

Dramatic Interest With Second Day of Manning Defense

Portland Expert Takes Fingerprint of H. M. Manning

Defendant Tells Dramatic Story of Pistol Duel

(Continued from Page 1)

stand upon the state's request.

"Do you place the time Manning turned over his gun to the officers?" Gillenwaters asked the funeral home director.

"I would say it was within 10 minutes after I arrived," he answered.

Whitlock declared this was approximately 8:32.

He said Horan's body was removed about 9:30 o'clock.

Whitlock said he didn't observe whether the door into the private office had been removed for the investigation but "presumed it was under the condition Rex McMillan and Leigh Ackerman were working."

He reiterated his statement of Monday, saying that Dr. Adler was not present when the gun was taken from Manning.

Pete O'Conner, sheepman, told the defense he parked at the gas station at Seventh and Pine streets about 6:00 o'clock on February 12.

"I heard two reports as I walked down Seventh street. At the alley I heard two more shots," he said.

He said he couldn't detect the direction but that he saw someone across the street near the building's entrance.

Only Estimated Time

He told Gillenwaters he estimated the time at 6:00 because he saw so many cars and people on the street.

He also said the space between the volleys was just about the length of time it required him to walk the length of the building on the east side of the street.

He said he heard of Horan's death about 9:30 that same night. He also told the state he first discussed hearing the shots with David Vandenberg a week ago last Sunday.

Henry M. Gibson of 823 Pine street was called. He testified to hearing shots on the night of February 12 in the vicinity of 6:00 o'clock.

The second two followed the first two within 30 seconds, he believed.

The state brought out that Gibson lived from 500 to 600 feet away from the Underwood building. Vandenberg pointed out on re-direct examination that there was very little obstruction between the Gibson home and the building.

Mrs. Gibson followed her husband to the stand and said she heard some shots. She was not sure how many, but said her husband would know.

There was no cross-examination.

Charlie Walsh was the next man to speak for the defense. He said he was walking down Seventh street about 5:00 o'clock when he heard four shots. He said the interval between the first two and the second two was brief.

He was the last witness before the morning recess.

David R. Vandenberg, member of the defense counsel, next took the stand. Roberts asked the questions.

Vandenberg said he was retained in the Manning case on February 13, 1933, and that later George M. Roberts became associated with him. He said he and Roberts approached District Attorney T. R. Gillenwaters.

He said he could testify as to the purpose of their visit. Gillenwaters objected vehemently to admission of the testimony. He said that if it was the matter of the physical evidence in the case, which the state had withheld from the defense until the trial, that he would protest on the ground the affair had been settled by a ruling of the judge.

Roberts insisted his purpose in bringing out this testimony was in connection with state evidence that the Manning offices had been locked up from Monday until Friday. He said the defense wanted to show it tried to get in and could not.

Objection Sustained.

Judge Wilson sustained the state objection, and upon Gillenwaters' request, asked the jury not to consider the matter in any way in its deliberations. Roberts said he wanted to make an offer of proof, and retired with a court reporter to the ante-room. Gillenwaters following.

When the defense attorneys returned, he questioned Vandenberg further, this time about a conversation the defense lawyers asserted had with Hardin C. Blackmer shortly after the shooting.

He asked Vandenberg if it was true that Blackmer told Vandenberg and Roberts that Manning, on the afternoon of February 13, had said that if Horan was in favor of it, he would keep his hands off. Vandenberg said Blackmer made such a statement.

Roberts then asked Vandenberg if Blackmer told them that Manning at the time said that "Horan was a fine fellow and had a long way to go."

Vandenberg said Blackmer had made this statement. This evidence was offered to impeach Blackmer's testimony for the state, when he denied having made such statements to the defense attorneys.

The next witness was H. H. Payne, Bertillon expert of the Portland police department. Payne, employed by the defense, said he began fingerprint studies in 1921. He has been with the Portland police department since 1922, and is now in charge of the bureau of

grab, and that started the action that culminated in the shooting.

Defendant Manning, composed and apparently confident, went to the witness stand exactly at 1:30 o'clock this afternoon. He crossed his knees, rested his chin on his right hand and began the story of his life.

George Roberts, chief defense counsel for the veteran attorney who has been for many years, conducted the examination for the defense.

The courtroom was filled. There was a quiet hush over the entire audience.

