

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,

Plaintiff,

vs.

No. 7373.

Clarence Darrow,

Defendant.

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REPORTERS' TRANSCRIPT.

VOL. 11

I N D E X.

Direct.	Cross.	Re-D.	Re-C.
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Bert H Franklin,

839

Henry H. Flather,

908

B. N. Smith,  
Official Reporter.

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2 o'clock P.M.

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Defendant in court with counsel.

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THE COURT: The jury are present, gentlemen; you may proceed.

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BERT H. FRANKLIN, on the stand for

7

further cross-examination:

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MR ROGERS: Mr Franklin, do you know Mr D M Williams who

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sits here -- Willard -- Mr D M Willard who sits here?

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A By sight, yes sir.

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Q Do you know Mr Pearson of the Associated Press, also

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Mr Willard of the Associated Press? A I might know him

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when I see him. If he is here and you will point him out

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I will testify.

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Q Did Mr Pearson ever introduce you to Mr Willard?

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A I don't remember Mr Pearson. I think somebody connected

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with the Associated Press introduced me to this gentleman.

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Q In Justice Young's court just after you were arraigned

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did you say to Mr Willard, who sits there: "I cannot talk

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about my case until it comes up for trial in the Superior

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Court, except one thing: Mr Darrow knows nothing about this

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affair and you can make that as broad as you like", and

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while you said it did you put your hand up and down in that

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fashion as I have indicated? A I did not. Now I will tell

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you what I did say to him --

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Q You did not say that? A I did not.

1 Q Do you know Mr Jones who sits here, Mr Harry H Jones?

2 A Very well, yes sir.

3 Q Did you ever say this to Mr Jones, during the prelimin-  
4 are examination of the Lockwood case in Department 9 of the  
5 Superior Court, the room of Department 9 of the Superior  
6 Court, before Justice William Young -- A You mean the  
7 Justice's Court?

8 Q Yes. Lockwood had just then testified that you had  
9 mentioned the name of Darrow during the bribery transactions.  
10 When Lockwood left the stand you said to Mr Jones "Any man  
11 who says I mentioned Darrow's name at that time is a God  
12 Damn liar. I might be guilty of all I am charged with, but  
13 I am not a damned fool. I certainly am not going to drag  
14 an innocent man into this thing." A I said all of it except  
15 the last part that you put onto the end of it.

16 Q I didn't put it on the end. A Well, that you read on  
17 the end of it. All except that part, Mr Rogers.

18 Q You didn't say to Mr Jones, then, "I certainly am not  
19 going to drag an innocent man into this thing"?

20 A I did not, him or nobody else. All the statements that  
21 you have alluded to at Judge Young's court were to the effect  
22 as you have stated in that particular statement except the  
23 latter part of it.

24 Q You know where they got the latter part? A I said it  
25 deliberately, and upon advice, Mr Rogers.

26 Q What is that you say? A I said it deliberately and

1 upon advice.

2 Q Being advised by the District Attorney; you say "deliber-  
3 ately and on advice? A I didn't need the advice of the  
4 Distri~~ct~~ Attorney to know what to say to you or anybody else.

5 Q You'd better take it. A When I am telling the truth.  
6 If I started to lie I would need considerable advice, and I  
7 would probably know who to go to to get it.

8 Q You needn't come to me, if that is the point you make.  
9 Did you not make the same statement that I have read from  
10 and made to Mr Timmons of the Examiner who sits here?

11 A Pardon me?

12 Q Mr Timmons, of the Examiner, "I certainly am not going  
13 to drag an innocent man into this thing"? A Read the  
14 whole statement.

15 Q I read it to you a moment ago. A Read it again.

16 Q "Any man who says I mentioned Darrow's name at that time  
17 was a God damn liar. I may be guilty of all I am charged  
18 with, but I am not a damned fool", or words to that effect?

19 "I certainly am not going to drag an innocent man into this  
20 thing. A I said almost exactly the words you used,  
21 to Mr Timmons, with the exception of the latter part. I did  
22 not say that to him or anybody else.

23 Q "I am not going to drag an innocent man into this thing"?

24 A No sir, I did not.

25 Q Did you say words to that effect to Mr White of the  
26 Express?

1 MR FORD: At the same place?

2 MR ROGERS: At the same place.

3 A Which is Mr White?

4 MR ROGERS: He is not here.

5 A I don't know him.

6 Q But did you say it to him? A I don't know him.

7 Q You did not say it to him? A I don't know him.

8 Q Did you say it to anybody that might resemble Mr White  
9 a white man for instance.

10 MR FORD: Just a moment. We object to that as there is no  
11 foundation laid as to time, place, or persons present. We  
12 want to know the white man,

13 MR ROGERS: White of the Express, a reporter.

14 MR FORD: He said he didn't know him.

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2s  
1 A I made that statement, Mr. Rogers, in the presence of  
2 several reporters at Judge Young's court, all except the  
3 latter part of it. I did not make that statement to anybody  
4 at any time at any place nor anything that could be con-  
5 strued as meaning that. I was maintaining my own innocence  
6 at that time.

7 Q You know Joe Musgrave? A Not by name. I may know him  
8 by sight.

9 Q He was formerly manager, I think, or associated with  
10 Bush's Hat Store at the corner of Second and Broadway.

11 A I may know him by sight.

12 Q He is a young lawyer, now, just been admitted to practice

13 A Really, Mr. Rogers, I don't remember him. If I did I  
14 would say so.

15 Q Did you ever buy any goods there in Bush's place? A Buy  
16 almost all of my goods there, yes, sir.

17 Q You know where Bush's store is? A Very well.

18 Q Don't you know a man they call Joe in that store?

19 A No, I don't think I do. If you point him out I would  
20 know him in a second. Whether I knew him or not. I know  
21 a great many men by face and I don't know the name. If he  
22 worked in there I know him, in the last ten years--no doubt  
23 but what I do if he worked there.

24 Q Now, did you say to Mr. Musgrave about the 5th or 6th  
25 of December while you were buying goods there as follows:  
26 That you could not afford to spend much money or create  
much indebtedness, as you were under a serious charge and

1 stood a chance of going to the penitentiary, but that  
2 you had lived in Los Angeles too long and had too many  
3 friends in town and that you would not go but would get out  
4 all right. That you were playing your cards and that before  
5 you would go to the penitentiary you would put in some one  
6 else? A I did not, or language that could possibly be con-  
7 srued as meaning that. I did buy some goods about that  
8 time but I didn't ask him anything about credit or any-  
9 thing of the kind. I paid for them. I may have told him I  
10 didn't want to spend too much money. I was at that time  
11 getting goods for the wedding of my daughter and buying  
12 them.

13 Q Do you know Adams Dixon Warner? A yes, sir. very well.

14 Q You know who I mean, now, do you? A yes, everybody  
15 knows him all over the state.

16 Q Did he come over to you speaking about a job looking up  
17 jurors? A yes, sir, he was sent there by Mr. Darrow.

18 Q Well, he came over, no matter who sent him? A Well,  
19 I know, but he was sent by Mr. Darrow, came with a note  
20 from Mr. Darrow.

21 Q He came, at any rate? A yes, sir, he came.

22 Q Did you have any conversation with him? A we didn't  
23 get a job either. yes, sir, I did.

24 Q Did you say to him there that you didn't have a job  
25 then that you were not quite ready but that you might have  
26 one later on? A No, sir, I did not.

1 MR. FREDERICKS • Just a moment--that is objected to upon  
2 the ground no foundation has been laid; it is irrelevant  
3 and immaterial.

4 MR. ROGERS • That is only part of it. I will get down to  
5 the material part.

6 MR. FREDERICKS. There has been no foundation laid to the  
7 time.

8 THE COURT. Well, it is answered. It is immaterial, as coun-  
9 sel says, but it is a foundation, go ahead.

10 MR. ROGERS. Q Do you remember saying to Mr. Warner at  
11 that time as a part of that conversation--I will give you  
12 all of it--

13 MR. FORD. Before you finish the question I don't think  
14 you laid the time.

15 MR. ROGERS. At his office in the Chamber of Commerce Building  
16 in this city on Broadway between First and Second and the  
17 time, approximately the commencement of the McNamara case,  
18 which was about the 10th of October, and possibly a little  
19 before that? A About when?

20 Q Well, a little before the commencement of the McNamara  
21 case, do you recall the incident? A I recall him being  
22 there, yes, sir.

23 Q Well, was there more than once? A Yes, sir.

24 Q How many times? A Twice, to my recollection.

25 Q Well, the first time is the time I am talking about.

26 A All right, what is it you want?



1 Q You remember having any conversation with him in which  
2 you had a list of jurors, the names in front of you and  
3 saying as you patted the list of names with your fingers  
4 like this, "There is an angle to this thing. I am going to  
5 win this thing myself right here. There is an angle to  
6 this thing that Mr. Darrow nor any of them know anything  
7 about? A No, sir, I did not.

8 Q Nor any words to that effect? A I didn't discuss the  
9 M. Namara case with that gentleman nor would I. He is too  
10 well known to everybody and I so reported to Mr. Darrow.

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1 Q Any better known than you are? A Not now, at that  
2 time he was.

3 Q Yougot in his class? A I admitted my wrongdoing here  
4 and every place else. I don't deny it.

5 Q Now, you know Mr. Dominguez? A Very well.

6 Q Will you be kind enough to repeat now what Frank  
7 Dominguez said to you there inthe Majestic Saloon? A Yes.

8 Q Go ahead.

9 MR. FORD. Just a moment--I believe that was gone into  
10 this morning and he repeated it.

11 MR. ROGERS. I have a right to ask him so it can--

12 MR. FORD. Asked and answered, objected to on that ground.

13 THE COURT. Overruled.

14 A As near as I remember that conversatiøn, Mr. Dominguez  
15 said, "Bert, I am sorry to see you in trouble, and I don't  
16 know whether you are guilty with what you are charged, but  
17 if you are there is somebody behind you and Mr. Darrow gave  
18 youthe money to do what you did with." And there he sits  
19 right there now and I tell it to his face, and he knows  
20 that is what I said.

21 Q Go on and tell the rest of it if you say that hapened.

22 A That is what happened.

23 Q Go on and tell the rest of it? A That is what happened.

24 Q ,sthat all that happened? A I told him not to mix Mr.  
25 Darrow in this case, that Mr Darrow had treated me nicely  
26 and was a splendid gentleman, and I was glad to work for

1 him, that is what I told him.

2 Q Anything else? A He has tried to make me say since  
3 that time I said it but I denied it.

4 Q Did you tell Mr. Dominguez right then and there Mr.  
5 Parrow was an innocent man, use those words? A I did  
6 not.

7 Q You have told the conversation as you say it was, have  
8 you, and all of it? A I couldn't say that I have told  
9 it all. I have told all that I remember.

10 Q Go on and remember any more that you can. A He said  
11 that there wouldn't anybody ever accuse me of having  
12 \$4,000 of my own. I then agreed with him.

13 Q Tell what <sup>else</sup> was said about the \$4,000? A That is about  
14 all I remember.

15 Q You don't remember any more? A Not at this time. If  
16 you refresh my memory I may.

17 Q Try and think of it some more, think of it and see.

18 A I am thinking all the time.

19 Q Go ahead and think quietly and see if you can remember  
20 any more.

21 MR. FORD. I think the witness is entitled to have the  
22 question put to him, if it is an impeaching question.

23 While we have made no objection to his testifying to conver-  
24 sations, yet the proper way is to put the impeaching  
25 question straight to him in the form they claim it occurred  
26 and ask him if he so testified or whether he testified in  
substance. We object to that on the ground no proper

1 foundation has been laid.

2 THE COURT. There is no question before the court at this  
3 time.

4 MR. ROGERS. Q I am asking you to relate any conversation  
5 about the \$4,000, to think of it and remember it, if you  
6 can.

7 MR. FORD. We object to that on the ground it is not the  
8 proper form of an impeaching question, incompetent, irrele-  
9 vant and immaterial, no foundation laid.

10 THE COURT. Objection overruled.

11 A I think Mr. Drain spoke up and said, "Yes, Bert, I  
12 wouldn't think you had so much money and if there is any-  
13 thing of that kind there must be somebody behind you  
14 besides yourself. Mr. John H. Drain, Ex-Street Superinten-  
15 dent, in the presence of F. M. Nicholl, ex councilman, and  
16 this gentleman here, Mr. Dominguez.

17 Q Are you sure that Nicholl was there? A I am yes, sir;  
18 yes, sir, he was there during part of the conversation at  
19 least.

20 Q Didn't you say to Mr. Dominguez right then and there  
21 that Darrow never gave you a dollar for any corrupt pur-  
22 poses? A I did not.

23 Q Or words to that effect. A No, nor words to that  
24 effect, nor anything that sounded like that in the least  
25 way. I was maintaining my own innocence.

26 Q At that conversation did you mention the name of Captain

1 Fredericks? A I don,t remember, Mr. Rogers, if I did,  
2 but Mr. Dominguez will coach you on what to say and I will  
3 answer it.

