

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES.

Extra Session Four.

Hon. W. M. Conley, Judge.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff, )

vs. )

CLARENCE DARROW,

Defendant.)

No. 7374

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REPORTER'S TRANSCRIPT.

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VOLUME NO. XXIV

March 5, 1913.

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I N D E X

Witness.

Direct Cross Redirect Recross

Argument:

Mr. Darrow.

Charles H. Magee  
and  
Willis N. Tiffany,  
Reporters.

CHARLES H. MAGEE  
OFFICIAL REPORTER, SUPERIOR COURT  
COURT HOUSE,  
LOS ANGELES, CALIFORNIA  
PHONES  
MAIN 2300  
HOME 60231

1 (Mr. Darrow then addressed the jury as follows:)

2 If the Court please, and gentlemen of the jury:

3 I wish the attorneys on the other side to be  
4 kind enough to stand for Gray. I have got some things to  
5 say about him, and I had rather he would be here, if he is  
6 not too big a coward. I think a man who professes to be a  
7 lawyer, takes his place as a lawyer, ought to be present  
8 when he is needed, whichever side happens to need him.

9 *aw* Gentlemen of the jury, it is not an easy task that  
10 I ~~have~~ <sup>am</sup> to perform. Of course, I don't know how well I will  
11 ~~perform~~ it. I have stood before juries a great many times,  
12 with more or less success, <sup>in</sup> ~~and~~ a great many kinds of cases;  
13 but never but once before have I ~~ever~~ had ~~any~~ occasion to  
14 talk to a jury for myself. And one feels that he may say  
15 too much, <sup>or</sup> ~~and~~ he may say too little, but I shall try to  
16 forget that I am the defendant, or that I am a lawyer--which-  
17 ever it is--and will try to talk to you as man to man,  
18 fairly, honestly, as I have ~~tried to talk, and tried to live,~~  
19 ~~and I leave it to you to live and to say if I have.~~

20 I am not here making any large number of complaints  
21 against the people of the State of California. I have been  
22 here now close to two years, all the time reluctantly,  
23 more than a year against my will and consent, and because  
24 the powers that hold the political destinies of this city  
25 in their hands wanted me to stay; and I am here to stay until  
26 a jury tells me I can go--one way or the other.

4  
1 This prosecution is not a prosecution but a perse-  
2 cution. It is not fair, and it is not honest, and it is  
3 not decent. Had I been a midnight robber or a burglar  
4 or a bank cashier, and ~~had~~ been tried once and acquitted,  
5 nobody would ever have dared, in a free community of intelli-  
6 gent men, to place me on trial again. I am not here be-  
7 cause they think or because they care whether the allega-  
8 tions of this indictment are true or false, but because, as  
9 Gray says, they want me; because I have committed the un-  
10 pardonable sin— have dared to oppose the mighty and the  
11 strong and speak in defense of the poor and the weak. And  
12 I had rather go ~~to~~ to the penitentiary and spend the rest  
13 of my life convicted of that crime than to have sold myself  
14 to them for ~~the~~ gold. *on this witness, once* I have been tried and ~~I~~ have been  
15 acquitted.

16 Bain has testified. Mrs. Bain has testified.  
17 Franklin has told his story. Every one of these witnesses  
18 have told theirs, and twelve jurors of this county have  
19 pronounced me Not Guilty, almost without leaving the box.  
20 Then, I am tried again on the same thing. ~~Not only that:~~  
21 There were two indictments in this case, and there isn't a  
22 child so ignorant that it does not know that the <sup>prosecution</sup> District  
23 ~~Attorney~~ choose the stronger first; and they <sup>did</sup> choose it,  
24 and they kept me here, and insulted me and treated me as  
25 they would not treat a common scoundrel, and a jury stood  
26 by me; and <sup>now</sup> they take the <sup>weaker</sup> ~~next~~, because the forces that con-

5 1 trol in this United States, the great forces of evil, want  
2 to destroy me. All right--do it! I will do you more  
3 harm in my destruction than in my prosperity.

4 "There is a soul in the American people. There is  
5 a conscience in ~~the~~ American people. There is a sense of  
6 justice, and though it may sleep, some time it will awaken.  
7 And the day I, if I should stand in the way of the laws of  
8 God and the laws of nature in the method it chooses to  
9 awaken the conscience of ~~the American people~~ *man*.

10 I have had friends—. The ten-thousand-dollar-  
11 by-appeal-counsel who addressed you yesterday--Gray--  
12 told you that all the honest people wanted me convicted.  
13 He lied! If I cannot go out in this community where I  
14 have been kept these two years and get ten friends to Gray's  
15 side I will go down to the Venice pier and jump into the  
16 ocean and get through with it at once, ~~and he knows it~~.  
17 Who are his friends? The criminal classes; the real criminals  
18 whom he is serving here, and ~~was~~<sup>are</sup> trying to destroy me. I  
19 have been subjected once to three months of this, and I  
20 have been found Not Guilty. I am subjected to six weeks  
21 more, because I have committed the sin of sins--I have  
22 defended the poor. ~~Sit back here! And what is worse~~

23 I don't fear this jury--I have been here too long. You  
24 know me too well. I have no more doubt about it than if  
25 it saw my brothers or my sisters passing upon my guilt or  
26 innocence in this case. There isn't a man on earth who

6 1 knows anything about this case and who has a conscience  
 2 that wouldn't acquit me if they believed I was guilty--which  
 3 I am not.

4 Think of the infamy of this plot!

5 Franklin reported on the 14th day of January that  
 6 he had received a messenger from the District Attorney's  
 7 office that if he would furnish evidence against Darrow he  
 8 could go free; and that if he knew anything against anybody  
 9 in Los Angeles he needn't tell it; that Darrow was the one  
 10 they wanted, and Gray says Darrow is the one they want.

11 All right, gentlemen--get him! You are welcome to him if  
 12 you get him. And I don't ask for ~~any~~ mercy from this jury,  
 13 ~~as I have asked for none from them.~~ If the State of

14 California can stand it, ~~Gentlemen of the jury,~~ I can stand  
 15 it. ~~It won't last long anyhow.~~ I have made my fight.

16 *The State* ~~They~~ deliberately dangled this bribe in front of  
 17 ~~me~~ Franklin: "You can have your liberty if you turn up--  
 18 not anybody that is guilty, you may shield them if there  
 19 are any--but Darrow." They have given immunity to

20 Franklin. They have left Bain and Mrs. Bain free. They  
 21 have never arrested White. They have given them money and  
 22 jobs. They have brought Harrington twice across the conti-  
 23 nent and he has claimed immunity and got it. They have  
 24 raked up every gutter-snipe and sewer-rat they could find  
 25 and bribed them that their masters might get me! Get me!  
 26 I have fought a brave fight, and if you get me I will try to

7 1 die a brave death! It has got to come sometime, anyhow.

2 ~~I did object some to Gray. I may, I think, have fought a brave fight for~~  
 3 long, and I don't want to be kicked to death by  
 4 a rickshaw. I would rather die a more dignified death, if  
 5 I could.

6 ~~They want to get me. All right. Let us see~~  
 7 ~~about it. Not only that, but I have another complaint to~~  
 8 ~~make:~~ At the end of this persecution, they subjected me  
 9 to Gray. Now, if anything is the matter with me, I wouldn't  
 10 mind a delicate operation by a surgeon, but I hate to have  
 11 a man operate on me with a meat axe; he is too clumsy. He  
 12 has been employed--employed in the word, I suppose--they  
 13 have got twenty-nine offices up there in the District At-  
 14 torney's suite, as you heard Frederick say--twenty-nine  
 15 lawyers, I suppose, <sup>one</sup> in every pigeon hole; but there wasn't  
 16 enough, and they had to allow Gray to loot the county out of  
 17 \$10,000 to satisfy his client the ~~M. A. Co.~~ <sup>Mitchells & Manufacturers</sup> and to furnish a  
 18 goat in this infamous proceeding. So he is the one. ~~and~~

19 I don't like to speak illly of my fellow men, but if I didn't

20 <sup>this case</sup> I couldn't talk about Gray; and he brought it on himself.

21 He said I was a coward, amongst other things. Now Gray is  
 22 brave, isn't he? Here I am in Los Angeles under indictment,  
 23 and he stands here, a prosecutor, abusing and vilifying  
 24 me, when he is not my equal, morally, intellectually--he  
 25 may be my superior physically--he weighs more; and he is  
 26 brought in here; and the hard part of it is, it is my sad

1 duty to make Gray immortal. That is what I hate about it.  
 2 Nature clearly ordained that he should live a short space,  
 3 and then go down into the earth and be forgotten inside of  
 4 a week, ~~after he is dead, but I have got to make him im-~~  
 5 ~~mortal.~~ Nature, it seems to me, meant that his great frame  
 6 should go down into the earth and take its place to feed  
 7 the worms and other higher forms of life, so that the dead  
 8 might do some good, although the living had not. And here  
 9 I come and I thrust immortality on him, <sup>for</sup> because he must  
 10 live in future as though he wanted himself to persecute  
 11 me--and I can't help that. And I have got to be dragging  
 12 him around as long as I shall live; for I can't get rid of  
 13 him.

14 "You say break, you say shatter the vase if you  
 15 will,

16 "But the stench of the polecat will hang round it  
 17 still."

18 I can't help myself, I say, and I have got to  
 19 make the best of it.

20 Gray has stood before this jury vilifying me for  
 21 four hours; his argument was Billingsgate from beginning  
 22 to end--nothing else, ~~nothing but that.~~ One would think  
 23 he had been sired by a swashbuckler and dammed by a fish-  
 24 woman; otherwise where did he get his vocabulary, and his  
 25 disposition? I can't tell; it must have been inbred and  
 26 inborn--he could not have acquired it.

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He said nothing about the case except <sup>that</sup> he wanted to get me; to get me because the interests that he represents have considered me their enemy. Well, go get me, Mr. Gray! -- If you can get me, get me! *And he asks you*

~~Another thing: This jury are intelligent men. All of you answered you had no grievance against me. You have not shown that you have any desire to get me; and yet I have been obliged to sit <sup>here</sup> and take it, when there is not enough evidence against me in this case to warrant any one of you ranchers for whipping your dog, if it was against you--or against your dog. ~~But they have asked you to destroy my life, to end my career; to put me behind prison bars, just to satisfy the malice and the hatred of the men who want it.~~~~

What is the Bain case? It is a joke. Do you suppose there is a district attorney on earth that would ever have dreamed of presenting an indictment on that case, or drawing it against anybody but a man? I can show you that case in fifteen minutes. What is it? Why, as Judge Powers said, I was cross-examined a day and a half, and never asked one question--not one. You twelve men have been in this jury box, <sup>for some weeks</sup> and you could have taken every word of evidence in one day. Gray talked about this case <sup>in the Bain case</sup> for four hours, and he didn't spend fifteen minutes, ~~or certainly not twenty minutes upon the Bain case. You can take all the evidence in the Bain case which they produced,~~



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~~and it destroys it.~~

Now, let me call your attention briefly to what there is to that case so far as the <sup>evidence is</sup> ~~case~~ concerned:

Gray talked about why I hadn't made an account and about this jury where the money was spent, so that you would know I didn't give Franklin \$500. Doesn't he think that this jury has any sense at all? What is the evidence? On October 4th I gave a check for \$1,000, and Franklin says <sup>Bain</sup> the money came from that check, and I know it. Now, is there anything else that anybody is interested in? ~~Is there anything else?~~ This man talks about this big corruption fund. How long do you suppose it would have lasted if you had paid him for his wonderful services <sup>✓</sup> any piece of litigation to which his name was ever attached? And how much do you suppose Burns and the Tractors' Association, and the other interests in this country and ~~this country~~ paid to prosecute the McNamara case? Ours would look like thirty cents. Talk about an accounting! There is just one question before this jury and that is, did I, on October 4th, write a check and give it to Franklin, and with that money, which I gave him did I tell him to go down and bribe Robert Bain?

Now, I say, gentlemen, that is silly--absolutely idle and silly; that Bain case. There is not a child who would not see in a minute <sup>that</sup> there is absolutely no evidence in that case, if we had put no witnesses on at all. ~~Now,~~

11

1 ~~what is it?~~ 7 First, Franklin testified <sup>s</sup> before, that  
 2 on the 6th day of October I gave him a check for \$1,000,  
 3 and that he immediately went down to the bank and got this  
 4 money. He testified <sup>in both trials</sup> ~~then and now~~ that the first time I  
 5 ever specifically mentioned bribery to him was on the 6th;  
 6 although he did say that I said on the 5th it was time to  
 7 get busy with the jury, and spoke of Bain, whose name had  
 8 never been mentioned before that <sup>day</sup>. When he testified the  
 9 first time he didn't have the check, but he had his book,  
 10 his bank book, which showed that the deposit was on the  
 11 6th; and he came into court and told the other jury, as he  
 12 admits here, that he got that check on the 6th. He  
 13 remembered it because he hid himself right off that day  
 14 to see Mrs. Bain--the very day he got it. He got the  
 15 check at the office; he went to the bank from there, and  
 16 from there to ~~the~~ Bains. And, I <sup>had</sup> never insinuated <sup>anything</sup>  
 17 <sup>about Gibes,</sup> ~~such thing~~ until the 5th, the day before; and lo, and behold!  
 18 the check turns up, and the check is dated the 4th. He  
 19 was given the check one day, ~~according to his own testimony,~~  
 20 before bribery was ever mentioned; two days before there was  
 21 any talk about Bain, or bribing Bain.

22 Now, what is there left of it? But let us go  
 23 further. Their case, even if there was no evidence against  
 24 it--even if I had kept still, and not denied it, their case  
 25 depends upon Franklin's having been told that that money  
 26 was for <sup>Gibes</sup> ~~that purpose~~, and his having gone down to the bank

12 1 and drawn \$500 out of that fund and taken that money and  
 2 given it to Bain. There can't be any question about  
 3 that. Now, gentlemen, this is all inside of a few words;  
 4 and there is not an honest man on the face of the earth, who  
 5 has got any judgment whatever, who would not have returned  
 6 a verdict of Not Guilty in this case without a word from  
 7 us.

8 He did draw a check for \$500 out of the bank;  
 9 he did deposit mine for \$1,000. Now, gentlemen, you haven't  
 10 got anything against me. You are not friends of Gray--  
 11 if you are, it is all off; so there is no use to argue with  
 12 you; but I just wanted you to get. Now, tell me what  
 13 kind of money did he get out of the bank? Let's see the  
 14 evidence. There are just three pieces of evidence on  
 15 that. You believe men aren't going to guess my liberty  
 16 away; you have got to do it on the evidence, and you have  
 17 got to be satisfied in your judgment, and on your consciences;  
 18 for it is a serious thing--whether it is for you twelve men,  
 19 or not, it is for me, ~~and it is for you, I know that. I~~  
 20 ~~never saw a jury in my life who did not consider such a~~  
 21 ~~matter a serious thing; and I would be willing to be tried~~  
 22 ~~in this case before twelve Hottentots, let alone men who~~  
 23 ~~love liberty and have judgment.~~

24 Now, what kind of money did Franklin get on his  
 25 \$500 check? If there is any guessing in this case, it is  
 26 my way, not theirs. ~~You know that, of course.~~ Some

13 1 of you might be here <sup>in my place</sup> sometime--the District Attorney might  
 2 get sore on you for something; and he might hire Gray--he  
 3 is there to be rented. Now, there are three witnesses that  
 4 settle <sup>this</sup> ~~that~~ question. One is the bank teller. The bank  
 5 teller swore positively on the other trial that he gave  
 6 ~~him~~ <sup>Franklin</sup> fifties and hundreds, and no twenties. ~~He swore posi-~~  
 7 ~~tively after that to send me to the penitentiary, if that~~  
 8 ~~was the issue and it depended on him-- absolute and positive~~  
 9 ~~and correct.~~ He paid out fifties and hundreds and no  
 10 twenties. The District Attorney <sup>knew</sup> ~~knows~~ it was all off, if  
 11 he testified that way again, so he sends for him, and before  
 12 he puts him on the stand he talks with him, and he comes  
 13 into this court and says, "I might possibly be mistaken,  
 14 although I believe today that I gave him fifties and hundreds,  
 15 and no twenties, and I swore to it positively five months  
 16 ago." Now, what are you going to say about it? Are  
 17 you going to guess against me, when the overwhelming weight  
 18 of the evidence is that way, and when he declared absolute-  
 19 ly positively and conclusively at the other trial? Why,  
 20 a jury that would guess against the liberties of a man upon  
 21 that kind of evidence would not be fit to live in any civi-  
 22 lized community. in any land on earth. But that is not  
 23 all. Let us follow it. He goes right down to Mrs. Bain's  
 24 house. He doesn't see a man around, so he talks to the  
 25 woman--anybody that he can talk to is good enough for Frank-  
 26 lin. He goes right down to Mrs. Bain's house, and Mrs. Bain

1 asks him to subscribe for <sup>a</sup> her paper, and she says he asked  
 2 her whether she could change a fifty or a hundred. Now,  
 3 do you think he got fifties and hundreds at the bank?  
 4 Why, is there any more doubt about it than that you gentle-  
 5 men are sitting here? And yet that is all there is  
 6 to the Bain case. <sup>Franklin</sup> He asked her right then and there if  
 7 she could change a fifty or a hundred, and she said she  
 8 couldn't. She says he fished down in his pocket and got  
 9 out the exact change. Now, he says he asked her if she  
 10 could change a fifty or a hundred. Franklin says that.  
 11 He must have had fifties and hundreds when he went down  
 12 to Mrs. Bain; and the cashier says he gave him fifties  
 13 and hundreds, and no twenties. Now think of it--isn't it  
 14 absurd? He went down there with the fifties and hundreds  
 15 and talked with Mrs. Bain, and didn't see Bob; and he went  
 16 back that night and gave him \$400, every bill a twenty.  
 17 Now, was it my money? Whose was it? You have got to say,  
 18 gentlemen, upon your oaths and <sup>beyond</sup> a reasonable doubt  
 19 that the package of money he took to Robert Bain was the  
 20 money he drew from the bank on account of the check I gave  
 21 him, and that I told him to do it. Would you whip your dog  
 22 on it? If you would, you ought not to have a dog, ~~like~~  
 23 ~~no right to one; not a bit.~~ I might almost submit that  
 24 ~~to Judge Gray--~~ Judge Gray--if he was not paid.  
 25 Now, what else? I am speaking about the Bain  
 26 case, because it has all been forgotten; nobody thought any-

15 1 thing about it; the lawyers haven't talked about it, and  
 2 the witnesses haven't talked about it; and nothing has been  
 3 said about it, and I ~~will~~<sup>might</sup> forget it. So I thought I would  
 4 begin on the Bain case, seeing it is the one on which you  
 5 twelve men are asked to shut me up in the penitentiary,  
 6 after I have been out for fifty-six years. Do you sup-

7 pose there is any danger? Why don't they give you some-  
 8 thing easy once in a while?

