

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. 19

I N D E X.

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

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P. J. Cooney,+

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ls 1 MONDAY, JUNE 10th, 1912. 1:30 P.M.
Mr 2 Defendant in court with counsel. Jury called. All present.
3 Case resumed.

4 BERT H. FRANKLIN,
5 on the stand for further redirect examination.

6 THE COURT. Proceed, Captain Fredericks.

7 MR. ROGERS. Juror Dunbar desired to ask a question.

8 THE COURT. What was that, Mr. Rogers?

9 MR. ROGERS, I say, Mr. Juror Dunbar intimated that he would
10 like to ask a question.

11 MR. FREDERICKS. I haven't quite finished yet.

12 THE COURT- If you just as soon, Mr. Dunbar, better wait
13 until Captain Fredericks has finished.

14 THE JUROR. I would like to have what he testified the first
15 night he went out to Mr. Lockwood's and also what Mr. Lockwood
16 said, read from the notes, that part of it is not quite
17 clear to me.

18 THE COURT. That can be done at the close of Mr. Franklin's
19 testimony or some other time before he leaves the court
20 room.

21 MR. FREDERICKS. Just to get it so we are sure, which night?

22 THE JUROR. The first night he visited--

23 Q Before Mr. Lockwood came to town at all?

24 THE JUROR. Yes.

25 Q The very first night?

26 THE JUROR. The very first night he went out and visited

1 him; I would like what he said, that is all.

2 MR. FREDERICKS. I am not sure we asked this witness that.

3 MR. ROGERS. It is in the record.

4 THE COURT. If it is in the record it may be read.

5 MR. FREDERICKS. Q Mr. Franklin, do you know the amounts
6 of money that you paid to the men whom you employed to work
7 under you in investigating the jury in the case of People
8 vs. McNamara? A I think I do; yes, sir. I have receipts
9 for all those several amounts.

10 Q Did you pay them in--did you pay these men anything in
11 August? A Yes, sir.

12 Q Do you know how much? A No, sir, I do not.

13 Q Pay them anything in September? A I did; yes, sir.

14 Q Do you know how much? A Approximately.

15 Q Well, approximately how much? A About \$1280.

16 Q Did you pay them anything in October? A I did.

17 Q How much? A Approximately \$1170.

18 Q Did you pay them anything in November? A Yes, sir.

19 Q How much? A I don't know.

20 Q Have you those receipts with you? A I have.

21 Q Do you know the names of all the men whom you employed
22 and the amounts that you paid each one? A I have them in
23 my pocket; I have a record of it in my pocket.

24 Q Let me see it. What does that record--what is that
25 record, receipts signed by the men? A No, sir, it is a
26 card system of amounts paid them and the dates on which

1 they were paid.

2 Q Have you the receipts? A I have; yes, sir.

3 Q Have you them with you? A I have; yes, sir.

4 Q Well, now, the signatures that are on the receipt, they
5 are the signatures of whom--

6 MR. APPEL. Wait a moment.

7 MR. FREDERICKS. If you know.

8 MR. APPEL. We object upon the ground it is asking the
9 witness for a conclusion and an opinion, and no foundation
10 being laid there as to personal knowledge or as to having
11 seen the receipts signed.

12 MR. FREDERICKS. I think the question is preliminary only.

13 MR. APPEL. I know, but do you know.

14 THE COURT. Objection sustained.

15 MR. FREDERICKS. The question is do you know? He has got to
16 say he knows before he goes any further.

17 THE COURT. Is that the question?

18 MR. FREDERICKS. Read the question.

19 (Last question read by the reporter.)

20 MR. ROGERS. That is not asking him, your Honor --

21 MR. FREDERICKS. I see, all right.

22 Q Do you know the signatures that are on the receipts and
23 whether or not those signatures are the signatures of the
24 men to whom the money was paid?

25 MR. APPEL. That is not the way to prove a signature. We
26 object upon the ground asking for a conclusion of the witness.

1 If I have seen a person sign a receipt I say this receipt
2 was signed in my presence.

3 MR. FREDERICKS. There is so many of them, if I could lump
4 them--

5 THE COURT. Is the question withdrawn?

6 MR. FORD. The question is, "Do you know?"

7 MR. APPEL. Whether he knows or not depends on this, your
8 Honor: There is two ways of proving signatures.

9 THE COURT. Objection sustained.

10 MR. FREDERICKS. You say you have the receipts in your
11 pocket showing the amounts you paid to your men?

12 A I have, yes, sir.

13 Q Approximately what was the amount you paid your men in
14 November on the McNamara case? A I couldn't tell you even
15 approximately.

16 MR. FREDERICKS. That is all.

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2P 1 THE COURT: Anything further?

2 MR ROGERS: Not just at the present time. We would like
3 to have the witness remain under subpoena, he need not re-
4 main in the court house, but in town.

5 THE COURT: In case it should be necessary, Mr Franklin,
6 I presume you would be available?

7 MR FORD: I suggest, if counsel desire, that they can sub-
8 poena him any time and have him called as their witness.

9 MR FREDERICKS: He is here; he lives in town.

10 A I will say, your Honor, my business occasionally calls
11 me out of the city, but I will agree to this, before I go
12 I will speak to one of the attorneys for the defense and
13 if for any reason they do not wish me to go I will be glad
14 to stay, if that is satisfactory to all concerned.

15 THE COURT: In regard to the reading of the testimony?

16 MR FREDERICKS: I have had handed me the transcript on
17 page 464, I have not examined it. I will look and see if
18 that is what I wanted. No, that is not the time.

19 A November 4.

20 MR FREDERICKS: Page 463, instead of 464.

21 MR ROGERS: I do not know whether Mr Dunbar wants the
22 testimony of this witness or the testimony of Mr Lockwood?

23 JUROR DUNBAR: I would like to have what Mr Lockwood said
24 to him, also what he said to Mr Lockwood.

25 MR FREDERICKS: That is, this witness' testimony?

26 JUROR DUNBAR: Yes sir.

1 MR FREDERICKS: Shall I read it, beginning on page 463?

2 THE COURT: Unless counsel prefer the reporter to read it.

3 MR ROGERS: Oh, no sir.

4 MR FREDERICKS: Beginning on page 463, line 8, (reading):

5 "Q That was at Mr Lockwood's home, I think you stated?

6 A Yes sir. Q The first time? A Yes sir.

7 Q What occurred at that time? A I went to the door

8 and knocked. Mr Lockwood appeared at the door in his

9 night dress. I told him I would like to have a conversation

10 with him. He told me it would be impossible that night,

11 that his wife was ill, that he would be glad to see me at a

12 later date and talk with me. I asked him when he thought

13 he could come in, and he said he thought the following

14 Thursday. I asked him to call me up when he got in town,

15 and make an engagement so that I could see him. That is all.

16 I bid him good-night and left."

17 JUROR DUNBAR: I would like to ask another question, your

18 Honor.

19 MR FREDERICKS: You do not want the second conversation,

20 you wanted this?

21 JUROR DUNBAR: I thought it was that. I can ask a question

22 and save time.

23 THE COURT: Go ahead.

24 Q By Juror Dunbar: I want to ask if he had been an inti-

25 mate friend for twelve years of Mr Lockwood?

26 A Very intimate friend, yes sir.

1 JEFFOR DUNBAR: That is all I wanted to know.

2 MR FREDERICKS: That is all.

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5 M R P J C O O N E Y, a witness called on be-
6 half of the People, being first duly sworn, testified as
7 follows:

8 THE CLERK: Your name? A P J Cooney, C-o-o-n-e-y.

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10 DIRECT EXAMINATION

11 BY MR FREDERICKS:

12 Q Where do you live, Mr Cooney? A Chicago.

13 Q What is your business? A I am an investigator.

14 Q How long have you lived in Chicago? A Born and raised
15 there,

16 Q How old are you? A Twenty-two.

17 Q Do you know Clarence Darrow, the defendant in this case?

18 A Yes sir.

19 Q Were you ever in his employ? A Yes sir.

20 MR ROGERS: Just a moment. We object to that as incompetent,
21 irrelevant and immaterial, a conclusion of the witness and
22 no foundation laid.

