

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. 20

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
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P. J. Cooney, +	1488			
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✓ Keene Fitzpatrick, +	1489	1497		
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✓ E. E. Elliott, +	1500			
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Kurt A. Diekelman,	1504			
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B. N. Smith,
Official Reporter.

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ls 1 TUESDAY, JUNE 11, 1912; 10 A.M.

2 Defendant in court with counsel. Jury Called; All
3 present. Case resumed.

4 P. J. COONEY,
5 on the stand for further direct examination:

6 MR. FREDERICKS. Q Coming back to the time--to the evening
7 when Mr. Darrow directed you to go and report to Mr. Franklin
8 for work in regard to the jury, you testified to, I wish
9 you would state, Mr Cooney, in substance, if you can, just
10 what Mr. Darrow said to you.

11 MR. ROGERS. Wasn't that matter all gone into?

12 MR. FREDERICKS. I looked it over here; it is only covered
13 by a line. It was not gone into.

14 THE COURT. All right; answer the question.

15 MR. ROGERS. Our same objection, your Honor.

16 THE COURT. Objection overruled.

17 A He explained to me, as I think I stated yesterday, that
18 these men were hostile.

19 MR. FREDERICKS. Q You understand the question? This is
20 what Mr. Darrow said to you. Just read the question again.

21 (Last question read by the reporter.)

22 A Why, he told me to get as many of the men in our office
23 as I could to assist me in that work and to report to Mr. Frank
24 lin.

25 Q And did he specify any of the men that you were to get or
26 did he leave that to you?

1 MR. ROGERS. Pardon me just a moment--that you were to get or
2 that you did get?

3 MR. FREDERICKS, I said, that you were to get.

4 MR. ROGERS. I think if that conversation is to be given it
5 should be given as a conversation and not its conclusion
6 or the opinion of the witness as to what was meant by it.

7 MR. FREDERICKS. I think so too, your Honor.

8 THE COURT. All right.

9 MR. FREDERICKS. That is all I want him to state, the con-
10 versation.

11 A yes, he specified one man, that was Mr. Fitzpatrick--
12 Mr. Keene Fitzpatrick--told me to find him if I could and
13 both go over there and I did find him and we went over
14 there.

15 MR. FREDERICKS. Cross-examine.

16 MR. ROGERS. No questions.

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18 K E E N E F I T Z P A T R I C K,
19 a witness called on behalf of the prosecution, being first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FREDERICKS. Q What is your name? A Keene
23 Fitzpatrick.

24 Q Where do you live, Mr. Fitzpatrick? A I live at
25 Ocean Park at present.

26 Q How old are you? A 23 years.

1 Q What is your business? What are you doing? A I am
2 an investigator. At present I am a salesman for the
3 California Product Company.

4 Q What were you doing prior to that? A I was director
5 of the Violet Street Playgrounds for the city.

6 Q Which city? A Los Angeles.

7 Q Prior to that what were you employed at? A I was
8 salesman for the Los Angeles Furniture Company.

9 Q You acquainted with Mr. Darrow? A Yes, sir.

10 Q How long have you known him? A I have known him inti-
11 mately for--since about the latter part of August, 1911.

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

13 Q When? A I was employed in the latter part of August
14 up to the time of the termination of the case--the McNamara
15 case.

16 Q In what capacity? A As an investigator.

17 Q You know Mr. Cooney? A Yes, sir.

18 Q You know Mr. Franklin? A Yes, sir.

19 Q Bert Franklin? A Yes, sir.

20 Q State whether or not you were ever at the house of Mr.
21 Lockwood in Walnut Center out towards Baldwin's Ranch?

22 A Yes, I visited Mr. Lockwood's house with Mr. Franklin
23 early in November, 1911.

24 Q What time of the day or night? A It was around 9 o'clock.

25 Q Day or night? A Night.

26 Q Did you see Mr. Lockwood at that time? A I did not.

1 Q What did Mr. Franklin do at that time? A After we
2 located Mr. Lockwood's house in Walnut Center, Mr. Franklin
3 went to the door and had some discussion with Mr. Lockwood,
4 I didn't overhear it.

5 Q Were you in hearing? A No, sir.

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1 Q Now, on the 25th, on the evening of the 25th of Nov-
2 ember, 1911, state whether or not you saw Mr Franklin?

3 A I don't remember about the exact date, whether I saw
4 Mr Franklin on that evening or not. I saw Mr Franklin
5 several times the latter part of November.

6 Q All right. I will put it in another way: State whether
7 or not you ever were in an automobile driving out to Compton,
8 Artesia and Downey with Mr Cooney?

