

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. 16

I N D E X.

Direct. Cross. Re-D. Re-C.

BERT H. FRANKLIN

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June 7, 1912. 10 o'clock A.M.

Defendant in court with counsel. Jury called; all present. Case resumed.

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BERT H. FRANKLIN, on the stand for further Redirect Examination:

A JUROR: Your Honor, may I have the privilege of questioning the witness in regard to some testimony that he has given that I am not sure my opinion is right or wrong.

THE COURT: I think so.

MR FREDERICKS: Any time the jury wants to ask questions --

THE COURT: That is a right, gentlemen, that any of you have any time that there is a matter that is not clear in your minds, why, the burden of deciding the facts is upon you, and if a matter passes that is not clear to your mind you have a right to stop the proceedings and clear it up. I trust, however, you will not necessarily interfere with the due course of the trial, but when it becomes necessary at any time don't hesitate.

MR FREDERICKS: Go ahead, Mr Golding, if this is the witness.

JUROR GOLDING: Yes sir, this is the witness. I understood from your testimony there was no amount agreed upon when

1 you went to work on the McNamara defense? A That is cor-  
2 rect, yes sir.

3 Q Does Mr Darrow owe you any money now on the McNamara  
4 defense? A That would be a question, of course, of an ac-  
5 counting between Mr Darrow and myself that we have not had  
6 up to this time.

7 Q How would you know if no amount was agreed upon?

8 A I could have my own statement and Mr Darrow might have  
9 his; that would be a hard question for me to decide.

10 Q You stated, I think, when you was trying to remember  
11 certain prospective jurors that there was twelve or four-  
12 teen hundred names you had to go over? A Sixteen hundred.

13 Q Sixteen hundred which you and your assistants investi-  
14 gated; is that right? A There was 1674 names upon the  
15 jury lists that I received. All of those men were not in-  
16 vestigated for the reason that part of them, by reason of  
17 having been called in other Departments, were exempt from  
18 jury duty and could not be called under the law.

19 Q About how many did you investigate? A I think about  
20 1400.

21 Q Fourteen hundred? A I think so.

22 Q And you received about, according to the statement of  
23 your bank-book as shown on that blackboard, about \$500 a  
24 week for your services? A No sir, I did not. The bank-  
25 book doesn't <sup>show</sup> ~~say~~ that and the statement on the blackboard  
26 doesn't show it.

1 Q Well, it shows approximately that? A No sir, not in  
2 the way you stated.

3 Q I'd like to see the blackboard. A The blackboard  
4 shows that amount, but not for my services.

5 Q I understood your testimony to say what showed on that  
6 blackboard was the total amount you had received from the  
7 McNamara defense? A No sir, I did not so testify. I  
8 testified that is what my bank-book showed I received from  
9 the McNamara defense.

10 Q Then I noticed on the blackboard that on November or  
11 October 28th you received \$500? A Yes sir.

12 Q Then you didn't receive it according to your bank-book  
13 anything in the month of November up to November 28th?

14 A No sir, not according to my bank-book.

15 Q But you did receive money that was not in the bankebook,  
16 is that the idea? A Yes sir, I did.

17 Q Now, there is another question: You said you went down  
18 to see Reese Llewellyn down to the Llewellyn Iron Works on a  
19 political mission. A Yes sir.

20 Q Was that -- I don't know whether the question is right  
21 or not -- was that political mission in favor of Mr Harriman?

22 A Had nothing to do with Mr Harriman or any contest of  
23 that kind at all. Didn't have anything to do with the city  
24 election.

25 Q Just one other point. After you left the office  
26 of Mr Darrow, as I understand it, with the \$4,000, you said

1 you went to the elevator and had the money in your hand.

2 A That is correct, yes sir.

3 Q After you left the elevator did you carry the money in  
4 your hand? A I think I had the money in my hand all the  
5 time from the time I got it from Mr Darrow until I gave it  
6 to Mr White.

7 Q You did? A Yes sir. It was a very small package,  
8 I can assure you.

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2s 1 Q You didn't put it in your pocket? A I don't think  
2 so, that is, to the best of my recollection.

3 THE JUROR. That is all.

4 THE COURT. You were on redirect examination, Mr. Ford.

5 MR. FORD. I intended to go into that matter later. Made  
6 some notes with regard to it. I guess I had better go  
7 into it now then. Mr Bailiff, will you bring the blackboard  
8 in court. Mr. Franklin, have you the names of the men who  
9 were in your employ? A Not with me, no, sir; I have  
10 them at the office.

11 Q Did you employ the same number of men all the time  
12 during the two months or the three months that you were  
13 engaged in working for Mr. Darrow? A No, sir, I did not.

14 Q When you went to work--you stated that you were employed  
15 by Mr. Darrow on the work of investigating jurors, beginning  
16 August 9, 1911? A About that time, yes, sir.

17 Q At that time did you receive any money from Mr. Darrow?

18 A No, sir.

19 Q Did you employ any men at that time? A Not at that  
20 time; no, sir.

21 Q When did you first begin to employ the men? A I think  
22 the 14th day of August, if my memory serves me correctly.

23 MR. FORD. The blackboard is being used in the other court.

24 Q When did you first begin to employ men to assist you in  
25 your work of investigating? A I think the 14th of  
26 August--14th or 15th--in that neighborhood.

Q When did you first receive money from Mr. Darrow for that

1 work? Q I think about two days previous to the 19th  
2 day of August.

3 Q And that was the \$500 cash payment to which you referred?

4 A No, sir.

5 Q. What amount did you receive? A \$500.

6 Q And who paid the men whom you employed? A I did, that  
7 is, it came through me. Sometimes Mrs. Franklin paid them,  
8 but most of the time I paid them.

9 Q Was it paid out of the amounts you received from Mr. Darrow  
10 or did Mr. Darrow make the checks out for these men? A Mr.  
11 Darrow made the checks payable directly to me.

12 Q All checks were payable to you? A Yes, sir.

13 Q And you paid your men? A Yes, sir.

14 Q Did you render any account to Mr. Darrow at any time  
15 of the men who were employed? A No, sir; not to the  
16 best of my recollection, I don't think I did; I don't  
17 think I was ever asked for it.

18 Q Have you ever at any time since the 14th--when did you  
19 last receive any sum of money from Mr. Darrow? A I don't  
20 remember at this time.

21 Q Did you receive any money since the 28th day of November  
22 1911? A Yes, sir; I have.

23 Q What was the first sum you received after the 28th  
24 day of November, 1911? A I want that understood, I did  
25 not receive the money directly from Mr. Darrow, I have not  
26 received any money directly from him since that time.

1 Q Did you from any other one of the attorneys for the  
2 defense? A Yes, I did.

3 Q From who? A LeCompte Davis.

4 Q How long after your arrest did you receive money from  
5 Mr. Davis and how much? A I received, I think, on the  
6 2nd day of December--I wouldn't be certain as to the  
7 date, \$100 from Mr. Davis, and I think the next date was  
8 on the 6th day of December, I received \$200 from Mr. Davis,  
9 and at a later date--I have forgotten at this time--I  
10 received from Mr. Davis \$1000 and gave him a receipt on the  
11 Darrow account.

12 Q About how long subsequent? A Well, I don't remember.

13 Q Was that a receipt in full for your services? A No, sir,  
14 receipt on account. I wrote it myself on Mr. Davis's paper,  
15 letter head.

16 Q Did you do any work for Mr. Davis or Mr. Darrow on this  
17 case after the 1st day of December, the date the McNamaras  
18 plead guilty? A Oh, no; no, sir.

19 Q When did you quit your work of investigating? A I pre-  
20 sume that you would say I quit on the 28th day of November.  
21 MR. APPEL. We move to strike out that answer. A man cer-  
22 tainly knows.

23 THE COURT. Strike it out.

24 A The 28th day of November, 1911.

25 BY MR. FORD. Q Did your men continue to work after that  
26 date? A They did not.



1 Q Did you pay your men for the work which they did during  
2 the period you employed them? A I did; yes, sir.

3 Q Do you know the names of the men whom you employed?

4 A I do when I hear them. I cannot repeat them now.

5 Q Have you, since the close of the McNamara case, received  
6 any moneys other than these three items which you have told  
7 us, the \$100 from Mr. Davis on one occasion, \$200 on another  
8 and \$1000 on another? A Not from the McNamara people; no,  
9 sir. I have received money but not from them and nothing  
10 connected with that case at all.