23 THE COURT: Objection overruled.

24 MR ROGERS:m Exception.

25 A Yes.

26 Q By Mr Fredericks: I will go back a little further.

1 What has been your occupation, beginning with the time you
2 first began to work? A Well, when I first got out of
3 school, of course, I held several small little office boy
4 positions, but my work since I have arrived at a business
5 age has been investigating, and with the exception of a year
6 that I devoted to charity work and settlement work at Hull
7 House in Chicago -- that is Jane Adams' settlement.

8 Q Now, when were you employed, when did you enter the
9 employment of Mr Darrow -- withdraw that -- were you ever
10 employed by Mr Darrow in the McNamara case? A Yes.

11 Q When did you first enter the employment of Mr Darrow
12 in the McNamara case? A To the best of my recollection,
13 I think in July of last year.

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1 Q Where? A I was employed in Chicago.

2 Q When did you come to Los Angeles, if you ever did in that
3 year? A I think I arrived here in the first few days of
4 August of last year.

5 Q How long did you remain in the employ of Mr. Darrow in the
6 McNamara case? A Until the finish of the case.

7 Q That was about when? A Why, I think sometime either
8 the first of December or a little further on in December.

9 Q Generally, what was your employment at that time for Mr.
10 Darrow?

11 MR. ROGERS. Objected to as a conclusion or opinion called
12 for; incompetent, irrelevant and immaterial.

13 THE COURT. Overruled.

14 MR. ROGERS. Exception.

15 A My chief work was gathering evidence and interviewing
16 witnesses, with a view of putting them on the stand.

17 MR. FREDERICKS. All right, I just wanted--

18 MR. ROGERS. I move to strike out the answer as incompetent,
19 irrelevant and immaterial and a conclusion or opinion, no
20 foundation laid.

21 THE COURT. Motion to strike is denied.

22 MR. ROGERS. Exception.

23 MR. FREDERICKS. Did you work under the personal direction of
24 any one other than Mr. Darrow during that time, and if so,
25 whom?

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

1 it is calling for a conclusion or opinion of the witness;
2 calling for the ultimate fact, not calling for statements.
3 THE COURT. Objection overruled.

4 MR. APPEL. Exception.

5 A I was subject to the orders of Mr. Darrow and Mr. Harrington.

6 Q Did you know Mr. Harriman at that time also? A I knew
7 he was in the office, yes.

8 Q Now, do you remember whether or not you made a trip back
9 east after your employment with Mr. Darrow commenced?

10 MR. Appel. We object to that upon the ground that it is
11 incompetent, irrelevant and immaterial and hearsay and no
12 foundation laid, and no connection with this case.

13 THE COURT. Objection overruled.

14 MR. APPEL. Exception.

15 A Yes.

16 MR. FREDERICKS. Q Do you know a man by the name of Hammer-
17 strom? A Yes, sir.

18 Q Who was he?

19 MR. APPEL. Wait a moment. That is objected to upon the
20 ground it is incompetent, irrelevant and hearsay; no founda-
21 tion laid for the introduction of the evidence; immaterial
22 who Hammerstrom or Hammerstein was.

23 THE COURT. Overruled.

24 MR. APPEL. Exception.

25 A Yes, sir, I know him.

26 MR. FREDERICKS. The question was who was he? A He was

1 another investigator on the case.

2 Q On which side of the case? A On the defense.

3 Q That was the McNamara case? A Yes, sir.

4 Q Now, coming to the time when you were--do you know
5 whether or not he was any relation to Mr. Darrow?

6 MR. APPEL. We object to that as immaterial.

7 THE COURT. Overruled.

8 A It was my understanding that he was a brother-in-law.

9 MR. FREDERICKS. Q Now, coming to the time when you went
10 back east I will ask you to state about when that was or
11 exactly when it was, if you can? A It was a very short
12 time, I think, within a week, before the beginning of the
13 case. I think the first week of October, about that time.

14 Q Did you ever have a--did you about that time have a con-
15 versation with Mr. Darrow the day you were leaving to go
16 east in regard to Mr. Hammerstrom?

17 MR. APPEL. Wait a moment. That is objected to upon the
18 ground it is incompetent, irrelevant and immaterial and
19 hearsay and no foundation laid; collateral to any issue
20 in this case and no connection shown.

21 A Yes, I did.

22 THE COURT. Wait a moment.

23 A pardon me.

24 MR. APPEL. No connection shown between the case now at
25 issue and any matter in connection with Hammerstrom.

26 THE COURT. Overruled.

1 MR. APPEL. Except.

2 THE COURT. Answer the question.

3 A Yes.

4 MR. FREDERICKS. Q Where was that conversation and when
5 with reference to the time when you left to go back east?

6 A It was held in the offices of the defense in the Higgins
7 Building, I think the night before I left.

8 Q Who else was present, if any one? A No one, just
9 ourselves.

10 Q State to the jury what that conversation with Mr. Darrow
11 was in so far as it related to Mr. Hammerstrom?

12 MR. ROGERS. If your Honor please, that brings up a matter
13 about which we desire to be heard. Your Honor has--

14 THE COURT. What is the objection, first, Mr. Rogers?

15 MR. ROGERS. Objected to as incompetent, irrelevant and
16 immaterial, and not within the issues of this case; no
17 foundation has been laid for it. I think it would be well
18 that we should be heard upon this general question. Your
19 Honor had a brief submitted, but I am not quite sure that
20 the matter was argued as it ought to have been, having a
21 very firm conviction as to the admissibility of a certain
22 source of evidence, I think this sort of questioning will
23 bring out evidence which is absolutely immaterial in this
24 case. I desire to be heard on that question.

25 THE COURT. I will hear you.

26 MR. ROGERS. Was your Honor the California Reports here?

THE COURT. I expect they are here.

Bm1 MR ROGERS: The idea which I desire to present to your
2 Honor is very well illustrated in one case, the 136th Cal,
3 the People vs Carpenter, which I read to your Honor, or
4 rather handed it to your Honor, and the general subject is
5 excellently considered in the opinions of the case of People
6 against Molineaux, in New York State, but I cannot better
7 illustrate my meaning than is illustrated in the decision
8 itself in the 136th Cal., so I will content myself with
9 stating my position by reading one case. People against
10 Carpenter, 136 Cal, 391. The crime charged against the
11 defendant was that of subornation, suborning Stennett to
12 testify falsely in that case of People vs Ennis, "But the
13 prosecution was permitted, over repeated objections of the
14 defendant, to introduce witnesses and other evidence tending
15 to prove that the defendant, prior to the trial in the case
16 referred to, was guilty of the crime of advising the same
17 witness to conceal himself for the purpose of avoiding the
18 service of a subpoena, and thus or persuading him from at-
19 tending upon the trial. (Pen. Code, sec. 136) This, we
20 think was error. 'Nothing is better settled or more ration-
21 al than that an indictment for one crime cannot be sup-
22 ported by proof of another.' (People v. Perazzo, 64 Cal.
23 106; People v. McNutt, 64 Cal. 116; People v. Barnes, 48
24 Cal. 551; People v. Hartman, 62 Cal. 562.) There are ex-
25 ceptions to the rule in cases where the intent or guilty
26 knowledge is an element to be established, as in the case of

1 uttering forged bills, etc; but the case here does not come
2 within these exceptions. For this error we advise that the
3 judgment and order appealed from be reversed. Henshaw, J.,
4 McFarland, J., Temple, J.," the best judges who ever sat on
5 a bench in a criminal case ordered the opinion and hearing
6 in bank was denied.

