

## G E O R G E B U R M A N F O S T E R,

produced as a witness on behalf of the defendant, having been first duly sworn, was examined in chief by Mr. Masters, and testified as follows:

Q Professor, will you state your full name please?

A George Burman Foster.

Q Where do you live, Mr. Foster? A In Chicago.

Q How long have you lived in Chicago? A About 17 years.

Q Where did you live before coming to Chicago?

A I lived in Toronto, Canada.

Q Where were you born? A I was born in West Virginia.

Q Where were you educated?

A I was educated in Shelton College, West Virginia, the State University, West Virginia, Regester Theological Seminary, and Universities of Gertongen and Berlin, Germany.

Q And after finishing your education, what became your line of work? A I had two lines for over two years. I was minister of a church at Saratoga Springs --

Q New York? A New York; and after that I became Professor of Philosophy at the University of Toronto, and after that I came to the University of Chicago.

Q Do you hold any chair in the University of Chicago, Illinois?

A Yes, sir; I am professor, head of the department of Comparative Religion in the University of Chicago.

Q How long have you held that chair? A Let's see; held that one chair since 1905. Prior to that time I was in the Divinity School, University of Chicago, chair of theology. I was transferred to the chair which I now hold.

Q Do you know the defendant, Clarence S. Darrow?

A Yes, sir.

Q How long have you known him? A I have known him personally since 1906.

Q Where have you met him and known him?

A Here in this city.

Q In this city? A Yes, sir.

Q What has been that nature and intimacy of your acquaintance with him?

MR KEETCH: Objected to on the ground that it is incompetent, irrelevant, and immaterial, and no foundation laid.

A I have been acquainted with him socially, and in the way of friendship; not in a business capacity at all.

MR MASTERS:

Q During the time that you have known him in the city of Chicago, I wish you would state whether or not he has been a man that was much or little in the public notice.

MR KEETCH: The same objection.

MR MASTERS: Just answer the question.

A He has been a public man, and considerably in the public

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notice, so much so that I have frequently seen references to him in the newspapers. Yes, sir, I could say that.

Q That he was much in the public notice.

A Yes, as compared with men in general.

Q Do you know the general reputation which Mr. Darrow bore in the community in which he resides, previous to the finding of these indictments against him, for truth, honesty and integrity? A Yes.

Q What was that reputation? A I have heard nothing-- I don't remember to have heard anything adverse to Mr. Darrow's truthfulness and honesty. What I have heard was good.

MR KEETCH: I object to the answer as not responsive to the question, according to the form of it.

MR MASTERS: Q I will ask you this question, Professor Foster: What was that reputation, good or bad?

A It was good.

Q And now I will put the question in the present tense: What is that reputation, good or bad?

A Do you mean now, since that trouble has arisen?

Q Yes. A It has not changed, as far as I know.

MR MASTERS: That is all.

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## CROSS EXAMINATION

By Mr. Keetch.

Q You say that you have known Mr. Darrow since 1906; that would be about six years.

A Six years.

Q You live where, Professor? A I live in Chicago.

Q What part of Chicago? A I live on the south side, as it is known here.

Q What street and number? A My address is 1432 Hyde Park boulevard.

Q And Mr. Darrow lives in that same neighborhood?

A Yes.

Q And you have met him socially? A Yes.

Q Have you had occasion to discuss various matters with him? A Yes.

Q Socially? A Yes.

Q Politically? A Yes.

Q Is it in a sociological way? A Yes, sir.

Q And as a matter of fact, upon various questions of the day which interested you and interested him along those lines? A Yes, that is quite true.

Q And you hold the chair now, you say, of Comparative Theology? A Comparative Religion.

Q Comparative Religion. A Yes, sir.

Q And you say you have held the position as pastor or minister in churches before coming to the University to work?

A In my boyhood, before I went to Toronto as Professor of Philosophy, I was a pastor.

Q But you still deliver lectures outside of Chicago?

A Yes, sir.

Q Did you deliver a lecture in Grand Rapids a short while ago? A I have never delivered a lecture in Grand Rapids. I have frequently occupied a pulpit in Grand Rapids.

Q Do you know the Reverend Mr. Wishart? A Yes.