9 Now, what else? Here is a man gone out to buy  
 10 a juror. I wonder whether I have bought any of these  
 11 twelve--I am interested in this case, because I can get  
 12 better food outside, and the rooms are bigger than in the  
 13 penitentiary. I could live there--I don't want to, I  
 14 don't like the board, I don't like the rooms. I like the  
 15 company better than some I have been compelled to live  
 16 with in Los Angeles during the last two years--it is  
 17 honest. I ought to be interested in this case, if I  
 18 was in the other. But let us see what else there was.

19 I asked Franklin to buy a juror, so he will vote  
 20 Not Guilty in a case of very serious importance, that the  
 21 whole world was interested in, and where a man if he stood  
 22 would have to stand like iron; and what did he do? Listen  
 23 to Bob Bain--and Gray says he believes Bob Bain. I did  
 24 until Gray said he did--now, I begin to doubt him. I don't  
 25 know how Gray could believe a truthful story; his mind is  
 26 not made that way. Bain says he told Franklin at that time

16 1 that he would convict if the evidence was convincing, and  
 2 that he never told him anything else. And he also says  
 3 franklin left the money anyhow. Now, it may be, and probably  
 4 is, true, that if I went to one of your jurors and told  
 5 you I wanted you to sit on a jury and I wanted to give  
 6 to give you \$500 now and \$2000 after a while, and you said,  
 7 "All right, I will take it, but I will convict if the  
 8 evidence is convincing;" and I left it with you, that would  
 9 probably be an attempt to bribe somebody, ~~probably would~~.  
 10 But that is not the question. Supposing a man starts out  
 11 to buy a juror and he finds a man and he says, "All right,  
 12 I will take your money, but if the evidence is good I will  
 13 stick your man." Do you think he would buy him? Why, it  
 14 is crazy. No one would think of bringing it up against any  
 15 person except some one who had committed the unpardonable  
 16 sin of being against the system, and standing for the weak  
 17 and the poor and the oppressed and the laborer--and you know  
 18 it. And when Bain got into the jury room he told a juror--  
 19 Webb--an intelligent, plain man, ~~the same here and told~~  
 20 ~~you~~ that if he was left on the jury he would stick those  
 21 sons-of-bitches--referring to the McMenaras. Now, what  
 22 do you think <sup>of that</sup> for bribery?

23 Now, that is all there is to that Bain case; and  
 24 I say again that a man who would whip a dog on that evidence  
 25 ought not to have a dog--the dog ought to have him. x x x x

26 Now I was taking Franklin as he is. But look at  
 him--there is Franklin at the top, and there is all the

17 1 witnesses who have disputed him (counsel referring to a  
 2 list of names on the blackboard.)--not such, is it? Q.  
 3 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,  
 4 18, 19, 20, 21--not to say anything about Sam Browne and  
 5 Pain. Every one of them--and Gray would stand here and  
 6 say that all of those people were liars, and that Frank-  
 7 lin was to be believed, so they may get me, and corroborate  
 8 him with Harrington, who has been contradicted by 1, 2,  
 9 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13--besides being the  
 10 most infamous wretch who ever lived upon the face of the  
 11 earth. And yet you are to believe Franklin; you are to  
 12 believe Harrington, and you are to believe everybody else  
 13 committed perjury, so that they can shut me up because I am  
 14 the most dangerous citizen in the United States. Gray is  
 15 dangerous--but he is not that dangerous. He doesn't know  
 16 enough!

17 I wonder if this is a dream! Is it possible  
 18 that after all these years I am really in a court with a  
 19 judge and a jury--a jury who has the power to send me to  
 20 the penitentiary--upon that kind of evidence?

21 Gentlemen, I don't want any mercy. If I did this  
 22 thing I am old enough to know better. You just decide it  
 23 the way you ought to--that is all. I don't want ~~any~~ mercy.  
 24 But let me tell you this, that if there is any American  
 25 jury could send me to the penitentiary on that kind of  
 26 evidence, then, all right--I want to go, because if I linger



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1 ~~along some time longer~~ <sup>outside</sup> they might hang me for something, and  
 2 I had rather not die that way. ( Well, I had rather die  
 3 that way than by these mult kicks I referred to, but,  
 4 anyway, I don't want to die that way; and if they can send  
 5 me there they can send you there, and any unconscionable  
 6 cut throat can get you; and when you do get home you had  
 7 better take your children in your arms with a fond embrace  
 8 and kiss your wife goodbye, for you cannot tell but what it  
 9 will be the last, when this character of wretches can  
 10 destroy you.

11 I am not talking to this jury because I have any  
 12 fear. Do you suppose I think you, and you, and you, and  
 13 you, and the rest of you would do it? If I did, gentlemen,  
 14 I would want to go and get locked up where there couldn't  
 15 anybody get at me from the outside. The quicker the better.  
 16 Got me in soak, right off. And yet, Gray says he is a  
 17 good man--Harrington is a good man. Gentlemen--Harring-  
 18 ton! If anybody on earth would ever place the least  
 19 credit or credence in that man Harrington, then, I would  
 20 like to see his head. I don't <sup>discuss</sup> recite it now, but I will  
 21 later. I don't care whether he is impeached at all; but  
 22 there are thirteen or fourteen witnesses who have testified  
 23 directly that he lied.

24 And Franklin--Gray says you have no right to dis-  
 25 believe Franklin. If there is anybody on earth would  
 26 place any credit in him in this case it is the first time I

19 1 ever saw a case of the kind where they did.

2 Now, Gray talked here for four hours. He has  
 3 found six honest men in his four hours talk. Let us see  
 4 what the list is: Franklin, Harrington, Biddinger and  
 5 McManigal--there are four. Now, I understand how Gray  
 6 likes those men. They are his sort. He loves a man of  
 7 that kind; and a fellow that turns states evidence and  
 8 helps out his clients, he deserves a hale, and he gets it  
 9 from Gray. There are four of them. There are two more,  
 10 the District Attorney and Harry Chandler, ~~and there are~~  
 11 ~~six--not a quartette, but a sextette. Now, the four~~  
 12 ~~of them.~~ We can understand from the bent of Gray's mind  
 13 --if you can call it a mind--~~we can understand~~ how he loves  
 14 Fredericks, because Fredericks let him break into the  
 15 treasury and get \$10,000 for moving <sup>for recesses</sup> ~~an adjournment~~ day  
 15<sup>a</sup> 16 after day and blackguarding me at the end of the case. The  
 17 evidence doesn't disclose why he loves Harry Chandler,  
 18 but I can guess. ~~I know why he loves Harry Chandler.~~ I  
 19 will guarantee that Chandler has visited <sup>Gray's</sup> ~~his~~ pen a good  
 20 many times and poured ~~many~~ many a pail of swill down his  
 21 trough! That is why he loves Harry Chandler. I don't  
 22 need evidence, but a man like him couldn't love anybody  
 23 but a crook or somebody who paid him. ~~And nobody could~~  
 24 ~~love Gray for money--not for money.~~ These are the six  
 25 honest men, according to Gray! ~~Let me give you a little~~  
 26 illustration of Gray. Now, I don't do this to show how

20 1 crooked he is, but to show how foolish he thought you were.  
 2 ~~--that is all.~~ If you had a ten-year-old child who couldn't  
 3 see through Gray it wouldn't hardly be worth while to  
 4 raise him, because he wouldn't get much more than ten any-  
 5 how. Let me give you one illustration. He gave his reasons  
 6 why you should convict me. The main one was because he  
 7 wanted it; but one of them was that Russell had lied when he  
 8 said he deposited gold instead of currency; <sup>for Hamilton;</sup> that is one  
 9 reason. Now, gentlemen, what have I ~~got~~ to do with the  
 10 question whether he deposited gold or currency? It doesn't  
 11 make any difference to me; or where he got the money, ~~doesn't~~  
 12 ~~make any difference to me.~~ My case doesn't depend on  
 13 that. But let's see what he did. <sup>Gray</sup> He took out a deposit  
 14 slip and he showed it to this jury. Sometimes when a  
 15 man is lucky enough to put money into a bank in Los Angeles  
 16 he makes a deposit slip, and Russell said he took that  
 17 money down in gold, and he remembered it. Gray says,  
 18 "Oh, five hundred dollars--you wouldn't notice it in your  
 19 pocket." Well, I never noticed it in mine, but it would  
 20 weigh about two pounds if it ever got in there. So, that  
 21 is something you might remember. Russell says he got  
 22 gold; and, lo and behold, they turn up a wonderful deposit  
 23 slip, and on the deposit slip he has written the deposit  
 24 under "currency". What does Gray say? He says, "Why,  
 25 here is documentary evidence." He says, "Here is a deposit  
 26 slip that is just like a deed to your home or to your farm

21 1 Here is a deposit slip that is just like a marriage certi-  
 2 ficate. Here is a deposit slip which is a document that  
 3 cannot be disputed, and which is sacred." I wonder if  
 4 you like to have anybody talk that way.

5 Gray said I was a moral idiot. He is more kinds  
 6 of an idiot than that, or he wouldn't talk that way to  
 7 you. He is that and then some! Now, there may be  
 8 here and there a man on this jury who has put money in the  
 9 bank--possibly one that has got it out. I will guarantee  
 10 that half the time you pay no attention to what you enter  
 11 it under. There is checks; there is drafts; there is  
 12 currency; there is gold; there is silver; there is foreign  
 13 checks and foreign drafts, and all kinds of entries, and  
 14 you simply write it in any old place and let it go. And  
 15 they know it. And yet, to get me into the penitentiary,  
 16 this contemptible quibbler would tell this jury that be-  
 17 cause <sup>the clerk</sup> that was written in ~~there~~ in the column of "Currency"  
 18 instead of "Gold" you should send me to the pen. Gentlemen,  
 19 all right. I will pack my valise tonight; but I will  
 20 stay as long as Gray is at large--at least, if that kind  
 21 of talk can go to any American jury. It can't. He knew  
 22 it. If a bank wouldn't pass a deposit slip of that sort,  
 23 why didn't they call in the cashier and let them show it  
 24 wouldn't? They quibble around here all day to know whe-  
 25 ther Job Harriman was down to that vault that morning, and  
 26 we have brought in the clerk who saw him there. I don't

After discussing the Biddinger testimony  
which was identical with that adduced  
at the former trial (See Danwar Defense  
Plea of August 1912, pages 11-14) Mr.  
Danwar continued:

22 1 care whether there is any slip or not. We have brought  
2 in the clerk who saw him there, and whether he knows the  
3 day or not, he knows it was about that time. And yet,  
4 gentlemen, they would ask you to send me to the penitentiary  
5 because there was a missing slip with a wrong date; and  
6 they showed conclusively it was the wrong date, and it  
7 had no date, and he was there at that time or about that  
8 time and at that time of day. But still--oh, well, Darrow  
9 is dangerous! He is dangerous! Just take a chance and  
10 send him and get rid of him! I do not believe there are  
11 that kind of jurors in California. I do not believe  
12 that there are that kind of jurors anywhere on the face  
13 of the earth. They don't come with the land that is  
14 broad and big and generous and free, where men are as  
15 free and generous as the bounteous sunshine that covers  
16 your valleys and your hills. *J* Send me to the penitentiary  
17 to help out Gray's clients and the M. & M! Upon the  
18 perjured testimony of men whom they get from the jails  
19 and the sewers; men like Biddinger, whom you wouldn't receive  
20 in your woodshed or in your pig sty--men of that charac-  
21 ter!

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1 And yet Gray says <sup>Biddinger</sup> he is a <sup>and truthful!</sup> noble man, he has been ten years  
 2 ~~on the police force in Chicago. I don't believe the Mayor~~  
 3 ~~knows it!~~

4 Now, Biddinger and I both live in Chicago, gentlemen.  
 5 That is, ~~I used to~~ I used to live there. You heard  
 6 what the others said about me; <sup>Chicago men</sup> two United States Senators,  
 7 one Mayor; <sup>Two</sup> ~~two~~ ex-mayors; <sup>me and my</sup> pretty much all the judges of  
 8 the Supreme Court down, ministers; priests; lawyers;  
 9 business men. Do you think Gray can do any better in this  
 10 town. He couldn't unless there are bigger liars than  
 11 there are in Chicago. He couldn't do as well. Do you think  
 12 anybody that is trying to hound me to prison could do any  
 13 better? Could Fredericks do any better? Could Ford do  
 14 any better. Could anyone do better than that? And I have  
 15 been there for a quarter of a century practicing law,  
 16 fighting as I have fought, from the day my eyes were first  
 17 opened, for the unfortunate and the weak and the poor,  
 18 taking my chances and fighting their fights; and I have  
 19 been respected by my enemies. These were not my political  
 20 or social friends. They were not what Gray calls anarchists.  
 21 The class to which he belongs <sup>for</sup> because in this great country  
 22 of ours there are rich anarchists and there are poor ones.  
 23 But mind this, it is the rich ones that are dangerous;  
 24 not the poor. <sup>These affidavits were not from</sup> They are not socialists, ~~They are not even from~~  
 25 ~~even democrats.~~ <sup>were from the</sup> They are rich, <sup>matter?</sup> and of course, they are  
 26 republicans, all of them; bankers and lawyers and judges  
 and doctors. <sup>J.A.</sup> Guy Biddinger lives there. Do you suppose

*Such character witnesses.*

1 he could get them? Why, he would have to go down in  
2 the redlight district where he kept a saloon to get any-  
3 body to testify for him! And yet, Gray says that that  
4 man is a truth teller and I am a liar. Guy Biddinger!  
5 Why, gentlemen, I have been watching you here from day to  
6 day. I am not going to tell you you are the wisest  
7 people I ever saw. You would think I was lying to you  
8 and I would be. Perhaps you are. It is an ordinary,  
9 fair-minded intelligent jury, such as draw from the box  
10 in the regular way. I don't know how you all think or  
11 how you all believe; your religion or your politics,  
12 or your ideas of social life; but supposing you would  
13 go down a dark alley and knew you were going to meet Guy  
14 Biddinger, John Harrington, Bert Franklin and McManigal,  
15 would you take a canon with you, or would you take the  
16 artillery, or what would you take? Talking about con-  
17 victing me with them! Gentlemen, if there isn't any  
18 more manhood within my little finger than there is in  
19 that whole bunch, then, for God's sake send me to prison--  
20 that is where I belong--right straight off, and don't  
21 bother about the evidence, if I am not better than all  
22 those people that they use against me. Have you heard  
23 an honest man speak? Have you known an honest man to say  
24 a word against me? No. You have sent your subpoenas  
25 of the federal and the state grand jury to the ends of  
26 America, and you go amongst the criminals and the crooked  
and the depraved and you open your jails, and you rake



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your sewers, and you give them immunity to catch me.  
~~If you can get me that way you can get any other man that  
ever lived, and you just send me--and may God have mercy  
on your souls!~~

These four men--those four! I move to strike out the  
word "man." These four--Bidding<sup>off</sup>, Franklin, McManiga,  
Harrington. They deserve any disgrace or infamy that  
could come to man, excepting the praise of Gray. I don't  
believe anybody ever deserved that. I think that is  
heaping too much upon the shoulders of these crooks and  
criminals and informers and stool pigeons and perjurers--  
but it is there. Gray said they were fine fellows.  
Not only that--now, gentlemen, just think of it a minute!  
And he has got a license to practice law! He couldn't  
get a dog license, but he has got a license to practice  
law. He tells you Russell is a perjurer, Wolfe is a  
perjurer, Harriman is a perjurer, Davis is a perjurer.  
Franklin, Harrington, McManiga, Biddinger, are noble men!  
Now, tell me: Would you rather Gray would think you were  
a crook or an honest man? It would cast suspicion on you  
if he said you were honest, if he said you were a crook  
you would be with this other class. He deliberately tells  
this jury that Harriman is a perjurer, Wolfe is a perjurer,  
Hawley is a perjurer, Russell is a per jurer, Stineman  
is a perjurer, Watt is a perjurer, Pirotte is a perjurer--  
everybody is a perjurer excepting this ~~who~~ holy  
quartet with Gray at the head.

