

# The Daily Capital Journal

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## COURT AFFIRMS GRAND JURY AMENDMENT

### ROOSEVELT URGES FEDERAL PROSECUTION FOR PANAMA LIBEL

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...who has lived nearly near Butteville, accident himself while hunting skiff. Gus Swan was Geo. Killen sat in the boat, where Killen put shore and started to pull by the muzzle. It went the top of his head off almost immediately. News of the death was asked county, but the coroner case belonged to Marion

Clough went to the scene of the 1:40 car Sunday. He was satisfied the death was a homicide. Coroner Clough returned Monday evening. Killen was 30 years old, a lame man, a mother, who is now in the hospital at Woodburn. The body was held Monday afternoon.

#### ROSEVOLT URGES FEDERAL PROSECUTION FOR PANAMA LIBEL

San Francisco, Dec. 15.—Because of the offense of drugging the passengers on the steamer occurred on the river near Astoria, Ore., and the jurisdiction of the court, two men and two women, the names of Sidney Leacock, Adkins, Eddie Roe and Atkins, were today released from custody. Captain of Detective Jas. examined them last night and had been brought ashore.

Murdock and a companion, Michael Murray, were the witnesses against the defendant that on last Friday the steamer left Portland and another man, a son of the record in Angeles county, were conscious, apparently the defendant was having been

...on the vessel were investigated, and a search for LeCoo, who was under the name of F. Dornell. The Senator docketed did LeCoo put in an affidavit he was walking off the vessel when the cry of "Stop," was sounded. Murdock and passenger passengers gave the wharf, Murray admitted excitement by firing his gun, and was compelled to leave the vessel.

...who was posing as a woman, was met on deck by the Senator who pointed his pistol at her and demanded her return. The little woman gave the revolver from her waist and a resounding "bang," sending him sprawling. The arms of Steward John were wrenched the weapon

Louise N. Nopander then a formal investigation charges before the Astoria men did not want to go on a trip, and it was agreed to have a final hearing at this port. A robbery took place in California, the local authorities have no jurisdiction over the accused persons discharged from custody. Prosecutions will probably be at

#### IMPORTANT LEGAL DECISION

#### UPHOLDS GRAND JURY SYSTEM

The supreme court today affirmed the decision of Judge Fraser, of Portland, who held that a criminal proceeding against Ju Nun could not be set aside because the constitution was amended in June, requiring that all indictments in future MUST COME FROM A GRAND JURY. The opinion is by Chief Justice Bean, and lays down some fundamental principles affecting the rights and liberties of all citizens. Without the references to authorities the text of the decision is as follows:

**Justice Bean's Opinion.**  
After the defendant had appealed, but before the disposition of the appeal, an amendment to the constitution was adopted, (June, 1908) which provides, among other things, that "no person shall be charged in any circuit court with the commission of any crime or misdemeanor defined or made punishable by any of the laws of this state, EXCEPT UPON INDICTMENT FOUND BY THE GRAND JURY." It is now contended, that by reason of this amendment the court is without jurisdiction and must order a discharge of the defendant. It is settled that the repeal of a law conferring jurisdiction takes away all right to proceed, under the repealing statute, as to all actions, suits or proceedings pending at the time of the repeal, unless there is a saving clause in the repealing statute, and this is so in an appellate, as well as the court of original jurisdiction.

