THE COURT: The exception will be noted.

Q Read the question.

The question and the portion of the answer were then read.

Q Go ahead. A He was there principally as I understood it --

MR. DARROW: I object to that.

THE COURT: You need not state unless you know what he was doing.

THE WITNESS: He told me --

MR. DARROW: We object to what he told him. The rule is perfectly plain. It can only be in rebuttal of a witness, and Mr. Davis said he was there.

THE COURT: He may state what he was doing there.

MR. HAWLEY: Davis said he was there working for two weeks, and we propose to show he was not.

MR. DARROW: What I will say will be in the most harmless kind of a way.

THE COURT: Proceed, Mr. Hawley.

Q What was he doing there, Mr. Paulson? A He was staying there.

Q Was he working there? A He worked a little occasionally.

yes.

Q Was he on the payroll? A He was not.

Q When you say he worked occasionally, what do you mean?

A He would get lonesome and he would rather work occasionally than to get idle.

MR. DARROW: We object to that as a conclusion.

THE COURT: The objection will be overruled.

MR. DARROW: I desire to save an exception.

Q Who was working in the tunnel? A I was one of them, and another party with me, and Mr. Davis came in occasionally.

Q The same as any other visitor would?

MR. DARROW: That is a conclusion that you called for.

MR. HAWLEY: Yes, that is right. I will take that back. I don't suppose some of you would know what work was
Q if you would see it.

MR. DARROW: No, I suppose not.

Q Did he work for the company in the sense that he was in the employ of the company during that two weeks? A No sir, all the work he done was voluntary.

Q When Orchard came there on that occasion, about the 4th or 5th, do you recall where Davis was? A He was in bed.

Q What time of day was it he got up there? A About five or six o'clock in the morning,-- it was six o'clock at that time.

MR. HAWLEY: You may take the witness. That is all upon this subject. We may desire to recall the witness upon another matter.

• CROSS EXAMINATION

BY MR. DARRON:

- Q Where is Dan Cortomer at this time? A I could not say positively where he is. I think he is in Los Angeles.
- Q Now, what makes you think he is in Los Angeles? A That is the last I heard of him.
- Q Haven't you in the last week seen that he has just returned from Spain? A I seen Cortomer in Wallace last week.
- Q And he had recently returned from abroad? A He did.
- Q And he was in Wallace last week and was in Spokane last week? A Yes sir.
- Q You have not seen him down at Los Angeles? A No, I have not been there lately.

MR. DARRON: That is all.

MR. HAWLEY: That is all. Please mark this document for identification State's exhibit N 2, and please mark this as State's exhibit for identification O 2.

I will now offer in evidence certified copy of deed from Charles E. Reeves to Harry E. Orchard, marked State's exhibit N 2 for identification, and also I will follow it with the offer of State's exhibit O2, being a deed from Orchard to Cortomer and I desire to offer them in connection with each other.

MR. RICHARDSON: We object to the introduction in evidence of the State's exhibits N 2 and O 2 for the reason

that they are not rebuttal evidence and for the further reason that they are incompetent, immaterial and irrelevant to establish any issue in this case. It is well known that a deed is frequently used as a conveyance, as a conditional conveyance, as a mortgage.

MR. HAWLEY: When it does, it becomes the duty of the other party to show that fact.

MR. DAWSON: Not in this kind of a matter.

MR. HAWLEY: Yes, in this kind of a matter and other kinds of matter as you well know.

MR. RICHARDSON: The question before the court is that Graham tried to sell his interest and that is the question for them to rebut.

MR. HAWLEY: There is nothing that could be stronger rebuttal than the fact that he had given a deed and had ceased to exercise any control.

THE COURT: The court will overrule the objection.

MR. RICHARDSON: Note our exception.

MR. DAWSON: It goes to each of them separately, of course.

THE COURT: Yes sir.

MR. HAWLEY: Gentlemen, this State's exhibit N 2 is as follows: I will read it all except the formal parts.

Said exhibit N 2 is in words and figures as follows,

to-wit:

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"THIS INSTRUMENT, made this 5th day of Oct. A.D. 1897, between
 Chas. H. Reeves, of the City of Wallace, County of Shoshone,
 State of Ida., party of the first part and Harry E. Orchard of
 the same city & state as aforesaid the party of the second part,
 the party of the second part.

WITNESSETH: That the said party of the first part, for
 and in consideration of the sum of \$1.00 One Dollars, lawful
 money of the United States of America, to him in hand paid by
 the said party of the second part, the receipt where of is hereby
 acknowledged, has granted, bargained, sold, remise, released
 and forever quit-claimed, and by these presents do grant, bar-
 gain, sell, remise, release and forever quit claim unto said
 party of the second part and to his heirs and assigns,

An undivided one sixteenth (1/16) interest in each certain
 claim or quartz lode known as and called the 'Hercules' and
 'Fly Fire' lodes. Both claims situated in Lalande mining dis-
 trict, about one & one half miles north of the city of Burke,
 State of Ida., on the left hand side going north on George gulch,
 the Fire Fly being the easterly extension of the Hercules.

Also (1/16) one sixteenth interest in another certain quartz
 lode known as and called the 'Old Veteran', being the westerly
 extension of the Hercules as above mentioned situated in
 Lalande mining district.

4238 TOGETHER with all the dips, spurs and angles, and also all
 the metals, ores, gold and silver bearing quartz, rock and earth
 therein, and all the rights, privileges and franchises thereto

incident, appendant and appurtenant, or therewith usually had and enjoyed, and also, all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof, and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, or, in or to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered C. H. Reeves (Seal).

In presence of:

A. G. Kerns.

STATE OF IDAHO)
) ss.
County of Shoshone)

On this 6th day of October, A.D. 1897, before me, A. G. Kerns, a notary public in and for said county, personally appeared C. H. Reeves personally known to me to be the person whose name is subscribed to the within instrument and acknowledged he executed the same freely and voluntarily, for the uses and purposes therein set forth.

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IN TESTIMONY WHEREOF, I hereunto set my hand and affix my
official seal this 20th day of June, A. D. 1907.

(Signed) Stanley P. Fairweather,

County Recorder,

By L. L. Brainerd,

Deputy."

(Official seal)

MR. HAWLEY: State's exhibit C 2 is as follows:

STATE'S EXHIBIT 02.

"THIS INDENTURE, made the seventh (7) day of March, A. D., 1898, between Harry E. Orsard of the City of Burke, Shoshone County, State of Idaho, party of the first part, and D. Carlsson of the same place & state as aforesaid, the party of the second part, the part of the second part.

WITNESSETH: That the said part__ of the first part, for and in consideration of the sum of (1.00) One Dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released and forever quit claimed and by these presents do grant, bargain, sell, remise, release and forever quit claim unto said part__ of the second part, and to his heirs and assigns, an undivided one sixteenth (1/16) interest in each of the following claims known as the 'Hercules', 'Fire (Fly Fire) Fly', and 'Old Veteran' the within named claims or quartz lodes being situated in the Lalonde mining district about one and one half miles north of Burke, Shoshone County, State of Idaho, on the left hand side going north on George Gulch, bounded as follows: Old Veteran being the western extension followed or joined by the Hercules, thence by the Fire Fly which is the easterly extension.

4212 TOGETHER with all the dips, spurs and angles and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Wallace, the day and year in this certificate first above written.

John H. Finn

Notary Public.

(Seal)

Recorded at the request of D. Cardoner, Mar. 8, 1888, at nine o'clock A. M., in Book '7' of Deeds, page 623, records of Shoshone County, Idaho.

Barry M. Hilliard, County Recorder,

By G. D. Hodge, Deputy Recorder.

STATE OF IDAHO)
) ss.
County of Shoshone.)

I, Stanley P. Fairweather, county recorder in and for the county of Shoshone, State of Idaho, do hereby certify the foregoing to be a full, true and correct copy of a deed, Harry E. Orchard, grantor, to D. Cardoner, grantee, as the original instrument appears upon the records of said county, in Book '7' of Deeds at page 623 thereof at my office and in my custody.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix my official seal this 20th day of June, A. D. 1907.

(Signed) Stanley P. Fairweather,
County Recorder.

By L. L. Brainerd,
Deputy.

(Official seal)

MR. HAWLEY: These are admitted in evidence, I believe, if your Honor please?

THE COURT: Yes sir. We will have the jury brought back at 1:30 and we will take up the matter of these objections that have been raised at that time.

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 1:30 o'clock P. M.

RECESS.

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Boise, Idaho, Saturday, July 14th, 1937.

1:30 o'clock P. M.

Court convened pursuant to adjournment.

THE COURT: Mr. Richardson, I will hear you now on your objection to the offer of the State of their exhibit G 2.

MR. RICHARDSON: That is the record of the conviction of John M. O'Neill?

THE COURT: Yes sir.