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Pete 1 Q You have not received any money from anybody connected  
2 with the case? A No sir.

3 Q Have you received any money from anybody connected with  
4 the other side of the case since that time? A No, nor  
5 before.

6 Q Mr Franklin, let me understand you. What do you mean  
7 by saying you have received other money?

8 MR APPEL: We object to that. The witness has testified in  
9 connection with this matter and we object to putting in any  
10 more outside matters than they have been putting in.

11 MR FORD: I presume my understanding, which is this, that the  
12 other moneys were for other work he was engaged in for other  
13 accounts.

14 THE COURT: Didn't you say the other moneys were outside  
15 matters and disconnected with this case? A Yes sir, I did.

16 THE COURT: I didn't hear it. So Mr Appel's objection is  
17 well founded.

18 MR FORD: If that is in the record I am satisfied.

19 Q That is all the money you ever received from any source  
20 for your work done prior to December 1, 1911? I mean, that  
21 is all the sums you have received since the first day of  
22 December? A Yes sir.

23 Q Now, you stated you received \$500 a few days before  
24 August 19th? A Yes sir.

25 Q Was that in cash or check? A By check.

26 Q From whom? A Clarence Darrow.

1 Q What did you do with that money? A I paid \$53 of  
2 that money --

3 Q Pardon me just a moment. What did you do with the  
4 check itself? A Deposited it in the First National  
5 Bank to my credit. No, pardon me, I cashed the check at  
6 the First National Bank, receiving for it \$500 in currency.

7 Q Then, what did you do with the money? A I paid it  
8 out, part of it, and deposited \$365 on the 19th day of  
9 August in the First National Bank to my credit. One item  
10 I remember of that amount, the only item I remember was  
11 \$53 I paid to Mr McKelvey for automobile hire for which I  
12 have a receipt.

13 Q Do you recall that Mr Rogers had written on the black-  
14 board the sum of \$500 in cash while you were testifying to th  
15 that and put over to the right hand side \$365, indicating  
16 that \$365 of that 500 had been deposited in the First Nat-  
17 ional Bank? A That is the fact. I don't know that he  
18 wrote it that way or not, that is the fact.

19 Q That \$500 was the first sum of money you ever received  
20 from Clarence Darrow in connection with the investigation  
21 of trial jurors? A Yes sir.

22 Q Now, did you during the month of August, 1911, receive  
23 any sums of money from Mr Darrow which were not deposited  
24 in your bank, the First National Bank? A I do not think  
25 so. I am quite sure, positive on that point.

26 Q On October 23 the last pen and ink item in this bank-

1 book which has been marked 8 for identification, and im-  
2 mediately below that Mr Rogers asked you about a pencil  
3 entry, 28-\$500, and I think you said that was in your  
4 handwriting, am I correct? A Yes sir, that is correct.

5 Q Did you deposit that \$500 in the First National Bank?

6 A No sir.

7 Q Did you receive any sums of money from Mr Darrow after  
8 the 16th day of October, 1911, that do not appear in that  
9 bank-book?

10 MR FREDERICKS: After what date?

11 MR FORD: The 16th day of October, 1911.

12 A Yes sir, I received that \$500.

13 Q Did you receive any other sums in October? A Pardon  
14 me. That \$500 appears in that bank-book, but it appears in  
15 my handwriting. It was not deposited at the bank, it was  
16 put in there so I could keep a record of what I got.

17 Q Did you receive any other sums of money from Mr Darrow  
18 during the month of October? A Well, I am a little un-  
19 certain about it.

20 Q Did you keep any books showing? A I did not keep any  
21 records of the amounts paid me for the reasons the checks  
22 would show, and I think, I am not positive -- and it may be  
23 that one of these entries was that amount, that I cannot  
24 testify to; but I did receive from Mr Darrow the sum of  
25 \$500 and I think it was during the month of October, part  
26 of which was given me in a personal check of Mr Davis'

1 and handed to me by Mr Darrow, part of the payment of \$500  
2 was cash and part check of Mr Davis'.

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4p 1 Q Did you deposit that money? A I am not positive  
2 as to that at this time; I don't know.

3 Q During the month of November did you receive any money  
4 from Mr. Darrow, between November 1st and November 28th,  
5 four weeks?

6 MR. APPEL. This reopens the cross-examination of this  
7 witness, your Honor.

8 MR. FREDERICKS. I think it does, but we are going over  
9 it to make sure. One of the jurors asked a question, and  
10 I think it was gone into, but we simply want to--

11 MR. APPEL. We do not want to be foreclosed from hereafter  
12 asking him.

13 MR. FORD. It was not gone into on cross-examination.

14 THE COURT. There is no objection. Mr. Appel simply stated  
15 his view.

16 MR. FORD. I call to your Honor's attention the fact that  
17 counsel went into these various items on cross-examination  
18 and he cannot object to us going into them on redirect  
19 examination.

20 THE COURT. We will cross that bridge when we come to it.  
21 Gentlemen, Gentlemen, now, address the court. We will  
22 cross that bridge when we get to it.

23 MR. FORD. Q How many men did you employ here in the month  
24 of August? A I haven't any independent recollection.

25 Q Have you any independent recollection as to how the  
26 number of men employed during the month of September com-

1 pares with the number of men employed during the month of  
2 August?

3 MR. APPEL. We object upon the ground it is irrelevant and  
4 immaterial and not relevant to any issue in this case; not  
5 redirect, the matter of comparison is immaterial how many  
6 he employed in one month or how many he employed in another.

7 THE COURT. Overruled.

8 MR. APPEL. Exception.

9 A I think I had more men during September, in fact I am  
10 quite sure, than I had during August.

11 MR. FORD. Q During the month of October, 1911, after the  
12 trial began did you employ more men or fewer men?

13 A Than when?

14 Q Than during the preceding month, September? A I think  
15 practically the same.

16 Q During the month of November how many men did you employ  
17 as compared with October? A During October and November  
18 I had but two or three men at my command on this case.

19 Q Then you did not employ as many men during the month of  
20 November as you did October and September?

21 MR. APPEL. I suppose he is leading the witness, of course  
22 you did and of course you did.

23 THE COURT. You object upon the ground it is leading?

24 MR. APPEL. We don't like to object. We suggest that he not  
25 lead the witness. I ask that.

26 THE COURT. Go right on with the examination.

1 MR. FORD. Q Did you employ fewer men during the month  
2 of November than you did during the months of October  
3 and September? A Yes, sir; I did.

4 Q How much money did you receive during the month of Novem-  
5 ber from Mr. Darrow other than the \$4,000 that you  
6 received on the 28th day of November? A I think during  
7 the month of November that I got a check from Mr. Darrow--  
8 I am not real sure about it, but I think I got a check  
9 during the month of November from Mr. Darrow for \$500 for  
10 services, that is the only time that my personal services--  
11 was ever anything said about it; I think that was during  
12 the month of November, I told Mr. Darrow-- I gave him a little  
13 statement on a piece of yellow paper like he holds in his  
14 hand, simply a rough sketch of how much I had paid out and  
15 said that I needed \$500 myself, and asked him for it, and  
16 he gave it to me. Now, I think that was during November  
17 but I am not positive as to that.

18 Q The only sum that you had left for your personal ser-  
19 vices other than that would be what remained after paying  
20 your men out of the moneys received from Mr. Darrow?

21 A Oh, no, that wouldn't be true. I got money for my  
22 services--not moneys you understand, but I spent money  
23 for my personal use out of the money that I got from Mr.  
24 Darrow on numerous occasions.

25 Q But you never had any direct accounting with him prior  
26 to the giving of this paper as to how much you had spent for



1 yourself and how much you had spent for your men? A That  
2 wasn't an accounting. That was a rough statement written  
3 down with a pencil in a hurry.

