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HAYWOOD TRIAL

CLOSING ARGUMENT

OF

W. E. BORAH

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May It Please the Court—Gentlemen of the Jury:

You have been patient throughout this long and tedious trial, and you have listened with marked attention to the evidence which has been given, and with especial attention to the arguments which have been made by counsel both for the opening and for the defense. I regret that I am compelled to commence this argument at a time of day when you must be somewhat weary and at a time in the trial when you must be impatient to get to your final duty and to the final discharge of the great task which has been imposed upon you. But I will not take up more of your time than seems necessary for the presentation of the State's cause—more than is essential to in some degree and to some extent review the arguments made by the very able and very eloquent counsel upon the part of the defense.

Special Prosecutor.

I am conscious at this time and by this time that I am a special prosecutor. It has been impressed upon my mind several times during the trial and several times during the arguments of counsel for the defense. I am not aware, however, that the fact that I am a special prosecutor should add anything in the way of disparagement or discredit to my appearance before you to say the last word that is to be said upon behalf of the State. The State has the right to employ such counsel as it deems necessary, both in number and standing. It may not always act with wisdom or select those

most capable of meeting those who come here for the defense, but such counsel as it selects are entitled to appear before you, accredited with the same integrity of professional purpose as is accredited to counsel for defense.

State's Responsibility.

There is no graver or more important responsibility resting upon a State than that of protecting property and preserving life, of enforcing law and administering justice. A State which can not protect its citizens, shield life from the assassin's malice, will soon lose its place in the hearts of men and in the affections of patriots. These are among the first great obligations of State and government, and those who assume to stand in the forefront of the work are entitled to have at least a patient hearing before all tribunals.

County Attorney Van Duyn.

Something has been said here in this case with reference to the fact that some of those who are supposed to represent the State have been supplanted. There are no differences between counsel at the prosecution's table that I know of. We are all satisfied with the different positions to which we have been assigned. The different duties have been assigned and they have been entirely satisfactory to those who are engaged in this prosecution. It has been our effort in this case to please as best we could the merest whims of counsel for the defense, but they are presuming when they would assign the different positions of counsel for the prosecution. I do not know of any reason why the elected County Attorney of Canyon County should be subjected to the criticism which has been his in this case, or why objections should be found to the particular duties which he has been called upon to per-

form. He was elected before and he has been elected since he commenced the performance of his duty in this case. He is the chosen representative of Canyon County, the county in which this murder took place, and he has simply performed his duty in connection with his associates in a conscientious, unfaltering and upright manner. He has been fearless and he is incorruptible. It may be possible that the defense has some reason to speak so disparagingly of a man who has had the courage to go forth and present this matter to the officers of the law, to put the machinery in motion by which it was to be determined who was the author of the awful crime of December 30th. Those engaged in the commission of crime are seldom satisfied with the conduct of those whose duty it is to uncover it. We apprehend that no one other than the defense could find fault with a prosecutor who undertook to ascertain the author of this awful crime.

Associate Hawley.

Likewise, unjust has been the attack upon my associate, Mr. Hawley. Why it was made I can not understand. It ought to be sufficient and satisfactory to answer a man's argument. It ought to be sufficient to do away with his logic. I know of no reason why a man who has lived in this community for forty years and whose integrity, and loyalty to his clients, have never been questioned should be attacked apparently upon the theory even of corruption. The burden of this case has been upon him. He is the man who has had charge of it in a large measure. You have observed the condition to which his health has been brought. Perhaps he was more irritable at times than he should have been with Mr. Darrow. But you must be satisfied with one proposition, that he has fairly, earnestly and determinedly presented such evidence as the

State had and has asked at your hands a verdict upon that evidence—nothing more. But there seems to be running through this case in some way and for some reason an insidious attack upon every one, whether high or low, associated directly or indirectly with the investigation of the crime of December 30, 1905. They have the right to insist upon the innocence of their client, but an attack upon officers of the law who undertake to investigate that crime can find no justification in the minds of right thinking men.

The Awful Story.

Gentlemen, I am not going to undertake to make a speech nor to talk to you, but I am simply going to talk **with** you about the evidence in this case. The awful story which has been told here in the court room—testimony which has come from the lips of witnesses—is far more eloquent and presents a much stronger plea for justice than anything I could say. If the facts which have been narrated before you are true, if the conditions which have been painted here from the lips of the many different witnesses are true conditions, there could be no plea so eloquent or so strong for the full discharge of fearless duty upon the part of jurors as the plea made by these facts and those conditions. I must be content, therefore, without undertaking to go outside of the record, or add to it, or to add very much in the way of my own suggestions, to simply call your attention to the salient features of the evidence, relying upon the evidence to supply the eloquence which the prosecution has not but with which the defense is so well supplied.

One thing is true, there can be no doubt about it, one thing which will not be disputed, and that is that a terrible condition of affairs prevails and has prevailed for the last five

years in this intermountain country. If there is any one thing that is established now beyond all question, not subject to dispute, it is that some twenty odd crimes have been committed here in this country, here where we live and expect to live, where our homes are and where they are to be, and notwithstanding that all of these crimes have been committed not a single individual has been whipped of justice. That condition of affairs exists beyond all question and that condition of affairs has been revealed fully and fairly to this jury—not disputed and can not be disputed. What more could be said or what more could be proven which would appeal to you to be careful and conscientious, courageous and brave in the final discharge of your duty—to be careful to locate the source of those crimes, ascertain the power which has caused this condition to prevail, and then bravely administer the punishment where it belongs.

Vicarious Atonement.

But notwithstanding those conditions, and lest I should be misunderstood, the defendant in this case is entitled to be tried upon the evidence which is adduced in this court room and upon that alone. He is entitled to have a verdict based upon nothing more than the testimony which has been given you here and which will be submitted to you by the court under its instructions. It has been said quite often by the defense that the defendant is not to be subjected to a verdict of guilty until this evidence satisfies you of his guilt beyond a reasonable doubt. There is no question about that principle of law. The State does not dispute it, of course. It is a principle so well grounded in criminal law, so well understood by all, that, without unnecessary precaution, it accompanies a man from the time of the charge until the jury finally

makes up its mind. Another thing: We do not ask in this case anything in the way of a vicarious atonement. We do not want Mr. Haywood punished for someone else's crime. We do not want the defendant in this case to suffer by reason of the crime of Harry Orchard if he was not in fact connected with it, aiding, abetting and assisting in its perpetration. We do not want this defendant convicted of the crime of George A. Pettibone if he was not associated and connected with him as a co-conspirator. We do not want him punished for the crime of Jack Simpkins unless he was also a co-conspirator with him. We ask, as I say, for no punishment other than that which is warranted under the law and upon the evidence—no punishment unless the defendant was associated and connected with the offense so as to make him responsible therefor.

Fair Jury.

Much has been said in the argument by the defense with reference to the fact that the defendant comes before a jury poisoned with prejudice, for weeks and months—before a jury coming from a community, as said by the eloquent counsel from Chicago, crying for the blood of Haywood. Do you know of any such condition of affairs? Have you heard of any facts of that nature? Do you know of any poison that has been lodged in your own hearts or any bias that is attached to your own minds? Have you heard of anybody in Boise City asking for the blood of William Haywood? Have you heard of any conditions which make you think that a community is here seeking the life of this man regardless of his guilt? When you were called upon this jury and examined upon your voir dire, and you were thoroughly examined, you stated to the court and to the community that your minds

were free of bias and of prejudice, that your hearts were clear of malice, and holding your hand to high heaven you stated you could give this defendant a fair and impartial trial. No one doubts that proposition now. No one doubts that if Mr. Haywood is sent back to Denver it will be because a fair and impartial jury has passed upon his cause; no one doubts that if he is subjected to punishment for this crime it will be because a fair and impartial jury has passed upon his cause. It is either too early or too late to talk about poisoned minds and inflamed communities. Whether he is guilty or innocent is for you to determine. But no man ever sat in a court room where there was greater fairness, more impartiality, more of a determination to give him a fair and impartial trial. If there is anything of which the City of Boise and the State of Idaho should be proud it is the fact that notwithstanding one of our most prominent citizens has been murdered, notwithstanding the fact that every rule upon which society is founded was in the commission of that crime set at defiance, and even the very integrity of the State assaulted, nevertheless they have gone deliberately, earnestly, fairly and impartially about the matter of determining who did it and to let the parties suffer or go free as the evidence directs.

Not Fighting Organized Labor.

Another thing: We are not fighting organized labor. We are not fighting the weak and the poor. Neither are we here to consent that organized labor shall be a shield to crime. Neither are we willing that a man in any station of life shall take life with impunity. This is not a fight on organized labor—it is simply a trial for murder. Frank Steunenberg has been murdered and we want to know. An awful crime has been committed and the integrity and manhood of Idaho want

to know. An offense which startled the civilized world was committed within our borders, and unless we had earnestly and determinedly endeavored to know the author we would be unfit to be called a commonwealth among the sisterhood of commonwealths of this Union. Simply because earnest men determined to act, and have found evidence which led them to go further and investigate, does not mean a fight upon organized labor. It does not mean, as my eloquent friend says, industrial warfare. It does not mean class against class, faction of society against faction. It does not mean the rich against the poor, the poor against the rich. It means law, justice and fairness, and the verdict of this jury will be in accordance with those principles, whether it be freedom or conviction. But if I were fighting the cause of labor—and there are surely some friends of labor aside from those who flaunt their friendship to the four winds—if I were fighting the cause of labor I would not seek to engender hatred and ill-will, faction against faction or class against class. I would not inveigh against law; I would not inveigh against society; I would not inveigh against every man who owns his home or his farm; I would not inveigh against Christianity, because without those things the laboring man goes down into slavery and the dirt. You had a lesson in the French revolution. You had it all told to you in the fall of the Roman Empire. The moment one class is arrayed against the other, faction against faction, the rich against the poor, and hatred and ill-will fills the gulf between, the man who goes to the bottom first is the man who toils. His protection and his only protection, his safety and his only safety, is in the flag, in the integrity of the State, the integrity of law. His protection consists in maintaining the integrity of that fabric under which we have lived and under which he has prospered more than any other place upon the face of the earth.

Crime of December 30th.

Let us consider for a few moments the crime of December 30, 1905. Not much has been said about that matter because the facts are undisputed. Not much time has been taken in discussing the features of and the circumstances surrounding that offense, or the conditions or environments which prevailed there just before and just after the murder. But it is well for us to consider it for a few moments because, in my opinion, the manner of the commission of that crime, the circumstances, the undisputed facts, when properly weighed and considered, will throw a great deal of light upon who did it. It will enable us to look with more certainty into some other offenses which have been referred to before you. It is a rush-light which if you take with you down the criminal way of Harry Orchard will enable you to see many times the truth of his testimony.

Experienced Criminal

In the first place, the man who committed that crime was an experienced criminal. He was a man of years of experience in the commission of that kind of crimes—a man who had killed before and in that way. It has the touch and finish, the diabolical completeness of the work of a master. The man who planted the bomb at Frank Steunenberg's yard gate had planted other bombs. The man who arranged that get away that night had arranged for a get away before. Everything surrounding the commission of the crime, the manner in which he undertook to accomplish it, the plan which involved certainty of execution and the absence of the criminal when the deadly explosion should occur, everything discloses beyond a question the trained and experienced veteran in crime. Yet they would have you believe as you look upon the

awful scene, so complete with proof that it was the work of one long trained, that this was his first crime, that he had committed no others, and that this one was for personal revenge. You had just as well say that the finished devil whom Shakespeare created and called Iago was a novice at his work as to try to believe that the man who made and planted the bomb at Frank Steunenberg's gate was about his first job.

Not Alone.

It seems to me that as you stand at Frank Steunenberg's yard gate, shattered, and stained with his own blood, and look out upon the devious trails of Harry Orchard as they are now revealed by the evidence in this case, every one of them leads at last to the stairway up which he ran the day the colored boy held the horse—every one leads to Denver. Starting from this gate, taking his back trail, crooked and winding though it is, devious as crime, but after all certain as fate, it brings up to but one place. We go to Nampa, then to Boise, then to Spokane, then to Wardner, back to Spokane, back to Seattle, on to Portland, back to Caldwell, back to Nampa, then to Salt Lake, then to Denver. The first letter taken out of the mail after the crime was committed is from Denver. Among the first to come to him is Sullivan, the attorney, from Denver. The second is from Spokane, but not until connection had been made from Denver. The index finger of fate pointed but in one direction, to the beautiful city on the plateau. Taking another trail seven years before and starting in the Coeur d'Alenes, what do we find? We find him at Wardner the day Cheyne, the scab, was killed, a member of the mob that blew up the mill. We track him out over the mountains, tramping, wandering here and there, then to Cripple Creek, then to Denver. Why was it so? How

did it happen that this man who they say lived on his small earnings in the gambling hell, always started from Denver when he went forth to murder and always returned there when the bloody deeds were finished? Who drew him thither, who furnished him comfort or gave him encouragement and protection? Was it possible that he was operating alone or did he have those who aided, abetted, encouraged and sustained him? This brings us to the law of conspiracy.

Law of Conspiracy.

It has been said that Mr. Haywood is not guilty notwithstanding Simpkins or Pettibone or Orchard or the others may be. But I want to call your attention a moment to the law under which the defendant is being tried. But I want to say before going to the law of conspiracy, in fairness to the defendant, that he cannot be made unwittingly a member of a conspiracy. I concede that to start with. He can not be made a member of a combination to commit crime without his knowledge and without his wilful design and purpose to join it. In other words, if Pettibone and Orchard combined to commit this crime and did commit it under the feet of Mr. Haywood, without his knowingly and wilfully joining the conspiracy, he is entitled to his acquittal. He can not be made responsible for these men's acts unless he knew that such a combination existed and wilfully and knowingly joined it. But if we have proven a conspiracy in this case, a combination between Mr. Haywood, Mr. Pettibone and Mr. Orchard and Mr. Moyer and Jack Simpkins to commit this crime, if you find they were in a combination, either express or implied, tacitly moved by the same purpose and with the same design and the same common object; if the evidence in this case shows that they were acting in concert, led on by

the same purpose, one doing one thing and another another, one helping here and another there, then the act of one becomes the act of all. After that combination is formed and that understanding had; after the agreement, express or implied, exists; after they begin to act together knowingly, from that time the act of George Pettibone is the act of Mr. Haywood; from that time the act of Mr. Moyer is the act of Mr. Haywood; from that time the act of Harry Orchard is the act of Mr. Haywood; and the act of Jack Simpkins is the act of Mr. Haywood. After the combination and agreement is in existence and they have become wilfully and knowingly members thereof, understanding the crime is to be committed or about to be committed, that wrongs are to be effected, from that time on they are one, they are partners, the act of one binds all. Now upon that theory the State is proceeding to prosecute in this case. Upon that theory it would not make any difference, when this crime was committed, whether Mr. Haywood was in Denver or Caldwell. Under that principle of law it would not make any difference whether he sent money himself or whether Pettibone sent it. Under that principle which binds together men who join together thus, the act of Jack Simpkins was the act of Haywood and it wouldn't make any difference in what part of this mundane sphere Mr. Haywood was resting at the time the act was committed. So it is hardly right to say, and it is not entirely answering the argument in this case nor the presentation made by the State to say, "I don't care about Jack Simpkins, let him go overboard;" for the counsel to say, "I don't care about George Pettibone, we will take care of him later." If the theory and the law as the State has presented it here, and to be given to you, in my opinion, by the court, are correct and the facts show this combination to exist, they can

not in candor say, "I am indifferent to Jack Simpkins." They can not in candor say that George Pettibone's unexplained telegram amounts to nothing. They are just as necessary to be explained and their actions to be explained as if they came from the hand of the defendant in this case.

Then the question is, Have there been any facts introduced here to show that condition and is that a correct statement of the law? Now, gentlemen of the jury, it is not the contention here, never has been, that this conspiracy is composed, as the very able counsel for the defense said, of forty thousand members of the Western Federation of Miners. It is not the contention that any considerable number of this organization ever had any knowledge of the specific offense here or any other offense which has been referred to in the evidence in this case. The contention of the State is that some four or five men associating themselves together, as members of this organization, for a number of years entertained the idea that one way in which to advance their cause and one way in which to protect their interests was the violation of law in different ways, and I could come very near submitting that proposition upon the argument of the eloquent counsel who has just taken his seat. I will refer to that in a few moments, however.

Criminal Organization.

The first thing we want to determine is whether or not this organization, the Western Federation of Miners, has anywhere a criminal force, a power which is actuated by criminal motives. And in order to satisfy you to start with, because I will refer to it at other times, I want to call your attention to two particular acts which are undisputed here, which will satisfy you in a moment that somewhere in this great labor organization, somewhere in the Western Federation of Miners,

is a power which controls and a power which commits crime. It is proven in this case just as clearly as the fact that Frank Steunenberg is dead. Look at the 29th of April, 1899. Upon that day the miner came out of the mine. He came at the call of some leader. They met in Union Hall. They organized and with absolute military precision they marched down to the train and took possession of it. They took possession of those who were running it and compelled them to start upon the journey. They put masks upon their faces and arms upon their shoulders. They went down to Gem, stopped, and again went into the Union Hall. They got some more arms and some more men. They backed up to the powder house and put on board the deadly instruments of murder. Arms were not enough. They must take that which a certain school of philosophers in this country think more of than they do the Bible, and that is dynamite. They backed up there and took upon this excursion train a lot of dynamite and they came down to Gem and were not satisfied and they backed up and took some more. They moved down to Wardner and again with absolute military precision, under the guidance and direction of some leaders, they got off the train, formed in battle array, the men with the long guns in front and the men with the short guns behind, and marched down to the Bunker Hill & Sullivan mine, blew up half a million dollars worth of property and killed and murdered Jim Cheyne. In open defiance of law, with absolute contempt for the State, they go upon this expedition, call out all their men, and for no other purpose, as you know, than the violation of law and the commission of the most aggravated crimes. Is there any question about it? Is Mr. Orchard the only man who testifies to it? If there was any question about, if it could be disputed or explained, where are the five hundred or the thousand men,

those loyal members of the Western Federation they talk about, who dare not come here and tell you a single word in regard to it? Where is Paul Corcoran, who came in and out of this court room, who was two years in the penitentiary and who ought to be there now? It was a criminal expedition gotten up for the purpose of the violation of law and the commission of murder. Who got it up? Who directed it? Where is the criminal force which led it? Was it an accident? Too much precision, too much certainty, the aim was too deadly, the result was too great. They marched back and went into the mines, says the eloquent counsel. Why did they march back home and go into the mines? Because they came to the conclusion, apparently, that there was no law in Idaho and that they could take human life and yet be perfectly safe in doing so. Criminal organization! I know that a man should be careful when he is talking about men who work down in the mines. But we are discussing facts in this case. It is an unpleasant duty sometimes to deal with facts, but it is the only thing we can do when we are trying a law suit. Another instance: They say no criminal organization. That was seven years ago. Since you have been called upon this jury, since Mr. Darrow made his opening statement in which he threw Jack Simpkins overboard, this man who was at Caldwell under an assumed name with this man who has been painted in all kinds of colors, Harry Orchard—a veritable devil, and I agree with them—Jack Simpkins who was hibernating with Mr. Orchard is made a high official of the Western Federation of Miners. When the news went forth he fled from justice, is a fugitive in hiding today, and this man who is a self-confessed criminal before the community has been re-elected and a crown of favor put upon his head in open defiance of every decent sentiment which ought to control a labor organization.

Is it a criminal organization that commits crime as they did on the 29th day of April? Is it a criminal organization that protects and harbors criminals? Is it a criminal organization that has as its leading officers fugitives from justice? There can be no question in the mind of any man but that somewhere in this organization, somewhere, is a criminal force and a criminal power which defies law, disrespects human life and believes in the rule of might and nothing more.

Now my friend, who grows a thousand times more eloquent than I ever expect to, says that we have no apology to make, whatever else we do, for anything that the Western Federation of Miners has ever done. Well, whether the defendant here is guilty or not, it strikes me that there are some things which have been done that ought to be apologized for, and that the statement of such a proposition is again a defiance of public sentiment, public decency and the laws of the State. Apologize! Why not? Jim Cheyne was murdered. Oh, yes, but that was justifiable—he was a scab. He was living upon the price which the union labor men had raised for him. Justifiable! The Bunker Hill & Sullivan mill was blown up. Oh, yes, but it was employing non-union men—ought to have been done. Why, he says, if you can get a thousand men together to go and do that thing then it is proof positive that it ought to be done. That may be so in some places, but it is not so in Idaho. There is only one rule here, and that is whether you are a mine owner, a scab or a union man, you are entitled to the protection of the law and to the preservation of your property and the protection of your life. All the way through this case, from the inception to the close, the testimony and the argument combined, is the proposition that if he was a scab, if he was a non-union man, like old man Stuart and the fourteen poor fellows who were sent into eternity on the 6th

of June, there is the subtle spirit of justification for it all. If the doctrine which has been argued here is true, if such is to be taught, I am not surprised that these men commit murder.

Harry Orchard.

Gentlemen of the jury, the great question in this case is, we admit it, Has Harry Orchard told the truth or any part of the truth? They have wanted to know for some time what I think of Mr. Orchard. I may not be able to tell you in one evening, but I will kind of give you an idea before I get through. Perhaps the most amusing feature of the Orchard discussion is the different views with which he presents himself to the defense, the different ideas which the learned counsel have of Orchard. It may not be instructive as a matter of evidence, but still I think it throws some light upon the matter and it is certainly instructive to study the different views which they have of Orchard. In the first place they say he was a homicidal maniac, going here and there, hither and thither, killing everybody he could, bent upon murder, because of a lesion in his brain, because he was a maniac thirsting for blood. That is the first view which is presented by the first counsel who opened this case for the defense. He got about half way through his argument and he undoubtedly satisfied you beyond a question that he was not a homicidal maniac at all, that he never committed but one crime in his life so far as murder is concerned and that was the killing of Frank Steunenberg and for private reasons. And then he got to thinking over the matter again and he saw perhaps that there was some inconsistency about that and he says, "I will make a Pinkerton out of him;" and he closed this case with the intimation that he was a Pinkerton and inveigled Jack Simpkins

off the train at Caldwell. I wish he would inveigle him back.