4 Q All right, I will ask him what you said. A All, right,  
5 you seem to need the help all right.

6 Q On that occasion didn't you say to Mr. Dominguez and Mr.  
7 Drain, "now, boys, don't attack Captain Fredericks in this  
8 thing, he is my friend and he is your friend. I see him  
9 every time I please and he is my friend"? A I did not.

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4P 1 Q Nor anything like that? A I didn't. If there was any-  
2 thing said about Captain Fredericks I would have said he was  
3 my friend. I have always said that and I say so yet, and I  
4 am not ashamed to acknowledge it.

5 Q On that occasion didn't Mr Dominguez say "Well, Bert, I  
6 am sorry to see you in this trouble", and didn't you say to  
7 him then "Oh, don't worry about me; I will get out of this  
8 all right"? A He said he was sorry to see me in that  
9 trouble.

10 Q What did you answer? A But I didn't say the latter  
11 part of your statement, no sir.

12 Q Or anything like it? A No sir. I may have said not to  
13 worry about me, I don't know; I may have done it, it is  
14 natural that I should. I was not playing the baby act, and  
15 never have.

16 Q Anything more on that subject, do you desire to answer  
17 it any further? A If I think of anything further I will  
18 tell you.

19 Q Well, go ahead. A I don't think of anything else  
20 just now.

21 Q Now, on the Sunday afternoon when you met Mr Darrow and  
22 Mr Davis in Mr Davis' office you remember the time, do you,  
23 after your arrest? A I do not. I met him in Mr Rush's  
24 office.

25 Q In Mr Rush's office? A Yes, in Mr Rush's office.

26 Q Well, Mr Davis and Mr Rush are partners, and the office

1 is the office of Davis & Rush, isn't it? A They don't oc-  
2 cupy the same rooms, no.

3 Q One has a private office and the other has a private  
4 office? A It was in Mr Rush's room.

5 Q All right, it was in Mr Rush's room. A Yes sir.

6 Q Do you remember saying then to Mr Davis and Mr Darrow,  
7 "The District Attorney has sent Colonel Tom Johnson to me and  
8 told me that if I will come through against Darrow I will get  
9 nothing but a fine, and that they will take the money that  
10 they have to pay the fine?" A No sir, I didn't. I told  
11 them, I think at that time on some occasion, Mr Rogers, that  
12 they had sent or Mr Johnson had said he had come from Mr Ford.  
13 Whether he did or not, I don't know.

14 Q Now, did you further say to them on that occasion that  
15 Colonel Tom Johnson had told you that the District Attorney  
16 had said that you, if you knew anything against any man other  
17 than Mr Darrow, any local man, any Los Angeles man, you need  
18 not tell it? A He did not.

19 Q "If you will come through against Darrow"? A No, I did  
20 not say that and Mr Johnson didn't say that.

21 Q Did you say that to Davis and Darrow at that time?

22 A I did not.

23 Q Or anything like it? A I did not.

24 Q Did you mention Colonel Tom Johnson? A I told them  
25 Mr Johnson had told me that, but not coming from the District  
26 Attorney.

1 Q You told them that Colonel Tom Johnson told you that?

2 A Yes, that is what he advised me, and I paid him for his  
3 advice before he gave it.

4 Q Didn't Colonel Tom Johnson tell you that, that I have  
5 just given you? A He did. What I have said, not what you  
6 gave me, what I said he said.

7 Q What do you say he said, anyhow? A I said that he  
8 said if it was necessary to mix up anybody else, any local  
9 man, in a fight of this kind to keep my mough shut. That is  
10 what he said, and that is what I told Mr Darrow and Mr Davis.  
11 I thanked him and paid him and that is all there was to it.

12 Q How many times did you ever see Colonel Tom Johnson?

13 A Twice.

13 Q Where? A Waldorf Saloon.

14 Q Where? A At the Waldorf Cafe and Saloon.

15 Q Did you, at the first conversation you had there, or the  
16 second, with Colonel Tom Johnson, ask him to go to the  
17 District Attorney's office and see if he could get the case  
18 continued for a month? A I did not.

19 Q Did you telephone to Johnson and ask him that?

20 A I did not.

21 Q Did you say anything to him about going to the District  
22 AAttorney's office? A I did not.

23 Q Did you say that if you would get your case continued  
24 you could find the man who gave you the money to bribe the  
25 jurors? A I did not. I said the latter part of it, I said  
26 that to Mr Johnson, and I said that to two other people, two



1 different people. I will tell you who they are, if you want  
2 to know.

3 Q I will come to that in a moment. Who were they, by the  
4 way? We might as well take them down now. A Irwin Dingle  
5 and Mr Ford.

6 Q Irwin Dingle and Mr Ford? A Yes sir.

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1 Q We will get down to Mr. Dingle in a short while. A I  
2 have no doubt. I did that at the suggestion of this  
3 gentleman, Mr. Darrow, understand that, at all times.

4 Q Why didn't you mention that when I went over the  
5 conversations with you? A That is the very thing I told  
6 you about on direct examination, that is the play we were  
7 to make and I told him Mr. Ford never would believe it and  
8 he didn't.

9 Q Did you say Darrow told you that? A Yes, both of them,  
10 Davis and Darrow together.

11 Q Did you say that Darrow told you that? A I don't  
12 remember. He did.

13 Q Why didn't you say it on direct examination? A I don't  
14 know, it didn't come to my mind, perhaps.

15 Q Didn't come to your mind. It comes to your mind now  
16 when you are cornered.

17 MR. FREDERICKS That is objected to as assuming a fact  
18 not in evidence. The witness on direct examination made  
19 that statement.

20 MR. ROGERS. He did not.

21 MR. FREDERICKS. yes, he did, and he went on and narrated  
22 it would be like a boy that claimed he had bought a bicycle.

23 THE COURT. Objection sustained.

24 MR. ROGERS. We will look that up right now.

25 MR. FREDERICKS Yes, it was made there when Davis and Darrow  
26 and this witness were together.

1 MR. APPEL. He was asked what Mr. Darrow said about that  
 2 and he said nothing and I move to strike that testimony  
 3 out because I remember making the argument because it  
 4 was not everything that somebody had said in the presence  
 5 of the defendant was admissible, it was hearsay, I remember  
 6 that.

7 MR. FREDERICKS. What he said Darrow said nothing to was  
 8 when Davis said "We will pay you \$5,000 and \$3,000 more."

9 THE COURT. The objection is sustained, unless counsel can  
 10 call my attention to the record.

11 MR. ROGERS. We will call your attention to the record.

12 Q Did you further say to Col. Tom Johnson at the time that  
 13 Darrow never gave you a dollar of money for Lockwood or for  
 14 any one else for the purpose of bribes and Darrow knew nothing  
 15 about any attempts to bribe any jurors? A No, I  
 16 didn't.

17 Q Did you say at that time that you could find the man that  
 18 gave you the money, that it might take a little time and  
 19 you didn't have the money yourself, but if the district  
 20 attorney's office would furnish the detectives you could  
 21 land him in a few days. Did you say that to Col. Tom  
 22 Johnson at that time? A I may have said that in effect,  
 23 yes, sir.

24 Q You did? A I may have said it in effect.

25 Q Did you say that Darrow never gave you a dollar of money  
 26 for Lockwood or anybody else for the purpose of bribes and

1 that Darrow knew nothing about any bribes or attempts to  
2 bribe any jurors? A I did not.

3 Q Now, when Col. Tom Johnson came back to you the second  
4 time he told you he had been to the district attorney's  
5 office, did he not? A Yes, sir.

6 Q And that the district attorney's office would not take  
7 that statement? A He did not.

8 Q And that they had evidence enough to send both Franklin  
9 and Darrow--that is, yourself and Darrow to the penitentiary

10 and that if you didn't come across you would go to the  
11 penitentiary and didn't you thereupon say to Johnson that

12 you knew you would never get immunity unless you named  
13 Darrow, that neither Darrow nor Davis knew anything about  
14 it and you would be telling a damned lie if you said you  
15 did? A No, sir, I did not.

16 Q And didn't Col. Tom Johnson say to you that you ought  
17 not to tell a lie no matter what happens? A No, sir,  
18 he did not nor I didn't make any such statement to him.

19 Q Nor, words to that effect? <sup>A</sup> No, nor words to ~~that~~  
20 effect. <sub>A</sub>

21 Q Do you know a Mr. Watt of Venice? A Very well-- well,  
22 not very well; I know him.

23 Q Have you been down at Venice recently, say in March?

24 A Yes, sir.

25 Q Did you see Mr. Watt down there? A I did.

26 Q Did you have dinner with him and a policeman named

1 Pirotte? A Yes, sir.

2 Q At the Casino? A Yes, sir.

3 Q Anybody present at that dinner? A No, sir.

4 Q Nobody else? A No, sir; not that I remember of, I  
5 don't think there was.

6 Q You know Pirotte then, do you? A yes, sir, slightly.

7 Q He is an officer at Venice? A Yes, sir.

8 Q Did you go to him and ask him about opening a detective  
9 agency at Venice? A I did not. I met him and spoke to him  
10 about it.

11 Q You met him and spoke to him about it. You talked to  
12 him about opening a detective agency at Venice, did you?

13 A I did.

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~~62~~ 1 Q Did you suggest that he interest himself with you?

2 A I did. Not at that conversation, though, not the first  
3 time I met him.

4 Q Well, at approximately that first conversation, very  
5 shortly afterwards? A Quite a while afterwards.

6 Q Did Pirotte say to you -- A When?

7 Q --at the time you mentioned to him the going into a  
8 detective office together, didn't Pirotte say to you that you  
9 were in some sort of trouble? A Pardon me, he never  
10 mentioned coming in with me in any office.

11 Q Well, what was it? A When do you mean?

12 Q I mean the time you talked of opening that detective  
13 agency down there with Pirotte? A I spoke to Mr Pirotte,  
14 or whatever you call him, Pete.

15 Q They call him Pete? A Yes, Pete.

16 Q Pete Pirotte. A On the walk just out of the main  
17 street of Ocean Park, I think it was on one Sunday afternoon,  
18 and asked him what he thought the prospects would be for  
19 opening an office, whether he thought it would be a good  
20 thing or not. He said he thought it would, and I told him I  
21 had been thinking seriously of opening an office in that  
22 town, and that was about all of the conversation at that time,  
23 that I remember.

24 Q Did you meet him again when the matter of the opening of  
25 an agency came up? A He came up to see me at my office  
26 some time later.

1 Q Did he mention then or at any of these conversations,  
2 this, that you were in some kind of trouble and that he did  
3 not think it was a good time to start an office while you  
4 were in trouble? A He did not, no sir.

5 Q Did you then say to him, "Why, I am going to get out of  
6 that all right; the District Attorney does not want me,  
7 they want Darrow"? A I did not.

8 Q Didn't you, as a matter of fact, tell him that the  
9 District Attorney's office wanted to get Darrow and that you  
10 were going to get out all right? A I did not.

11 Q Nor anything of that kind? A I would never have said  
12 it, because I knew what he was there for before he said ten  
13 words, him and Mr Watt and Mr Stineman, that you would bring  
14 up later, at Venice, it was easy, it was easy for a man that  
15 is an amateur like I am.

16 Q You mean being<sup>a</sup> smart detective, do you mean easy like  
17 I am? A I beg your pardon.

18 Q Never mind. You saw Pirotte again after you plead  
19 guilty, didn't you? A I think so, yes sir.

20 Q How many times did you see Pirotte down at Venice?  
21 A I saw him at my office next.

S 22 Q How many times did you see him down at Venice?  
23 A Oh, perhaps four or five times.

24 Q Perhaps four or five times? A Perhaps so.

25 Q Who was present at any of these conversations?

26 A Mr Watt present at a couple of them.

1 Q Anybody else? A Not at Venice, no sir.

2 Q Within hearing at Venice? A I don't think so, unless  
3 they were hid around there some where.

4 Q Now, after you had plead guilty in the Bain case, did  
5 you tell Pirotte at Venice that they were not going to do  
6 anything with you in the Lockwood case, but were holding it  
7 over your head to make you testify against Darrow, that even  
8 if they wanted to do anything with you they couldn't, because  
9 you already had immunity and, as a matter of fact, Lockwood  
10 and Fredericks and you were confederates, anyhow, or words  
11 to that effect? A No, no; nothing of that kind at all.

12 I might have said to him that on a charge of that kind the  
13 testimony of a confederate or co-conspirator would have to  
14 be corrobbrated. I may have said that to him, I don't rem-  
15 ember that.

16 Q In what connection? A Oh, I don't remember that; I  
17 don't remember of saying it to him. I may have done it.

18 Q You deny the rest of the conversation? A I do.

19 Q In any words or substance like it? A Yes sir, abso-  
20 lutely. I was very guarded in what I said to him.

21 Q Did you say to him at any time, -- I mention this  
22 dinner at the Casino, Mr Watt being present and I think Mr  
23 Stineman? A I never ate lunch with Mr Stineman.

24 Q Then Mr Stineman not present but Mr Watt being present,  
25 did you say to him there that Darrow never gave you any  
26 money to bribe any juror or knew anything about it?

A I did not.



1 MR. FREDERICKS. Just a moment, the witness answered so  
2 quick, I want to object upon the ground that the time was  
3 not stated.