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Am I still dreaming? Is it possible that here in California, a western state, liberal, broad, a jury is seriously asked to send a man to the penitentiary, a man who has lived a long life, has done his best, has had the respect of his fellow men, upon evidence like that? Because I am a stranger and they want me--a stranger. Away back yonder the Hebrew law giver wrote down, "There shall be one law and one ordinance for you and for the stranger who sojourns with you--one for you and for the stranger who sojourns with you." And yet this bunch of political pirates, controlled by a gang of financial pirates, deliberately say to this jury, "There shall be no law for Los Angeles; the gates are open; every man is immune; but here is a stranger within your gates and we want you to send him to the penitentiary." Gentlemen, if a jury of California should do that--not that it is I, I am nothing, I would be the victim--but it would leave a blot upon your state greater than all the frosts that could come down from the north; it would leave a stain upon the fair escutcheon of your fair state which would last as long as these mountains rise above your city, send me to the penitentiary with that! If they can send me, this gang of highbinders who hold the destiny of this county in the hollow of their hands, they can go out and choose any man they want and send him over that very same road. They can take him away from his home and his family and consign him to a

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1 living tomb--because they want him! They want him!

2 Let me ask you which you would rather do--would you  
3 rather be in my place right here or in theirs? My place  
4 isn't easy. I have lived a free life, I believe a useful  
5 one. I have fought all my life for other men, I have  
6 never raised my voice against a human being since I was  
7 born. I have never prosecuted in my professional career.  
8 I know that circumstances high above us control the acts  
9 of men. I know that the hand of destiny and the hand of  
10 fate is above us all, and I never could condemn, and I  
11 never would punish. I wouldn't whip a dog--or Gray  
12 neither! Certainly not a dog.

13 (Recess taken.)

14 (After recess.)

15 M. DAFROS. (Continuing.) Gentlemen of the Jury,  
16 I was saying that I didn't suppose anybody would envy me  
17 in my position. I haven't envied myself. Still, I don't  
18 know that I have pitied myself. I have fought in this  
19 fight a long while, and I know who I have fought, and I  
20 know the chances any man takes and always has taken and  
21 always will take if he chooses the side of the poor and  
22 the weak and goes against the powerful interest of the  
23 world.

Tif

23 I know it. I have intelligence enough to know it.  
24 I am not as wise as Gray says I am--he is wrong when he  
25 says I am one of the greatest lawyers in America--any  
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1 lawyer would look great to the judge; but I am wise  
2 enough to know that. I do know the chances I have taken  
3 in this game, but I have had my recompense. If I stopped  
4 now, and you gentlemen should send me to the penitentiary--  
5 hich you will not--I am joking about that; but <sup>if</sup> I should  
6 stop now, and stop in that way, I have had my reward; and  
7 I would still have it there. Men in this world do what  
8 the powers around them and above make them do. They  
9 follow the law of their being; and I have followed mine.  
10 I could have had money, and a different kind of fame and  
11 position. I might even have had as much of a title as  
12 Judge Gray's, if I had wanted to pay for it; but I did not.  
13 And I say to you honestly--and if I could see in your face  
14 what is not there, that you are going to condemn me--I  
15 wouldn't trade places with one of my pursuers; I wouldn't  
16 trade with one of them for a single moment. I would rather  
17 live my life as I have lived it, poor as it has been, than  
18 to live theirs as they are living them. Now, nobody  
19 can say I ever tried to destroy them. Nobody can say that  
20 I ever prosecuted a weak or an unfortunate.

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21 Gray says my doctrines are dangerous. I wish they  
22 were more dangerous than they are, to him and his kind.  
23 He says my doctrines are dangerous, because I said to  
24 this jury from the witness stand that there are men of  
25 such character that, though they may have done wrong,  
26 they would rather die on the gallows than to betray their  
fellow men. I believe no man who has a spark of manhood

7 1 in him has any use for a betrayer and a traitor.  
2 A man may reform, if he will--that is right; that is right;  
3 but it is not reforming to trade your liberty <sup>for the liberty</sup> /of anyone  
4 else. That is not reforming. It is not reforming to  
5 betray your fellows. You can better your own life, im-  
6 prove your own conduct; but the man who betrays someone  
7 else deserves the contempt of all honest men--and he gets  
8 it/ And Judge Gray said these men are heroes--you cannot  
9 punish crime without them. I don't know as much about  
10 criminals as Gray. Gray says I am a criminal. Perhaps  
11 I am. He says I am a criminal--and he seems to be  
12 thoroughly familiar with criminals. He says I have a  
13 face like a fox. Perhaps. Judge Powers put him the  
14 zoological garden, and I didn't think he classified  
15 him right. I think I would put him in with the domestic  
16 animal whose body more nearly resembles Gray's body, and  
17 whose squeal resembles Gray's voice at its best. That is  
18 where I would put him, when you are classifying. He talks  
19 of criminals. There is a great deal of nonsense talked  
20 about criminals--a great deal. He says I came out here to  
21 this coast to defend two men whom I knew to be guilty.  
22 There is not a word of evidence in this case to that  
23 effect--got a word. The evidence is all the other way;  
24 that I learned this, and learned it slowly, as a lawyer  
25 learns it of his client. I don't know--I am human; I  
26 have all the feelings of other men--stronger than some  
of them; weaker, perhaps, than some. I understand how

1 men do what we call commit crime--I understand it, and  
2 I never classified men, righteous men and criminals,  
3 and I never shall. I never saw a man that <sup>was</sup> wholly right-  
4 eous--unless it is Gray; I never saw a man that was  
5 wholly bad unless it is Gray. As I have known men, we  
6 are mixtures, part good, part bad, part evil, part noble;  
7 doing the best we can, surrounded by our temptations,  
8 and our feelings, and our desires, and our wants, and our  
9 inclinations. And over and above it all is the God who  
10 shapes our brain, the God who shapes us, the great nature  
11 who controls us and makes us do her bidding, whether will  
12 or not. I don't know you men. None of you may have the  
13 same philosophy of life that I have; but Gray says I am  
14 a coward. I have never been in the habit of sidestepping  
15 anything, and I do not propose to sidestep my philosophy  
16 so far as it affects this jury and this case.

17 I was sorry for the McNamees; I am sorry for them  
18 to-day. I would give a great portion of my life to have  
19 those two boys understood as they will one day be under-  
20 stood; and I want to say to this jury, even if it costs  
21 me my liberty, that the placing of dynamite in the Times  
22 alley was not <sup>an</sup> crime of the century; it was not even a  
23 crime, as crimes are understood. I want to make myself  
24 plain upon that, if it costs me the vote of every man  
25 in this jury box: I was sorry then, and I am sorry to-  
26 day for those boys. I took my life in my hands to help  
them save their lives, because they were my clients; and

1 I understood them. And I will take my life in my hands  
2 again to have them brought back to society, as I think  
3 sometime they will be.

4 Now, let me tell you--you may take it against me or  
5 for me: First, they never morally committed murder. They  
6 made a statement which was delivered to the District  
7 Attorney and is on file in this court, that J.D. McManara  
8 placed sixteen sticks of dynamite in the alley--about  
9 four pounds, ~~as I think; I have not figured it out,~~  
10 ~~but~~ four or five pounds. It would not have destroyed the  
11 building, and it did not. It did not even stop the  
12 printing presses; but unluckily, he placed it besides  
13 some barrels of ink, dropped it down and it exploded;  
14 and it lighted it and the horrible catastrophe followed.  
15 Neither one of those boys would have taken human life, and  
16 it was an accident; but under the laws of man, which makes  
17 little account of motives, they were guilty of murder.  
18 Under the laws of God, which considers motive everything,  
19 they were not guilty of murder. But I want to go further  
20 than that and to tell you the truth as to how I feel.  
21 This might be the last time I would have a chance to  
22 address a jury--but it won't--and I have been talking to  
23 them for 36 years; and I have generally told them the  
24 truth; possibly not always; but I will tell you that, for  
25 it might be the last opportunity. You may hang everyone  
26 of those men to the highest tree; you may hang every  
labor leader in America and the world to the highest tree;

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you may drive them into their holes like rats; you may destroy the last spark of courage in their breasts; and you may leave the injustice and the wrong that exists in the world to-day and new men will be born to take their places. Do you want to know who is responsible for that? It is the men who have reached out their hands and taken possession of all the wealth of the world; it is the owners of the great railroad systems; it is the Rockefellers, it is the Morgans, it is the Coulds; it is that paralyzing hand of wealth which had reached out and destroyed all the opportunities of the poor; and this is a protest against the strong. And you may kill and kill and kill; you may destroy every man who in a blind way has reached out with dynamite or anything else to fight against the social system; you may kill them, and you may send me and every other lawyer that dares to speak for them--you may send me to the penitentiary for life, and you may leave this injustice in the world and other men will come to take our places for ever and for ever, until the blind world sees and the dumb world speaks.

Let me tell you: Here is J.B. McNamara. If there is no other man on earth would raise his voice to do justice to him, I will do it, even if I am pleading for myself. Let me tell you something about him: Admitting he did wrong. I never believed in violence in my li fe on either



11 1 side. That is the reason why I would never prosecute  
2 a human being in a court. I don't believe in the violence  
3 of war; I don't believe in the violence that everywhere  
4 abounds on earth; I don't believe in the violence of the  
5 poor and the weak, who think they can obtain their rights  
6 by fighting the rich and the strong. I think they cannot;  
7 but I look for the motives of men. I know that higher than  
8 anything else in man is the conscience which God gave  
9 him. I know that the noblest men who have ever lived and  
10 died are those who have followed the light of their own  
11 conscience and their own conviction, even when that light  
12 led to death. Was J.B. McManera personally interested  
13 in the placing of dynamite in the Times Building? You  
14 know he was not. He was a working man. He was a fanatical  
15 trade unionist. He believed in force. I do not. I believe  
16 the law of love is the only law that can conquer in the  
17 end, but he believed in force. He did not do that for  
18 himself. Imagine him now: Here is a man comes down from  
19 San Francisco with a suit case with sixteen sticks of  
20 dynamite in it. He places it in this alley--for what?  
21 Suppose he succeeds and gets away--he cannot even get  
22 fame or glory for it. If Ford convicts me he can get  
23 glory. J.B. could not have got that. If he failed he  
24 lost his life, unless some fanatic like me would come  
25 here and imperil his own in disposing of his case  
26 to save his life, as I did. If he failed he lost his  
life, and yet he did it. Why? Out of willfulness or

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1       ickedness? No. Because in his brain was burning the  
2       thought that he was doing great good to the poor and the  
3       weak. Concede he was wrong--as I believe there is nothing  
4       more wrong--still he was thinking of others. Biddinger  
5       says he wanted to kill Chandler. There is not a man  
6       on this jury that if they had to choose between those  
7       two men, if they knew J.B. McNamara, would not fly to  
8       him and runaway from Biddinger--not one. Why did he do  
9       it? His brother was a structural iron worker. He had  
10      seen these men

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1 who were building these skyscrapers, going up five, seven,  
2 eight, ten stories in the air, catching red hot bolts,  
3 walking narrow beams, handling heavy loads, growing dizzy  
4 and dropping to the earth, and having their comrades pick  
5 up a bundle of rags and flesh and bones and blood, and take  
6 it home to a mother or a wife, because the Erectors'  
7 Association and the Steel Trust and the powerful would not  
8 waste the money to carry it up floor after floor so that  
9 when they fell they could buy their lives. He had seen  
10 their flesh and blood ground into money for the rich. He  
11 had seen the little children working in factories and the  
12 mills; he had seen sweat in every form coming from the  
13 oppression of the strong and the powerful; and he struck  
14 out blindly in the dark to do what he thought would help  
15 those. He listened to the cries of the weak, and he could  
16 hear nothing else. And he did it; and serious as the conse-  
17 quences have been to me, much as I have been misunderstood  
18 even by my friends, I shall always be thankful that I had  
19 the courage to take that step to save his life, and do what  
20 I could to help make him right before his fellow men. Some  
21 time the world will understand. I may be in the peni-  
22 tentiary, or I may be dead; but sometime the world will  
23 understand that you cannot settle the great question of  
24 poverty; that you cannot settle the great conflict between  
25 capital and labor; that you cannot settle it by sending  
26 men to jail and hanging them by the neck until they are

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1 dead. You may be upon one side or the other, but men  
2 don't act in this world without a cause; and while the  
3 cause is here the victims will be here, and here forever  
4 and forever.

5 Why, I have the supremest contempt for this bunch  
6 that would lend themselves to destroy me because I have  
7 been on that side--I have. I have been on that side, even  
8 when they misunderstood me; and I hope I will be with the  
9 last breath I draw; and I hope my life will not be spared  
10 so long that I may change, either for gold or for any other  
11 cause.

12 Gray says I am a coward--Gray; a man who does not  
13 dare come into this court room and hear me speak--like a  
14 miserable cowardly boy that would throw a stone in the  
15 dark and run away. He says I am a coward. Do you think  
16 he knows what courage is? Suppose he was set down in a  
17 hostile city for fifteen months facing the penitentiary;  
18 would he behave any better or any braver than I have done?  
19 What kind of a whine would we hear from him? I don't  
20 think that Gray is much of a lawyer. I was wondering what  
21 he would be good for. If he had lived sixty years ago, I  
22 could have found a job that I think he would have been fitted  
23 for; but he is a misfit in this age. He would have been  
24 all right in the days of slavery for hard and cruel masters  
25 to hire to beat negroes. He is built for it, and he has  
26 got courage to beat a man when his hands are tied--Gray

3 1 has. He might want his feet tied too; but he would have  
2 courage enough to beat them if they were securely fastened.  
3 He says I am a coward. This was bravery of his, wasn't it?  
4 A man under indictment and in his hand, to vilify him and  
5 abuse him for four long hours, to get a fee. Do you sup-  
6 pose that man cares a cent whether I gave this money, or  
7 not? You know he doesn't. A man who would argue to you  
8 that you should send me to the penitentiary because, forsooth,  
9 Russell put the deposit in the wrong slip, or the wrong  
10 column of the slips--do you suppose he cares? Does he care  
11 for bribery? Why, when his clients and the M. & M.,  
12 bribe the legislature or a city council, do you think he  
13 holds up his hands in holy horror? No, he would place  
14 a laurel wreath upon their brow. That is what Gray would  
15 do. But because I have dared to defend the weak; because  
16 I have dared to speak for those who cannot speak for them-  
17 selves, any quibble is enough--any quibble is enough to  
18 get me on.

19 Now, let us go a little further into the evidence.  
20 I was tried once for having given a bribe to Lockwood.  
21 Gray says, "Where did the money come from?" That is the  
22 first question Gray would ever ask; and the next is, "Where  
23 is it going to?" "Where did it come from?" How eloquent-  
24 ly he can talk about \$200,000--you would almost think he  
25 had a soul when he speaks of money; but you would know he  
26 had not after you had weighed him. It is not for me to

1 tell where the money came from. I haven't got to trace  
2 \$4,000 or \$400. It is for the other side to trace it to  
3 me--thank God; not for me, but for you, and you, and you,  
4 and you--for any of you may get into trouble. It don't  
5 seem so now, but you might. It didn't seem so to me until  
6 I got in with this bunch; but here I am. If you are ac-  
7 cused, it is for them to prove. But I can say this about  
8 the \$4,000, and about the \$400: That of all the people  
9 in the world interested in this case, I would be the last  
10 person likely to do it.

11 Let me show you. Do you suppose I didn't know  
12 these people? Do you suppose I didn't know Burns? Do you  
13 suppose I didn't know there were sleuths following me wherever  
14 I went? Do you suppose I didn't see them by day and by  
15 night, and understand them? Do you suppose, even if I had  
16 intended to do such a thing--I never fought that way--  
17 I am not built on those lines. I would rather lose today  
18 and win tomorrow, than to do it--but pass that up; and sup-  
19 posing I had wanted to, I would have been the last person  
20 on earth to do it. Because they would look at me first,  
21 for the people who wanted me, and for the position I hold.  
22 I made one mistake. I never ought to have received and  
23 disbursed any money--I never did before, and I never will  
24 again; and it was promised, as I testified, I should not  
25 this time; but it came upon me, and I couldn't help it.  
26 But of all the people connected with this case, I am the

5 1 last one who would do it. Not because I am the most  
2 honest--we will just out out honesty--as Gray does. I knew  
3 nothing about the people of Los Angeles. Every other  
4 lawyer and every other person intimately connected with  
5 the case knew Los Angeles. I wouldn't dream of going into  
6 a town where I knew nobody, and placing myself in people's  
7 hands. If I did, I am not anywhere near as smart as Judge  
8 Gray says I am. He says I am clever--I don't know why;  
9 at that particular moment I suppose he thought it would  
10 suit his argument. He didn't exactly like the shape of  
11 my head; he said it was too wide at the top, which indicated  
12 intelligence, and too narrow at the bottom, which indicated  
13 a lack of nerve. Now, Gray's head is turned just upside  
14 down, the other way. His is narrow at the top, where  
15 intelligence should be, if it was; and wide at the bottom,  
16 to show his nerve. And if he didn't have a lot of nerve  
17 he wouldn't be alive; it takes nerve for that kind of a  
18 man to stay on earth. I knew nothing about the town. And  
19 I would be the last one to undertake it. If it was a  
20 friend, some friend would do it. And then who was inter-  
21 ested? Everybody in the United States was interested. The  
22 Erectors' Association, Burns, the M. & M., the District  
23 Attorney's office, the detectives without end on the other  
24 side; all the powerful and the rich in the country, raising  
25 their money to carry on this case. All of them. Would  
26 they do it to get me? Let us see whether they would.  
Now, let me ask you as reasonable men--because I am getting

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tried by a jury of my peers. Reasonable men. Of-  
course, if Judge Gray was in here, and some more like him,  
I wouldn't think I was getting tried by a jury of my  
peers; but they are not. Let us see: The Erectors'  
Association hired a man who had been in my employ named  
Harrington--I am stating now only what is in the evidence--  
they hired him when they knew I trusted him; and they got  
him to come to California and rent a room in a hotel and  
put in a dictograph, and talk to me, so that I would say  
things that would betray me into their hands.