MR. RICHARDSON: I have examined the California statute, and I found that that is exactly the same as the Idaho statute, but I find no cases in point, but I do find in Abbott's Trial Brief that the proof may be made either way, and I do not care to contest further upon that other than to say it is not rebuttal evidence. If it was not for that word or in the statute --

THE COURT: The statute seems to be clear, and Underhill on Evidence settles the question.

MR. RICHARDSON: The same book says there is no way it can be done in the absence of a statute, and where there is a statute like this one it seems it can be done.

THE COURT: It may be admitted. Now about the admission of the two records from Washington?

MR. HAWLEY: All I have to say is, while this may be considered as an immaterial matter on general principles, and for general purposes, while the main fact of the material fact would be the question whether there had been a commitment to an asylum or not, and if the question of the commitment was the point, there would be no doubt in regard to the admissibility of this record; still we believe that it is admissible now. I think it would under other circumstances be considered, perhaps, immaterial. The contradiction is this: Upon his cross examination we developed the point that upon each of the occasions mentioned when he was committed, the complaint had been made by his son, -- by one son in 1894 or 1895, and by his other son in 1904. The record shows that one Aldington made one complaint, and one William Black made the other. I desire to introduce this at this time as showing the unreliability of the party, his want of memory, and his want of accurately stating any matters that came before that. I think the court will agree with me on this proposition that that would be proper in rebuttal to show that a certain witness was absolutely in error, had misstated a large number of immaterial facts, and to show from that that his recollection was defective, and therefore his evidence untrustworthy, and in a matter like this, where although it might be considered immaterial in some way, if upon a thorough examination in regard to the matter he testified in positive language as to an occurrence connected with it, we would have the right

to show that fact, and show the real fact as showing his general unreliability and defects of memory and all that, and upon that theory and for that purpose we have offered this evidence, and for no other.

THE COURT: Under the statute would his evidence be competent?

MR. HAWLEY: No, that would be a matter for legitimate argument to the jury. But we would have a right under these peculiar circumstances, where a man had been adjudged insane twice to contradict him upon points that could ordinarily be immaterial, and it is pretty hard to draw the dividing line between what is material and what is immaterial matters, because that which is immaterial in one given case might be absolutely material in another, and the object for which the question was asked and that which it was sought to rebut and contradict would have to provide as to the materiality or immateriality of the question,-- not the bare fact itself, but the connection of that fact with all the evidence of the witness and the purpose which as well for which it was offered. It is upon that theory that we introduce it and claim that it is material.

MR. RICHARDSON: I don't see how there can be any contention that immaterial evidence can be disputed or denied because if that were the rule a case would be prolonged indefinitely and without end. Now, this record that is sought to be admitted was admitted upon cross examination. It is said that

the record becomes material in order to dispute something.

THE COURT: The witness admitted those facts, as I remember.

MR. RICHARDSON: Yes sir, he did. Now he says the record becomes material because in the course of his cross-examination the complaint was made by one of his sons in one case and the other by another son in another case. He was not examined as to the contents of any written document or any writing that was put before him, and it might just as well be consistent with the truth that the formal written complaint was made by any other person, and that is entirely immaterial. If it was material to know anything about it it was material to know of his conviction, and not the process or means by which the process of his conviction was secured, and in view of the fact, it seems to me it would be highly improper to place before the jury the records of this man for insanity. It is not impeaching evidence, and the statute cannot be invoked in respect to that.

MR. HAWLEY: May I interrupt and make one suggestion in order that you may answer it if you desire?

MR. RICHARDSON: Certainly.

MR. HAWLEY: I want to make another suggestion, and I beg pardon of my brother for interrupting.

MR. RICHARDSON: No need of that sir.

MR. HAWLEY: That is this proposition: Even the statement in the affirmative of the witness called upon the stand,

when it comes to a matter of this kind, would not be conclusive, and we would have the right to prove it by the record in any event. I merely offer that as a suggestion.

MR. RICHARDSON: It would be true if that was the essential matter which was being inquired about, but this arises by virtue of the cross examination. The only theory upon which it could be introduced at all would be the theory of contradiction or impeachment of something he has said -- that is, contradiction in the nature of an impeachment. Now, it is not sought to impeach this witness. It must be confined to rebutting testimony, and there is nothing which it rebuts, since, if your Honor please, the witness upon the stand admitted he had been twice convicted of being an insane person and sent to an asylum.

MR. HAWLEY: While we are offering this as rebuttal we would also be allowed to introduce it as impeaching testimony, and it is true we would have a right to introduce in rebuttal this record even if he had admitted it in its entirety, if it is true then we would have a right in seeking to introduce it here now, -- we would have that right; or a record that affects his general reputation for veracity in one sense, not as to an unintentional falsification, but it goes to the question of whether he is in such a condition mentally as to enable him to testify to the truth, and if that is conceded we would have a right to put that in in the face of an admission that he had been so convicted or committed, -- then there could be no question

about this at the present time. If it is an impeachment, then it becomes, if material at all for any purpose, we would have a right to contradict it, and on the proposition that it affects his general reliability as a witness we would have a right to impeach him, and a man under those peculiar conditions where he has been held twice for commitment to an insane asylum, if it would go to the weight to be attached to his evidence and all these matters in regard to that, that would show that he had misstated the fact after his attention had been called to the jury and it would be for the jury to draw from that whether the matters he has testified to would be likely to be the truth.

MR. DARROW: May I make one statement as to that, as to whether this is impeaching evidence?

MR. HAWKINS: Certainly, I have no objection.

MR. DARROW: There can be no question about that. This witness was asked whether he had ever been in an insane asylum and whether he had ever been committed to it, and he said, yes. There is nothing to contradict there,-- really nothing. Now, as to the next proposition, it certainly must be statutory unless the statute provides that an independent record of this sort can be introduced in evidence to affect the standing of the witness; then certainly there is no place for it, and I do not see how there can be any claim that the statute of this state does make any provision for this kind of a record. And

beyond all that, what does it prove? A witness may be shown to have been convicted of an infamous crime, and the record may be introduced to prove it, and the record estops him from denying his guilt, and then it is argued that a witness who has committed a felony is not worthy of the same credit, and a witness might be sent today to an insane asylum and be a sane man to-morrow. He might be insane at one time and a few days afterwards released, and he may be insane and still be one of the most truthful people in the world. It does not follow that his credibility has been destroyed. He is a competent witness just the same, and the fact alone of his experience and his surrounding life as told by himself is all that a jury can draw any inference from. It would not be proof that he could not be believed or that his testimony ought not to be received. It would simply show that at some time for some special purpose and on some special account, he was declared insane, and when he is released, why, of course that blot -- if it is a blot -- is off of him entirely. He is sent out as a man thoroughly competent. It is not like a conviction of a felony that implies some moral perversion, and where a jury would be justified in saying that it was doubtful as to his evidence. It is not claimed that this man is now insane. He suffered from a malady -- a mental malady and he got well and was discharged; it is just as much a malady as a malady of the body, and a malady that no more affects the truthfulness of the witness than any malady of the body. You

might just as well say that a man who had had the scarlet fever and had recovered and gotten well was not to be believed. I should doubt whether any authority can be found that would permit this record to be introduced.

MR. HAWLEY: Now, I think the very statement of my brother shows the necessity for introducing this evidence. It is true a man may become insane and recover from it and that an insane man may testify accurately to given events, but there is nothing to prevent a witness from being called and giving his testimony, and the very fact of a man having suffered from mental disease is a proper subject and it is proper for any light to be thrown upon that subject that can possibly be brought to bear upon it, and here in this case we insist that the very fact of his being unable to tell the people that had sworn to this complaint, of his being unable to accurately testify and testify upon this important point, to him, would of itself be the proof that the jury would have to take his statements with a great many grains of allowance. It would affect his credibility because as far as that proceeding is concerned it was a material point in that as to who had made this charge; it was something that must have implanted itself upon his mind, and if he had been in a normal mental state at the time of this occurrence to which he testified it would tend to show to the jury whether he was in a normal state or not. We contend this is admissible and it is, from the statement of the counsel it is conclusive.

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THE COURT: The court will not pass upon this matter

at this time. Before passing on this I desire to read portions of the testimony of this witness; I have the record and I will examine the record and pass upon this at the opening of court on Monday morning. Send for the jury.

Thereupon the jury was returned into court.

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

MR. HAWLEY: I will now call Mr. Hiddaugh -- no, not Mr. Hiddaugh, Mr. Grinshaw. I will recall Mr. Grinshaw because he has not been cross examined, and I will introduce this exhibit G 2.

THE COURT: It may be admitted.

MR. RICHMOND: Note our objection to the ruling admitting the exhibit, and I will say, Mr. Hawley, that we do not care to cross examine Mr. Grinshaw.

THE COURT: It is admitted over the objection of the defendants, and the exception will be noted.