4 MR. ROGERS. The object of the time is only to call his  
5 attention to it. He mentions an incident of a dinner at  
6 the Casino and that is all that is necessary he know. He  
7 knows what time it is himself. He remembers the incident  
8 and that is all that the foundation is for.

9 MR. FORD. And the jury and the prosecution has no right  
10 to know about it.

11 MR. ROGERS. The jury has every right to know about it.  
12 All the witness has to do is to comprehend the time, and  
13 when he says that it isn't necessary for the rest of us.

14 THE COURT. I think the time should be fixed.

15 MR. FREDERICKS. The time should be fixed for the sake of  
16 the jury.

17 THE COURT. Question stricken out and objection sustained.

18 MR. ROGERS. All right, we will say about March 7th or  
19 thereabouts, possibly a little later, you remember the  
20 time, don't you, when you took dinner down there to the  
21 Casina with Pirotte and Watt? A Yes, sir.

22 Q You comprehend the time well enough? A I remember the  
23 occurrence of taking dinner with them, I think twice as  
24 far as that is concerned.

25 Q Well, at about that time in March when you did take  
26 dinner at the Casino with Pirotte and Watt?

1 A I couldn't say it was in March.

2 Q What time was it? A I don't know. If you will allow  
3 me to refresh my memory, I have it down in a book.

4 Q Go ahead and refresh your recollection. A I haven't  
5 got that with me. I can send and get it.

6 Q It was after you plead guilty, was it? A I am not so  
7 sure about that.

8 Q As a matter of fact, wasn't it after you plead guilty?

9 A I am not so sure about that. I have it in my book, all  
10 of the meetings I had with Mr. Pirotte and Mr. Stineman and  
11 Mr. Watts and what I thought they were doing.

12 Q Oh, doubtless after you have woke up. A No, I woke  
13 up as soon as he came.

14 Q When did you see Pirotte last? A Only about two weeks  
15 ago at Venice.

16 Q You saw him, did you? A Yes, sir.

17 Q Did you tell him then that you had been worrying for  
18 fear that he, Pirotte, Watt and Stineman were pumping him  
19 in the Darrow case? A I did not. I had a conversation  
20 with him along that line before that, though.

21 Q When Pirotte replied, "You are crazy". Didn't you say,  
22 "Well, that takes a load off of my mind." A No, sir,  
23 I did not.

24 Q Or anything of that kind? A No, sir. I wanted him to  
25 know I knew what he was doing. I told him so and that is  
26 all there was to it. I hunted for Mr. Stineman and Watt

1 so I could tell them too. I couldn't find them.

2 Q You know Mr. Stineman is a director in a bank down there?

3 A I know he is an ex saloon keeper.

4 Q You know Mr. Watt was the city clerk down there many  
5 years? A Mr. Watt, Oh, no, he never kept a saloon, that  
6 I know of.

7 Q Is it your objection to Mr. Stineman that he is an ex-  
8 saloon keeper? A No, I have no objection to that at all.  
9 MR. FREDERICKS. That is objected to as assuming that the  
10 witness has any objection to Mr. Stineman.

11 THE COURT. Objection sustained.

12 MR. ROGERS. Q You know he is a director in a bank down  
13 there? A I do not.

14 Q Don't know anything about that? A Only by hearsay.

15 Q You have heard it? A I have.

16 Q I am asking you again at that dinner at the Casino  
17 when you and Watt were there with Pirotte, didn't you  
18 say then that Darrow never gave you a dollar of money  
19 for any corrupt purpose to bribe any jurors or anything  
20 else, or words to that effect? A I did not.

21 Q You knew Mr. Watt who is city clerk at Venice for many  
22 years? A He was city clerk there, I understand. I didn't  
23 know him then.

24 Q When did you meet him first? A I think it was the  
25 Alexandria Hotel, but I am not sure.

26 Q You met him down at Venice first? A I am not sure/<sup>as</sup>to

1 that point, Mr. Rogers, I may have done.

- 2 Q Did you ask Watt what he thought about opening a detec-  
3 tive agency at the beach with Pirotte? A I did not.

4 Q Did Watt say to you then, "You have been in some  
5 trouble lately that might affect it"? A I did not.

6 Q Didn't you say to him then, "Why, I been in a little  
7 trouble, but I am out of it already, and then didn't Watt  
8 say to you, "Why, they have got another case against you,  
9 haven't they, in the same matter?"

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8S 1 Didn't you thereupon reply, "They will do nothing about the  
2 Lockwood case", or something of that kind? "They are hold-  
3 ing it over my head to make me testify against Darrow".

4 That they don't want you, but Darrow was the man they wanted?

5 A I did not.

6 Q Anything like it or in substance that? A I might have  
7 said they had another case against me, I don't remember. I  
8 don't think I even said that to him.

9 Q Did you say to him you were not the man they wanted;  
10 they wanted Darrow? A No.

11 Q Didn't you say ~~that~~ to Mr Watt that you were smart  
12 enough, or lawyer enough, one or the other, to know that  
13 they couldn't convict you in the Lockwood case, for you and  
14 Lockwood and Fredericks were confederates in that case?  
15 Did you say anything like that? A I don't know, I may  
16 have said -- well, I don't remember, Mr Rogers. I believe  
17 I had some conversation with him along that line, and I think  
18 I said "Unless it was corroborated they could not convict  
19 me", I am under the impression --

20 Q Then you would deny saying that? A No, I would not  
21 deny saying that, or affirm it. I don't have any recollect-  
22 ion of saying it, I may have done; I know I thought that.

23 Q You say that you and Lockwood had been friends for  
24 fifteen years, something of that kind? A Yes, -- pardon  
25 me; say that ~~what~~ to him?

26 Q Yes sir, to Watt, A I might have done.

- 1 Q Did you further say that Fredericks was one of the best  
2 friends that you had on earth? A I might have done.
- 3 Q You don't deny it? A Or affirm it.
- 4 Q Did you say while you had plead guilty in the Bain case  
5 it had <sup>not cost</sup> ~~cost~~ you anything as the county paid your fine?
- 6 A I did not.
- 7 Q Or anything like that? A No sir.
- 8 Q Or anything in substance of that effect? A No.
- 9 Q Well, it hadn't cost you anything, had it?
- 10 A Cost me my reputation.
- 11 Q Did Pirotte then say to you, ask you if Darrow  
12 had given you the money that was taken from you when you were  
13 arrested, and did you then say to Pirotte, "Darrow didn't  
14 give me any money, but you must not talk about the case",  
15 for you were to be a witness? A No sir, I did not.
- 16 Q Nor anything like it? A No, nor anything like it.
- 17 Q In Mr Watt's presence, or anyone else present at that  
18 time? A Nor, anybody else's presence.
- 19 Q A week later than that time did you see Watt in the  
20 Alexandria Buffet in Los Angeles? A In the Alexandria  
21 Buffet in Los Angeles, yes sir.
- 22 Q That was about a week after you saw him in Venice,  
23 wasn't it, at this dinner? A I don't know, I have got  
24 it in my book; I haven't got it here, I don't remember.
- 25 Q You don't remember? A No independent recollection.
- 26 Q Did you see Stineman that day on that occasion?

- 1 A Yes sir.
- 2 Q Did you ride down to Venice with Stineman and Watt in  
3 the machine? A Yes, but not that night.
- 4 Q What night was it? A I don't remember.
- 5 Q What is the matter with your memory? A Nothing.
- 6 MR FORD: Object to that as an improper question to address  
7 to the witness.
- 8 MR ROGERS: Can't you tell what night you went down to  
9 Venice with Watt and Stineman in the machine? A I have no  
10 independent recollection. If you allow me to consult my  
11 diary I can tell you.
- 12 Q Go ahead and consult. A I haven't got it here.
- 13 Q Did you meet Pirotte at the Alexandria? A When?
- 14 Q At that time when you met Watt and Stineman? A No sir.
- 15 Q Did you meet Pirotte at Venice? A When?
- 16 Q On that occasion when you went down in the machine with  
17 Watt and Stineman? A Don't get it confused, it was not  
18 that night I went to Venice in the machine.
- 19 Q I don't care, did you see Mr Pirotte down there the  
20 night you went down with Watt and Stineman? A He went  
21 with us.
- 22 Q Pirotte went with you? A Yes, he was in <sup>the</sup> machine.
- 23 Q So you, Stineman, Watt and Pirotte went down to Venice  
24 in the machine together? A Yes.
- 25 Q . Anybody else? A No sir.
- 26 Q What machine was it? A A machine Mr Stineman said

1 was his, I don't know whose it was.

2 Q Did you and Pirotte and Watt go to the Casino and have  
3 some beer and sandwiches, when you got down there? A Who?

4 Q You, Watt and Pirotte, go to the Casino and have some  
5 beer and sandwiches after you got down in the machine?

6 A Yes sir, we did.

7 Q Do you remember a conversation occurring there at the  
8 Casino while you were having those beer and sandwiches and  
9 things?

10 A Oh, we had a conversation, I don't remember.

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1 Q Talk about this matter? A I don,t think it was men-  
2 tioned in that conversation.

3 Q Did you say at that time to watt and Pirotte that on  
4 the morning that you were arrested you had no appointment  
5 with Darrow and Darrow did not know you were to be ~~on~~ the  
6 street at that time. Did you further say that Brown  
7 must have telephoned to get him there, and then did Watt  
8 ask you how much money was taken from you when you were  
9 arrested and where you got it, and you said there was  
10 plenty of money circulating around there that the lawyers  
11 in the case knew nothing about? A I did not.

12 Q Or anything like it? A Or anything like it to that  
13 effect or anything that could possibly be construed as mean-  
14 ing that.

15 Q All right. Now, while you were at the Alexandria Hotel  
16 you say you met Stineman did you? A Yes, sir, where I  
17 was introduced to him, I think.

18 Q Well, who introduced you? A I think Mr. Watt.

19 Q Did you go anywhere from the Alexandria? A <sup>U</sup>On which  
20 occasion?

21 Q On the day you were introduced to Stineman?

22 MR. FREDERICKS. That is objected to upon the ground that  
23 the time is not fixed with any kind of certainty at all.

24 MR. ROGERS. Q About March 21st?

25 MR. FREDERICKS. Withdraw the objection.

26 A My impression at this time, Mr. Rogers, is we did not go

1 anywhere that day.

2 MR. ROGERS. Q Did you ever go to the Bristol Cafe for  
3 dinner? A Yes, sir.

4 Q Did Stineman go there with you? A Yes, sir.

5 Q Did he take dinner with you? A No, I took it with him.

6 Q Well, be that as it may, you ate dinner together?

7 A Yes, sir.

8 Q Who was present at that dinner where Stineman was?

9 A Mr. Watt and Mr. Stineman.

10 Q You and Watt and Stineman were sitting together at the  
11 Bristol Cafe at a table? A Yes, sir.

12 Q Anybody else present besides the diners, aroundabout?

13 A Therewas only two of those.

14 Q I mean to say you ate inthe public room, did you?

15 A Yes, sir.

16 Q Well, I mean the diners at the other tables? A Yes, sir  
17 the regular dining room at the Bristol Cafe, the main  
18 dining room.

19 Q Did you talk about this case there with Mr. Stineman?

20 A Yes, sir.

21 Q Did you say to Mr. Stineman, words to this effect: That  
22 if Darrow will give up certain evidence that he has against  
23 Gompers he will be released, but Gompers is the man they  
24 want because he is the head of the Union and Burns wants  
25 to break that up and Burns will get Gompers before they  
26 get through and didn't Mr. Stineman ask you, "Why do they

1 want to get Darrow?" And didn't you say, "Oh, he has been  
2 defending the unions and is a prominent man on their side."

3 Didn't Stineman ask you where you got the money for  
4 Lockwood and didn't you say, "Outside parties had furnished  
5 it," that Darrow never gave you any money to fix jurors or  
6 anything of the kind, and didn't you say then after you  
7 had talked at some length about that, didn't you say, "For  
8 God's sake don't repeat this conversation." A I did not.

9 Q Or anything like it? A No, nor anything like it.

10 I will tell you what I did say to him.

11 Q Tell me what you said to Stineman. A I would like  
12 very much to tell it. I haven't had an opportunity.

13 Q Go ahead and tell it.

14 THE COURT Go ahead, you have a chance now.

15 MR. FREDERICKS I understand the date of this was the  
16 latter part of March.

17 MR. ROGERS. The 21st of March. A I couldn't say  
18 it was that day. I say I was there upon a certain  
19 occasion with Mr. Stineman <sup>and</sup> Mr. Watt, and we had dinner  
20 together--lunch together. That upon that occasion I told  
21 Mr. Stineman and Mr. Watt that I had been promised by Mr.  
22 Rogers--pardon me--Mr. Davis.

23 Q It is good company, but don't get me in. A Sure, I  
24 will try not to get you in good company, you would <sup>not</sup> be at  
25 home, perhaps. Now, pardon me a moment. I told him  
26 at that time that Mr. Davis had told me that he probably could

1 get me off with two years. / <sup>That</sup> I went home to Mrs. Franklin  
2 and told her that and told her that if I got off with two  
3 years and served my time, which I thought it was my duty  
4 to do, that she would be taken care of and the family would  
5 be taken care of by Mr. Darrow, and her remarks to me at  
6 that time--and that is what caused me to change, exactly  
7 what did: "Bert, I admire your stand that you are taking,  
8 and I agree with you on what you have said, but if you bring  
9 one dollar of dishonest money into my house I will leave  
10 you in 24 hours;" and then is when I quit.