1 They could put one into your dining room, into your  
2 room, into any part of your house, and almost hear your  
3 thoughts--and there might even be jurors here who some  
4 have evil thoughts; I have known jurors who did. They  
5 not all perfect. Now, which do you think is the worst  
6 to put up a job to accuse a man of bribery, or to hire  
7 a trusted man to place a dictograph in your room, to  
8 your confidence, and report your conversations for the  
9 sake of getting you into the penitentiary? The first  
10 a sacrifice, compared with the last. There isn't any  
11 man can imagine, scarcely, how mean the last is. And I  
12 guess Gray is right. I think I am a coward. I think  
13 Judge Powers rather complimented me when he spoke of :  
14 I think if I was not a coward I would just kill Harrison  
15 ton--just plain kill him. I can hardly give myself credit  
16 for not killing him. Now, the Erectors Association did  
17 that; and the Burns men did it; and the officers did :  
18 wouldn't they do more? Now, let us look at the other  
19 side. On the side of labor, every workman in the coun-  
20 try was interested, contributing money, lending their aid  
21 The heads of all the labor unions were interested. A  
22 number of men under indictment in this town charged with  
23 it. A number of others were liable to be under indictment  
24 and have been since. Hundreds of people on our side  
25 directly interested. Of all the eighty millions of  
26 people in the United States, most all of them were in-  
ed in some way; and several millions of them directly

1 interested, and yet they say I did; and if I didn't,  
2 who did? As well say, if any other person didn't do  
3 who did? There were tens of thousands of people in the  
4 United States who had more motives to do that than I  
5 did--assuming it was ever done--tens of thousands who  
6 had more motives than I; and of all the people in the  
7 world, I would have been the last one, if I had had a  
8 sense, to do a thing like that. It is not for me, gentlemen,  
9 to show who did it.

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1 I don't care anything about whether you have got to cor  
2 borate the evidence of an accomplice. If there is any  
3 man who would give any credit to Franklin or any credit  
4 to Harrington I would like to see that man. He isn't in  
5 court today--he was here yesterday. I have shown con  
6 clusively that one man at least couldn't. I have shown  
7 Wolfe, by Harriman, by Hawley, by myself, directly, tha  
8 it wasn't possible. And you have got to believe all o  
9 ther perjurers to believe that story. Franklin has  
10 stated to Warner, Bowditch, Matt, Drain, Willard, Bern  
11 Jones, Whit, Hood, Sampson, Johnson, his lawyer, Stein  
12 man, Nicholson, Firette, Davis and Barrow, that I didn'  
13 And yet Gray says stick me! Gray says to convict me  
14 upon the evidence of that man! What would our liberty  
15 be worth if a man, because he has a certain standing, a  
16 certain position, a certain place in the world, can have  
17 his liberty sworn away by stool pigeons like that! If  
18 that's the quickest it is done for better. Gentlemen,  
19 may I convict you. You may convict me, but if you do, get  
20 some evidence that would command itself to your consciences  
21 and your soul. Get some evidence that will be <sup>such</sup> evidence that  
22 in the long night hereafter you can satisfy your consciences  
23 with the thought that I am in prison by your verdict. Get  
24 evidence that you can go out under the clear sunlight or  
25 under the stars of night or beside the ocean or on the  
26 plains or on the sides of the mountains--get evidence that

1 under the heavens you can justify your judgment and con  
2 science, but don't convict me on the testimony of stool  
3 pigeons and informers and gutter snipes and sewer rats,  
4 such as Gray has told you are the best witnesses on ear  
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6 (The jury was here duly admonished and recess take  
7 until tomorrow morning at 9 o'clock.)

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THURSDAY, MARCH 6, 1913; 9 A.M.

THE COURT. The defendant will proceed.

MR. DARROW. May it please Your Honor, and gentlemen of the jury:

For a little time this morning I want to discuss two or three things which they call collateral. Pretty much all of this is collateral--I don't know what it is collateral to, though. The charge on which I am being tried breaks down on their own evidence. This other is supposed to be collateral to that charge. But all same, as long as they have spent all but two or three of the six weeks of your time on collateral matters, I talk about it. They spent all their day and a half or examining me on collaterals. Collateral to nothing. Do they say I am guilty of? Oh, Gray went out, didn't I want to make one or two more references to dead men, then we will pass that.

They say I tried to get a witness out of the state, a witness named Dickelman. First let us see how honest these people are; and whether they are trying me for crime or trying to get me. You are asked about where the money came from. Nobody has ever tried to find where it came from. No district attorney, and no grand jury ever tried to find where it came from. They have tried to rake and scrape through the sewers of this country to find a chance to indict me. Have they been honestly investigating any crime in this case? Let me show you.

2 1 Gray said I was guilty of a crime in sending Diekelman out  
3 of the state. What is the evidence? He says that a  
4 principal is responsible for his agent. He knows better, if  
5 he knows anything--which he does not. The principal is  
6 responsible so far as the agent acts according to the in-  
7 structions given him; but in criminal matters his responsi-  
8 bility goes no further. ~~XXXX~~ The evidence as to Diekelman is  
9 uncontradicted in this case. A man came to my office, and  
10 he came there when Davis was present, didn't he? And he  
11 said that the Burns people had taken Diekelman to Albu-  
12 querque to keep him out of the way; and that he had not  
13 identified this man; that he could be useful to us. Mr.  
14 Davis and I were together--together we called in this  
15 young man, Mrs. Darrow's brother, and told him what to do;  
16 and he went away. Not one word spoken by me alone; not one  
17 word but what was uttered by both of us; and I am a criminal,  
18 and Gray is sorry from the bottom of his heart for Davis.  
19 Davis is an honest, upright man; but what do you think of  
20 the justice in this great state of California, if a dis-  
21 trict attorney under those conceded facts could charge me  
22 with crime and leave out Mr. Davis, whose own testimony  
23 shows, and has always shown, that he is equally responsible  
24 with me? Is there any man on earth who has any sense of  
25 fairness who would stand for it?

25 I may be a stranger--I am a stranger to all of  
26 you; but as I quoted to you, in the old Hebrew law three

1 thousand years ago it was there written down there should  
2 be one law for the stranger and one law for the citizen.

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1 We have degenerated in three thousand years. From the  
2 Hebrew nation down to the District Attorney's office of  
3 Los Angeles is a moral degeneracy that you would hardly  
4 think could be reached in three thousand years of  
5 industrious degeneration. X X X X

6 ~~That was done? This young man went to Albuquerque.~~  
7 ~~Diekelman had not been subpoenaed. He was not even a~~  
8 ~~witness. He had not testified--this man. The first~~  
9 ~~thing he did was to give him \$100 so that he could return~~  
10 ~~to Los Angeles any time he saw fit--and Diekelman swore~~  
11 ~~to it. No effort to conceal him. Nothing--excepting~~  
12 ~~to keep track of him; and he gave him that money to~~  
13 ~~return--the first thing he did. The instructions were~~  
14 ~~plain and specific and direct and given by both of us.~~  
15 ~~And yet they say that I am a criminal on account of it.~~

16 Gentlemen, I don't want to waste your time. If there  
17 is one solitary man that the District Attorney had been  
18 looking for on this jury who would pay any attention  
19 then, he is hopeless--then, he is hopeless--and I couldn't  
20 get him.

21 By the way, I never heard any examination of a jury  
22 before as the District Attorney examined this. I have  
23 heard of defendants being anxious to have one man or two  
24 men stand for him, but I never heard of a district  
25 attorney begging each juror that if he believed the  
26 defendant guilty he should stand alone and prevent a  
verdict of acquittal in the case. This is the first.



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It wouldn't be with a highwayman or a burglar or a banker. It is done with me. If, by chance, some way there comes into the jury box one man who has some prejudice against me or <sup>the</sup> cause I have stood for all these years, then, for God's sake stand, and don't let there be any acquittal, serve the District Attorney, so that Gray can foot the county out of \$10,000 more and I can be further crucified to satisfy the malice and the hatred of as hellish a band of conspirators as ever pursued a mortal in the world. All right, gentlemen. I have lived a fairly active life, and it is time to rest, and if I have to stay down here in this sunny clime and fight for my liberty the rest of my life, all right--I will stick; and if I get it, all right; and if I don't get it the office and I will fight it out and see which goes to the penitentiary first. I will stay here in this land as long as perchance they might find one juror to stick.

~~Now, so much for Diekelman.~~ What else. McManigal!

How Gray does love McManigal! He doesn't have to be under any obligation to McManigal in order to love him. He likes that kind of a man. I am charged with a crime with reference to McManigal--and what is the evidence? Now, let's see. The evidence is that Mrs. McManigal, the husband, and George Behm, the uncle, came here to the county jail to see McManigal. Mrs. McManigal first came to me in Chicago and told me her story; how the Burns detectives had hounded her and sought to buy her

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and bring her to give consolation and aid to her husband in his job. For the sake of herself and her children she didn't want him to be a traitor and an informer. She didn't want it said of ~~her~~ <sup>the</sup> children that had been born of her body that their father was the most despicable creature who ever lived; that, as he put it, in order to prevent being made the goat, he would turn upon the other man. For the sake of her children she didn't want that man to be a traitor and an informer on the men with whom he had worked, whether that work had been illegal or not. Was she right? I don't care whether she was right or not. If there is a juror in this box who thinks she is wrong, very well. Do you suppose the wife of any one of you would want you to be a traitor and an informer? If she would, they have got queer wives in Southern California. Then, I say to you if you have done wrong, stop doing wrong, but take your responsibility like a man and don't escape by seeking to unload your sins on someone else. Anyone would say that--anyone but Gray! x x x x

~~She came to the office. This evidence is competent only in one way, and that is because Harrington heard a conversation with Behm and another in Chicago. Mr. Davis was present at that conversation. He heard the instructions given. He gave them himself. We gave them together. Together! We told them that they should go to the jail; that <sup>if</sup> this man had made a false statement we would defend him; we would get him out on bonds if we~~

1 could; we would defend him, and to try to get a chance  
2 for us to see him and find out the truth, which we had a  
3 right to find out. Now, what? Instructions given by  
4 both of us--both of us, gentlemen!

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3M 1 And I am a criminal--and Gray is sorry from the bottom of  
2 his heart for Davis! If he had not said that I wouldn't  
3 have supposed he had a heart. But he says he has.

4           McManigal says they came over; that George Behm,  
5 his uncle, came over to the jail and proposed that I would  
6 send him a check over to the jail so he could bank it in  
7 jail for \$5,000. Now, if any of you think I did, why,  
8 just stick me. I belong in the penitentiary or in the  
9 crazy house--one of the other; and I don't know that it  
10 would make much difference which place I went. If I ever  
11 suggested or thought for a single moment of any such thing  
12 --all right, gentlemen--it is time I was supported at the  
13 expense of California. They have made me enough expense,  
14 anyhow, and they had better take care of me the rest of  
15 my life if I said it or if I did it--and I am ready. There  
16 isn't any man that has got any sense that would believe it  
17 for a moment. I doubt if Gray believes it--although he  
18 doesn't come in that class. Still, I don't believe he  
19 believes it. I told him and I told Behm just exactly--and  
20 Davis told him--just exactly what we had a right to do;  
21 just what I would do again, just what I couldn't get along  
22 without doing in fighting this case. And yet upon this  
23 collateral matter I am a criminal.

24           And what else did Gray say to you about Behm?  
25 Gentlemen, I have tried to be cool about this matter. I  
26 don't know how well I have succeeded; but if there ever  
was an infamous plot in a court of justice, this is that

2 1 plot. Gray told this jury that I had tried to get George  
2 Behm to commit perjury before the grand jury; that I had  
3 committed a crime and admitted it. Now, what is the  
4 evidences? Does he think there are twelve fools here,  
5 anxious to do this job for him and get rid of me because  
6 he says they want me? What is the evidences? He was  
7 subpoenaed before the grand jury. He came to Le Compte  
8 Davis and me together. You know what the evidence is.  
9 Davis, manly and truthful, and ready to tell the truth, he  
10 tells the story himself. He came to both of us. We told  
11 him not to answer certain questions; and Davis told him.  
12 He went there. He couldn't be taught to say "irrelevant,  
13 immaterial and incompetent." He was too incompetent to be  
14 taught. So he just was told to say, "That don't concern  
15 the case"--and he said it. Now, I wonder when it became a  
16 crime for a lawyer to advise his client to refuse to answer.  
17 Since Gray began to talk--but it was not a crime for Davis,  
18 but it was a crime for me; a collateral crime--collateral  
19 to the main issue in this case. He came back after-  
20 wards; after refusing to answer the questions, and he brought  
21 a list of questions with him, and I read them, and Davis  
22 told him how each one should be answered. Acted to-  
T 23 gether! And yet I am a criminal; I am a criminal, and  
24 there is nothing to it, so far as Davis is concerned.  
25 All right, Gentlemen. If under a plot like this twelve  
26 men could be found in Southern California that would take

3 1 away the liberty of a stranger within your gates, then,  
2 gentlemen, it would be better for Southern California if  
3 the ice should come down from the north and overwhelm it.  
4 For you can live without oranges, and you can live without  
5 money, and you can die; but if twelve men under their oaths  
6 as a jury passing judgment upon a fellow, could do a thing  
7 like that, it would be better that the land were blighted  
8 and destroyed forever. However, I haven't any fears about  
9 it. I don't know whether Gray would do it, excepting for  
10 the tax--I don't know what he would not do for that.

11 Now, that is the evidence on Behm. And on that  
12 evidence you are asked to convict me for bribing Bob Bain.  
13 Wonderful, isn't it? Why, the thimble rigger at the  
14 circus is not in it with the prosecutors in this case--he  
15 isn't in it. Davis and I told George Behm not to answer  
16 questions before the grand jury; therefore Darros is guilty  
17 of bribing Bain. All right. If there is any jury on earth  
18 that would ever consider it for a minute, then I am not  
19 being tried by a jury of my peers, any more than I am being  
20 tried by lawyers that are my peers.

21 What else? There is another choice bit--that  
22 Biddinger--how he does love Biddinger! But one thing more  
23 before I get to that.

24 The testimony about McManigal and about Diekel-  
25 man is made competent in this case by Harrington. If it  
26 was not for Harrington, they could not have brought it in.

1 Harrington had to say that he heard certain conversations  
2 in certain directions--which occurred, of course, in Davis'  
3 presence, although Harrington has lied about it, as is his  
4 custom. That is, Harrington is the connecting link. Now,  
5 I don't mean the connecting link--I mean the connecting link  
6 in this case--

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T 4 1 I don't mean the connecting link between the monkey and  
2 man--he is not close enough to man to act in that capacity.  
3 He is the connecting link in this case, and wherever you  
4 want a connecting link there is Harrington, the connect-  
5 ing link, the human inhuman connecting link. And Harring-  
6 ton is a peach. I may have occasion to say a little more  
7 about Harrington before I am done.

8 Now, they talk about Biddinger--Gray says that I  
9 confessed to crime about Biddinger. I sat upon the  
10 witness stand and admitted it, and smiled.--I think he  
11 said "simperingly." He wouldn't use that word excepting  
12 he is such a ladylike man, such a girlish fellow. I don't  
13 know whether I smiled or not. I told my story. And while  
14 we are on that subject, I want to put it down beside any  
15 other witness--certainly any witness they called in this  
16 case. Did I quibble? Did I dodge? Did I sidestep?  
17 Did I try to argue with court or counsel? Or did I tell  
18 my story straight? Compare it with Fredericks; compare  
19 it with Franklin's; compare it with anybody else; and  
20 whether I told my story plainly, directly, and in a  
21 straight forward manner, or not, I leave it to you gentle-  
22 men who have got to pass upon me with all the rest.

23 Biddinger--Biddinger is a choice morsel. And Gray  
24 says I confessed to crime, because I said I gave him  
25 \$700 to furnish me information about who were the traitors  
26 that were betraying our cause in our camp. He said that;



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and he was not stricken dead, either, while he said it. The Lord does not always act at the time when you would think he would. He puts things off some times for his own purpose. And he said, while it is admitted in this case that Burns had our camp lined with detectives and informers, he didn't commit any crime. While they had their men getting the inmost secrets of our office; while they had men meeting on the executive board of the organization and in their pay; and yet he says I committed a crime under my own statement, when I gave Biddinger \$700. It is not worth talking about. The only question is, what did I tell Biddinger? Now, there you have Biddinger and me for it--together with the circumstances which there are, surrounding the case. All right, gentlemen. I am under indictment; I have been acquitted once--acquitted; and they are in the hopes that they can get one or two men to keep me from being acquitted again. I am under indictment, but if I had been convicted and would come out of the penitentiary with my stripes on to testify, and my appearance and my word was not better than Biddinger's, I would want to go back--I would want to go straight back. Do they think for a moment that he could get the support that I have had from people who have known me for a life time? And then look at the facts. He says that he and four or five others brought J.B. McManara here; and

1 I wanted to get his evidence. What about the four or  
2 five others? Would it have been any use without them?  
3 Was it of any use anyhow? Talk about the arrest at  
4 Indianapolis when there were a dozen men present, and  
5 I wanted to get Biddinger and leave the dozen!

6 Another thing, gentlemen--this happened early--  
7 or it happened late, rather, in August--August 25th.  
8 It was three months after that that this case was  
9 running. Was there any efforts by me to get any evidence  
10 out of Biddinger? He went on his way, and was never  
11 heard of again until he turned up here on this witness  
12 stand to swear to lies against me. Did I try to get any-  
13 thing in the three months? Did he try to deliver anything?  
14 Why, it is childish. The purpose was a perfectly plain  
15 one. Why did I go to San Francisco to see him--are there  
16 any of you who don't know?