Mr. Darrow: We will consider that.

Mr. Borah: There is just one thing I would say with reference to Orchard's insanity. I don't believe that Mr. Richardson demonstrated that on cross-examination. It is certainly no compliment to one of the greatest lawyers in the West that this maniac did not disclose any of his weakness under a week's cross-examination. But there is another peculiarity about this homicidal maniac. As the greatest reader of the human heart once said, "There must be method in his madness." In all his hurrying and scurrying here and there, killing where he would and where he could, he always hit upon the enemies of the Western Federation of Miners. He never killed a man nor attempted to kill a man who doesn't come under the ban according to the language which is printed in the Western Federation magazine. Maniac! Entirely too much method there.

Now, my friend who has just closed and whom I listened to with so much interest, perfectly spellbound, said to you yesterday in one of his flights of humor or fancy that Mr. Orchard had purchased his freedom and had received his pay in advance.

Mr. Darrow: His life, I said.

Mr. Borah: His life. I am glad you concede we are going to keep him in the penitentiary. And that if he hadn't made his confession and purchased his life that the grass would be growing over him and the daisies blooming over his grave. You know that is not true. If he had not confessed and did what he did Fred Miller would be earning his fifteen hundred dollars. The Western Federation of Miners would be here clearing Harry Orchard, and you would never have seen Billy Easterly nor Bill Davis nor anybody else appearing here

against him. They would have been here and the eloquent gentleman from Chicago would have demonstrated to you with absolute certainty that he could not have killed Governor Steunenberg because he was down at the Saratoga hotel when the bomb went off—just as Mr. Riley was too close to the bomb in San Francisco to admit of its going off. And instead of hearing him argue upon the leader of the Western Federation of Miners you would have had a chance to hear him upon Harry Orchard, the man of unblemished character, as was said in that interesting letter by the firm of Richardson & Hawkins in November of 1904.

Again, who is this awful monster? They say that my friend Hawley has Orcharditis. We have had a touch of it since February 18, 1906, but they had Orcharditis from April 29, 1899, until February 18, 1906. We are keeping him in the penitentiary tied up. They had him going here and there, protecting the body of Mr. Moyer, the friend of Pettibone, his banker, associating with Bill Easterly, the friend of Davis, here and there—one of them, a delegate to their convention, on the Ways and Means Committee. The Orcharditis which we got we got out of the heart of the Western Federation of Miners. This man with twenty murders at his belt—this monster, as we agree, the greatest criminal of the twentieth century—one of the leading members of the Western Federation so far as non-officers are concerned, and yet they say it is not a criminal organization.

But another thing, perhaps the most awful thing that has occurred in this case, and the one which Mr. Darrow pointed out with all the pathos and eloquence at his command, is the fact that this man who had killed fifteen or twenty men came on the witness stand and told you his true name. When we put Orchard on the stand we contented ourselves with show-

ing that he had committed fifteen or twenty murders. Mr. Richardson took him up on cross-examination and showed that he had stolen a sheep. We did not think it would add anything to his degradation to show a matter of that kind. Then he showed that he underweighed cheese; then he showed that he ran away with another's man's wife—wanted to prepare him for New York society. When we got through with him we supposed him to be one of the greatest criminals who ever lived. But, they say, "A greater crime still is that he came upon the witness stand and told his true name—don't forget his little daughter." I do pity his little daughter and his wife or anybody else who bears his name. But who put into this record the name of that child?

Mr. Darrow: You did.

Mr. Richardson: Sure, under direct examination, the first thing you did.

Mr. Borah: I beg your pardon, we asked Mr. Orchard his name, but the man who put into this record the name of this child was the astute cross-examiner, Mr. Richardson. If her name is to go down in infamy, the fact that he had a daughter, if her given name be recorded where the man who may some time love her will have an opportunity to know of her shame and read of her curse, it is not because the State of Idaho put her name there, but because the defense did.

Mr. Darrow: He gave his residence and told his name.

Mr. Borah: Exactly.

Mr. Darrow: Wouldn't they know who his daughter was?

Mr. Borah: Yes, but you people must record it here—no one else did.

Mr. Darrow: Oh, no, we never knew his name before.

The Court: Go on, Mr. Borah.

Mr. Borah: Did not know his name, did not know who

he was? Why, they knew his uncle, his aunts, his great uncle, his grandfather, his brother, their boyish quarrels, and everybody else who died of or was supposed to be affected by insanity within four generations. Didn't know his name or where he lived? What did you have Pettibone here for? You showed that Pettibone had told him or he had told Pettibone all about their early careers.

Mr. Darrow: Oh, no.

Mr. Borah: Read your record again when you get time.

Mr. Darrow: No, we don't need to.

Mr. Borah: Let us proceed further: Harry Orchard appears upon the scene for the first time, so far as the direct evidence in this case is concerned, upon the 29th of April, 1899. There are other features of his life which I am going to discuss later but I want to commence there at the present time, on the 29th of April, at the time of this offense which I have been discussing. Harry Orchard was undoubtedly in that crowd. He appeared there and, as we admit, already a criminal, already a man given to crime, already one who would be quick to seize an opportunity to commit a crime, one who, in my judgment, was in all probability a criminal by instinct, a criminal from the time he was old enough to know what law was and how to violate it. So he came upon the scene on the 29th of April, 1899, and as he says, went down upon the train and was one of the men who touched off the fuse. There seems to be a spirit of jealousy upon their part; they do not want to give credit for that to such an obscure member of the Federation, but there can be no doubt in the mind of any one that Orchard was there. They had the men here by whom they could prove—Mr. Corcoran and others—what happened at that hall. Harry Orchard testified to it and they could have testified whether it was true or untrue, but they did not see

fit to dispute it. So we are satisfied that he went down there the 29th of April, bent on crime, and mixed with the men who were committing crime that day.

Those who talk to you about the fact that Harry Orchard became acquainted rather quickly down in Cripple Creek, that his association down there with reference to the Vindicator and the commission of those other crimes was such as to preclude the idea that they would employ a man who was a stranger to them—want to bear in mind that they knew him from the act of April 29, 1899. W. F. Davis was undoubtedly in that mob. When you listened to his cross-examination you knew he was concealing something, that he was not telling all he knew. A train went through Gem; he was standing about; that train had three or four hundred men on it; they were masked; they were armed, but he paid no attention to it, did not know anything about it, as to where it was going; was not concerned about it, and would lead you to believe he did not know. Now, gentlemen, the one thing which kept Davis from knowing was the fact that something happened after they got to Wardner, something that is not barred by the statute of limitations. Murder does not outlaw in this State. I asked Davis if he was interested in that train, or if it was not a rather interesting day. "Well," he said, "it is owing to what you call an interesting day. I did not see anything wrong with it—nothing to interest me," or words to that effect. And this man states to you that notwithstanding the fact that he witnessed that scene he did not know where that train was going nor what they were up to, nor did he make any inquiries in regard to it. He is one of the parties who says that he was not there, though Orchard testifies he was. But Orchard tells you what happened at Burke, the words which were spoken, who were present, what was done,

and described the scene from beginning to end. Doctor Allard said he as there, that he saw him going and saw him coming back with the men who were on the train, and in view of the fact that they have the names of six hundred men who know all about the matter and did not dispute his presence, it must be conclusive to your mind that Mr. Orchard was there, and therefore commenced his career of crime upon the 29th day of April, 1899, so far as this organization is concerned. He immediately enters into the confidence of his friends and prepares for his future work. He is at home among men who riot in bloodshed and glory in the defiance of law.

Test of Truth.

Let us see if there are some tests of truth with reference to witnesses upon the stand which apply to Orchard. In the first place, a man may go upon the witness stand and testify to a simple proposition. He may say that he saw John Jones shoot John Smith at the corner of Eighth and Main streets, and it will be very difficult to break him upon that proposition. It is very difficult to cross him so as to show it is false, if it is false, because it is a very simple proposition. A man may say, as Davis said, that he was not on the train and he may remain with the declaration, but when you take a witness and put him upon the witness stand and take him through a period of his life extending over four or five years, meeting an individual here, an individual there, committing a crime here and another there, coming in contact with this condition and that condition, traveling upon the train, giving the entire detail of his life and with the circumstantial certainty which Orchard did, that is one of the best tests of the truthfulness of a witness. I submit that it would be impossible for a man to run the gauntlet of four years of active falsehood, coming in contact

as he did with so many different people, circumstances and conditions, without being detected by the cross-examination of so adroit a cross-examiner as Mr. Richardson. That is the first test of Orchard's truthfulness. There is another test: I want you to bear in mind that there is a brand of criminality and method of crimes which seem to belong almost exclusively to Harry Orchard. You can pretty nearly trace him from the death of Jim Cheyne and the blowing up of the Bunker Hill and Sullivan mill to the yard gate of Frank Steunenberg seven years afterwards by the nature of his crimes and the manner in which he committed them. Yard gates with bombs; door steps with bombs; a bomb here, a bomb there. There is a brand for the way in which he accomplished his crimes by which, as I said a few minutes ago, if you look out from the gate of Frank Steunenberg, you can almost track him back over his entire career. And that is a fact you are entitled to take into consideration when you are weighing the question of whether he testified to the truth in this cause.

Orchard's Religion.

One thing more before going to the details of the evidence, and I might as well cover it now as later on. Much has been said here in mockery and derision of Orchard's profession of religion. I suspect it does not greatly matter to you so far as this cause is concerned whether he has or has not accepted the teachings of Christianity. I suspect that you will accept or reject his testimony in accordance with the rules which ordinarily obtain in courts of law; that you will measure its worth in proportion as it is corroborated by other testimony, in proportion as it commands the judgment and convinces the minds of reasonable men. But notwithstanding this, I want to call your attention to the fact that this question of his

religion or non-religion was not a matter which the State imposed upon this jury in any way, shape or form. They say it was gotten up by Mr. McParland for its effect upon the jury and to brace him up as a witness before you. You know that there was no intimation made of such a thing by the State upon its direct examination. It was not flaunted before you nor paraded here by any act of the State, but Mr. Richardson saw fit, having been informed, it appears, by a former member of the Western Federation of Miners—that is, according to his statement—to show that he had accepted the teachings of Christianity.

Mr. Darrow testified in this connection with reference to his religious views. He was generous enough to give us a discourse on religion, incident to a discussion of the evidence in this case. I hardly think he is an expert on the subject. Neither am I, so I will venture a suggestion, assuming that we will likely be considered by this jury of equal moment as witnesses. His statement recalls an experience which was mine when a small boy. I was raised by Presbyterian parents. The religious strain of Calvin was present in our household. About the time I arrived at the age when every boy knows just how the world was made and how man accidentally arrived upon earth, I secured from some source a little volume of Colonel Ingersoll's. It was the "Mistakes of Moses." I was perfectly fascinated with the story. I soon found out that this man of whom I had heard so much at family prayers was a worse man than Darrow's Orchard. He had killed an Egyptian and hidden him in the sand. He had done a great many other things unnecessary to mention here—I was perfectly fascinated with the story. I was so glad to find these saints were human. One day while sitting under a tree reading when I ought to have been pulling the weeds out of the corn, father

came along and asked what I was reading. I closed the book and being in rather a close place, like Pettibone, I concluded I would keep still, so I answered not. Father, thinking that my silence under such circumstances was an admission of guilt, reached over, took possession of the book, and I never read any more out of that volume. Some other things happened which it is also unnecessary to mention. I went my way disconsolate. I had no Ingersol and the intellectual heavens were without a star. Finally I secured the life of Napoleon Bonaparte and read it. I came to the conclusion that Napoleon was a greater man than Ingersol—the greatest genius in war or statesmanship that ever lived. I came to the history of his Egyptian campaign. I read how he took with him on that trip from Paris a number of philosophers, savants from the salons of Paris—learned men, wise men—men who were teaching in that day, as some would vainly teach now, that there is nothing higher or more divine than the impulses and emotions of the human heart, nothing greater or more godlike than the human intellect; men who taught that there was no difference, as my eloquent friend now says, between the unlettered barbarian muttering his unmeaning words at the foot of a black idol and the jubilant soul looking up to the God on Calvary, asking for guidance and direction. I read how, one night, these philosophers sat upon the deck of the ship and discussed in their puny way the mistakes of the Infinite, how they finally concluded there was no such thing as religion, no God, nothing higher than man. At last they turned to Napoleon for an opinion, who, pointing to the firmament above, said: "Tell me who made that firmament and I will then discuss this matter with you." This was a revelation to me. Skepticism and agnosticism were things of the past. And I say to you tonight that I am not a religion-

ist, neither am I a hypocrite, but it is too late in this, the morning of the twentieth century, to write upon the divine brow of the One who died on Calvary, "impostor;" too late to write above that bowed head, "false prophet." While some may not know, millions do know that their Redeemer liveth. It is too late to argue against the teachings of Him who said, "This day thou shalt be with me in paradise."

Orchard may not have religion. I do not know, but I do know that twenty centuries of Christian civilization, I do know that thousands and thousands of the best men and women who ever walked upon this earth tell us and teach us that there is a divine power which can reform men's brains, reform and make better men's hearts, which can give the power to do that which they did not have the courage to do before. Even Orchard's story, then, is not so strange. After all, nothing could be more natural, more in harmony with the never finished story of crime than the very thing Orchard tells you took place. In our strength and pride we are given over to mockery and derision; in the hour of success we are blasphemers and declare as the fool declared that there is no God. But in the hour we are cast down it is altogether different. In the night of despair, when the stars of hope are dead, every sinner of us, the bravest and the frailest, turn at last to that old book which our mothers loved. It is the only book on earth when we are face to face with the trouble which human aid can not alleviate. When some great sorrow presses us to earth and we are locked in with our own sufferings, how quickly memory carries back over the years and we are landed again at the old homestead. In the twilight sits a saintly form, bent and gray, and on her lap rests the book—it is mother and her Bible. There is the picture, memory will never lose it, it is the anchor of the moral world. Every ship-

wrecked mariner upon the ocean of life prays at last to anchor there—all the mockery and blasphemy and scorn of atheism can not cloud its beauty. God never intended it should be destroyed. He never intended man should become vile enough and fiendish enough to wholly forget its divine influence. And if Orchard, poor, miserable wretch, his hands red with the blood of more than a score of innocent men, his soul steeped in the very uumes of hell—if he saw that picture and was drawn to it again he simply saw what every criminal sees when he stands looking out from behind the prison bars at the near end of life. Oh, I learned long ago not to mock at any man's religion. It is at last a secret between himself and his God.

But, says Mr. Darrow, he is now playing the greatest game he ever played in his life; he is playing the life of Mr. Haywood for his own; that his testimony is untrustworthy for that reason. Gentlemen of the jury, I do not know what you will do with Mr. Haywood; I do not know what your verdict will be in this case; no man will know until it is rendered in this court room. You may return him to the city of Denver, you may turn him loose to go back to the State of Colorado to take his place at the head of this great organization. But the man who planted the bomb at Frank Steunenberg's gate and comes into this court and swears to it will pay the forfeit of his crime. They talk of promises. We are not asking for vicarious atonements. Fighting Haywood for Harry Orchard? Trading in blood? You may turn **him** loose, but you will never get twelve men in the State of Idaho who will turn Harry Orchard loose and you will never find a man in this State who will, as Governor, turn him loose. And I trust that if ever I compromise with the man who planted that bomb at Steunenberg's gate that the great God will wither my right

arm until it falls from its socket. We are only using him for the very purpose which we are entitled to use him, to bring other guilty men to punishment. But there is no compromise, and there will not be; no immunity, and there will not be. We know there is one man guilty of murder, and you will determine whether there is more or not. There is no evidence here that Harry Orchard has been promised immunity, and the manhood and integrity of this State is behind the fact that he will never get it. Why should we compromise with him or anybody else? He says he is ready to meet his God. The law has been violated and a man murdered. He certainly did it. But again, I do not want him turned loose for other reasons. He might inveigle Jack Simpkins off his train again; he might go down there and get in company with Bill Easterly again; he might go to running with the Western Federation of Miners again. There is only one place for that man and that is in the penitentiary until the time comes for him to go hence. And I want to say to you that the man who intimates that I would compromise with Harry Orchard does not understand the kind of blood that circulates in my body. He does not know the love I bore the dead.

Accomplice—Corroboration.

Harry Orchard is an accomplice and his testimony must be corroborated. It does not make any difference how thoroughly you are convinced of its truthfulness, before the court will permit you to find a verdict of guilty it must be corroborated. I want to discuss with you a few minutes, before I ask the court to close for tonight, the question of the corroboration of the testimony of an accomplice. In the first place, you must be satisfied he is telling the truth before, as a practical proposition, the question of the corroboration arises at all.

There are two kinds of corroboration: First, there is the corroboration which satisfies you of the truthfulness of the witness's story itself, and a large part of this corroboration has been of that nature. Second, there is the other kind of corroboration which is necessary under the statute and that is the corroboration which connects this defendant or tends to connect the defendant with the crime.

In considering the corroborative evidence in this case you will be under the necessity of separating these two classes of corroborative evidence in order to arrive intelligently at the determination of whether or not the evidence we have been introducing under all circumstances is material. Take, for instance, the statement of Miss Peabody. We do not contend that it was such as of itself would tend to connect Mr. Hayward with this offense, but it does tend to show, as we had a right to show, the truthfulness of the statement of Mr. Orchard. Other witnesses might be noted, which would illustrate the difference between the corroboration that simply goes to the question of truthfulness of the witness and to the question of the corroboration that of itself and independent of Orchard's testimony tends to connect the defendant with the offense here charged. This last class of corroborative evidence must be found in the record before we are entitled to a verdict, although aside from it you should be satisfied in your own mind that the statements of Harry Orchard are true. In other words, you might, after hearing his testimony say, "We are satisfied Mr. Orchard told the truth," but if you should fail to find the corroborative evidence tending to connect the defendant with the crime, then the statute would interpose and you could not render a verdict of guilty. One of the important questions, therefore, is whether or not there is any corroborative evidence here tending to connect the defendant

with this offense, which evidence of itself has that effect. It is not necessary that the corroborative evidence of itself establish his guilt; it is not necessary that it of itself be sufficient to satisfy you beyond reasonable doubt. It is not necessary that it in fact connect the defendant with the crime. If you are satisfied of the truth of Orchard's statement and then satisfied in addition that there is evidence which of itself tends to connect the defendant with this offense, the statute is satisfied. For instance, if you should be satisfied that after Orchard was arrested and this defendant, knowing of his offense, came to his rescue, that of itself might be sufficient to tend to connect him with the offense charged. If you should be satisfied that the letter, which Mr. Orchard says came from Mr. Pettibone, referred to the hundred dollar draft which Mr. Haywood sent to Mr. Simpkins and that it was sent for the purpose of assisting in this murder or to hold up Orchard while he was committing the crime, that he sent the draft knowing these facts, that of itself would be a strong circumstance which would be entirely sufficient to satisfy the statute. It is not necessary for us to show, as was argued by Mr. Richardson, that a corroborative fact must stand alone and be sufficient by itself to sustain us under the statute. Circumstances running through the case gather strength as they go, and when they are all put together they may be amply sufficient to satisfy you of the connection of the defendant with the offense, whereas one fact or one circumstance standing alone would not do so. A man may be connected with a crime and the corroboration may consist wholly of circumstantial evidence, just as a man may be convicted upon circumstantial evidence alone. And if you find in this case that the circumstances are—such as the writing of the letter to Mrs. Orchard with knowledge that a crime was to be committed, or the writing of

the letter upon the part of Mr. Pettibone at the suggestion of Mr. Haywood, or the sending of telegrams transmitting money upon the part of Pettibone—I say if you find these circumstances are proven they may become convincing and conclusive and they may be sufficient to satisfy you that the defendant in this case was connected with this offense even when some single circumstance or fact alone would not do so.

I would like to close this evening for it is too hot to proceed.

Adjourned.

Near the close of my argument last night I had undertaken to call your attention to some general principles under which the case is to be tried—some general rules with reference to the evidence of Orchard and the corroboration which should obtain in order to entitle us to a verdict at your hands. I shall not undertake to review all the evidence in this case. I shall not do so for several reasons. In the first place, I do not know that I should be able to do so from a physical standpoint, and secondly, there is no necessity for that for Mr. Hawley has gone very fully into the evidence; but particularly for the reason that it is not within the scope and purpose of my argument to do other than to group the evidence in a general way around four points, and if I succeed in doing that I shall be content in my own mind that I have done all I can for the State's final presentation.

I want to call your attention to the first point and that is whether or not the conspiracy existed; whether there was an agreement upon the part of four or five certain men whom I shall name to commit crime and to do violence to those whom they believed to be antagonistic and unfriendly to the Western Federation of Miners.

Second. Was the defendant a member of that conspiracy—did he know that it existed, did he aid, abet, assist and encourage anyone in the commission of this crime.

Third. Has Harry Orchard told the truth in this case?

Fourth. Is there sufficient corroborative evidence which of itself tends to connect the defendant Haywood with the crime to satisfy the statute?

I want you to keep these four propositions in your mind and be patient with me while I go through some of this evidence. Of course I shall have to travel over territory that has been covered already and much more ably than I can do.

I want to take up this argument a little differently from what my associate did, or my opponents. I desire to begin my discussion of this case as to the evidence, with the murder of Governor Steunenberg and to travel back over the trail of Harry Orchard rather than to commence with the Colorado situation and come this way. I want you to pay particular attention to one proposition with reference to the killing of ex-Governor Steunenberg and that is as to the corroboration of the testimony of Orchard.

