

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
2 IN AND FOR THE COUNTY OF LOS ANGELES.

3  
4 PEOPLE OF THE STATE OF CALIFORNIA,

5 VS

6 J. J. McNAMARA  
7 and  
8 J. B. McNAMARA.

PLAINTIFF'S AFFIDAVIT  
ON DEFENDANTS' MOTION  
TO TRANSFER CASE TO  
ANOTHER DEPARTMENT OR  
TO CALL ANOTHER JUDGE  
TO TRY THE CASE.

9 STATE OF CALIFORNIA }  
10 COUNTY OF LOS ANGELES } SS

11 Walter Bordwell, being first duly sworn, deposes and says:

12 That he is, and at all times herein mentioned was, a duly qual-  
13 ified and acting judge of the above named court; that on the 5th  
14 day of May, 1911, the Grand Jury of said county, being then and there  
15 duly impaneled, returned nineteen indictments against J. J. McNamara,  
16 J. B. McNamara, and others, each of said indictments charging them  
17 with the crime of murder; that said indictments were so returned  
18 in Department Nine of said court, wherein affiant was then presiding.

19 That on said 5th day of May, 1911, Honorable George H. Hutton  
20 was acting as Presiding Judge of said court; that on said date the  
21 said Presiding Judge, pursuant to the rules of court requiring him  
22 to select the departments to which cases should be assigned, duly  
23 assigned the cases, growing out of said indictments, to said Depart-  
24 ment Nine, wherein affiant then presided, and now presides.

25 That said assignment of said cases, growing out of said indict-  
26 ments, to Department Nine, aforesaid, was not made upon any motion  
27 or upon any individual election or effort on the part of affiant.

28 Affiant further says that he had nothing whatever to do with the  
29 issuance of the order directed to one Harrington to show cause why  
30 he should not be punished for contempt, referred to in the affida-  
31 vits of defendants filed herein, either as Judge of Department Nine,  
32 or otherwise, or at all, but on the contrary, affiant says that said

1 order was made by the then Presiding Judge of said court, to wit,  
2 Judge Hutton. Affiant further says that he did not order or direct  
3 the arrest of said Harrington referred to in said affidavits, nor  
4 did he have anything to do with fixing the bond under which said  
5 Harrington was placed.

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7 Affiant further says that the said order to show cause came reg-  
8 ularly on for hearing before him, as Judge of Department Nine, for  
9 the reason that the cause had been regularly assigned to said depart-  
10 ment by Presiding Judge Hutton, and said affiant was the duly ap-  
11 pointed and acting judge of said department, and that said affiant,  
12 as judge of said department, made the order directing said Harring-  
13 ton to appear before the Grand Jury of the County of Los Angeles  
14 and answer the questions propounded by the District Attorney and his  
15 deputies, for the reason that the showing there made was such that  
16 this affiant was of the opinion that upon the facts presented the  
17 law required, in the furtherance of justice and the administration  
18 thereof, that such order should be made; that there was not at any  
19 time brought to the attention of affiant, either as Judge of said  
20 Department Nine, or otherwise, or at all, any unfair or unjust con-  
21 duct on the part of the District Attorney of said county.

22 Affiant denies the allegation of said defendants in their affi-  
23 davit filed herein wherein they say:

24 "Nor did he permit affiants' counsel to enter upon said mat-  
25 ter or to argue the same."

26 in which allegation reference is had to this affiant as Judge of  
27 said Department Nine, but on the contrary, this affiant alleges  
28 that the counsel for said defendants, the McNamaras, did file affi-  
29 davits in response to said order to show cause, and did, on Friday,  
30 the 22nd day of September, 1911, present and argue the matters in-  
31 volved in said order to show cause for more than one hour, and that  
32 thereupon this affiant took said order to show cause and the answer  
thereto and the affidavits filed in support of said answer under  
advisement until the following Monday.

Affiant further says that at no time or place did he ever de-

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clare from the bench, or otherwise, that he instructed the Grand Jury to enter upon the or any inquiry as to whether or not said defendants, the McMarras, their agents, and attorneys, had been tampering or interfering with the witnesses in the case; but, on the contrary, affiant avers that what he did state to the Grand Jury, in substance, was as follows:

"That the Grand Jury had no right to investigate or hunt up evidence in a case after they had returned an indictment therein, but that they always did have the right to investigate any crime that was presented to them upon which they had not already passed, whether such crime consisted of bribery or attempted bribery, or other unlawful interference with or influence of, or attempt to so interfere with or influence, witnesses to be, or who might be, called before the court to testify in any case, and that they would receive the commendation of the court at all times for so doing;"

that this advice to the jury was entirely general in its nature, and was not directed specifically against these defendants, their agents or attorneys.

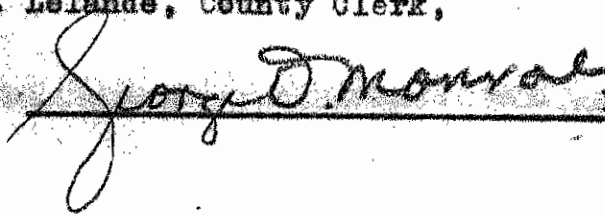
Affiant further says that on the Monday to which said order to show cause was continued counsel for said defendants attempted further to argue said order to show cause, and it appearing that said counsel were only repeating the arguments of the previous Friday, and the said affiant, sitting as judge of said court, deeming himself fully advised concerning the matter, declined to hear further argument, and ordered the said Harrington to answer the questions propounded to him before the said Grand Jury.

Affiant further says that the defendants herein, the McMarras, are each and both entire strangers to him; that he does not now entertain, nor has he ever entertained, any sentiment of hostility to them, or either of them; that he has no hatred, malice or ill-will toward them, or either of them; that he has not heretofore taken any action, judicial or otherwise, with reference to them, or either of them, or with reference to any of their agents, attorneys or employes, from any motives of hostility, hatred or ill-will whatever, but that each and all of his judicial acts heretofore in said cause have resulted solely from his opinion that under

1 the facts and law presented to him the furtherance of justice and  
2 the correct administration thereof demanded that the orders should  
3 be made by him as they were made. That he has not now, nor has  
4 he ever had, any bias or prejudice whatever against either of  
5 said defendants, the Mellamars, or any of their attorneys or agents.

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12 Subscribed and sworn to before  
13 me this 11th day of October, 1911,  
14 H. J. Lelande, County Clerk,  
15 By

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17 Deputy.  
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