11 Q That is what you stated to Stineman? A Yes, sir, that  
12 is what I said to Stineman.

13 Q And Watt? A Yes, sir. *Watt*

14 Q And that is all you said?  
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2 A I couldn't say that was all. That was the main thing  
3 because I didn't talk to them. I knew what they were after  
4 all the time, and it is in the diary just as I got it.

5 Q You talked -- while we are talking about that, I would  
6 not have mentioned this if you had not said this, -- but you  
7 took your wife along the time you went out to bribe Lock-  
8 wood, didn't you? A I beg your pardon? What do you  
9 mean to insinuate by that, Mr Rogers, that she knew?

10 Q I don't mean to insinuate anything. A No, don't you,  
11 either.

12 Q I asked you if you didn't take your wife along the  
13 first time you went out to bribe Lockwood? A I took my  
14 wife along, yes sir, but if she had known it I would never  
15 have been in court today, and you know it, and don't you dare  
16 to insinuate anything else.

17 Q I didn't insinuate -- A Either in court or out of it.

18 Q I will ask you now -- you have brought your wife in here,  
19 I didn't ask you -- if you didn't take her along the time  
20 you went out to bribe Lockwood? A Yes sir.

21 Q What kind of a man do you think you are to take your  
22 wife along when you go on a bribery expedition?

23 MR FREDERICKS: That is objected to --

24 THE COURT: You need not answer the question; the question  
25 is entirely improper.

26 A You, probably, would not have done it; you would have

1 gone alone.

2 MR ROGERS: I wouldn't have gone. A No, no.

3 Q Do you know George Hood, formerly milk inspector?

4 A Yes sir.

5 Q Know him pretty well? A Very well for years.

6 Q Have any talk with him about this? A I don't remem-  
7 ber.

8 Q I will come back to those statements a little later.

9 I will take up another branch of this now for a few moments  
10 and come back to some other statements shortly. Did it

11 happen down there at Third and Los Angeles that you walked <sup>down</sup>

12 Third Street towards -- while you were walking down Third

13 Street towards Wall that you met anybody besides Campbell?

14 A Nobody that I knew, that I remember of.

15 Q You say you watched Campbell until he had gone midway  
16 of the block between Main and Los Angeles on Third?

17 A Yes sir, on the south side of the street.

18 Q Did he disappear going towards Main? A Apparently so,  
19 yes sir, as far as I could see.

20 Q Where was Lockwood then? A I don't know, he hadn't  
21 come in sight at that time.

22 Q Hadn't yet got in sight? A No sir.

23 Q Then you turned around and walked back towards Los  
24 Angeles Street? A Yes sir.

25 Q Did you stop at any place? A I don't think so.

26 Q Did you see Lockwood when you came back?

1 A As I was coming back, yes sir, I did.

2 Q You had an opportunity to speak to him? A I did not.

3 Q Well, how far were you from him? A One hundred and  
4 fifty, two hundred feet.

5 Q How far did you walk from Los Angeles Street towards  
6 Wall? A About three hundred feet.

7 Q Are you sure of the distance? A I didn't step it off  
8 nor measure it, that is my estimate of the distance.

9 Q Can you tell what part of the street you were opposite,  
10 what building, or anything of that sort? A No sir. I was  
11 about three hundred feet away, though, to the best of my  
12 recollection.

13 Q When you walked back you saw Lockwood come up, or was he  
14 there already? A I saw Mr Lockwood when I was coming  
15 back across the street from the north; I saw him meet Captain  
16 White on the northeast corner of Third and Los Angeles Street.

17 Q What happened then when you saw them there?

18 A To me, or to them?

19 Q Did you keep on walking with respect to yourself?

20 A Yes sir.

21 Q Which side of the street did you walk up?

22 A The south side.

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1 Q Were they still standing at Third and Los Angeles when  
 2 you passed Third and Los Angeles yourself? A When I  
 3 passed the east side of Third and Los Angeles streets they  
 4 were there. After that I don't know, until I got up  
 5 a hundred feet from the corner, then I saw them again.

6 Q Where had they been in the meantime, do you know?

7 A I don't know anything about it.

8 Q Did you keep your eyes on them? A When?

9 Q When you were coming back from Wall street after  
 10 seeing Jim Campbell, did you keep your eyes on them after  
 11 that after you first saw them? A I did not.

12 Q Were you where you could see them all the time?

13 A Let me explain to you and then you will understand it.  
 14 He started across the street north to meet Mr. White on the  
 15 north corner, inthe meantime I was 150 to 200 feet  
 16 away and from the time he met Mr. White I was about 75  
 17 feet from the corner, I didn't look at them any more  
 18 until I had arrived at a point about 50 to 75 feet of  
 19 Los Angeles, onthe south side of Third street, when I turned  
 20 around and saw them.

21 Q They were still where they had been when you saw them  
 22 before? A Yes, sir.

23 Q Or had they moved? A Mr. White was coming towards Mr.  
 24 Lockwood, he had been somewhere--they were about 10 feet  
 25 apart about that time.

26 Q Did you see George Home by that time? A Yes, sir.



1 Q You knew he was a city detective? A I did.

2 Q You knew he had been working in the McNamara case from  
3 the start, didn't you? A I did not.

4 Q So, having seen Jim Campbell and George Home before  
5 White returned to Lockwood the second time-- A Oh, he  
6 never was away from him, as far as I know, he only was 7 or  
7 8 feet away from him, just stepped up to him as I turned  
8 around.

9 Q Just stepped up to him as you turned around? A Yes,  
10 sir. He had stepped to him again, he apparently had been  
11 away--I don't know anything about it; I don't know.

12 Q Say anything to White or Lockwood or give them any  
13 high sign? A I did not.

14 Q Didn't make any effort to attract their attention?

15 A I did not.

16 Q Did they leave there, the place where they were, the  
17 northeast corner, did you say it was? A Yes sir.

18 Q Did they leave there? A They did.

19 Q Where did White go? A Came straight across the street  
20 west with Mr. Lockwood to where I was.

21 Q came up together, did they? A yes, sir.

22 Q Where was George Home all this time? A I don't know,  
23 you will have to ask him.

24 Q Where was he when you last saw him before these people  
25 came across the street? A Peeking around the corner  
26 of the saloon around Los Angeles street from around up

1 Third street.

2 Q Please read the answer. (Answer read.) Which do  
3 you mean to say, Mr. Home was on Los Angeles Street or on  
4 Third street peeking around-- A The northwest intersection  
5 of Third and Los Angeles street.

6 Q He was evidently watching? A Evidently so. Yes, sir,  
7 that is what I thought.

8 Q Now, when you went out to the Bain house you say you  
9 went to Mrs. Farley's, the next door neighbor, and asked  
10 for Mrs. Bain? A I went to the next door neighbor.

11 Q When you went out to see Captain White you first spoke  
12 to Mr. White and Mr. New? A I beg your pardon.

13 Q When you went out to see Captain White you first  
14 spoke to Mr. New? A yes, I said, "How do you do?" I asked  
15 him if Captain White was there and he said he was in the  
16 back room and about that time the Captain came out.

17 Q Well, now, you endeavored to get corroborating evidence  
18 by somebody everywhere you went, to Lockwood's and to  
19 White's and Bain's by speaking to somebody immediately  
20 before you went there, didn't you?  
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12p 1 A If I had been trying to do so I could not have succeeded  
2 any better, apparently.

3 Q Then you were trying to do it, weren't you? A No, sir,  
4 I was not.

5 Q How is it a smart detective like you, with your years  
6 experience could make such a perfect case? A According  
7 to your statement I am not very smart, and I will admit  
8 it, too.

9 Q You don't agree with that, do you? A Yes, sir, I will  
10 admit that along that line of bribing jurors I don't know  
11 anything about it, thank God I don't.

12 Q Why is it that you got a witness everywhere you went  
13 immediately before you started anything about bribery?

14 A That is a conclusion in your mind, not in my mind.

15 Q It is a fact, isn't it? A Apparently so, yes, sir.

16 Q Are you saying appearances are deceitful in this case?

17 A Oh, no. I will say this to you, that I was there on the  
18 business for Mr. Darrow.

19 Q Oh, doubtless. A Mr. Darrow was paying me and nobody  
20 else and nobody else has ever spoken to me about it.

21 Q Not Mr. Harrington even? A Who?

22 Q Mr. Harrington? A No, sir.

23 Q We will get to that in a few moments. A Not even Mr.  
24 Harrington.

25 Q We will get to that in a few moments. A All right.

26 Q Why was it you picked Third and Los Angeles Street, one

1 of the most busy streets in the city at 9 o'clock in the  
2 morning to pull off this stunt, as you call it? A Because  
3 I thought that would be the best place, because it was a  
4 busy corner.

5 Q Where Mr. Home and Mr. Campbell and sundry other persons  
6 could see it? A They could if they had been there, and  
7 they apparently were there, but not to my knowledge  
8 until afterwards.

9 Q Oh, undoubtedly. A Yes, undoubtedly.

10 Q How many years, experience did you have as a detective  
11 and criminal investigator and what not?

12 MR. FORD. We object to that. That has been gone into  
13 several times. Counsel keeps charging back to the same  
14 point. Object to that on the ground it has been asked and  
15 answered.

16 THE COURT. Objection sustained.

17 MR. ROGERS. Exception. Q Now, when you went over to  
18 Captain White's you say you saw Mrs. White? A Captain  
19 White's house, you mean the residence?

20 Q Yes. A Yes, sir, I did.

21 Q You asked Captain White if he didn't want to go out to  
22 Lockwood's, didn't you? A I asked him if he would like to  
23 go for a ride, yes, sir.

24 Q You meant go out to Lockwoods? A That is where I was  
25 going.

26 Q You meant to go to Lockwoods when you said, "Take a ride?"

1 A That is where I was going and if he had gone with me  
2 that is where he would have gone.

3 Q You had an object to take him along? A No, I thought  
4 he would like an airing, he was not looking very well and  
5 he needed it.

6 Q You mean you wanted him along for the purpose of  
7 having a witness along? A I mean exactly that, the man  
8 didn't look well and that is the reason I wanted to get  
9 him along.

10 Q You didn't want him out to Lockwood's for the purpose  
11 of accusing him in the bribery business? A No, sir, I  
12 did not.

13 Q You just wanted to take him out there and let him have  
14 the fresh evening air? A Yes, sir, exactly.

15 Q Did you think the fresh morning air down at Third and  
16 Los Angeles street would do him good? A I don't know any-  
17 thing about that, I didn't think about it particularly.

18 Q The next morning you took him to Third and Los Angeles  
19 streets to get the morning air, didn't you?

20 MR. FORD. We object to that on the ground it is not cross-  
21 examination.

22 THE COURT. Objection overruled. A What is the question?  
23 (Question read.) A Captain White, you mean?

24 Q Yes, sir. A I took him there to give him \$4,000  
25 Mr. Parrow said he would give to me that morning to bribe  
26 Mr. Lockwood.

1 Q yes, so I understand. A That is it exactly.

2 Q When you were going to take him out to Lockwood's the  
3 evening before you didn't mean to do anything at all except  
4 just merely take him for a ride? A That is all.

5 Q The next morning you took him along for the purpose  
6 of bribing Lockwood?

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1 A After I had informed him that Mr. Lockwood couldn't  
2 come inthe afternoon I then told him I was going to Mr.  
3 Lockwood's and asked him if he would go along and ride  
4 with me and he said no, he didn't care to go. That is  
5 all there was to that occurrence.

6 Q Your object was to get White out there to make up a  
7 little better case, wasn't it, instead of taking him for  
8 the evening air? A No, sir.

9 Q Is that so? A No, sir.

10 Q How long had it been since you had gone to your Friend  
11 White and solicited him to take a ride with you for his  
12 health?- A I did not--

13 MR. FORD. We object to that as incompetent, irrelevant  
14 and immaterial, not cross-examination.

15 MR. ROGERS. It is perfectly competent.

16 THE COURT. Objection overruled.

17 A I didn't go to Mr. White's house to ask him to go with  
18 me for a ride, that was not my purpose in going there.  
19 I so testified, that was an incident.

20 Q What did you say to White out there that evening?

21 MR. FORD. We object to that onthe ground it has been  
22 gone into fully on cross-examination by counsel.

23 MR. ROGERS. It has not. I never asked him at all about  
24 the White imident.

25 THE COURT. Objection overruled.

26 A I told him that Mr. Lockwood could nct go that afternoon

1 as he had agreed and that he had 'phoned to me and I  
2 was going to his house and asked him if he could meet me  
3 at the corner of Third and Main the next morning at about  
4 a quarter to nine or 8:45--I don't know which I stated--  
5 I am sure of the time.

6 Q That is what you told him when you went over that  
7 evening? A Then I asked him if he would like to go with  
8 me for a ride.

9 Q How did you know that Lockwood was to meet you at Third  
10 and Main the next morning if you hadn't met Lockwood yet?