There is no Mine Owners' Association connected with the death of Governor Steunenberg. There are no Pinkerton detectives having to do with his death. Orchard was not sent there by the mine owners nor by the Pinkertons. He was in company with the official head in this State, of the Western Federation of Miners. At the time of Governor Steunenberg's death there was no conflict, no trouble anywhere in this State. This man having done what he believed to be his duty when he held his official position had retired to private life. He was going his way among men, passing out and in. There were no difficulties here, there were no conflicts to divide men's passions or feelings or to arouse them. It was a cold-

blooded, deliberate murder, the malicious and premeditated killing of one who stood unchallenged in his actions before the world. This relieves us of much of the discussion that pertains to other situations, and it is very necessary to get this particular point of view to start with.

Colorado Troubles.

There are many things which happened in Colorado on both sides, things which men on either side had no right to do; things which ought not to have been done at all. I am not going to defend the mine owners. I do not care anything about them so far as this case is concerned. They are no part of this controversy. They are like other men, no better and no worse. I am not here to defend the militia. I do not care anything about the militia. I am not here to criticize them, but I will say generally that I apprehend the time will come when Colorado will awaken to the fact that there ought to be something in Colorado higher and better than the militia, higher and better than the question of union or non-union men, and that is the manhood and integrity and patriotism of the State. But in this discussion of the Steunenberg murder we have a clear field so far as these matters are concerned. We get a clear view of the relationship of the man who is guilty and the men whom we charge—their actions toward one another relieved of any of the condition of affairs that embarrass or cloud or veil the true situation from a juryman's standpoint.

Steunenberg Murder.

Beginning, therefore, with the death of Governor Steunenberg, we observe again that Harry Orchard starts upon his mission of crime from the city of Denver. This is not de-

pendent upon the testimony of Harry Orchard. It is proven entirely outside of any of his statements, any evidence that he gave in this case. Mr. Haywood tells you that along the latter part of August, between the 25th and 30th, 1905, Harry Orchard left the city of Denver. He says that at that time he came home one day and that his wife said to him that Orchard must have gone. He says he saw him several times during the latter part of August, talked with him at Pettibone's house, observed his presence in Denver, tells you at last that he left there between the 25th and 30th of August, 1905.

We track Orchard, not by his testimony but by the testimony of other parties, from Denver to the city of Nampa and from there to the city of Caldwell. We find that a few days after he leaves the city of Denver and the home of this defendant, in a very short time after Mrs. Haywood saw him there, that he is registered at the hotel in the city of Nampa and a very few days thereafter at the hotel in the city of Caldwell. We learned from Mr. Easterly that about the first of September he had some communication with Orchard between Caldwell and Silver City. So, aside from the testimony of Orchard, it is well established that he came direct from the city of Denver to the city of Caldwell, that he came directly from the home of the defendant to the place where Governor Steunenberg lived.

As stated to you by Mr. Darrow, you were not obliged to put aside your common sense or lay aside your reasoning power when you became jurors. You should weigh the probabilities and improbabilities and exercise what is sometimes called in this country "horse sense" with reference to these matters. And when we find Orchard going directly from Denver to the home of Governor Steunenberg with no osten-

sible legitimate purpose, we naturally ask why he took this trip. Why did he go? Did he go to gamble with the soldiers? Did he go to pursue the vocation to which they say he was devoted? Did he go there for the purpose of working in the mines? Did he go there to associate with any of his old comrades or friends or to find those with whom he was inclined to associate, or did he go as the emissary of this organization to gratify a long standing grudge?

We find another thing: When he arrived in Caldwell, at no time did he engage in any pursuit or purport to do any business, nor did he give any evidence of the fact that he was there for a legitimate or proper purpose. He seems to have left Denver, to have gone directly to the home of the man whom it will be conceded the Western Federation looked upon as an enemy, to spy upon his home for weeks and months until he finally accomplished his death.

You must find an interpretation for a man's acts. Orchard, having left the immediate presence and contact and association of the defendant and the leaders of the Western Federation of Miners and having gone directly to the scene of the murder, you naturally ask why. All these facts are proven outside of the testimony of Harry Orchard. There is another matter here to which I want to call your attention a little out of its order and that is a letter that Orchard wrote and sent by Marion Moore to be mailed in Alaska back to his wife. There are two uses to which this letter can be put and I call your attention to it at this time to show the close association of Orchard with the leaders of the Western Federation of Miners. He wrote a letter—left out the date. He went to Moore, who was on the Executive Board—not to some tin-horn gambler, not to some associate in the low walks of life where they have now placed him, but he went to one of the leaders of the

Western Federation of Miners and said to him in substance, "I want to deceive my wife"—or, taking Moore's inference for it—"I want to deceive my mistress." And I take it, so far as Moore is concerned and his connection with this affair, it makes very little difference whether he regarded this woman as Orchard's wife or his mistress. Anyway he says, "I want to get away from her, I want to mislead her as to my whereabouts, and I want you, an officer of this labor organization, to carry this letter dated Alaska, and become a co-conspirator from a moral standpoint in my efforts to disassociate myself from my wife and children, or the woman with whom I am living." Gentlemen, I ask you what questions would you have asked him and what would you have done under the circumstances, especially if this man had been practically a stranger to you, as Moore alleges Orchard was to him? Would you have engaged in that dirty, contemptible little piece of work? Would you not have said, "Have the manhood and courage to go tell your wife the situation, or the woman with whom you are living?" Would you not have said, "If this is your way of doing things I will have nothing to do with it and you had better get off the benefit list?" But for some reason Orchard always felt assured that he could go to an officer of the Western Federation of Miners with any kind of a crime on hand and not be turned away, and he was never mistaken in his position. So we have the close association of these men, not only in the ordinary affairs of life, but in what at least was a violation of the moral law. Here is a moral outrage disclosed by this transaction because, as it turns out, Moore took the letter, carried it all the way to Alaska, put the date in the letter and sent it back to the woman over whom they have shed so many tears in this case. Was Harry Orchard very much worse than Moore, and what was the relation

of these parties? What do you think of the association of this man with the leader of the Western Federation of Miners? All this took place in the latter part of July, 1905, about the time they were discussing the death of Governor Steunenberg.

Again, we find that Mr. Moyer came home from California, according to his own statement, in the latter part of August, 1905. We have no testimony of the association of Orchard with Mr. Moyer other than Orchard's testimony, but Moyer was there, according to his statement, in August, 1905. He returned from the State of California where he had been for his health. In this connection is an incident which I must again go out of my way to mention, and that is the Neville matter. You will remember that one of the things Orchard was to do upon his way West was to kill Neville. Something has been said as to why we did not put Charley Neville on the stand. I may discuss that later, but I now call your attention to the fact that Mr. Moyer admitted an important proposition to which Charley Neville would undoubtedly have testified had Mr. Moyer not admitted it, and that is that old man Neville had at one time appeared at Federation headquarters and asked for money from the Federation. The amount is not very material, but the fact that he was there, that he asked for money and asked for it by reason of the Independence depot explosion is admitted by Mr. Moyer. Probably the presence of Charley Neville here in the court room had something to do with that admission. But the important fact is that old man Neville was figuring in the affairs of these parties and had demanded money, as Orchard stated; that he had been arrested and connected up with the Independence depot explosion. So Mr. Moyer was there in the latter part of Aug-

ust. Neville was there asking for money. Orchard says that Moyer called his attention to the fact that he wanted to get away with Neville at this time because he had demanded money and knew too much.

What do we next find? We find by the testimony of Orchard that Pettibone arranged and assisted in his departure for Caldwell. They will say to you that there is no evidence of this except the evidence of Orchard. I say to you that there is the strongest kind of corroborative evidence, and that is the silence of Mr. Pettibone. The court, in my judgment, will instruct you that when an important fact is within the control of the defendant, the proof of which fact would greatly aid his cause, and he fails to produce it, it is a strong circumstance which you may take into consideration. Remember, that if Mr. Pettibone was a member of this conspiracy his act was the act of Haywood and his silence at this time is the silence of Haywood. The very fact that Orchard testifies that he assisted him in getting ready for this criminal enterprise and the fact that Pettibone remains in jail down below, silent, not willing or afraid to deny, is a powerful corroboration of Orchard's statement. Pettibone is charged with having performed a criminal act and he does not deny it.

"But," says Mr. Darrow, "we would not put Mr. Pettibone upon the stand because he must be tried himself." Now I am not going to quarrel with them as to the keen, shrewd manner in which they try criminal cases. I am not going to ask this jury to pass any criticism upon them—whether they acted with good judgment or not in keeping him off the stand. They may have exercised good judgment in doing so—in fact, I think they did. In this respect I think they are correct. They perhaps took less chances by keeping him off than by putting him on and in this respect showed much shrewdness as at-

torneys. But it does not change the fact of his silence nor take away the fact that it is a powerful corroboration that he is afraid to go on. It rather adds to the strength of our contention—the fact that this man is off the witness stand, the fact that the lawyers called in consultation evidently decided it was not safe for him to go upon the witness stand. His absence under those circumstances is not less a matter of strong proof before the jury. Why is he off the witness stand, why does he remain away? Because he must take care of himself. Sure. But nevertheless there is the place, there the opportunity to explain or attack one of the most vital points in this case. And silence is proof and strong proof corroborative of Orchard's story. So we have the proof that another member of this conspiracy was there in Denver at this time associating with Orchard, assisting him in his departure, getting him ready to go to the city of Caldwell.

What does Mr. Haywood, the defendant, say with reference to Orchard going from his immediate presence to Caldwell? He says that he saw him—I think, to put it altogether in his favor—two or three times during the latter part of August. He says that he was stopping at Pettibone's house, that he had a talk with him in Pettibone's kitchen, that he talked with him about his domestic affairs. The policeman says they were walking together and Haywood says it was likely true they were walking together and associating together—discussing matters which only men in intimate relations would discuss with one another. Not only that, but he says to you that Mrs. Haywood said to him between the 25th and 30th of August that Orchard had gone, and that is the last we see of him in Denver.

So, gentlemen of the jury, he not only starts from the city of Denver, but he starts from the immediate association and

companionship and from immediate touch with these defendants, to Caldwell. No proof? Oh, no. As Mr. Richardson would say, this event does not prove anything. Standing alone, possibly not. But it is the beginning of the proof of a very strong chain of circumstances we are building step by step. From these circumstances we will build to the point where we will ask you as jurymen to take it all, group all the facts together, and then explain it if you can upon any other theory than that of the defendant's guilt.

And how did he go? He not only left Denver from immediate association with these defendants to go to Caldwell where he had no ostensible business on the face of the earth unless it was murder, but he went armed like a Cuban major general. He had a sawed-off shotgun and he had the Peabody bomb, loaded, in his trunk. He left Denver, as you know, with crime in his heart. He did not get the inspiration in Wallace a month afterwards. His inspiration did not come by reason of his association with Paulson and those of the Hercules with whom he had once been associated. He carried it with him from Denver. It was the moving, impelling and compelling power with which he left the city. Did he have that sawed-off shot gun? Did he have the bomb? In the first place, let me call your attention to the fact that here is where Pettibone might offer some more testimony. Darrow says that Pettibone was the man whom everybody called upon for everything—to buy sawed-off shotguns and everything else needed in order to run the business of the Western Federation of Miners. They always went to Pettibone, and Orchard says that Pettibone helped him get ready and that Pettibone helped him pack this Peabody bomb in his trunk. Gentlemen, I want you to remember this, that there is one of those conspirators down there in jail who another

conspirator, Mr. Orchard, says helped pack his trunk with a bomb when he started on his trip from Denver. Is it a fact when it is thus undenied? Is it a fact when they have the means to dispute it and refuse to do so? Is it not corroboration of Orchard? Is not his silence a confession?

Let us trace this Peabody bomb and find out if there is any other corroborative evidence in this case as to the manner in which Orchard went from Denver to Caldwell. Orchard says he went down the streets of Denver somewhere at one time when he was getting ready to kill Governor Peabody and ordered a bomb to be made and told them he wanted it for a cactus plant. Mr. Roach comes upon the witness stand and tells you that the order was made, the bomb is identified as the bomb which was made under this order. It was delivered to a man in the tailor shop adjoining and by him to Orchard. Orchard says he took it to Canyon City. Mr. Vaughn says there was something of that nature there in the room and that there was some talk about it. Orchard says he wrote to Marion Moore to bring it up from Canyon City, and Marion Moore, though on the witness stand, does not deny it. They get it back from Canyon City and Orchard says he packed it in a trunk with Pettibone's assistance to bring it to Caldwell, and Pettibone does not deny it. Orchard goes to Caldwell and afterwards the bomb turns up—where? Up here in the city of Wallace along the trail where Orchard and Simpkins traveled. Mr. Richardson can not conceive of the fact that Orchard would carry this bomb on the train loaded, but it was loaded. Study the life of this man; the commission of crime with him was supreme over everything else in life; he had no more regard for human life than I have for the ants upon which I tread. If Goddard's family was killed he was indifferent. If Gabbert's family was killed he passed

on. A man that could blow up fourteen men as he did at the Independence depot would not hesitate about putting a bomb in his trunk and carry it on the train. But the fact remains that he did carry it, for the young fireman finds it at Wallace in the river and finds it loaded. Angus Sutherland gets it from the fireman, brings it down here and identifies it. Mr. Roach also identifies it. We have identified this instrument of war taken with Mr. Orchard on his trip from Denver to the city of Caldwell.

He did not have it with him for the purpose of engaging in card playing with the soldiers; the mine owners did not give it to him; the Pinkertons did not furnish it to him; he left Denver from the association of these defendants, still on the benefit list of the Western Federation of Miners, left from the immediate association of Pettibone and Haywood, carrying this instrument of death with him. Is there any doubt that he went there for the purpose of murder? Is there any doubt that the co-conspirators knew where he was going and why he was going? You may possibly doubt as to who sent him, but you can not doubt that he left Denver with the intention of killing Governor Steunenberg when he left. That is one fact that is settled beyond all question, and we will settle the other question by further testimony.

Motive.

Gentlemen, when we find men engaged and associated together for the purpose of crime and the question of who is responsible and who is not arises, we come immediately to the question of motive. We have Orchard going all the way from Denver to Caldwell; he has arrived and he is ready for murder. Now the question arises, Whose motive was it, what was it that impelled him to come?

First, then, let us take up this question of the personal grievance against Governor Steunenberg—this matter of the forfeiture of his interest in the Hercules mine. Mr. Darrow said he would show that this sale from Orchard to Cardoni was a conditional sale. You understand exactly what a conditional sale is. Is there a single word in this evidence—has a single witness testified to any fact which indicates anything which has the semblance of a conditional sale? Some witnesses have testified that he made threats, but what we want to know first is where is this conditional sale of which we were told and upon what could Mr. Darrow have possibly based his statement that they would prove it? Upon what facts could Mr. Orchard possibly base his statement that he lost the property? The conditional sale has not been proven in any way. They content themselves with undertaking to show that Orchard made threats because he had forfeited his property, which he in fact never did forfeit. They have abandoned the idea of a conditional sale, they have not shown how it was purchased, whether absolutely or upon condition, whether the deed was in fact a deed or a mortgage. There is not a word of testimony in this case upon this proposition. They say, "Why does not Mr. Cardoni come here." I apprehend that Cardoni is not an idiot. Why should he come? He has an absolute deed recorded. He has been in possession for eight years and the grantor in the deed testifies it was an absolute deed. Do you know of any way to make the title better? There is nothing here for Cardoni to be anxious about. He has a perfect title, an absolute title. There is nothing that could be added that could make it more perfect. So Mr. Cardoni can very well afford to spend his time in Spain looking over the beauties of that country and visiting with his friends, as has been suggested in this court room he is now doing. His title is perfect

and absolute. A decree of court could not help it, and besides, court decrees with reference to title are seldom rendered in criminal cases. Now this deed was made upon the 7th day of March, 1898. When they asked Orchard if he did not make a conditional sale he told them promptly that he made a deed. We go to the record and we find the record sustains Orchard. Right here I want to call your attention to one thing. It is a powerful feature of proof in this case. Do not forget it at any time when you are considering this evidence. There is not a single scintilla of evidence here such as record evidence, registered letters, telegrams, deeds, not a single piece of evidence of that nature that was not subject to any man's power to change, that could not be tampered with; that does not corroborate Orchard. He says he got money by telegram, and the telegraph records tell the same story. He says he got registered letters from Pettibone, and the registered letter records show that he did. He said he sold his property and gave his deed at a certain time and the record sustains him. Put your finger if you can upon a piece of that kind of testimony that does not dovetail into the story of Harry Orchard. You will find that every piece and particle sustains him throughout.

It is barely possible that Easterly might tell a story. It is barely possible that Lottie Day might be mistaken—she is a woman so I will not say anything stronger than that. It is possible that McGee may have gotten his dates mixed as did Aller. But these things, the telegraph records, the registered letters, the deeds brought here before you, are silent but unimpeachable witnesses. And never has Harry Orchard come in contact with a record in this case but the record has come forward to sustain him. Is not this a powerful circumstance? And now what does this deed say? "And also all the estate,

right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part, of, in or to said premises and every part and parcel thereof with the appurtenances. To have and to hold all and singular the said premises with the appurtenances and privileges thereto incident unto the said party of the second part and his heirs and assigns forever. In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written. On this 7th day of March, A. D. 1898, before me, John M. Fenn, a notary public in and for said county, personally appeared Harry K. Orchard, personally known to me to be the same person whose name is subscribed to the within instrument who executed the same and who acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein set forth. In testimony whereof I have hereunto set my hand and affixed my official seal at my office in Wallace on the day and date in this certificate first above written. John M. Fenn, notary public. Recorded at the request of D. Cardoni, March 8, 1898, at 9 o'clock a. m., in Book 7 of Deeds, page 628 of the records of Shoshone County, Idaho." We say, therefore, that upon the 7th day of March, 1898, Mr. Orchard gave a deed absolute to Mr. Cardoni. Mr. Cardoni takes the deed to the recorder, puts it on record where it is notice to the world that he is the sole owner of that property and Harry Orchard never claimed it thereafter. Governor Steunenberg did not go into the Coeur d'Alenes with the troops until 1899, more than a year after Orchard had parted with his title and the vendee had taken possession and was working the property. Orchard in the meantime was working for him at a salary. Is all this proven by Orchard's testimony alone? Certainly not. It is conclusively proven outside of his testimony. There are two

things we all agree upon in reference to Orchard. First, that he is not a fool, and second, that he is a rascal. No dispute about that. If there had been any way in the world for him to have gotten in upon this mine, any conditional sale, he would have been smart enough to know it and rascal enough to take advantage of it. They say he was trying to sell it to Gill. And yet from that day to this the man who always wanted money, who took every opportunity to get it, has never for a moment undertaken to blackmail that title or to get an interest which would have made him a millionaire. No, he would rather kill Steunenberg for causing him to forfeit a title which he had sold a year before he ever knew of the existence of Steunenberg. This is the logic and this is the reasoning upon which this defense is founded.

If Harry Orchard had sold out some additional interest or attempted to part with some equity after Governor Steunenberg went into the Coeur d'Alenes, if he had made this conditional sale into an absolute sale by some new interest, there might be some basis for this claim that he forfeited his interest. But the coming of Governor Steunenberg into the Coeur d'Alenes did not cause him to change his attitude toward this property in any respect. He had not claimed an interest in it for over a year and he had nothing to forfeit. Still they say Governor Steunenberg caused him to lose his interest. How did he cause him to lose it? Suppose you should make a conditional sale tomorrow of your property, and suppose for some reason you should find it necessary to go away, leave the State, to go to London. Would that change the title or change your rights? Would not his rights have been just the same down in Colorado as they would have been had he stayed in Idaho? The evidence does not show that he executed any other instrument or that he went back to Cardoni and got any addi-

tional money or made any release of any equity—this is the only paper he executed. This marks the date when he sold. The fact of his leaving the State of Idaho would not change the title from a conditional to an unconditional sale without some affirmative act upon the part of Orchard. He had just the same title to the Hercules mine when he arrived in Cripple Creek in 1902 and he has just the same title now as he had upon the 29th day of April, 1899.

What did Steunenberg's going into the Coeur d'Alenes have to do with the changing of the title to this property? The deed had been executed; it was absolute on its face; no other deed was ever executed; no change made in the title. They would seem to want you to presume or to infer, without any proof to that effect, that this deed was in fact a mortgage. In that event my logic is all the more forcible. Once a mortgage always a mortgage. Every lawyer and every layman knows that. If it was a mortgage upon the 29th of April, 1899, it was a mortgage when he talked with Gill in Spokane in 1905. If he had anything to sell in March, 1899, he had the same interest to sell to Gill in 1905. He had not sold anything in the meantime, had he? He had not executed any other paper, had he? He had not forfeited anything, had he? It would still be a mortgage and he would have just as much to sell to Gill in 1905 as he had in 1899. If what they claim to be true were a fact, all Orchard would have to do would be to say, "I want a lawyer," and a dozen lawyers, from Chicago and elsewhere, would be anxious to bring a suit to recover an interest in the Hercules mine. Orchard would not only be entitled to his interest but he would be entitled to an accounting from Cardoni. How ridiculous this all seems! And it would be ridiculous if it were not for the interest of the defense in this case.

The testimony shows, therefore, that he sold this interest to some one a year before the trouble and that he could not have had any possible reason for assassinating ex-Governor Steunenberg because of the fact that he had lost an interest in the mine. Nevertheless, they claim he stated to a number of parties at different times, that he did lose an interest and that he was going to kill Steunenberg for that reason. I can not discuss all the testimony in regard to these threats but I am going to discuss it in part.