4 Q Do you know how much money you yourself received per-  
5 sonally during the month of September after paying your  
6 men? A I do not.

7 Q Do you know how much you paid your men during the month  
8 of September? A Not independently, no.

9 Q Have you any memorandum with you that will show how much  
10 you paid your men? A No, sir; I have at the office, and  
11 areceipt for every man I employed, every payment that I  
12 made them.

13 Q Did you or did you not employ and receive any compensa-  
14 tion for your personal services from Mr. Darrow?

15 MR. APPEL: Wait a moment, that is immaterial, what was  
16 in his own mind. I don't see how it affected any issue  
17 in this case.

18 THE COURT. Objection overruled.  
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Sm 1 MR FORD: He stated he had no definite --

2 THE COURT: Objection is overruled.

3 MR FORD: Oh, I beg your pardon. A I did, yes sir.

4 Q Did you deposit any money in the First National Bank  
5 after the 23rd day of October, 1911; between that date and  
6 the 1st of December? A You mean money received from the  
7 defense of the McNamara case?

8 Q Did you make any deposits at all from any source?

9 A No sir, not personal deposits.

10 Q Did you make any deposit in your account, the account  
11 referred to by this bank-book? A I did not make any  
12 deposit in my own name in the First National Bank after the  
13 date shown in this book. Well now, Mr Ford, I am not so  
14 sure about that.

15 Q About what? A About making any deposits in the  
16 First National Bank to my own account.

17 Q What other account did you have, Mr Franklin?

18 A I didn't have any myself. Mrs Franklin had an account  
19 there, very small account I assure you, but I don't think I  
20 deposited any money in the bank after the 23rd day of Oct-  
21 ober.

22 Q Well, when you wanted money, Mr Franklin, how did you  
23 get it from Mr Darrow?

24 MR APPEL: He testified, your Honor, that when he wanted  
25 money he would go to Mr Darrow and he would give him a check;  
26 that was his testimony.

1 THE COURT: I think that has already been asked and answered.

2 MR FORD: I think that is correct, but the jury brought it  
3 up; seemed to be some doubt on these matters, and I wanted  
4 to be sure the record included it. I don't carry it all in  
5 my head what is testified to in court. Have you at any  
6 time, Mr Franklin, made any demand on Mr Darrow for an ac-  
7 counting, or has he made any demand on you for an account-  
8 ing at any time?

9 MR APPEL: Wait a moment. We object to that as incompe-  
10 tent, irrelevant and immaterial, and leading and suggestive,  
11 and not redirect.

12 MR FORD: These demands have all been brought out on cross-  
13 examination.

14 THE COURT: I think that matter was already covered by Mr  
15 Golding's question.

16 MR FORD: That may be.

17 MR FREDERICKS: I don't think that particular one --

18 MR FORD: On redirect examination counsel has a right to  
19 bring out certain things testified to on cross-examination.

20 THE COURT: All right. Objection overruled.

21 A Read the question, please.

22 (Last question read by the reporter)

23 A No, neither a demand nor a request.

24 MR FORD: Have you made any claims directly or indirectly  
25 on Mr Darrow since the close of the McNamara case, for  
26 moneys other than what you have already received?

1 MR APPEL: Wait a moment. We object upon the ground it is  
2 incompetent, irrelevant and immaterial, and not redirect.

3 THE COURT: Overruled.

4 MR APPEL: Exception.

5 A No sir.

6 MR FORD: Have you had any misunderstanding with him, or  
7 bias or prejudice against him by reason of money that you  
8 claim he owes you? A No sir.

9 MR APPEL: We object. --

10 THE COURT: Strike out the answer.

11 MR APPEL: We object upon the ground it is incompetent,  
12 irrelevant and immaterial, and not redirect.

13 THE COURT: Objection overruled.

14 MR APPEL: Take an exception.

15 THE COURT: Restore the answer.

16 (Last question read by the reporter)

17 A I have never had any misunderstanding with Mr Darrow  
18 on any subject whatever. I haven't any feeling or preju-  
19 dice against him at all.

20 MR APPEL: We move to strike out the answer of the witness  
21 on the ground that it is not responsive <sup>to</sup> the question, and  
22 we ask the Court to admonish the jury not to pay any at-  
23 tention to the answer.

24 MR FREDERICKS: I think it is material, may it please the  
25 Court, although it may go a little further.

26 THE COURT: It is not responsive to the question. He has

1 not answered the question. A I thought I had.

2 THE COURT: Read the answer.

3 (Last answer read by the reporter)

4 A If that isn't an answer, I can't give one.

5 MR APPEL: What is going to be done with our motion. We  
6 are entitled to a ruling.

7 THE COURT: You are going to get one. I will rule on it.

8 MR APPEL: He is so fast, your Honor, I can't catch up  
9 with him.

10 THE COURT: The answer may be regarded as an explanation to  
11 an answer, if an answer had been made. No answer to the  
12 question. Under the objection, it will be stricken out.

13 A JUROR: Can we have the last question and answer read?

14 THE COURT: Yes sir. Read the answer.

15 MR FREDERICKS: Possibly the witness may think the answer  
16 stricken out is --

17 THE COURT: Read the question, and the witness may answer  
18 it; and the Court admonishes him it is a question that can  
19 be answered "yes" or "no", and if he wishes to make any  
20 further explanation, that he has that privilege.

21 MR APPEL: We now object to the witness being instructed  
22 that he can make an explanation because the question was  
23 objected to upon the ground that it was leading and sug-  
24 gestive and upon other grounds, the question might call  
25 for an answer "yes" or "no". Doesn't call for an explana-  
26 tion or subject of explanation.

1 MR. FORD. I think the Court already ruled on the objection.

2 THE COURT. All right. The witness has answered the question  
3 then.

4 MR. FREDERICKS. The proposition now was a request from one  
5 of the jurors to have the question read.

6 A JUROR. My request was to have the question asked as it  
7 was asked and the answer given as it was given.

8 THE COURT. That has been stricken out, Mr. Leavitt, the  
9 answer as given has been stricken out, but you can have the  
10 question and the witness can again answer the question.

11 (Last question and answer read as follows by the Reporter:

12 "Q--Have you had any misunderstanding with him or bias or  
13 prejudice against him by reason of money that you claim he  
14 owes you? A--No, sir.

15 MR. APPEL. We object--

16 THE COURT. Strike out the answer.

17 MR. APPEL. We object upon the ground it is incompetent,  
18 irrelevant and immaterial and not redirect.

19 THE COURT. Objection overruled. Restore the answer. A--  
20 I have never had any misunderstanding with Mr. Darrow on any  
21 subject whatever. I haven't any feeling or prejudice  
22 against him at all.)

23 THE COURT. Then the entire answer is restored, Mr. Appel.

24 In making my ruling I didn't know that the witness had  
25 said, "No, sir." The answer in full will be restored.

26 Mr. Leavitt, you asked to have it read, the question and

1 answer. He is entitled to it. (Question and answer read)

2 MR. APPEL. Of course, we take an exception so as to make  
3 the record straight.

4 BY MR. FORD. Q Did you ever at any time ask Mr. Darrow  
5 for money for yourself and had it refused?

6 MR. APPEL. We object to that as immaterial, incompetent  
7 and irrelevant, not redirect, leading and suggestive.

8 MR. FORD. Perhaps it has been answered in full. I do not  
9 insist on it.

10 THE COURT. Objection overruled.

11 A No, sir.

12 THE COURT. At this time, Gentlemen of the jury, I make the  
13 announcement that the Secretary of the court has just  
14 informed me that the large and airy courtroom used by  
15 Department 9 will be available for further hearing of this  
16 case on and after Monday. I think this <sup>is</sup> conducive to the  
17 comfort and good health of the jurors and counsel and every-  
18 body connected with the case. It will be the large court  
19 room in the Hall of Records.

20 BY MR. FORD. Q You stated last night, as we adjourned,  
21 that you had gone out to a prize fight with a detective  
22 from the district attorney's office and that you also met  
23 Mr. Dominguez. You were asked--did you at any time discuss  
24 the case with him, that is, the detective, in any way,  
25 shape or form, and your answer was you did not. Now, did  
26 you discuss it with Mr. Dominguez at that time in any way,

1 shape or form, either on the car going out or at the  
2 prize fight after you got there? A I didn't go on the  
3 car with Mr. Dominguez.