11 A I didn't know. That is the way I intended to arrange it,  
12 if possible. If I hadn't I would have come to Mr. White's  
13 house and told him when I come back.

14 Q You told White to meet you the next morning at Third  
15 and Main before you had been out to Lockwood to see if  
16 Lockwood would go there? A That is exactly correct.

17 Q Now, we will return to my question: How long was it  
18 before that that you had taken Mr. White for a ride for  
19 his health? A I never took him for a ride that I remember  
20 of, except in the sheriff's office when he was not feeling  
21 well and I had cases on the outside I would ask Captain to  
22 go with me and he quite frequently went.

23 Q What did White say to you about Lockwood?

24 MR FREDERICKS. That is objected to unless the time is  
25 specified.

26 Q At this time, that he went over there and found Mr. New



1 and tried to take White out for an airing for his health.

2 MR. FREDERICKS. I withdraw the objection--

3 A He asked me if I thought Lockwood was safe, or words to  
4 that effect, and told me he didn't think he was but if I  
5 was satisfied he was, or words to that effect.

6 Q What he told you was, " My God, Franklin, I wouldn't  
7 trust George Lockwood as far as I could throw a bull by  
8 the tail", isn't that so? A Yes, that is right.

9 Q Well, if you then were not seeking to bring this thing  
10 about and were not engaged in bringing it about how was it  
11 you went on after White told you he wouldn't trust Lockwood  
12 as far as he could throw a bull by the tail?

13 MR. FREDERICKS. That is objected to as being unintelligible  
14 unless it is stated what he means by "this thing".

15 THE COURT. Objection sustained.

16 MR. ROGERS. Q How was it you went on with this performance  
17 down at Third and Los Angeles street with Lockwood and  
18 after White had told you, "My, God, Franklin, I wouldn't  
19 trust George Lockwood as far as I could throw a bull by  
20 the tail"? A Because after Mr. Lockwood had stated that  
21 he would do what he did, I believed him, and I was not  
22 asking Mr. White for his advice as to what I would do,  
23 either.

24 Q You knew White knew Lockwood very well, didn't you?

25 A Oh, yes.

26 Q And when White said he didn't believe Lockwood was trust-

1 worthy, did it give you any pause whatever? A No, I wish  
2 it had.

3 Q I am not asking you for your desires, but, it didn't?

4 A You have asked me for them in numerous occasions.

5 Q It didn't give you any pause? A It did not.

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Q In Mr Davis' presence when Mr Darrow and Mr Davis and you were talking together in the room that you call Mr Rush's room, and as to the relation of the matter of Colonel Tom Johnson, didn't Mr Darrow say to you, "You are perfectly at liberty to tell anything you know about me" , and did you not then reply in Mr Davis' presence and hearing, "If I did tell what I know about you it would not hurt you any"?

8 A No, I did not.

9 Q Did anything of that kind or of that purport occur?

10 A No sir, nothing of that kind.

11 Q Did he say it? A Say what?

12 Q What I have just indicated to you in the question.

13 A Well, repeat it again.

14 (Third to the last question read by the reporter)

15 A No, I did not.

16 Q Now, on your cross-examination a spell ago, you said that Mr Darrow told you to say that there was some other man gave him the money besides yourself, or words to that effect, on that Sunday afternoon? A All three of us discussed it right there at that time.

21 Q Yes. A Yes sir.

22 Q And Mr Darrow told you that, did he? A Yes sir, he did.

23 Q Now, I will ask you if this is not what you said on direct examination. A Perhaps not as broad as that , in those words, you understand.

26 Q I understand. Now, isn't this what you said on direct

1 examination: "Mr Davis said that if we did that, I could  
2 convince Mr Ford that there had been another party who acted  
3 as a go between between Mr Darrow and myself and gave a des-  
4 cription of that man, and where he claimed to be from, the  
5 name that he gave that Mr Ford might believe a statement of  
6 that kind and that it would relieve me of a great deal and  
7 relieve Mr Darrow from any complicity for the reason it  
8 would leave him entirely out of the matter, and then I sug-  
9 gested, in fact told Mr Davis, that Mr Ford would never be-  
10 lieve a story of that kind, it would be the same old story  
11 of the boy stealing the bicycle and saying he bought it  
12 from somebody, and didn't know who he bought it from. I  
13 suggested inasmuch as this man told me he came from Mr  
14 Darrow and gave me that assurance -- Mr Darrow then spoke up  
15 for the first time I remember of and said 'If you mention my  
16 name I want you also to tell what you know about Mr Harriman'".

17 A Yes sir, I so testified, and I will tell you what I  
18 meant and what happened.

19 Q I am asking you, a minute ago --

20 A Wait a minute until I get through.

21 Q Answer my question.

22 THE COURT: The witness has stated he has not finished his  
23 answer to the question. Let him finish his answer.

24 Q By Mr Rogers -- Go ahead and finish your answer to the  
25 question.

26 A I am. The question that was considered between Mr

1 Davis and Mr Darrow and myself at that time up until the  
2 moment Mr Darrow made that remark was not that Mr Darrow  
3 should be named, but the fact this man came to us inde-  
4 pendently, to me independently. Then when the proposi-  
5 tion of having him come from Mr Darrow, then is when Mr  
6 Darrow spoke up and said "If you mention my name I want you  
7 to tell what you know about Job Harriman."

8 Q By Mr Rogers -- Now, didn't you say on your direct  
9 examination after you had related the fact that you say Mr  
10 Davis told you to mention something about that matter, you  
11 have just been speaking about, didn't you then say: "Mr Dar-  
12 row then spoke up for the first time that I remember of"?

13 MR FREDERICKS: That is objected to on the ground it is not  
14 ~~in keeping~~ impeaching and does not tend to contradict this  
15 witness in any particular.

16 THE COURT: Objection overruled.

17 MR FREDERICKS: He may have gone on afterwards and said  
18 everything the witness said.

19 THE COURT: Objection overruled. Answer the question.

20 MR ROGERS: I suggest that the intimation of counsel that he  
21 might have gone on afterwards and said it all is suggestive  
22 and an intimation and is a tip to the witness, and I take  
23 exception to it.

24 A I don't need any tips, Mr Rogers.

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MR. FREDERICKS. You can take any exceptions you want to. My argument is to the Court.

THE COURT. Counsel has a right to assign the statement of the district attorney as error, if he sees fit.

A I testified exactly as you have read, without a doubt.

Q Now, you say Mr. Darrow was the one that said to you he would like to have you say that somebody else--

A Mr. Darrow said that also, I didn't say he didn't.

Q I asked you if it was not Davis and you said it was Darrow? A I didn't say so on direct examination--wait until I get through, Mr. Rogers, and we will get along much better.

Q All right. A I was very particular upon all these conversations to state that that was all I remembered. A man can remember a thing one time and forget it some other time very easily. I told that conversation exactly as you have read it out of that record.

Q What has happened to your memory since you related it on direct examination? A Nothing. I was not asked about it.

MR. FREDERICKS. That is objected to on the ground it assumes anything happened to his memory.

THE COURT. Objection sustained. Strike out the answer. Gentlemen of the Jury, bear in mind your former admonition. We will take a recess for ten minutes at this time.

(After recess. Jury returned to court room.)

B E R T H F R A N K L I N,

on the stand; cross-examination resumed.

(Defendant in court with counsel.)

THE COURT. You may proceed, Gentlemen.

MR. ROGERS. Q I now call your attention to the matter of John S. Underwood, you recall? A To my visit to Mr. Underwood?

Q yes. A Yes, sir.

Q John S. Underwood was an iron worker, wasn't he?

A I believe so.

Q Where is his place of business? A The southeast part of the city. I don't remember exactly the street.

Q You remember the name of the company? A No, I do not.

Q He has a foundry or iron shop down there, hasn't he, iron works? A He did have, Mr. Rogers.

Q He did have at that time? A yes, sir.

Q John S. Underwood was a member of the Employer's Association at that time, wasn't he? A I am sure I don't know.

Q You knew, didn't you, that there was a strike on in the iron trades which was going on and which, as a matter of fact, led up to the dynamiting of the Times. A I don't know anything about that. I know there was a strike on about that time, Mr. Underwood told me so himself.

Q Didn't you know there was a strike on in the structural trades, in the Llewellyn Iron Works, Baker Iron works and in all of the iron works connected with the Employers Asso-

1 ciation? A I knew there were strikes on at those  
2 different places but I didn't know anything about the  
3 Erectors' Association or the Structural Iron Workers'  
4 Association. I knew there was a strike on at those places.  
5 I had read so in the paper.

6 Q Had you gone into this matter to look up various  
7 jurors without understanding the relation of the strike  
8 of the Structural Iron Workers to The Times controversy?

9 A I was familiar with it, yes, sir.

10 Q Then you did know that the Employers' Association had a  
11 strike on its hands which led up to the dynamiting of the  
12 Times, didn't you? A I knew that those different estab-  
13 lishments had strikes on, yes, sir.

14 Q And you knew that John S. Underwood had a strike on in  
15 his place? A I did not until he told me.

16 Q Well, you knew, didn't you, that John S. Underwood was  
17 connected with the iron business? A I did not, nor, sir;  
18 not at that time. He had not been very long. He had  
19 been in the oil drilling business.

20 Q Didn't you know that the Employers' Association was conne-  
21 cted with the Merchants & Manufacturers Association in  
22 opposition to that strike? A Well, I was satisfied, Mr.  
23 Rogers, that the Llewellyn Iron works and the Baker Iron  
24 Works and the M & M Association were working together to  
25 bring about a decision as to what caused the explosion of  
26 the Times, and also the Llewellyn, and that their interests



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was supposed to be opposed to the interests of Union labor, and that we didn't want any of that kind of men on the jury.

Q Well, now, did you go to John S. Underwood--assume, for the sake of the argument, for the sake of the questions, that John S. Underwood was a member of the Employers' Association and that he had a strike on in his place just the same as the Llewellyn Iron Works had, you mean to say that you went to John S Underwood and asked if you could bribe him?

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S 1 MR FREDERICKS: That is objected to as assuming a fact not  
2 in evidence, that is, that this witness knew that John S  
3 Underwood was a member of the Employers' Association, or  
4 that he had a strike on when he went there.

5 MR FORD: Already testified that he didn't know that he had  
6 a strike on until he got there.

7 MR ROGERS: If your Honor please, the object of the ques-  
8 tion -- I might as well disclose it, the witness' answers  
9 will be no different, I venture, if I disclose my object.  
10 If I am able to show either by this witness or by the sur-  
11 rounding facts that John S Underwood was, as a matter of  
12 fact, a member of the Employers' Association; that he had  
13 an iron works in this city and that anybody who was con-  
14 nected with the matter at all knew that the iron works of  
15 this city, controlled by the members of the Employers'  
16 Association, were engaged in that strike, which began in  
17 the June before the October when the Times was blown up,  
18 and that all <sup>of</sup> this labor controversy and the picketing  
19 ordinances were drawn with reference to that strike of  
20 the iron trade. I want to find out by this witness, if he  
21 could by any peradventure as a sane man, if he is telling  
22 the truth, that he did go to Mr Underwood for any other  
23 purpose than to get someone to act as a blind and to make  
24 this play in order to wreck Mr Darrow, Mr Gompers and  
25 others. That if he went for any other purpose than to get  
26 a dummy, he would have picked somebody else than Mr Under-

1 wood. It seems inconceivable that a man with any soundness  
2 of mind at all, if he were really illegitimately intend-  
3 ing to try to bribe a juror and not merely to make a fake  
4 play for the purpose of injuring Mr Darrow, seems to me he  
5 would have picked somebody besides a man who had a strike  
6 in his own place, guarded as that place was day and night  
7 with guards, with all his men out, engaged in this strike,  
8 why, it is positively -- it seems to be absurd that Mr  
9 Franklin, if he did intend as a matter of fact to bribe a  
10 juror, would have picked John S Underwood. He might as well  
11 have picked John Llewellyn or Fred L Baker. Mr Underwood,  
12 I intend to show is a member of the Employers' Association,  
13 engaged at that very time in fighting the strike, and  
14 fighting against these union men, and the idea of his  
15 going to him and asking to bribe him <sup>so</sup> is absolutely absurd  
16 that it seems to me it shows that he did not make an attempt  
17 to bribe the juror for the sake of merely bribing him, and  
18 that is the state of mind I am going into, and I have a right  
19 to ask him all about it. If he says he does not know I have  
20 a right to find out if he ought not to have known, in order  
21 to see whether he is telling the truth. If he says he  
22 doesn't know, he must have known if he was the man that was  
23 looking for these jurors, finding out all about them,  
24 finding out what would influence them; finding out whether  
25 they would actually be jurors in the McNamara case and if he  
26 approached John S Underwood, a member of the Employers'

1 Association, a man with an iron works with a strike on of  
2 his own, was to be approached, it could be for no other  
3 purpose than to make a play of this kind, and I have a  
4 right to go into it, seems to me. Maybe I am not getting  
5 at it right, but that is the idea I am after.