Bill Easterly says that away back in 1902 or 1903 Orchard told him that he was going to kill ex-Governor Steunenberg because he caused him to lose his interest in the mine. Of course the fact that he had no interest in the mines does not affect Easterly's story a particle. He says he told him on one or two occasions that he was going to kill this man whom Easterly knew to be an ex-Governor of the State and whom he knew had been prominent in Coeur d'Alene affairs. Mr. Easterly carried this dreadful secret with him for five years and until he came down to Silver City in the State of Idaho. After he came to Silver City and after Orchard went to Caldwell for the purpose of killing ex-Governor Steunenberg, he called up Easterly over the 'phone and talked with him. Easterly had this secret and he knew that Orchard, the man who had made the threat, was at Steunenberg's home town. Easterly said nothing. Finally Easterly sees by the paper that Governor Steunenberg has been blown to pieces, that he had been murdered, and by this same man Orchard, who had made the threat and who had been a fugitive from justice from Colorado from the 6th day of June, 1904. He knew he was killed by the man called Hogan, the man whom Easterly knew as Hogan, the man who had said he would kill him, the man who was a suspect and a fugitive, and still Easterly kept the matter to himself.

Immediately after the murder the officers began to gather evidence against the suspect. Easterly had in his possession the most conclusive proof of his guilt and he kept it to himself. The State was searching for evidence; the papers were disclosing the fact that every clew was being gathered. Mr. Easterly knew Orchard all the time, had communicated with him, and shortly before the murder had talked with him over the 'phone and had written to him, but he never opened his mouth about the matter until this defendant was arrested and it became necessary to show a personal motive upon the part of Orchard for this killing.

I am not going to say that Easterly lied. That is a matter which you will pass upon. But I will say this: He either testified to a falsehood or he was a member of the conspiracy to kill Governor Steunenberg. Take which horn of the dilemma you want. You can not say to me, you can not say to reasoning men, that this man Easterly knew Orchard as he did, this vile wretch whom they paint here day after day as the most consummate criminal of the twentieth century, knew him as a suspect, knew his grudge against Governor Steunenberg, knew all this and kept it to himself under such circumstances unless he was a member of the conspiracy. Why was he concealing this information? For the protection of whom? There is one redeeming trait about Easterly. He finally comes to the conclusion that he will make one truthful statement, and he plainly says that he would not have told it at all had it not been necessary to protect this defendant.

Next is Bill Davis. Davis says he heard this threat. Now, don't forget another thing as we go along, and that is that while they are building up all this information within the Western Federation of Miners as to the knowledge of these threats and that Orchard was going to kill Steunenberg, that

the Western Federation of Miners, from the 30th day of December, 1905, until the 18th day of February, 1906, was in absolute possession of evidence which would have enabled the State to hang Harry Orchard, and yet never breathed it to anybody. Is this a criminal organization? But Davis is a very cool, calm fellow. He is a man who can see a train go through town in daylight with a thousand men on it armed and masked and feel no interest in the subject whatever. He is very cool and calm—Grant was not a circumstance in war compared to what Davis would have been had he had a chance. It is said that when Grant went to Vicksburg he was very much disturbed as to what would happen when he got there; but such an event would not discompose Davis—Davis, who was not at the Bunker Hill mine at all, who went up to work at the Hercules a few days after, who changed his name and took to the tall timber. Davis says that Orchard told him that he was going to kill Steunenberg. When did he make known this fact? After you listen to his testimony with reference to his actions upon the 29th of April how much consideration can you give to his evidence whenever it is of importance to the defense? Reason it out for yourselves, make up your minds whether he is interested or whether he is not, and whether he would suit his testimony to the case.

But, they say, would Mr. Ramey lie? What reason had he for lying? I am inclined to think that he did not lie. I do not believe that he would wilfully and knowingly state a falsehood. I do not know the man, but he appears well and disinterested. He says that Orchard undertook to sell him this claim in the spring of 1899. That might be entirely true except as to the date. For instance, if we should take the date of 1898, at the time he was actually trying to sell it and did sell it, there would be nothing strange in the fact that he was

attempting to sell it to Ramey. It is very probable that as to that Mr. Ramey has gotten his dates mixed. There is nothing strange about the proposition that a man should get a date mixed when there was nothing to charge his mind with the particular time, and especially when he had not thought about it for six years. It seems that Orchard came along on horse-back and had a few minutes' conversation with Ramey and passed on. Without any memorandum made at the time or any reason to hold it in memory he now thinks it was in 1899. But think how improbable that is in view of the fact that at the very time he was trying to sell to Ramey there was a deed on record in Shoshone County, where Ramey lived, showing that it had been sold for a year. I apprehend, therefore, that Mr. Ramey was simply not interested in this matter and was mistaken as to the date, and the same logic and the same rule would apply precisely to Mr. and Mrs. Gill. We will assume, also, that they are telling what they believed to be the truth; but we can not conceive of the fact that they would undertake to buy an interest in a property to which the title had passed more than a year before and at a time when the vendee was in possession and working the mine. There is only one way to reconcile the statement of these people with honesty of purpose and that is upon the theory that they were mistaken as to the dates.

I think Mr. Coates said something about Orchard's threats also; and I want to say something about Mr. Coates. He has some peculiar ideas and I don't know just exactly how far he injected them in this evidence. I do not believe that Mr. Coates is entitled to the eulogy which Darrow gave him. I am judging him by his testimony and that alone.

His testimony shows that in 1905 Orchard went to Wallace and met Coates; that he had met him before in Den-

ver; that he had a conversation with him very shortly after he arrived in Wallace about stealing Paulson's child. Now watch Coates' action in this matter. It is very peculiar that Orchard was so free to go to any Western Federation of Miners' officer, or to any friend of the Western Federation of Miners, or their associates, to talk of crime, but he did. Paulson was Coates' neighbor—he lived just across the street and likely the little child played about his yard. Here is a man who goes to him and seriously states that he is going to steal the child. It did not make much of an impression upon Coates at first. That is peculiar also. But it didn't disturb him a great deal. Orchard came back the next day and took up the matter again about stealing the child, and then Coates seemed to think of the matter more seriously and came to the conclusion that he would have to do something. He did not call up by 'phone and tell Mr. Paulson to look out for his children, that there was a kidnaper in town; he did not go to an officer and say, "Here is a suspect from Colorado, a hyena in here to steal children;" like Easterly and Davis, he kept it to himself. This in itself makes me think that there is something in it of corroboration of Orchard's testimony, who testified that Coates said that he would take part of the money. But finally, according to Coates, he said to Orchard, "If you steal that child I will get out a special edition of my paper; I will denounce you;" the child will be gone—the horse will be stolen, but I will lock the door, and a special edition of my paper will look fine on the streets of Wallace. Perhaps Paulson would have been perfectly willing to pay for that special edition if it could have been brought out before the child was stolen. A day or two afterwards Orchard comes along again and says, "I want to get five hundred dollars from Paulson. I want you to tell him a lie if

he asks you certain things about our stock deal." It was a lie, was it not? What does Coates say? Does he say, "You miserable rascal; you who were going to steal his child; you now want his money; I will go tell Paulson?" Does he? No, No. He says, according to his own testimony, "All right, I will tell him, if he asks me, what you want me to." Is not that his testimony? So Orchard goes down at once to the unsuspecting Paulson. Orchard says he is going to get five hundred dollars and Coates does not object as to the amount. But Orchard's heart failed him and he only got three hundred; Coates' heart stood the test. Orchard came back up the street, pulled out the check and showed it to Coates and told him that he had the money. Now Coates knew all about that transaction—that disreputable transaction upon the part of Orchard. Orchard found Mr. Coates listening to the child stealing story, and we find him in a little dirty conspiracy aiding, abetting and assisting Orchard in getting money from Paulson, his neighbor. That is the view which we get of Mr. Coates from his own testimony. How much dependence can you put in his evidence? After Orchard had told him that he was going to steal the child and after he had secured the money through the connivance of Coates, does Coates break with this criminal? Certainly not. Orchard goes to Salt Lakes, writes back to Coates and they still continue to do business together. It really seems to me that this man is not entitled to the eulogy of Mr. Darrow. There was something shady in these transactoins. He was conniving with Orchard in these matters, and I have no doubt in the world but what if that child had been stolen he would really have gotten out an extra edition of his paper.

But Coates is one of the parties who said that Orchard stated to him that he was going to kill Steunenberg. Did he

come forward with this evidence at the time the State was searching for evidence against Orchard—an ex-Lieutenant Governor, reading the newspapers daily, publishing a newspaper—did he say anything about his information, so important to the State?

Next they introduce a witness by the name of Day—Miss Lottie Day, or Mrs. Lottie Day, I don't know which.

Mr. Darrow: I think it is mistress. You people found her first, however.

Mr. Borah: I don't know whether she was single or married at the time Mr. Stone found her.

Now, Mrs. Day tells us of a talk which took place down in the boarding house, in the Belmont rooming house, in Denver. I am simply going to call your attention to some of the circumstances surrounding that particular conversation. It seems that Orchard and Lottie were sitting upon a lounge, talking in a rather confidential way—when this confidence first arose does not appear in this case. But Orchard was there on the lounge with Mrs. Day talking over matters of a confidential nature, and she says that he told her that he was once in love; an altogether probable proposition from one standpoint, and unopposable from another. They had a conversation in which Orchard said that he had owned at one time an interest in the Hercules mine but that Governor Steunenberg's action in some way caused him to lose his interest and he was going to kill him. This conversation continues until Mr. Haywood appears upon the scene. She testifies with equal positiveness that Haywood and Orchard—this friend of hers—were there together, and that Haywood and Orchard went off into a private room to have a conversation. She is their witness. But that part of the story they say is untrue. Haywood denies it. She was just as positive of one statement

as the other; it was all one transaction—it was all one conversation—it was all one scene, and Mrs. Day was just as positive as to the fact that Haywood was there and that he went into the room with Orchard as she was that Orchard had been whispering in her ears something about his early love. But Haywood says that this part of her statement is false; that he didn't go into the room with Orchard. Well, as I said a few moments ago, in view of the fact that Mrs. Day is a lady—at least a woman and I presume a lady—in view of the fact that they have shown that she was mistaken in a very important and very controlling feature of this evidence, in view of the fact that they have brought her here and impeached her themselves, I leave it for this jury to say whether or not this testimony of Mrs. Day impeaches the deed which had been recorded a year before Orchard ever heard of Steunenberg. You remember that Lottie said, when Orchard was telling her this, "Oh, forget it, forget it!" I will apply the same phrase to Mrs. Day and pass her on.

There is one other witness in regard to this matter of threats whose testimony I want to refer to. I can not, for want of time, go through all this line of testimony but I want to call attention to this one witness—General Eugene Engley, the ex-Attorney General of the State of Colorado. I do not care to refer to the fact that he was Attorney General under Waite's administration. That he was an interested witness you can have no doubt; that he was here to make a speech from the standpoint of the defendant's interest you can have no doubt; that there was not power enough in the Court or myself or the attorneys for the defense to stop him you can have no doubt; that he was deeply concerned, and manifested it, there can be no question. He says that Orchard made a somewhat similar statement to him. Now, above all men, I

want to know where Engley was with his information from the 30th day of December, 1905, when this man's name was sent broadcast over the land as a suspect, until the 18th day of February, 1906. Why did he not come forward with his information? The ex-Attorney General of the State of Colorado, who would be supposed to be in favor of punishing crime, had in his knowledge the fact that this man had a personal grudge against Frank Steunenberg—had expressed it to Engley, and Engley believed he was going to murder him. He had this evidence within his possession during all this time and yet never conveyed his information to the officers of the law nor in any way assisted the uncovering of the most dastardly crime ever committed in this State. But Engley says on the witness stand, "I had this evidence and I gave it to no man; I give it to you for the first time in this case." Perhaps there was some reason for this withholding which he did not make known to us. But I just want to say one thing in passing, because we are entitled to take all these things into consideration in weighing the effect of a witness's evidence. General Engley does not believe in law. He does not believe in the orderly affairs of society. He thinks that everything is made wrong and that Engley ought to make it over. You remember I asked him if he was a Socialist, and he said, "If you refer to the fact of a man's belief in the initiative and referendum, in the imperative mandate, in the controlling of the trusts, in the control of railroads by law, then I am not a Socialist; but if you refer to the creed which would take this earth out of the hands of the few who have wrongfully taken possession of it and turn it over to the many to whom it belongs, then you may write me down as a Socialist." Socialist! He is an anarchist. He is not a Socialist in any sense of the word. He believes in turning society upside down; arraying

class against class, brother against brother. He believes in saying to the man who has his home or his ranch which he has earned by his industry and frugality, "Give it up and get out; turn it over to the man who did not earn it; turn it over to the man who may never have worked a day in his life." I am not surprised that the State of Colorado has had hell within its borders within the last ten years when its prominent men preach such doctrine. When men talk and preach such doctrine what do you think the man down in the mine will do, what do you think that he is likely to do? When an ex-Attorney General of a State goes into a court in a civilized community, in an orderly conducted community, and preaches his infamous doctrine it is time that decent men place the brand of infamy upon his brow and send him forth, as he is, an outlaw. He speaks of philosophical anarchy. You might just as well talk about philosophical hell. From his standpoint it is one and the same thing.

We have reviewed briefly some of the evidence with reference to Orchard's personal motive. If he did not have a personal motive in going to Caldwell, then who had a motive in sending him there? In order to answer this you must go back to the 29th of April, 1899. Upon that day there was trouble in the Coeur d'Alenes. The Bunker Hill and Sullivan mine was destroyed and Jim Cheyne, a scab, was murdered. A day or two afterwards Governor Steunenberg, as Governor, called the troops into the Coeur d'Alenes. A few days later a bull pen, so called, or an improvised prison, was erected. Hundreds of miners were placed in that bull pen or improvised prison. A permit system was established under which a man must disclaim allegiance to the Western Federation in order to get work. Afterwards one of the leading members of the Western Federation was convicted of murder. There was a

deep seated hatred and feeling arose against Governor Steunenberg by reason of these matters. There was a feeling upon the part of the Federation that he was their pronounced enemy, their uncompromising foe, and this feeling continued down to the day of his death. It is not for me to argue here today whether Governor Steunenberg was right in all his acts or not; I am not going to argue that he was not sometimes in error. That is immaterial so far as this case is concerned. I have my convictions about the matter, but such is not evidence and you care nothing about it. The fact remains that he went there, that he did these things mentioned and that he was considered as being unfriendly in every respect to the Western Federation, and that he was looked upon, from the day he called the soldiers into that camp until the day that he died, and even thereafter, as the mortal enemy of this organization. The bull pen theory was his; the permit system was in a large measure his; and the troubles in Colorado did not cause this long, constant hatred to die, did not cause them to forget their troubles in the Coeur d'Alenes, but rather accentuated their feeling. All that has been proven here in this case with reference to the Colorado situation rather strengthens the theory of the State and shows the intense and abiding hatred for Governor Steunenberg—shows that the motive continued from the time of the troubles in the Coeur d'Alenes until the time of his death.

I am going to read at this time from the magazine called the Western Federation of Miners Magazine. The first article is dated in 1901 and the other articles are dated in 1905 and 1906. We want to see whether or not this hatred existed, whether it prevailed at the time of Steunenberg's death. We will find from these articles that he was regarded as a foe, as one who was swayed by the capitalistic class, as the corrupt

representative of Rockefeller, as the representative of all of those who have been denounced here in this court room by counsel. This article says: "How this villian has risen in four years from editor of a weekly paper on the Snake River desert to a wealthy sheep owner, mine owner and stock holder! Where did he get the money to make these investments except from the mine owners, whose lackey he was from the day he was elected Governor."

The same old story of the mine owners! "Whose lackey he was from the day he was elected Governor." He stood in the same class with Peabody. He stood in the same class with Bell. He stood in the same class with Goddard. He stood in the same class with Gabbert; the same class with Hearne; the same class with the fourteen poor fellows who were sent into eternity upon the 6th day of June, 1904. That is, he was a man who was regarded as the enemy of organized labor. Let us separate right here this proposition of individual hatred and the individual ill will of the members of this organization from the hatred of the organization, as it were. It was a hatred arising out of what Mr. Darrow is pleased to call an industrial warfare. You will determine whether or not Mr. Haywood's ill will was a personal ill will or whether it arose by reason of his being at the head of this organization. It was an industrial war from their point of view and that is the reason why they looked upon this man with such bitter feeling and why the hatred never died—the war was not over.

Again reading: "Farewell Steunenberg, once Governor of Idaho! Your political career is ended. You have done every thing within your power to send the men who made you Governor to the penitentiary, and worse than all, you stand before the world a convicted perjurer before a congressional investigating committee. But your cheek has long since lost the

blush of shame and your damnable deeds will never appeal to your manhood, for such you never possessed." How insignificant the feeling of Harry Orchard! His Hercules mine forfeiture and keeping alive the passions of hatred, compared with this unforgiving, unforgetting, unrelenting hatred of the officials of this organization against Frank Steunenberg! And why? Simply because he could not conceive it to be his duty as Governor to sit still and see a thousand men go into a neighboring town armed and masked, destroy property and commit murder. He might have erred in the manner in which he undertook to take care of the State's right, but he was called into action and he did his duty nobly as he understood it. He acted according to the lights which were before him and there is no question but what these men who opposed such things understood that Frank Steunenberg was in unrelenting opposition to their methods. No wonder, as Orchard says, they said to him, "Kill him, kill him, not alone for what he has done; kill him that these men in Colorado and elsewhere who oppose the Western Federation of Miners may know that we do not forget and that they are living a living death." Hatred! Corroboration! Motive! How could there be more conclusive proof of all these things?

I read again: "Your sole ambition was money, which in your estimation was superior to honor; but you are gone and upon your political tombstone shall be inscribed in indelible words, 'Here lies a hireling and a traitor.'" Why? Why traitor? Did he desert the State? Did he violate his oath? No. He went to the Coeur d'Alenes with the soldiers because there was no other power by means of which he could uphold the law and maintain order. He did one thing, he stopped assassination in the Coeur d'Alenes. He restored order, and I will leave it to you whether or not there was a necessity for

his action when a thousand men could get together and violate law and commit murder in the open light of day. I will leave it to you if drastic measures were not necessary in order to preserve the integrity of the State.

But what did they think of this man when he was resting in his simple home in Caldwell—sleeping his last sleep? Seven years had passed. He had gone into private life. He was martyred, blown to pieces at his gate even as he was looking into his lighted home on that holiday night. Everything connected with the crime, every surrounding feature of the awful scene would naturally compel men to forget all past differences and bury all past hatreds. Even if he had been an enemy any one would have naturally said, "Let us forget and forgive. Perhaps he erred, but let us bury his error in the grave with all that is mortal of him." No, no. Here is what they say: "Former Governor Frank Steunenberg of Idaho met his death last Saturday evening at his home at Caldwell, Idaho. The press dispatches report his dissolution via the bomb route." That is the eulogy of the Western Federation of Miners passed upon Frank Steunenberg at an hour when the world stood aghast at the awful crime. "The press dispatches report his dissolution via the bomb route." My God! What can be said in answer to this awful, unappeasable hatred? You might well suspect that the man who wrote that article under those circumstances was a man who was capable of nurturing within his heart the desire of murder—and such turned out to be true. The man who wrote that article, who boasted of it, whose eyes gleamed with gratification when he was asked about it, turned out indeed to be a murderer. He expressed the sentiments and reflected the views of the officers of the Western Federation of Miners.

But I read again. Let us get down to the roots of this hell-

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

This is the eulogy! No motive! No feeling of hatred! And yet counsel for the defense say that these things had been forgotten; that Coeur d'Alene was a thing of the past; Steunenberg was in private life. Again this magazine says: "The organs of the capitalistic class recognize in the death of Steunenberg the loss of a man who was faithful and loyal to their interests. The history of the Idaho strike of 1899 is still fresh in the memory of the membership of organized labor throughout the country." Still fresh! "The brutality and barbarities that characterized the official acts of those who were clothed with power and backed by authority of law will never be forgotten during the life of the present generation. The military stockade or 'bull-pen,' where hundreds of men were goaded and tortured to the limit of human endurance, could have no other effect than to kindle in the hearts of many the flame of hatred that would burn as long as there lived a victim that bore the scars of the conflict of the year 1899," and so forth and so on.

Gentlemen of the jury, these are the words of the men who were running that paper. The defendant was paying for it; the Western Federation officials were sustaining it. It was their voice speaking to the world over the grave of Frank Steunenberg and it carries the poisoned venom of the settled

hatred of six years. We know, just as well as we know that we are trying this case, that out of the conditions of 1899 arose this hatred for Governor Steunenberg, and that it never died; that he was never forgiven; that it lived and would live as long as lived any individual who was acquainted with that situation. Here is the motive; here is the controlling, impelling, guiding power which sent Harry Orchard, armed with murderous weapons, to the city of Caldwell.

This crime was born of no ordinary conditions. You must not look for the motive among the ordinary passions which hold sway in the heart of common malefactors. Ordinarily, when we look for the motive which impels to the commission of crime, we search the dark recesses of the human heart, to find somewhere in its foul chambers, crouched and coiled and hissing, the serpent of jealousy, greed, personal hatred—some vile passion long since dead to the voice of humanity. Do not permit yourselves to be led by adroit counsel into searching there and there alone for motive. You will not find it. You must enter another domain, a field of crime where fanaticism and violence walk hand in hand under the red flag; where law and its blessings are cursed; where order and its fruits are disowned; where the sacred flag of the free is lowered, as it was a few days ago in an eastern city, to the red flag of blood and death—there you will find the real motive for this crime. Revenge? Yes. But it was the revenge of those only who hate order and law, who hate the restraint of government, who hate the man who maintains government and stands by his official oath. Understand this and you will understand why it was decreed that though six years had passed, the man who restrained violence in the Coeur d'Alenes was doomed to die.