The constitutional amendment in question did not, in terms, repeal the law conferring jurisdiction upon the courts to hear and determine causes in which a defendant had been accused of a crime by information filed by a district attorney prior to the adoption, and we do not think it does by implication. The penal code of 1864 declares that no person can be prosecuted for the commission of a crime but upon the indictment of a grand jury, unless otherwise provided by law. It also provides in detail for the drawing and forming of a grand jury, defines its powers and duties, provides the form of indictments and the manner of finding and returning the same, and for all subsequent proceedings thereon. In 1899 the legislature adopted, as it had power to do, an act, MAKING IT LAWFUL FOR A DISTRICT ATTORNEY TO PROCEED, BY INFORMATION AGAINST ANY PERSON ACCUSED OF THE COMMISSION OF A CRIME, WITHOUT THE INTERVENTION OF A GRAND JURY, and providing that the form of the information, and the manner of setting out the acts constituting the crime, should be substantially the same as provided in case of an indictment, and that from the time the information is filed it shall be deemed to be in all respects the same, and there after until, and including, final judgment and execution. This statute has not been repealed. We think the recent constitutional amendment had no effect thereon, except TO DEPRIVE A DISTRICT ATTORNEY OF THE RIGHT TO FILE AN INFORMATION IN THE CIRCUIT COURT BY requiring that all prosecutions in that court thereafter instituted shall be by indictment. In all other respects the statute is in full force and effect, and the jurisdiction of the court to proceed with pending cases remains unimpaired. The language of the amendment is in the future tense and is susceptible of a construction making it APPLICABLE TO FUTURE AND NOT PENDING CASES, and it should be so construed, especially in view of the consequences which would result from the contrary view. It will be observed that the amendment does not provide that a person shall not be "tried" or "prosecuted" for a criminal offense, except upon indictment, but simply that he shall not be charged therewith. The word "charged," as ap-

#### GUNBOAT IS TAKEN BY DUTCH

#### SECOND LOST TO VENEZUELA

(United Press Leased Wire.)  
London, Dec. 15.—According to a Central News dispatch from The Hague, the Dutch blockading squadron in Venezuelan waters has effected the capture of another of Sastra's warships, supposed to be the coast defense gunboat Mayo. The report gives no details of a skirmish, and it is believed here that the Venezuelan vessel surrendered without a shot being fired on either side. The Mayo is a small gunboat of modern construction. After its capture it was able to proceed to Curaçao under its own steam, the vessel being placed in charge of a Dutch prize crew.

**Castro.**  
Berlin, Dec. 15.—President Castro, according to an admission made today by a member of the German foreign office, is here to effect a diplomatic alliance, whereby Germany will support Venezuela in future international entanglements in return for such concessions from the republic that will allow Germany to become the dominating influence in Venezuela's commerce. Castro, it was also learned today, wants a big loan. Herr Goesch, the counselor in the foreign office, visited Castro today and arranged for an official visit with Count Von Buelow, the German chancellor, and Foreign Secretary von Schoen. Castro and Herr Goesch indulged in a lengthy discussion concerning the political situation in Venezuela, and the president of Venezuela demanding that he be received in a manner commensurate with his station. This was promised him, after which Castro sent a member of his suite to leave his cards with Von Buelow and Von Schoen.

Emperor Wilhelm today sent a cordial telegram of welcome to Castro. The emperor's telegram may have different meanings, according to the subject matter and the context. It may mean the accusation which precedes the formal trial, or it may mean the responsibility for the crime itself, and may be applicable to one who has been convicted and is serving a sentence. In common parlance it signifies the formal commencement of a criminal proceeding by the filing or returning of the accusatory paper. When we speak of charging a person with the commission of a crime, we ordinarily mean the commencement of the proceeding, by the filing of a written complaint or accusation, and in our opinion it was in this sense that the words were used in the constitutional amendment in question. Hence, when it provides that NO PERSON SHALL BE CHARGED WITH A CRIME, EXCEPT UPON INDICTMENT, it means that no prosecution shall here after be commenced except in the manner stated, and does not refer to pending cases. The amendment does not repeal or change the law under which defendant was tried and convicted, nor makes that a criminal act which was innocent when committed; or change the punishment; or alter the rules of evidence; or in any other manner affect any substantial right of the defendant. It was a mere change in the procedure and is prospective, not retrospective. (To have held otherwise might have turned loose all criminals held for trial but not yet convicted when the new amendment was adopted in June by the people.)—Ed. Journal.

#### OKLAHOMA BANK ROBBED OF \$15,000

(United Press Leased Wire.)  
McAlester, Okla., Dec. 15.—The safe of the First National Bank of McAlester, Okla., was blown open with dynamite today by robbers, who escaped with \$15,000 in gold. A posse that he shall not be charged therewith. The word "charged," as ap-

#### BIGGY'S BODY IS FOUND

#### RECOVERED FROM 'FRISCO BAY

(United Press Leased Wire.)  
San Francisco, Dec. 15.—A body positively identified as that of Chief of Police William J. Biggy, was found in the bay today, clad in a heavy black overcoat and with the hands clasped tightly behind the back. The face was not recognizable on account of the action of the water during the two weeks since the chief disappeared from the police launch. In a pocket of the overcoat was found a revolver, believed to be the one which Commissioner Kell loaned Biggy at the time of his visit to the commissioner's home at Bolvedere, just before the fatal trip on the bay.