6 MR FREDERICKS: May it please the Court --

7 THE COURT: Let's have the question read first.

8 (Last question read by the reporter)

9 MR FREDERICKS: Now, may it please the Court --

10 THE COURT: Objection sustained.

11 MR ROGERS: Did you know that John S Underwood -- cut that  
12 out. Did you make any inquiries about John S Underwood  
13 before you went down there? A No sir, I was well ac-  
14 quainted with him.

15 Q Being well acquainted with him, did you know that he  
16 had an iron workd down in the southeast part of the city?

17 A No sir. The last time I talked with Johnny he was in  
18 the oil drilling business he told me -- oil well drilling  
19 business.

20 Q How did you know where to go, where to find him?

21 A I forget. I think I may have got the address out of  
22 the telephone book. I am not sure. I know I had consider-  
23 able trouble finding Johnny.

24 Q Did you go to his place of business? A Certainly I did.

25 Q You went to his place of business? A After I found  
26 where it was, yes.

*July S Underwood*

17s 1 Q When you got in sight of his place of business you knew  
2 it was an iron works, didn't you, by the sight of it?

3 A I don't remember whether I knew it. I did when I got  
4 inside.

5 Q And knew by the looks of it when you got inside that  
6 it was an iron foundry or iron works? A Oh, yes.

7 Q You could see that? A Yes.

8 Q That was before you said anything to Underwood about  
9 going and acting as a juror in the McNamara case? A Yes,  
10 sir.

11 Q Well, now, after you had found that he was in the iron  
12 trades--in the iron business, did you ask him if he had  
13 any strike on or if he was connected with the Employers'  
14 Association? A I didn't. He told me he had one on.

15 Q Was that before you had approached him on the subject  
16 of acting as a juror as you call it, in the McNamara case?

17 A I think so.

18 Q Now, after he told you that he had a strike on and that  
19 he was in--you saw he was in the iron business, you mean  
20 to say you went on and approached him about accepting a  
21 bribe and acting as a juror? A Yes, sir.

22 Q In that very case? A That is correct.

23 Q What were you trying to do? A To bribe him.

24 Q And was it your idea that you could bribe him? A Yes.

25 Q And being in the iron business and having a strike on at  
26 that time? A I thought I could get him; I thought I would

1 try, I didn't know.

2 Q As a matter of fact, you wanted to use him as a dummy  
3 the same as you used Lockwood to make a play, isn't  
4 that so? Isn't that the more reasonable explanation?

5 A It is not so in either case, neither Mr. Lockwood  
6 nor Mr. Underwood.

7 Q Now, what did you do after Mr. Lockwood--Mr. Underwood told  
8 you that he would not be bribed? A I went away.

9 Q Anything else? A Oh, I presume I did something since  
10 that time, yes, I don't remember.

11 Q Can't you remember it? A Just at that particular time?

12 Q Yes, what did you say to him? A You asked me where I  
13 went or what I did.

14 Q What did you say to him? A I passed the time of  
15 day with him--you want the whole conversation as near as  
16 I remember it?

17 Q After you had made an iron worker a proposition to serve  
18 on the McNamara jury what did you say to him, and he had  
19 refused it, what did you say to him? A He told me that he  
20 would not go into anything of that kind under the circum-  
21 stances; that he could not afford anything of that kind,  
22 and more than that that he was friendly to Mr. Ford, they  
23 both belonged to the same church and he would not do any-  
24 thing to hurt Joe Ford.

25 Q What else--what did you say then? A Nothing I could  
26 say .

1 Q Did you tell him anything about not telling him?

2 A I don't think so. I had every confidence in Mr. Under-  
3 wood, as far as that part is concerned.

4 Q What did you say to him about it? A I may have said  
5 I consider this confidential, I don't remember.

6 Q Did you say anything else? A I don't remember.

7 Q Is the conversation fresh in your recollection? A Well  
8 you didn't ask me for all the conversation.

9 Q I am asking you for the last part of it, what you said  
10 to him after he refused your proposition, as you say?

11 A I don't remember just now.

12 Q Didn't you congratulate him upon the stand he had taken?

13 A That is it exactly.

14 Q Why couldn't you remember it until I put it in your  
15 mind? A I don't know why I couldn't. I could explain  
16 hardly a good deal today. It is a little difficult.

17 Q As a matter of fact, before you made the proposition  
18 to bribe Mr. Underwood he told you that he had lost every  
19 man he had by the strike, didn't he? A Told me that ~~he~~  
20 was working there alone, that his men had struck.

21 Q How long had you known Johnny Underwood? A For years.  
22 I don't know, I think about 22 or 23 years, perhaps.

23 Q Did you know--had known him fairly well all that time?

24 A Yes, sir.

25 Q Knew him to be a man of uprightness and integrity?

26 A Oh, yes, I never knew anything out of the way with

1 Johnny Underwood in my life. I knew he was a very liberal  
2 sort of fellow. I knew I could talk to him and I haven't  
3 had any reason to change my mind so far.

4 Q Well, now, if you were really in earnest in trying to  
5 bribe Underwood and not trying to get up a play or a perform  
6 ance, why didn't you congratulate Underwood on the stand he  
7 had taken? A Because I am always glad to meet an honest  
8 man.

9 Q You had known him 22 years and you didn't think he was  
10 honest? A I didn't say that.

11 Q Well, isn't that true? A No, sir, it is not true.

12 Q Didn't you think he was dishonest when you went there  
13 to bribe him? A I thought I could talk to him.

14 Q Didn't you think he was dishonest when you went there to  
15 buy him? A That didn't enter my mind. I thought I could  
16 talk to Johnny in regard to the matter and if he wanted  
17 to act he would and if he didn't he would say so.

18 Q Didn't you say a moment ago you thought you could bribe  
19 him? A No, I didn't say I could bribe him. I said I  
20 thought I could go there and talk to him.

18 21 Q You went up to bribe him believing him to be an upright  
22 man and an honest man and a man of integrity? A I never  
23 had any reason to believe that Johnny Underwood was any-  
24 thing but a splendid citizen.

25 Q For that reason you went up to bribe him? A No,  
26 because he was a friend of mine, and being a liberal man



1 I thought I could talk with him. The man is dead now and  
2 I would rather not pursue that conversation.

3 Q I was going to ask you that?--A Yes, he died a few days  
4 ago.

5 Q --if Johnny Underwood was not dead. A Yes, Johnny  
6 died a few days ago.

7 Q You told-- now, with respect to Guy Yonkin, how long have  
8 you known Mr. Yonkin? A Since about 1903.

9 Q Had you ever been in business with him? A No, sir.

10 Q Had he ever been connected with any business in which  
11 you were a deputy? A no, sir, not personally.

12 Q What was the nature of your acquaintance with Guy Yonkin?

13 A Just social, is all.

14 Q Never had anything but just a social acquaintance with  
15 him, had you? A No, sir.

16 Q Knew he kept a cigar stand on third street, did you?

17 A Yes, sir.

18 Q Believed him to be a thoroughly upright, honest  
19 decent boy, didn't you? A Thought he was a good square  
20 fellow. Think so more than ever now.

21 Q Well, you went up to bribe him, didn't you? A Yes, sir.

22 Q Any reason to think he would take it? A No, I didn't think  
23 he would take it.

24 Q Now, Frank Smith-- you knew he was a bright young man,  
25 a young man just coming on in business?

26 MR. FREDERICKS. Who is this you are talking about?

1 MR. ROGERS. Yonkin.

2 A Yes, sir, I considered him a very bright young man.

3 Q Now, Frank Smith, of Covina, where did you ever know  
4 Frank Smith? A I got acquainted with Frank during a  
5 trial in the United States Court.

6 Q What trial was that? A The trial of the United States  
7 versus Chapman and others.

8 Q When was that, approximately? A Oh, three years ago.

9 Q Never knew him before? A No, sir.

10 Q Ever meet him any place except in the United States  
11 Court? A Yes, sir, many times.

12 Q Where? A On the street.

13 Q Ever have any business with him? A Not any more  
14 than connected with that particular case. I was with him  
15 very very frequently during that case.

16 Q What was he connected with that case, in what way?

17 A He was a witness.

18 Q You met him during the trial of that case? A Yes, sir.

19 Q How long did the case continue? A Three months--about  
20 15 weeks, I believe.

21 Q 15 weeks in all? A Yes, continually, almost.

22 Q Aside from meeting him on the street had you ever seen  
23 him other than at this case? A I don't think so.

24 Q Did you ever have any sort of business with him?

25 A Not any more than that case. I subpoenaed him and  
26 things of that kind.

1 Q Well, you subpoenaed him as a witness in the case and  
2 while he was in attendance on the court you were there?

3 A Yes, and talked to him a great deal.

4 Q You know anything about his moral character, a man of  
5 uprightness and integrity? A I always thought he was all  
6 right.

7 Q By that you mean to say what I asked you, that he was  
8 a man of uprightness and integrity? A Yes, sir, I thought  
9 he was all right.

10 Q You thought he was all right, but did you think he was  
11 a man of uprightness and integrity? A Yes, sir.

12 Q And you thought he was a man of honesty? A I thought so,  
13 I did.

14 Q Had he ever given you any reason to believe that he  
15 would be the kind of a man that would be bribed? A None  
16 whatever.

17 Q You have mentioned--Mrs Smith was there when you got out  
18 there? A A lady he introduced to me as Mrs. Smith.

19 Q On that occasion when you met Mrs. Smith you began the  
20 conversation with Frank Smith about bribing him?

21 A Immediately after she left, yes, sir.

22 Q But as soon as she had left. Now, where was it that  
23 you first met Guy Yonkin down at his cigar stand? A Yes,  
24 sir--you mean in regard to this?

25 Q In regard to this thing that you spoke of?

26 A Yes, sir.

1 Q And you took him into a public place, did you not, to  
2 talk to him about it? A Took him in a seat in the back  
3 of a saloon in a box.

4 Q That is in a saloon next door to the place where he has  
5 his cigar stand? A There are two; I don't remember  
6 which one we went into.

7 Q One or the other of those places? A Yes, sir.

8 Q Well, they are saloons frequented by large numbers of  
9 people? A Yes, sir.

10 Q And you took him in there during the day time, that is  
11 to say during the busy time? A Yes, sir.

12 Q Were there many people around there? A Yes, sir, in  
13 the saloon.

14 Q A good many and you walked inwith him together, did you?  
15 A Yes, sir.

16 Q And sat in an open kind of a buffet place, no door or  
17 anything of that sort? A No, no door.

18 Q Was there anybody in his place when you asked him to  
19 leave it and go with you? A Not onthe inside, I don't  
20 think; no, sir.

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1 Q Who was it that took his place behind the counter?

2 A Some friend standing in front, he asked him to look  
3 after the place for a few moments.

4 Q How did you go out to John Underwood's place?

5 A In the automobile.

6 Q Automobile? A Yes sir.

7 Q How did you go out to Frank Smith's place?

8 A Automobile.

9 Q Did you go out to Frank Smith's place in the day time?

10 A No, it was at night the last time I was there.

11 Q The first time you were there? A Day time.

12 Q Who was the man that drove you? A Fred Hoffman.

13 Q Who was the man that drove you down to Underwood's?

14 A Fred Hoffman I think -- in fact I know it was.

15 Q I will have to recall this witness for further cross-  
16 examination a little later, but certain materials which your  
17 Honor can understand the nature of have not yet arrived, and  
18 I will ask leave to put them to him when they arrive; other-  
19 wise than that I close.

20 MR FREDERICKS: Now, we don't want to take this witness up  
21 on redirect until they are through.

22 THE COURT: When will you be ready to finish?

23 MR ROGERS: Tomorrow morning. You can call Captain White,  
24 he is here.

25 MR FREDERICKS: There is another witness <sup>here</sup>/we want to put on  
26 and let go. Counsel says those things he supposes the Court

1 knows. Of course we would make no objection to counsel if  
2 there is some particular matter he wants to go over, why,  
3 we have no objection to it, but we want it understood that  
4 it is confined to some particular reason, and for that  
5 particular reason he has not finished it.

6 THE COURT: The Court does not know what Mr Rogers meant,  
7 but will take it for granted that there is some excellent  
8 reason or he wouldn't make the request. I can readily  
9 understand there might be a good many reasons, the parti-  
10 cular one I do not know, but I assume it is a sufficient  
11 reason or the request would not be made.

12 MR FREDERICKS: We don't want counsel to go into a general  
13 cross-examination of this witness again.

14 THE COURT: Oh, no.

15 MR ROGERS: The Court can permit, in his discretion, certain  
16 sorts of questions to be asked.

17 THE COURT: The witness may be excused, then, I take it,  
18 until 10 o'clock tomorrow morning and will then be recalled  
19 for further cross-examination, and after the cross-  
20 examination has closed redirect will take place. Have you  
21 any objection to that method of procedure, Captain Fredericks?  
22 You may start in with your redirect now.

23 MR FREDERICKS: I was busy making notes and would like to  
24 indulge your Honor to have the reporter read the Court's  
25 remark.

26 (Last remark made by the Court read by the Reporter)

1 MR FREDERICKS: Your Honor, we have another witness who  
2 would be glad to be put on now, but it will necessitate  
3 sending over to the office and getting some material, some  
4 papers and things, and it will take possibly ten minutes;  
5 but the witness will be short and he is ~~the~~<sup>a</sup> witness from a  
6 long distance and wants to get away.