7 MR FORD: The commissioner's opinion was concurred in by them.

8 MR ROGERS: Yes. The hearing was reversed.

9 THE COURT: One at a time.

10 MR ROGERS: We all know what commissioner's opinions are,
11 and we also know what hearing in bank denied means.

12 Your Honor, please, that case has been cited and referred to
13 with approval many times, and it is the law today.

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5p 1 As said by Mr. Justice O'Brien in the Mullineaux case
2 at a time of attempts to introduce evidence of other matters
3 comes right down to the proposition that it is a subtle at-
4 tempt to induce a man to concur in an idea that a man who would
5 commit one offense is more likely to commit another than one
6 who did not commit the original offense. It is the excep-
7 tion where cases of other offenses are admitted in evidence
8 to prove the original offense. The exceptions are where
9 there is a necessity for proving guilty knowledge, as in the
10 case of forged bills, as in the case of counterfeit money,
11 as in the case of forged checks, as in the case of issuing
12 checks without funds in the bank, etc., and so on. There
13 is no law which permits isolated instances of other offenses
14 to be introduced unless the offense itself by reason of its
15 being a part of a system or plan conduces to evidence of the
16 offense at bar. Now, let us see if that meets with the
17 requirements of this case. The offenses, the ulterior
18 offenses, if I may be pardoned for using such words--the
19 other offenses used to the evidence of the offense on trial,
20 those offenses must be of some kind, they must be of the same
21 nature, they must be practically a part of a plan or system
22 not looking to a general result but looking to the commission
23 of this offense itself. In other words, we must not confuse
24 ultimate objects with a plan or system. Now, if it be true
25 that, for instance, I myself would forge a bill or forge a
26 check, that I blew a safe down in Watts, would not be evidence

1 thereof, although my ultimate object would be to get money
 2 for a particular purpose. If I needed a thousand dollars and
 3 I blew a safe down in Watts to get \$500. and I forged a
 4 check to get another \$500 the fact that my ultimate object
 5 was to get a thousand dollars, would not render admissible
 6 the safe blowing in the perjury case, or the perjury in the
 7 safe blowing matter.

8 We have numerous authorities here which I will ask
 9 that your Honor hear from other persons than myself, and I
 10 wish to merely outline in a general way what our position is.
 11 Your Honor has looked at the case of People vs. Glass. Now,
 12 in the case of People vs. Glass they admitted evidence and
 13 I might say to your Honor I also wrote a brief in that case
 14 which I have here--in the case of People vs Glass they ad-
 15 mitted evidence of the attempted bribery of other supervisors;
 16 as I told your Honor when I presented this matter tentatively
 17 before; I was very much in doubt as to whether or not evi-
 18 dence of the Bain matter and evidence of the Kruger matter and
 19 evidence of other jurors might not be admissible in this case,
 20 but that does not admit evidence of a different sort of
 21 offense, if one were committed in this case, simply because
 22 the ultimate object, perchance, was the acquittal of the
 23 McNamaras. Now, your Honor will see where evidence of this
 24 kind is going to lead. We are brought in here upon notice
 25 to defend ourselves upon a certain offense, upon the offense
 26 of having bribed Lockwood, or attempted so to do. That does

1 not notify us that we are compelled to come here to protect
2 ourselves against the charge of having perchance told a
3 witness to leave the state, and if your Honor please,
4 there is no connection between the two things, there is no
5 indication because perchance one thing might be true that
6 the other must of necessity be true because of the ultimate
7 object being the same in each case.

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6p 1 Evidence of other offenses is admissible only to prove
2 guilty knowledge, intent, system. It cannot prove system
3 in this instance because knowing in a general way what is
4 intended to be proven you cannot prove a system by proving
5 merely that the ultimate object was the same, and we are
6 not put upon our notice to come here prepared to protect
7 ourselves against every sort of charge in the McNamara
8 case. We are brought here to answer to the charge of jury
9 bribing. As said in the case of People against Glass,
10 evidence of the attempt to bribe other supervisors, was
11 admissible in that case as showing the plan, system or
12 necessity, being to get so many votes in the Board of S uper-
13 visors, and one vote would not be of any consequence, one
14 vote would not accomplish anything, it would take a majority
15 of the Board. Therefore, they admitted evidence of other
16 supervisors, but in the Glass case they reversed it because
17 they admitted evidence of a similar attempt in the City of
18 Oakland, there being nothing in the world but a likelihood
19 to come from the evidence that a man who would do one thing
20 would do another. Now, in the case of People against
21 Mullineaux, which is the leading case upon the question, Mr.
22 Justice O'Brien says that we always are likely to believe
23 and it is a very subtle argument we are likely to believe,
24 because a man perchance committed one offense he is more
25 likely to commit another one, and that is the argument for
26 the admissibility of all things of that sort, and that is

1 what they are trying to do here, no matter how they cover it
2 up, no matter how they subterfuge it, that is the idea,
3 showing perchance, if they may, some other thing was done
4 than that of the bribery of jurors for the object of securing
5 the acquittal of the McNamaras, but because a man perchance
6 might induce a witness to leave the state and might, per-
7 chance, induce a witness to secrete himself and avoid
8 subpoena, that doesn't, by any means, show that he would
9 bribe a juror, or that he had bribed a juror, and so I call
10 your Honor's attention to those authorities as they will be
11 presented to you, I will ask to be heard in conclusion upon
12 the matter, because I believe that there is great opportunity
13 here, if we have any criminal law left, for making a very
14 serious and substantial error.

15 THE COURT. I might say, Mr. Rogers, your present argument
16 dealing with this matter, I am resting very heavily on the
17 decision of People vs. Glass and with the distinction made
18 there between the attack upon the San Francisco Supervisors
19 and the Oakland Supervisors. I merely point that out.

20 MR. ROGERS. yes, I understand that, and if your Honor
21 pleases, may I illustrate from that case itself. You see,
22 when Mr. Glass was charged with the bribery of one
23 supervisor in San Francisco they, very properly, according
24 to my judgment, admitted evidence of the attempted bribery
25 of other supervisors, there being the necessity in order
26 that the franchise might pass of getting so many votes, there

1 being 19 supervisors, as I recall it now, it required a
2 two-third vote, something of that sort.

3 THE COURT. I had thought of that.

4 MR. ROGERS. Now, if, perchance, in that case it had been
5 sought to introduce evidence that Mr. Glass bribed the clerk
6 of the police court, that would not indicate that he had
7 bribed a supervisor.

8 THE COURT. Under that decision it would not have been com-
9 petent evidence.

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Sm 1 MR ROGERS: Under that decision it would not have been
2 competent evidence, and the mere fact that it related to
3 the same matter, that is, that the same ultimate object was
4 to be accomplished, does not of necessity render it part of
5 a system; in other words, part of a system must be of the
6 same nature as all the other parts or it is not a system,
7 and we must not confuse ultimate object with system in
8 criminal law. They must be mutually and interdependent
9 offenses. As I said, I believe we have the Glass brief
10 here. I helped prepare it, and am very familiar with the
11 doctrine of the case, and before your Honor rules it would
12 be a very excellent idea, according to my own notion, that
13 your Honor peruse that brief. It was the brief that reversed
14 the case. Mr Appel will present the matter to your Honor,
15 and if necessary --

16 MR APPEL: If your Honor pleases, one of the essential
17 elements to be considered in admitting evidence of collater-
18 al offenses or declarations of the defendant, or admissions
19 of the defendant concerning his commission of other matters,
20 must be this: does the matter intended to be introduced
21 show any act in relation to the principal offense charged
22 in the indictment? Does it tend to illustrate a motive for
23 committing the offense charged in the indictment? For
24 instance, if a man should commit some unlawful act against a
25 woman and there is liability of his being prosecuted, and he
26 should be accused of the murder of that woman, his perpetra-

1 tion of the unlawful act upon that woman, his commission
2 of an offense against the person of that woman, might be
3 given in evidence to show the motive for the killing, that
4 is true; but if a man should commit burglary -- two burglar-
5 ies upon the sam night, and he is being accused of one
6 burglary, neither of which burglary would prove a motive for
7 committing the other burglary, consequently our courts have
8 said that such offenses are not admissible. If I should
9 go to a juror and offer him a bribe to decide a case in my
10 favor, it cannot be said that because I took a witness out
11 of the state and bribed him to keep him out of the state,
12 that because I took that witness out of the state, that
13 therefore there was a motive for my bribing a juror, that
14 is what I intended, the crime which I intended, bribing a
15 juror, cannot be said to be the result of the other, in
16 consequence of my bribing a witness, and that is the test
17 and that is the rule all the decisions are decided.