Q When did you see him last? A I saw him some time this last winter.

Q He is a minister of the gospel, isn't he? A Yes, sir.

Q Of the Congregational church, is it? A No, sir.

Q I beg pardon? A No, sir.

Q I thought that was it. What church is he pastor of?

A Pastor of a Baptist church.

Q A Baptist church? A Yes, sir.

Q Then you met him at that time, last winter, in December, January or February? A I was not there last winter.

I met him here in the city last winter.

Q Oh, yes. Did you have any conversation with him in Grand Rapids at all relative to Mr. Barrow?

MR MASTERS: I object to that as not competent, and not cross examination.

MR KEETCH: All right.

A I do not recall that I had any conversation.

Q Do you know of anything that has transpired since these indictments in California, which, in your opinion, would change Mr. Darrow's reputation for truth, honesty and integrity?

A No I know anything that has transpired?

Q Yes.

MR MASTERS: I object to that as incompetent, irrelevant and immaterial.

A May I make a general statement?

MR MASTERS: Well, you are asked the question whether you know of anything that has transpired.

A I don't.

Q You say you don't?

MR KEETCH: Wait a moment, now.

A I don't, but I would like to explain my statement.

MR KEETCH: Surely.

MR MASTERS: I object to the question because it is not with reference to anything we are investigating here, and it is not cross examination.

MR KEETCH: You have already made the objection.

A The question that was asked me a moment ago was if I knew anything that would or had changed it--

MR KEETCH: I withdraw that question for the moment, and I will ask you this: You said Mr. Darrow's reputation for truth, honesty and integrity in the community in which he lives was good. Do you refer to Hyde Park only, or do you

refer to the city of Chicago?

A I refer to the larger community, having, however, more definitely in mind the region where he lives.

Q You lean Hyde Park. A Yes, sir.

Q Do you know what reputation is, Professor?

A What reputation is?

Q Yes. A I know what I think it is.

Q What do you think it is, Professor?

A Reputation is the general opinion which a public holds with reference to anybody.

Q Have you had occasion to discuss Mr. Darrow as to his honesty, truth and integrity?

A I have frequently discussed Mr. Darrow, not definitely and solely with that idea in mind, but with reference to his general attitude and work in the world, particularly with men on the golf links.

Q Have you discussed him with reference to those particular traits, bearing those particular traits in mind, or principles which would involve those particular traits?

A Principles which would involve those?

Q Yes. A Yes. No man has raised a question with me, is Mr. Darrow an honest man, nor have we minutely examined that question one way or the other as to that.

Q Has Mr. Darrow himself raised the question with you as to his honesty, integrity and truthfulness?

A He has not.

Q He has not? A No, sir.

Q Have you discussed the question of Mr. Darrow, which would involve those principles, with Mr. Wishart?

MR MASTERS: I object to that.

MR KEETCH: (Continuing) Of Grand Rapids.

A I don't recall that I have done so.

Q For the purpose of refreshing your recollection, I will ask you if you did not the last time you were in Grand Rapids in the presence of Mr. Wishart and others, state to him at that time, or in part of the conversation which occurred at that time with reference to Mr. Darrow and after these indictments were returned in California, that on an occasion sometime, I think, in the month of June or in the summer of 1910, shortly before Mr. Darrow left for California, that you and he were discussing the question of the McNamara case, and that you asked him how he handled his big cases, and whether they were not difficult to handle, and that Mr. Darrow replied, yes, they were, sometimes they were desperate cases and required desperate measures, and that he, practically in the course of that conversation, admitted to you that in the Boise case, known as the Moyer-Haywood case, that the jury had been reached in that case, and that the McNamara case was a desperate case, and that it might require the same desperate measures, or words to that effect, and that you expressed to Mr. Wishart at that time and those present



that you were greatly disappointed in Mr. Darrow ever since that statement of his, and you were very, very sorry to hear it, or words to that effect? Do you remember that conversation?

MR MASTERS: Is that the question?

MR KEETCH: Yes, that is all of it.

MR MASTERS: I object to that question on the ground that it is incompetent, irrelevant and immaterial, and because it is not cross examination of the witness, and because it is not in impeaching form, and because it is not contradictory of anything the witness has said, and because it does not go to the general question of his general reputation in the community in which he resides.