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1 Because he lied to me, and he said he was going to show me  
2 Clancy in company with Burns in the office of my friend  
3 Fremont Older--to show me Clancy was betraying us. And  
4 I gave him the money just as I told you, for that purpose--  
5 and I got swindled. And if the State had any sense of  
6 decency, they would give it back. That is all there is  
7 to that. Yet they want you twelve men to find that I  
8 bribed Bob Bain, because Biddinger says I tried to get his  
9 evidence in the McNamara case. I don't know whether you  
10 follow me, or not. They expect you to follow them--I  
11 don't.

12 They brought in a man named Smith, and a man named  
13 Yonkin, who said Bert Franklin came to them and made them  
14 an offer of jurors. Bert Franklin does not testify to  
15 that. Even Bert Franklin does not say he ever told me or  
16 spoke to me about that subject. Now, it may be true, but  
17 it is a very mysterious thing that two men who seem to be  
18 decent and respectable, should have had that happen to them,  
19 and never report it to anybody. And there isn't any claim  
20 on earth that I ever knew it, or authorized it--even Frank-  
21 lin doesn't say so. And yet that is why it is here, to  
22 throw it in with the rest, in the hope that in this dump-  
23 pile you may not distinguish; you may say, "Well, I guess  
24 there is something to it and we will just take a chance and  
25 find him guilty."

26 Now, I have to discuss the Lockwood case--I discuss-  
ed that once. I didn't suppose I would ever have to talk

CHARLES H. MAGEE, REPORTER.

In commenting on the Lockwood case which  
was presented in this trial as "collateral"  
testimony (see Record of August 1912)

2 1 about it again; but here I am talking about it again; and  
 2 I may have to again--I am not guessing any more. There  
 3 are people that you cannot guess on; and I have fallen  
 4 amongst them. The Lockwood case--it took a jury just about  
 5 ten minutes to decide it, and here it is, rebashed, without  
 6 a single syllable that is new, and with much of the old  
 7 left out. I wonder if there is any man could listen to  
 8 that story--any man listen to it honestly, and have any  
 9 doubt of my innocence in that transaction? Twelve men did  
 10 listen to it and have no doubt about it; and I think  
 11 you could call twelve more as long as I live, to listen to  
 12 it, and you couldn't find one who would have any doubt  
 13 about it. Men might, reading lying reports in prejudiced  
 14 newspapers, have a doubt about it, or men might hear stories  
 15 passed from mouth to mouth and doubt it; but you could not  
 16 hear the evidence in that case and doubt it for a single  
 17 minute. In the first place, as I will show you after I  
 18 am done with it, that case was settled and disposed of,  
 19 and there was not a motive on earth for me to imperil  
 20 my liberty and my reputation by buying a juror at that  
 21 time; even if I wished to spend the money, and even if I  
 22 was willing to do it. X X X X next 4208

23 But how was it done? Let us see. Gray, with  
 24 his wonderful knowledge of witnesses and of truthful men,  
 25 says, "Gentlemen, we have proven this conclusively, and  
 26 the defense has helped us prove it. They have established

3 1 an alibi which is not true; and when you establish an alibi  
2 that is not true"--that is about the way he put it--"that  
3 shows you are guilty." Now, let us see. It doesn't hurt  
4 Gray to pick up the best man in the city of Los Angeles one  
5 after another and say they are perjurers--one after another.  
6 All of them perjurers because Franklin disputes them. Why,  
7 look at the difference in the witnesses in this case:  
8 Compare Biddinger, McManigal, Harrington, Franklin--  
9 Harrington and Franklin the only ones who said anything--  
10 practically Franklin alone--compare them with the men who  
11 have come here to testify for me and against them. You  
12 could think it would raise the blush of shame, even upon  
13 the cheek of Gray. Compare them with Wolfe, with Older,  
14 with St. John, with Harriman, with Russell, with Dominguez,  
15 with Col. Johnson, with Davis--with any of the thirty-five-  
16 odd witnesses that were produced; and then tell me whose  
17 liberties would be safe if you would take the sword of  
6T 18 accusers like that against honest men. Then, gentlemen,  
19 all the teachings of the Book are bad; all the teachings  
20 of the moralists are bad; and if we want to make ourselves  
21 safe in society, we will not associate with decent men, but  
22 consort with rogues and thieves, because in your hours of  
23 trouble and adversity the decent men are liars, and the  
24 rogues and the thieves and the perjurers and the traitors  
25 and the informers, are the only ones whose word will go in  
26 a court of justice--in a court of justice! Gentlemen,

1 if there is a righteous God who notes the affairs of men,  
2 if you could find a jury in this court house who would take  
3 the word of scoundrels like that against honest men, then  
4 this building would crumble stone from stone, and the name  
5 of "Justice" in this court house would be erased forever.  
6 Think of the mockery of saying that men have built insti-  
7 tutions and reared buildings dedicated to justice, and in  
8 those temples the words of scoundrels and thieves and  
9 traitors and informers would outweigh the oaths of honest  
10 men! Gentlemen, if that is true, and you do it, go home  
11 to your children after you send me to the penitentiary, and  
12 tell them to consort with thieves and pickpockets and  
13 rogues and scoundrels and perjurers, or else their liberty  
14 cannot be preserved.

15 Let us look at this question of the Lockwood case.  
16 Here was a case that was disposed of. The McManara case  
17 was settled. Somebody, somewhere--either some secret friend  
18 who didn't know it, or, more likely, some designing enemy  
19 who did, fearing what would come about, conspired to do  
20 this work. Is there any doubt about it? If I did it,  
21 you have got to believe that several men of good reputa-  
22 tion and standing are perjurers. Gray admits it, and  
23 swallows it down with one gulp. They are perjurers. If  
24 they are not, why, Franklin can't be believed. You have  
25 got to disbelieve and doubt your own judgment upon all the  
26 facts of this case, and take Franklin; and you have got



5 1 to believe Franklin in spite of the fact that these twenty-  
2 three people have said that the story he told you was a lie  
3 and that he was testifying to save himself, or for money.

4 Now, let me ask you another question. There  
5 isn't a breath in this case but Franklin. Suppose  
6 Franklin had come on the witness stand and said, "Yes, I  
7 am testifying in this case and I am getting a thousand dol-  
8 lars for the job." What would you do then? Would you  
9 believe him? But he is getting infinitely more than  
10 that, if he ever tried to do anything. He is getting his  
11 liberty; and liberty is worth something--even to Franklin.  
12 That is the bribe that he is taking to make me a substitute  
13 for him. They don't need anything else.

14 Let me ask you: Supposing that any criminal or  
15 crook can be caught red handed and then tell that if he  
16 put this onto you he can get out. Now, suppose I am  
17 guilty; but suppose this jury of twelve good men and true  
18 establish the law down here in Los Angeles when any criminal  
19 is taken redhanded all he has to do is to turn and fasten  
20 it onto a fairly respectable man and he will be let go,  
21 how long will you last? You will last until the District  
22 Attorney gets sore on you. That is how long you will last.  
23 How long would any honest man last? He would last until  
24 his enemies combined against him, and then he would go, and  
25 there would be no help on earth for him, and you know it.  
26 Better that a thousand men go unconvicted than that this

6 1 should be the law, and that a jury of your countrymen should  
2 do that to you, or to me! The one--if a guilty man escapes,  
3 that is little; but if you establish a precedent by which  
4 any scoundrel on earth can lay his hands upon another's  
5 shoulders and let other men suffer, then the last safeguard  
6 for the your freedom and the freedom of your fellow men is  
7 gone. Now, what about it? I have been fortunate in  
8 some respects in this case. Franklin is a talkative  
9 fellow. If he had been deaf and dumb I wouldn't have come  
10 out so well; but he talks to everybody he meets, and when  
11 he talks--especially if he has been drinking, he sometimes  
12 tells the truth. He has been talking ever since.

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The Franklin family is a wonderful family. We have had three of them. If there were more Franklins they would have a better case, because wherever Gray could get hold of a Franklin, let Franklin come. Franklin! Franklin's wife!! Franklin's daughter!!! I wonder there are not more of them. The State's Attorney's office ought to encourage large families of Franklins. They may want to get somebody else in the future, and there is the Franklin breed. And when you need something--Franklin! Harrington may die after a while. Franklin is leaving his progeny behind for the benefit of the District Attorney's office.

Now, what does Franklin say? He says on the morning of the 29th he came to my office in the Higgins Building and I gave him \$4,000; and Gray says Shober corroborates him because Shober says he came to the Higgins Building at seven o'clock in the morning, or ten minutes before seven. Now, what do you think of Gray? Franklin says that he came there at a quarter of nine--14 or 15 minutes of nine. I asked him how he knew the time and he said he looked at the clock on the street, and I asked him what time it was by the clock on the street and he said he didn't know. So you can see how he knew the time. He came there, he says, between 14 and 15 minutes of nine; that I telephoned to Job, and I said Job would be there in a minute or in five minutes; that presently Job

1 Harriman came in with his overcoat on his left arm, a  
2 black overcoat, and we stepped into another room and I came  
3 back and gave him \$4,000, and he told me what he was going  
4 to do with it. Now, gentlemen, sometimes jurors make  
5 mistakes. That other jury might have. Sometimes they  
6 make mistakes. If any of you think I did this fool trick,  
7 why, take a chance anyhow and send me. Leave the moral  
8 part out of it, because Gray says I am a moral idiot.  
9 So, just leave that out. He hasn't said I am any other  
10 kind of an idiot. He wouldn't know. He is only a judge  
11 of morals--that is all. He says that I told him to go  
12 down to the corner of Main and Third and pass it to White,  
13 within a half a block from my office; mind--a half a  
14 block; a corner where men are passing and repassing, al-  
15 most as many of them as there are on any other corner  
16 in town; where the street cars and the teams are in the  
17 street, and he was to go there and pass it within a half  
18 a block of the office; and not satisfied with that, he  
19 was to send that man to pass it again on the corner of  
20 Third and Los Angeles, another very thickly traveled corner.  
21 Now, if I did that, I oughtn't to be at large. I might  
22 fall in the fire and get burned to death--if I did that.  
23 That even staggered Gray--and he said maybe Darrow didn't  
24 know just where it was to be done. But Franklin swears  
25 positively that I told him where to do <sup>it</sup>; that it was under-  
26 stood I knew where it was to be done, and it was to be done  
on both those corners. Now, you know there isn't a man

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on earth that has got any sense who would ever dream of doing any such thing, especially a man watched by detectives every moment of his waking and his sleeping.

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Let me tell you another thing about this, which shows that it is utterly impossible. The evidence in this case is that Franklin went out to Geroge Lockwood's house the night before. He said he was going to bring the money out, and he was going to bring the "Big One." Lockwood says he mentioned my name in some connection, although Franklin says he is a liar. I don't know which tells the truth, and I don't care, but anyway, Lockwood thought he meant me by the "Big One," and he asked where I was. Franklin said I wasn't coming. Now, they were trying to get me-- that is plain enough. Franklin told Lockwood that he would give it to him in the morning, and told him where, didn't he? On Tuesday morning he was to deliver him the money, and they were after me. Now, they had detectives all over. Here was Burns, the most wonderful man who ever lived in the detective line. Here is Sam Browne--Gray says he is an honest man. I don't know whether that is the reason that the District Attorney got rid of him the other day or not. Gray says he is honest. We will assume he is. He is a good detective. They had five or six others there. If they were after me and Franklin told them on Monday night he didn't have the money but he would have it on Tuesday morning and pass it on the street, don't you think they would have sent somebody to trail me from my house to my office and know exactly where I was? Don't you think they would have had the Higgins Building sur-

2 1 rounded by detectives, so that nobody could go in or out  
2 without them knowing it? Don't you think they would have  
3 traced Franklin from his house to see whether he was con-  
4 nected with me? Why, it is crazy! If they ever had any  
5 thought that anybody was seriously intending to do that  
6 thing, then, they did trail me, and they did trail Franklin,  
7 and they did trail Harriman, and they know that Franklin  
8 lies. If there was anybody--even anybody who might have  
9 wanted to help me without my knowing it, who really intended  
10 to do a thing like that, they would have had that entrance  
11 to that building watched, and they would have had me  
12 trailed from the time I left my home. You know it. If  
13 they didn't do it, then, this whole scheme was what it seems  
14 plainly to have been, a put-up job; and even no friend of  
15 mine was in it. Do you suppose they didn't know where I  
16 was? If anybody was trying to bribe that juror on that  
17 morning do you suppose they didn't know where Franklin was?  
18 Do you suppose with all their detectives and the most famous  
19 district attorney who ever lived upon the face of the earth--  
20 he may be the wisest and the greatest, but his hiring Gray  
21 wouldn't show it. Unless he is letting the county pay a  
22 political debt I cannot understand what it is for. Do you  
23 suppose that if they thought they were going to get me in  
24 that trap they wouldn't have fixed the trap? Why, it  
25 isn't worth talking about. But, now, what about the facts  
26 and the perjury in this case. In order to believe that I am

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1 guilty in that matter, Job Harriman committed perjury.  
 2 Another thing: If that is true, then, Job Harriman knew  
 3 it and was in it. Does anybody want to make him any  
 4 trouble? Has anybody hinted at anything? Darrow is the  
 5 man they want--"the stranger without your gates"--the most  
 6 dangerous man in America--because he has dared to stand for  
 7 the poor and the oppressed. Harriman says he was not  
 8 there; that he didn't see me. Now, maybe he is lying.  
 9 Perhaps he is. But how are you going to say so? How are  
 10 you going to say it? Do you know he is lying? Is there  
 11 anything in this case to show that he is lying? Is there  
 12 any reason in this case why you should believe Franklin in  
 13 his place, especially when Franklin has told at least twenty  
 14 men that I never gave him a dishonest dollar in the world?

15 Do I need to stand here and argue to this jury  
 16 for my liberty under circumstances like that? It is a shame  
 17 and an outrage that the political forces of this county would  
 18 have a right to make me do it. Aye, when this infamous  
 19 scoundrel himself has told over and over and over and over--  
 20 and once--nay, twice, to the emissaries of the state them-  
 21 selves that I had nothing on earth to do with this. And  
 22 still I am blackened and hounded and pursued for more than  
 23 one long year upon the word of a scoundrel like that, when  
 24 the powers of this county promised him his freedom if he  
 25 would do it.

26 ~~Another thing: Frank Wolfe occupied an office~~



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near me. We were in the habit of coming down on the car together. We came down on the car together that morning. We went to the office together. We were discussing a political matter. I had told him that a man who had been the political manager of the brewery interests had been here; had told me that the interests were not going to take any side in politics in that election. We were discussing the political situation. He went with me to my room. He stayed there until the telephone rang, and I said I was going to the Socialist headquarters to see Job Harrison. We went down the hall together to his office. Now, if Wolfe tells the truth, Franklin is a liar. He is anyhow! He admits that. Of course, you have got to believe liars in order to convict me. That is a small job, to believe a liar and a crook and an informer and a perjurer!. But you have got to believe that Wolfe committed wilful perjury in order to get me in this case, for you people cannot help believing that the same hand that was back of one was back of the other. The other jury believed it, and if, on hearing this evidence, they believed I bribed Bain they would have thought I bribed Lockwood.

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1 Now, let's see: Gray says that Wolfe is a perjurer.  
 2 He is a man who for more than 20 years has been a well  
 3 known newspaper man, the managing editor of the Herald;  
 4 to day, one of the managers of the Municipal News; a  
 5 man with a fine face, with the truth stamped all over it,  
 6 isn't he? Now, we may all be fools. Maybe truth is un-  
 7 truth, and untruth is truth. Perhaps evil is good; per-  
 8 haps from the wicked and the vile and the corrupt and  
 9 the infamous you hear the truth. Perhaps from the good  
 10 and the virtuous and the honest you hear only lies.  
 11 But we haven't been trained that way. Gray says he wasn't  
 12 trained that way, by his Catholic-Presbyterian-Methodist-  
 13 Congregational-Baptist ancestors. I don't know whether  
 14 he got all of them or not. There might have been a Free  
 15 Thinker or two--one or two Free Thinkers among his ancestors.  
 16 Perhaps there might have been some Christian Scientists  
 17 among his ancestors too that he forgot. I haven't looked  
 18 up your religion, of you people, but it looks to me that  
 19 Gray did. All I have to say, if he had Catholic-Presby-  
 20 terian-Methodist-Baptist-Congregational ancestors it  
 21 doesn't speak very well for those churches. There are  
 22 some things that all those <sup>religious sects</sup> things couldn't do ~~and that~~  
 23 ~~is one.~~ Now, we may all be wrong and Gray be right, but  
 24 we are taught to believe that honest men tell the truth,  
 25 and we are taught to doubt scoundrels and rogues; and he  
 26 says that Wolfe is a perjurer. Wolfe! Now, why? Well,  
 because he wants to--but what excuse does he give?

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1 why, he says Wolfe couldn't possibly have remember<sup>ed</sup> when  
2 this case came up that he had seen me on the 28th day of  
3 November in the morning. Now, there is some truth in  
4 that, but there is only a little truth in it--like other  
5 things. Now, what did Wolfe tell him? He told him that  
6 he was with me and what we were doing; that I got up and  
7 went with him to his door, and on down the hall, in answer  
8 to a telephone message, and said I was going to the Social-  
9 ist headquarters, and within an hour or two of that time  
10 he heard that Franklin had been arrested and that I had  
11 been on the street--but Gray didn't tell you that. If he  
12 told you that it would look like it was in my favor, and  
13 it is his business to get me, and whether I did it or not  
14 he doesn't care. It would be still better for him to get  
15 me if I didn't do it. Do you think that when Wolfe heard  
16 two hours later that I had been down on the street when  
17 Franklin was arrested--do you think he didn't remember  
18 that he was with me that morning, and that I went to the  
19 Socialist headquarters? And yet he says Wolfe is a  
20 perjurer, because he couldn't remember six months where  
21 he was on that particular day. Ordinarily, no, he couldn't.  
22 And then, he says, "When did you know that there was any  
23 claim that Darrow had given that money on that morning?"  
24 And he said that he hadn't heard of that until some pro-  
25 ceeding before the grand jury. Now, let's see. That was  
26 about the 5th day of December, a month later; but when he  
heard in the morning that I was down on the street he

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1 recalled and would recall every circumstance connected with  
2 me that morning. It would be there in his mind, let alone  
3 the event, and it was there, and he swore to it, and you  
4 have got to believe that he is a perjured scoundrel in  
5 order to believe Franklin.