7 THE COURT: Very well. We will take a recess for ten minutes.

8 (After recess)

9 (Jury returned to court-room.)

10 THE COURT: Who is your next witness?

13 HENRY H. FLATHER, a witness called on

14 behalf of the People, being first duly sworn, testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR FORD:

18 Q State your name. A Henry H. Flather.

19 Q By the Reporter: How do you spell it?

20 A Henry H F-l-a-t-h-e-r.

21 Q By Mr Ford: How old are you? A Forty-five.

22 Q Where do you reside? A Washington, D.C.

23 Q Any street and number? A Well, I live at the Mendota.  
24 Apartments, in the city.

25 Q And your occupation? A Cashier of the Riggs National  
26 Bank of Washington.

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1 Q That is a bank recognized under the national banking  
2 laws of the United States? A It is, sir.

3 Q And where is their banking place? A On Pennsylvania  
4 Avenue, right opposite the treasury.

5 Q In the city of Washington, D C ? A In the city of  
6 Washington D C.

7 Q How long have you occupied that position? A Cashier?

8 Q As cashier. A Since 1907.

9 Q During that time what have your duties been with regard  
10 to the bookkeeping and accounts of that bank? A Well, I  
11 supervise the bookkeepers and all the clerks.

12 Q Their work is done under your supervision and direction?

13 A Absolutely, sir.

14 Q Do you know Samuel Gompers, the head of the American  
15 Federation of Labor? A I do not know him, but I have known  
16 of him; but I do not know him.

17 A Do you know Frank Morrison? A Yes, I know him very  
18 well.

19 Q What is his business, if you know? A He is Secretary  
20 of the American Federation of Labor.

21 Q As secretary of the American Federation of Labor --  
22 withdraw the question -- have you any business relations with  
23 him? A Well, he keeps his bank account with us.

24 MR APPEL: Wait a moment, your Honor. We object to that as  
25 incompetent, irrelevant and immaterial; no foundation laid  
26 for the introduction of this evidence.



1 MR FORD: It is merely preliminary, to reach a document,  
2 of course.

3 MR APPEL: I don't know, you might ask a whole lot of  
4 matters in the guise of being preliminary; I have been there  
5 myself.

6 THE COURT: If he states it is preliminary it will be al-  
7 lowed to go in. Objection overruled.

8 MR APPEL: We take an exception.

9 MR FORD: Read the question.  
10 (Last question <sup>and answer</sup> /read)

11 Q How many bank accounts does Mr Morrison have with the  
12 Riggs National Bank?

13 MR APPEL: Wait a moment. We object to that on the ground  
14 it is incompetent, irrelevant and immaterial, not the best  
15 evidence; secondary evidence.

16 MR FORD: It is merely preliminary to get to one particular  
17 account.

18 THE COURT: Objection overruled.

19 MR APPEL: We except.

20 A He has an individual account and then account as  
21 Frank Morrison, Secretary, and a Number 5 account, Frank  
22 Morrison No.5, and Frank Morrison M S account and M H account,  
23 money held account, and I think he has a No. 3 account, unless  
24 it is closed at the present time, I am not positive.

25 Q Directing your attention to the special No.5 account,  
26 do you know what that account is?

1 MR APPEL: We object to that on the ground it is incompetent,  
2 irrelevant and immaterial, hearsay; upon the further ground  
3 no foundation has been laid and it calls for secondary evi-  
4 dence and not connected with any matter in this case, not  
5 connected with the defeddant, not showing that the defendant  
6 has any connection with said account in any way, shape or  
7 manner.

8 THE COURT: Objection overruled.

9 MR APPEL: We except.

10 A If you will please have the question read again.

11 (Question read)

12 A Yes.

13 Q By Mr Ford: State what it is.

14 MR APPEL: Wait a moment. The same objection.

15 THE COURT: Objection overruled.

16 MR APPEL: Exception.

17 A It is a McNamara Defense account fund.

18 Q Do you remember the occasion of that account being  
19 opened?

20 MR APPEL: We object to that on the ground it is incompetent,  
21 irrelevant and immaterial, calls for secondary evidence, no  
22 foundation laid, it is hearsay as far as this defendant is  
23 concerned, no evidence has been introduced<sup>showing</sup>/or tending to show  
24 that this defendant had anything to do with the opening of  
25 that account or any connection with it in any way, shape or  
26 manner.

2lp 1 MR. FORD. I might state, your Honor, that the object is  
2 this, it is to identify certain moneys which we will after-  
3 wards trace to the def endant.

4 THE COURT. Objection overruled.

5 MR. APPEL. We aexcept.

6 A What is the question? (Question read.) I remember when  
7 it was opened Mr. Morrison told me it was moneys received  
8 for the expense of the McNamara defense.

9 MR. APPEL. We move to strike out the answer of the witness.  
10 It is absolutely hearsay.

11 MR. FORD. I think that is probably true.

12 MR. APPEL. I do not think even in a Justice court that  
13 would be admissable.

14 MR. FORD. We are perfectly agreeable to have it stricken  
15 out, we do not think it is proper. We understood that the  
16 answer would be competent--

17 MR. APPEL. I have no way of characterizing this mode of  
18 introducing evidence against this defendant, he is being  
19 tried for his liberty, he is being allowed to introduce  
20 secondary evidence in the face of every decision, absolute-  
21 ly evidence that not even in a Justice court would be  
22 admissable.

23 THE COURT. Your remark is entirely uncalled for. Counsel  
24 himself has requested and consented to that motion being  
25 granted. This outburst has no point whatever that I can  
26 see.

1 MR. APPEL. In the face of my objection, it was allowed  
2 to go in.

3 THE COURT. The objection has been made and counsel on the  
4 other side immediately acceded to it and the answer has  
5 been stricken out by the district attorney.

6 MR. FORD. And I will withdraw the question. In other  
7 words. I wish to hand counsel for the defendant a docu-  
8 ment, before I exhibit it to the witness.

9 (Mr. Ford hands document to counsel for defendant.)

10 BY MR. FORD. Q While counsel is looking at the document  
11 I will ask you to state whether or not you were the offi-  
12 cial custodian of the books, documents and records of the  
13 various depositors in your bank, the Riggs National Bank?

14 A I am, sir.

15 Q And those documents are prepared under your direction  
16 and supervision? A Every one of them, sir.

17 Q I will now ask you to look at this document, which  
18 bears a legend at the top, "Frank Morrison, Secretary  
19 Special Number 5" which I state merely for the purpose of  
20 identifying it, and which I have shown to counsel, and ask  
21 you if you know what that paper is?

22 MR. APPEL. The question is if he knows, your Honor.

23 THE COURT. Yes, answer the question yes or no.

24 A Yes, sir, I know what this paper is.

25 BY MR. FORD. Q State what it is.

26 MR. APPEL. Wait a moment. We object to that on the ground

1 it is not the best evidence; it is incompetent, irrelevant  
2 and immaterial for any purpose; it is hearsay, no founda-  
3 tion laid, not connected with any act of this defendant,  
4 refers to declarations and acts of persons not connected  
5 with this case or shown to be connected with the defendant,  
6 therefore, it is hearsay.

7 THE COURT. Objection overruled.

8 MR. APPEL. We except.

9 A Read the question. (Question read.) This is the  
10 original sheet out of our ledger that is kept the account  
11 of Frank Morrison, Special No, 5, which they have an  
12 account.

13 MR. FORD. Q Which account do you refer to as the McNamara  
14 defense fund?

15 A Yes, sir, which account I referred to as the McNamara  
16 defense fund.

17 MR. ROGERS. If your Honor pleases, your Honor saw a moment  
18 ago that the evidence was stricken out.

19 MR. FREDERICKS. Not that part of it.

20 MR. ROGERS. That Mr. Morrison told him so, it was the  
21 McNamara defense fund.

22 MR. FREDERICKS. That was stricken out.

23 MR. ROGERS. Now, which he has referred to, that the  
24 evidence was stricken out.

25 MR. FORD. No, he made another statement.

26 MR. ROGERS. Never mind, we take an exception to the state-

1 ment of counsel as an effort to get before the jury  
2 evidence which was stricken out.

3 MR. FREDERICKS. That is not the evidence, your Honor.

4 THE COURT. Counsel has a right to specify his objection.

5 MR FREDERICKS. But the facts are he stated at another  
6 time, in an answer to another question that this account  
7 was--that it was a McNamara defense fund account and that  
8 was not stricken out.

9 MR. APPEL. He said he was told that.

10 THE COURT. There is no objection to this question.

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11 MR. APPEL- The objection to that question/<sup>is</sup> it is leading  
12 and suggestive and contains matter not in evidence and is  
13 a recitation of evidence which has not been given because  
14 your Honor struck it out, the statement that Mr. Morrison  
15 told him what it was, he struck the whole matter out.

16 THE COURT. The objection was sustained.

17 MR. FREDERICKS. We would like to ask the reporter to repeat  
18 it from his notes.

19 THE COURT. I do not think it is necessary. This question  
20 is leading and suggestive.

21 MR. FORD. Will you read the last question and answer that  
22 is still in the record?

23 (Last question and answer read.)

24 Q State whether or not that is the official record of the  
25 bank containing the deposits and withdrawals on the account  
26 of Frank Morrison on a Special Number 5 account?

1 MR. APPEL\_ We object to that on the ground it is incom-  
2 petent, irrelevant and immaterial, calls for a conclusion  
3 and opinion of the witness; leading and suggestive; hear-  
4 say; as not being connected with this defendant, calls  
5 for acts and declarations and doings of other persons not  
6 connected with this defendant; not shown to be connected  
7 with this defendant, therefore, it is hearsay.

8 THE COURT. Objection sustained.

9 BY MR - FORD. Q Will you just state what that document is,  
10 in your own words fully, Mr. Flather.

11 MR. APPEL. Wait a moment--he has been asked that question  
12 and the witness has identified that document. Now, then,  
13 after he has identified the document, if the document is  
14 admissible it must show for itself what it is and what it  
15 contains; if it is admissible,--if there is anything in  
16 there that is ambiguous and needs an explanation, then  
17 the time will come when they may offer it to explain the  
18 document. That is a document, your Honor, as we often  
19 know, which requires oral testimony in order to make it--

20 MR. FORD. Withdraw the question.

21 Q When was that account opened?

22 MR. APPEL. We object to that on the ground it is calling  
23 for secondary evidence and because it anticipates, your  
24 Honor, that the document will be introduced in evidence, and  
25 I might as well object to it upon the ground that the  
26 document has not been offered in evidence and has not been

1 allowed in evidence yet and we object to any matter of  
2 any kind deducible from that document for the information  
3 of the jury or the court here.

4 MR. FORD. I intend to offer the document.

5 MR. APPEL. Well, then, don't examine into the contents of  
6 it.

7 MR. FORD. I intended to lay the foundation for its introduc-  
8 tion by showing what it is, and then offer it.

9 MR. APPEL. What it is, the document will show, and the  
10 witness has been allowed in a general way to explain what  
11 it is.

12 THE COURT. The witness has stated what it is.

13 MR. FORD. "When was that account opened" is entirely a  
14 different question, your Honor, and if the witness knows  
15 he is entitled to answer.

16 MR. ROGERS. If he knows otherwise than by means of the  
17 document.

18 MR. FORD. I will withdraw the question.

19 Q Does this document contain all of the items of deposits  
20 and withdrawals of that account during the time it was  
21 open?

22 MR. APPEL. We object to that, because counsel is assuming  
23 that this document is of a particular kind and because it is  
24 leading and suggestive and because it calls for an opinion  
25 and construction of the witness of the words contained in  
26 the document if any, and further, it is leading and sug-



1 gestive, and it is incompetent, irrelevant and immaterial  
2 for any purposes, and hearsay, so far as this defendant  
3 is concerned.

4 THE COURT. Objection sustained.

5 MR. FORD. I would ask your Honor to look at the document  
6 and your Honor can see from the nature of it it is one  
7 of those documents concerning which parol testimony is  
8 admissible to explain it.

9 MR. APPEL. But, the first thing is, is the document in  
10 evidence?

11 MR. FORD. I have stated, if the Court please, it will be  
12 for the purpose of showing the existence of certain moneys  
13 and that we will trace a portion of those moneys through  
14 the hands of this defendant and that we will trace a por-  
15 tion of the moneys which passed through the hands of this  
16 defendant through the hands of this defendant to Bert  
17 Franklin and from Bert Franklin to Lockwood.

18 MR. APPEL. The mere statement of the purposes that  
19 counsel may have in his mind, does not make the evidence  
20 admissible; he may have the purpose to prove a particular  
21 thing and the evidence when offered may be of such a nature  
22 that it would not be admissible.