MR KEETCH: At this point I will ask that I may recall the professor a little later in the day, when I may be able to give the time, place, and persons present absolutely.

MR MASTERS: You can do as you please.

MR KEETCH: We will suspend with him at this time.

MR MASTERS: If you suspend, the record will show that it is at your request.

MR KEETCH: Oh, certainly. What was your answer to that question, Professor?

A I have been trying to recall the matter. I have no recollection of seeing Mr. Wishart in 1910 at all.

Q No, I didn't say 1910. I said recently. I said

this conversation related to that conversation you had with Mr. Darrow with reference to the McNamara case, which was shortly before he left for California, in 1910, in the summer. This conversation you had occurred recently, that is, within the last few months, in the city of Grand Rapids, Michigan.

MR MASTERS: The same objection to that question, and also because the question as propounded involves so many elements that it cannot be answered.

MR KEETCH: That question was more of an explanation to the professor in response to his statement in reference to 1910. I specifically called attention to the time, that is, I haven't the date exactly right now, but I think I will have it, as I say. I want to know if the professor recalls the incident or not.

A I do not recall the incident.

Q Do you remember having any conversation with Mr. Wishart relative to that matter? A I don't remember any conversation that we had definitely with reference to Mr. Darrow. I do remember meeting Mr. Wishart once this winter, and having dinner with him.

Q Yes. A And we did discuss the question of socialism pretty thoroughly. It is not impossible that this matter came up. If it did, it must have been most incidentally.

Q Don't you remember now that I recall it to you, that that conversation was had with reference to Mr. Darrow?

A No, I don't remember any conversation with Mr. Darrow being stated to that effect. Would you mind repeating that long question again?

MR KEETCH: Just read the question, Mr. Reporter.

(Question referred to read by the reporter)

MR KEETCH: Do you remember that conversation?

A I was not in Grand Rapids when I had a conversation on the question of socialism with Mr. Wishart. It was here in the city.

Q It was here in Chicago. A Yes, sir. As I remember it, in Grand Rapids, I went there to supply his own pulpit in his absence, and I don't remember seeing him there.

Q Do you remember such a conversation with him in the city of Chicago? A I had this conversation about socialism, but I have no recollection of this data at all there indicated of the McNamara case.

Q And did you have such a conversation with Mr. Darrow?

MR MASTERS: Well, I object.

A I have had conversations with Mr. Darrow in which this Boise matter came up; but that he reached the jury, that he reached the jury in the way that is obviously implied there, that he told me that he so reached the jury in the way implied there, I have no recollection of that whatsoever.

MR KEETCH: Q What was his conversation with reference to the Boise jury?

MR MASTERS: I object to that as incompetent, irrelevant and immaterial, and not being impeaching of anything, or going to the question being investigated here.

A Shall I answer the question?

MR KEETCH: Yes.

A He presented me the address which he gave, in writing, wanting my judgment of it partly from the view of a certain religious discussion, and partly from the point of view of his ability as to that speech.

Q And no question with reference to the bribery of the jury in the Boise case came up, or gave you that impression?

A None whatever that I recall.

Q And did he say anything with reference to the McNamara case in the same way, that is, that it might require desperate measures.

MR MASTERS: The same objection.

A This was before the McNamara case. I never talked three minutes in my life about the McNamara case.

MR KEETCH: Q Well, do you remember expressing yourself as having been disappointed in Mr. Darrow?

A I do not.

MR KEETCH: Then, that is what I say, with reference to the time and place, and persons present, I will endeavor to

get that a little later on, and I will ask that the proceedings as far as this witness are concerned be suspended at this time, and that I may have an opportunity of further cross-examination.

(Whereupon the witness was excused temporarily).

Tuesday, May 7, 1912,

12:30 o'clock, p.m.

Taking of depositions resumed pursuant to adjournment.