18 If I should go to the Board of Supervisors of this County
19 and intending to pass a measure / ^{through} them, should bribe one
20 supervisor for the purpose of having him vote in favor of
21 the measure I wished to pass, there you can easily see,
22 your Honor, that the mere bribing of one supervisor would
23 not accomplish the end, it would be necessary to bribe a
24 majority of the supervisors, therefore my bribery of other
25 supervisors are acts, in pursuit of the very object of
26 bribing one supervisor; therefore, that offense of the

1 bribing of other jurors would be admissible, but distinct,
2 unconnected offenses which do not show any necessity, or
3 which are not acts of the object which I wish to accomplish
4 in line with the offense charged, I say, are not admissible
5 in evidence. Under People against Edwards, Justice Allen
6 presiding --

7 THE COURT: Give me the citations.

8 MR APPEL: The 13th Appellate Court, page 552, says this:

9 (Reading decision.)

10 In People vs. Williams, 133 Cal. 168, Mr. Justice
11 Temple in speaking for the court in a case involving a
12 similar offense says: (Reading decision.)

13 Now, in the Fourth Northwestern Report, your
14 Honor, please, I read that because that was a case of
15 bribery. The Appellate Court of New York says this:

16 (Reading decision.)
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1 MR ROGERS. I just suggested to Mr. Appel it occurs to all
2 of us, it would be a point of wisdom if the jury be ex-
3 cluded, that perchance, your Honor rules with us. (Dis-
4 cussion.)

5 MR. FORD. I think as long as the jury has heard part of the
6 argument and part of the discussion on this subject, they
7 might as well hear it all, and counsel desire to have the
8 jury excluded, seems to me they ought to have done it before
9 they presented their side largely as they have already.

10 MR. FREDERICKS. It is the same case that has been argued
11 before.

12 THE COURT. It has been partly argued and partly submitted
13 on brief, but I deem it proper that counsel should argue the
14 matter and present it at length at this time. I see no
15 reason why the jury should be required to remain in their
16 seats at this time, and gentlemen of the jury, as this
17 argument is addressed solely to the court, you may bear in
18 mind the admonition given you on former occasions, not to
19 talk to any one or allow any one to talk to you about this
20 case and to retire to your jury room until you are sent for,
21 which may be possibly twenty minutes or half an hour. You
22 are excused, gentlemen. You may proceed, gentlemen.

23 MR. APPEL. Therefore, serve the Court, (Reading):
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1 Now, mind, your Honor, the jury are not here and we
2 might as well speak of these matters as they will probably
3 be taken to be introduced here. Suppose it was undertaken
4 to show here that Clarence Darrow looked up every witness
5 of the prosecution here? Suppose that it were to be attempted
6 to show here that Clarence Darrow paid a part of those
7 witnesses money with which they might travel out of the state
8 and requested them to pass out of the state and to be out
9 of the jurisdiction of the court. What would it show? It
10 would show not an act tending in the slightest degree that
11 he had bribed juror Lockwood. Would it? It would only show
12 his desire to win the case. And this is what this court
13 says: (Reading)

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p 1 Suppose, make it still stronger, suppose, your Honor,
2 that the witness came here upon the stand and said to you,
3 "Clarence parrow came to my office and there confessed to
4 me that he had bribed witnesses to go out of this state."
5 There would be a declaration or admission of the defendiant
6 concerning the commission of a crime, and I will show your
7 Honor that even on cross-examination those questions have
8 been held by our Supreme Court to be absolutely incompetent
9 and to be prejudicial to the rights of the defendant.

10 (Reading decision):
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1 Now, there was a distinct crime committed with the
 2 desire of Mr. Sharp to pass a certain bill, including two
 3 streets. Those two streets not being mentioned in the bill
 4 he goes to the engrossing clerk who was the clerk of the
 5 body who had the passage of that bill in their jurisdiction,
 6 and in order to carry out fully his desire to have that bill
 7 not only passed by bribery, but by forgery, was allowed to
 8 show that he had undertaken to bribe the clerk, the engrossing
 9 clerk, the clerk who had the last effort at the making of
 10 that bill, and that was to prove a distinct and separate com-
 11 mission of a crime, it didn't intend to show that defendant
 12 Sharp did offer a bribe to one of the legislative body to
 13 pass the bill. How could it?

14 (Reading decision)

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9P1 A man might as well commit one crime and yet it is no
2 evidence that he committed the other; a man might as well
3 commit perjury and it is no evidence that because he commit-
4 ted perjury he committed larceny; a man might bribe a
5 witness, but it is not evidence that he therefore bribed a
6 juror. There is none offered in bribing a witness, that
7 because of that a man would bribe a juror, one does not
8 necessarily arise the connection with the other. "It showed
9 the capacity to commit bribery, but which in fact gave him
10 no advantage of the other citizens, and gave no franchise
11 to him that he did also bribe the defendant for different
12 purposes."

13 Now, your Honor, this Court reverses the case upon
14 that ground. Now, we have a case here in the 100th Cal.,
15 People against Lane, considered with approval in the 13th
16 Appellate Report, which I have read to your Honor.

17 ^{As} a general rule, evidence of a distinct and separate offense
18 ^{not} can be admitted to show commission of another offense, and
19 this rule includes all evidence of other collateral facts
20 or those which are incapable." Now, mind the language.

21 I have very earnestly sought for decisions that give the
22 reasons for the exclusion of this evidence. Mark the
23 language, your Honor. And this rule excludes all evidence
24 of collateral facts, or those which are incapable of af-
25 fording reasonable presumption or logical inferences as to
26 the principal fact or matter in dispute, and evidence of

1 another offense cannot be given unless there is some clear
2 connection between the two offenses by which it may be
3 logically inferred that if guilty of the one the defendant
4 is also guilty of the other.

5 THE COURT: Read that again, please.

6 MR APPEL: "As a general rule, evidence of a distinct and
7 substantive offense cannot be committed to show the com-
8 mission of another offense, and this rule excludes all
9 evidence of collateral facts, or those which are incapable
10 of affording a reasonable presumption or logical inference
11 as to the principal facts or matter in dispute; and evidence
12 of another offense cannot be given unless there is some
13 clear connection between the two offenses by which it may
14 be logically inferred that if guilty of the one the defend-
15 ant is also guilty of the other." (Continuing reading)

10 1 The issue here is not, as I said before, was there an
2 attempt to clear McNamara by corrupt means, that is not the
3 issue before us, but this specific offense is, "Did Clarence
4 Darrow offer a bribe to juror Lockwood." Now, any other
5 act which would not show that he must necessarily be guilty
6 of corrupting juror Lockwood because he committed this
7 offense, that evidence of the commission of those extraneous
8 and collateral offense I say is not admissible, because
9 one would have to go into the flights of imagination to see
10 the connection between the two, or the logic existing between
11 the two, and the great trouble and great error in that Lane
12 case was that the lawyers considered the questions of
13 motives. Now, why did this man commit that crime? Because
14 he had committed that other crime? It was necessary to
15 commit this crime because he had committed that other, that
16 is his motive. Why does a man kill another one? We will
17 say, because his motive was revenge. Then we have a right to
18 show his feelings of revenge. We have a right to show he
19 had malice in his heart and because of malice he killed him,
20 and we have a right to show that at another time at another
21 place he laid in wait for his victim in the attempt to kill
22 him. To admit evidence of such collateral facts would be
23 to oppress the party implicated by trying him on a case of
24 which he has no knowledge, and sometimes prejudice a jury
25 against him. Wharton on Criminal Evidence, Section 29.

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(Reading)

in the case of People Against Dameron, your Honor, tried in this county, accused of forging Hervey Lindley's name, other forgeries of Hervey Lindley's and of Doctor Walter Lindley's name were in the case and the prosecution-- we went in and admitted that the defendant, your Honor, did sign the name of Walter Lindley to the note in dispute. There was no question of scientor then, there was no question of whether he knew or did not know it was Hervey Lindley's name to that note. If the defendant had said, "I didn't know when I passed that note that was not Hervey Lindley's name, some one gave it to me", or something to that effect, it was a mistake, it was an improvident thing for me to do, but I had no guilty knowledge that was not his name, evidence of other forgeries would have been admissible in evidence for the purpose of showing the utter improbability that in the one case he was mistaken while in the other case he could not have been mistaken, when we apply common sense

1 to the ordinary everyday affairs of life. Here is the
2 evidence of this man that he cannot, if he is to be believed--
3 he says Clarence Darrow gave him this money for the absolute
4 intention and purpose on his part to bribe juror Lockwood,
5 he not only showed the motives and intent, but the purposes
6 for the criminal act. Talk about circumstantial evidence.
7 Wasn't that direct and to the point--so they want to prove
8 the guilty knowledge of Mr. Darrow by evidence of collateral
9 issues and collateral matters. I say that it is not admis-
10 sible in that regard.