Tells of Family

Manning, to only occasional question said his full name was Horace Milton Manning and that he resided in Klamath county. He lived with his wife and one minor son, aged 8.

The defendant, looking frequently at the members of the jury, said he was born in Jacksonville, Ore., on September 20, 1879. He will be 55 on his next birthday.

His father, who was once sheriff of Jackson county when Klamath was included in that territory, has been dead for a few years, he said. His mother, now 80, lives with daughters in Arizona.

Manning moved with his family to old Linkville in 1882 or 1883.

"My schooling started in about 1888. My family had moved to a ranch and during the summer I attended a three-months' summer school. In the winter I worked for my board and room. In 1893 or 94 I was janitor in the city schools under Will Worden. I graduated in this city in 1897."

He continued:

"In the summer when I was not in school I worked in the field, among the sheep, drove stages for Captain Applegate and accumulated a little money.

"I attended the state normal school at Ashland in 1897 and 1898."

"When where did you go," the defense counsel asked.

"Owing to a lack of funds, I went to work at the old Oregon hotel at Ashland. Then I was employed in the Southern Pacific depot."

"Eventually I started east for Chicago to attend the Northwestern School of Law."

Manning explained that he left here in 1899 and took special work at Chicago to make up deficiencies in credits. He finally secured the necessary subjects and was admitted to the law school.

Children at Trial

"I graduated in the spring of 1903. Prior to that time I had married and had two children," Manning explained.

His two children, James and Elizabeth, were present in the courtroom as their father testified.

"Owing to illness in the family, I quit school for a year. I finally succeeded in finishing."

Manning said he practiced in Chicago for some time.

"During my time in college while raising a family, it was necessary for me to work nights. I left my lecture at 5:30 in the afternoon and worked until 2:00 the following morning. I usually managed to get to bed about 2:30 and was up at 7:00."

Returns to Klamath

"I kept this up until I finished my course. My weight went down from 220 to 182 pounds. My doctor said I would have to take a rest or it would be an enforced one."

"So I sent my family to Klamath Falls. I finished up my work in Chicago and came to Klamath Falls myself."

Manning continued:

"I arrived in Klamath Falls in March of 1909 and was admitted to the bar the same year."

Manning then explained his acquaintance with Richard Shoro Smith, whom he referred to as Dick Smith. Smith is a banker at Eugene and one of the leading citizens of the state. The two were old friends.

He stepped in with Smith and they started to practice law. He said he had been almost continuously except for a ten-month period in 1931.

Tells of Associates

The defense counsel, Roberts, then asked him with whom he had been associated during and prior to 1930.

Manning said Smith eventually moved to Eugene because of his wife's ill health. The defendant then associated himself with John Irwin, Klamath Falls attorney and candidate for circuit judge, until Irwin was elected district attorney. The two purchased Smith's library and moved into his office.

In 1919 Manning said he met a young man by the name of Ganong—also a Klamath Falls attorney and judgeship candidate—and employed him in his office. Later the two formed a partnership.

Ganong Partner

Various associates came into contact with Manning in the profession, but the partnership with Ganong continued for some years.

"Mr. Van Vactor (present deputy district attorney) was with me for a while," Manning said.

E. E. Driscoll, too, entered Manning's employ.

"I needed the services of a more experienced lawyer. I met Claude McCulloch and employed him at \$350 per month."

"We needed larger quarters so we moved to a suite of rooms I had over Swanson's."

There the firm of Manning, Mc-

Colloch and Driscoll was organized.

Manning explained that he later permitted McCulloch and Driscoll to purchase an interest in the firm. He held a 50 per cent interest, McCulloch 33 per cent and Driscoll 12 per cent.

Driscoll—who was referred to as Eddie—was to care for the detail work.

"There was a lot of work," he said.

"A young man by the name of Ralph Horan, whom I believe was a deputy district attorney at the time, impressed me—a nice boy—"

"The work was too heavy for Eddie. We needed help. We had five rooms and a library, so we decided to hire him. I started him at \$75 per week."

The defendant went on:

"Horan was an active boy—a nice boy—he worked with me and under me."

Manning said McCulloch did considerable office practice, but he himself took Horan and Eddie into cases.

"I found both loyal and capable young men. I was putting in a lot of hard licks at that time."

The Oregon Bank building was under construction and Manning said the firm moved into a five-room suite there in 1930.