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GEORGE BURNAN FOSTER,  
recalled for further cross-examination, pursuant to his  
being temporarily excused from the stand by counsel  
for the People of the State of California, was examined  
by Mr. Keetch, and testified further as follows:

Q Professor Foster, yesterday I called your attention to a certain conversation, or alleged conversation between you and Dr. A. W. Wishart of Grand Rapids, Michigan. At that time I did not have the exact date of the conversation, and I am frank to say that the place where it took place was stated somewhat incorrectly by me. You have, however, recollected, I believe, that you did take dinner with Dr. Wishart in Chicago, at which time the subject of Socialism was discussed, is that correct?

A Yes.

Q Do you remember what time that was, when it was?

A Not definitely. It was some months ago, however.

Q Was it just before or just after Christmas time?

A I have only an impression, sir, and that is that it was before.

Q Before Christmas? A I have an impression

that it was, yes sir.

Q At that time you and Dr. Wishart were the guests of Mr. W. E. Nesbit of this city?

A Wilbur D. Nesbit.

Q Wilbur D. Nesbit? A Yes.

Q And you registered at the Chicago Athletic Club, as his guest, on that occasion?

A I remember I was his guest. Whether I registered or not, I don't know.

Q Well I mean you were registered. Do you remember that you were? A I was his guest.

Q Was he present during that interview or that discussion that you have reference to?

A Mr. Nesbit was present part of the evening, but not all of the evening.

Q Not all of the evening? A No.

Q The conversation which ensued between you and Dr. Wishart at that time, as you say, was with reference to Socialism, and on that occasion Mr. Barrow was mentioned in that connection, was he not, Mr. Clarence S. Barrow, the defendant in this case?

A I have no recollection that his name occurred at all in that connection in that interview on that occasion.

Q Then, for the purpose of refreshing your recollection, Doctor, at that time and place, and in the presence of Mr. Wishart, wasn't the subject of the McManara case discussed by you two at that time?

A I have no recollection whatever that the matter was discussed.

Q Will you deny that such was the fact?

A Well, I am inclined to do so, though I hesitate to do so. If I had to choose between affirming and denying, I would deny.

Q Suppose that I should ask you to, Doctor, what will you do? Do you deny having had a conversation with Mr. Wishart with reference to the McNamara case and Mr. Darrow?

A I say that if the alternative is put before me of affirming or denying that I had that conversation, I would deny it as the more probable fact.

Q You have absolutely no recollection of it?

A I have no recollection that his affairs were brought up at all. I have a recollection of very different matters.

Q During that same conversation with Mr. Wishart, and at that same time, did you and Dr. Wishart not express some considerable horror over the McNamara case, and in that connection you stated to Dr. Wishart that you had had a conversation with Mr. Clarence S. Darrow who just had been retained as counsel in the McNamara case, that this conversation took place in June of 1911 and not June of 1910 as I have been reported here, and which perhaps was my mistake. Did you not make that statement



to Dr. Wishart?

MR MASTERS: I object to that question on the ground that it involves several different elements, and it cannot be answered intelligently. On the further ground that it is not cross-examination. On the further ground that anything that the witness may have said to Wishart or anything that Wishart may have said to the witness is not competent and does not go to the question of the general reputation of the defendant, Clarence S. Darrow. That it is otherwise incompetent, irrelevant and immaterial.

MR KEETCH: Q As I stated yesterday, Doctor, I am calling your attention to this conversation and this incident for the purpose of showing traits of character inconsistent with the general reputation to which you have testified, in the community in which Mr. Darrow lives. I now repeat the question, did you not in this conversation with Dr. Wishart, at that time and place, state to him that you had a conversation, sometime in the summer of 1911, with Mr. Darrow in which the McNamara case and the case in Boise, Idaho was discussed?

MR MASTERS: I object to it on the ground that there is not anything in the question as propounded that has any bearing on the question being investigated here. It is not in form, nor of an impeaching character. It is not cross-examination. The time and the place and the persons who were present are not definitely fixed. The question contains too many elements to be answered, and is otherwise incompetent, irrelevant and immaterial.

A Shall I answer?

MR KEETCH: Yes.

A I am confused with reference to your date. In the former statement of the case I gathered that my conversation was with Mr. Wishart in June, 1910. In the latter question it would see that my conversation was with Mr. Darrow in 1911.