9 MR ROGERS: That is objected to as leading, if your Honor
10 please. I am not very particular --

11 THE COURT: Yes, I think it is.

12 MR FREDERICKS: I do not think that is leading, your Honor.
13 If I would ask that in any other way he would have to recite
14 everything he has done in the last six months in order to
15 bring it in. I didn't ask him the time, I said: "Were you
16 ever in an automobile with Mr Cooney at any time from the
17 beginning of the world to the present time?"

18 MR ROGERS: He has put the words in his mouth by saying the
19 25th of November.

THE COURT.

20 MR FREDERICKS: No, I did not, I think it is harmless, at
21 any rate.

22 MR FREDERICKS: Has the Court ruled?

23 THE COURT: Yes. There was no formal objection.

24 MR FREDERICKS: I beg your pardon. Answer the question.

25 A I was with Mr Cooney.

26 Q What day of the week was that? A Sunday morning.

1 Q Do you remember what day of the month it was?

2 A I am not sure, I think it was the 26th.

3 Q Of what month? A November, 1911.

4 Q Now, state whether or not you saw Mr Franklin on the
5 evening -- or saw Mr Franklin before that at any time, the
6 day before that?

7 MR ROGERS: We object to that as incompetent, irrelevant,
8 immaterial; no foundation laid, not within the issues.

9 THE COURT: Objection overruled.

10 MR ROGERS: Exception.

11 A I saw Mr Franklin the night before.

12 Q Where? A In his office in the Chamber of Commerce
13 Building.

14 Q Did you have a conversation with him at that time?

15 A Yes, I did.

16 Q Who was present? A Mr Cooney, I think there was
17 somebody else present, I don't remember.

18 THE COURT: Mr Williams, can you hear what is being said?

19 JUROR WILLIAMS: Yes sir.

20 THE COURT: Can you, Mr Blakesley?

21 JUROR BLAKESLEY: Yes sir.

22 THE COURT: Any juror that cannot hear speak up.

23 JUROR BLAKESLEY: This seat ought to be a little higher.

24 THE COURT: Mr Sheriff, will you attend to that during the
25 noon hour. Mr Blakesley requests that the seat be raised
26 a little. All right.

1 Q By Mr Fredericks; Now, what was the conversation you
2 had with Mr Franklin on the Saturday evening, the 25th of
3 November?

4 MR ROGERS: We object to that as irrelevant, incompetent and
5 immaterial, no foundation laid; not within the issues.

6 THE COURT: Objection overruled.

7 MR ROGERS: Exception.

8 A [Mr Franklin told me that he had already given the
9 orders to Mr Cooney and Mr Cooney would direct me as to
10 what was to be done in regard to interviewing certain
11 jurors.] He told me another matter, about a certain party
12 that was to be held that evening in honor of his daughter --

13 Q By Mr Fredericks: We do not care about that, simply
14 in regard to jurors; give all the conversation in regard to
15 anything that might be in relation to jurors.

16 A That was about all there was to it. He told me he
17 had already given the orders to Mr Cooney, and he would tell
18 me what was to be done in regard to the matter.

19 Q Now, on the Sunday, the 26th day of November, state
20 what you did and who was with you? A An automobile ar-
21 rived at our residence about 6 o'clock in the morning, and
22 in company with Mr Cooney and the chauffeur --

23 MR ROGERS: I do not wish to interpose an objection contin-
24 ually, I would like to have the same objection I last
25 stated to this general subject.

26 MR FORD: I think when counsel is taking an objection to a

1 line of questioning at the beginning of it it is not neces-
2 sary for the Court to rule on all of it.

3 THE COURT: There is some doubt about that in the absence of
4 a stipulation. I think, if there is a stipulation, and the
5 Court concurs in it, I think a man is safe. It is so stipu-
6 lated?

7 MR FREDERICKS: Yes sir.

8 THE COURT: And the Court so concurs in this stipulation.

9 MR ROGERS: It will be understood as to this witness?

10 THE COURT: Yes, it will be understood as to this witness
11 that there is the same objection, the same ruling and ex-
12 ception to all of this line of testimony, without its being
13 objected to.

14 MR FORD: The courts have ruled hundreds of times, even
15 without a stipulation, if it is objected to once or twice
16 you do not need it.

17 THE COURT: Yes, I know.

18 Q By Mr Fredericks: Now, go ahead, Mr Fitzpatrick, and
19 tell everything you did that day? A The automobile arrived
20 at our residence about 6 o'clock that Sunday morning and in
21 company with Mr Cooney and the chauffeur we visited the
22 towns of Artesia, Compton, Downey, and there we called up
23 certain prospective jurors which had been, the names of whom
24 had been given to Mr Cooney by Mr Franklin the preceding
25 evening,

26

3s 1 and while Mr. Cooney called these men or their near neigh-
2 bors on the 'phone I stood by distracting any parties that
3 might be listening to his conversation.