4 Q I beg your pardon, you met him at the fight? A We  
5 bought seats and went in and had a seat next to him.

6 Q Mr. Franklin, on cross-examination you testified to a  
7 conversation had with Mr. Davis a day or two following at  
8 your office, a day or two following your arrest; the  
9 conversation was held at your office and at which con-  
10 v ersation Mr. Davis had informed you he was trying to make  
11 arrangements to have you plead guilty and that you would  
12 be fined perhaps \$5,000 and perhaps you might have to take  
13 a year in the penitentiary and he would see you were paid  
14 a thousand dollars. Why were you to plead guilty  
15 and take a fine of \$5,000 or a year in the penitentiary  
16 at that time, any other conditions attached to it?

17 MR. APPEL. We object to that on the ground it is incom-  
18 petent, irrelevant and immaterial, calling for a conclu-  
19 sion and opinion of the witness, not calling for the  
20 circumstances, not redirect.

21 THE COURT. Objection sustained.

22 BY MR. FORD. Q You testified on cross-examination that  
23 the first time you met Mr. Davis after your arrest was at  
24 the city jail and Mrs. Franklin was there? A yes, sir.

25 Q Give us all the conversation that occurred at that  
26 time?



1 MR. APPEL: We object to that as incompetent, irrelevant  
2 and immaterial, not redirect, not redirect on anything  
3 brought out by the defense; the declarations of Mr. Davis  
4 and the declarations of witnesses here, the declarations  
5 of his wife/<sup>not</sup>in the presence of the defendant, made after  
6 the alleged arrest are not evidence against this defend-  
7 ant. This was all brought out on their direct examina-  
8 tion and crossed by us.

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7p 1 MR. FORD. If the Court please, counsel asked on cross-  
2 examination concerning that conversation. We made the  
3 same objection they are now making, and they argued it  
4 vehemently at that time and they brought out a part  
5 of the conversation, I presume by way of impeachment.  
6 Now, if any conversation is brought out we are entitled  
7 to the whole of it; if it was material then it is material  
8 now, if it was competent then it is competent now, and  
9 that is the universal rule, whenever part of a conversation  
10 is brought out the adverse party is entitled to the whole  
11 of it.

12 THE COURT. My impression was it was all brought out, but  
13 if it was not all brought out--

14 MR. FORD. It was brought out on cross-examination, your  
15 Honor.

16 THE COURT. I think we better resolve the doubt by having  
17 it. Objection overruled.

18 MR. APPEL. It does not ask for the entire conversation, if  
19 I remember it right. It didn't ask for conversation, it  
20 asked for something that was in the witness's mind, his  
21 reasons for it.

22 THE COURT. Read the question. (Question read.)

23 A Why, all the conversation I remember is, Mr. Davis came  
24 to the--well, I cannot say he came--he was there, I met  
25 him in the city jail in the office of the jailer in the  
26 corridor, rather, and Mr. Davis said, "Well, Hello, Bert,

1 how are you, how are you feeling?" And then the discussion  
2 came up, as I said at the time, it was impossible at the  
3 time I testified on direct examination, it was impossible  
4 for me to remember the exact language and it is now, but  
5 he asked me, told me not to worry that the complaint would  
6 be issued and they would get me out on a bail bond or on  
7 a bond, and I requested of him that it be in cash. He said  
8 that was all right, they were preparing the complaint and  
9 that the warrant would be served on me in a short time and  
10 that everything would be all right, or words to that  
11 effect. I don't remember the exact conversation. Now,  
12 the--

13 BY MR. FORD. Q Now, the next time-- A Pardon me--  
14 THE COURT If you have not finished, Mr. Franklin, finish  
15 your answer.

16 A I remember now he asked me why I didn't send for some  
17 body? I told him I knew somebody would come to my aid  
18 sooner or later, something of that nature.

19 Q Now, the next time you met Mr. Davis you stated it was  
20 at the north end of the court house at the time of your  
21 arraignment? A yes, sir.

22 Q At that conversation he told you to keep your mouth  
23 shut. Was there anything else said at that time between  
24 you and Mr. Davis? A He told me not to talk to the  
25 reporters and to be very careful who I talked to and keep  
26 my mouth shut, or words to that effect, along that line.

1 Q And then a day or two following occurred a conversation  
2 at your office between you and Mr. Davis? A Yes, sir.

3 Q In which you discussed some arrangements to plead guilty  
4 and the possibility of your being fined and sent a year  
5 to the penitentiary. Just give us the whole of that con-  
6 versation.

7 MR. APPEL. We object to that on the ground it is not  
8 redirect, the witness has testified fully on his direct  
9 examination in reference to that matter and we cross-  
10 examined him on that.

11 THE COURT. I will have to refer to the record. I think  
12 Mr. Appel is right.

13 MR. DEHM. page 590.

14 THE COURT. I think you are right, and your associate has  
15 it there.

16 MR. APPEL. We were objecting to it all the time and your  
17 Honor allowed it and we had to cross-examine, conversations  
18 outside of the presence of the def endant with a third  
19 party.

20 MR. FORD. Page what?

21 THE COURT. page 590.

22 MR. FORD. That was not gone into on direct examination.  
23 We may have started to, but we were cut off if we did.

24 THE COURT. Here is the record, 590. Let us see what it  
25 says.

26 MR. FREDERICKS. 590 cross or direct?

1 MR. APPEL. Direct.

2 MR. FORD. That is correct.

3 THE COURT. Objection sustained.

4 BY MR. FORD. Q Now, your next conversation was at the  
5 office of Mr. Gage? A To the best of my recollection.

6 I don't testify on that for sure, but I think it was the  
7 office of Mr. Gage.

8 Q And then came your preliminary examination on the Bain  
9 question? A I don't know about that. I had one.

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8P 1 MR APPEL: Your Honor, all this was gone over on his direct  
2 examination.

3 MR FREDERICKS: He has not asked him any questions about it.

4 MR APPEL: No, but you are reciting to him the events.

5 MR FORD: Oh, it is a preliminary question, merely.

6 MR APPEL: Oh, I understand. You are leading him on, and  
7 telling him when the next conversation occurred, and all  
8 this and that. Now, that is not fair. They examined him  
9 about that. If they have any questions to ask, why don't  
10 they do so?

11 THE COURT: If they ask an improper question, Mr Appel,  
12 if you object to it --

13 MR APPEL: I know, but I am objecting to him telling now  
14 this followed, and that followed.

15 THE COURT: Do you object on the ground it is leading?

16 MR APPEL: No, I object to him holding a conversation  
17 between himself and the witness, and telling what occurred  
18 next, and all this and that. Isn't that refreshing the  
19 memory of the witness? If he asks a question when it is  
20 proper, we won't object to it; but why should he have a  
21 conversation here, and the same as telling a man, now,  
22 this happened after this, and this happened after that.  
23 They agree, and are seemingly in perfect accord.

24 MR FREDERICKS: That is a very good way to make the  
25 matter clear.

26 THE COURT: I do not see any harm in the question, now.

1 MR APPEL: It is not a question, your Honor. He is con-  
2 versing here, and I object to his conduct in that respect.

3 THE COURT: Let us have the next question.

4 Q By Mr Ford: At the time of the preliminary examination  
5 on the day of <sup>the</sup> hearing, Mr Franklin, you testified that you  
6 did have a conversation with some newspaper reporters; you  
7 also testified that at that time you had a conversation with  
8 Mr Darrow, or Mr Davis, I have forgotten which, immediately  
9 preceding your conversation with newspaper reporters. Is  
10 that correct?