Q I will endeavor to be more explicit. You have already stated, Doctor, that you had a conversation on the subject of Socialism with Dr. Wishart in the Athletic Club, shortly before Christmas, to the best of your recollection?

MR MASTERS: I object to that as incompetent, irrelevant and immaterial.

A Yes, sir.

MR KEETCH: Q (Continuing) In the Athletic Club, Dr. Wishart and yourself being present, only, did you not in connection with that subject of Socialism refer to a conversation which you had yourself personally with Mr. Clarence S. Darrow in the summer of 1911, in which the McHamara case and the Boise case was mentioned?

MR MASTERS: The same objections as made previously to this same line of questions.

A I have no recollection whatever of such a reference. And if I am to choose between affirmation and denial, I positively deny it.

MR KEETCH: Q Well, you do deny having had such a conversation with Dr. Wishart in which you repeated a conversation with Mr. Darrow?

A I do.

Q Now, at that same time and place, in the presence of Mr. Wishart, being in the Athletic Club, shortly before Christmas, 1911, did you not tell Mr. Wishart that Mr. Darrow, the defendant in this case, in answer to your questions with reference to how such big cases as the Boise, Idaho case and the McManara case were handled, that he told you on that occasion that the two fellows, referring to Moyer and Haywood, were undoubtedly guilty, and that the first thing they had to do was to get the jury, and that they got the jury in that case? Did you or did you not make such a statement to Mr. Wishart?

MR BASTERS: That is objected to on the ground that anything that the witness may have said to Dr. Wishart or anybody else does not go to the question of the general reputation of the defendant here or his truth, integrity and honesty; on the ground further that the evidence sought to be elicited is not contradictory to anything the witness has said. The question is not in form, and it is otherwise incompetent, irrelevant and immaterial.

MR KEETCH: Q Did you or did you not make that statement to Dr. Wishart at that time and place?

A I have no recollection of doing so. Moreover, I

I will specify that I did not, and that the phrase "get the jury" is no phrase that I would use any more than the phrase used yesterday "reached the jury" was a phrase that I would use, this latter being a phrase I had never heard of before in connection with jury bribery.

MR MASTERS: Before what.

A Before yesterday, in connection with jury bribing.

MR KEETCH: Q Presuming, or assuming that you were then quoting Mr. Clarence Darrow, did you or did you not use that language?

MR MASTERS: The same objections.

A I did not use the language, and I have no knowledge of such phrase.

MR KEETCH: Q Did you not, then and there at that time and place, at the Athletic Club, and to Dr. Wishart, state that you inferred from what Mr. Darrow said that the jury had been bribed in the Moyer case?

MR MASTERS: The same objection.

A That is impossible.

MR KEETCH: Q You didn't make such a statement?

A I made no such statement as that.

Q At the same time and place and to the same person, Dr. Wishart, did you not also say that in reference to the McManara case Mr. Darrow told you in that conversation, in June or in the summer of 1911, that the confessions

made by Ortie McManigal, the co-conspirator and co-defendant of the McNamaras, was true?

MR MASTERS: I object to that on the same grounds as the other questions are objected to.

A Do I understand you mean that I said to Mr. Wishart that that was true?

MR KEETCH: No. That Mr. Darrow said those confessions were true?

A Were true,--in June, 1911?

Q Yes, or in the summer of 1911, I would not be absolutely positive as to the month, but shortly before Mr. Darrow left for California?

MR MASTERS: The record may show, for the sake of brevity, that I make the same objections at large and in detail that I have made to these other questions along the same line.

A I made no such statement as that to Mr. Wishart, to the best of my belief and knowledge, nor did Mr. Darrow have any conversation with me about the guilt or innocence of Ortie--what is it?

MR KEETCH: Ortie McManigan.

A Ortie McManigal.

Q You say to the best of your recollection and knowledge, Professor Foster, that you will deny that you did make that statement to Mr. Wishart?

A I make my same statement, as between affirmation

and denial, I deny it absolutely. Moreover, at that time, in June of 1911, to the best of my recollection, no evidence had been sought or found in the case.

Q You are aware, are you not, that the newspapers had printed alleged confessions of Ortie McManigal at that time?

MR MASTERS: The same objections.

Q I am not aware of that, sir.