4 Q Did you hear what Cooney said? A I did; some places
5 I heard him and other places I did not.

6 Q Well, down at Compton, did you hear what he said to Mr.
7 Elliott? A I don't remember whether he got Mr. Elliott
8 on the 'phone or not. The substance of his conversation
9 was--

10 MR. ROGERS. Just a moment--I think that question should
11 be yes or no, do you remember.

12 THE COURT. Yes, I think so. Answer yes or no.

13 A I don't remember.

14 MR. FREDERICKS. Q Well, do you remember the substance
15 of it? A Yes.

16 Q Relate it. A Mr. Cooney told whoever this party was he
17 got on this 'phone that he was about to be summoned as a
18 juror in the McNamara case and if he wished to avoid service
19 that he better not be at home on that day when the summons
20 would be likely to be served.

21 Q Had you ever worked under Mr. Franklin before that day?

22 A Yes, sir.

23 Q And were you working under his orders regularly? A For
24 a part of the time I was.

25 MR. APPEL. Wait a moment. We object upon the ground as
26 calling for the conclusion or opinion of the witness and not

1 calling for facts; incompetent, irrelevant and immaterial,
2 hearsay and no foundation laid.

3 THE COURT. Objection overruled.

4 MR. APPEL. We except.

5 MR. FREDERICKS. Q What part of the time and what time were
6 you working under Mr. Franklin's orders? A During the month
7 of November, I believe, I worked steady for Mr. Franklin
8 during the early part of November and I alternated from Mr.
9 Franklin's office to the other office in the Higgins Build-
10 ing the latter part of November.

11 Q From which office did you draw your pay? A The office
12 in the Higgins Building.

13 Q Who was in charge of that office? A Mr. Darrow, I believe.

14 MR. FREDERICKS. That is all.

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CROSS-EXAMINATION.

17 BY MR. ROGERS. Q When you went out to Lockwood's house
18 you say you went with Mr. Franklin in the automobile?

19 A Yes, sir.

20 Q Any one else? A His wife and daughter and chauffeur.

21 Q His wife and daughter? A Yes, sir.

22 Q You went out to see the road race first, didn't you?

23 A No, afterwards.

24 Q Afterwards, are you sure about that, Mr. Fitzpatrick?

25 A It was our intention to see the road race after Mr.

26 Franklin had visited Mr. Lockwood.

1 Q You mean the Phoenix race? A Los Angeles-to-Phoenix
2 automobile race, yes, sir.

3 Q That went out the Whittier road? A I believe so, yes,
4 sir.

5 Q And did you go over to the race after you were out there
6 at Lockwood's? A Yes, sir.

7 Q Where did you pick up Mr. Franklin that evening or where
8 did he pick up you? A I met him in front of the Chamber of
9 Commerce Building, I believe, about 7 o'clock.

10 Q Where did you go from there? A Well, we went directly
11 to Walnut Center as best we could. We had a hard time
12 locating the house.

13 Q And you made some inquiries around among the neighbors
14 there, did you? A Yes, sir.

15 Q Well, you went out and spoke to possibly three or four
16 people residing around that country and inquired where Mr
17 Lockwood's house was? A Yes, sir.

18 Q And Mrs. Franklin and Miss Franklin were along? Now,
19 calling your attention to the night that has been referred
20 to here, one evening when you say you had a conversation
21 with Mr. Franklin in Mr. Cooney's presence, you started to
22 say something about Mr. Franklin saying that he could not go
23 with you or that he had some other engagement. Mr. Franklin
24 had a party at his house that night, didn't he? A I don't
25 remember whether it was at Mr. Franklin's house or another
26 house. He spoke of a party and invited us.

1 Q Invited you to go? A Yes, and Mr. Cooney.

2 Q You did not go? A No, sir; I don't believe we went.

3 Q Can't you remember? A I don,t remember whether we went
4 or not.

5 Q What time was this conversation between yourself and Mr.
6 Cooney and Mr. Franklin on this evening? A About 7 or
7 7:30.

8 Q You don't remember whether you went to some kind of a
9 function or party afterwards? A I don,t think we did go.

10 Q You don't know where you did go, as a matter of fact?

11 A No, sir.

12 Q Did you see Franklin again that night? A I don't rem-
13 ember that we saw him.

14 MR. ROGERS. That is all.

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4-P 1 THE COURT: We will suspend formal proceedings for a few
2 minutes while we are waiting.