MR. HAWLEY: This is exhibit G 2, and I will read the same to the jury.

Said exhibit G 2 is in words and figures as follows,
to-wit:

STATE'S EXHIBIT Q 2.

"STATE OF SOUTH DAKOTA,)
) ss.
 County of Lawrence.)

I, Col Star clerk of the Circuit Court, of the Eighth Judicial Circuit of the State of South Dakota, in and for the county of Lawrence, do hereby certify, that as such clerk, I am the legal custodian of the records of the Circuit and county courts of said Lawrence county, and that said records are in my keeping, that the above and foregoing is a full, true, and correct copy, and transcript of Indictment, Endorsements, Verdict, Sentence, and Record marked and numbered pages 1 to 6 inclusive in the case of Territory of Dakota vs John M. O'Neil indicted as John A. Hogan as the same appears of record and on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this 1st day of July, 1907

Col Star

Clerk of the Circuit and County Court

By

Deputy.

(Official seal)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Deadwood, in said county, this 1st day of July, A. D. 1907.

Sol Star

Clerk of the Circuit Court

By Deputy.

(Official seal)

TERRITORY OF DAKOTA,)	
County of Lawrence.)	vs. In District Court First Judicial District.

The Territory of Dakota

vs.

John A. Hogan, Defendant.

The Grand Jurors of the county of Lawrence and Territory of Dakota, duly impaneled, charged and sworn, to inquire into and true presentment make of all public offences against the territory of Dakota committed or triable within the county of Lawrence in said Territory of Dakota,

Upon their Oath Present. that John A. Hogan, on the twenty-third day of November in the year of our Lord one thousand eight hundred and eighty with force and arms in the county of Lawrence and Territory of Dakota, in and upon the body of one Daniel Halley in the peace of the Territory of Dakota, then and there being, feloniously, wilfully and of his malice of forethought, did make and assault, and that the said John A. Hogan a certain

pistol, commonly known as a revolver then and there charged with gun powder and leaden bullets which said pistol by the said John A. Hogan in his right hand, then and there had and held, then and there feloniously and wilfully, and of his malice or forethought did discharge and shoot off to, against and upon the said Daniel Falbey, and that the said John A. Hogan with one of the leaden bullets aforesaid, out of the Pistle aforesaid, then and there by force of the gun powder aforesaid, by the said John A. Hogan discharged and shot off as aforesaid, then and there feloniously wilfully and of his malice or forethought, did strike, penetrate and wound him the said the said Daniel Falbey in and upon the belly of him the said Daniel Falbey then and there with one of the leaden bullets aforesaid, so as aforesaid discharged, and shot out of the pistol aforesaid, by the said John A. Hogan in and upon the belly of him the said Daniel Falbey, one mortal wound of the depth of four inches and of the breadth of half an inch, of which said mortal wound the said Daniel Falbey, from the said twenty-third day of November, in the year aforesaid until the twenty-fifth day of the same month of November in the year aforesaid in the county aforesaid, did languish and languishing did live on which said twenty-fifth day of November in the year aforesaid, of the wound aforesaid, the said Daniel Falbey, in the county aforesaid died, and so the jurors aforesaid, upon their oath aforesaid, do say that the said John A. Hogan and of his malice or forethought did kill and murder, contrary to the

known form, force and effect of the statute in such case made and provided, and against the peace and dignity of the Territory of Dakota.

A. W. Hestie

District Attorney.

Necessof witnesses examined before the Grand Jury on finding the foregoing indictment, James A. Smith, Richard Hickey, J. C. Clancy, Rogers Sullivan, James Reilly, V. M. Duane.

'Endorsed' 'A true bill B. Case foreman of the Grand Jury.'

Presented by the foreman of the Grand Jury in the presence of the Grand Jury in open court and filed as a record of the court this 15th day of December, 1880

Frank J. Washabaugh, Clerk."

"December 15th, 1880.

The defendant herein was duly arraigned upon the within indictment in the presence of his counsel William H. Parker and in open court.

Defendant answers that his true name is John H. O'Neil, the indictment is under the direction of the court read by the district attorney, and defendant is given until December 17th, 1880 at 10 o'clock A. M. to plead.

Frank J. Washabaugh, Clerk.

December 15th, 1880.

The defendant in open court in the presence of his counsel is served with a certified copy of the indictment herein, a list

of the witnesses on the part of the prosecution, and of the petty jurors.

Frank J. Washabaugh, Clerk.

December 17th, 1880.

The within named defendant John M. O'Neil indicted as John A. Hogan, in open court in the presence of his counsel now orally pleads Not Guilty.

Frank J. Washabaugh, Clerk.

V E R D I C T

Deadwood, January 13th, 1881.

We, the jury in the case of the Territory of Dakota, vs John M. O'Neil indicted as John A. Hogan find the defendant guilty of manslaughter in the second degree as charged in the indictment and recommend the mercy of the court.

Hiram E. Hale, Foreman

'Endorsed'

Filed January 13th, 1881.

Frank J. Washabaugh, Clerk.

Territory of Dakota)
 County of Lawrence) In the District court in & for Lawrence Co.
) Dek. Terr.
 Territory of Dakota)
)
 vs)
)
 John M. O'Neil)
 indicted as John A. Hogan) Indictment and conviction for
)
) Manslaughter in the 2nd degree.

S E N T E N C E

Now on this 24th day of January A. D. 1881, the District attorney and the above named defendant John M. O'Neil indicted as John A. Hogan with his counsel Joseph Miller and William L. Hamilton Esqrs. come into court, and this being the day fixed by the court for the pronouncing of judgment upon the verdict of guilty of the crime of Manslaughter in the second degree, as charged in the indictment, heretofore returned against the said defendant in this court. The said defendant is now asked by the court if he has any legal cause to show why the judgment of the law upon the said conviction should not be pronounced against him, and the said defendant now answers that he had no cause to show.

And the said defendant John M. O'Neil indicted as John A. Hogan having been duly convicted in this court of the crime of Manslaughter in the second degree IT IS NOW BY THE COURT HERE CONSIDERED ORDERED AND ADJUDGED, and the sentence of the court is that you John M. O'Neil indicted as John A. Hogan be imprisoned at hard labor in the Detroit House of Correction located at Detroit in

the State of Michigan (the same being by law the territorial prison for the Territory of Dakota) for the term or period of one year and six months, there to be kept fed and clothed according to the laws regulating said prison and that while so confined therein you shall be exclusively under the control of the officers or officer having lawful charge of said prison, and that you stand committed until this sentence be complied with.

By the Court

Gideon C. Meedy

Judge.

'Emmerson'

'Filed January 24th 1881.

Frank J. Washburn

Clerk."

"Record as taken from Book 2 page 514 and 515 of the clerk of court within and for the county of Lawrence and Territory of Dakota.

The following is the list of jurors empanelled to try the case of Territory of Dakota

vs

John M. O'Neil indicted as
John A. Hogan

- | | |
|-----------------------|---------------------|
| 1. Hiram F. Hale | 7 John M. Robinson |
| 2. Frank Eaton | 8 Alexander Moore |
| 3. James B. Woolley | 9 Ignas B. Petit |
| 4. Solomon Bloom | 10 John A. Nye |
| 5. Austin G. Harshman | 11 J. M. Jones |
| 6. Robert E. Grisham | 12 Albert Burnham." |

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ROY H. KINGSBURY, being called as a witness in rebuttal on behalf of the State, and being first duly sworn, on oath testified as follows:

DIRECT EXAMINATION

BY MR. HAWLEY:

- Q What is your name? A Roy H. Kingsbury.
- Q Where do you reside? A Wallace, Idaho.
- Q How long have you resided there? A I have resided in the Coeur d'Alenes seven years and a half nearly.
- Q What is your business? A Clerk.
- Q Clerk for what particular company? A The Federal Mining and Smelting Company.
- Q How long have you been in the employ of the Federal Mining and Smelting Company? A For nearly seven years and a half in various capacities.
- Q As such clerk you may state whether you have the custody and control of the books and records of that country? A I do.

MR. HAWLEY: Please mark this as State's Exhibit D for identification.

The exhibit was marked State's exhibit P 2 for identification.

MR. HAWLEY: And you may mark this stub book, State's Exhibit Q 2 for identification, and mark this one State's exhibit R 2 for identification, and this book, State's

exhibit B 2 for identification.

- Q I will hand you State's exhibit B 2 for identification and ask you to state what that book is? A This is the office record of the time for the Consolidated Tiger and Poorman mine during -- from October, 1898, to and including May, 1899.
- Q Is that one of the mines that is the property of the Federal Mining Company? A It is.
- Q And is situate where, -- is this mine? A At Durke, Idaho.
- Q Do you know when this mine came into the control and possession of the Federal Mining Company? A I cannot give you the date.