11 Now, this Mullineaux case we are all acquainted with,
12 I read it so long ago I have forgotten the facts, but if I
13 remember right, he undertook to prove that another person
14 had been poisoned by Mullineaux in the same manner that
15 they claimed he had poisoned a person for whose death he
16 was upon trial, and the court says--now, your Honor, I am
17 glad I found a clause here illustrating my position that
18 motive is the impelling force towards the result accomplished.
19 In cases where motive is directly in issue, where it must
20 be shown for the purpose of leading the minds of the jury
21 to the fact this man had a motive to commit this crime;
22 this man had the opportunity to commit it, he had the
23 ability to commit it, and the desire to commit it, all
24 those different acts may be shown in evidence. Motive
25 is the moving power which impels a man: (Reading)
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1 Now, what is the hypothesis here? I am anticipating what
2 this evidence is, and I am somewhat in the dark, but I am
3 speaking because I do not know what the evidence is, your
4 Honor -- but I am speaking of the broad proposition, what is
5 the hypothesis? Clarence Darrow bribed Juror Lockwood.

6 Now, how does the fact that Clarence Darrow committed per-
7 jury of any material paper in a case show or tend to show in
8 any way that Clarence Darrow bribed Juror Lockwood? If the

9 issue was that Clarence ^{Darrow} /is guilty of having a most extra-
10 ordinary desire of acquitting McNamara by unlawful means --
11 assuming that such an indictment as that were possible under
12 our law, by unlawful means -- I can easily see, your Honor,
13 that Clarence Darrow's acts in asking a witness to leave the
14 State would indicate his great desire to win the case by
15 what? By those unlawful means. And I can easily see that

16 the act of bribing a juror to decide the case in his favor
17 would prove the ultimate fact of his great desire to win the
18 case by unlawful means. But, how in the world? That is

19 not the ultimate issue in this case. The ultimate issue

20 just exactly is "Did Clarence Darrow unlawfully and wilfully
21 and knowingly and corruptly ^{offer to} /bribe or give a bribe to Juror

22 Lockwood. " How does his great desire -- and that is the
23 point upon which ^{counsel} /here in his opening statement gave me his
24 idea of his desire to introduce this evidence --

1 In the Mullineaux case, if your Honor pleases, the
2 fact that the defendant had sent poison to another person
3 with the distinct intent on his part to kill and murder
4 that person, was held to be inadmissible; and at the same
5 time, your Honor, was held to be inadmissible for the pur-
6 pose of proving that he had any intent to, or that he ever
7 in fact did kill and murder the person for whose murder he
8 was being tried, although the means were the same, and they
9 reversed that case. Now, there, your Honor, the means and
10 the situation of the parties, were the same, and they held
11 it was not admissible.

12 Now, if it is for the purpose of showing criminal
13 tendency, I say that cannot be introduced in evidence, if
14 it is for the purpose of showing to the jury the bad
15 character of the defendant, specific acts of our code make
16 it inadmissible in evidence. In State vs Le Page,
17 New Hampshire case, the Supreme Court says this about it,
18 three rules -- four rules -- page 75.

19 THE COURT: I do not believe counsel on the other side
20 will attempt to contradict that position that testimony
21 offered cannot be offered for the purpose of showing
22 criminal intent or bad character.

23 MR APPEL: Yes, but your Honor will see such a distinct --
24 there is such a rule, such a distance, there is no logical
25 connection, there is no reason why a man should commit one
26 crime because he committed the other; the commission of the

1 distinct crime here, standing here by itself, surrounded
2 by its own circumstances, circumscribed in every way,
3 particularly specific in itself, cannot prove that I went
4 and committed a crime over here. Yes, if I had assaulted --
5 if I had assaulted a woman here, had committed a crime
6 against her, if she has moved over here and accused me of
7 that crime before your Honor, and I went killed her before
8 she testifies, then they have a right to show that not only
9 she had accused me of the commission of the crime, but that
10 she was the prosecuting witness and that I was guilty of
11 this crime, for the purpose of showing a motive for commit-
12 ting the murder; there is a connection clearly and well
13 defined, but here are two distinct persons. I may be al-
14 lowed to say, here is "A", a witness; there is "B", a juror,
15 disconnected from the trial, no influence that this witness
16 had upon that juror, no connection, no reason ^{because} why I bribed
17 witness "A" that I should bribe juror "B".

18 In People vs. Mullineaux the Court says: (Reading)
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1 (Citing numerous authorities)

2 THE COURT. This is a matter upon which counsel for the
3 defendant have heretofore presented a brief, at my request.
4 One phase of it was passed upon heretofore, and while this
5 evidence, which I am assuming is the evidence that has been
6 indicated by counsel from the defendant, namely, evidence
7 tending to show that the defendant in this case took some
8 means to keep a witness for the state out of the jurisdic-
9 tion, so he could not testify, and the counsel has very
10 properly and very ably presented their side of the question,
11 and I still think the case of People against Glass governs
12 and controls here. I have devoted very diligent attention
13 to that case as applicable to this point, and I am convinced,
14 notwithstanding the authorities that have been presented
15 here, that the true test of the admissibility of evidence
16 of this character is this: is such evidence offered for the
17 purpose of furthering the conspiracy or any conspiracy to
18 prevent the jury from bringing in a verdict of guilty for
19 any cause other than the introduction of the whole testimony
20 in the particular case involved, that is, the case of
21 People vs McNamara, indictment No. 6939, comes within that
22 rule, and I am of the opinion, which is a very firm opinion,
23 I agree with counsel if I had entertained serious doubts
24 about the correctness of it, it would be my duty to resolve
25 it his way and I would certainly do it. I have a very firm
26 opinion that it is the duty of the Court, when it comes within

1 the class of evidence which I have indicated, it is the
2 duty of the Court to admit it, and I shall make no ruling
3 at this time but call the jury back and the witness on the
4 stand and then rule on the question. We will take a recess
5 for five minutes.

6 (After recess.)

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8 P. J. COONEY,

9 on the stand for further direct examination:

10 THE COURT. I remember that question. You may reframe the
11 question. The question was what was the conversation with
12 Mr. Darrow, if I remember.

13 MR. FREDERICKS. The questions leading up to it, if the
14 reporter has them.

15 (The testimony read by the reporter.)

16 THE COURT. Now, read the objection.

17 (Objection read by the reporter.)

18 THE COURT. The objection is overruled.

19 MR. FREDERICKS. Q Now, answer the question. A I do not
20 remember the exact words but the substance was that to wire
21 Mr. Hammerstrom at the Utah Hotel at Salt Lake--

22 Q Who said that? A Mr. Darrow said to wire Mr. Hammerstrom
23 at Salt Lake, the Utah Hotel, that I would find him there
24 as he had told him or advised him to wait out of the state
25 until the Decklemen matter blew over.

26 Q Did you after that see Mr. Hammerstrom? A Yes.

1 Q Where and when? A At the railroad depot.

2 MR. ROGERS. Objected to upon the same ground as stated in
3 my last objection, incompetent, irrelevant and immaterial.
4 and not within the issues and no foundation laid.

5 THE COURT. Objection overruled.

6 MR. ROGERS. Except.

7 A In the railway station at Salt Lake City where he met
8 me.

9 MR. FREDERICKS. Q Well, how soon after the conversation
10 that you had with Mr. Darrow was it that you met Hammerstrom
11 at the railway station in Salt Lake City? A Well, I
12 think the next day, whatever the running time of the train is,
13 I left the next morning.

14 Q Did you have a conversation with Hammerstrom at the time
15 you met him at the depot in Salt Lake as you were on your
16 way east?