11 MR APPEL; Wait a moment. We object to that question, now,  
12 first, upon the ground it is not redirect, it is incompetent,  
13 irrelevant and immaterial, that the witness had testified  
14 in reference to the matters now in question in direct, and  
15 on cross-examination, and has given it all fully, and an  
16 explanation concerning the alleged conversation; we object  
17 upon the ground that the District Attorney is telling him  
18 what he already testified to, and when it was, and with  
19 whom, and we object to the District Attorney instructing and  
20 leading the witness in any respect, and we assign this con-  
21 duct of the District Attorney as an additional series of  
22 acts in examining this witness by way of instruction <sup>of</sup> the  
23 witness; that is, that the acts done in effect are an in-  
24 struction to the witness. I do not mean any misconduct  
25 purposely made by counsel, I am talking to the effect of  
26 that mode of examination.

1 MR FORD: Now, if the Court please, I was simply leading  
2 up to a certain conversation, and when I get to that con-  
3 versation I do not intend to lead the witness. This ques-  
4 tion was merely preliminary; your Honor will remember on  
5 cross-examination counsel sought to impeach the witness by  
6 showing that he made statements to newspaper men, and I am  
7 simply calling the attention of the witness to what the  
8 record shows on that matter, asking if that is correct,  
9 and then I purpose to ask him about a conversation held im-  
10 mediately preceding that conversation with newspaper men,  
11 and ask him to give me the substance of it in the next  
12 question.

13 THE COURT: The question is merely preliminary?

14 MR FORD: The question is merely preliminary. It is not  
15 important; it is in the record already, but merely to  
16 direct the witness' attention to the certain time and place.

17 THE COURT: With that statement, the objection is overruled.

18 MR APPEL: We take an exception.

19 MR FORD: Read the question.

20 (Last question read by the Reporter)

21 A I did have a conversation with Mr Davis, but I am not  
22 sure but what Governor Gage was there; I think he was.

23 Q Was Mr Darrow there at that time? A No sir.

24 Q And the statements to the newspaper reporters --

25 A Pardon me -- I don't know what conversation you  
26 allude to. I imagine, I don't know what conversation



1 you are alluding to; if it is the one I had in mind, Mr  
2 Darrow was not there.

3 Q I wish to direct your attention, first, to the occasion  
4 of your making some statements concerning Mr Darrow at that  
5 time to certain newspaper reporters.

6 A Mr Darrow was not there.

7 Q Now, will you state why, how you came to make those  
8 statements to the newspaper reporters at that time?

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9p 1 MR. APPEL. We object to that on the ground it is incom-  
 2 petent, irrelevant and immaterial, upon the ground that  
 3 his own private notions, his own private reasons are imma-  
 4 terial in any respect, not binding upon the conscience of  
 5 the jury, nor upon the defendant, and it is hearsay; his  
 6 own private reasons are hearsay; upon the further ground  
 7 that any reasons he gives for making this statement attribut-  
 8 able to a third party are not binding upon the defendant in  
 9 any way, shape or manner; hearsay and immaterial.

10 THE COURT. I will take a recess for five minutes and rule  
 11 on your objection after convening.

12 (After recess.)

13 MR. FORD. At the time of the preliminary examination  
 14 of the Bain matter, Mr. Franklin, were you or were you not  
 15 still maintaining your own innocence to the newspaper  
 16 reporters?

17 MR. APPEL. We object upon the ground that it is incompetent  
 18 irrelevant and immaterial and calling for an opinion or  
 19 conclusion of the witness.

20 THE COURT. I think the first point to be done is the ruling  
 21 of the court on the question. I didn't hear this ques-  
 22 tion. Read the question. (Last question read by the  
 23 reporter.)

24 THE COURT. Read the objection. (Objection read by the  
 25 reporter.)

26 THE COURT. Objection overruled.

1 MR. APPEL. We except.

2 A I neither said I was innocent or guilty. I said nothing  
3 to the reporters at all about my guilt or innocence.

4 MR. FORD. Q At that time were you maintaining your inno-  
5 cence in court?

6 MR. APPEL. Wait a moment--we object to that upon the  
7 ground it is incompetent, irrelevant and immaterial and  
8 hearsay and not binding upon the defendant; calling for  
9 his conclusion, for his opinion; calling for his own condi-  
10 tion of mind at that time; not binding upon the issues  
11 of this case and hearsay.

12 THE COURT. Objection overruled.

13 MR. APPEL. We except.

14 MR. FORD. Q Answer the question. A That is a difficult  
15 question for me to answer, Mr. Ford; in a Justice court  
16 there is no plea of guilty or not guilty taken there. I  
17 was represented by counsel.

18 MR. FORD. Q Were you still acting in cooperation with the  
19 defendant, Mr. Darrow?

20 MR. APPEL. Wait a moment--we object upon the grounds it is  
21 calling for a conclusion or opinion; leading and sugges-  
22 tive.

23 THE COURT. Seems to call for a conclusion. Objection  
24 sustained on that ground.

25 MR. FORD. Q Had you at that time admitted your guilt to  
26 any reporter?

1 MR. APPEL. Wait a moment--we object upon the ground it  
2 is incompetent, irrelevant and immaterial for any purpose  
3 whatsoever, and not redirect; leading and suggestive and  
4 hearsay.

5 THE COURT. Objection overruled.

6 MR. APPEL. We except.

7 A No, sir, I had not.

8 MR. FORD Q Mr. Franklin, you stated that some years ago  
9 you were employed in the sheriff's office of this county?

10 A Yes, sir.

11 Q At that time were you paid / through the sheriff's office or  
12 / through the district attorney's office?

13 MR. APPEL. Wait a moment--we object upon the ground that  
14 was a matter which was gone into on direct examination  
15 and we cross-examined him, the first questions put to the  
16 witness was his previous occupation and among that he said  
17 he was a deputy sheriff.

18 MR. FREDERICKS But the difference is this: Counsel is  
19 maintaining and we want to show what the facts are, simply  
20 because they are the facts. Counsel has maintained that  
21 the witness at that time occupied what he says is the  
22 same position that Sam Brown, who is employed by the dis-  
23 trict attorney, occupies now. Now, we wish to show that  
24 this is not true, that this witness did not occupy that  
25 position and just what position he did occupy and in what  
26 department and that it may be counsel has tried to show

1 that this witness was employed by the district attorney at  
2 that time, and therefore there were some close relations.  
3 Now, we wish to show just what the facts are in regard to  
4 that.

5 THE COURT. I think, Captain Fredericks, that whole matter  
6 was covered. I recall distinctly the answer of the witness,  
7 the source from which he believed he received his pay.

8 MR. FREDERICKS. Brought out on cross-examination, I think,  
9 your Honor, and we haven't gone into it on redirect.

10 THE COURT. I don't doubt but what you are entitled to it  
11 once but not twice.

12 MR. FREDERICKS. That is what took so much time. There is  
13 such a mass of this, that is why we don't wish to ask it  
14 twice.

15 THE COURT. It might go on forever.

16 MR. FREDERICKS. That is what we are trying to do, to make  
17 sure we don't go into a matter twice. I don't think that  
18 matter has been cleared up. I made a note to clear it up  
19 and I find the note is still unchecked.

20 THE COURT. What page of the transcript?

21 MR. FREDERICKS. I didn't make that note but I took my  
22 notes in court.

23 MR. FORD. The record shows that Sam Brown worked for the  
24 district attorney and Mr. Franklin worked for the sheriff's  
25 office. They are distinct offices. We don't care anything  
26 about it--

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Sm1 MR FREDERICKS: If the record shows that, that is all we  
2 want it to show.

3 MR APPEL: You ought to know what the record shows.

4 MR FREDERICKS: We don't think the record shows that.

5 MR APPEL: What does the record show?

6 MR FREDERICKS: It was not gone into fully. Of course,  
7 there was a great deal of argument --

8 THE COURT: To save time I will resolve the doubt in  
9 favor of letting it go in. Objection overruled.

10 MR FORD: I will put it in another form to make it clear:--  
11 read the question.

12 (Last question read by the reporter)

13 A To the Sheriff's office.

14 Q Did you take your orders and details as to work from  
15 the Sheriff or the District Attorney?

16 MR APPEL: Wait a moment. We object to that upon the  
17 ground it is not redirect; it is leading and suggestive,  
18 incompetent, irrelevant and immaterial, and already gone  
19 into on direct and cross.