MR. RICHARDSON: No, he asked you if you know; I submit yes or no answers the question.

THE WITNESS: I do.

- Q What was that date?

MR. RICHARDSON: We object to that as immaterial and not rebuttal evidence.

MR. HAWLEY: It is one of the incidental questions which will explain questions which will come after, if your Honor please, as to when this transfer was made.

MR. RICHARDSON: We object to it.

THE COURT: What do you expect to show by this?

MR. HAWLEY: I expect to show this, that on the 1st of May, 1899, there was a transfer of that mine, a change of possession, and that the books --

MR. HARRON: That would not be the best evidence.

MR. RICHARDSON: We would object to that for several reasons besides that it is not rebuttal evidence. That would not be a way to show a transfer of the mine anyway.

MR. HAWLEY: I am rebutting the statement in regard to several of these witnesses, in regard to his whereabouts at certain times. I will go a little farther,-- of course I have got no objection to making this statement, but I don't know as it should be made in the presence of the jury.

MR. RICHARDSON: We have no objection to his making the statement.

MR. HAWLEY: The point I am attempting to make, if your Honor please, and the point I am seeking to make by this evidence is to rebut the statement of the witness -- of two or three of these witnesses who have testified in regard to the witness Orchard's whereabouts at certain times in the last of April and First of May, 1899.

MR. RICHARDSON: That was not brought into the testimony upon our part. They examined Orchard as to his whereabouts on the first of May, 1899, and at all other times, and then we gave our testimony upon that subject, and it would not be rebuttal testimony now for them to put in a part of their case in chief and then add something to that case under the guise of rebuttal. That has always been forbidden. If that was the rule they might introduce one particle of evidence on that subject in chief and then wait until we have been heard and then introduce the balance of it, and

they are not allowed to do that.

MR. HAWLEY: It is not necessary to dispute that, but we would say it must be conceded that in any matters tending to rebut the evidence of Orchard as given upon the stand, we have a right to show the impossibility of that testimony given in that behalf. If they show the whereabouts of Orchard at a particular time we have a right to show he was at some other place and could not have been at the place indicated, and that is what we are attempting to show.

MR. RICHARDSON: They have shown where he was at that time, and we have shown where he was at that time, and they now come back again to show where he was at that time and then we can come back and wind up by hunting up some more evidence and show where he was, and so on indefinitely.

THE COURT: My recollection is that you have shown where Orchard was on at least two different occasions.

MR. RICHARDSON: Yes sir, and they covered the exact period.

THE COURT: Now, if the prosecution are prepared to show by any evidence that Orchard was not at the place designated by the witness, it is clear to the court that that is proper rebuttal testimony.

MR. RICHARDSON: Let me suggest this to your Honor: Orchard testified himself as to where he was on the 29th of April, 1899.

THE COURT: Yes sir.

MR. RICHARDSON: And what he did the next day, on the 30th of April, and the 1st day of May, and the 2nd day of May, and the 3rd day of May, and the 4th day of May when he went to Missoula, Montana; he went over each one of those days and showed exactly where he was. Now we introduced evidence to show that upon two of those days he was at another place than the place where he has stated. They come back to show with evidence that he was at the place he stated he was, and now how would that tend to rebut our testimony? If they could show that the witnesses Dominick Flynn and Mr. Mallala were in Spokane at the time when they testified they were in this store playing cards at Millan, Idaho, I would call that rebuttal testimony because that would be rebuttal. That would rebut the testimony as to where were Dominick Flynn and Halla, but so far as, where was Orcheri, concerned, it would not be rebuttal because they have made it a part of their case. If they did not consider it important at the time it would not change the rule which is, that having touched upon the matter they must give us all the evidence they have upon that matter.

MR. HAWLEY: And there is no such rule as that that prevails in either civil or criminal cases and nothing can be found that would warrant such a statement of the law as made by learned counsel on the other side. It is not necessary in either a criminal or a civil case for a party to exhaust themselves upon certain testimony, because so to do would make in cases of

such length -- it would be absolutely unmeasurable to a court; it may be that a hundred different propositions arise during a case; some two or three of those may be considered material by the defense and they will seek them out for the purpose of showing their falsity. That is proper that they so be shown, and because that may be done by the opposition party it does not follow that the party making the case -- the State in a criminal action must prove all of those points and exhaust all of its testimony in corroborating the testimony of any particular witness, because how could they ascertain what particular matter would be disputed? Your Honor can readily see that in a case that would ordinarily occupy two or three days, two or three weeks would be consumed; so it has been always the rule so far as my experience has been concerned, and it is a matter that can be easily ascertained of course, but I did not bring up the authorities for I did not apprehend there would be any dispute with reference to it -- it has always been held that when one of those matters has been touched upon incidentally by the prosecution, if it is disputed by the evidence of the defense, then the prosecution can come and show that that disputing evidence of the defense cannot be correct. What is rebutting testimony? It is simply testimony that is brought forward to show that certain testimony of a certain witness who has testified upon the other side cannot be true.

MR. DANCOW: Will you allow me to ask a question?

MR. HARTLEY: Yes sir.

MR. DABROW: Would you contend that you could introduce in rebuttal any testimony that you could introduce in chief?

MR. HANLEY: I don't know as it is necessary for the -- as far as this inquiry is concerned to answer that question, but I think you could; that is, anything that would tend to show the falsity of a particular matter. You cannot repeat evidence that has been given once.

THE COURT: I cannot tell from this statement what you intend to prove by this witness, but by the statement that has been made before the court can see how this testimony would be proper rebuttal, and under the statement of the rule as made by Mr. Richardson the court will overrule the objection.

MR. RICHARDSON: Note our exception.

THE COURT: The exception will be noted.

Q Read the question.

The question was then read.

Q You can answer that question, the court says. A The date was the date of the transfer of the Empire State of Lisco Mining Company to the Federal Mining and Smelting Company.

Q What date was that? A I don't know the date, but the date is a matter of record and will show for itself.

Q I will now call your attention again to exhibit P 2. You have said this was the time book; I will ask you to examine the record of the month of April, 1899, and see if the name of Harry Graham appears?

MR. DARROW: How is that rebuttal -- of what proposition is it rebuttal to, I mean.

MR. HAWLEY: I am asking this question, and I will ask another or two then.

MR. DARROW: Then I will object to that unless it is pointed out what it rebuts.

MR. HAWLEY: I will say this, that we expect to show by this witness and by this book and these records that Mr. Cronard was working the latter part of the month of April at all times except April 29th and possibly the 30th, and continue that and show that he was working the 1st, 2nd and 3rd of May of 1899 in this --

MR. RICHARDSON: That would be exact corroboration of what Cronard said on that point. What would it rebut?

MR. HAWLEY: The evidence of your witness who said he met him at a certain place.

MR. DEERY: Does it say that he worked twenty-four hours?

MR. HAWLEY: No, but we will argue as to that afterwards.

MR. DARROW: Now, on what date do you claim the stage driver said he met him?

MR. HAWLEY: I think, on the 2nd of May. We might understand that he was working here until the time that he went to the -- went out of the country to Montana. We laid

that foundation by Mr. Paulson.

THE COURT: Both before and after the 29th?

MR. HAWLEY: Yes sir.

MR. RICHARDSON: Suppose the book does show that he was working a shift, wouldn't it be possible for him to meet a man on the road?

MR. HAWLEY: That might be a matter of argument.

MR. DARROW: It has got to be clearly rebuttal first. If there is a date, I think it ought to be pointed out.

MR. HAWLEY: There is no rule I know of that would justify the statement that it has got to be clearly rebuttal. If it is evidence that tends to show the inaccuracy of a statement made by the witness --

MR. RICHARDSON: Then this is not rebuttal evidence at all.

MR. HAWLEY: We insist that it is purely rebuttal.

THE COURT: The court has ruled upon the question.

MR. RICHARDSON: Note our exception.

Q Will you turn to the record for the month of April and see if Harry Orchard's name appears in April? A It does.

Q This book is in your care and under your custody, is it, as part of the records of this company? A It is partially.

Q You have it in your custody and under your care, do you?

A It is in the vault of the company. I took it from the vaults of the company.

Q And it is one of the books that is kept by the company as part of the record of their business? A Yes sir.

Q Where is this part?

MR. HAWLEY: I have had this marked generally as the State's exhibit P 2 and I desire to mark specially this line and transfer the exhibit mark to this line, if there is no objection, or we will --

MR. DARROW: May we see that?

MR. HAWLEY: Now, we offer this line marked State's Exhibit P 2 in evidence.

MR. DARROW: May we ask the witness to step down here and explain this to us.

MR. HAWLEY: You have a perfect right to cross examine him.

MR. DARROW: I know that, but we would rather know what to cross examine on. Have you another book like that?

MR. HAWLEY: No, I said we would have another from May, showing about three days and that is in the same book, but in another place.