We find, therefore, that Harry Orchard left the city of Den-

ver, left the home of the defendant, went to Caldwell, the home of the man upon whom rested the long-nursed hatred of this organization; that he left carrying a shot gun and a dynamite bomb; left with murder in his heart. We find that he had not personal motive, but that he left the immediate association of the officials of an organization who seemed determined to never forgive or forget Frank Steunenberg, who hated him with a chronic hate. He arrives at Caldwell, and what happens next? He immediately commences his efforts to locate Steunenberg; he does not locate him at once; he is unable to carry out his designs immediately. Mr. Richardson thinks that there is considerable in the fact that he did not kill Steunenberg at once. He says if these men, the Western Federation officials, desired his death that Orchard should have accomplished it at once. Not speedy enough! There is always a condition to murder and that is that it shall be accomplished under such circumstances that the murderer may likely get away. This was always a part of the plan of Orchard; he was an expert at that, and he chose his time, the circumstances and conditions with that in view. It seems to me that in the face of this record there ought not to be much complaint against Orchard upon the ground of speediness and efficiency. But he did not locate Steunenberg, and so he passed on. After visiting Nampa and Caldwell he took his ticket and went on down to Portland, then to Seattle, then he wandered over to Wallace and there he came in touch with whom? With Jack Simpkins. Jack Simpkins, the representative of the Western Federation of Miners for the State of Idaho. They soon get together for some reason. Orchard always gravitated toward the officials of this organization. Wherever Orchard was he was always in contact with the Western Federation of Miners if there was any representative of that organization on the

ground. When he went to Cheyenne he met Davis and Copeley; when he went to San Francisco he met Copeley; when he went to Caldwell he called up Easterly; when he went to Wallace he met Jack Simpkins; wherever he is he finds a Western Federation man and lays his plans and purposes before him. He meets Jack Simpkins, and what do they do? I will pass over for the present some of the transactions in Wallace.

They left Wallace and went to St. Joe; from St. Joe to Spokane—remember now this is not Orchard's testimony, it is proven by other witnesses—from Spokane to Caldwell. Remember now that Jack Simpkins becomes a part of this conspiracy. It does not make any difference when he joined it and it does not make a particle of difference whether the parties at Denver sent him to Simpkins or not. Simpkins had been in Colorado. He had been in the bull-pen. He was there, says Orchard, when they were talking about some of the murders in Colorado, and he was a representative of this organization. As soon as business begins within his jurisdiction he gets in touch with the transaction. He has now met Simpkins, and Simpkins and Orchard come to Caldwell. I want you to tell me why this co-conspirator went with Orchard to Caldwell. Richardson says he thinks that Simpkins went down in that country to attend to his official duties and that Orchard inveigled him off of the train. Oh, no! The mine owners sent him down there! The Pinkertons inveigled him off of the train! You know that Jack Simpkins got off that train because he knew Harry Orchard and knew his mission. Now why do I say that?

Simpkins goes to the hotel. With whom? With Orchard. How does he register? He registers under the name of Simmons, not Jack Simpkins. He registered under an assumed

name with Harry Orchard? No, with 'Tom Hogan, the name which Orchard takes for the emergency. They are now in the city of Caldwell, together, with no ostensible, legitimate purpose or business on earth—they are there for the purpose of crime. The very fact that they were going under assumed names, stopping together, occupying the same room in this town where there was no miners' organization, where Governor Steunenberg lived, indicates conclusively that they were not there for a lawful or legitimate purpose. The representatives of a great labor organization, traveling under assumed names, in the very home of the man whom the organization hated with the hate of hell, in the home of the man who had, as they believed, injured Simpkins himself. They were now together at the home of Governor Steunenberg, to whose home Harry Orchard had gone direct from Denver, carrying with him the means by which to murder.

Now, gentlemen of the jury, I want you to watch these five men. Here is Jack Simpkins, Harry Orchard, George A. Pettibone, Charles Moyer and William D. Haywood. Watch these five men! In a little over thirty days Frank Steunenberg is to die. Watch their actions. They are going to and fro; they are in touch with one another; you will find out pretty soon whether or not there is evidence of a co-conspiracy outside of the testimony of Harry Orchard. Watch them! Do not expect the State to prove all they said, but watch their actions. One conspirator is today a self-confessed murderer; another conspirator a fugitive from justice; another conspirator down here in jail and afraid to testify. No evidence? What more do you want? Watch them from this time because we have them all in action. They are in touch with one another; they are moving on to the scene. This man is doing his part and that man is doing his, and you will find a complete and abso-

lute conspiracy, terminating with the final effort of these parties to save Harry Orchard after the crime is committed.

I call your attention to the fact now that while Orchard and Simpkins were there at Caldwell they planted a bomb. You will remember, according to his testimony, that they planted the bomb for Steunenberg the first time about the 16th or 17th or 18th of November, at the very time that Simpkins, a member of the Executive Board was at Caldwell under an assumed name; at the very time that they were shadowing the home of Steunenberg. Mr. Haywood writes a letter upon that fell same day to Mrs. Harry Orchard and states therein a falsehood—at the very time that the representative of this great organization representing Idaho, the co-defendant of Mr. Haywood, now a fugitive from justice, and Harry Orchard, the self-confessed murderer, were in Caldwell sleuthing upon Governor Steunenberg, we have a false letter written by Mr. Haywood telling Orchard's wife that he is in Alaska. Do not forget, in your considerations, that in this conspiracy the alibi proposition is always an essential ingredient of a conspiracy; and do not forget that there are brains behind this conspiracy. It is not an accident; it is not the work of a blunderer.

And so we have Orchard up in Alaska, according to the letter, while as a matter of fact he is down at Caldwell, the point to which he went direct from the home of Mr. Haywood and in company with Jack Simpkins, a co-official. No evidence? No corroboration? But Jack Simpkins after a time becomes uneasy, leaves Caldwell, goes to Nampa, a distance of ten miles, and there he takes his right name on the register. He is Simmons at Caldwell, where Governor Steunenberg lives; he is Jack Simpkins at Nampa, ten miles away. Conscious of guilt! Did not know! Inveigled off the train!

Certainly not. He is a moving part of this conspiracy. But he passes on and goes over to Silver City and there meets Bill Easterly. What conversation took place between Jack Simpkins and Bill Easterly nobody will ever know because there is no hope, in my judgment, of catching Jack, and Bill will never tell. But they met and the fact that Jack had been at Caldwell a short time before with Orchard was, in all probability, talked over. It would be very natural. Simpkins leaves Silver City, goes back to Spokane, takes Orchard's unused railroad ticket and goes where? He goes to meet the other members of this conspiracy. He reaches Denver, and there we do not know what took place, but we do know this, that Jack Simpkins had been at Caldwell, under an assumed name, with a murderer, and had just left Denver a short time before, and we are entitled to reason, under the circumstances, as to what took place in Denver. We know he went direct to Denver, and we know that it is entirely probable, entirely reasonable that some conversation took place. What next takes place? He left Denver. What happens while he was there? I am taking this up a little out of its line because it illustrates. While there Jack Simpkins gets the large sum of \$213. He thinks this is too much for a Western Federation official to carry home so he takes \$113, I believe it was, and leaves the other \$100 with Mr. Haywood to be sent to him. The probability of these things is just as much a matter for your consideration as the actual facts. But he splits up his \$213 and gives Mr. Haywood \$100. Why? Well, let's see.

Things afterwards discovered makes this splitting up necessary. On December 30th, about the time that Frank Steunenberg was killed, this letter which I hold in my hand was written. "Friend Tom." Who is Tom? How did the writer know who Tom was and that Tom was in Caldwell? How

did they know, when Orchard got to Caldwell, whether his name was Hogan or Green or Dempsey or Orchard, or what it was? Why, they knew because Simpkins had been with him and had reported it to Denver. How did this party who wrote in Denver know that he was in Caldwell at all? He knew it because Simpkins had been there with him and had reported it. "Friend Tom"—this is the man whom Richardson says I called Harry, a fact which I had forgotten; they were rather familiar at this time themselves with this murderer. "Friend Tom: Your letter received. That was sent to Jack the 21st." What was sent to Jack, and who is Jack? Jack was the man who had been to Caldwell. And who was Orchard? He was the man whom Jack had left at Caldwell to carry out this murder. Orchard says that he had written to Pettibone to send him \$100. So there comes this letter back unsigned which, for itself, shows that the man who wrote it was conscious of the fact that he was in touch with a criminal; and in the letter it is said, "Friend Tom: That was sent to Jack the 21st," and so it happened that we go searching the bank records of Denver and we find a draft dated on that same day, the 21st, sent to Jack Simpkins, and the draft is sent by William D. Haywood. It was sent as a Western Federation draft. Here is a piece of evidence which called in unmistakable terms for the presence of George Pettibone again. His act, you will remember, as a member of this conspiracy, binds William D. Haywood. Orchard says that he wrote to Pettibone. A letter comes back unsigned; Orchard says it was Pettibone's handwriting; Pettibone, by his silence, admits he wrote it. Rather than undertake to explain this by Pettibone they will permit William D. Haywood to take the chance of having that interpreted against him, notwithstanding Darrow says that Pettibone is a friend of humanity and

always willing to sacrifice himself for his friends. Mr. Hayward himself had just as well kept silent as to keep Pettibone silent. Now it is for you to say, under all the circumstances, whether or not Jack Simpkins split up this \$213, or whether or not this was \$100 sent to sustain this murderer. It is for you to say, in view of that letter, what that \$100 was for and at whose instigation it was sent. It is for you to say, in view of all the circumstances, whether or not this is evidence which not only tends to show, but shows, the connection of the defendant with this crime. They say that this draft was not cashed until January 4th. Does that cut any figure? The fact that it did not reach its destination does not show that it was not sent at Orchard's suggestion. The murder was pulled off sooner than anticipated, but in view of the evidence in this case, that Jack Simpkins gave Fred Miller \$100 on the 4th of January, the same day that the draft shows it was cashed, discloses, I apprehend, that instead of Orchard getting it, his attorney got it. It all went to the same fund for the same purposes; driving home the same conclusions; bringing into play the entire combination and all the actors.

Time speeds on and Frank Steunenberg is nearing his doom. Orchard loafs around until he gets an opportunity. Upon the 30th of December he goes up to the yard gate, puts his bomb in place, arranges it so that the Governor will pull it off when he steps inside of the gate, runs down the street, gets to the Saratoga hotel practically by the time the awful murder takes place. Experienced criminal! Killed, murdered, blown to pieces—and by whom? By the body guard of Charles H. Moyer; by the old associate of William D. Hayward; by the man who a few weeks before left Denver armed with a shot gun and a bomb by the assistance of George Pettibone; by the man who goes from Spokane to Caldwell with

Jack Simpkins; by the man who traveled with Simpkins in Caldwell under an assumed name! Murdered by one of the co-conspirators in this case! A man who had been in touch with them for four months, actively engaged in this very crime.

Is all this dependent upon the testimony of Orchard? Are not these facts crowding in upon you and forcing you to the conclusion that back of him somewhere were aiders and abettors, men who furnished him money, men who furnished him encouragement and comfort; back of him somewhere was a power impelling and encouraging him to crime? There is no doubt about it. Now, did the mine owners do this? Did the Pinkertons fix up this job? Did you ever hear or know of a more complete conspiracy where all of the conspirators were so actively engaged in the crime?

To the Assassin's Rescue.

This crime was committed the night of December 30th, 1905—Saturday night. Upon the first Orchard was taken into custody. Now watch these conspirators again. How quickly they get into action! What would you expect them to do? Knowing as you do that they had cognizance of what was going on, what would you expect them to do immediately after Orchard was intercepted? If, as a matter of fact, Orchard was there to commit that crime and if, as a matter of fact, they knew that he was there for that purpose, you would expect then, as soon as he was apprehended, to undertake to reach him, but by secret methods. You would expect them to get busy, and to get busy under cover. You would expect their actions in trying to reach him would be such as indicated knowledge of crime. You would expect them to go to Orchard's rescue before he asked for it. Did they do it?

They acted in complete harmony with just what you would expect them to do.

Upon the 3d day of January, 1906, without a word from Tom Hogan, without any request whatever upon his part, and before the Western Federation had in any way been implicated in this matter, we find a telegram sent to Hogan, from whom? Here is the telegram. Upon the telegram is marked, "Phoned." The man who sent that telegram did not have the courage to go to the telegraph office and let his face be seen. "Time filed 7:30 p. m., paid. Charge to Robinson, Miller & Rosenhauf." Who hired them? One of the co-conspirators here, the man who had been down at Caldwell with Orchard under an assumed name and helped him plant his first bomb. The telegram says: "T. Hogan, care of Sheriff, Caldwell, Idaho. Attorney Fred Miller will start for Caldwell in the morning. (Signed) M." Rather quick in their action! Rather hurried to get to the defense of this man! Why are they sending an attorney from Spokane? How do they know his name down in Caldwell is T. Hogan? Why should they go to his rescue? Does the attorney go? He starts from Spokane but he does not go all the way through. Now the defense says that it is the policy of the Western Federation of Miners to go to the defense of its men, any man who has ever been upon their list. Then there was no reason why Fred Miller should not have proceeded at once openly and above board to Caldwell. If he knew and if Jack Simpkins, who employed him, knew that this man was a Western Federation man, but did not know that he was guilty, and was acting under this general rule, then why should he not go and why should he not go openly? Why should he not have signed this telegram in full? But Miller starts to Caldwell, buys a ticket to Caldwell, goes down as far as Walla

Walla and for some reason or other turns around and flees from his client. They are trying to reach him with a concealed hand. They are trying to give him encouragement unbeknown to the world, and when the news began to spread they saw they were uncovered, Miller takes his back track and leaves his client in the city of Caldwell. If he was going to defend a Western Federation man, believing him innocent, was there any reason why he should be ashamed of it? No. But the truth is Jack Simpkins had been to Miller's office, he had also been to Caldwell, he had been there under an assumed name, he had left Orchard to do this awful deed, and the minute that Frank Steunenberg passed into eternity he knew that his co-conspirator had murdered him. He was acting with the consciousness of guilt, not under the rule of the Federation but in an attempt to help a fellow murderer.

What do they do next? After starting upon his fruitless mission the brave Miller, who starts to his client and turns and flees, goes back home. Now remember this telegram to Orchard was sent at 7:30 upon the evening of the 3d. Miller would start down upon the morning of the 4th. He would get back to Spokane upon his return trip the evening of the 4th. As soon as he gets back to Spokane he sees that he can not get to his client under cover. Then Simpkins gets in touch with another member of this conspiracy. He sent a secret telegram, so secret, so undecipherable, so hidden in the mysteries of their way of doing business that it took the attorney for the Federation and Mr. Haywood and Mr. Moyer three days to interpret it. They worked upon it, and they are not even yet entirely satisfied. Why this secrecy from Jack Simpkins, and why does he send a telegram to Haywood at all? What does the telegram say? "Can't get a lawyer to defend Hogan. Answer." Why can he not get a lawyer to

defend Hogan? What is the matter with Miller? Why had he started and turned back? No consciousness of guilt! No evidence of crime! So he says in effect to Haywood, "Send a man to defend Hogan." Who is Hogan? How does Haywood know that he ought to be defended? Why, Hogan is a man who was at Caldwell a few weeks ago with the chief representative of the Western Federation for Idaho, a man to whom Pettibone had written a few days before, a man who is on the benefit roll, a man who had left Denver a few weeks before armed for crime. Get busy!

Now, gentlemen, I want you to think of that telegram when you go into your jury room. It is a very peculiarly worded telegram, if Mr. Haywood did not know, before it was sent, anything about this transaction. The telegram does not say, "Harry Orchard is here as Tom Hogan;" it does not say, "He is charged with the killing of Governor Steunenberg and is innocent;" it does not say, "Do you want me, as a member of the board, to act in this matter?" It does not say, "Do you want a lawyer or shall I act?" No, he simply says, "Can't get a lawyer to defend Hogan," and the man who sent that telegram knew that the man who was to receive it understood precisely the entire situation. There is not any more doubt about it than that the telegram was sent. It reveals the knowledge, the complicity, the association of all parties.

Immediately they began to get ready for a general defense. Mr. Nugent is telegraphed to through Mr. Hanlon, the secretary of the union at Silver City. What does Nugent say? He says a very wise and proper thing, something that would naturally suggest itself to you. When they telegraphed him to get ready to defend the Western Federation of Miners because Harry Orchard has assassinated Governor Steunenberg, Nugent says in reply, "I don't see how the Western Federa-

tion of Miners is involved." Neither could you at that time; neither could anyone else; only those who had known what had happened before he was murdered could understand how the Western Federation was involved. Nugent wants an explanation. He was very wise and level headed. There was no more reason in the mind of Nugent, keen and level headed as he is, why the Western Federation wished to get into that defense than there was why they should take up any other assassin's defense. Here is one of their straggling representatives up here in the State of Idaho, one whom they say had been for years a tin horn gambler, charged with the assassination of a Governor, arrested, no charge laid against this defendant, no charge at that time against Pettibone, no charge against Moyer; yet they rush to his rescue; yet Jack Simpkins must send a telegram which shows upon its face knowledge upon the part of the party receiving it.

By whom was this telegram sent? By a man who is now a fugitive from justice. A few days after this murder we must notice another incident. Sullivan, the attorney from Denver, calls on Orchard at Caldwell. We now have Mr. Nugent from Silver City, whose attention is directed to this matter. We have Fred Miller coming down from Spokane on a second trip, when he finally reaches Caldwell. We have Sullivan, another attorney, coming from Denver. All within a very few days after the murder. There must be something very important about this matter to somebody besides Orchard. After they all come in contact with Orchard they know who he is; they know that it is Tom Hogan, the suspect from Colorado, a man whom they now repudiate as having been a bilk all his days, but they proceed immediately to his defense. Mr. Moyer says, in one of his paper interviews about this time, "We will investigate and if we find that this man

is guilty, we are not in favor of protecting criminals." They had from the 30th day of December until the 30th day of January to make their investigations. What do they make? Do they go to Jack Simpkins? Making an investigation! Why, the knowledge was in their possession. Jack Simpkins, the member of the Executive Board from Idaho, their representative of this organization, had all the information in the world that they needed. From whom were they going to make inquiry? Why, Fred Miller went down to Denver direct from Jack Simpkins, and Jack Simpkins is in possession of all the facts necessary to hang Harry Orchard. What investigation do they make? They did not make any, and they did not need to make any. The Western Federation of Miners, through its officials, knew everything. One of these conspirators was actually on the ground and what one of them knew all knew; what one of them did all did; and yet they tell you they were going to proceed to investigate. Well they did proceed. Mr. Miller went to Denver thirty days afterward direct from Hogan, the suspect from Colorado, and they gave him a check for \$1500. For what purpose? To defend this man whom they knew at that time and whom Simpkins well knew, and whom Pettibone knew had committed this awful murder. Now are those facts dependent upon the testimony of Orchard? Let us go back a moment and see how much of this is proven outside of Orchard's testimony.

First, his trip to Caldwell; where he stopped; his trip to Wallace, and that Simpkins went back there with him, and that he stopped with him under an assumed name. These are facts proven by the hotel register, by old man Dempsey, by Russell, by Bowman, and are undisputed propositions here. Simpkins went to Denver and back; the letter comes to Orchard in jail; the draft is sent to Simpkins; all outside of Orch-

ard's testimony; that the letter is in Pettibone's handwriting is proven by Orchard's testimony and Pettibone's silence, and silence is a confession; that this telegram was signed by Simpkins; that Fred Miller was sent down, turned around and went back, and that the other telegram was sent at Simpkins' suggestion; that they acted upon it; that they employed counsel—all proven outside of Orchard's testimony. Are these facts which tend, of themselves, to connect the defendant with this crime? Are we here before you with the testimony of Orchard alone? They say that the Pinkertons have built up this case. The Pinkertons built nothing; they have simply uncovered. No Pinkerton has been upon the stand; they have simply unraveled the testimony where it lay hidden beneath the wily schemes of those who were engaged in the crime. Did the Pinkertons send Orchard to Caldwell? Did they send his shot gun and his bomb with him? Did they send Jack Simpkins to Caldwell? Did they cause him to register under an assumed name? Did they send him back to Wallace and from there to Denver? Did they cause him to send this telegram to Haywood? Did they cause Haywood to hire attorneys for Orchard? Did the Pinkertons send help and aid to Orchard? This is the case of the killing of Frank Steunenberg which stands alone, clean, absolutely clean, of any evidence which can be charged to any parties who may be interested in this case.

Mr. Darrow may say of me, as he did of Hawley, that I am crazy; but I have lucid intervals, and I say to you that if you will start with Harry Orchard from the time he left Denver until Fred Miller was hired on the 30th day of January, 1906, to defend this murderer, and trace his testimony and watch the actions and read the letters and the telegrams, watch the movements, the concerted actions, of all these five

men, you will find that there is a complete and absolute conspiracy proved beyond a reasonable doubt and that conspiracy had for its object, among other things, the murder of Frank Steunenberg, and you will find all of this outside of any evidence or any crime that was connected with the affairs in Colorado. Standing alone, measured by the rules of evidence and the law which will be given you by the Court, you will find here a clean, complete and thoroughly established conspiracy, and you need not go elsewhere.

What have we by this time? No crime! Where is Jack Simpkins that "Dear Tom" was talking about? A fugitive, in hiding. Where is another member of this conspiracy—Orchard—a self-confessed murderer? Up here in the penitentiary. Where is George Pettibone, the man who wrote the letter? Driven into a corner where he does not dare to come to the rescue of his life-long friend. Three members of this conspiracy, confessing their guilt, either by their words or by their silence, one of them a fugitive—confessing that they are the murderers of Frank Steunenberg. Uncorroborated! There is only one other feature that could add any strength to this whole matter and that is the open confession of the other two. That is all.

Something has been said in their argument about newspapers and about how the Western Federation came to go to the defense of Orchard, certain newspapers having been introduced, and you may be called upon again to look over them. I shall not take the time to read them, but I have read them, and I want to call your attention to three or four things which they say, and when you read them I want you to read them in the light of these suggestions.