MR KEETCH: Q At that same time and place, and in the presence of Mr. Wishart, and to Mr. Wishart, did you not say to him that Mr. Clarence Darrow, in that same conversation of June, or thereabouts, 1911, after making the statement that Ortie McManigal's confessions were true, said that in cases of that character their chief efforts were directed towards discrediting the witness and blackening his character, and in order to do that he had induced Mrs. McManigal to file a suit for divorce, making certain charges reflecting upon her husband, and they had also promised to see that McManigal's children were taken care of until they were grown up. Did you make such a statement to Dr. Wishart at that time?

MR MASTERS: The same objections.

A I did not.

MR KEETCH: Q As purporting to be a conversation with Mr. Darrow in the summer of 1911?

A I did not.

Q You deny that positively? A I do.

Q At the same time and place, and to Dr. Wishart, following this alleged repetition of a conversation with Mr. Darrow in the summer of 1911, did you not express to Dr. Wishart at that time the effect of that kind of conduct by Mr. Darrow upon the labor movement, and expressed your disapproval of his conduct in a very outspoken way?

MR MASTERS: I object on the same grounds.

A I did not, to the best of my knowledge.

MR KEETCH: Q Well, will you deny it, Doctor, that you did?

A As between the two alternatives, I deny it.

Q And did you not at that same time and place state to Dr. Wishart that Mr. Darrow's conduct was extremely reprehensible, and that thereafter the subject led into industrial and social questions of a general character?

MR MASTERS: The same objections.

A I deny that.

MR KEETCH: Q Then I understand, Doctor, taking these questions and answers seriatim, and combining them, you now deny absolutely that you held any conversation of this character with Dr. Wishart at the Athletic Club shortly before Christmas, 1911, in the City of Chicago?

MR MASTERS: The same objections.

A In the form in which I couched my answers to your questions, I deny any conversation in which Mr. Darrow or his life and work were involved.

MR KETCH: Q Well, in which these traits of character were involved, honesty, truth and integrity?

A Yes, in which these traits of character were involved. I meant my phrase "life and work" to cover the whole ground. I mean to say to the best of my knowledge and belief. The issue in dispute was not discussed by me at all.

Q Then as a whole, do you deny specifically that at this time and place, at the Athletic Club, you stated to Dr. Wishart that you had had a conversation with Mr. Clarence S. Darrow in the month of June of 1911, or thereabouts, shortly before he left for California, in which he stated to you that the two fellows, meaning Moyer and Haywood, defendants in the case of People of State of Idaho vs. Moyer and Haywood for the murder of Governor Stunenberg, that these two men were undoubtedly guilty, and that the first thing they did was to get the jury, and that in connection with the McManara case the confessions of Ortie McManigal were true, and that with the object of discrediting his testimony and blackening his reputation he had induced Mrs. McManigal to file a suit for divorce in which she had made certain charges reflecting upon her husband, and had agreed at that time to take care of Mrs. McManigal and her children until they should be grown up? Do you deny that any such conversation as that occurred between you and Dr. Wishart?



MR MASTERS: I object to that question on the ground that it contains too many elements to be answered; on the ground, further, that it is not cross-examination; on the further ground that anything the defendant Darrow may have told the witness does not bear upon the question being investigated here, namely the question of his general reputation for truth, honesty and integrity; and on the further ground that it is incompetent, irrelevant and immaterial.

MR KEETCH: Q Do you deny that?

A As I recall the various items of your question as you named them, there is no additional element in the separate questions and my answers to them. I do deny it.

Q Were you ever a guest of Mr. Nesbit at any other time at which you were also in company with Dr. Wishart, at the Athletic Club?

A I have no recollection that that is the case. And on this time Mr. Nesbit and Mr. Wishart and I were together but a little while there, and then Mr. Wishart and I went to the theatre in the evening, and it seems utterly incredible that we should have gone over such a tremendous amount on any subject as this would seem to indicate,--dinner at 7 o'clock, and to the theatre at 8.

MR KEETCH: That is all, Doctor.

## R E D I R E C T E X A M I N A T I O N

By Mr. Masters:

Q Mr. Foster, can you fix the time of the month of 1911 that you dined with Mr. Nesbit and Mr. Wishart any more definitely than you have already fixed it?