17 MR. ROGERS. Objected to as hearsay and no foundation laid,
18 incompetent, irrelevant and immaterial, and not within the
19 issues.

20 THE COURT. Objection overruled.

21 MR. ROGERS. Exception.

22 A Yes, I did.

23 MR. FREDERICKS. Q What was that conversation?

24 MR. ROGERS. The same objection. I just state it without
25 repetition unless it is required to be repeated.

26 the court. Overruled.

1 MR. ROGERS. Exception.

2 A I repeated to him the message of Mr. parrow.

3 MR. FREDERICKS. Q No, state what you said to him, that is,
4 in substance.

5 MR. ROGERS. The same objection.

6 THE COURT. Overruled.

7 A I told him Mr. Darrow's orders to him were to remain out
8 of the state until the Decklemen matter blew over, and to go
9 back east with me.

10 Q State whether or not he did go back east with you.

11 MR. ROGERS. The same objection.

12 THE COURT. Overruled.

13 MR. ROGERS. Exception. I say the same objection, of course
14 that has been held that is not sufficient, still we
15 all say it, with your Honor's permission I will not take up
16 time by making the objections fully, but if you desire to
17 have my statement--

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3 Sp THE COURT: You have the Court's permission, and the Court
2 desires you to state it. It saves time, and it is well
3 understood by all parties.

4 MR FREDERICKS: We so understand it, your Honor..

5 A He did go back East.

ete 6 Q How long were you absent in the East on that trip?

7 MR ROGERS: The same objection.

8 THE COURT: Objection overruled.

9 MR ROGERS: Exception.

10 A About one month.

11 Q And state whether or not you came back to Los Angeles?

12 A I did.

13 Q About when did you come here? A As near as I can put
14 it, the first part of November, around the 1st of the month.

15 Q Do you know Bert Franklin? A Yes.

16 Q Did you know him during the time you were working in
17 the McNamara defense? A Yes sir.

18 Q Did you know him about the time you returned -- did you
19 see him about the time when you returned to Los Angeles
20 from this trip to the East?

21 MR ROGERS: That is objected to as leading and suggestive,
22 incompetent, irrelevant and immaterial.

23 Q State whether or not you saw him about that time; it is
24 preliminary --

25 THE COURT: The question withdrawn and another one substituted?

26 MR ROGERS: I beg your pardon, is that the condition of the

1 record? I didn't hear him. Please read the question.

2 MR FREDERICKS: I will reframe it to make it clear; I should
3 not have added to it until it was ruled on.

4 Q By Mr Fredericks: State whether or not you saw Mr
5 Franklin and had a conversation with him about the time you
6 met him from the East.

7 MR ROGERS: We object to that^{as} leading and suggestive,
8 incompetent, irrelevant and immaterial and not within the
9 issues.

10 THE COURT: Objection overruled.

11 MR ROGERS: Exception.

12 A I did.

13 THE COURT: I might say there is a suggestion of a leading
14 question there, and I hope counsel will refrain from any-
15 thing in the way of leading questions here. That particular
16 one has just a suggestion of being a suggestion, but it is
17 harmless.

18 MR FREDERICKS: Whether a question is leading or not is a
19 relative matter; they are all more or less leading, or else
20 we would have to tell all our experience of life.

21 THE COURT: I am merely saying this, Captain, because we have
22 had lots of trouble on this line, and I hope you will avoid
23 it.

24 MR FREDERICKS: I do not think leading questions are one of
25 my habits. I will avoid them as much as I can.

26 Q State whether or not you had a conversation with him at

1 about that time in which the name of Juror Bain was
2 mentioned?

3 MR ROGERS: That is objected to as hearsay, incompetent,
4 no foundation laid, irrelevant, immaterial and not within
5 the issues of the
6 the indictment.

6 THE COURT: Objection overruled.

7 MR ROGERS: Exception.

8 A I did.

9 Q Now, I am not going to ask you to relate what that
10 conversation was, but after you had that conversation with
11 Mr Franklin in which Mr Bain's name was mentioned, where
12 did you go? A In the Higgins Building, to Mr Darrow's
13 office.

14 Q State whether or not you saw Mr Darrow then? A Yes.

15 Q Did you have a conversation with him? A Yes.

16 Q What was that conversation?

17 MR ROGERS: Same objection.

18 THE COURT: Objection overruled.

19 MR ROGERS: Exception.

20 A In substance, I told him --

21 Q By Mr Fredericks: Told who? A Mr Darrow, that
22 Franklin had been talking too much and that he had said
23 something to me which I thought Mr Darrow ought to know,
24 and then I related what Franklin had told me.

25 Q All right. Relate that. A That they never
26 would convict J B, while Bain was on the jury.

1 Q Who is J B?

2 MR ROGERS: I move to strike out the answer as so far given,
3 as incompetent, irrelevant and immaterial, not within the
4 issues, no foundation laid.

5 MR APPEL: Hearsay.

6 THE COURT: There is no answer to the question.

7 MR ROGERS: The former answer, I desire to move to strike it
8 out.

9 MR FREDERICKS: That is part of the conversation, your
10 Honor.

11 THE COURT: The motion to strike out is denied.

12 MR ROGERS: Who was J B, is the question I desire to object
13 to, as an opinion, no foundation laid.

14 MR FORD: If the Court please, if a certain term is used --

15 THE COURT: Objection overruled.

16 MR ROGERS: Exception.

17 MR FREDERICKS: Answer the question, if you remember the
18 question.

19 A We had been discussing the McNamara case when he made
20 this statement, and I understood him as meaning J B McNamara,
21 the defendant in that case.

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p 1 MR. APPEL. I move to strike out the last answer of the
2 witness on the ground it is his own conclusion, it is incom-
3 petent, irrelevant, immaterial and we move to strike out what
4 the witness is claimed to have said to the defendant on the
5 ground that it is hearsay, incompetent, irrelevant and
6 immaterial; the statement of this witness cannot bind the
7 defendant, and that the statements of Franklin cannot bind
8 the defendant, being a mere matter of opinion, no foundation
9 laid, the declarations of other people, there must be some
10 foundation.

11 THE COURT. The motion to strike out is denied.

12 MR. APPEL. We take an exception.

13 BY MR. FREDERICKS. Q Do you remember the question, Mr.
14 Cooney? A No, I do not.

15 THE REPORTER. The last question was answered, your Honor.
16 (Reading answer.)

17 THE COURT. There was another question after that?

18 MR. FREDERICKS. No, I think not. I had in mind the motion
19 to strike out.

20 BY MR. FREDERICKS. Q What did Mr. Darrow say or do, if any-
21 thing, or what further was said and done by either of your,
22 if anything? A He said, "Thank you".

23 MR. ROGERS. The same objection.

24 THE COURT. Objection overruled.

25 MR. FREDERICKS. Wait a minute--

26 A He said, "Thank you", or, "All right" or some little

1 words referring he had heard or understood what I said, that
2 is all.

3 MR. ROGERS. Let us hear that answer.

4 (Answer read.)

5 MR. ROGERS. I move to strike that out as a conclusion of his,
6 in relation to what he understood or what was indicated.

7 THE COURT. Strike out all of the answer except "Thank you"
8 or "All right".

9 MR. FREDERICKS. No objections.

10 Q How soon after you had the talk with Franklin did you
11 go up and have the talk with Darrow which you have just
12 related? A Immediately.

13 Q Now, coming down to Saturday, the 25th day of November,
14 1911, state whether or not you saw Mr. Darrow that evening,
15 Saturday evening, or that afternoon? A I don't remember the
16 exact date, but I remember seeing Mr. Darrow on the Saturday
17 evening--about that date. I don't remember the exact date.

18 Q Do you remember the time when Mr. Franklin was arrested
19 on the charge, the Lockwood charge? A Yes, I remember it.

20 Q All right. Now, with reference to that, where was the
21 time? A It was a short time before that.

22 Q For whom had you been working, that is, under whose direc-
23 tions had you been working all the time?

24 MR. APPEL. We object to that as immaterial.

25 THE COURT. Objection overruled.

26 MR. APPEL. We except.

1 MR. FREDERICKS. Answer the question.

2 A I had been working for Mr. Darrow and for Mr. Harrington.

3 Q I may have asked you this question, I am not sure--up
4 to that time had you ever worked under Mr. Franklin?

5 MR. APPEL. We object to that because the witness is an
6 intelligent witness and he says up to that time he had been
7 working for Mr. Harrington and Mr. Darrow.