20 THE COURT: I am pretty well satisfied Mr Appel is right  
21 about that.

22 MR FREDERICKS: I am sure it has not.

23 THE COURT: Well, let me have the transcript.

24 MR FORD: I withdraw that question just a moment, and go  
25 into a matter that was not taken up on direct examination.

26 Do you know Samuel L Brown? A Yes sir.

1 Q Do you know what his official position is?

2 MR APPEL: Wait a moment. We object to that as immaterial.

3 THE COURT: Objection overruled.

4 A From common report, I know, yes sir; that is the only  
5 way.

6 MR FORD: Do you know Jim Campbell? A Yes sir, very well.

7 Q Did he work in the Sheriff's office when you were  
8 there? A He did, yes sir.

9 Q State whether or not he was the Deputy Sheriff assigned  
10 to the District Attorney's office at that time, if you know.

11 MR APPEL: Wait a moment. We object to that as incompetent,  
12 irrelevant and immaterial for any purpose whatsoever; not  
13 redirect, having already gone into in every respect, both  
14 on direct and in cross.

15 THE COURT: It is leading and suggestive.

16 MR FORD: I withdraw the question.

17 Q Did you ever at any time occupy the position now  
18 occupied by Samuel L Browne of the District Attorney's  
19 office?

20 MR APPEL: Object to that.

21 THE COURT: Objection overruled.

22 MR APPEL: We except.

23 A No sir.

24 MR FORD: Were you ever at any time under orders of the  
25 District Attorney while you were in the Sheriff's office?

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

1 it is incompetent, irrelevant and immaterial for any purpose;  
2 calling for a conclusion or opinion of the witness; not re-  
3 direct; already covered by direct and cross-examination.

4 THE COURT: Objection sustained.

5 MR FREDERICKS: On the ground it has been covered?

6 THE COURT: On the ground it has been covered.

7 MR FREDERICKS: If your Honor remembers it that way.

8 MR FORD: You stated on cross-examination, Mr Franklin,  
9 that while you were in the Sheriff's office that you some-  
10 times had business with the District Attorney's office in-  
11 vestigating cases which they were prosecuting. At whose  
12 order did you do that; at the order of the District Attorney  
13 or at the order of the Sheriff?

14 MR APPEL: Wait a moment. We object to that as incompetent,  
15 irrelevant and immaterial, already covered by direct and  
16 cross-examination; not redirect; calling for a conclusion  
17 or opinion of the witness.

18 MR FREDERICKS: I just like to explain this --

19 THE COURT: Objection overruled.

20 MR APPEL: Exception.

21 A Please read the question.

22 (Last question read by the reporter)

23 A The County Sheriff.

24 MR FORD: You testified on cross-examination that while you  
25 were in the Sheriff's office you were head of the depart-  
26 ment of criminal investigation. I will ask you to state --



1 of the Sheriff's office, is that all you said?

2 MR APPEL: We object upon the ground the question is  
3 leading and suggestive, and the District Attorney has told  
4 the witness what to testify to, and it is putting the  
5 answer that he wants in the mouth of the witness. It is  
6 one of a series of acts on the part of the District Attorney  
7 to which we have been complaining, and we assign that con-  
8 duct as error. It is by way of instructing the witness  
9 and reminding him what he wants him to testify to.

10 MR FREDERICKS: May it please the Court, the object is  
11 just the reverse of what counsel is making his objection  
12 to, and if the testimony goes on it will be apparent that  
13 it is so, that there was no such department in the  
14 Sheriff's office. Now, the point is, and I think I can  
15 state it without attempting to state any matter or evidence  
16 that will not be brought out here. Samuel Browne is at the  
17 head of the Bureau in the District Attorney's office that  
18 is called --

19 MR APPEL: We object to any statement of facts.

20 MR FREDERICKS: That is just the point. All right, I will  
21 not make any statement of facts; I will not make it, but  
22 now, I get the point. The Department of Criminal Investi-  
23 gation -- there may be a Department of Criminal Investigation  
24 in the District Attorney's office. There may be -- it might  
25 be that Mr Browne might say that he was at the head of that  
26 Department. Now, this witness has said that years ago he

1 was at the head of the Department of Criminal Investigation  
2 in the Sheriff's office. There may be an attempt to confuse  
3 in the minds of the jury those two ideas, and argue to this  
4 jury eventually, that this witness here was in the employ  
5 and occupied the position in the District Attorney's office  
6 ~~which~~ by reason of that title. That is the point we are  
7 trying to make here, simply showing the relation of the  
8 witness because it is apparent from the questions here that  
9 one of the contentions of the defense might be that this  
10 witness here was in the employ of the District Attorney at  
11 the time he was doing all these things, and so we want to  
12 show the matter right straight down just exactly as it is.

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11s 1 MR. APPEL. Why, he says, your Honor, these matters were  
2 years ago. You can easily see how unimportant that is.  
3 He says these matters were years ago. He says, also, that  
4 for the last three years and a fraction that he was United  
5 States Marshall, or Deputy United States Marshall, and that  
6 he only opened up a detective office just a little prior  
7 to his resignation, and so forth, three years and a half  
8 removal from any possibility of this proposition. Our  
9 evidence, of course, has a tendency to show that they came  
10 in contact with each other, the district attorney or his  
11 deputies, came in contact with <sup>each</sup> other as necessarily is the  
12 case with the men having charge of the criminal matters of  
13 the sheriff's office, the district attorney being the  
14 legal advisor of all the officials of the county and state,  
15 that as a matter of law we all know in our experience as  
16 lawyers here and as men who have something to do with the  
17 courts that the tendency would be it might properly be that  
18 a man in the sheriff's office having charge of the criminal  
19 investigation would come in contact with the district attor-  
20 ney's office which would be proper in its place, wouldn't  
21 it? And that is all there is to it.

22 THE COURT. I quite agree with Mr. Appel, but if you insist  
23 on it I think you have a right to it.

24 MR. FORD. If the Court please, we agree with counsel it is  
25 really unimportant but we believe they were attaching great  
26 importance to it. We are still satisfied <sup>that they</sup> desire to show

1 it was of great importance and we are trying to show its  
2 unimportance .

3 THE COURT. The court has ruled you can have your question  
4 if you want it.

5 MR. FORD. Now, counsel has conceded it is unimportant.  
6 We are satisfied and we will quit on that point.

7 MR. APPEL. The only trouble between counsel and I is he  
8 thinks he knows what I think and my colleagues think, and  
9 they don't know anything about them. They get up a ghost  
10 and they follow it around.

11 THE COURT. Is the question withdrawn?

12 MR. FORD. Yes, your Honor, in view of that concession  
13 that it is unimportant, that is all we were trying to  
14 show.

15 Q Mr. Franklin, you stated on cross-examination that when  
16 Mr. Harriman came into the room on the morning of the 28th day  
17 of November, 1911, that you did not see him come out of the  
18 door into which he went with Mr. Darrow. Just attracting  
19 your attention to that testimony, is there any other door  
20 to that room into which he went and from which he might  
21 have gone out without your seeing him?

22 MR. APPEL. We object upon the ground it is not redirect,  
23 it simply calls for guesswork on the part of the witness.

24 MR. FORD. Oh, no--

25 MR. APPEL. Go ahead-

26 MR. Ford. Pardon me.

1 THE COURT. Mr. Appel, you have the floor.

2 MR. APPEL. That the matter has been gone into in direct  
3 examination, on cross, that it is simply asking the witness  
4 to guess as to what might be or what might not be a guess,  
5 that it is telling him what there is there and what there  
6 is not there. He is telling him, wasn't there another  
7 door there, in fact, telling him there was another door  
8 there, it is leading and suggestive, and we assign this ques-  
9 tion of the district attorney as error, as being another  
10 additional act on his part of misconduct in leading the  
11 witness and putting into the mind of the witness what answer  
12 he wants. I think he had enough time to instruct him what  
13 he wants outside of the court.

14 MR. FORD. I ask that the court take action, especially the  
15 last words said by counsel, as an insinuation that this  
16 witness has been instructed by me, he has made the remark  
17 that he should think I had enough time outside of court to  
18 instruct the witness. What I want him to answer. It is an  
19 insinuation I instructed him as to what I wanted him to  
20 do and I ask the court to take some action in the matter.