MR. RICHARDSON: You say you offer it in evidence?

MR. HAWLEY: We offer it in evidence.

MR. RICHARDSON: We object to the offer of State's Exhibit P-2 in evidence for the reason that it is incompetent, irrelevant and immaterial, and it is not rebuttal evidence and it is not the original evidence, and not sufficiently authenticated in addition to that. The witness called to is a transfer back.

(Mr. Hawley hands Exhibit P-2 to the court).

THE COURT: Mr. Hawley, the court has a doubt about the proper identification and authentication of this record to prove what you are seeking to prove by it.

MR. HAWLEY: If the court is in doubt upon this matter I will not leave to withdraw this witness for the time being, until Monday. I will withdraw him until Monday and re-introduce it at that time.

THE COURT: Yes sir, the court will permit you to do so.

MR. HAWLEY: You may be excused until Monday morning.

THE COURT: The next witness may be excused until Monday morning at 9:30.

MR. HAWLEY: At that time we will be prepared to present it. I will call E. L. Hale.

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

DIRECT EXAMINATION

BY MR. HANLEY:

- Q. Mr. Hain, where do you reside? A. Wallace, Idaho.
- Q. What is your business, sir? A. Master mechanic.
- Q. For what company or association? A. The Federal Mining & Smelting Company.
- Q. Where were you living in April, 1899? A. What is that?
- Q. Where was you living in the month of April, 1899?
- A. Gen, Idaho.
- Q. Where was you working? A. At the Gen mine.
- Q. In what capacity? A. Master mechanic.
- Q. And for what company or individual? A. Supposed to be lenders, C. K. Cartwright, George Ruggles, Harry Allen and William Hoynes.
- Q. Was this in the Gen mine you say? A. Yes sir.
- Q. Where was you on April 29th of that year? A. I was there.
- Q. Do you know W. F. Davis? A. I know Bill Davis.
- Q. Sometimes called Big Bill and Big Davis? A. Yes sir.
- Q. Where was Davis working at this time, the latter part of April, 1899? A. Was working either in the mine or in the boiler room, I forget which; I don't remember.
- Q. Of this mine? A. Yes sir.
- Q. You say state whether or not there was any work in that mine on April 29th? A. None that I know of.
- Q. Was you in the town of Gen that day? A. Yes sir.
- Q. How much of the time was you around the town? A. Well, I

guess probably ten minutes. I was on the works all day principally.

Q. How was the town, open or closed?

MR. RICHARDSON: We object to that as immaterial, irrelevant and incompetent and as not rebuttal. There isn't any question of rebuttal here that I can see that could possibly be answered by that question. Don't make any difference whether the town was open or closed that day.

MR. HANLEY: It amounts to a good deal, your Honor, if Mr. Davis was in town, as he says he was, he was certainly in some place. He says he was around town that day in different places.

MR. RICHARDSON: Here is a man that says he was around town ten minutes that day.

MR. HANLEY: We will see what we can show during that time. We have a right to show every ten minutes.

MR. DARROW: You will have to fix the ten minutes.

THE COURT: Objection overruled.

MR. RICHARDSON: Note our exception.

Q. What time was it you were around town? A. It was in the forenoon. I couldn't state the time.

Q. Was you there about noon? A. Yes sir, the best I remember.

MR. HANLEY: What is funny, Brother Darrow? For the benefit of the jury?

MR. DARROW: You say you can fix every ten minutes, and he says he couldn't state when he was there.

MR. HANLEY: I am asking what time it was, whether it was forenoon or afternoon.

MR. RICHARDSON: I submit he has answered that question.

He said some time in the forenoon, he didn't know when.

Q. What is the answer? A. What is the question?

Q. Whether it was forenoon or afternoon you were around town?

A. I was over town in the forenoon.

Q. What was the condition of the town as far as the saloons and other places being open or closed?

MR. RICHARDSON: We object to that. It is not rebuttal, and is immaterial, irrelevant and incompetent besides.

MR. HAWLEY: That is the very question that was objected to and ruled on.

MR. DARROW: We submit that wouldn't prove Bill Davis was in town.

MR. RICHARDSON: Every time he asks it we are going to object.

THE COURT: In what way is that relevant as rebuttal testimony?

MR. HAWLEY: Relevant in this way, he says he was around the saloons and around the places of business in that town; if I can show that they were closed --

MR. DARROW: For ten minutes?

MR. HAWLEY: Yes, and for ten hours, too, if you want to know.

MR. RICHARDSON: There might have been a back door.

THE COURT: Go on. The court will overrule the objection.

MR. RICHARDSON: Note our exception.

(Question read).

A. I only remember of one place being open.

Q. And did you go into that place? A. Yes sir.

Q. State whether or not you saw Mr. Davis around town that day?

A. I did not.

MR. RICHARDSON: We object to that.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

Q. How many people were there around town? A. I only saw two besides myself.

Q. You was around the works the rest of the day you say?

A. No sir.

Q. Where was you the rest of the day? A. I went to Wallace about noon, the best I can remember.

Q. What time did you return? A. About six o'clock, the best I can remember. I can't state the exact time.

MR. HAVILL: You may take the witness.

CROSS EXAMINATION

BY MR. RICHARDSON:

Q. You were over town just about ten minutes of the entire day?

A. The best I can remember, yes sir.

Q. And you only looked for one saloon? ~~xx~~ Found that one open?

A. No, I believe I tried a couple.

Q. You tried a couple? A. Yes sir.

Q. The third one you tried you found open? A. The second or third.

4277 Q. And you went into that and come right out again? A. Well, I had a drink before I come out.

Q. And that was all there was of it? A. About all.

Q. And you didn't happen to see Davis while you were taking your drink? A. No.

MR. RICHARDSON: That is all.

RE-DIRECT EXAMINATION

BY MR. HAWLEY:

Q. You didn't see only two people in town that day?

A. That is all.

MR. HAWLEY: That is all.

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

DIRECT EXAMINATION

BY MR. HADLEY:

- Q. What is your name? A. William Dewey.
Q. Where do you reside, Mr. Dewey? A. Goldfield, Colorado.
Q. How long have you resided there? A. About six years.

MR. DAWSON: Speak a little louder, please.

MR. HADLEY: Speak as if you were trying to make his Honor on the bench hear you, Mr. Dewey.

- Q. How long have you resided in Goldfield, Colorado?
A. Well, I have resided there in Goldfield two years, that is --
Q. How long have you lived in the Colorado country? A. About seven years.
Q. What is your business or occupation? A. Miner.
Q. How long have you been engaged in the mining business?
Oh, about how long? A. Oh, about twelve years.
Q. What particular mine are you working in at the present time?
A. The Vindicator mine.
Q. How long have you been working in the Vindicator mine?
A. About three months.
Q. Where were you living in 1899, in April of that year?
A. Gen, Idaho.
Q. What was your business at that time? A. I was mining.
Q. In what particular mine? A. The Friess mine.

THE COURT: When was this, Mr. Hadley?

MR. HADLEY: April, 1899.

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Q. State whether or not at that time you was a member of the Western Federation of Miners? A. I was.

Q. Of what particular lodge or union? A. Of the Gem union No. 11 I believe.

Q. You may state whether you worked on the 20th of April?

A. I did not.

Q. You may state whether or not you went to or was called into the union hall that morning in the town of Gen?

MR. RICHARDSON: We object to that, if your Honor please, as not rebuttal evidence. They had their day on that.

MR. HADLEY: Our object in this, if your Honor please, is to show that this witness was there at that time in the union hall, and W. F. Davis, who testified as a witness for the defense, was also there, and that he served out weapons at that time, and that the parties that were there, Davis and this party went and took the train and went to the town of Warner and Kellog.

THE COURT: The objection is overruled.

MR. RICHARDSON: Note our exception.

A. What is the question?

(Question read).

A. I was.

Q. Was there a meeting there on that morning? A. I don't know whether you would call it a meeting or not. It was never called to order. There was a gathering.

Q. A gathering composed of what persons, what kind of persons?

A. About all the male population of the town.

Q. Do you know W. F. Davis? A. Yes sir.

- Q. Was he there that morning? A. Yes sir.
- Q. Was there anything particularly that he did that called your attention to his presence? A. Yes sir.
- Q. What was that, Mr. Dewey? A. Handing out guns and ammunition.
- Q. What kind of guns? A. There was all kinds, that is, rifles.
- Q. Do you know where these rifles had been stored? A. No sir.
- Q. Where was he when he was handing out the guns and ammunition, what part of the building?

MR. RICHARDSON: We want it understood that our objection to this not being rebuttal goes to all of this evidence without renewing the objection to every question?

THE COURT: Yes sir, it will be so understood.