(Recess taken.)

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(After recess.)

Gentlemen, I was speaking of the direct testimony on this matter. No one would have any more right to imperil the liberties of their fellow man by saying that Wolfe and Harriman were perjurers, than they would to shoot them in cold blood. They may be perjurers, but what is there in this case to show it? What right have you to assume it? What right has any one to assume it? That they may believe a man who is a self-confessed scoundrel, a liar, and a traitor? What else? On that morning at 7 o'clock, or a little before, Franklin came to this office. He came there with a man who has been described as a small man, and a dark man, a sallow man. Gray says that this is the best put up case he ever saw. Well, he has probably tried to put them up himself, and his judgment might be good; but he perhaps didn't do it very well. Did anybody unearth that man--the small man, the dark man--who came to the office with Franklin at 7 o'clock, or before, on that Tuesday? Where did the information come from? They subpoenaed Shober--a man whose every look is that of an honest man. They subpoenaed him before the county grand jury, and he told his story there. We didn't get him. We read his story as told before the grand jury, and they come here and try me, and they didn't put him on the stand--because they didn't want him. It might prove me innocent; and they are not trying to prove my innocence; they are here to prove the innocence of every scoundrel and crook and traitor that

2 1 has come into this case, that they may prove me guilty--or,  
2 if not proved, to get the jury to assume it. And they did  
3 not use him, and we have brought him here, and he des-  
4 cribes that man, and describes him thoroughly, and is posi-  
5 tive about it. Suppose he said before the grand jury  
6 that might have been the day before? What of it? The  
7 presumption is it was on that day. Mrs. Franklin swears she  
8 was at her own office at half past eight that morning; she  
9 swears her husband left the house before she left. She  
10 doesn't know how long before--she has no memory about it.  
11 Franklin swears he came direct to the office, and he swore  
12 he was there a quarter to nine; and yet he left his home  
13 before his wife left, and his wife got to her office at  
14 half past eight. How do you reconcile it? It cannot be  
15 reconciled; it is not true. That man was there with  
16 Franklin; they went into the office together. They went  
17 in together--what they did there, or who it was, I don't  
18 know. It is one of those inscrutable mysteries which no  
19 man can solve until sometime the lightning tears the gloom  
20 and the truth is revealed, as one day it will be. They  
21 were there. Franklin swears it is not true. Shoher swears  
22 it is. Mrs. Franklin corroborates us; but what else? He  
23 came to his own lawyer, Tom Johnson, whom Gray says is an  
24 honest man--that is the first time I ever heard a man say a  
25 word against Tom Johnson--Gray says he is honest; but I may  
26 be mistaken; perhaps he is a crook--no, Gray says he was big

3 1 hearted. Well, Gray ought to be a judge of hearts--not  
2 having one himself. What did he tell Tom Johnson? He  
3 goes to his own lawyer. Tom Johnson comes to him about  
4 the 10th, or 11th, or 12th day of January. We came from  
5 the District Attorney's office; and Franklin, the clever,  
6 shifty scoundrel, pulls out some money and says, "I want  
7 to retain you as my lawyer," when he came from the District  
8 Attorney's office--and he did. Then he told him I never  
9 gave him a cent in the world; that it was given to him by  
10 a small, dark man, who was a stranger; and if he could get  
11 some help from the District Attorney's office, he could  
12 find that man.

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1           Now, gentlemen, think of it! Yet they want you to  
2 convict me in this case on that evidence. When Shoher  
3 tells his story--when Franklin tells it to his own  
4 lawyer; and when he tells Hood that another man was there,  
5 a stranger, and if he could find him it would settle his  
6 case--yet, I am to go to the penitentiary, because, for  
7 sooth, I am the enemy to the rich--the rich, whose boots  
8 Gray would lap for about the price that another man would  
9 shine them. Could there be any question in the mind of  
10 an honest man about the facts as to that matter? Do  
11 you tell me you are going to throw out the testimony of  
12 Tom Johnson, his own lawyer; and throw out the testimony  
13 of Shoher, and believe Wolfe is a perjurer, and Harriman  
14 is a perjurer, and Hawley is a perjurer, that you may  
15 believe a self-confessed liar, and a perjurer, to get me?  
16 Well, if there is any great public need of getting me,  
17 for God's sake, don't be too cautious about it, but take  
18 the leap, and I will stand for it.

19           Let us see--what else? Gray says it is not possible  
20 I was going down to the Socialist headquarters. Why  
21 don't some of them tell you what I was doing? Did I get  
22 Franklin as a little boy, and say, "Here is \$4,000; go  
23 down to two street corners, and buy a juror." As I would  
24 say, "Sonny, take a cent and go and buy a stick of candy?"  
25 If I did, gentlemen--why, if I did, as I have said before,  
26 there is some state institution where I belong. Did I  
take the money and give it to Franklin to go and give it



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do the job, and then go down there and watch it? If I did, I am still crazy. Did I have information that they were going to catch Franklin, and go down to stop it? If I did, where is the evidence in this case? Gray called Sam Browne an honest man, and yet he says he gave the information. What do you think of that? And Browne said no; whatever there was there was bottled up with a few people, and nobody could know it. And if I had known it, don't you think I would have gone in the other direction? Have I got no sense at all? Gray says I have some sense. Wouldn't I have gone in the other direction, then? Why, of all the crazy things a jury was ever asked to believe, this was the craziest and most impossible. Could never have happened, and it could not have happened that way. But Gray says, "Oh, yes; but now if Darrow had been going to the Socialist headquarters on the east side of Main street, and started on the west side, wouldn't he have gone all the way down on the west side, instead of crossing over when he started to?"

12T 1 Could you beat it? Isn't that a wonderful logic? Wouldn't  
2 I have gone clear down on the east side and crossed over  
3 down there, instead of crossing over somewhere else? If  
4 Gray would, I would not. And therefore, gentlemen, that is  
5 not true--therefore, does anybody know where he would have  
6 crossed, and why? The chances are, on a thickly traveled  
7 street, you would cross where you had a good chance, if  
8 you were in a hurry; and you would not wait until you got  
9 to a crossing where the travel would be greater. As I  
10 stepped up, Franklin says I spoke to him; and Sam Browne  
11 and I said I did not. Sam Browne said he was under arrest,  
12 and I must not speak to him. And yet they say, "Oh, well,  
13 why didn't you speak?" Why didn't I? Does any man know  
14 why he didn't do a thing, and why he does do something  
15 else? I couldn't do anything, no matter what it was, that  
16 would not look guilty to Gray. I would be guilty if I  
17 did it, and I would be guilty if I did not. Take the  
18 twelve men of you--if you want to take long enough to figure  
19 it up, and just sit down, and each one say separately just  
20 what you would do under those circumstances, and probably  
21 you will find that no two of you would act alike. You can't  
22 tell--it depends on the man. And whether your actions would  
23 be guilty or innocent, depends on the fellow looking at  
24 you. If he believes his fellow man guilty, your conduct looks  
25 guilty; if he believes him innocent, your conduct looks  
26 innocent. You can't judge men that way; you can judge

2 1 you're self that way, that is all. Gray can't judge me--he  
3 judges himself. That is, he confesses on himself. That's  
4 all he can do; and all he does do; and all any man does,  
5 when he figures out the motives of men.

6 And then I came up to the court house. I came  
7 direct to the court house, so I could not have seen Harrington.  
8 I came direct to the court house, because I said so;  
9 and I am corroborated by the fact that while I came up  
10 Spring street and Browne came up Main street, and he came  
11 direct to the court house, he met me here. So I could  
12 not have seen Harrington--the scoundrel. And I met him, or  
13 came up to him about as we were going into the building.  
14 I had thought of it; I had wondered about it; I was anxious  
15 to save the lives of my clients, and I thought I had it  
16 worked out, and that it was completed and over; and a  
17 great burden was lifted from my mind. And I wondered what  
18 it was; and I asked him--I asked Sam Browne; and he said  
19 it was bribery. And he says in one place I told him if I  
20 had known that was going to happen I never would have had  
21 him. In another place he says I said, if I had known it  
22 was going to happen in that way, I never would have had him.  
23 Nobody knows the words, or can know them. And Gray says he  
24 went right in and wrote it down immediately. He did not.  
25 He says he wrote that down that afternoon; and I don't  
26 need to tell you gentlemen that you cannot write the words  
exactly as they are spoken--couldn't possibly do it. I

3 1 said I wouldn't have had such a thing happen for the world.  
2 And I would not. And doubtless I asked him if he could do  
3 anything about it. What of it? I was fearful at once  
4 when I thought of it, of the effect it would have on this  
5 case that had taken my days and my nights and my mind, and  
6 my heart, in an effort to save the lives of these men.  
7 Now, if any one of you knew how you would act and how you  
8 would all act and talk under the same circumstances, then  
9 you may judge me. But if you do not, then it is best to  
10 put an honest construction upon the motives of men when  
11 you can; and when you put an honest construction on the  
12 motives of men, you put an honest construction upon your  
13 own motives. You show that your own life is honest and  
14 free and fair, and that you are not misjudging your fellow  
15 man.

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1 That is all you show. And no other construction is  
2 possible in this case. Nothing else is possible excepting  
3 that I knew nothing whatever about it, and couldn't know  
4 it.

5 Now, let us see how Franklin is contradicted. He was  
6 charged with getting \$4,000 from some source. And what  
7 did he do? In the flash of an eye--in the flash of an  
8 eye, he started to charge a crime onto Lockwood, to get  
9 rid of it himself. Whether he and Lockwood were in it  
10 together, I don't know, and I don't care; but if they  
11 were not, he immediately started to turn it onto Lock-  
12 wood to get rid of it himself. Do you think he would  
13 hesitate to turn it onto me? You know he would not.  
14 Do you think I was a fool, to send him there at the corner  
15 of my office to do this job on two streets, and then go  
16 down there myself? And then Mrs. Franklin says at nine  
17 o'clock in the morning I called up his office. Would  
18 I have called him up there if I had sent him down to the  
19 corner of those two streets and known he was there? Would  
20 I have told her to go and find him, if I had known right  
21 where Franklin was? Why, gentlemen, in order to believe  
22 those stories, you have got to take leave of your senses;  
23 you have got to have your heart and mind filled with  
24 vengeance and hatred and lust for blood, or lust for life;  
25 you have got to believe that your own fellowman is guilty  
26 and hate and despise him, or you couldn't believe stories

1 like that, even if they were not contradicted. But are  
2 they contradicted? He starts out in the twinkling of  
3 an eye to unload his guilty, if he had any, upon Lock-  
4 wood--his friend. Within a week he goes into Bush's  
5 clothing store to buy some goods and he tells Musgrove  
6 he had been in this town too long to go to the penitentiary;  
7 that he was playing his cards and he would slip it to some  
8 one else. Is Musgrove a liar too? Franklin says  
9 he is a liar--is he? Are you going to take a long chance  
10 that he is a liar and make me stand for it? I guess not.  
11 Within a few days he sees three or four newspaper reporters  
12 --Willard, Jones, White, and one or two more; and voluntar-  
13 ily he goes to them and says I am an innocent man and he  
14 won't stand to see me condemned; and then he comes into  
15 this court and tells you Le Compte Davis told him to say  
16 it; and Le Compte Davis says he never said such a thing  
17 in the world. Are you going to believe it, or are you  
18 not? First he denies telling the newspaper men any such  
19 thing; then he says Le Compte Davis told him to say it;  
20 and these lawyers, in order to trap me, say, "Oh, yes;  
21 he was lying then to protect Barrow." He was a liar and  
22 a scoundrel, and has only turned good when he seeks to  
23 swear my liberty away to save his own. Believe it if  
24 you want to. If you believe it, then the safest place  
25 I can find to rest my head will be within the prison  
26 walls.

And then he meets Frank Dominguez and George Drain

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1 Now, is Dominguez a liar? Dominguez asks him where he  
2 got that money and whether I gave it to him, and says he  
3 doesn't believe I did; and he said I was kind hearted and  
4 good to him, and the most generous hearted man he ever  
5 knew; and that I never gave him a dishonest dollar in t e  
6 world. And then he swears he didn't say it.

7 Not that he is trying to shield me, but that he swears  
8 he didn't say it.

9 Now, let us look at it again--he shielding me?

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147 1 They say that he told the truth, and he says he told the  
2 truth; but he said I was kind, generous, the best friend  
3 he ever had. Now they say he was trying to shield me to  
4 save himself. He was trying to shield me first. Now, as-  
5 suming that is true, and assuming that at the end he found  
6 he had to testify against me to save himself. He did it--  
7 he got immunity. Don't you think if he was ever my friend  
8 he would want me to escape? Do you think he would want me  
9 stuck? He might have had to do something, but wouldn't he,  
10 when he got down in his heart, if he had one, wouldn't he  
11 want me to win? If he was my friend ever, and if he was  
12 my friend then--yet this man has not only come upon this  
13 witness stand and told this story bristling with lies, but  
14 he has gone further, and he sat in this court room day after  
15 day through all these long days, prompting the District At-  
16 torney, to give him perchance some clue by which he can fast-  
17 en the chains tighter. Has he been my friend? He has  
18 brought his sour-faced wife into this court to have her  
19 say something that might condemn me; and he has brought his  
20 daughter into the court, to add the whole weight of the  
21 Franklin family in my condemnation. yet they say he was  
22 my friend trying to shield me. When did he become my  
23 enemy, and how? I can understand that some weak men might  
24 be so weak that to save themselves, they might swear some-  
25 thing onto their fellow man; but if they really cared for  
26 that man, down in their heart of hearts, they would want



2 1 him to win; but Franklin has sat here with the venom and  
3 the bitterness of a snake; and he sat upon the witness stand  
4 and showed in his testimony the venom and bitterness of a  
5 snake in every word he uttered against me; lying and quib-  
6 bling all the time to take away my liberty. Was he my  
7 friend? Was he ever my friend? Was he the friend of any-  
8 body on earth but the District Attorney, who has been feed-  
9 ing him at his crib, while he has been lying to get an  
10 honest man into the penitentiary?

11 What else? Before he was arrested he told Warner  
12 that he would win this case on that jury list; that there  
13 was an angle to it that none of the lawyers knew anything  
14 about. At the trial before, he denied it outright. What  
15 does he do this time? Somebody has told him that he had  
16 better tell a little different story, so that the jury will  
17 believe it. So that he says now Warner wanted to make  
18 speeches around the county to change public opinion, and  
19 he said that was the angle he didn't know anything about.  
20 What do you think of that? A man who came in here five  
21 months ago and denied it outright that he made any such  
22 statement, and then because, forsooth, the word "angle"  
23 might stick in the jurors' minds, he invented that crooked  
24 story, that it might carry some plausibility this time.  
25 Mind, gentlemen, he denies all these statements. He does  
26 not admit them and say he was lying then; but he denies  
them, almost all of them--and then he says that on the 14th

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day of January he came to Davis' office--now, mark this--  
this fellow is not only a perjurer, a weak criminal, a  
traitor, an informer, but he is a thief. He met Tom Johnson  
on the 12th, or the 11th--and Tom Johnson told him to  
come through and tell the truth.

Referring to

~~Over his discussion of Franklin's~~  
~~conduct with reference to the latter's~~  
~~conduct after his arrest and before he~~  
~~had decided to~~ determine with the  
district attorney ~~to file a~~  
~~charge to have his own~~ ~~the~~  
Speaker said: prior to trading  
his employer for immunity, Mr.  
Darrow said:

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1 And he went back for him to the District Attorney's office  
2 to get him some time. And he reported that the District  
3 Attorney had said he would not give him any time; that he  
4 had testimony enough to send me and Franklin both to the  
5 penitentiary. And Franklin says, "I know what they want;  
6 they want Darrow; but if I said that either Darrow or  
7 Davis ever gave me a cent of money for any corrupt pur-  
8 poses, I would be a God damned liar"--on the 12th or the  
9 10th. And Johnson told him that if he could satisfy the  
10 District Attorney, the District Attorney would do what he  
11 could for him; and he advised him to save himself. Then  
12 what does he do? He goes to Davis, on the 12th--on the  
13 12th--and he tells him what is truth, that he has never  
14 had a settlement in his case, that there is some money  
15 coming to him, and insists on more money; and he gets  
16 \$1,000--on the 12th. Why do you suppose he did it?  
17 He intended to turn his crime upon someone else, and before  
18 he made him the victim, to run away with the \$1,000. He  
19 got <sup>it</sup> on the 12th, and then sent for Davis and me to meet  
20 him on the 14th. Now, you can believe Davis and me on  
21 the one side, or Franklin on the other; just according to  
22 the way your mind is, whether it is like Gray's or like  
23 a man's. Did Davis tell the truth, or did Franklin tell  
24 the truth? Davis says and I say, that Franklin came in  
25 there and he said that Tom Johnson/<sup>said</sup>the District Attorney  
26 wanted to get me, Darrow; and if Franklin knew anything  
about anybody in Los Angeles, he need not tell; and

1 that Franklin had told Tom Johnson he would be a damned  
2 liar if he said anything against me; and that I said to  
3 him then, "You are at perfect liberty to go to the District  
4 Attorney's office and tell them everything you ever knew  
5 about me." Is there one place in this case from beginning  
6 to end where I have ever sought to shield myself? To use  
7 my position or my money or my client's or my friend  
8 for myself. Gray knows better; and yet he said to you  
9 that I would sacrifice everything to save myself. I have  
10 never asked for mercy. I would die before I would ask for  
11 mercy from this gang of brigands that are and have been  
12 seeking my blood. There are things which are worse than  
13 death. I do not have to ask mercy--I can fight; and when  
14 I cannot fight, I will stop fighting; but I can still  
15 fight. I might say, in the language of the modern poet,  
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1 More than half beaten, but fearless,  
2 Facing the storm and the night;  
3 Breathless and reeling, but tearless,  
4 Here in the lull of the fight.  
5 I who bow not but before Thee,  
6 God of the fighting Clan,  
7 Lifting my fists I implore Thee,  
8 Give me the heart of a Man!