Captain Conroy Sergeant Donovan, Patrolmen Burns and Berry positively identified the body, and the members of the police commission were notified. An escort of mounted police was ordered to accompany the body to the morgue. The fact that the hands were clasped behind the body indicated that the man made no struggle when he fell into the water, and is taken to support the suicide theory.

The body was sighted floating in the freeway about half way between Goat Island and Vallejo street wharf by the pilot of the Southern Pacific steamer Transit, which plies in Oakland creek. The pilot reported to the police. The department launch was still out on its long search for the body and another launch was hired to tow in the remains of the late chief.

It is reported that the police commission will postpone a meeting called for tomorrow at which it was to select Briggs's successor. The disappearance of Chief Biggy from the police launch on the night of November 30, followed a visit to the home of Police Commissioner Kell at Bolvedere, across the bay. Biggy had been greatly affected by allegations of inefficiency, and his conduct against which appeared in the newspapers, and the fact that charges to be preferred against him were being prepared by lawyers. He offered to resign when he called on Kell, and said he was "being hounded to death." His most serious troubles began when Morris Haas, who attempted to assassinate Francis J. Heney, committed suicide at the county jail, while being guarded there by three of Biggy's men. It is generally believed that Biggy committed suicide. Engineer Murphy was the only other occupant of the launch on the return from Bolvedere, and he did not miss the chief until he had almost reached the city.

#### INSPECT VESSELS FOR UNCLE SAM

(United Press Leased Wire.)  
San Francisco, Dec. 15.—An army inspection board, comprising Colonel J. B. Bellinger, superintendent of the army transport service, chief engineer John Donnelly and Captain Scott of the transport service, today is completing an inspection of the steamers Sierra, Sonoma and Ventura of the Ocean Steamship line with the probable purchase of them by the government in view. One of the officers admitted last night that they were making an inspection of the vessels and would forward the report of their investigation to the department at Washington. The shipping men of this city believe that the government intends buying the vessels for use in the much-talked line between here and Panama. The government purchased three vessels in Boston to be used between New York and Colon, and it is believed that three ships in the Pacific will link New York and San Francisco via Panama by a government owned steamship line. It is rumored that the frequent complaints of large shippers of the Pacific Mail's Panama service has caused the government's action.

#### BITTER FEELING IN TRIAL

#### LAWYERS WRANGLE IN HAINS CASE

(United Press Leased Wire.)  
Flushing, L. I., Dec. 15.—The state today sprang a surprise on the attorneys defending Thornton Jenkins, charged with participation in the shooting and killing of William E. Annis by Captain Peter C. Hains, brother of the man on trial. Justice Crane, before the examination of Hains began, designated James A. Dayton and Elmer S. White as special prosecutors to assist the state officials during the trial. The announcement brought forth strenuous objections from Chief Counsel McIntyre, of the defense. The objections were overruled and the examination of Voreman Elias C. Richard, a lumber dealer, by Prosecutor White began. Every question of White's was objected to by McIntyre, who announced that he would object to every proceeding of the court in which White participated. As a result of the objections constant wrangles between opposing counsel took place, and the bitter feeling engendered was apparent to the spectators.

During the morning Alexander J. Ardine, a plumber, of Long Island City, was chosen as the seventh juror. During a recess of the court, Chief Counsel McIntyre announced that Thornton Hains would take the stand to testify in his own behalf. Mrs. William Annis, widow of the man whose murder the defendant is being tried for, arrived today and will remain until after the completion of the jury. She is expected to be one of the first witnesses for the prosecution.

#### MRS HAINS WILL NOT TESTIFY

Winthrop, Mass., Dec. 15.—Mrs. Peter Hains, wife of Captain Peter Hains, whose brother, Thornton Jenkins Hains, is on trial at Flushing, charged with participation in the killing of William Annis, today said that she would not go to New York during the trial, as she had nothing to say against or for her husband's brother. She further said that she did not know whether she would testify at the future trial of her husband.