- Q. Go on. A. What is the question?
- Q. What part of the hall was he in when he was giving out these weapons and ammunition? A. On the stage.
- Q. Was there a stage in the hall? A. Yes sir.
- Q. At the end of the hall? A. Yes sir, at the far end from the main entrance.
- Q. Did you have any gun given you? A. Yes sir.
- Q. By whom? A. By Davis.
- Q. After this distribution of the arms and ammunition, what was done by you people there? Where did you go, if anywhere?
- A. When the train came down, somebody hollered "All aboard" and everybody got on the train.
- Q. Where did you go? A. To Kellogg.
- Q. After you got to Kellogg -- or, in going down to Kellogg did you see W. F. Davis on the train? A. No sir.
- Q. After you got to Kellogg did you see W. F. Davis? A. Yes sir.

Q. What was he doing? Where was he when you saw him?

A. He was getting the men -- the first I saw him he was getting the men kind of shaped to march out in some kind of shape and go down towards the mill.

Q. This was after you reached Warner Junction? A. Yes sir.

Q. Your train stopped? A. Yes sir, and everybody got off.

Q. How many men was there -- or, what particular position was he occupying at that time there on the ground?

MR. RICHARDSON: He can tell, if your Honor please, over our objection, what he was doing.

Q. Yes, what he was doing. I stand corrected. A. Well, he was giving directions.

MR. RICHARDSON: We move to strike out that answer, if your Honor please, as stating his conclusion.

THE COURT: Motion denied.

MR. RICHARDSON: Note our exception.

Q. What kind of directions was he giving? A. Well, the first that I remember "All men with long guns to the front", and then he got out of my hearing, but the men with the rifles started to move off, the head of the column -- he was evidently at the head of the column, and when they got moved down as far as I was I fell in with the rest and followed.

Q. You had a long gun, did you? A. Yes sir.

Q. Was Davis masked? A. No sir.

Q. Did you go to the mill that day? A. I went within a short distance of it.

Q. State whether or not Davis went to the mill? A. Yes sir.

Q. After the column got near the mill did you see Davis?

A. Yes sir.

Q. What was he doing, if anything? What did he do?

A. Well, the last I saw of him they halted the column down by the mill --

Q. Who halted the column? A. Halted the column, yes.

Q. Who halted it, I asked? A. Well, that I couldn't say because they was too far ahead of me, to hear who gave the command. They stopped, the front, and that stopped the rear end of it. But there was about six or eight of the front of the column made a rush and went to the mill. The rest of the column stayed back, they never went any closer.

Q. Where was Davis during the time this rush was made? A. He was one of the members of the six or eight, whatever it was, that went.

Q. Was you present in that section at the time the mill was blown up? A. Yes sir.

Q. State whether or not you saw G. P. Davis there in that vicinity after the mill was blown up? A. Yes sir.

Q. Whereabouts did you see him? A. By the side of the train.

Q. At what place? A. At Kellog.

Q. That is Wardner Junction? A. Wardner Junction I believe they call it.

Q. That is the same place they call Wardner Junction. Did you see him afterwards on that day at any other place? A. No sir, I don't remember him after that.

Q. State whether or not you proceeded on the train that afternoon or evening from Kellog or Wardner Junction up the road?

A. Yes sir, we went back to Gen on the train.

Q. Did you see Davis while on the train going back? A. Not that I can remember.

MR. WASHLEY: You may take the witness.

CROSS EXAMINATION

BY MR. WASHINGTON:

Q. This meeting that occurred in the hall that evening was not a miners' union meeting at all then, was it? Anybody could go in there at that time? A. Yes sir.

Q. And everybody did go in, didn't they, without regard to whether they were members of the union or not? A. I think so.

Q. And everybody who went in there took part in the meeting just as much as though they were members of the union, didn't they?

A. Well, there was no meeting.

Q. There was no meeting, never was called to order? A. No sir.

Q. And there wasn't any vote taken as to what should be done there, was there? A. No sir.

Q. You went in there and got some guns and went out and got on the train? A. Yes sir.

Q. And there was no speeches made nor anything of that kind?

A. Not that I heard.

Q. Who else was there besides yourself and Bill Davis?

A. Well, I can only remember a few.

Q. Well, just give us the names of those you remember.

A. There was a man named Johnny Peterson was there. He was the man that told me to come up to the hall.

Q. Who else besides Johnny Peterson? A. Tom Housman.

Q. He was the shift boss of the Crystal mine, wasn't he?

- A. I have forgotten whether he was shift boss at that time or not.
- Q. Can you give the names of any more? A. I don't remember any right at present.
- Q. Was Joe McDonald there? A. I don't think so.
- Q. Did you see Joe McDonald that morning? A. No sir, not that I know of.
- Q. He was superintendent of the Frisco mine, wasn't he?
- A. Yes sir.
- Q. Was you on the train when it backed up to the powder house of the Frisco mine? A. Yes sir.
- Q. Did you see Joe McDonald open the powder house and take the powder out? A. No sir.
- Q. Didn't hear him say anything? A. No sir.
- Q. Don't know anything about that? A. I was in a box car and the door opened on the other side and I couldn't see anything.
- Q. That was the reason you didn't see or hear anything that was going on there, is that right? A. Yes sir, I think so.
- Q. Now give us the names of the balance of the men in the union hall that you recognized. You have given two besides yourself and Mr. Davis. There was a good many more than four people there, wasn't there? A. Yes, that was the trouble, there was too many.
- Q. Give us the number of those who were there and the names of as many as you can remember? A. You want the number you say?
- Q. Yes. A. Well, I should judge there was a hundred or a hundred and fifty people in there.

THE COURT: Witness, we can't hear you. You must speak louder.

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THE WITNESS: I should judge there was one hundred or one hundred and fifty people in the hall.

Q. Now you have named four of them. Name the other one hundred and forty-six if you can. A. Well, I can't do it.

Q. Name as many of them as you can. A. Because there was a great many of them that I didn't only know their first names.

Q. Well, give us the first name of as many as you can remember.

A. There was a fellow they called Shakespears.

Q. His first name was William, wasn't it, or Bill? A. I don't know whether that was his first, last or middle name. There was a man by the name of John Hays there.

Q. Any more? If Shakespeare was there I suppose Bacon ought to have been alone around somewhere? A. Probably he was.

Q. What? A. I don't know about Bacon.

Q. You don't remember Bacon? A. No.

Q. Well, give us the names of any others? A. I don't think of any more just at present.

Q. That is all you can think of out of one hundred and fifty, is it? A. It is just at present, yes sir.

Q. What has become of Peterson? A. I think he died.

Q. Is that the reason you gave his name, because he is dead?

A. No sir. I remember him because he was the man that met me on the road when I was going to work.

Q. Is Shakespeare dead too? A. I don't know.

Q. Don't know what has become of him? A. No sir.

Q. Do you know where Noonan is? A. No sir.

Q. Do you think he is dead, too? A. Well, I don't know.

Q. Do you know where Hays is? A. No sir.

- Q. Do you know what has become of McDonald, the superintendent of the Crystal mine? A. I know where I last heard he was.
- Q. Where did you last hear from him? A. He was up on some island up there in southern Alaska running a mine.
- Q. Treadwell Island? A. Yes, I think that is the name.
- Q. Was he around at the meeting? A. I didn't see him.
- Q. Didn't see him at the meeting nor there at Coz that morning?
- A. No sir.
- Q. Didn't go down with you to Gardner that day? A. I don't think so.
- Q. Do you know a man by the name of W. F. Davis who was commonly called Golden Smith, or who was at that time? There were two W. F. Davises in the town of Coz, wasn't there? A. Not that I knew of.
- Q. You don't know that W. F. Davis who is now in Alaska?
- A. No sir.
- Q. Didn't know but one W. F. Davis? A. One W. F. Davis is all I knew.
- Q. Didn't know a big man there by the name of W. F. Davis who afterwards went to Alaska, ^{who was sometimes called Golden Smith} who was elected to the legislature and served a term in the legislature and who is now in Alaska?
- A. There was a man by the name of Golden Smith, I knew him.
- Q. You didn't know that his name was W. F. Davis? A. No sir.
- Q. Didn't see him there on that day? A. I don't remember of seeing him.
- Q. Is he a big man? A. He is a tall, slim man.
- Q. And commonly called Big Hill, wasn't he, or Big Davis?
- A. Not that I ever heard.