9  
10 What though I live with the winners  
11 Or perish with those who fall?  
12 Only the cowards are sinners,  
13 Fighting the fight is all.  
14 Strong is my Foe--he advances!  
15 Snapt is my blade, O Lord!  
16 See the proud banners and lancers!  
17 Oh spare me this stub of a sword!

18  
19 Give me no pity, nor spare me;  
20 Calm not the wrath of my Foe.  
21 See where he beckons to dare me!  
22 Bleeding, half beaten--I go.  
23 Not for the glory of winning,  
24 Not for the fear of the night;  
25 Shunning the battle is sinning--  
26 Oh spare me the heart to fight!

1 "Red is the mist about me;  
2 Deep is the wound in my side;  
3 'Coward' thou criest to flout me?  
4 O terrible Foe, thou hast lied!  
5 Here with my battl: before me,  
6 God of the fighting Clan,  
7 Grant that the woman who bore me  
8 Suffered to suckle a Man!"

(Brew)

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3 1 I don't like fighting. I have been a man of peace, but  
2 I have been fighting all my life; and if it is written  
3 down in the book of fate that I shall fight to the end  
4 in the city of Los Angeles, why, here we will fight it  
5 out. I have not asked quarter, and I will not. I have  
6 been treated as I believe no District Attorney ever treated  
7 a man before. I have been placed on trial after a jury  
8 had vindicated me almost without leaving their seats.  
9 I have been pursued and hounded up and down by this gang  
10 of brigands who seek my life's blood, and I am still here  
11 to fight as long as they come.

12 Let us see what else Franklin did and said. He told  
13 Nicholson, the reporter, in his office that I never gave  
14 him any money. He told Hood that another man gave it to  
15 him; and that after the crack came the man disappeared  
16 and he couldn't find him. And then what did the scoundrel  
17 do? He says Davis and I told him to tell that story.  
18 Told him--is Davis committing perjury again? Over and  
19 over he is committing it. Over and over every man you  
20 have known as honest in the community is lying to save  
21 me. They subpoenaed Henry Gage, ex-governor of this  
22 state, and did not dare to use <sup>him</sup> and I placed him on the  
23 stand to show that their claim that I hired Gage was a  
24 lie. Everything in this case has been heaped on me;  
25 I employed everybody; I did everything; no matter how  
26 many others were responsible for it at the same time,



4  
1 it is all Darrow. He is the man you must get, or else  
2 the gold of the rich is not secure. All right. Gentlemen,  
3 you may be on that <sup>side</sup> but you are not so far on that side  
4 that you are willing to send your fellowmen to the  
5 penitentiary to help them, when he has done no wrong.  
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16 T 1 He has talked, and talked, and talked from beginning to  
2 end. Even as late as March, he saw Pete Piroto, a police-  
3 man in Venice; he saw Watt, as honest a man as ever lived,  
4 who came here all the way from Montana to testify for me.  
5 Lincoln Steffens, whose friendship I am proud to claim,  
6 came all the way from New York twice to save my name;  
7 and in the meantime they are sending to Chicago/<sup>for testimony</sup> to condemn  
8 me. What do you think of those people? Gentlemen, let  
9 me tell you this: You can find me guilty--you have got the  
10 power; but if on the evidence in this case you twelve  
11 men should find me guilty, you would glorify me and write  
12 a condemnation of your souls that all the generations to  
13 come could never wash away. I would rather be in my  
14 place and serve my time than to be in yours, if you could  
15 do it. This man told Watt; told Piroto, and he told  
16 Stineman, that I never gave him a cent--and that is in  
17 March, after he plead guilty. And yet they say they don't  
18 believe these three witnesses--these are perjurers, because  
19 he wouldn't have said it after he plead guilty. And  
20 still this scoundrel went down there and sought them; he  
21 wanted to go into business with them; he opened up his  
22 heart to them and he told them the truth and it will help  
23 to save me. They would have you believe that they are  
24 perjurers. How many perjurers are there mustered in this  
25 case--20 or 30, or more--the most respectable and highest  
26 minded men who have come into the witness chair to save  
their fellow man--20 or 30, have committed the penitentiary  
crimes, and perjured their souls to save me; and the only

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1 honest men are Franklin and Harrington.

2 Let me call your attention to another thing: I will  
3 have to hurry over this, and I will leave much unsaid.  
4 Was that man there--that small, dark man, with Franklin  
5 on that morning? They asked Shober if he was not a man  
6 named Mayer; and Franklin swore on the morning before,  
7 Mayer was there with him. Shober said he saw Mayer in  
8 the District Attorney's office, and that was not the man.  
9 Let me ask you, where is Mayer? The Assistant District  
10 Attorney arose and said they couldn't find him. I don't  
11 believe him--not a word of it. There isn't a word of  
12 truth in that statement. Let me tell you: Franklin saw  
13 him in the street a week before this case opened--here  
14 a week before it began. They had their subpoenas out  
15 for weeks. They could send to Chicago to drag this  
16 infamous Harrington here; they could go to the jails and  
17 the sewers, and scrape creation to bring witnesses here;  
18 but Mayer, in Los Angeles, who they say was here, they  
19 couldn't bring. Is there any doubt about Shober's story  
20 and Franklin's story, that a man of this kind was there,  
21 and gave him that money? There is no more doubt about it,  
22 scarcely than the shining of the sun. Yet you are to dis-  
23 regard it; you are to believe I am guilty. I know better.  
24 I know I do not need to urge/you/people on that question.  
25 You couldn't do it, if you wanted to.

26 Now, they say I am guilty on account of the way I  
acted afterwards. Let us see. First Ford said to me

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on cross-examination, practically, "You are guilty, be-  
cause you did not do enough for Franklin; you didn't send  
anybody to him that morning, did you? A No."  
"Well, you are guilty, then."

AIM 1 "In the afternoon you furnished a bond for him, didn't you?  
2 Yes. Well, then, you are guilty." Pretty tough if you  
3 don't know whether you do enough or too much. You can't  
4 tell. What would you do? Suppose that it was your hired  
5 man, would you help him to furnish a bond? This too  
6 is charged to me. And yet Davis tells the story, that he  
7 went over there and Franklin said he was not guilty and  
8 that it was a job, and he asked him to get a bond for him,  
9 and he went to McNutt to go on the bond and McNutt said  
10 he would excepting his property was in his wife's name;  
11 and he came to me and asked me to give him the money, and  
12 I did; and I am guilty for that. A man would do it for  
13 his hired man, for his chauffeur, for any one. I would  
14 have been a cowardly scoundrel if I had done less; and yet  
15 they say that shows I am guilty.

16           Gentlemen, when you come to interpret the conduct  
17 and the acts of men you are getting into a field that is  
18 very dangerous and very doubtful. The most you can do is  
19 to say how you would have acted under the same circumstances,  
20 and that you can't know unless you live under those cir-  
21 cumstances. You can't tell, and nobody can tell. Take  
22 the statements of Fredericks, for instance, that I mopped  
23 my brow and my hands shook, as evidence of guilt. Do I  
24 need to talk to you about that? He showed his zeal to get  
25 me; to hire a special prosecutor to get me and shirk a  
26 burden and responsibility himself to go upon the witness

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1 stand and swear to rot like that to get me; and yet Davis  
2 says no such thing happened, and Fredericks said no such  
3 thing happened when Davis testified before. Davis relat-  
4 ed that story just exactly the same at the other trial as  
5 he does now. Fredericks cross-examined him, and Fredericks  
6 said, "I think that is so, but I don't exactly remember."  
7 But he remembers now! Now he remembers! And Gray says  
8 that is a direct confession to Fredericks. All right,  
9 gentlemen--all right. I will leave that with you.

10 Now, let's see what else they have got. I  
11 hope I won't have to say any more about Franklin. I don't  
12 like to use his name. I wish I could get somewhere where  
13 I would never see or hear of it again. It might be a good  
14 name for a dog, but it is a bad name for a man--although  
15 there might be some good Franklins for that.

16 To brace this up they call Harrington, and what  
17 does he say? Why, their theory is on the second day of  
18 September I got \$10,000 in San Francisco, because I trans-  
19 ferred one of the drafts to the Building Trades Council  
20 expense fund in San Francisco and their theory is I got  
21 the money. Ten thousand dollars is considerable money--  
22 and I had it in my pocket for thirty days! Well, if this  
23 gang had been around I wouldn't have had. Gray would  
24 have got that for fees if I had had any, and the rest of  
25 them would have got it just for their own purposes. I  
26 didn't have a safety deposit vault; I didn't have the key

3 1 to the safe. I never had, and I carried \$10,000 around  
2 in my trousers pocket! All right. And on a certain  
3 night in September, between the 20th and 30th, Harriman  
4 was there to eat off of me--Harrington, I mean. I have to  
5 apologize to Harriman, because I get the names mixed some-  
6 times. Nothing but the names, however, are similar.  
7 Harrington came there to get something to eat, and we went  
8 out on the porch of a house, upon a hill, brilliantly  
9 lighted, almost in the presence of his daughter, and Mrs.  
10 Darrow, and I pulled out a roll of bills and told him what  
11 it was and what it was for; and not only that, but we  
12 entered into considerable conversation about it. Well,  
13 now, gentlemen, I don't understand how a human mind is  
14 constituted that could believe it; that could believe it  
15 possible. It is so utterly unreasonable that even if it  
16 was, a man who said it, you would think he was mistaken.  
17 And he says again, after Franklin was arrested I came to  
18 his office at 10 o'clock on the 28th day of November, and  
19 he was alone in the office, and I took him back to my of-  
20 fice where I was alone, and I said to him, "If Franklin  
21 speaks I am ruined;" and he went away--on the 28th day of  
22 November. Now, what about that? First, it wasn't possible  
23 that I could be there. I was not there from 9 o'clock  
24 in the morning until noon, or nearly that; and then some  
25 one was with me all the time, as it so happened. I didn't  
26 go there at 10 or at 11. At about half past eleven I went

4 1 there with Davis and McNutt, and it couldn't have happened.  
2 Next, it would be utterly improbable, not to say impossible,  
3 If I had any such fool thing as that to say to him I would  
4 have probably said it to him in his own office where he  
5 was alone instead of taking him into my own and taking him  
6 back.

7 next, here is a list of the witnesses who contra-  
8 dicted Harrington--thirteen of them. It is a shame to  
9 talk about it, gentlemen. It is almost a reflection on  
10 this jury to think I have got to talk about it. And yet  
11 it is my case and I can't help it. He told Older that I  
12 had instructed him at all times, and everybody connected  
13 with it, that there should be no crooked work, and there  
14 was not, and that was on the 23rd, when Older came down,  
15 the 23rd of November, long after the scene on the porch.  
A2M 16 He told it to Davis on the day of the arrest. We told it  
17 to Balding; to Mrs. Wartenstein. We told it to Mrs. Dar-  
18 row when he was sitting with her beside the fire saving  
19 his board through the Christmas holidays, visiting with her,  
20 and seeking to entrap and ensnare her husband, either for  
21 money or to save himself. I don't know which Harrington  
22 would do the most for, to get money or to save himself.  
23 He says he doesn't know Franklin. And yet we have proven  
24 in this case conclusively that they were in daily con-  
25 sultation. They might have been, and been honest; but why  
26 have they lied about it? Why do they say they never met



5 1 more than two or three times in their lives when they were  
2 in daily consultation? We have disputed them by Russell  
3 by Shober, by Dias, by White, by Mrs. Darrow, by myself,  
4 by Bowren, by Mrs. Kernaghan, by Older, by Balding, Mrs.  
5 Hartenstein and Scott, who knows where I was and knows I  
6 was not there at that time. Now, let's see; Here are  
7 three newspaper men. Here is Bowren, sitting here in  
8 this court room with us day after day; in March he told  
9 me that he didn't know a thing against me; he couldn't  
10 give the grand jury any information excepting some unim-  
11 portant details. Now, is he trying to save me? What  
12 did the scoundrel do? He sits here on the witness  
13 stand and looked at Bowren and says, "It is a lie; I didn't  
14 say it; I never said it." He didn't explain. He said,  
15 "No, Bowren is a liar." Well, do you believe it? He told  
16 it to White, a newspaper man. He told White that he didn't  
17 know of a single thing against me; that I had done nothing  
18 dishonest. He told it to young Dias and other newspaper  
19 men; and he doesn't say he was deceiving the newspapers.  
20 Oh, no! He says they were liars and I didn't say it--  
21 every one of them are liars. And yet, gentlemen, you  
22 are asked to take away the liberty of your fellow man on  
23 the testimony of a scoundrel like that; and a man,  
24 gentlemen, who has lived in the world, who has done some  
25 work in the world, whose life is perhaps of some value to  
26 the world, who has fought for his fellows, who has fought  
in justice, who has defended the weak and the poor and the

6 1 expressed, who has never prosecuted a human since he was  
2 born, who has never asked for vengeance against any man,  
3 who has never condemned any man, who has tried to judge  
4 everybody humanly and kindly, as I wished to be judged  
5 myself.

6 (Recess taken.)

7 (Mr. Darroo continuing.)

8 Gentlemen of the jury, I know I have said more  
9 than I need to, and yet many things that I meant to tell  
10 you about I have left unsaid, and I have only three-quar-  
11 ters of an hour more to talk. Then, I will leave it to  
12 you.

13 I want to speak about the settlement. Was I  
14 intending to settle and had I settled this case on November  
15 25th or before? Gray says that I had spies in Burns'  
16 office, and that I knew before that time or before the 19th,  
17 when this began--I knew that they had information about  
18 Bain. Now, Gray can say anything excepting sense. Do you  
19 suppose if I had any information that the District Attorney  
20 knew about Bain that I could by any chance have tried to  
21 get hold of Lockwood? He knows better--if he knows any-  
22 thing. I did try to get what information I could from  
23 their office. There isn't a labor organization in the  
24 United States that Burns doesn't have his spies in, and they  
25 had them in my camp from beginning to end, and I don't know  
26 now who all they were, but I suspect that Harrington and

7 1 Franklin were two. You know it. You know they had  
2 them; and we, of course, were getting what information we  
3 could from them, as we had a right to--and we would not  
4 have been doing our duty to our clients if we had not.  
5 Now, is there any possible chance that this settlement  
6 was not practically completed before that time? ~~Let's see.~~  
7 ~~There is no doubt about our conversation in San Diego on~~  
8 ~~the 19th. There is no doubt but what Mr. Steffens came~~  
9 ~~here on the 20th; that he saw Mr. Lisaner, who sits here;~~  
10 ~~and saw Mr. Gibbon on the 20th; that on that date Meyer~~  
11 ~~Lisaner handed him that typewritten statement, eight days~~  
12 ~~before this happened--the 20th. Now, let me show you how~~  
13 ~~I know that there isn't any doubt about it that Mr. Steffens~~  
14 ~~tells the truth. That was on Monday. On Wednesday we have~~  
15 ~~the District Attorney, according to his own statement,~~  
16 ~~going down and meeting Chandler and Brand, and they show~~  
17 ~~him a copy of this typewritten statement, and Steffens says~~  
18 ~~a copy was given to Chandler. So they got it at least on~~  
19 ~~Wednesday. It came to the District Attorney on Wednesday,~~  
20 ~~or on Tuesday. He swears he didn't speak to me on Tuesday~~  
21 ~~or Wednesday. He did. But let that be as it may; he talked~~  
22 ~~to Davis on Wednesday. He told Davis about this settlement~~  
23 ~~and its progress, and he asked him what he knew about it~~  
24 ~~and why he didn't have his men come in and plead guilty--~~  
25 ~~on Wednesday! On Wednesday night I telegraphed Fremont~~  
26 ~~Older to come here and consult with him about it. Didn't~~

8 1 I believe it? is that a lie? Did he come? On Tues--  
2 day I telegraphed to Gompers and labor leaders of the  
3 east to see if they could have some one come.  
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M A S 1 On Wednesday Steffens and Davis and Older and I met to  
2 discuss it, and Davis said that the District Attorney had  
3 demanded that they both plead guilty and J.J. take a  
4 term of years, and I said it ought to be done, that other-  
5 wise we couldn't save their lives; and Davis said he  
6 objected to it for no other <sup>reason</sup> than because of the ~~fact~~  
7 effect it would have on me with labor unions; and I replied  
8 to him that I was willing to take the responsibility;  
9 that I had no right to consider anybody but my clients  
10 and I did not. And yet, Gray tells you that I was willing  
11 to destroy my clients to save myself. I, who had given  
12 everything I possessed on earth, risked it all for the  
13 benefit of those two men; willing to be misunderstood by  
14 the great mass of men who had been my friends; willing  
15 to take a serious responsibility which none of you can  
16 estimate; willing to fly in the face of the country if  
17 need be to save their lives. I had followed my duty as  
18 a lawyer as the law and the duties of the profession  
19 laid it down, that a lawyer should forget father and  
20 mother and wife and son and brother and sister and home  
21 and country and himself, and should lay all upon the altar  
22 of the client whom he is sworn to save. I did it. I  
23 did it. And, gentlemen, sometimes, when I am known as  
24 I should be known, and as I will be known, it will be  
25 written down that this settlement was one of the most  
26 successful acts that any lawyer ever accomplished in his  
career, and that very few lawyers ever lived who were