A I cannot, sir.

Q Is it your recollection that it was before Christmas time in December of 1911?

A I have to answer you as I answered the other lawyer here, that I have simply an impression that it was before that time.

Q Do you remember which one of the two you met first, Nesbit or Wishart?

A My impression is that I met them both at the same time.

Q Where? A They were sitting by a table or looking glass or something in the building, that is where I met them. Now, that it was the Athletic Club, I am not sure. It was one of the Clubs on Michigan Avenue.

Q You don't know what club it was? A No, sir.

Q Do you remember what the hour was when you got there? A My impression is that it was somewhere between half-past 6 and 7 o'clock.

Q You were not a member of this club, whatever club it was? A No, sir.

Q At whose invitation did you go to this club?

A That I do not know, Mr. Masters.

Q When before this evening had you seen Mr. Wishart?

A I cannot be sure of that. I have seen him only three or four times in my life.

Q When did you first see him? A My impression is that it was some three or four years ago, at the University, at some meeting there.

Q You mean at the University of Chicago? A Yes.

Q How long did you see him on that occasion?

A A minute or two.

Q Were you introduced to him? A Yes, sir.

Q Do you remember who introduced you? A I do not.

Q Did you have a conversation with him on that occasion?

A I recall no conversation.

Q Well, can you state what length it was, whether more than casual? A It was casual, I will say.

Q How long after this occasion did you next see him?

A I cant answer that definitely.

Q About how long? A Quite a number of months.

Q Where was that? A My recollection is it was again at the University of Chicago.

Q At an occasion when you were lecturing, or something of that kind? A It was an occasion on which a number of addresses were made, and he made one and I made one.

Q An audience being present, of course?

A Yes, sir.

Q Was it in the nature of a convocation or graduation,

or something of that kind?

A No, sir, it was not a convocation or graduation. It was some discussion of some kind.

Q You and he lectured from the same platform on that occasion? A I would not say a platform. It was a dinner, as I recall it.

Q A banquet? A Yes, sir.

Q And you and he spoke after the banquet? A Yes, sir.

Q It was more a post prandial talk, was it?

A Yes, sir.

Q Did you have any conversation with him on that occasion? A I just visited with him then a little, but it was with reference to the different positions.

Q Where did you sit with reference to where he sat at the banquet table? A That I dont know, sir.

Q Were you sitting next to him? A I dont remember.

Q Do you remember when the conversation with him took place? A It took place at the adjournment of the meeting.

Q How long was that conversation? A That was quite a while. I walked with him on my way home and on his way to the train. I walked with him to the train.

Q How long did that occupy? A I think we were together an hour or so.

Q Walking to the train? A Yes, sir.

Q Now, when was the third time that you met him, and

where? A My recollection is that the next time was we dined together at the Union Hotel.

Q Where? A That is in Chicago.

Q In the City of Chicago? A Yes, sir.

Q Was that at his invitation or at yours?

A Again my recollection is that it was at his invitation.

Q How long were you with him on that occasion?

A A number of hours, two or three hours.

Q Now, when was the next time that you saw him?

A I dont remember seeing him again until this dinner.

Q The dinner at the Club in Chicago? A Yes, sir.

Q In December, or thereabouts, of 1911?

A Yes, sir.

Q At any of these meetings or at any of these conversations with Wishart, was there anything between you and him in the nature of familiarity or intimate intercourse by way of conversation or otherwise?

A Repeat that, please?

Q By way of conversation, or otherwise?

A Intimate intercourse?

Q Yes. That is to say, such intercourse as men would have with each other who are friends and knew each other for years or were friends of long standing?

A No, sir. It was and has always been objective and general; no personal or private matters.

Q No matter of personal or intimate life on your part or his part in it either way?

A No, sir,--meaning by that, our private affairs, friendly experiences, I do not recall that such was the case.

Q Or also including the private affairs or experiences of friends of yours or his in any of these conversations?

A I know of nothing of that kind.

Q Isn't it true, as a matter of fact, Doctor, that these conversations between you and him were matters of theoretical speculation, and abstract discussion of matters of the day, sociological and otherwise?