21 MR. APPEL. Your Honor, I simply state that because while  
22 the witness was on the stand here this morning he was interro-  
23 gated, immediately upon your Honor taking a recess of five  
24 minutes he got up from his seat and they consulted together,  
25 while this witness was under the orders of the court, when  
26 no man should talk with him and discuss with him his testi-

1 mony. by the lawyers on either side, and I called atten-  
2 tion of a dozen witnesses.

3 MR. FORD. I admit that I asked some questions of the witness  
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12-H MR APPEL: To discuss what he was testifying to here and  
2 discuss matters, and he dare not deny it.

3 MR FORD: I have just admitted it.

4 MR APPEL: Lawyers should avoid not only what is im-  
5 proper, but what looks improper. We do not like your Honor,  
6 for my part I speak, we do not like to have any notions  
7 upon any matters. I try to keep my mind clear of those  
8 things, but in the interest of the case, we naturally get  
9 those impressions, and when those impressions are justified  
10 by the acts which I saw, I am very likely to express them.  
11 I try not to express them.

12 MR FORD: If the Court please --

13 THE COURT: Just a moment. I want to ask Mr Appel one other  
14 question. You used the word "instruct" there?

15 MR APPEL: Yes.

16 THE COURT: In a sense that might have a significance.  
17 Is that <sup>the</sup> word you meant to use?

18 MR APPEL: Your Honor, I say that is instruction what he  
19 tells him, you testified so and so.

20 THE COURT: I call your attention to the difference between  
21 a consultation between a witness --

22 MR APPEL: I mean instruction, your Honor, if he wanted to  
23 instruct the witness in a matter he instructs the witness  
24 in the court-room, that he had plenty of time outside of  
25 the court-room, not do it bare faced in the presence of  
26 the jury, and in my presence. I mean exactly what I say.

1 I say that the construction to be placed by any lawyer  
2 who has had any experience in court here, that he has been  
3 telling what the witness testified to, and he says to him  
4 might there or might there not have been another door  
5 there through which you went out, and you could not see him.  
6 Isn't that a suggestion to the witness what the answer  
7 might be, your Honor? I mean it in a legal sense; I do  
8 not mean he would do it corruptly or improperly, anything  
9 of that kind. Of course, I do not assign to counsel any  
10 corrupt motives. I put that construction upon it, upon  
11 the language used by him. What difference is there  
12 between a suggestion to the witness, suggesting an answer,  
13 suggesting to him what he testified to -- it is apparent  
14 from the language here, and I am justified to put that  
15 legal construction upon his language, and I have been re-  
16 peating him time and time again, over and over again, and  
17 your Honor has occasionally sustained our objection because  
18 it was leading and suggestive. If the Reporter reads the  
19 question, your Honor will see it there.

20 MR FORD: If the Court please, during the recess Mr Franklin,  
21 as he passed here, I asked him some questions about the men  
22 employed, as to whether he could get me the amounts that  
23 were paid out to the men, which I have a perfect right to  
24 know, as your Honor well knows.

25 MR APPEL: I object to his statement.

26 MR FORD: Counsel, in his attempted explanation to the Court,



1 called attention to the fact that I had done that which to  
2 my mind indicates and tends to reiterate just what he had  
3 said in the first instance, that I had instructed the  
4 witness what to say. I will leave the matter to your Honor,  
5 and let your Honor determine it.

6 THE COURT: I thought when counsel used the term it was an  
7 inadvertance and I assumed that he had ~~not~~ in mind a consul-  
8 tation, and I do not feel, gentlemen, that the orderly process  
9 of this trial can be carried on when counsel on one side can  
10 be permitted to pass that kind of a reflection upon counsel  
11 on the other side, under circumstances here present; and such  
12 occurrences tend to interfere with the proceedings of the  
13 Court, and have at this time interfered. I shall be con-  
14 tent at this time in admonishing counsel with a very  
15 strict observance of the rule to avoid personalities. I do  
16 say that his remark made was an improper personality, which  
17 I regard it my duty to most emphatically admonish counsel  
18 should be refrained from, in order ~~not~~ to interfere with  
19 proceedings in this court-room at this time. The remark  
20 has now stopped proceedings for a period of five minutes.

21 MR APPEL: Your Honor, we have been asking your Honor to  
22 instruct counsel on the other side not to lead the witness  
23 right along.

24 THE COURT: The Court has sustained the objections whenever  
25 they were leading.

3p 1 MR. APPEL. If that question is not leading, your Honor,  
2 then I would not have been justified by my remarks.  
3 If your Honor has it read your Honor will see that he that  
4 he spoke to him about there being another door there, and  
5 that would naturally convey to the witness the impression  
6 that he could explain his former testimony by reference  
7 to this other door that he said to him, "Might he or  
8 might he not come out of the other door", and "you might  
9 not see him." That conduct is absolutely prejudicial  
10 to the rights of this defendant. If your Honor please,  
11 this line of conduct must suggest to the witness those  
12 things and are we to sit here in absolute and abject control  
13 and not be able to respond and characterize that conduct  
14 as improper? Then, your Honor, the rights of this defend-  
15 ant would be looked after in no proper way and, your Honor,  
16 when I assumed the duties of my office, when I swore I  
17 must defend my client at any cost to me, I had maintained  
18 that rule and if by the improper use of language used in the  
19 legal sense, if there is to be any reflection cast, any  
20 idea that I am not performing my duty, your Honor, I say  
21 that is not true. I do this in the interest of this man  
22 whom I am representing here and I am willing to represent  
23 him at any cost to me, properly within the rules of my  
24 duty and I say that a man who would not do his duty because  
25 of being afraid of transgressing any rule of law when he in  
26 good faith of his purpose in some way or other in using

1 language may appear to transgress any rule of law, I say,  
2 because he may be afraid to speak his language, his mind,  
3 because he may be afraid to offend the Court, and counsel  
4 on the other side, that he must sit here in abject silence,  
5 I say he is not fit to represent the defendant in any  
6 case. I say, your Honor, I have explained to your Honor  
7 that I put a legal construction upon the language and I  
8 have a right to argue to your Honor that it is in effect  
9 an instruction and a suggestion to this witness to answer  
10 in the manner indicated by counsel on the other side, and  
11 that is all there is to it.

12 THE COURT. Perhaps we do not quite understand each other,  
13 Mr. Appel.

14 MR. FORD. If the Court please--

15 THE COURT. No, Mr. Ford, this is not the time. The  
16 remark which the court has admonished you as a member of  
17 this bar <sup>was</sup> not to use an insinuation or intimation that counsel  
18 on the other side had instructed the witness out of court,  
19 not in court.

20 MR. APPEL. No, your Honor, I say he would have sufficient  
21 time to instruct the witness out of court instead of instruct  
22 ing him in court.

23 THE COURT. That is the sole ground of the admonition in  
24 reference to the suggestion that it had been done out of  
25 court or that he had time to do it out of court, and the  
26 Court does not in any sense of the word criticise you for

1 your objection to the question, which is a leading ques-  
2 tion and which objection is sustained.

3 MR. APPEL. Your Honor, I am not going to be intimidated  
4 by the Court or any one else in the discharge of my duties.  
5 I can afford to leave this case, but I wont.

6 THE COURT. No one is trying to intimidate you, Mr. Appel.

7 MR. APPEL. And I want to say to the Court here that no  
8 admonition of the Court or any correction by the Court ever  
9 intimidated me when I felt conscious of doing right and I  
10 protest in the interest of this defendant that counsel should  
11 be subjected here from time to time, continually against me--  
12 it seems I have been singled out in this case, your Honor  
13 as an object of comment and of admonition from time to  
14 time. And I state my position unequivocally.

15 THE COURT. The Court would lose the respect for counsel  
16 that it always has entertained and still entertains if any  
17 improper admonition from any court would prevent him from  
18 doing his duty as he sees fit. I think, however, that this  
19 is ended. The objection is sustained on the ground it is  
20 leading and suggestive.