8 MR. FREDERICKS. It is general employment.

9 THE COURT. Objection overruled.

10 MR. APPEL. We except.

11 A No, I had never worked for Mr. Franklin.

12 BY MR. FREDERICKS. Q Do you remember where you had this
13 talk with Mr. Darrow a few days prior to the time when Franklin
14 was arrested on the Lockwood charge?

15 A In the Higgins Building, in the office of the defense.

16 Q Now, do you remember what day of the week it was?

17 A Yes.

18 Q What day in the week was it? A Saturday.

19 Q Saturday? A Yes.

20 Q State whether or not it was the next Saturday preceding
21 the arrest of Franklin?

22 MR. APPEL. We certainly protest against his telling him when
23 it was.

24 MR. FREDERICKS. I am not telling him.

25 MR. APPEL. Leading his mind to that, why limit his mind to
26 that.

1 THE COURT. Objection sustained.

2 BY MR. FREDERICKS. Q State how close to the time in which
3 Franklin was arrested was this Saturday?

4 A My recollection is it was about a ^{week} ~~month~~ previous to the
5 Franklin arrest.

6 Q Now, what was the conversation you had with Darrow at
7 that time in the Higgins Building Saturday afternoon or
8 evening? A He told me to report to Mr. Franklin that there
9 was some work on the jury to be done.

10 Q State whether or not you had ever had such orders at
11 any other time prior to that.

12 MR. APPEL. Wait a moment. We object to that upon the
13 ground that it is incompetent, irrelevant and leading.

14 MR. FREDERICKS. Fixing the time, your Honor.

15 THE COURT. Objection overruled.

16 MR. APPEL. Exception.

17 A I had never been told to report to Mr. Franklin for jury
18 service, no.

19 MR. FREDERICKS. Q Now, when you got that direction from Mr.
20 Darrow do you remember what time of the day it was?

21 A It was in the evening, I think about 6 o'clock or 7, in
22 that neighborhood.

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Sm 1 Q Was anybody else present? A Well, they were in the
2 office there, but not close enough to hear our conversation.

3 Q State whether or not -- or state what you did pursuant
4 to that direction of Mr Darrow?

5 MR APPEL: We object upon the ground it is incompetent,
6 irrelevant, ^{and} immaterial for any purpose whatsoever; outside
7 of the issues in this case and not connected therewith and
8 no foundation laid.

9 THE COURT: Overruled.

10 MR APPEL: And is a conclusion of the witness, and on the
11 ground it assumes that the witness did something himself
12 pursuant to some alleged direction assumed by the District
13 Attorney to have been given him by ~~the~~ Mr Darrow, and to
14 which the witness has not testified to.

15 MR FORD: He just testified he received directions to report
16 to Franklin.

17 THE COURT: Overruled.

18 MR APPEL: We except.

19 A To report to Franklin.

20 MR FREDERICKS: When? A That same evening.

21 Q Where, do you remember? A At Mr Franklin's office.

22 Q State what was said and done between you and Franklin
23 at the time you reported to him?

24 MR APPEL: Objected to upon the ground it is ^{incompetent,} irrelevant, and
25 immaterial for any purpose whatsoever; it is hearsay, and no
26 foundation laid.

1 THE COURT: Objection overruled.

2 MR APPEL: Exception.

3 A He gave me the directions of the work I was to do.

4 MR FREDERICKS: Yes, but what did he say?

5 MR APPEL: The same objection as before upon each and all
6 of the grounds stated, and the further objection it is
7 hearsay.

8 THE COURT: Overruled.

9 MR APPEL: Exception.

10 A He gave me a list of names he said were prospective
11 jurors in the case, and the ones marked in a certain way
12 we were to go out in a machine that same evening or the
13 next morning and get within local telephonic exchange so
14 as not to use the long distance, and call them up and warn
15 them that they were to be called as jurors in the McNamara
16 case, and that if they wished to avoid service they had
17 better hide, or some way keep under cover.

18 MR APPEL: Now, we move to strike out the evidence of the
19 witness on the ground it is incompetent, irrelevant and im-
20 material for any purpose whatsoever; that it doesn't tend to
21 prove any issue in the case or any element of the offense
22 charged in the indictment; that it is hearsay, and it is
23 collateral and no foundation laid.

24 THE COURT: Objection overruled.

25 MR APPEL: Exception.

26 MR FREDERICKS: Was anyone with you at that time? A Yes.

1 Q Who? A Another worker for the defense, Mr Keen
2 Fitzpatrick.

3 Q State what you did then after you got those directions
4 from Mr Franklin?

5 MR APPEL: Wait a moment, we object upon the ground it is
6 incompetent, irrelevant, immaterial and no foundation laid;
7 it is hearsay, and it is calling for acts and declarations
8 of parties of which the defendant has not been shown to
9 have any control, and calling for hearsay evidence, not con-
10 nected with the case in any way, shape, or manner, and no
11 foundation laid.

12 THE COURT: Objection overruled.

13 MR APPEL: Exception.

14 A The next morning early we had a machine call at the
15 place we were staying --

16 MR FREDERICKS: Who is "we"? A Mr Fitzpatrick and I, and
17 we went out and followed the directions and did the things
18 we were told.

19 MR APPEL: I move to strike out the answer of the witness on
20 the ground it is not responsive to the question; merely a
21 conclusion or opinion of the witness.

22 THE COURT: Part of the answer, "followed the directions" will
23 be stricken out.

24 MR APPEL: Exception.

25 Q Where did you go? A We went to Artesia and Compton,
26 and I think the other town was Downey. I know there were

1 three towns.

2 Q Now, take Compton; what did you do in Compton?

3 MR APPEL: Object to that as incompetent, irrelevant and
4 immaterial and hearsay; does not tend to prove any issue in
5 the case or any element of the charge embraced in the in-
6 dictment. It is immaterial for any purpose, and no founda-
7 tion laid.

8 THE COURT: Objection overruled.

9 MR APPEL: Exception.

10 A We went to the location of the local telephone exchange
11 and found the number of the party whose name I do not recall
12 just not.

13 MR FREDERICKS: Just a moment, now; see if you can recall the
14 name of the man that you called up.

15 MR ROGERS: The same objection, your Honor; and I call your
16 Honor's attention to the fact not even Franklin even testi-
17 fied to that.

18 MR FREDERICKS: Mr Franklin testified that Darrow did know
19 about the facts, and talked it over with him; that was Mr
20 Franklin's testimony he was asked about.

21 THE COURT: Overruled.

22 A I think there was a Mr Sackett at Artesia. I think
23 Elliott, I think his name was, at Compton, I am not positive.
24 I think he was connected with the bank there. I do not reme-
25 mber the other names. I think I would remember them if I
26 heard them

1 Q Well now, we don't wish to lead the witness your Honor,
2 but we submit that he said he does not recall the names.

3 Now, I think it would be permissible for us to --

4 THE COURT: You may ask a leading question there.

5 MR FREDERICKS: State whether or not the name at Artesia
6 was a man by the name of R E Dolly? A That was one of
7 the names, yes.

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1 MR. ROGERS. Wait a moment--the answer is in. I would like
2 the same objection.

3 THE COURT. Let the record/^{show} the same objection and the same
4 ruling and the same exception.

5 MR. FREDERICKS. Q State whether or not another name at
6 Downey was C. R. Freeman.

7 MR. ROGERS. The same objection.

8 THE COURT. Overruled.

9 A yes, I think that is one of the names.

10 MR. FREDERICKS. You mention--

11 A There was Mr. Sackett at one place, I don't remember where
12 he was.

13 Q Now, do you remember whether you called up anybody else
14 at Compton? A No, I think that is about all the names that
15 I remember.