2 1 willing to stake so much upon the salvation of their  
3 2 clients as I staked upon that. And I am willing to be  
4 3 judged--I am willing to be judged on that question by  
5 4 God and by man. Would Gray have done it? Would he have  
6 5 given up fat fees after he saw any prospect to make him  
7 6 fatter still? Would he have considered his clients? Had  
8 7 I any right to consider anything else? Had I a right  
9 8 to consider Job Harriman's political prospects or my  
10 9 personal prospects or anything but those two men? Those  
11 10 lives were in my hands, and I did consider, and I acted,  
12 11 and I took the responsibility; and whatever befalls me  
13 12 I shall never regret what I did. I told them on that day,  
14 13 Wednesday, we must settle it if we could. On Thursday,  
15 14 rather. When Older came to me we went over the whole  
16 15 situation. Judge McNutt, as noble a man as I ever met,  
17 16 and as true, told me that I was right, that my duty and  
18 17 my responsibility was there, and I was right to take it,  
19 18 no matter what anyone else should say--and I took it. On  
20 19 Friday and Saturday we got back word from the east that  
21 20 the Breeter's Association was objecting to a settlement  
22 21 along the original lines; and we prepared to get ready  
23 22 for the worst, that J.J. could take a sentence if he had  
24 23 to take it. Now, let's see: Fredericks tells you that  
25 24 from Wednesday, the 22nd, until the day after Franklin  
26 25 plead guilty, no one ever talked with him about the  
26 26 settlement of this case. Now, let's see: I wonder if

3  
1 you believe it. I don't. If 400 district attorneys in-  
2 stead of one had sworn to it I wouldn't believe a word  
3 of it. It isn't true. Le Compte Davis isn't a perjurer.  
4 The facts concerning this case are not lies. His statement  
5 isn't true. Was he corresponding with the east? Now, let  
6 me ask you. Steffens says that Harry Chandler, a personal  
7 friend of Fredericks--a personal friend of Fredericks--  
8 that he got word from Otis from the east, and the first  
9 telegram he didn't let Otis see. He got another one which  
10 he did let Otis see, on Friday or Saturday. What does  
11 Fredericks say? Fredericks says he can't remember for  
12 certain whether he might or might not have seen a tele-  
13 gram, but a telegram did come to General Otis in cipher  
14 about that time and Fredericks had the cipher, the key,  
15 to the dispatch, and he went out to Otis's house and  
16 translated it. And strange to say, Fredericks can't tell  
17 this jury one single word that was in that telegram, or  
18 how it happened. Now, what do you think? Now, I will  
19 tell you something else. You can prove things by what  
20 people do not do as well by what they do. Fredericks  
21 says he had a meeting with Brand and Harry Chandler was  
22 present, on Wednesday. Steffens says that on Friday and  
23 Saturday and every day he was consulted with  
24 Chandler, who was getting word to Fredericks, and that  
25 on Friday and Saturday Chandler told him the telegram  
26 had come from the east to obstruct that settlement. Now,

4 1 there is one man anyway that knows, and that man is John  
2 D. Fredericks' personal friend, Harry Chandler. Doesn't  
3 he? Doesn't he? Harry Chandler knows whether those tele-  
4 grams came from the east. He knows <sup>whether</sup> ~~where~~ he saw John  
5 D. Fredericks. He knows whether Steffens told the truth.  
6 He knows whether Steffens came across the continent to  
7 perjurer himself to save me. He knows--and he is John D.  
8 Fredericks' personal friend, and he has not gone on the  
9 stand; and instead of that Fredericks has left out every  
10 single business man connected with this and gone on the  
11 stand and told an improbable story himself. Do you  
12 believe it? He may forget, and he may lie--I don't care  
13 which. It isn't the truth. Steffens tells the truth  
14 when he says Chandler brought him that word. And if he  
15 doesn't tell the truth then Chandler should be here to  
16 deny it, and he could deny it, but he wouldn't and he  
A 4 17 hasn't. Let's see. Fredericks says that Davis is a  
18 perjurer again when he says he saw Fredericks on Monday,  
19 the 27th, and settled this. Did he, or didn't he? Is  
20 there any other evidence? Steffens and I both testify that  
21 on Sunday we spent a large part of the day in jail--Sunday,  
22 the 26th--talking with the boys about a settlement, and  
23 they agreed to it, each to plead guilty for himself; each  
24 agreed to separately. McHutt was with us. He is dead.  
25 His daughter comes in here and swears that he was absent  
26 all day Sunday, and he told her where he was going; and  
they didn't permit her to testify where he said he was



5 1 going. Steffens and I say the agreement was made; that  
2 we asked McNutt to see Davis that night to have Davis go  
3 the next morning to see Fredericks. Did he go? Let's  
4 see. Judge McNutt's <sup>daughter</sup> comes into this court, and she swears  
5 that after her father's return home on that Sunday evening,  
6 the 26th, the first thing he did was to telephone to Le  
7 Compte Davis, and Le Compte Davis came to their house and  
8 spent three-quarters of an hour or an hour with her father--  
9 Sunday evening--the first time and the last time that Le  
10 Compte Davis was ever in their house. Have you any doubt  
11 about his errand, about why he was there? Nobody could  
12 have any doubt about it. It is as plain as the sun in  
13 the heavens. He went there for that purpose; and the  
14 next morning he went to Fredericks and arranged it, and  
15 he came back to Steffens and to me, and also to McNutt  
16 that same day, and reported it to us, and we told him to  
17 have it carried out the next morning.

18 Now, gentlemen, another thing: On the 24th, which  
19 was Friday, I received a telegram from Ed Heekels in  
20 Chicago in answer to one that I sent on the 22nd, and  
21 which should have been answered quicker, asking if he  
22 should come; and I replied on the 24th to come at once.  
23 Would I have sent him a telegram on the 24th, which was  
24 Friday, if the settlement was not in progress? If I  
25 didn't expect it? If I didn't want it? If I was <sup>not</sup> desiring  
26 to council with him if he got here in time? Every man  
knows it, and they know it. There is no more doubt but

1 what this took place beginning on the 19th than of any  
2 fact that can be proven by human evidence. It was com-  
3 plete and finished, so far as I was concerned. We were  
4 careful regarding the secret, so that it should not become  
5 public property, that it might be carried out. Suppose  
6 Davis lied to me on Monday and he didn't see Fredericks.  
7 At least, Davis and Steffens and I all testified to what  
8 he said on Monday. Are you going to say it is a lie?  
9 Suppose he didn't tell me the truth, or he was mistaken.  
10 The question isn't, was it true, but did I believe it true?  
11 On Monday--On Sunday--did I think this case was settled?  
12 No, I would have no motive to commit a crime like that  
13 even if I had the inclination to do it. But they say  
14 that on the 29th, the day after Franklin was arrested,  
15 you sent a telegram to Indianapolis saying you could spend  
16 \$1,000, and then on December the 1st, the day that he  
17 plead guilty, you sent another saying that they needn't  
18 do it--and \$1,000 for evidence. They understood. I  
19 told them about it before. They understood it this time.  
20 On the 29th, with Franklin's arrest filling the air,  
21 there was great doubt about it being finally carried  
22 through, and I was willing to do it. On December the  
23 1st it was done. Now, gentlemen, it isn't a question of  
24 whether my judgement was good or bad. It isn't a question  
25 of whether it would be wiser if I had done some other way.  
26 The question is, what did I do, and what did I think, and  
what did I honestly believe? Here were these two men.

7  
1 You men may not be accustomed to lo king at things as  
2 I am. Probably not. I have known smething of what the  
3 world calls criminals. I have found that they were much  
4 like other men. You could take them by the hand and feel  
5 the same handclasp and the same warm blood that flows  
6 through the veins of other men. The infinite God who  
7 molded their skulls and fitted the brain to the skull  
8 made them the way they are, with perhaps this thing or  
9 that not right, but barring that they were like all other  
10 human beings who breathe, You and I too may have criminal  
11 instincts in us and it may be our good fortune that fate  
12 has not thrown the right temptation across our path and  
13 made us like what Gray calls "The criminal." There isn't  
14 the difference in men that most men think. I have found  
15 what is called the criminal poor, despized, outcast--I  
16 have found that he loved his wife, his father, his mother,  
17 his brothers, his sisters. I have found them giving their  
18 lives even for their fellow man. I have found them kind  
19 and generous and human and subject to all the sympathies  
20 and the good influences of other men. I have found as  
21 I passed through the world that men are strangely,  
22 wonderfully alike; and when I see a man placing himself  
23 upon a pedestal and calling the others criminals and con-  
24 demning his fellow man, I mistrust that man.  
25  
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A5M They are not criminals. The more we know and the more we  
1 think and the more we study, we know that responsibility  
2 for human action lies with the Supreme Power, whose hand  
3 is heavy above it all; The more we know that we are blind  
4 creatures in some great game that the infinite plays,  
5 some game for his own purpose, a purpose that the wit of  
6 man cannot solve, that he moves us here and there upon the  
7 great checker board of life, and after we fill our place,  
8 the place that we must take/<sup>until</sup> in the game is done, and we go  
9 off the board forever. We are not responsible, as some  
10 men think. We go groping in the darkness along through  
11 this old, weary, tired, wornout world, doing the best we  
12 can. There come good and evil. There come good thoughts  
13 and bad thoughts. Temptations beset us--trials, tribulations.  
14 We have to bear them with the brains we have, with the  
15 energy we have, with the intelligence and the knowledge  
16 that we have, and we are not responsible and cannot be  
17 responsible for results. And so, I thought of these two  
18 poor clients of mine. Others may look upon them with  
19 infamy and with hatred. I have sat with them in their cells?  
20 I have heard them stipulate as to what should be done for  
21 their poor old mother, for their sisters, for their brother,  
22 for the few people who were left behind with nothing. I  
23 have heard them lament the sad, sad consequences that came  
24 from the destruction of the Times, which, in itself, was  
25 a great accident in the great broad sweep of things. I have  
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felt upon their human side and I knew that human side as I do of every man who lives if I can get near him--for I believed. I know it and I understand it, and I know that human lives are much alike. I knew too that although I think these men had taken the wrong method,--as I have written forever and spoken forever for peace, peace, and good will to man. I know that while I didn't believe it or advocate it, or never believed in it, I know that other men did. Misguided they may have been, and were; but I knew they had laid their lives upon the altar of what they thought was right, and I wanted to save their lives and help them all I could. If I had known of this, if I had known of the cruelty that could have come from the destruction of the Times, I would have walked here to have prevented it. No man on earth can point to any place where I ever sanctioned cruelty or the taking of life, either by the individual or by the state. Neither do I think they would have done it. But whatever the facts, they were entitled to their defense. I was bound to them by the law of my profession. And more than that, I was bound to them by my sympathies, by my feelings, by my struggle with them in a common cause, although my methods were different from theirs. I did what I could to save them. I did it honestly. I did it bravely. I have told the story before to twelve jurors. They have heard all this. They went to their room and pronounced me Not Guilty. That should have

ended it. But here I am again in the hands of this  
twelve.

I am growing older and I have grown weary of  
the fight. It isn't fair. It isn't just. It isn't human.  
If my enemies had a sense either of pity or decency it wouldn't  
have happened--but they have neither. The only sense they  
have is the money sense. It isn't fair. I have grown  
weary and tired. As the poet says:

"I am tired of tears and laughter,

Of men who laugh and weep,

For what may come hereafter

For those who sow to reap.

"Weary of days and hours,

Blown buds of vanished flowers,

Desires and dreams and powers

And everything but sleep.

"From too much love of living,

From hope and fear set free,

We thank with brief thanksgiving

Whatever God's may be.

"That no life lives forever,

That dead men rise up never,

That eve'g the weariest river

Winds somewhere straight to sea.

4 1 "There sun or star shall waken,  
2 Nor any change of light,  
3 Nor sound of water shaken,  
4 Nor any sound nor sight.  
5  
6 "Nor wintry leaves nor vernal,  
7 Nor days nor things diurnal,  
8 Only the sleep eternal  
9 In an eternal night."  
10 I am ready for that sleep.  
11 I have loved peace. I have loved my fellow men.  
12 I believed in peace. I believed in the law of love. I  
13 believe it is the greatest and most potent force in all  
14 this great universe. I have loved peace, and I have had  
15 to fight almost from the time I have opened my eyes--I  
16 have been fighting, fighting, fighting. I have grown  
17 weary of the fight. I began young. Admitted to the bar  
18 at twenty-one, living thirty-six years in the courts, and  
19 in that time no man can say I ever oppressed the poor or  
20 took cases against them or sought to condemn any human  
21 being that lived. I have loved mercy and kindness and  
22 charity and gentleness, and the best I could I have prac-  
23 ticed it as the years have come and gone. And it is  
24 for this, gentlemen, that I am here today, because I haven't  
25 condemned, I haven't judged; I have loved my fellow man;  
26 I have loved the weak; I have loved the poor; I have loved

5 1 the struggling; I have fought for their liberties, for  
2 their rights, that they might have something in this world  
3 more than the hard conditions that social life has given  
4 them. I have fought it bravely, valiantly, honestly. I  
5 have fought it all these years in that way, and I know that  
6 in no other way can any victory be won; and I am here today  
7 in the hands of you twelve men because of that long fight.

8           Gentlemen, I have done my duty in this case. I  
9 did my duty in the McNamara case. I have done my duty as  
10 the Infinite Being gave me light to see my duty, and I can  
11 be content with this verdict, whatever it shall be.  
12 I know, gentlemen--I know what it will be. But if this  
13 jury, through mistake or otherwise, perchance should con-  
14 fine me to prison, I can find work to do in prison; such  
15 work as I have done. And if I haven't so lived that I  
16 could adjust my life to such conditions so fate forces on  
17 me, then I haven't lived enough and it will do no harm for  
18 this to come. I don't want it. I don't want it for myself.  
19 I don't want it for my family. I don't want it for the  
20 millions of friends who have come around me in this bereave-  
21 ment--the millions, I may say. Not that I know, but friends  
22 that I know and friends that I don't know. The friends in  
23 Los Angeles where I was a stranger, and where they have  
24 clustered around me in my trials and tribulations to give  
25 me courage and strength and to uphold my hands; the twelve  
26 jurors who passed on my case before, and for whom I will



6

1 always feel a kind of affection that I couldn't for other  
 2 men, who have come here day after day in this trial to  
 3 give me their courage and their confidence and their cheer,  
 4 and to wish me well in this new ordeal.

A7M

5 Not long ago--not long ago I was sitting in the  
 6 depot down here at Sixth street, and near me sat an old  
 7 woman with a shawl over her head; and suddenly she turned  
 8 and looked at me and asked if this was Mr. parrov, and I  
 9 told her it was; and she took my hand and kissed it, because  
 10 she said she knew that I had been the friend of the poor.  
 11 I had rather go to the penitentiary, gentlemen, with the  
 12 kiss of that poor woman on my hand than to live in a palace  
 13 purchased at the price of my dishonor and my shame. I could  
 14 have hunted with the wolves, but I did not, and I would  
 15 not. I have brains enough to know that that path is easy.  
 16 I know that all the good things in the world come to those  
 17 who play with them. I have passed it aside; turned away  
 18 office, position, wealth, to follow my own life. I don't  
 19 deserve credit. I couldn't have done it; it isn't in my  
 20 being. I could have done nothing else. I didn't even  
 21 choose my road. Somewhere away back in the past there was  
 22 planted in me or my ancestors certain seeds which I deem  
 23 are seeds of richness, which took possession of my being.  
 24 The infinite God knows; I don't know. I was born with the  
 25 feelings I have. I have lived them the best I could. I  
 26 could travel no other road, and I am satisfied with what

7 1 befalls me in the road that I have traveled.

2           Gentlemen of the jury, there is nothing to this  
3 case--nothing. There isn't a man here would condemn an  
4 enemy on it, let alone me--and I know it. And yet I have  
5 been forced to fight, to fight the second time, and here  
6 I am.

7           I have enemies, strong, powerful, influential,  
8 who are seeking to accomplish my ruin. I have friends.  
9 I have friends who are good and noble and true. I have  
10 friends who never saw my face or heard my voice. I know  
11 that today--today--where men toil with their hands; where  
12 women, worn and weak and weary are sewing at their daily  
13 task, I know there are prayers going up in my behalf that  
14 they may reach the hearts of those twelve men who hold  
15 my fate. I know that there are sewing girls in great cities  
16 who, bidding over their task, will drop a briny tear upon  
17 their needle which will be stitched into the garments that  
18 the rich will wear. I know that wherever the poor and  
19 the weak, wherever they are brought together, they are  
20 hoping and praying that you twelve men will save the life  
21 and the liberty of a man who has fought their fight and  
22 battled for them. It is more to them than it is to me.  
23 I can live here. I can live there. I can live wherever  
24 you say, but I choose to be free. I choose to be vindicated  
25 again, as I have been before--and I deserve it too.  
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Gentlemen, it is with you--in the hands of these twelve men, strangers--strangers in a strange land; after my long career, after my hard fight, after all the bitterness and hatred of the past, I come to you worn and weary, and tired, and submit my fate, the fate of my family, and the hopes and the fears and the prayers of my friends, to you.

THE COURT. We will take a recess now.

(Jury admonished by the Court, and a recess taken until 1:30 P.M. this day.)

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4156

4157 *Continuation*