First, these newspaper articles, which caused them to act, as they say, show that Orchard was wanted in Colorado for

the blowing up of the Independence depot, a crime for which the Western Federation had issued a reward of \$5000. They certainly could not object to having a thorough investigation of that. If they did object it might be suggested that the \$5,000 reward was issued for a blind. These newspapers say that Mr. Crump and Mr. Bell and those who were coming to Idaho, were coming with extradition papers to get Orchard and take him back to Colorado. For what purpose? Were they after Haywood or Moyer or Pettibone? No. They wanted to get this individual whom they themselves say had been suspected for two years. No charge made that the Western Federation was in this killing at Caldwell. The only thing they said in the paper was the fact that there was a postal card in his pocket addressed to Charles Moyer, unsent; no suggestion that Moyer was a co-conspirator or that the Western Federation was back of Orchard. This suggestion comes after the telegram is sent by Miller to Orchard at Caldwell. Now there is not a single intimation in these papers that the Western Federation, or its officials had anything to do with the murder of Governor Steunenberg at the time of the sending of the first two telegrams.

Take these papers and ascertain for yourself. You will find that at the time these telegrams were sent, this secret telegram, that there was not a suggestion of any nature incriminating the Western Federation. The first open declaration which showed that the Western Federation was involved came from the first telegram sent by this defendant. Shrewd! Keen! Brains! Of course he has brains. He entered upon this defense in the second telegram he ever sent, and that is the first time the Western Federation of Miners was thrown to the front in this fight. You will find, further, that these papers promised, upon the part of Moyer and Haywood, that

there would be a close investigation as to whether or not this man was guilty and, if he was, they would not aid him, and you know that they made no such investigation. These are the things which are disclosed by the newspaper articles and they show no reason why the Western Federation should defend Orchard in order to defend itself. But, anyway, the newspapers came after the telegram from Miller to Hogan and from Simpkins to Haywood.

So much for the testimony in reference to the killing of ex-Governor Steunenberg. This is the crime for which the defendant must be convicted if at all. This is the crime with which he stands charged in this indictment. If we have not proven this crime beyond a reasonable doubt, then it is immaterial what may have been done in Colorado. If we have not satisfied you of a conspiracy for the killing of Frank Steunenberg, and satisfied you that this defendant was a member of that conspiracy, it would do us no good to show that there was a conspiracy and an attempt to murder in Colorado; it would do us no good to show that these defendants conspired to blow up the Independence depot; it would do us no good to show that they killed Lyte Gregory. This is the offense for which the defendant must be convicted, if at all, and the evidence must be satisfactory to you beyond a reasonable doubt. Hence, I have taken considerable time in discussing this particular offense. I want you to group all the evidence of the State around it. I want you to understand that every particle of evidence in this case has been introduced for the purpose of proving this one crime. You may be doubtful as to other crimes without being doubtful as to this one; you may be doubtful as to whether the Vindicator mine incident was an accident or a designed explosion; you may be doubtful of some other transactions; but, if you are not doubtful of this crime, then it is your duty to convict.

The question then arises, why do we go to California; why do we go into these other offenses at all? Not that we can convict the defendant of those offenses, but for the reason that we desire to show to the jury the nature of this organization, the fact of its connection with Orchard, the relationship of Orchard with the defendant, the fact that they were associated together in crime, to show motive, to show the incentive. Therefore, when you come to consider the Bradley matter, you examine it for the purpose of determining some of these matters, for the purpose of finding evidence which accentuates and strengthens the claim of the State in the proof of this particular offense.

The Attempt on Bradley.

Let us see if they had a motive in attempting to kill Mr. Bradley by reason of his association with the Bunker Hill and Sullivan mine or by reason of the fact that he was considered an enemy of the Western Federation. If they murdered Gregory because he was considered an enemy of the Western Federation; if they blew up the Independence depot because the men upon it at the time were scabs and because they considered them unfriendly or a hindrance to the advancement of their cause; if they attempted to murder Goddard because he had rendered decisions which they considered unfriendly, because he was the agent and representative of the capitalistic class which they believed to be arrayed against them; if they attempted to murder Gabbert, and got Walley, for the same reason; if they attempted to murder Bell and Peabody because they regarded them in the same class as Steunenberg, then we are approaching step by step to the conclusion that there was a conspiracy so embracing in its purpose the commission of these crimes, all governed by a single motive, by

a single design, for a single purpose, and all tending to prove the general understanding to do away with their enemies. For instance, if you should be satisfied that they were associated together in crime in Colorado and for the same motive and for the same reason they were together in Idaho, it would greatly strengthen your belief as to this crime. It might be pretty difficult at first thought to conceive the proposition that a great labor organization had at once and suddenly determined upon the plan of sending a man into Idaho to kill an ex-Governor. At first blush it seems improbable and unreasonable. Therefore, we go back into the history of the organization; we trace it back to its first cause; we go back to the motives which actuated them in their first movement; we find out who are their friends, who are their enemies, who are their associates, what their objects and purposes are, what they have been doing, what kind of an organization it is, and all for the purpose of throwing light upon this particular crime charged.

Before going into the details of the evidence with reference to the Bradley matter, I call your attention to the similarity between the two offenses, that of the killing of Governor Steunenberg and the attempt to kill Bradley; and as you go along watch the development of the evidence in the case and you will find a wonderful likeness, a wonderful similarity in the plan and scheme and details between the two offenses. For instance, we have already, we believe, satisfied you that Mr. Orchard started from the city of Denver to Caldwell. He testifies to that fact and all the evidence in the case points to the truth of his statement. So, again, when he started upon his mission to kill Bradley he starts from Denver and goes direct to the city of San Francisco. They would have you believe that he went all the way to San Francisco to play cards

with the soldiers at the Presidio; that this man, at his own expense, on his own initiative, by reason of some motive of his own, suddenly got up, took the train at Denver, went down to the city of San Francisco—a roving, irresponsible tin horn gambler. Remember, too, that the same man who prepared him and assisted him in getting ready for the trip to Caldwell was the same man who assisted him in getting ready for the trip to San Francisco.

Immediately after Orchard arrives in San Francisco he goes at once to the neighborhood where Bradley lived and begins to shadow his house. Notice how directly he moves from Denver to the very home of the man who is the recognized enemy and opponent of the Western Federation of Miners, the man whose mill was blown up in 1899 and who would likely have been killed had he been there at the time. This roving and irresponsible tin horn gambler had a scent for the enemies of the Western Federation of Miners that was deadly and certain and a thousand times stronger than the scent of any blood hound. He moves direct to the scene. He shadows upon his house. Now is there any evidence of this outside of Orchard's testimony? Let us see. When he arrived in San Francisco, and in a short time thereafter, he turns up at Giubinny's store, an out-of-the-way place, a little store in the outer portion of the city. Has he any business at Giubinny's? Is there any reason for his being there? Is it a gambling dive? Is there anybody there whom he knew? What motive had he for going there? What prompts him? Why, just across the street lives Mr. Bradley, the man whom they had evidently attempted to get upon the 29th day of April, 1899, the man who stood in the same class with Governor Steunenberg, whose property was destroyed and whose employees were murdered, by reason of all of which Frank

Steunenberg was called into the Coeur d'Alenes with the troops. And so he goes direct to Giubbiny's and made himself familiar with Giubbiny, stays about the store, gets acquainted. Why? Incidentally they would say; accidentally they would argue. He simply saw those girls over at Bradleys and wanted to get acquainted with them. It so happened, however, that they were the employees of Fred Bradley, the Bunker Hill and Sullivan mine manager, whom he wanted to meet, and it seems that he did not care to meet anybody else's employees. After he got acquainted with the girls, which acquaintance he asked for, then he said to Giubbiny, "I want to carry some groceries over there." He went over and took groceries to the house and got in touch with the door, became familiar with the openings and surveyed the situation. He now knows where Bradley lives. He takes no chance; he carefully and coolly and fiendishly surveys the situation; he gets closer and closer in touch with Bradley but finally discovers that he is away from home. He then waited about until Fred Bradley returns. In the meantime what does he do? Now, this is not Orchard's testimony. Mr. Giubbiny says he asked him to get him a room. Where? Where does he want the room? Anywhere where it is cheap? No. "I want a room which overlooks Fred Bradley's place of residence." This is the testimony of Giubbiny. So Orchard goes from Denver direct to a hiding place in order to get at Bradley's residence, secures a room which overlooks his home, and yet they tell you there was no design, no motive, that he was not shadowing, sleuthing or intending to kill. After he got the room overlooking Fred Bradley what does he proceed to do? He stays around very close; watches Bradley's movements. He did not kill him in a day. True he did not kill him when he was in the mountains, but it is true that this

stranger went where he would expect to find Bradley; it is true that he went with the evident design to find him; it is true that every act of his discloses that he was intending to find him, and for an evil purpose. Now was this his motive? Was this his own design? What reason did he have for being there? Bradley was a stranger to him. After he got acquainted, got his room, gets located, knows all about what is going on, he proceeds, in the first place, to poison the milk. What is the evidence in regard to this?

Orchard says that he poisoned the milk. Mr. Bradley says that he tasted the milk and found it bitter; the girl who was working in the house did the same. A part of the milk was taken out and given back to the dairyman, the dairyman gave it to the chemist and the chemist found that it had enough strychnine in it to kill half a dozen men or more. All these witnesses have been here and testified to these facts. Was it an accident or an incident that the only man who found the milk bitter, the only complaint in that entire vicinity, was that of Bradley's? Was it an accident that the man whose milk had poison in it was once the manager of the Bunker Hill and Sullivan mine? Was there no design, no purpose? But what do they say in answer to this. They simply say he could not have gotten upon the flat roof. Mr. Darrow says that there is a piece of testimony that was undoubtedly manufactured by the great manufacturing establishment of the Pinkertons; that we found out by pictures that there was a flat roof there and then it turned out afterwards that the flat roof was not there until six months after the milk was poisoned, and so he thinks the State is caught. Now, is his statement true? The inference which he would have you draw is that we had found out that there was once a flat roof there and, supposing it to have been there at the time of the poison-

ing, that we just put Orchard on top of that roof and manufactured this piece of testimony. It was not necessary to have any flat roof at all. Mr. Orchard could have gone up the stairs. But it would seem that if this flat roof was a matter of manufacture that the State would have introduced it itself. But the question of the flat roof was not a thing which the State put into the evidence at all.

Among a few other questions which Richardson asked Orchard was this one: "And you laid on a flat roof somewhere?" "I laid on a flat roof there three or four or five feet above the roof on the back part." Mr. Richardson draws from the witness, on cross-examination, the manner in which he poisoned the milk, and draws out the fact that there was a flat roof there somewhere. This does not show very much design or preconceived action to manufacture on the part of the State. It is drawn out upon cross-examination, and I submit that Orchard does not say anywhere in his testimony that he got upon the flat roof of the Linforth flat.

By Mr. Darrow: There is a question just before that, Senator, if you will permit me to call your attention to it. Shall I look it up?

Mr. Borah: I have it.

Mr. Darrow: All right.

Mr. Borah: Mr. Orchard did not say, as I read his testimony, that he got on the Linforth flat, that is upon the roof of a four-story flat. What he says, under any fair interpretation of the evidence, is that he got upon a roof there somewhere, a flat roof which was in close connection with the Linforth flat. "There was a flat roof on the back story and I got over on there before daylight," in connection with the testimony in which he says, he got on a flat roof there somewhere. This is his evidence. Now Mr. Orchard would not know and

could not know whether this particular roof was a part of the Linforth building or not; he does not undertake to say that he was on the top of the Linforth flat. But it is apparent that he went up that pair of stairs, and just as Mr. Giubbiny says he could do, he passed over onto this flat roof of the Wise house, which was there at the time the milk was poisoned. Is not that correct?

Mr. Darrow: No. I thought you would say that.

Mr. Borah: A Daniel come to judgment! You know what a man is going to say two days ahead.

Now there is a statement of Mr. Orchard in connection with it. Of course he could not get on top of the roof of the Linforth flats and it would be of no service to him in poisoning the milk to be there. He would not be any closer to the place where he could put the poison in the milk than if he was down on the ground. It therefore stands to reason that he meant just what he said, in answer to Mr. Richardson, who first brought out this matter, that he got on a flat roof there somewhere. Mr. Giubbiny says there was a flat roof there extending within two or three feet of the stairs and that a party could pass over from the stairs onto the flat roof without any difficulty.

We do not contend and never did contend that he could or did get on the top of the Linforth flats. But when you take into consideration the fact that he went direct to the house of Bradley, that he put himself in touch with the inner part of the house as nearly as he could, that he got acquainted with the servants, that he went into the house, that he stayed there and shadowed it and remained with it until the milk was poisoned, and there is no question about all this, it will not take you very long to determine whether, in accomplishing this, he stepped from the stairs over onto the Wise building where there was a flat roof.

There is too much of design. When you see a piece of machinery at work you know that there was a designer behind it; you may not know how he did it, you may not know what mechanism he used, but you know behind all of this machinery was a design and a designer. The evidence which shows the poisoning of the milk is so conclusive, so thoroughly established and corroborated, so incidental to the presence of Bradley there and of his presence at the Bunker Hill and Sullivan mine, that you know that there was a design and a designer behind it all; that it was not an accident. But the milk poisoning scheme miscarried and he went back to the old proposition of "via the bomb route." He concluded that that was better and more in accordance with the creed under which he had been raised.

Now taking up the question of the explosion of the bomb, let us go over to Mrs. Soward's room where Orchard is stopping, the room which Giubbiny had secured for him, and find out how he was amusing himself; let us see what this tin-horn gambler, without a purpose and without a motive, is doing down in San Francisco. We find here immediately a facsimile scheme to the one which was used in the killing of Steunenberg. There is the screw eye in the door, the lead shavings, the lumber shavings scattered about the room, the experimenting, identical with the experiment which was carried on in room 19 of the Saratoga hotel at Caldwell. Did the Pinkertons fix up this room for Mrs. Soward? Did the Pinkertons put a lie upon her lips? Did the mine owners put the room in the condition in which it was found? That Orchard was there, with his window looking out upon Bradley's residence, manufacturing this bomb, is established beyond a doubt. He was not manufacturing it either to assist him as a gambler. What next happens?

The night before the bomb is exploded at Bradley's door Mr. Orchard moves his valise and belongings, takes them away to another part of the town, preparing his alibi. Why does he go? He knows that there is going to be a gas explosion the next morning at Bradley's house! Mr. Giubbiny happens to be upon the car that night and asks him where he is going. He told him he was going to a certain part of the city, but Giubbiny observes that he did not go there. He states a falsehood to Mr. Giubbiny. He is attempting to conceal his whereabouts. He was moving, getting ready, when the murder is accomplished, to make his get-away, making his chance of flight perfect. His scheme was all worked out in his own brain, and next morning the manager of the Bunker Hill and Sullivan mine, the man whose milk had been poisoned a few days before, is blown into the street the moment he opens his front door. Notice the evidence for a few moments with reference to this incident. The next morning Bradley came out of his room. Miss Bell had preceded him down the stairs sometime before, gone to the outer door, opened the hallway from top to bottom, picked up the newspaper and carried it back up stairs. There had been an entire opening of the hallway, where the gas was supposed to be accumulating that morning, upon the part of Miss Bell. After she had gone back and taken the paper into the room Mr. Bradley left the room, and, at the top of the stair, lighted his cigar. If there had been a sufficient amount of gas permeating that building to blow it to pieces, to wreck it, to damage it in the sum of \$10,000, it is perfectly certain that something more than the space immediately surrounding the door would have been affected by the gas. He lights his cigar at the top of the stair, and if there had been any gas there of any amount it would seem there would have been some indication of its

presence at the time of the lighting of his cigar. He did not even smell gas; he discovered nothing peculiar. He walked down to the door with his cigar lighted, the match out, starts to open the door. At the very moment he springs the latch, which would pull that wire and set off the deadly bomb, as it was set off at Steunenberg's gate, at that very moment he is blown back—knocked down. Up to this time he had smelled no gas; never did smell any gas until after he was knocked down; of course it would be there at that time by reason of the explosion. Do you believe it was a gas explosion? Look at the condition of the floor immediately in front of the door. The vestibule and the tiling floor outside of the door were torn up, a hole was torn in the floor, the building was wrecked, the pieces of the mat under which the bomb lay were in his eyes—everything points conclusively to the fact that it was a bomb explosion. Every physical incident, every physical fact discloses that when he opened that door that it was not the impossible thing of a cigar igniting the gas, but it was another bomb placed not at the yard gate at this time, but at the doorway of Bradley.

What next happens? This tin-horn gambler who went down to San Francisco without any purpose or design, so they say, does not stay there to gamble very long after this explosion. His mission is ended. He had been nowhere except around Bradley's residence. He has done all he can do. He has not killed him but it is a miracle that he was not killed. So Orchard leaves. But before leaving he went over to see Copley, another Western Federation man who happened to be in San Francisco, and, of course, Orchard must come in contact with him. What does he tell Copley? Copley says that Orchard told him that Mr. Bradley had gotten what he deserved. Do you understand, as jurymen, that he meant

by that that this was an accident? Does that suggest to your mind that there was lurking in the thoughts of Orchard that he got what he deserved through the design and purpose of some one who intended that he should get it? What does Copley say? He admitted to me, upon cross-examination, that he understood from Orchard that possibly he had something to do with the Bradley affair. I could not get him to admit fully his understanding because he was not sure just what I wanted and he knew he did not want me to have what I wanted, whatever it was. But when Mr. Darrow took hold of him, upon re-cross examination, in his persuasive subtle way, he asked him the question and Copley evidently thought "surely Darrow is my friend and I think I know what he wants," so he says, "Yes, I got the idea that he had something to do with it." Here within a few days and a few hours after this explosion, which these Pinkertons here manufactured, Mr. Orchard tells Mr. Copley, gives Mr. Copley to understand that this man got what he deserved and that Orchard had something to do with it. What else does he have to do with Copley? Why, he made a proposition to Copley to begin to trim coin. There is a peculiarity about this man Orchard; it is his familiarity, in criminal matters, with the leaders of the Western Federation of Miners. He never hesitated to discuss with them, at any time, any criminal bent or any criminal scheme which he had in his head. Whenever he wanted to commit crime or had an idea about committing crime he went to his Father Confessor, one of the Western Federation officials, and told him. And so he kept on committing crime and kept on talking to them about it until he came to be the greatest criminal of the twentieth century. He says to Copley, "Copley, I think we can do some business. I see in the paper where a man has been successful in trimming coins," and so

forth. Well, Copley, of course, did not go into the business. He was lecturing upon the troubles of Cripple Creek. He considered this business more profitable than trimming coins.

What next happens? Orchard said to Mr. Copley, "I am going to get out of San Francisco. Have you any objection to me coming over here and disidentifying myself?" Now remember, this man had been telling Copley about this explosion—how he came to be talking about a gas explosion I do not know—and he told him that the man had gotten what he deserved, and he had given him the impression that he had something to do with it; and the next thing he said to him was, "I have a suit of soldier's clothes and I would like to come over here and put them on so I can get into Denver without being identified." That is the story which Mr. Copley tells. Now you know precisely why Mr. Orchard put on the soldier's clothes a thousand miles from Denver. He put them on, not to get into Denver, but to get out of San Francisco, the place where he had attempted to commit murder. And that, taken in connection with the fact that he had told about this matter and taken in connection with the fact that he had been there shadowing this house and that Copley understood that he had had something to do with this, was sufficient to have satisfied any mind on earth, except Copley's, that he had committed crime. But nothing like crime would be entertained by Mr. Copley, so he saw this man leave San Francisco with a suit of soldier's clothes on and a pair of spectacles, or goggles, in order that he might get back into Denver safely. Back to Denver! From Denver to San Francisco! The crime is finished, I have done all I can, so back to Denver! What was the power which drew him back to Denver? Wander where he would and do what he might, when the crime was finished he took the trail straight for the city of

Denver. What was the invisible chain which bound him to this city on the plateau? Back to the immortal George A. Pettibone—"friend of humanity," says Darrow—"a Happy Hooligan," says Mr. Darrow. But there is something about this Hooligan which is a little different from the Hooligan which we know; Hooligan has a passion to talk; Pettibone believes silence is golden. While Orchard is down in San Francisco who is his banker? From who does he get his support, his help, his money? "Lest we forget." I am of the opinion that my subtle friend thought that there might be something in this Pettibone matter which would need explanation. He undoubtedly said to himself, "I am out here trying a case before twelve men with whom I am not very familiar. They may want some explanation of Mr. Pettibone's action. As reasonable men they demand this and I guess we had better give them some kind of an explanation." And so at one time he summoned his courage and he said to you in the opening address that this money was wired to Orchard on two occasions, possibly three, by Pettibone. He wired him money after Orchard had told him how to send it, under what name to send it and what name Pettibone should use when he sent it. Pettibone, unsophisticated, just a child, never had any experience in sending money, buying shot guns, or doing any business of that kind. So he acts in docile obedience to Orchard's instructions. Pettibone must use the name of Wolfe, under the instructions of Orchard—Wolfe or Pat Bone. That he must send the money and it must be released without identification. Orchard gives him the strictest instructions about it and Pettibone did it just as Orchard told him. That is all there is about it. Now this is the testimony of Mr. Darrow.

Mr. Darrow: Not the last part, isn't.

Mr. Borah: Isn't it?

Mr. Darrow: I think the evidence was, "have it released so that it could be paid to him," that is, I think so.

Mr. Borah: I was reading from your opening statement.

Mr. Darrow: Well, I think we corroborated that part of it.

Mr. Borah: Perhaps I should say that this is the uncorroborated testimony of Mr. Darrow.

Well, what happened while Orchard was in San Francisco with reference to this money matter? Orchard, being a gambler, of course he had to have a banker—in your mind. He went to San Francisco, they say, wrote back and told them to send down his union card; going down there to gamble with the soldiers, but he might need his union card so as to get in touch with his union friends—send down his watch charm. So Mr. Wolfe testifies, of course, that that is just exactly what was sent in that letter. The letter was covered up; there was no trouble for Wolfe to testify to what was in it; there was no money in that letter, Wolfe is sure of that. The contents of the letter were hidden from the world, therefore, there was nothing in it but a union card and a few other trinkets. But the registered letter went and Orchard says there was \$100 in it. The probabilities are with you.