He explained also that he had been absent part of the time in 1928 through illness.

In the meantime Horan was taken into the firm.

The partnership continued until January of 1931.

"At that time I had a complete nervous breakdown."

The defendant told the jury he and Horan had been very busy with the State vs. Nacker case. Horan had done considerable of the work because of Manning's illness.

A physician advised me to take rest. The partnership had been running four years.

"I didn't know how long I would be ill, so we took up the question of selling my interest. I gave them all a contract."

"I assigned the right to re-enter practice in Klamath Falls."

Manning said:

"My relations with all three were pleasant, close and friendly."

"I turned the practice over to the new firm and left for California. That was in the middle of January, 1931."

Manning said he and Horan and Driscoll spent much time playing golf, and did much mountain climbing.

"I then thought I could return—that was in September of the same year—and continue my practice."

"So I came home."

Manning then told of the marriage of Ralph Horan and Clarice Elliott. He described Miss Elliott as a fine girl of good family. He said he "knew she would make Ralph a wonderful wife, which she has."

In January, 1930, when the firm moved to the bank building, the witness said, he was in San Francisco for a diabetes check-up. While he was in the south, Horan and Miss Elliott were married.

Manning recalled that he was then a fellow of congratulation and the firm decided to raise Ralph's salary to \$175 per month. He said he contributed \$75 to the wedding expense.

"Clarice Horan would be a credit to any man, and I think she brought credit to Ralph Horan," said Manning.

"Did you return to practice when you came home?" asked Roberts.

The witness explained that he carried disability insurance in two companies. He said on his return he had an examination by Dr. George Merryman and was told he could return to work. He got rooms in the First National bank building and began practice again November 15, 1931.

He said the office was rather noisy and expensive, and in the following August he moved to the Underwood building.

Roberts then asked the witness about litigation pending between the offices.

"At the time of the homicide there was one case," said Manning.

He then explained the details of the case of Long Bell Sales corporation versus Dr. A. A. Soule, Mrs. Soule and Jennie Lang.

This case involved the Soule sanitarium property. The Big Basin Lumber company had a mechanic's lien against the property. J. H. Napier, Manning said, was attorney for Soule.

Manning said Mrs. Lang called at his office and said she had not been served with papers in the case. He told her she would need a lawyer until served, and advised her to come in at such time.

One evening, Manning said, he met Horan and asked him about the case. He wanted to know why Mrs. Lang had not been served.

Horan told him Napier was representing Mrs. Lang and that the Big Basin Lumber company was thinking of entering a default against Manning. Manning said he was surprised to learn Napier represented Mrs. Lang, and checked up on the situation. He learned from Napier that a mistake had been made, probably by a stenographer, and that Napier did not know he had been listed as representing Mrs. Lang. The matter was explained to Judge W. M. Duncan.

Manning then entered an appearance for Mrs. Lang. He called Horan again and told him his client had not been served with a summons.

Manning demurred to the complaint on two grounds, he said. Some time later the case was argued and Duncan overruled Manning, giving him a certain time to answer.

Manning said he talked the matter over in the court room

with Cy Sweet, Big Basin manager, and Horan. Sweet said a Long-Bell man was coming shortly and they would try to reach some basis of settlement.

Some time later, Manning said, Horan called him and said it had been decided the company would take \$1700 for its claim on the property.

"This," Manning said, required his taking the matter up with Soule with the idea that Mrs. Lang could advance the \$1700 and take a new mortgage.

Manning said he was also representing Mr. Peterson of the Peterson-Johnson Lumber company at that time. Peterson had a contract with a firm in Stockton and wanted to get there for a conference, taking Manning with him.

The witness said he had until January 26 or 27 to answer to the complaint in the Big Basin case. He said he did not want to file a foreclosure against Soule. He said he examined the lien, found it good, and advised Mrs. Lang that the lien might take precedence over the mortgage. He wrote her, telling her to come in before he went to Stockton.

There was a conference in Manning's office of the defendant parties in the suit, and Dr. Soule called Don F. Hamlin, his associate, and told him to prepare a stipulation until February 15. Hamlin, he said, by some mistake or misunderstanding, made it March 15.

When the stipulation was taken to McCulloch's office, Manning said, McCulloch refused to sign it, "which I think was proper," said the witness. The time, he explained, was too long. Hamlin came back and said McCulloch would not sign and Horan was out because his wife was in the hospital.