23 THE COURT. Objection sustained.

24 MR. FORD. We offer the document in evidence at this time  
25 as People's Exhibit No. 10.

26 MR. APPEL. We object to that on the ground it is incom-

1 petent, irrelevant and immaterial; it is hearsay; no  
2 foundatin laid and has no bearing on this case, it does not  
3 tend to show any acts, declarations or fact connected  
4 with this defendant; the document purports to be a document  
5 kept in another state from the state where this defendant  
6 is being examined upon; it is not his doing, kept with  
7 his consent, by his authority or in any way connected with  
8 it, and your Honor will understand that this kind of  
9 evidence is ever admissible in a criminal case. If your  
10 Honor pleases, that account would be the existence of a  
11 fact of what some third person wrote on that paper,  
12 your Honor, even in the introduction of a record you must  
13 bring the bookkeeper, a person who has knowledge of the  
14 fact into court to testify to the fact and he may refer  
15 to the document in his possession recording that fact for  
16 the purpose of testifying orally to the fact. I suppose  
17 in that bank I assume it is run somewhat like other banks  
18 are run--here is a cashier looking over the business of  
19 that bank and the bookkeeper is down there who records those  
20 things; the cashier naturally supposes from the ordinary  
21 course of business the account is correct, but he didn't  
22 make the entry, he doesn't know exactly whose moneys they  
23 are, he only assumes in the general course of business that  
24 account is correct; and in civil cases it is admissible  
25 in evidence because the presumption is that the matter is  
26 done in the general course of business, that those things

1 happen from day to day; but in a criminal case it is  
2 said by our Supreme Court the presumption of innocence is  
3 so great that it predominates and overcomes any other  
4 assumption of the existence of another fact, and as is said  
5 by one Judge, you must put your finger on the fact by  
6 direct, positive testimony before any assumption is allowed  
7 to weigh against the defendant.

8 MR. FREDERICKS. We cannot do it all at once.

9 MR. Appel. I say, in the North Carolina case they have  
10 said that that kind of evidence is not admissible and, if  
11 your Honor please, in the Carlson cases, this same district  
12 attorney's office, they for nearly three months undertook  
13 to introduce documents which were made in New York as against  
14 Mr. Carlson here, and documents which came from Canada  
15 against Mr. Carlson, and after citation of those cases time  
16 after time again they withdraw them and never proved the  
17 fact. There are so many authorities upon the subject  
18 in this state--I can show you a number of authorities--  
19 that books of account, memoranda kept by persons, telegrams  
20 written by other persons, letters and so on written by  
21 other persons, and statements of facts/<sup>of</sup> that kind written by  
22 persons are hearsay. It is a clerk way down there in  
23 Washington writes so and so deposited a hundred dollars,  
24 here comes the cashier, doesn't know anything about the  
25 facts, he brings a document here, the original, if you  
26 please--the copy, if you please, a copy would not have been

1 any different than the original--but the original  
2 would not have any greater weight than the copy. That  
3 clerk says down there in this paper that Mr. Appel deposited  
4 \$100 here. That clerk is not here to testify or swear to  
5 the fact that that entry was correct nor it was so. Now,  
6 here comes the cashier who did not--I assume he did not  
7 make this entry--I assume that--I may be mistaken--here he  
8 comes and says this is the official record--there is no  
9 such a thing as an official record, this is not a document  
10 kept in the ordinary course of business under the laws  
11 of the State of California to make itself evident of the  
12 facts contained therein, it is only a document kept under  
13 the solemnity of the laws of this state where this case is  
14 being tried that makes those documents, by express provi-  
15 sion of the statutes, allowed to be introduced in evidence  
16 as prima facia evidence of the facts contained therein,  
17 such as are deeds of record, such are deeds acknowledged,  
18 pleadings in court verified by the parties, or the record  
19 of the case existing in court, and they are admissible in  
20 evidence because they are deemed to be the official  
21 record. Why, your Honor, if your Honor pleases, in one  
22 case here the gentlemen must remember in the Samuelson  
23 case, they introduced a record of a certificate of marriage  
24 against the defendant in the case which was tried here against  
25 a reporter. The Supreme Court reversed that case because  
26 they said it is hearsay and it is inadmissible, it is the

1 declaration of a third party that this defendant married  
2 a certain woman at a certain place. It is hearsay, that  
3 statement is not made in open court, it is made over there  
4 where the record is made. It is just the same as if I had  
5 gone down there to Washington and said I know that so and  
6 so deposited this amount and I put it on this book and then  
7 they bring the book without my oath there, it is not sworn  
8 to, it is in the shape of a deposition, it is not evidence.  
9 While I have not got the cases here, your Honor, I can  
10 produce them and one or two will be sufficient. We make  
11 this objection in good faith. We think, your Honor, that  
12 if any claim is to be attached to this defendant it ought  
13 to be strictly, that the evidence should be strictly under  
14 the rules of law.

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25 1 This is too important your Honor. If the letter had  
2 been written by the Cashier and said I deposited a memorandum  
3 in this bank, saying so and so made a deposit there, I dep-  
4 osited this memorandum in this bank, and say so and so drew  
5 from that deposit a certain amount of moneys, he says that  
6 when he writes that in that book. He doesn't say it under  
7 oath. He doesn't say it in the presence of the defendant  
8 and in that North Carolina case the Supreme Court there said  
9 the defendant was entitled to be confronted by the witnesses  
10 so he could cross-examine. The bookkeeper who made this is not  
11 here for cross-examination. This account may be correct; it  
12 may not be correct, but he has not him here to cross-examine  
13 him. Under what circumstances did you make these entries?  
14 Do you remember anything concerning the facts? We cannot  
15 cross-examine the witness that is speaking here, your Honor.  
16 He speaks how? He signs a document down here in the possession  
17 of this gentleman, who is the legal custodian of that document  
18 but it is not this gentleman's statement under oath. If it is a  
19 statement of someone who wrote it there and it is one intro-  
20 duced here made over there to this gentleman, if you please,  
21 and carried by this gentleman into court. Wouldn't it be  
22 like going down there and asking that bookkeeper if he didn't  
23 receive a deposit on a certain date and whether he entered  
24 it on this book? Yes. And I could come into this court  
25 and say this bookkeeper told me that deposit was made and  
26 here is a memorandum of it. Your Honor can see it is hearsay.

1 and yet the defendant has not that which witness who made  
2 memorandums here that he may cross-examine him concerning  
3 the correctness of that, and he is to be convicted and a  
4 fact must be laid here against him on evidence of that kind.  
5 Now, your Honor, if your Honor has any doubt about that  
6 question and my objection is not logical, let me read to  
7 your Honor decisions. Do not take what I say, but let me  
8 read you the decisions on that point. I can readily see,  
9 your Honor, that a book of account be kept in the general  
10 course of business in a store here, that you can introduce  
11 that in evidence against me in a civil action, and under  
12 the rules of law and under long practice and long experience  
13 thereby out of necessity that account is deemed correct on  
14 its face, no matter who made it, and it is deemed to be  
15 evidence of the transactions and it is deemed prima facie  
16 evidence of the delivery of goods therein named to me, but  
17 in a criminal case what presumptions can you indulge in the  
18 presumption of innocence? Now, it seems to me, your Honor,  
19 and I speak this in perfect seriousness, I speak it on both  
20 sides of the case, it seems to me, your Honor, this is a  
21 matter of importance. These gentlemen don't want to try a  
22 case here that will go amiss on account of any error, and  
23 certainly I don't want any evidence introduced against Mr  
24 Darrow that is not proper and legal, and I am seeking here,  
25 you may say, perfectly impartially to the question of law,  
26 to a fair question of law. I say that I am correct upon

1 that, your Honor, and <sup>I</sup> can cite to your Honor the decision.

2 MR FORD: Now, if the Court please, this is a very simple  
3 matter and I think counsel has, as sometimes happened before,  
4 has mixed up two questions in his objection. There are two  
5 questions involved. This evidence that we have offered is  
6 not admissible for the purpose of proving that the defendant  
7 did the things contained there, and it is not offered for  
8 that purpose. If we were trying to prove the acts of the  
9 defendant by this document <sup>it</sup> would be clearly error. The  
10 defendant's acts cannot be proven in that matter, but we are  
11 not trying to prove that the defendant deposited his money  
12 there. We are not trying to prove that the defendant did  
13 any of the acts represented there. We are offering it for  
14 an entirely different purpose apart from the acts of the  
15 defendant. We are offering it to prove another fact, namely,  
16 that there was some money deposited in a bank in Washington.

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S 1 We will follow that back up -- that fact standing by itself  
26 2 might not have any relevancy, but we will follow that fact  
3 up by showing that that money was forwarded, or large por-  
4 tions of it, were forwarded to the defendant in this case,  
5 and show what the defendant did with that money. We simply  
6 want to show the existence of the account and the existence  
7 of the money, and this is relevant -- I mean this is competent  
8 only to prove the existence of the money, that is all. To  
9 prove the existence of the account on which we would show  
10 that checks were drawn. We will follow this up by showing  
11 that checks were drawn on that account and which money was  
12 used in this particular case that is now before the Court;  
13 that is, we will endeavor to show that.

14 MR APPEL: But that is not an answer, Your Honor, to relieve  
15 the proposition, because I want to prove a series of facts  
16 to prove an ultimate fact, your Honor. There may be one or  
17 two of these little chains of evidence that is not admissible.

18 MR FORD: I have not interrupted counsel during his argument  
19 and tried to refrain. Now, one of the legal presumptions is  
20 that private transactions have been fair and regular, and  
21 that the ordinary course of business has been followed.

22 Subdivision 19 and 20 of Section 1963 of the Code of Civil  
23 Procedure. Now, this witness has testified to his official  
24 position; he has testified that these documents are properly  
25 under his supervision, under his direction, and if I haven't  
26 laid the foundation sufficiently, I think perhaps I ought

1 to have asked him one question more, which I will do and  
2 withdraw the offer for just a moment. Has this document  
3 to which your attention has been directed, Mr Flather, been  
4 kept in the ordinary course of business of the bank with  
5 Mr Morrison and that account?

6 THE COURT: Answer the question.

7 A It has.

8 MR FORD: And is a correct statement of the account --  
9 State whether or not it is a correct statement of the ac-  
10 count of the Riggs National Bank of Washington, D C, ~~that~~ with  
11 Frank Morrison on that special Account No.5?

12 MR APPEL: Your Honor, we object upon the ground no foundation.  
13 has been laid for the asking of this question; it is incompe-  
14 tent, irrelevant and immaterial, and it will be hearsay.  
15 Now, your Honor, you cannot bring the occurrences of a man  
16 except those who have knowledge of the facts relating to it  
17 personally. Now, that has been held absolutely, and calls  
18 for a conclusion or opinion of the witness.

19 THE COURT: Objection sustained.

20 MR FORD: Just one other question. Attracting your atten-  
21 tion to the column headed Debits, I will ask you to state  
22 what the items in that represent?

23 MR APPEL: Wait a moment, your Honor. I object to the  
24 witness being examined concerning any word or any figure or  
25 any dot in that document because it would be ~~subject~~ substi-  
26 tuting the language of the witness for what the document

1 contains, and upon the ground that it is incompetent,  
2 irrelevant and immaterial, and the document itself has not  
3 been introduced in evidence, therefore they have no right  
4 to any information from the contents of that document.

5 THE COURT: Objection sustained.

6 MR FORD: I want to be heard on that, if your Honor will  
7 bear with me just a moment.

8 THE COURT: Very well.

9 MR FORD: I want to call your Honor's attention to the  
10 purpose. I have not asked to read the items and I don't  
11 desire to do so at this time. I have simply attracted his  
12 attention to certain items and my object in so doing was to  
13 show that the figures in that column represented moneys  
14 paid out by the bank, of which this witness is the cashier,  
15 to show that upon that document the bank acted, and in order  
16 that we may follow the presumption set forth in Section 1963,  
17 Subdivison 27 sets forth in the Code of Civil Procedure,  
18 "That acquiescence followed from a belief  
19 that the thing acquiesced in was conformable to the right  
20 or fact;" and 28, that "Things have happened according to  
21 the ordinary course of nature and the ordinary habits of  
22 life"; and that the ordinary course of business has been  
23 followed. We wish to show that the parties between whom  
24 this account existed acted upon that document, and therefore,  
25 the inference is that it was correct and right. Your Honor  
26 would not allow us to ask the witness whether it was correct

1 or right, on the ground that it was a conclusion of the  
2 witness. Now, I want to direct the witness' attention to  
3 something in which the law draws the conclusion, draws the  
4 inference, makes it a presumption, which, unless the con-  
5 trary is shown to exist, is presumed to be true. That was  
6 the only object. I did not ask for the items, nor do I de-  
7 sire to read them to the jury. I am only offering it for  
8 the purpose of proving the existence of certain facts, which  
9 facts in themselves are not pretended to be, and no claims  
10 are made, are the acts of the defendant. If they were  
11 offered for that purpose we would concede they were inad-  
12 missible.

13 THE COURT: The order sustaining the objection will be re-  
14 stored and the objection will be sustained.

15 MR FORD: I show counsel what purports to be a check-book  
16 containing cancelled checks.

17 THE COURT: It is apparent you cannot finish this branch of  
18 the case tonight. Might as well adjourn at this time.  
19 Gentlemen of the jury, bearing in mind the admonition hereto-  
20 fore given you, we will take a recess until tomorrow morn-  
21 ing at 10 o'clock.

22 (Jury admonished recess until June 5th, 1912, at  
23 ten a.m.-

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