Again a few days afterwards a telegram is sent from this same Wolfe, at least under his name, and there was no concealment possible in this matter because it was open to the inspection of the world. Now you know that Orchard received money from Pettibone. You would like to know why he received it. Orchard says that it was sent to sustain him while he was committing this crime, and you know that it was sent at a time when he was shadowing the house of Bradley. You would like to know why it was sent. We have an explanation

of the letter—nothing in it but a card and some trinkets. But the telegrams are here unexplained. They say that Pettibone was sending money, not to Dempsey, not to Tom Hogan, not to Harry Orchard, but to Harry Green. Why didn't this man Wolfe tell us, explain why this money was sent; it was sent in his name, he knows about the letter; that is easy. But the telegram is more difficult. So he goes upon the witness stand, explains the letter, and keeps silent as to the telegram. Mr. Pettibone, one of the men who is charged here, and he refuses to testify, sent Mr. Orchard money and held him up, aided, abetted and encouraged him while he was down there trying to commit this crime. No evidence? No corroboration? The silence of this man is a thousand times stronger than Harry Orchard's testimony. It is corroboration of the most powerful kind. You know that the relationship of Orchard and of Pettibone was close. The circumstances show their relationship at the very hour of crime, but his lips are closed and these incriminating matters are left undenied. Of course I agree with Mr. Darrow that it was wise to keep him off the stand—one more chance at least for Mr. Pettibone. Now, candidly, why should not Pettibone go on the stand and tell you about these telegrams? What difference does it make about Pettibone sending a few hundred dollars down to San Francisco to a man who was there simply to play cards with the soldiers? How could this incriminate Pettibone? Would there be anything criminal in the fact that Pettibone sent \$150 to a man in San Francisco about the time that there was a gas explosion? If they believe this a gas explosion, if they believe the poisoning of the milk is a fake, there would be no reason in the world why Pettibone should not put himself here upon the witness stand and say, "Yes, I sent this money," but there is the knowledge of their own conscious-

ness of the crime—sometimes stronger than any other fact in guiding men in their actions—the inward consciousness of wrong upon the part of Pettibone, and he keeps silent. He knows that while you are up here talking about gas explosions and the fact that Orchard couldn't get on the flat roof, he knows that that explosion was a bomb explosion, he knows that he did get on the roof and he knows that Pettibone helped along with these matters. It will not do to say that Pettibone can keep quiet; it does not answer the charge in this case.

Another matter for reflection. After Orchard left San Francisco, no more poisoned milk. After Orchard left San Francisco Mr. Bradley's residence seems safe enough—no more gas explosions. Somehow and in some way the presence of this man always insured trouble to the enemies of the Western Federation. When he was around strychnine got into the milk, and bombs were found at the doors. You will find throughout this entire story just that kind of unquestioned proof.

If Pettibone did send this money, where did he get it? Orchard says that it was the understanding that all the money was to be paid to him through Pettibone. We have proof in this case that not a dollar can be paid out of the Western Federation funds without the signature of this defendant. We have proven the close relationship of the defendant and Pettibone. Pettibone had no reason to be active in this matter except as a member of the Western Federation.

Gentlemen of the jury, there is no way by which you can reconcile all the circumstances and facts in this case with the innocence of this defendant. His connection with these affairs is unexplainable upon the theory of innocence. Orchard's testimony is direct and positive, and these facts, piled one upon another, makes the State's case unanswerable.

(Adjourned.)

Gentlemen of the jury, there is an understanding between the court and myself that the discussion of evidence in this case shall close tonight. I expect to carry out that understanding, which I have no doubt you will be glad to know. In order to do that it must necessarily follow that a vast amount of territory covered by the evidence must be left uncovered by the argument; it would be impossible for me to take up and discuss all the different matters in Colorado and the evidence which refers to those matters—this is especially true in view of the fact of the great heat this evening. But you have listened to the testimony of the witnesses in regard to these affairs and you will apply the evidence to the general principles discussed as carefully as though I took up the time in going into details. First, I want to call your attention to a matter which slipped my mind in connection with the Bradley affair. I stated that Mr. Orchard started for California from Denver when he went to kill Bradley. Undoubtedly the thought suggested itself to your mind that I should call attention to the testimony of Dr. McGee, because if his testimony be true it would appear that Orchard did not start from Denver but from Wallace. It would appear also that Mr. Orchard was untruthful. Therefore I must call your attention for a moment to McGee's testimony. Mr. Darrow wanted to know if I would say that Dr. McGee was liar. I will say in answer that I will not say that Dr. McGee is a liar. I am not in the habit of saying that in the court room any more than I can help, and I never say it outside of the court room to a man as large as Dr. McGee. I will try and reconcile his statement with the theory of his honest intention to tell the truth. It appears that Dr. McGee came to Boise and was present in the court room. The impeaching question which Mr. Richardson put to Orchard fixed the time of McGee's con-

versation in the fall of 1905. If you will recollect, the first question propounded to Mr. Orchard relative to his talk with McGee in the town of Wallace referred not to the fall of 1904 but to the fall of 1905. We know as a matter of fact that Orchard was there in the fall of 1905. In other words, Dr. McGee must have been in doubt himself as to when this conversation took place. If it took place in 1905, there is no contradiction between Orchard and McGee, and he undoubtedly fixed the date as 1905 in the first instance. It was in 1905 that Orchard was there and left this Peabody bomb, turned it over to a man by the name of Cunningham. This is another fact which tends to show that it was 1905, because McGee says that Orchard was in company with Cunningham. All these things lead me to believe that the doctor was mistaken as to the time.

Again, if Mr. Orchard had been in the city of Wallace in the fall of 1905, it seems entirely probable he would have met some one whom he knew, some of his old associates. He would likely have gone to the residence of Mr. Paulsen. As Mr. Darrow frankly admits it does seem strange that this is the only witness who claims to have seen Orchard in Wallace in 1904, whereas there is plenty of evidence he was there in 1905. In addition to this, we brought some direct testimony here to the effect that Mr. Orchard was in the city of Denver at the time McGee thought he was in the city of Wallace. Mr. Mosher so testifies. Now if you desire, you can reconcile the McGee testimony upon the basis of honesty upon the part of McGee—it is perfectly easy for you to do this. I am perfectly willing that as jurors you shall always harmonize a man's testimony with the theory of his honesty when that can be done.

Orchard's Loyalty.

In this connection I want to call your attention to another matter in regard to Orchard. A great deal has been said about Orchard's attempt to fasten this crime upon the defendant. The suggestion has often been thrown out that at the time he was committing these crimes, going about here and there, he had the ultimate design and purpose of fastening these crimes upon this defendant. I call your attention to the fact that Mr. Orchard throughout these entire four years was perfectly loyal to the Western Federation of Miners and to its officials. If it had been his design to fasten this crime upon the defendant he would have preserved instead of destroying the testimony—he would have held the letters instead of destroying them. He had an opportunity to gather up evidence against these parties, take advantage of their association—he could have arranged matters so the evidence would have been overpowering, conclusive. He could have preserved his telegrams from Pettibone, his letters from Pettibone, his letters from Haywood, could have placed them in a position where the evidence would have been final and conclusive. But he did not do so. Until he made his confession he studiously and industriously destroyed everything that would tend to incriminate the defendant or his associates.

So far as his being associated with the mine owners or the Pinkertons is concerned, if he had anything to do with these parties it is clear that he never at any time undertook to build up a case against this defendant. His first determination to tell what he knew came after he was arrested and was placed in prison and after he had time to think over the matter. Such other evidence as we have in this case we have had to go to the four corners of the earth to secure. Such other evidence

is the evidence which he left upon his trail and which it was not within his power to destroy. His were not the acts of a man who had a design and purpose of putting a rope around the defendant's neck, as Mr. Darrow has told you. He was simply bent on crime, he was the emissary of a criminal organization. He did his work thoroughly and completely and did it loyally.

Another thing you should remember is that Mr. Orchard never did a day's work after the Independence depot explosion of August 6, 1904. He had no income save that which he derived from the Western Federation of Miners; he had no employment. He was going here and there, traveling all over the country, spending money. Where did he get it? Who supplied it? Why would he take it upon himself at his own expense and of his own motion to go about over the country killing men? He did not rob them when he killed them. He did not make pecuniary gain an incident. There was an outside motive, another reason—some one was associated with him and holding him up. These are matters which I want you to consider and to which I call your attention before passing on to the Colorado situation. They throw much light upon the fact that somewhere, in some way, there was connected with Harry Orchard a powerful influence, a powerful factor, aiding, abetting and supporting him.

I think it is very clear also that after the 6th of August, 1904, Harry Orchard was a fugitive from justice; he was a suspect. They wanted him for the crime of the Independence depot explosion. It was very clear that it was the opinion that he was wanted, and it is very clear that during all this time he received benefits from the Western Federation of Miners, in confidential relation with and supported by them. He was always in touch, from the 6th day of June, 1904, un-

til the awful murder of December 30, 1905, with some officer of the Western Federation of Miners. For a time he was stopping at Pettibone's house, loafing at his store, or he is with Mr. Moyer, or he is walking and talking with Mr. Haywood, or he is with Mr. Copley in San Francisco; with Davis at Cheyenne or Moore in Denver—always in touch with the high officials of the Western Federation of Miners—this fugitive from justice, this man whom they now call a tin-horn gambler, this greatest criminal of the age. Can there be any doubt in your mind from what source came his support, his aid and comfort? Can there be any doubt in your mind how he lived and for whom he lived and for whom he did his work? Can there be any doubt in your mind that they knew he was a criminal and thus harbored him?

Colorado Situation.

As I said to you this morning, Mr. Haywood cannot be convicted here for any crime committed in Colorado. You are trying him upon one charge. We go into the Colorado situation for the purpose of ascertaining if there be any facts which tend to prove the ultimate fact to be proven, and that is his connection with the crime at Caldwell. It does not follow, therefore, that the State must prove in this case each particular crime in Colorado beyond reasonable doubt. There is only one thing that we must show in this case beyond a reasonable doubt and that is the fact that the defendant was connected with the offense at Caldwell. And if all the circumstances and all the facts piled upon one another and connected with one another finally satisfy you of this ultimate proposition, then the State has made its case. We do not have to show beyond a reasonable doubt that he exploded the bomb which killed McCormick and Beck. We do not have to show beyond a reasonable doubt that he ex-

ploded the bomb which killed the fourteen men at the Independence depot. We do not have to show beyond a reasonable doubt that he killed Lyte Gregory—we simply propose to take all these facts and circumstances and satisfy you of his long association with this organization as a basis from which we will reason that it was probable they were connected together in the Steunenberg murder. From all these transactions in Colorado you will endeavor to ascertain what the relationship of Orchard was to these crimes and what the relationship of Orchard was to this organization, for all these throw light upon the ultimate fact to be proven. As I said before, one circumstance standing alone may be very weak, but two circumstances standing together gather strength, and three circumstances become stronger, and then adding other circumstances and so on the chain becomes complete and the proof conclusive. Circumstantial evidence is sometimes stronger to the mind as a matter of proof than direct evidence. For instance, a man may say, "I saw John Jones shoot Smith at a certain place." That man may be lying. But if you get a chain of circumstances composed of facts which are not subject to manufacture—if you take telegrams, registered letters and that class of evidence and build up a complete chain of circumstances, it becomes more convincing than direct evidence. This is the reason why we are in Colorado, for the purpose of getting a complete chain of circumstances, for the purpose of showing association and motive, for the purpose of completing the conspiracy and showing the design and purpose, for the purpose of showing the relationship between these parties. All these things help to develop the common motive, the common design, the common purpose, in other words, that Peabody and Bell and Goddard and Steunenberg all stood within the firing line of this organization.

Extradition.

Something has been said with reference to the manner in which these men were brought from Colorado—their kidnapping, so-called. Only a word in regard to that: If these men were not legally here they would not be here—they would not have stayed here. If there was anything illegal or defective in regard to the manner of bringing them here, I apprehend the very able counsel who represent them would not have permitted them to remain here, because they made a heroic effort to get them away. But that is a question with which you are not concerned. The only matter with which you have to deal is whether or not the defendant was connected with the offense at Caldwell. If he was so connected with that offense then it was the Idaho law that was violated. It was a citizen of Idaho who was murdered. If he was connected with this offense it was in this jurisdiction where he raised the red hand and it is right and proper that a jury of Idaho men should sit in judgment upon the men charged with the commission of that crime. True, as said by Mr. Darrow, he is a stranger to you. But he is just as safe in the hands of the men here as he would be in the State of Colorado. He will never be convicted unless the evidence satisfies you beyond reasonable doubt. He will not be convicted upon prejudice or by reason of his being a stranger. Everything that the law provides has been thrown around this trial and he has been safeguarded in every respect. They have been given every latitude vouchsafed to a defendant. The rules of examination and cross-examination of witnesses have been extended fully and freely to the limit. But the counsel seem particularly out of humor because these men were brought here in company with Buckley Wells. Just what that has to

do with their guilt or innocence is not apparent. This is the young man who they say has a Harvard accent. If you should happen to have a boy who has an ambition to get an education and who desires to go to Harvard, pull him back. He is going in the wrong direction. If he should succeed in becoming a successful student of that institution it would be justification for a verbal assault if not something worse. It is no discredit to Mr. Wells that he worked his way through Harvard, and I apprehend that kind of logic will not satisfy a jury as to the guilt or innocence of this defendant. Mr. Wells was simply Adjutant General of the State of Colorado. He came here in company with these men by direction of the Governor of that State.

Pinkertons.

One of the first things we have to encounter in the Colorado situation is that there were a great many Pinkertons in Colorado and that they did a great deal of devilment down there by getting into the unions. It is further charged that the State of Idaho has employed Pinkertons for the purpose of gathering evidence in this case. That is true. The State has employed some Pinkertons and paid them, and the fact that there have been some deficiency warrants issued, if such be the fact, is not a matter about which counsel for the defense need feel uneasy. The State is willing to pay in order to find out whether we have a system of laws which protect the lives of its citizens, and no appeal to a jury upon the question of taxes will answer the great question or satisfy the mind as to who killed Frank Steunenberg. If there has been any squandering of money we have a board which audits the bills, and toward the conclusion of that auditing I should like to compare the counsel's compensation with mine. They

called Mr. Friedman—or Freakman it ought to be—to the witness stand. He had been employed by the Pinkertons, in their employ for two or three years—a stenographer. I think he was the private stenographer of “Father McParland,” the man who has all kinds of schemes in his brain for the purpose of convicting innocent men, of putting upon innocent men crimes—so they say. They did a great deal of hinting as to what they were going to uncover by bringing forth Mr. Friedman with his letters, and what did they show? I felt quite sure they would prove Harry Orchard was a Pinkerton. I supposed they would at least get in touch with him somewhere. I supposed they would show something in regard to the mine owners having been guilty of the blowing up of the Independence depot. In fact, when I looked into the fellow’s face I did not know what they would show. I knew he would go to his full capacity. I knew that a man who would steal letters, steal them with a purpose and design—he did steal them and bring them here—would do anything within his power. Well, they finally succeeded in showing that the Mine Owners’ Association was not a client of the Pinkertons at all in 1903-4. They broke the backbone of their own conspiracy. Is not that true? Did you find anything in those letters showing a conspiracy? Certainly not; you found the very opposite. They disproved utterly the connection of the Pinkertons with the Mine Owners’ Association and disproved utterly the connection of the Mine Owners’ Association with any of these crimes. It appears that Mr. Londoner went down to Cripple Creek a day or two after the Independence depot explosion and he gave us a graphic description of conditions there prevailing. Londoner was a Pinkerton. What does he say about the miners—this organization that was after the miners to fasten crimes upon them? Why, the best certificate

of character that has been given in Cripple Creek to the Western Federation of Miners was given by Londoner. So if there is anything in the way of proof of Londoner's letter it would be that the Western Federation of Miners was a client of the Pinkertons rather than the Mine Owners' Association. I do not suppose they really were clients of the Pinkertons, but the proof tends to show that rather than the opposite.

Mr. Redell was also a Pinkerton. He went down to Telluride and joined the union, got to be secretary and remained an officer of that organization for some time. It appears that Mr. Collins had been assassinated and that Barney and Smith had been killed or mysteriously disappeared; that there were mysterious crimes in Telluride. Apparently there was no power there to intercept and punish the criminals. So Redell went into Telluride, and you can imagine what he went for. He had his suspicions and when he went to Rome he determined to do as the Romans did—he talked anarchy, and the more he talked the higher he climbed officially in the union. Is not that true? How did he get to be an officer? How does it happen that this man who they say was talking anarchy and lawlessness was elected to a high office in the union and kept there if the union did not believe in such things. General Engley went down to Telluride and the only fault he found with Redell was that he did not talk it strong enough. He said he talked with him for a few moments and found out he did not know anything about philosophical anarchy—he was not fit to be secretary of the union or anything else in Engley's estimation. But what did Redell do in the way of fastening crime upon the Western Federation of Miners? He did not do anything or attempt to do anything of this kind. He simply kept in touch with the organization for the purpose of ferreting out those crimes which had been

committed in that district. The Pinkertons were employed for the purpose of uncovering evidence. They have not been engaged for any other purpose than that of hunting up and gathering the evidence which was in existence. For instance, they did not send Jack Simpkins to Caldwell, but they found out he was there. They did not prepare Mrs. Soward's room with the evidence of Orchard's guilt, but they found the room in the condition in which it was left. They did not send the telegram to Orchard in the name of Pat Bone or Harry Green, but they uncovered it. They did not send Orchard to Nampa and Caldwell, but they found the hotel register which established the fact that he was there. They did not have Haywood write the letter to Mrs. Orchard, but they found the letter. And so they have been employed in this case and their work has been finished. There can certainly be no just criticism upon an organization which faithfully uncovers and brings into court the conclusive evidence with reference to a man's guilt.

Mine Owners.

But it appears also that the mine owners are to be charged with many of the crimes in Colorado. The mine owners are like all the rest of us—they are human. They are men who have gathered their money together, put it into the mines, taken the risk, helped develop the country, and there is no evidence in this case of any wrong doing upon their part toward the Western Federation of Miners until after the strike occurred in Colorado. Then things happened on both sides which may be subject to censure. I do not know as to this, but I do know that the evidence establishes beyond a question that the mine owners did not commence this trouble and that they were reasonable and fair in so far as it was possible.

You know and I know that when a strike occurs there is bound to be trouble and no one can tell precisely with whom the fault rests. But there is no evidence that the mine owners desired to do anything else than to operate their properties. But in this connection, to show what they had to contend with I want to read an agreement which has been introduced in this case. This is as follows: "It is hereby agreed between the Miners' Union, by V. St. John, president, and the Smuggler Union Mining Company, by Edgar A. Collins (the man who was afterwards murdered), that all work shall cease on said mines for the space of three days, commencing Friday evening. Also that said Miners' Union will refrain from violence either to person or property for the same period. That said Smuggler Union mine is to have the right to keep four men as watchmen at the Bullion tunnel, one at the Penn tunnel and one on the Sheridan dump. Agreed this 3d day of July, 1901. -Smuggler Union Mining Company by Edgar A. Collins, Assistant Manager. V. St. John, President." That is signed by the president of the union and it is agreed that just for a time they will restrain themselves from violence to person and property. Is violence to person and property a tenet of the Western Federation of Miners? Do they simply contract to hold themselves down for three days? Is it so much a part of their creed that it can only be restrained for a short time by contract? And yet they say this is not a criminal organization. Remember now that Collins was afterwards murdered. I presume the time in the contract had expired.

Independence Depot Explosion.

We will refer for a short time to the Independence depot explosion where fourteen men were killed and seven maimed

for life. I want to call your attention in the first place to the fact that this explosion was not an accident. The men who were killed there were not killed by accident. Those who touched off that explosion did not intend it to go off at any other time than the time when these men were at the depot. There was a suggestion by Mr. Darrow in his opening statement to the effect that this depot was blown up simply as a scare, that it was not intended by the mine owners or Pinkertons to actually kill anybody—they had an old depot of little value and it was their intention to explode a bomb and destroy the depot just before the train came in, but not kill anyone, so as to cause an uprising of feeling in the community against the Western Federation of Miners. They put a witness on the stand, Mr. Blizard, who disproved that idea. They asked him "What was its condition?" A. "It was quite a nice up-to-date station with waiting room and a large office." Q. "What do you know as to its size?" A. "I do not know but I should judge one hundred feet long and forty or fifty feet wide." Q. "Was there a platform?" A. "Yes, there was a nice large platform leading down to the track." They called no other witnesses upon this subject. They abandoned the proposition of showing that the explosion was under an old worthless depot, and abandoned the proposition of showing that the explosion was an accident as to time. It was not selected because it was an old depot, it was selected because there was the place where it was positively known that these non-union men got on and off the train—they were the only people, practically speaking, that used the depot. When the time came for the explosion the men who caused the explosion must have inevitably known these men were there at that specific moment on the platform. It is not reasonable that they were so close to the platform and yet did not know

precisely the whereabouts and position of the men. It was the intention of those manipulating the matter to kill and they did kill with dreadful certainty. The man who caused that explosion was a finished murderer, one who when he shot, shot to kill, and that was Harry Orchard and one other, no less a pronounced criminal—Steve Adams.

Is there any possible doubt in this case, under all the evidence as it now stands, that Harry Orchard blew up the depot and that he did so in connection with Steve Adams? We were not able to prove it beyond a reasonable doubt, but the defense did. Their evidence must satisfy you that Harry Orchard was the guilty man. Orchard said he did it, the defense showed that the hounds tracked him, and now Mr. Darrow is forced to argue that Harry Orchard did it, and we concede it.