Manning said this was his last day to answer—Jan. 26 or 27—and Judge Duncan was asked to prepare an order. He did so, extending it to March 15. It was when Manning saw the order he realized a mistake had been made and he immediately called McCulloch, informing him his answer would be in by February 15 and that he had not intended to ask for such a long extension.

Manning said that on February 12 his time was nearly up and he would leave with him for Stockton by February 15.

The morning of that day, he said, he came down to the office to get out some papers for the dissolution of the Arcade Brewing company.

After he arrived at his office, about 10:00 a. m., he telephoned the McCulloch and Horan office and asked if Horan was in. McCulloch said Horan was out of town so Manning left his telephone number.

The witness said he went home for lunch and returned at 2:00 o'clock. He said he remembered chatting that afternoon—about 3 o'clock—with Al Graham, an old friend. He was with Graham about half an hour.

He then told about meeting Gillenwaters and having a drink of beer with him in the Palm Garden. He said they talked briefly of the recall, and that he at first refused to take the glass of beer until G. A. Shearer argued him to take it. He said he believed they had two glasses of beer. Gillenwaters asked him to attend a Lincoln day banquet with him in Medford and he refused to make the trip.

Manning said he remained at the beer garden a few minutes longer, then returned to his office. He telephoned Dr. Harlan Carter about dental work, making a date for the next morning at 8:30 a. m.

Manning said that while he was in the office two men came in, asking him to represent them in a case. This he refused to do because he had been approached by a party on the other side of the case.

The witness said he then called up Chris Blanas of the brewing company informing him that the dissolution papers would be ready after 5 o'clock and to bring the company secretary up to have them filed.

Met Mr. Isted

He said as he stepped out of his office he met Mr. Isted, employee of Perrin's office. He chatted with Isted a moment and then went into the reception room of T. R. Gillenwaters' office. He said he kidded Avis Young, Gillenwaters' stenographer, telling her he had seen Gillenwaters, her boss, and that she had work to do.

"I have no recollection of staring at her," said the witness, referring to Miss Young's statement on the witness stand.

In a moment, he said, Orth Siemore opened the door and invited him to come into Siemore's office. He described his conversation there with Siemore and Hardin Blackmer.

"As I remember," said Manning, "there was some kind of a feud between Ted Gillenwaters and Ralph Horan. In speaking of the recall, I think I made the remark that it was a fight between Ted and Ralph. I would keep out of it."

He said he believed he said that Horan was a bright young man who would go some distance. He didn't remember if a disparaging remark about Horan by Blackmer provoked the remark.

Manning said he returned to his office about 5:20 p. m. The stenographer was through with the brewing firm papers. Manning said he took the papers into his private office and put them in the central drawer of his desk.

Blanas soon came in as the stenographer went out. The sec-

curious about it, and sometime early in January Mrs. Manning caught him with it.

"She thought I had better take it. I took it to the office early in January, and tossed it into my desk. Never thought much about it again. It lay on the right hand side of the drawer. There were no cartridges other than what were in the gun."

"Have you heard the testimony concerning a bottle thrown out of your office windows?" the counsel asked.

"Yes."

"Now, gentlemen," said Manning, turning to the jury, "There was never on the entire day of February 12, a gin bottle in my office. There was no gin bottle thrown out of a window by myself or anyone else in my presence. I heard Rex McMillan testify that a label was found in a waste paper basket in the reception room."

Roberts asked Manning and the witness changed his remarks to refer to the ante room.

"The last time I was in my reception room was before I went into Gillenwaters' office or before I went to the Eagle pool room for some cigarettes. There was not a wastepaper basket there."

"I have a heavy mahogany desk I purchased along with a chair and a wastebasket and telephone stand to match."

Manning said there was no other basket in his office in the ante-room.

"There never has been a basket in the ante-room as long as I have been in that office. There was none there on February 12 when I last was in there."

Manning said he was in the room about 5:30 when he went to get his hat.

"No label was taken off a gin bottle that day by me and as I remember, none for several days back."

The defendant spoke emphatically.

Manning then explained about the window curtains in the ante-room which he said were made by his wife.

He said they would not raise with the lower windows.

One of the jurors asked a question about the curtain and Manning answered, calling the juror by name, "Mr. Dohart."

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