16 Q What did you say--take Mr. Elliott at Compton, what did
17 you--state what you did and said in regard to that.

18 MR. APPEL. Wait a moment. We object upon the ground it is
19 incompetent, irrelevant and immaterial for any purpose what-
20 soever; and it is hearsay, not binding upon the defendant,
21 no foundation laid for the introduction of the statement
22 or declaration or acts of this witness as against the defend-
23 ant, not binding upon him.

24 THE COURT. Objection overruled.

25 A I told him he was to be called as a prospective juror
26 in the McNamara case, and that if he wished to avoid

1 service he better keep under cover. In some cases we
2 did not find the man himself but we would get his wife
3 or a neighbor and have him deliver the message to him.
4 On several occasions we got the man himself.

5 MR. APPEL. We move to strike out all of the evidence of
6 the witness as to communications over the telephone, upon
7 the ground no foundation has been laid for the introduction
8 of his evidence; it hasn't been shown who any one he talked
9 to or whether or not he knew the voice at the other end
10 of the 'phone, or knew the voice of the person.

11 THE COURT. Motion to strike out denied.

12 MR. APPEL. Exception.

13 MR. FREDERICKS. Now, this time that you have been talking
14 about, what day of the week was it you went around?

15 A Sunday morning.

16 Q I want to go back to the conversation that you had with Mr.
17 Darrow in regard to what Franklin told you--did Mr. Franklin
18 tell you anything as to why you were to telephone to these
19 particular ones that he mentioned?

20 MR. ROGERS. Objected to as leading and suggestive, incom-
21 petent, irrelevant and immaterial, and no foundation laid, and
22 hearsay.

23 THE COURT. Objection overruled.

24 MR. ROGERS. Exception.

25 A Yes, they were men who on previous interviews had shown
26 themselves hostile to the defense.

1 MR. FREDERICKS. Q Now, coming back to the time when you
2 had a conversation with Mr. Darrow and told him what Franklin
3 had said about Bain, I want to fix that time if I can--
4 that is, I want you to fix it if you can and I want to ask
5 you in regard to the time, if you can fix it by anything--
6 by any other event that you know of so as to get it approxi-
7 mately correct.

8 MR. APPEL. We object to that upon the ground that the
9 witness has already fixed the time, your Honor, and abso-
10 lutely. He said absolutely it was one week prior--

11 MR. KEETCH. He said it was his best recollection.

12 MR. APPEL. Now, let me say something. He said it was
13 one week prior to the arrest of Mr. Franklin. He spoke
14 about the Saturday, your Honor. He said soon after he got
15 back from the east but he said one week, I have exactly the--

16 MR. ROGERS. Counsel is confusing the time. I don't think
17 he quite understood Mr. Fredericks's question.

18 THE COURT. Read the question.

19 (Last question read by the reporter.)

20 THE COURT. Objection overruled.

21 A It was a short time after I returned from the east and
22 a short time after Bain had been sworn in as a juror. I
23 went east the first week in October and returned about the
24 first week in November. I don't remember the exact date of
25 Bain being sworn, but it was sometime after I returned
26 from the east, and a little while after Bain was sworn in,

1 that is the best I can fix it.

2 MR. FREDERICKS. Now, coming back again to the matter that
3 you were talking about a while ago, about going to Compton,
4 Downing and Artesia, and calling up these jurors that you say
5 was on Sunday? A Yes.

6 Q Now, how do you remember how long that was before Franklin
7 was arrested for the Lockwood case?

8 MR. ROGERS. Now, if your Honor please, he has gone into
9 that very thoroughly and very liberally and very suggestively.
10 Now, he is trying to get him to say it was the Saturday or
11 the Sunday before the arrest, and the witness would not do
12 it in spite of inducements held out to do so, and he would
13 not reply as counsel wanted. Now, he comes around back
14 again trying to get him to change his testimony or to make
15 it the time counsel seems desirous to have him make it.
16 He said it was about a week before the arrest, now he wants
17 to get it to some other time, leading and suggestive.

18 THE COURT. Let me have the question again.

19 MR. FREDERICKS. I would like to say a word. We want to
20 get the facts, that is all.
(Question read.)

21 MR. ROGERS. I object to that as already gone into,
22 asked and answered, incompetent and irrelevant and imma-
23 terial, leading and suggestive under the circumstances.

24 THE COURT. On the ground it is leading and suggestive the
25 objection is sustained

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17-P1 MR FREDERICKS: I am asking him to fix the date by another
2 date.

3 THE COURT: I think it is leading and suggestive.

4 MR FREDERICKS: All right.

5 Q Assume, then, that Mr Franklin was arrested on Tuesday,
6 the 28th day of November, what date would you say this Sunday
7 was that you were out at Compton and Downey and these other
8 places?

9 MR ROGERS: We object to that as hearsay, incompetent, no
10 foundation laid; leading and suggestive, already asked and
11 answered.

12 THE COURT: Objection overruled.

13 MR ROGERS: Exception.

14 A I could fix it this way, the same day that this calling
15 up was done I left for 'Frisco, and I was in 'Frisco about a
16 week or two when Franklin was arrested. It would probably
17 be a shorter time than that, than two weeks. That is the
18 best that I can fix it.

19 Q By Mr Fredericks; Well now, let's see; maybe we can
20 fix the time some other way. Were you ever out at
21 Compton and calling on Mr Elliott at any other time than
22 once? A No.

23 MR APPEL: We object to that as leading and suggestive, in-
24 competent, irrelevant and immaterial, and assumes that the
25 witness did call up Mr Elliott when he has not testified he
26 has ever talked with Mr Elliott, or knew Mr Elliott, or the

1 difference between Mr Elliott and another man. Immaterial
2 for any purposes whatever.

3 MR FREDERICKS: Simply an endeavor to fix a date, your Honor,
4 it is many months ago.

5 THE COURT: Objection overruled.

6 MR APPEL: Exception.

7 Q Now, let me see, Mr Cooney, about that time you say you
8 went to San Francisco, the same day that you were down at
9 Compton? A Yes.

10 Q And what time in the day? A I left that afternoon.

11 Q That afternoon? A Yes.

12 Q Did you get any transportation of any kind?

13 MR APPEL: This looks to me like cross-examination.

14 MR FREDERICKS: Well now, let me see. Suppose I want to
15 fix a date by a witness; suppose I know what the date is,
16 suppose I don't think the witness in answering has the right
17 date.

18 THE COURT: There is no objection before the Court.

19 MR APPEL: I did make an objection; I say, it is leading.

20 THE COURT: I didn't hear the objection.

21 MR APPEL: He has answered it twice.

22 MR FREDERICKS: We want to get at the real facts.

23 THE COURT: Objection overruled.

24 A I bought transportation on the boat, Pacific Navigation
25 Company, either at San Pedro station or down town, I don't
26 remember.

1 Q And how long were you enroute before you got to San
2 Franciseo? A The next day.

3 Q Then, what day of the week was it you got to San
4 Francisco? A On Monday.

5 Q Was there any portion of your transportation that you
6 retained that had the date on it?

7 MR ROGERS: The same objection.

8 THE COURT: Objection overruled.

9 A (No response).

10 Q By Mr Fredericks; Well, assume that Mr Elliott was
11 drawn on the venire on November 25, on Saturday, November 25,
12 what date would you say it was that you went out there to
13 Compton?

14 MR ROGERS: That is objected to as incompetent, irrelevant
15 and immaterial, a hypothetical question, no foundation laid.

16 MR FORD: It is not a hypothetical question, the venire of
17 November 25 is in evidence, and the name --

18 MR APPEL: You might tell him so.

19 MR FORD: He is assuming that; it is not a hypothetical
20 question.

21 THE COURT: Objection overruled.

22 A You mean that he answered?

23 Q By Mr Fredericks: No, he was drawn on the list.

24 A When we were given this list by Mr Franklin, we were
25 told that the list was already out and would probably be
26 served the day or the same day that we were to do this

1 calling up.

2 MR FREDERICKS: All right. That is all.

3 THE COURT: Gentlemen of the jury, time for adjournment has
4 arrived.

5 (Jury admonished.) We will now adjourn until ten
6 o'clock tomorrow morning.

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8 (Here the Court took an adjournment until Tuesday,
9 June 11, 1912, 10 o'clock A.M.)

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