- Q. Never heard anything of that kind? A. No.
- Q. How tall a man is he? A. Golden Smith?
- Q. Golden Smith, yes. A. I should judge he was six feet, if I remember right.
- Q. Was he more than six feet? A. That is what I would take him for, a six-footer.
- Q. About six feet four inches high, wasn't he, and a very large man? A. No sir, six feet.
- Q. Was he a slender man or a fairly stout man? A. Rather slender I think.
- Q. Do you remember his wife? A. Yes sir.
- Q. His wife was six feet tall, wasn't she? A. She was very near it.
- Q. And he was considerable taller than his wife, wasn't he? A. I don't think he was much taller, if any.
- Q. You say you didn't see him around that day? A. I don't remember him.
- Q. And you don't know as he is in Alaska now? A. I don't know where he is.
- Q. And has been there for some time? A. No sir, I have no idea where he is at all.
- Q. How long did you live there after 1897, Mr. Dewey?
- A. I left there -- well, I stayed there until about August. In August I went to Butte and worked a little while and then went back again, and finally left about the first of the year.
- Q. You were not in the mill pen at all? A. No sir.
- Q. Stayed right there and kept right on with your work, didn't you? A. I didn't work, no, only a few shifts.

- Q. Weren't arrested by the military? A. No sir.
- Q. Was charged with the offense of blowing up the Barker Hill
& Sullivan? A. No sir.
- Q. And never told anybody about it at that time? A. No sir.
- Q. When did you leave that section of the country?
- A. I left that section of the country about the first of the year
after this happened.
- Q. And where did you go to then? A. The Cripple Creek district.
- Q. And have been in the Cripple Creek district ever since?
- A. Yes sir, with the exception of about three months.
- Q. Did you join the union at Cripple Creek? A. Yes sir.
- Q. And when the strike was declared you deserted the union,
didn't you? A. Yes sir.
- Q. Immediately? A. Shortly after.
- Q. And you have been working for the Vindicator people ever
since, haven't you? A. No sir, not all the time.
- Q. How long have you been working for the Vindicator?
- A. The last time about three months.
- Q. The general manager of the Vindicator, or the superintendent,
has been taking a great interest in this trial, hasn't he?
- A. Well, I don't know how much interest.
- Q. He is the man who saw you about coming here, isn't he?
- A. Yes sir.
- Q. His name is Campbell, isn't it? A. No, he isn't the man that--
- Q. Campbell is the general superintendent, isn't he? A. Yes sir.
- Q. Campbell is here in town, isn't he? A. Yes sir.
- Q. Came with you, did he? A. No sir.
- Q. You came by yourself? A. Yes sir.

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- Q. No one with you at all when you came? A. No sir.
- Q. Who got you to come here, Mr. Dewey? A. Ed. Trevaro.
- Q. Who is he? A. Superintendent or foreman of the Vindicator mine.
- Q. Under Mr. Campbell? A. Yes sir.
- Q. And did you talk with Mr. Trevaro first or did he come to you and ask you if you knew anything about these Coeur d'Alene troubles? A. I believe it was my own remarks that brought it up.
- Q. When did you first talk with him about this matter? A. Just a few days ago.
- Q. After you read the testimony in this case? A. "Yep."
- Q. After you read of the fact that Bill Davis had testified here on the stand? A. Yes sir.
- Q. You didn't know what Bill Davis you was coming here to testify against when you came, did you? A. I had a pretty a pretty good "idea".
- Q. You had a good "idea"? A. Yes.
- Q. Did you tell your "idea" to anybody? A. I only told it to Trevaro.
- Q. Had you talked with Trevaro before about your having been in the Coeur d'Alenes? A. Not that I know of.
- Q. Had you ever told him that you was a member of the union in the Coeur d'Alenes? A. I don't know.
- Q. Don't know whether you had or not? A. No sir.
- Q. But in any event when the strike occurred in Gripple Creek you immediately consented to work against the union and have been working against them ever since? A. Not immediately.

I was out about four or five months after the strike occurred before I went to work down there. I can't state exactly.

Q. What did you get for coming up here, Mr. Devey? A. Wages and expenses.

Q. Easier than working in the mine, aint it?

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

MR. RICHARDSON: All right.

Q. Who gave you this money for coming up here? A. I got my expense money at the Pinkerton office in Denver.

Q. And who gave you the balance of your money? A. I haven't got any balance.

Q. You have got a balance still coming, have you? A. I expect so.

Q. What are your wages? A. \$4 a day.

Q. \$4 a day? A. Yes sir.

Q. Where are you going to get that from? A. I shall call at the office when I get back for a settlement.

Q. Call at the Pinkerton office? A. Yes sir.

Q. If they don't settle there will be something doing, I suppose, according to your contract? A. I will be out.

MR. HANLEY: We object to that.

Q. That is the agreement you have got with them, is it, anyway? A. Yes sir.

Q. Did you make that agreement in the Pinkerton office or did this party make it for you down in the Vindicator mine?

4291 A. I made that in the Pinkerton office.

- Q. How did you come to get from the mine up to the Pinkerton office? A. I was told to go up there.
- Q. Trevero told you to go, did he? A. Yes sir.
- Q. And he told you that it was Campbell's orders, didn't he? A. Yes sir.
- Q. For you to go up to Denver and report to the Pinkerton office? A. Yes sir.
- Q. Your time is going right on at the mine too, just the same, isn't it? A. Well, that I don't know.
- Q. Well, that is where your time is running, you are going to have your time from some place or other, aren't you? A. Yes sir.
- Q. So you went to the Pinkerton office at Denver by Campbell's orders conveyed to you by Trevero? A. Yes sir.
- Q. How much money did you say you got at the Pinkerton office? A. I got \$50.
- Q. And on that you came up here? A. Yes sir.
- Q. How long have you been up here? A. I got here this morning.
- Q. Did you hold any office during the strike in Cripple Creek? A. No sir.
- Q. After you commenced working on the Vindicator you have been working continuously there ever since. A. What kind of office do you mean?
- Q. I mean any office? A. Since the strike?
- Q. Since the strike of August 10th of 1903? A. Yes, the last two years.
- Q. The last two years what office have you held? A. City marshal of Goldfield and deputy sheriff of Teller county.

Q. Do you know how you became appointed to that office?

A. I was elected.

Q. You were elected to that office? A. Yes sir.

Q. And you have been marshal at the same time of working in the Vindicator mine? A. No sir.

Q. How long have you been working in the Vindicator mine?

A. I said three months this last time.

Q. How long did you work there before, before you became town marshal? A. I don't remember. I was working at the Golden Cycle when I became town marshal.

Q. Were any of these people on the train masked? A. Yes sir.

Q. How many of them? A. The biggest part of them.

Q. In what way were they masked? A. A piece of cloth was tied over their face with a couple of holes through.

Q. What is that? A. A piece of cloth tied over their face, and a couple of holes through it for eyes.

Q. All masked in exactly the same way? A. Pretty much the same.

Q. Any of them wear garments to disguise them, women's dresses or anything of that kind? A. I don't remember that.

Q. Didn't see anything of that kind? A. No sir.

Q. How many people did you see coming down on the train, about, on your way to Wardner? A. I didn't see many. I was in a box car most of the way.

Q. Well, did you have a box car full of people with you? A. Yes, it was fairly well filled.

Q. Give us the names of the people who were in the box car with you? A. I couldn't give them. They were masked.

Q. Were you masked yourself? A. "Yes".

Q. When did you get masked? A. In the hall.

Q. Who masked you? A. Myself I guess.

Q. Masked yourself? Well, don't you know whether you did or not?

A. Well, it is a kind of a long while, but I think I did. I will say I did.

Q. Where did you get the material that you made the mask of?

A. Someone came in there with cloth and they tore it up in a strip and it was scattered out over the crowd and we would catch a piece and put it on.

Q. And that is what you did, you got a piece and put it on, did you? A. I don't know who distributed it. Yes sir.

Q. And after that you didn't know anybody and didn't anybody know you? A. No.

Q. By name, couldn't tell a single person who rode in that box car with you? A. Not that rode in the box car, I couldn't.

Q. You talked with those people in the box car, didn't you?

A. Very little.

Q. Heard their voices? A. There wasn't much said in there, no sir.

Q. How long had you lived in the town of Gen? A. Well, I first went there in 1894, but I had been away awhile, I don't remember just how long.

Q. Well, about how long were you away? A. I think I was away a year and a half and then I was back there the remainder of the time.

Q. Then you lived there in all three years and a half to four years? A. I should judge so.

Q. Perhaps a little over four years, and you knew pretty nearly

everybody in that town, didn't you? A. Yes sir.

Q. There wasn't over seven or eight hundred people in the whole town, was there? A. I don't think there was that many.

Q. About how many do you think there were? A. I don't think there was over four hundred.

Q. Not over four hundred people in the whole town and you don't know of a single person who went down on the train with you?

A. Those that I mentioned.

Q. Well, you didn't mention anybody's going down on the train with you. You said you didn't see Bill Davis going down on the train? A. Oh, no, I ~~am~~ didn't see him.

Q. Now when you got down there and got out of the car give us the names of as many people that you saw as you know. There is Bill Davis, you are sure of him, aren't you, he is one?

A. Paddy Burke.

Q. Paddy Burke, that is two. A. Tom Noonan, John Peterson.

Q. Anybody else that you met down there? A. I don't remember anyone else.

Q. Of all the people that were down there that is all that you can remember? A. Those are the only ones that was in a position that impressed themselves on my mind.