#### KING EDWARD REPORTED ILL

(United Press Leased Wire.)  
London, Dec. 15.—From sources of unquestioned reliability, it was learned today that the royal family physician was deeply concerned over the king's condition. That Edward himself realizes the gravity of his illness is indicated by the fact that he is rapidly unloading many governmental responsibilities on the shoulders of the Prince of Wales. The most alarming features of the king's condition were the reappearance of those symptoms which preceded his operation in 1902. He suffers much from abdominal pain, and his weakened physical condition is seen in his noticeable loss of weight. The court physicians have ordered the royal patient to cancel all engagements.

#### LAYING CORNER STONE OF EATON BUILDING

The corner stone of the new administration building, to be known as Eaton Hall, on Willamette University campus, will be laid with appropriate ceremony on Wednesday, December 15, at 2:30 p. m. The donor of the building, Hon. A. E. Eaton, of Union county, will be present, as well as other prominent friends of the Methodist institution, and the ceremonies will be conducted by the local order of Odd Fellows. Addresses are to be delivered by Bishop Smith, Hon. R. A. Booth and Hon. C. B. Moores. President Homan and the faculty and students will attend, and the intention is to make the occasion impressive and long to be remembered in the history of the school.

#### PRESIDENT ROASTS PULITZER

#### SLANDERING CANAL COMMITTEE

(United Press Leased Wire.)  
Washington, Dec. 15.—Asking that the government prosecute Joseph Pulitzer, owner of the New York World, for libel upon the good name of the United States, in connection with charges of fraud in the purchase of the Panama canal, President Roosevelt today sent a vigorously worded special message to congress, with which he transmitted all the records and papers concerning the deal.

The message in part follows: "In view of the constant repetition of the assertion of the assertion that there was some corrupt action by or on behalf of the United States government in the acquisition of the title of the French company to the Panama canal, I deem it wise to submit to congress all the information I have on the subject. The stories were first brought to my attention, as published in the Indianapolis News, which is cited by Delavan Smith. The stories were scurrilous, libelous and false. Mr. Smith has sheltered himself behind the excuse that he accepted the statements of the New York World, owned by Joseph Pulitzer.

"It is idle to say that the known character of Mr. Pulitzer and his paper is such that statements in the paper should be believed by nobody, but, unfortunately, there are thousands who believe statements they see printed, even though they are in Pulitzer's paper. Congressmen actually have been induced to introduce a resolution with reference to these charges.

The President then quoted the specific charges, as published, bringing in the names of Charles P. Taft, brother of the president-elect and Douglas Robinson, brother-in-law of the President. He then continued: "The statements sometimes occurred in the editorial columns and sometimes in the news columns and in special contributions. The wickedness of the slanderers is surpassed only by their faculty. The inventor of the Taft story evidently supposed that William H. Taft was secretary of war during some period of the Panama canal purchase. He did not become secretary until after the transaction was closed. The inventor of the Robinson story did not take the trouble to ascertain that he was not connected with any phase of the deal. No shadow of proof can be produced to support the stories. They consist of strong, infamous libels. In form they are part libels on the individuals, Robinson and Taft, for instance. In fact, they are libels upon the government.

"I don't believe you should concern yourselves with the individual writers of the articles. The real offender is Pulitzer. The great injury is the blackening of the good name of the American people. "It should not be left for a private citizen to sue Pulitzer, but he should be prosecuted for libeling the government. In point of encouraging the inquiry of wrong doing, there is no choice between a public servant betraying his trust than a man guilty as Pulitzer is in this instance. It is a high national duty to bring this man, who only seeks to connect the government with wrong doing of the basest and foulest kind, to justice. The attorney-general is considering the form of proceedings."

The rest of the message is taken up with a description of the method of purchasing the canal. The President declares that the money was paid to the stockholders at the direction of the French courts, and the story that Americans were interested in either the old or new French company is declared groundless. All the documents in the case are submitted. It was suggested by Roosevelt that if congress deemed it advisable, it doubtless would be possible to get the name of the shareholders from France through the American ambassador.