What else is shown? Not only that Harry Orchard was there, but also another personage of whom you have heard considerable—Steve Adams. I wonder if Steve—loyal Steve—the man whom they are now defending for murder—I wonder if he is a Pinkerton. I wonder if he was in the employ of the Mine Owners' Association when he did this. I wonder what is the trouble that he does not testify in this case. Now, let us see if Steve was there. That Orchard did it is now conceded on both sides. We have convinced the defense of that and they admit it. Orchard testifies that Adams assisted him. At the time they are hunting for Orchard, they put a man upon the stand by the name of Blizard and he testifies that Sterling told him that Steve Adams was one of the men who blew up the depot. In addition to that it has been proven before you that Steve Adams made a confession. What that confession is you can not know. But it has been proved that a confession was made. So we have the statement of

Orchard, the circumstances proven in regard to Sterling and the hounds, the statement of Blizzard, a confession by Orchard; and Adams, their client, having once confessed, now silent and afraid to testify.

We have had two explanations as to why Adams did not go on the witness stand. These explanations do not harmonize exactly, but they harmonize as well perhaps as two unreasonable propositions could be made to do. But one thing must be apparent to you. We have noticed that the defense has been traveling around over the United States for the purpose of gathering up a little piece of evidence here and a little piece of evidence there to be used in showing that Orchard did not do this and did not do that. Orchard went upon the witness stand and named to this jury and to this court and to these defendants, his associate, the man who was with him at the Independence depot, the man who helped kill Lyte Gregory, the man who hunted and haunted Peabody, Goddard, Gabbert and Bell, the man who has since made a confession. There is the only man who could satisfy this jury not only that Orchard was mistaken or lying as to this incident or that, but that his entire statement is a falsehood. What a powerful club we placed in the hands of the defense—and yet they dare not use it. Why? Simply because down here in this jail is the man-killer who for two or three years was the hired assassin accompanying Orchard upon all his expeditions of crime. He has confessed. He now refuses to stand by that confession. He is in their hands, they are defending him for murder, and yet he dare not run the gauntlet of an examination before this court.

There is no man who could uncover all the infamy of the State as it has been pictured by the defense, like this man Adams. He was up here in the penitentiary, he was around

when McParland was talking to Orchard—if any inducements were held out to Orchard he would know it, he has been with him day after day for years, knows where he was, what he was doing, or else he knows Orchard was stating a falsehood from beginning to end.

They say Harry Orchard's confession came from the manufacturing establishment of Mr. McParland. They would have you infer also that he tampered with Steve Adams. Why didn't they raise this lid? Why didn't they break into this manufacturing establishment? If they want to know what kind of divine ointment Father McParland puts upon a man's tongue to make him talk, all they have to do is to call Steve Adams. He could uncover the whole transaction and show the infamy of the State from beginning to close of the matter. But Steve, like Pettibone, thinks this is a good time to keep silence, and his counsel agree with him. He is their client. They say as a partial excuse that he must be tried for murder himself. True, he is being tried for the murder of some timber jumpers in North Idaho. He is not being tried for anything connected with the affairs in Colorado. If he is guilty of those things he could be tried, but if Harry Orchard's statement is false and Steve Adams was not at the Independence depot explosion at all there was no possible reason why he could not go upon the stand without any injury to himself and clear up these matters. This witness is in a position to do so much for the defense, to serve them so effectively if Orchard's statement is not true that only a controlling interest could keep him off the stand. That interest must have been something in the nature of his inability to satisfy this jury that he was not at the Independence depot and at the murder of Lyte Gregory.

Mr. Richardson says in answer to the charge of blowing up

the Independence depot that such an act would have been the most foolish, the most unreasonable thing the Western Federation of Miners could have done; that if they did it it was of more injury and a greater detriment to their cause than anything else that could have happened. Well, when we come to talk about doing foolish things I want to refer back to the 29th of April, 1899. Can you conceive of a more unreasonable, foolish or injurious act upon the part of a labor organization than their act upon the 29th of April? They went out in the open day, in defiance of law, put themselves upon record as a criminal organization, destroyed property and committed murder. It was the height of folly. It was unreasonable from every standpoint, almost the conduct of an insane person. It brought down upon them the condemnation of the entire thinking world. But we find that the test of reason or unreason is not the test to apply at all times to the action of this organization. You see the motive for this crime, the Independence depot explosion. What reason could any one have had for committing the crime other than the Western Federation of Miners. Let me call your attention to a little matter here which shows conclusively the motive. You will remember the testimony of old man Stuart, who testified as to his experience. He says he went to work upon a certain day as a non-union man. He was told by Minster that if he went to work he would have to take the consequences. But he went to work. When he came home that night who was it visited him? Steve Adams, the man who helped blow up the Independence depot, and for the same reason—Sherman Parker, William Campbell, Ed Minster and a few others. They took the old man out of his house, away from the pleading family, took him up on the hillside, beat him up, shot him and left him for dead. They undoubtedly

supposed he was dead. Why? Simply because he went to work upon a certain day in defiance of the dictates of the Western Federation of Miners—no other reason in the world; no other excuse could be given for attacking this old man; simply because he was a scab.

Here upon the Independence depot platform were some twenty men known as strike breakers, men who had gone into the non-union mines and were at work. Every mine in that district, except one, the Portland, was a non-union mine. The Western Federation was losing the fight. They were enraged at the strike breakers. They believed if they killed a lot of these scabs the rest would be afraid to go to work in the district. Here was the motive. They say this was the result of a conspiracy upon the part of the mine owners. Peculiar conspiracy which had for its object the destroying of their own property and killing their own men! The motive for this murder at the Independence depot in view of the multitude of facts proven in this case is conclusive.

Now, watch the actions of Adams and Orchard immediately after the Independence depot explosion. Orchard starts immediately by wagon to Denver. He arrives in Denver in a few days and goes directly to headquarters. Adams starts across country afoot, he arrives at headquarters almost the same time Orchard does. These men, whom the evidence shows as being the guilty parties, strike immediately for headquarters after the crime is committed. Orchard changes his name and Adams changes his name. They go into hiding. Orchard finally starts out and Pettibone helps to get him ready. They concede that Pettibone purchased the things which Orchard takes with him. Now, there never was a day after the Independence depot explosion in which Orchard was not wanted for this crime, and there never was a week

but what he was in touch with the Western Federation of Miners, on their benefit list and continued to be so, harbored and taken care of by them until he made his confession to McParland on the 18th day of February, 1906, of the murder of Steunenberg. There never has been a day since the Independence depot explosion that Adams has not been in touch with the Western Federation, taken care of by them, and is now being defended for murder by their counsel.

Lyte Gregory.

One more matter in Colorado, and that is the murder of Lyte Gregory. It was stated in the opening that the evidence would show that the Western Federation of Miners never had any grievance against Lyte Gregory and knew nothing about him. The evidence in this case, on the other hand, shows conclusively that this organization did have something to do with Lyte Gregory and shows that the organization regarded him as a spy and an enemy. It appears from the evidence of Mr. Copley, Mr. Sabin and Mr. Haywood himself that Gregory was a detective; that he was a witness in a case against the organization at Idaho Springs, despised and hated above all things on the face of the earth. It appears further that he was in active operation as a detective at the time Copley was tried. He might not actually have been called as a witness, but I do not apprehend they love Mr. McParland any more because he was not called as a witness. I apprehend they do not love Mr. Redell any more or hate him any less because he was not called as a witness. That Gregory was a deputy sheriff and was active in gathering testimony in that case is now proven beyond question in this case. That was the motive for his killing and that was the motive Orchard testified to. Pettibone found him up in Den-

ver one night, went to Orchard—Pettibone, this man with silent lips—and said, “This man Lyte Gregory is up here and we would like to make an example of him.” This was enough, and Adams and Orchard got ready for the trip. They start like blood hounds upon the trail. They follow him from the main part of town, armed with their sawed-off shot guns, hunt him into a saloon, watch him there until he comes to the door and shoot him as he staggers into the street. Mr. Baldwin, a witness upon behalf of the State, directly and minutely corroborates Orchard. Orchard states they went out to that saloon and first sat down in the front room; that he afterwards went into a little ante-room and began there a game of cards. Mr. Baldwin gives the movements of Gregory precisely as they were given by Orchard. He tells you about his going into the front room and then into the ante-room and afterwards passing out on the street and in a few moments thereafter being murdered. Mr. Orchard also states there was present a man by the name of Meldrum, a member of the Western Federation of Miners. That when Gregory was shot Meldrum went in one direction and Orchard and Adams in another. Where is this member of the Federation? Mr. Orchard says that Pettibone is the man who instigated that murder. Pettibone is here and does not deny it. Orchard says that Adams assisted him. Adams is here and does not deny it. Orchard says that Meldrum was present, and Meldrum was not brought to disprove it. Baldwin corroborates Orchard. Now it is not necessary for you to be convinced beyond a reasonable doubt that Orchard and Adams killed Gregory at the instigation of Pettibone, who was a member of the conspiracy, but it seems that the evidence is such that you could well be satisfied beyond a reasonable doubt. Take the Independence depot, the killing of Gregory, the evi-

dence and circumstances surrounding them, and we see the motive flowing from the same source, you see the same parties in action and you find strong and controlling features of corroboration supporting Orchard's story.

Another thing you should consider is the fact that no one was ever prosecuted for killing Gregory. He was murdered there in the city and there was no stir whatever, apparently, to prosecute. This is a thing you ought to consider with reference to all the transactions that took place in Colorado and with which it is charged the Western Federation was connected. There was some powerful influence protecting the murderers. There was some mighty power staying the hand of the law. There was some influence which made cowards and criminals of those whose duty it was to uphold the law. Perhaps this finds an explanation in the statement of Orchard, wherein he says that Haywood went to the Sheriff next day and stopped the investigation with reference to the killing of Gregory.

Peabody and Goddard.

There were some attempts made upon the lives of Peabody and Goddard and Gabbert and Bell in the city of Denver to which we desire to call your attention next. Want of time compels me to group these. Mr. Orchard states that he attempted to kill Goddard and Gabbert and Bell and Governor Peabody. In the first place there can be no doubt, I presume, that a bomb was found at Goddard's gate and it had been there for some considerable time. The circumstances surrounding it show that it is Orchard's brand. It is fastened to the gate just as he fastened one to Governor Steunenberg's gate. It is true that it miscarried—accidents will sometimes happen even with the schemes of the Western Federation of

Miners. After Orchard's confession parties are sent to uncover the bomb and they find it exactly as he told them they would. Who was Goddard? He was a member of the Supreme Court of Colorado. He had rendered a decision in which they were much interested and against them. But that is very slight testimony as to motive compared with the testimony of the defendant himself upon the stand. He states upon cross-examination that he regarded Goddard in the light of a corrupt enemy of the Western Federation of Miners. Perhaps that is not the exact language but that is the effect of his testimony. He regarded Hearn and Bell and Peabody and Goddard and Gabbert as the tools of the capitalists, as corrupt representatives of those who organized against them, as men who would not give them justice—as their uncompromising enemies. Gabbert stood in the same position. There was a bomb placed for him in almost the same manner as Orchard and Jack Simpkins fixed the first bomb for Governor Steunenberg. It was placed so the wire would stretch across the pathway. The result was not Gabbert's death but Mr. Walley's. The bomb did its awful work but not upon the right individual. Now who was it in the city of Denver that was going around planting these bombs at gates and across pathways? Do you see any similarity between this work and the work that took place down in Caldwell, the work at the Independence depot, the work at Bradley's residence, the work in the Vindicator mine? Whose motive furnished the moving power for this crime? Certainly this tin-horn gambler was not acting upon his own responsibility and alone. He did not care what decisions Gabbert rendered, he did not care what military orders Governor Peabody issued or caused to be issued. Somewhere there was some one who was interested and who was aiding, abetting and upholding

him in these crimes. The evidence in this case established very thoroughly that Orchard went down to Canyon City for the purpose of killing Governor Peabody, and this is a very important matter. He carried with him the bomb which he afterwards brought to Idaho. This bomb was discovered by Mr. Vaughn in Orchard's room. Here we again come in direct touch with Pettibone. Mr. Pettibone suggested to Mr. Orchard that they take as a cover a commission to write insurance. He suggests to him that if he will go up to Mr. Stearns, the general agent, that he, Pettibone, will give him some letters of recommendation, and the letters are in evidence here, the letter from Mr. Pettibone, Mr. Sullivan and a number of other parties. Mr. Orchard gets his commission to write life insurance, goes to Canyon City, shadows the house of Peabody but finds no opportunity. But every time he leaves Denver he leaves by the assistance and connivance of Pettibone, and every time he gets through with his job he returns. Of course there can be no question as to the attitude of Governor Peabody toward the Western Federation of Miners. There can be no question as to the hatred they bore him. They regarded him as their greatest enemy. Again the motive appears, again the action of these parties is shown, and again Orchard is shown to be in action by no motive of his own nor any reason for acting except that he is to be considered the tool, the machinery, of this conspiracy and these conspirators.

What was the relation of Mr. Orchard to the Western Federation of Miners during the year 1905, the time within which he was attempting to kill Peabody and Goddard and Gabbert and Bell? That he was living in Denver we thoroughly established and, as I understand, is not now disputed by the defense. This is proven by Max Malich, by Haywood,

by the policeman, aside from the testimony of the State. That he was upon the benefit roll is also admitted. That he was at this time a suspect on account of the Independence depot is well proven. That he was going under an assumed name and in hiding except as to the Western Federation is well established. There are two letters which have been introduced in evidence. These are letters written by Orchard to his wife. They are dated at San Francisco. This is for the purpose of misleading her. He suggests in the letters that he will send her letters to headquarters, meaning the Western Federation headquarters, and that they will be forwarded from there. He advises her to send her letters to headquarters and they will be forwarded to him. Now as a matter of fact, at this very time he was in Denver at headquarters day after day. In these letters he refers to Pat Maloney as the man who carries the letters. Pat Maloney was in the employ of the Western Federation. He also states in these letters that he has arranged with the secretary (Mr. Haywood) to take care of his wife while he is absent. This thoroughly corroborates Orchard when he testifies in answer to Mr. Richardson's questions that his wife had been provided for. He also refers in these letters to the association of himself with Adams and Mrs. Adams and that he had sent a hundred dollars to his wife through Mrs. Adams. In other words, his association with this organization is continuous, secret and false, from the 6th day of June, 1904, until the 30th day of January, 1906, at which time fifteen hundred dollars was paid to an attorney to defend him for the murder of Governor Steunenberg.

As another evidence of this association, and close association during this time, we call your attention to the fact that Orchard testifies that they purchased a dark horse to be used

in driving about the town to locate Peabody and Bell. We bring a witness here, a colored man, who testifies in thorough corroboration of Orchard that during this time Orchard and Pettibone came to him to buy a horse; that Orchard and the colored man got into the buggy and drove down to the Federation headquarters; that Orchard got out of the buggy, went upstairs and got Mr. Haywood, whom the colored man identifies here in the court room, and that Orchard and Haywood got into the buggy and drove around to test the horse; that after they returned, Orchard and the colored man drove back to the stable and that a short time afterwards Orchard came over and paid him the money for the horse. I regard this as a peculiarly strong circumstance, a thorough corroboration of Orchard, showing close association of the men at the very time they are trying to accomplish the death of these citizens of Colorado and just prior to their starting Orchard to Caldwell.

When you pile one of these circumstances upon another, connecting one fact with another, when you take the story of Harry Orchard and follow it up with this long line of corroborative facts, there can be no possible answer other than yes to the questions: Was there a conspiracy, was this defendant a member of it, has Harry Orchard testified to the truth, and is he corroborated?

Here I wish to call attention to some of the startling doctrines of Mr. Darrow. This is not for the purpose of attacking the man personally. Personally, I like him very much but I do not like his doctrines as given to this jury. I am going to say a word in answer to them. No better time could be selected for a reply than while we are discussing these wholesale attempts of Orchard to murder Peabody and Gabbert and Goddard and Bell. When you heard these doctrines thus given

to you yesterday you must have said to yourselves at once, This man justifies murder, coldblooded, deliberate murder, openly in the courts of our country. If Haywood felt as his counsel feels, who speaks for him, if this is the creed of the Western Federation of Miners, why should they not kill and murder? The surprise is that Peabody and Gabbert and Goddard and Bell are not all dead. If "constitutions are only made for the rich," if "laws are made to protect the rich and oppress the poor," if that is the way they feel, if society is rotten and debauched and corrupt, if the vermin of shame is crawling everywhere on the body politic, why not raise the red hand of anarchy and drive everything back to chaos and force? These are the potent reasons for crime, and if you lodge them securely within the brain of man you are rendering him capable of crime. Shame, oh shame, that one so gifted, one so blest with genius, has so far forgotten. The constitution was made for you. It is the shield of the weak. Brave men are every day throwing it around the poor and the helpless. Patriots purchased it with their blood and patriots will preserve it at the cost of limb and life. Our laws are made for us. This splendid old fabric is the priceless estate which belongs to all. Men are not all fiends, love still lives in the human heart, virtue still seams our civilization with strength, patriotism still stirs the breast of man, law reigns and there is a Power above, just and righteous altogether. Whatever there may be of factions, whatever there may be of classes, whatever there may be of trouble, all will be finally settled and adjusted in accordance with right and justice—brave men, courageous men will lead the way and all will follow. Somewhere and in some way will be found lodged within the law a power which will guide and control men without the necessity of their taking the law in their own

hands. These doctrines that have been given you are wrong, they make men wrong, they inspire doubt and distress, hatred and murder. These are the doctrines that have turned from its true course this great labor organization. These teachings show as their fruitage the awful story this evidence reveals. They are at the bottom of a vast number of these crimes. We are trying to determine tonight whether or not the State of Idaho can enforce the law and stop the spread of these blighting doctrines. We are trying to determine whether there is some of that old courage, that manhood which, willing to stand up and uphold the law, protect property and shield life.

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

I have read Danton's harangue to the mob in the streets of Paris; I have all but heard the silvery tones of Desmoulin's in the Jacobin clubs, where organized assassins toyed with the lives of men; I can see Robespierre, now drunk with his

fellow's blood, staggering back against the pillars of the assembly hall as retribution raised its cold hand to lead him forth to death, but never have I heard or read so frightful an attack upon all those things for which the saints of justice have suffered martyrdom as I have heard in this court room. Some may falter, some of us may not stand the test, but there will be found somewhere men brave enough to do their duty. Such doctrines can not prevail.

Gentlemen, I am worn out and I have no doubt you are more than weary yourselves. I am not going to trespass much longer upon your time. You have been patient and considerate in the extreme. The great task imposed upon you, the great trust reposed in you, have stimulated and sustained you throughout this long and tedious trial and you have watched and listened and been faithful. You are today carrying with you the anxious solicitude of an entire people. There is no home in Idaho tonight but thoughts of you and your final duty will intermingle with the sentiments which made that home possible. The court, the faithful officers, the attorneys, now pass into the background and all thoughts, all considerations are with you—the twelve men selected and sworn and solemnly charged with the most grave and solemn task ever given to twelve men in Idaho—they are waiting, waiting for the voice of your foreman.

You will never again occupy a position so important, so responsible in all its bearings as you do now. On the one hand, if you believe in the face of this evidence that this man is innocent you will release him, turn him loose; but on the other hand, if we have pointed to the men who conceived and caused to be carried into dire execution this awful crime, then in the name of law, in the name of the honor of our State, you will act without the dread of men or the fear of men, for you

know that after all is done and the work is finished and the excitement has died away the thing which will remain with you permanently is that sleepless monitor of the soul asking over and over as the days go by, "Were you brave and faithful in the discharge of the most supreme duty of life?"

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

the government. As I thought over that night again I said to myself, Thou living God, can time or the arts of counsel unteach the lessons of that hour? No, no; for the sake of all that good men hold near and dear let us not be misled, let us not forget, let us not be falterers in this great test of courage and heroism.

Soon these men will be gone, their homes are elsewhere, and as brothers of the bar I wish them well. They look for protection to other States, to other laws. But we remain and with us remains the solemn duty of protecting life and property, of standing by the State you have helped to build and within whose borders you have planted the reign of law. Gentlemen, I do not want innocent men convicted, heaven knows I do not thirst for innocent blood. Counsel for the defense have tried to make you believe that we would have professional distinction at the cost of human liberty or life. There has been something in this cause to make a man forget all professional pride. I only want what you want—murder stopped in Idaho. I only want what you want—human life made safe—assassination put out of business. I only want what you want—the gate which leads to our homes, the yard gate whose inward swing tells of the returning husband and father, shielded and guarded by the courage and manhood of Idaho juries.

But they say it is a solemn thing to take life. True, very true. But the fearless performance of duty by courts and juries protects society and prevents the spread of murder and anarchy. In the older days when man walked closer to his God and heard more clearly the admonitions of the moral teachings under which we must thrive or perish, it was said, "By man's blood shall man's blood be shed." He who takes life in the malice of the heart forfeits his right to live—for

the sake of society, for the sake of all men who love their fellow men and want to live with them in peace—he forfeits his right to live. It has been so from the beginning, so by the sanction of Him who provides all things for the good of the children of men.

If this be true where individual man slays but another, ten thousand times more true should it be where men in hatred and malice, in stealth and in secrecy combine, confederate and agree to carry on and commit indiscriminate murder, where men defy law, denounce society, trample upon all rights, human and divine, and thirst for the blood of all who chance to thwart or oppose their criminal purposes. Anarchy, pale, bloodless, restless, hungry demon from the crypts of hell—fighting for a foothold in Idaho! What shall we do? This is the question. Shall we crush it, shall we make it unsafe for the disciples of this creed to do business here, or shall we palter and trim and compromise and invite it to choose other victims. These are the questions to be settled by you and you alone. It is up to you. In the court of your own conscience the verdict must be worked out and I must leave it all with you. Yet I hesitate to close. This matter lies nearer my heart than anything in my whole life. Nevertheless I can but turn the matter over to you for your final action. Thanking you for the State for your long and devoted service and bidding you have courage for your final great duty, I leave the State's interests with you.