A That is my entire impression of the matter.

Q Did you know at the time that you were conversing with him that he was a detective? A I did not.

Q Did you know at any of these conversations that he had identified himself in the capacity of detective, or what might be called such, for the interests of the employer, of what is sometimes called the capitalistic class, did you know that?

MR KEETCH: One moment. I object to this line of questioning, on the ground that it is incompetent, irrelevant and immaterial, and not proper re-direct examination, and not within the issues at all, and not going to the general reputation of the defendant, and having nothing to do with this phase of the case.

MR MASTERS: Just answer the question, Doctor.

A I did not.

Q Did you know this man Nesbit well? A No, sir.

Q How much of the time was he present while you were at this Club?

A Well, he left immediately after dinner, that is my recollection.

Q You got there about 7 o'clock, you say?

A That is my recollection.

Q How long were you at dinner? A That, I dont know.

Q Was he present at the dinner table? A My recollection is that he was.

Q Did he leave before you and Wishart left?

A My recollection is that he did.

Q And then you and Wishart went to the theatre, did you? A Yes, sir.

Q What theatre did you go to? A I think it was the Studebaker.

Q Was it cold weather? A I dont know, sir.

Q Did you go in a cab? A No, we walked.

Q Did you have any conversation with Wishart going to the theatre, any more than the casual talk all the time? A That, I dont know, sir.

Q Do you remember discussing any abstract or theoretical subject with him going to the theatre?

A I do not.

Q Did Clarence Darrow at any time or place ever say

to you that in the case known as the Heywood-Moyer Case, or the Moyer, Heywood and Pettibone case that he or anybody else in that case had done anything improper with the jury in that case by reaching it, bribing it, or corruptly influencing it in any way, shape or manner?

A He did not.

Q At any time or place did he ever say any such thing as that to you?

A He never did, sir.

Q Did you at any other time or place say to this man Wishart, or to anybody else, that Clarence Darrow had ever said any such thing to you? A I did not, sir.

MR MASTERS: That is all.

R E C R O S S   E X A M I N A T I O N,  
by Mr. Keetch.

Q I understand by the last question that all of the other times you have related with reference to having the conversations with Mr. Wishart, were on other occasions; did you have this conversation or anything of that kind with him? A I did not.

Q So far as your relations with Mr. Wishart were concerned, they were of a friendly character, of course?



A Friendly, yes.

Q you were both interested in the same lines of thought and when you got together you discussed these sociological questions, did you not?

A My recollection is, that was part of our discussion, but there were certain other lines which were not Socialistic.

Q It would not be anything unusual, if you were walking to the theater together, to refer to questions along these lines, while walking to the theater or at any other time, there would not be anything unusual in that, would there?

A No, it would not have been unusual.

MR. WETCH: That is all.

R E R E D I R E C T E X A M I N A T I O N,

By Mr. Masters.

Q Did Clarence Darrow ever say to you that desperate cases required desperate measures, and in answer to your question as to how he won these cases, that such measures might be required in the McNamara case? Did he ever say any such thing to you in form or substance?

A He did not.

Q I mean literally, or in substance, did he ever say any such thing as that to you, at any time or place?

A No, sir.

Q And did you ever say any such thing as that to any person, to Wishart or anybody else?

A I did not.

Q As having been said to you by Mr. Darrow?

A I did not.

Q Did you ever have a conversation with this man Wishart, in which the name of Ortie McManigal, or his wife, ever came up, or about his divorce suit or anything else?

A I did not, as I said in my previous statement.

MR MASTERS: That is all.

MR KEETCH: Just this one statement, which I desire to make, in fairness. After the proceedings were suspended yesterday, I communicated with Dr. Wishart, and I have now asked you, Dr. Foster, with reference to that exact conversation that is said to have taken place at the Athletic Club, and that is now outside of what I asked you yesterday, because what I have stated today is based upon statements made to me by Dr. Wishart, last night.

MR MASTERS: Now, that you have made the statement in the record, did you communicate with Dr. Wishart by telephone, or is he in town?

MR KEETCH: By telephone.

MR MASTERS: By long distance?

MR KEETCH: Yes.

MR MASTERS: That is all.

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