21 BY MR. FORD. How many doors are there to that room into  
22 which Mr. Harrimen went in with Mr. Darrow?

23 MR. DARROW. No use wasting time on this, we admit the  
24 room in which he says Mr. Harriman stepped there were  
25 several doors there, he could come out in the hall without  
26 coming back.

1 MR. FREDERICKS. We are in the novel position of having the  
2 defendant and an attorney at the same time, but I still  
3 think we should proceed in the regular way and prove things,  
4 not by admission but by testimony, it only takes a ques-  
5 tion and an answer, and takes up a second.

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14H THE COURT: Why take up time on a matter which is admitted  
2 by defendant himself personally, and as attorney?

3 MR FREDERICKS: It makes no difference, but in fact we  
4 ought to prove things.

5 MR DARROW: I object to that statement; it is not only  
6 competent, but it is the right way to do things to save  
7 time, by admitting things.

8 THE COURT: I agree with you. Counsel may go on and  
9 ask any question he wants to.

10 Q By Mr Ford: Was there a hallway near the room in  
11 which you were at that time, in which you were at that time?

12 A There was an entrance in the room in which I was at  
13 that time from the hallway, yes sir.

14 Q Did the other room open on a hallway? A It did not.

15 Q Into what did the other room open? A Into the office  
16 of Mr -- well, I say Mr Darrow's stenographer, I am not sure--  
17 the stenographer who sat between Mr Harrington's office and  
18 this consultation room, to explain myself.

19 MR DARROW: I object to it on the ground it has been admitted.

20 THE COURT: Objection sustained.

21 MR FORD: I don't understand the location of the rooms,

22 MR FREDERICKS: If the Court will let these things be ad-  
23 mitted this way.

24 MR FORD: I am trying to show the location --

25 THE COURT: Read the admission of Mr Darrow, Mr Reporter.

26 MR FREDERICKS: We know what we want to prove; Mr Darrow

1 doesn't know.

2 THE COURT: The Court is going to let in proper testimony,  
3 but when matters are admitted, that disposes of it.

4 MR FREDERICKS: May it please the Court, we maintain it does  
5 not dispose of a thing when it is admitted.

6 THE COURT: The Court is the sole determinator of  
7 that matter.

8 MR FREDERICKS: May it please the Court --

9 THE COURT: I want the admission made by Mr Darrow; I didn't  
10 quite hear it when he made it.

11 MR FREDERICKS: You cannot admit a thing in a criminal case.

12 MR DARROW: What?

13 (Admission of Mr Darrow read).

14 MR FORD: That is all right as far as it goes, but I want to  
15 show the entire location of the room with respect to all  
16 other rooms, etc.

17 THE COURT: All right.

18 MR FORD: I can only ask one question at a time.

19 THE COURT: All right; go ahead.

20 Q By Mr Ford: The room in which you were, I believe you  
21 stated, was the northeast corner room of the Higgins Building?

22 A I did not.

23 Q I beg your pardon. Where was it? A The southwest  
24 corner.

25 Q Southwest corner of the Higgins Building? A Yes sir.

26 Q The room into which Mr Harriman stepped, what direction

1 was it from that room? A Immediately north.

2 Q Immediately north? A Yes sir.

3 Q Now, was there any hallway running north and south  
4 alongside that room? A There was not.

5 Q Was there another room north of that room again?

6 A Yes sir.

7 Q Was there a room east of that room? A East of which  
8 room?

9 Q Of the room in which Mr Harriman stepped? A No sir.

10 Q What was there -- A A wash basin, etc.

11 Q What was there east of that room? A You understand  
12 the south room --

13 Q Perhaps if we get a blackboard we can draw it here.

14 A I can draw a map, if you want me to.

15 MR FORD: Will you bring us a blackboard, Mr Bailiff?

16 (Blackboard brought into court-room)

17 Q By Mr Ford: Will you step to the blackboard, Mr  
18 Franklin, and draw a rough diagram there <sup>how</sup> ~~of~~ the rooms  
19 were situated with respect to one another?

20 A (Witness steps to blackboard and draws) This line in-  
21 dicates the west line of the Higgins Building; this line in-  
22 dicates the south line of the Higgins Building; those two  
23 lines signify the office of Clarence Darrow; that is what I  
24 term the "consultation room"; that is the room occupied by  
25 the stenographer; that is the room that was occupied by  
26 Harrington, Mr Harrington;--



1 Q John R Harrington? A Yes sir. That is a room  
2 occupied by -- rather, in which there were exhibits.

3 Q Will you make some mark on there indicating it as an  
4 Exhibit Room? A (Witness does so/ <sup>Drawing</sup> ^ Indicating a hall-  
5 way; indicating a door leading from the hallway into the  
6 private office of Clarence Darrow; indicating a door lead-  
7 ing from the office of Clarence Darrow into the consultation  
8 room; indicating a door leading from the consultation room  
9 into the office of the stenographer; indicating a door  
10 leading from the office of the stenographer into the office  
11 of J R Harrington; indicating a door leading from the office  
12 of the stenographer into the hallway; indicating a door  
13 leading from the office of John R Harrington into the  
14 hallway.

15 Q Where was the office of Job Harriman? A (Indicating  
16 on board) The last line drawn indicates a very narrow hall-  
17 way running around the south side of the Higgins Building.  
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15 1 The line I am now drawing indicates the office of the  
2 stenographer; as I understood, the office of the  
3 stenographer of Mr. Harriman. This indicates the office  
4 of Mr. Harriman (indicating); this indicates a door leading  
5 from the office of Mr. Harriman into the hallway.

6 Q Now, Mr--if you will just have a seat--are we to under-  
7 stand--that is perhaps leading--in which room were you with  
8 Mr. Darrow when Mr. Harriman came in? A In the room  
9 marked "C.D." which indicates Clarence Darrow.

10 Q In what room did Mr. Darrow and Mr. Harriman go?

11 MR. APPEL. We object to that on the ground it is not  
12 redirect examination; incompetent, irrelevant and imma-  
13 terial, has been testified to on direct examination and the  
14 witness has been cross-examined on it.

15 MR. FORD. It is true, so far as it relates to this speci-  
16 fic question. This may lead to the fact Mr. Harriman had  
17 gone into the room with Mr. Darrow and that the witness  
18 did not see him again. I want to find out into which  
19 room he went.

20 MR. APPEL. We testified to that on his direct examination.

21 MR. FORD. It is for the sake of having it clearly before  
22 the jury. Now we have the diagram and I think we can  
23 all understand it, the Court, counsel and the jury. It is  
24 in the interests of truth and I ask the court in its dis-  
25 cretion to permit that. I am not going through the conver-  
26 sations, just simply to indicate the rooms.

1 THE COURT\* The Court cannot see <sup>the</sup> special significance  
2 attached to it, Mr. Ford.

3 MR. FORD. Well, on cross-examination the witness said  
4 that he did not see Mr. Harriman again. Now, we have an  
5 object in going into that little detail to see what did  
6 become of Mr. warriman.

7 MR. APPEL. They should have done that on their direct  
8 examination.

9 MR. FORD. Perhaps that is true, we might have been a  
10 little bit more thogough on direct examination. It  
11 is a matter entirely within your Honor's discretion and I  
12 would have been through it in just arminute, in three  
13 questions I will be through with this blackboard and the  
14 witness on that point.

15 THE COURT\* It opens up a field--

16 MR. FORD. Withdraw that question.

17 Q Will you please indicate on the diagram into which  
18 room Mr. Harriman went.

19 MR. APPEL. We make the same objection.

20 THECOURT\* Objection overruled.

21 MR. APPEL. Exception.

22 A Point to it, you mean?

23 MR. Ford. Yes, or indicate, just tell us.

24 A The room immediately north of the room of which I  
25 have just spoken marked "C. R."

26 Q The consultation room? A Yes, sir.

1 Q That is all on that point. Was there a doorway leading  
2 from the consultation room leading to the room marked  
3 "stenographer" and also a door from the stenographer's  
4 room into the hallway?

5 MR. APPEL' He has already testified to that, your Honor.

6 THE COURT. Objection sustained. We will take an adjourn-  
7 ment at this time.

8 (Jury admonished. Recess until 2 P.M.)

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