Q. You have given us the names of all these others before except Paddy Burke. Now tell us about him, who was he and where did he come from? A. Paddy Burke was up there but I don't know whether he was in the union hall, and the only reason I can remember him down there was because he had a Springfield rifle with a bayonet on it. That was the only rifle with a bayonet in the whole bunch.

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- Q. That is the reason you remember Paddy Burke? A. Yes sir, I can remember him.
- Q. What has become of him? A. I don't know. I think he is up there in the Coeur d'Alenes yet, but I don't know.
- Q. Don't know? A. I have lost track of those fellows since I went to Cripple Creek.
- Q. Lost entire track of all of them, did you? A. Yes sir.
- Q. Bill Davis was right there in Cripple Creek for two or three years, wasn't he? A. Yes sir, he was.
- Q. Well, you hadn't lost track of him then? A. I didn't know where he was until I heard he was here, that is, after he left Cripple Creek.
- Q. There was a lot of Coeur d'Alenes down there in Cripple Creek, wasn't there? A. There wasn't very many.
- Q. Not very many? A. No sir.
- Q. None that you were acquainted with? A. No sir.
- Q. Except Bill Davis? A. Well, he is the only one that I remember now that I know was from the Coeur d'Alenes.
- Q. When you rode back to Gem that day how did you go, in a box car? A. It seems to me we was in a baggage car.
- Q. Lots of other people with you? A. Yes sir.
- Q. Now give us the names of those that went back with you that day. A. I can't remember positively anyone that was in the car.
- Q. Don't remember anyone, and yet the car was full of people?
A. Yes sir.
- 4296 Q. On your way down from Gem to Wardner that day you paid your fare, didn't you? A. No sir.

- Q. It was a free ride as far as you was concerned from Gen all the way down to Wardner, was it? A. Yes sir.
- Q. Did you know a man up there named William Kennedy at Gen at that time? A. Did they call him Bill Kennedy?
- Q. Well, I should judge possibly he might be called Bill Kennedy in that camp, his first name being William. A. Yes sir.
- Q. How high did that man stand? A. No, I should judge, was about five foot nine.
- Q. Wasn't he six feet two inches and a half high? A. No.
- Q. Was not? A. No.
- Q. Never referred to as Big Bill? A. Yes, but his bigness was the other way.
- Q. It wasn't in his height? A. No sir.
- Q. Did you know Andy Heimer of Gen at that time? A. Yes sir.
- Q. How high was he? A. He was about a six-footer.
- Q. Wasn't he about six feet four inches high? A. No, I don't think so.
- Q. Was he referred to as "Big" by anybody? A. I don't remember him being referred to that way.
- Q. How was he for width? A. He was slender.
- Q. Slender? A. Rather slender.
- Q. Did you know Bob Bradley? A. Yes sir.
- Q. He was another big man up there, wasn't he? A. Yes sir.
- Q. How big was he? A. Well, he wasn't very big for height but he was big the other way.
- Q. He didn't stand six feet two inches in height? A. No sir, I don't think so.
- Q. How anything like that? A. No sir.

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- Q. Do you know Dan Herington? A. Yes sir.
- Q. He was a big man too, wasn't he? A. Yes sir.
- Q. How tall was he? A. Well, he was in the neighborhood of six feet.
- Q. Stood about six feet three inches high, didn't he? A. No.
- Q. Did you know Lou Floodston? A. Who?
- Q. Lou F-l double o-d-l-a-b-o-n? A. No sir.
- Q. Didn't know him? A. No.
- Q. Did you know two men there called the Floodston brothers, each of whom was over six feet high? A. I don't recognize them by that name. Spell that name again, please.
- Q. F-l double o-d-l-a-b-o-n -- perhaps you would rather have it spelled F-l-o-o-d-s-t-o-n. A. No sir.
- Q. Don't remember then. Do you know how big Joe McDonald was? A. Yes sir.
- Q. He was a strapping big fellow, wasn't he? A. A good big fellow, yes.
- Q. Stood over six feet high, didn't he? A. No.
- Q. How high did he stand? A. About five feet ten I would judge.
- Q. John Hays, did you know him? A. Yes sir.
- Q. He was a big man, wasn't he? A. Fairly tall, not very stout.
- Q. All of these men whom I have mentioned were big with the exception then of two of them? A. Well, they were big one way or the other.
- Q. Well, that includes all of them, don't it? The two of them were big the other way? A. Well, I guess so.
- 4298 Q. So that there was a number of big men in that party if those men were in the party, and they were all masked so that you

- couldn't tell who they were, is that right? A. Yes.
- Q. Weren't you sufficiently familiar with the men in that town, having resided there about four years, so that you could tell the names of the men notwithstanding the fact that he had a little piece of cotton cloth over his face, couldn't you tell it by his walk and by his appearance, who it was? A. Well, I might think who he was but then that wouldn't make me know it.
- Q. Now having found out all of the men whom you know, give me the names of all the men whom you think were there? A. Well, if you give me the name -- pay roll of the Frisco mine I will call every name that is on there and tell you that he think they was all there.
- Q. You think that the whole Frisco outfit was there? A. Yes sir.
- Q. Including Joe McDonald, the fellow who was superintendent of it? A. Yes sir.
- Q. There was a fight on between the Frisco mine and the Hunter Hill & Sullivan people at that time, wasn't there? A. That I know nothing about, in regard to the men.
- Q. Well, I mean in regard to the management of the mine.
- A. I don't know.
- Q. Don't know anything about that? A. No sir.
- Q. Hadn't the remotest idea what you was going down there that day for? A. Not until we got down there.
- Q. Didn't know? A. No.
- Q. Notwithstanding the fact that you put a mask on yourself and you took a gun in your hand and got in a baggage car and rode down there? A. Now sir.
- Q. No idea what you were going for? A. No positive idea.

- Q. No trouble about doing what you did after you got down there, was there? A. I didn't catch your meaning.
- Q. I say you didn't hesitate about doing your part of what was done when you got down there? A. Yes sir.
- Q. You haven't been offered immunity from punishment so far as you are concerned by anybody? A. No sir.
- Q. Nobody has said anything to you about that? A. No sir.
- Q. And nobody has offered you any immunity if you should come out and testify against anybody else? A. No sir.
- Q. And you do this thing voluntarily? A. Yes sir.
- Q. For the mere pleasure of doing it and in order to help justice? A. Yes sir.
- Q. That is your idea about it? A. Yes sir.
- Q. A. What have you been thinking about these last eight years so far as justice was concerned in regard to this matter?

MR. HAWLEY: We object to that as not being proper cross examination.

MR. RICHARDSON: I will change the form of the question.

THE COURT: Question withdrawn.

- Q. When did you come to the conclusion that you would tell about this Barker Hill & Sullivan matter, when did you first come to the conclusion you would tell about what you knew? A. When I saw the Orchard confession.
- Q. When you saw how he was treated that made you think it would be a good thing for you to testify, did you? A. No sir, not in that light.
- Q. Didn't think of it in that way, and so you came up here to testify at the request of the Vindicator people and in order

to tell what you knew about this transaction at the Bunker Hill & Sullivan? A. I didn't catch the meaning of it.

(question read).

A. Partly that and partly to corroborate Orchard's statement.

Q. Specially because you saw Orchard's confession in the paper?

A. I saw his confession and some of these other denials of it.

Q. Did anybody talk with you about your being guilty of what occurred there? A. No sir.

Q. Nobody has said anything about that to you? A. No sir.

Q. You were anxious to corroborate Orchard's confession with respect to the Bunker Hill & Sullivan mill, were you?

A. I wasn't anxious, but I was willing to.

Q. And you didn't see Orchard there that day at all?

A. I don't know Orchard.

Q. And yet you were so interested that you was willing to come up here and help him out on that? A. Yes sir.

Q. That ~~statement~~ situation has been published in every book in the country, hasn't it, almost, that has treated on that subject, just as you have stated it here today? A. Sir?

Q. I say that has been published in every book that has treated of the subject just as you stated it here today? A. I expect so.

Q. A thousand or twelve hundred men gathered from Mullen, from Burke, from Gen, from Mace and from Wallace, got onto a train and went down to the Bunker Hill & Sullivan mill near the town of Kelleg and blew it up on the 29th day of April, 1899, isn't that right? A. That is right.

Q. And out of that thousand men you were one of them?

A. I was one of them, yes sir.

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Q. And you remember four or five others? A. Yes s r.

MR. RICHARDSON: That is all.

MR. HARTY: That is all.

Thereupon the court gave the jury the statutory admonition, the bailiffs were sworn, the jury retired in charge of the bailiffs, the defendant was remanded, and court adjourned until Monday, July 15th, 1907, at 9:30 o'clock A. M.

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