3 (Recess was here taken for 5 minutes. After recess.
4 Jury returned into court-room.)

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6 E E E L L I O T T, a witness called
7 on behalf of the People, being first duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION

10 BY MR FREDERICKS:

11 Q What is your name? A E E Elliott.

12 Q Where do you live, Mr Elliott? A Compton.

13 Q This County? A Yes sir.

14 Q What is your business? A Banker.

15 Q Where did you live on the 26th of November last year?

16 A Compton.

17 Q What is your first name? A Elmer Ellsworth Elliott.

18 Q Just state whether or not you were served as a juror
19 in the case of People vs. McNamara on the 26th day of Nov-
20 ember, 1911? A I don't remember the date, but I was

21 served, I was subpoenaed as a juror.

22 Q And what day of the week was it you were served?

23 A Sunday, I believe.

24 Q What time in the day? A I think Sunday evening,
25 if I remember correctly.
26

1 Q Now, in order to fix that date, state whether or not
2 you reported in court in pursuance of that summons? A I did.

3 Q And do you remember what day of the week it was you
4 came to court? A I think it was on Tuesday, the following
5 Tuesday.

6 Q Do you remember of hearing of the arrest of Bert Frank-
7 lin at any time on the charge of having bribed Juror Lockwood?

8 A I think I read it in the papers at the time.

9 Q With reference to the time when you appeared in court
10 in pursuance of this summons, what was the time when you
11 noticed the arrest of Franklin? A I think it was after-
12 wards, if I remember correctly.

13 Q That is, you saw it in the paper afterwards; is that what
14 you mean? A Yes.

15 Q Now, on the Sunday when you were served, state whether
16 or not you were called up on the telephone by any person and
17 had any conversation in which the Darrow case was mentioned
18 or the McNamara case was mentioned?

19 MR APPEL: We object to that on the ground it is incompetent,
20 irrelevant and immaterial, hearsay; no foundation laid, not
21 binding upon the defendant, not tending to prove any issue of
22 this case.

23 THE COURT: Objection overruled.

24 MR APPEL: We except.

25 MR FREDERICKS: Answer the question.

26 A Yes sir.

1 Q And at what time of the day was this telephone call?

2 A I think it was between 8 and 9 o'clock in the morning.

3 Q Sunday morning? A Sunday morning.

4 Q Relate to the jury what that telephone conversation was,
5 in substance.

6 MR APPEL: We object to that as incompetent, irrelevant and
7 immaterial; hearsay, no foundation laid, not tending in any
8 way, shape or manner, to prove any of the issues of this
9 case, and collateral thereto; no foundation laid.

10 THE COURT: Objection overruled.

11 MR APPEL: Exception.

12 THE COURT: Answer the question.

13 A I was informed by somebody who said they were my friend
14 that I had been subpoenaed as a jurymen in the McNamara case,
15 and if I did not wish to serve as a jurymen I had better get
16 out of the way. That was the sum and substance of the con-
17 versation.

18 Q Over the telephone? A Yes sir.

19 MR FREDERICKS: That is all.

20 MR ROGERS: That is all.

21 MR FREDERICKS: That is all, Mr Elliott.

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5s 1 MR. FORD. Hasyour Honor made a rule that witnesses should
2 be excluded from the court room?

3 THE COURT. There has been no rule.

4 MR. FORD. That is my recollection. You ask for it?

5 THE COURT. It has not been asked for and has not been
6 made, to the best of my recollection, at this time.

7 MR. FREDERICKS. We are perfectly willing to have it made.

8 MR. FORD. We ask that it do be made.

9 THE COURT. I am opposed to the enforcement of such a rule
10 on general principles, but if it is requested I will adhere
11 to the request.

12 MR. FORD. I had noticed witnesses in the room but I was
13 not aware there was any such rule.

14 MR. ROGERS. It is usually made and I thought it had been
15 made.

16 MR. FORD. There will come a time when we will ask for the
17 exclusion of the witnesses your Honor. We ask that the
18 order be made at this time for the exclusion of the wit-
19 nesses. (Discussion)

20 MR. FORD. We make an exception to the newspaper men, but
21 without naming any witnesses, we ask that the rule be en-
22 forced with the exception of the newspaper men.

23 THE COURT. Are there any witnesses in this court at this
24 time under subpoena by either side, if there are stand up.
25 One witness is present. It will be necessary, under the
26 application made, that witnesses be excluded. Mr. Sheriff,

1 have you a place for the accommodation of the witnesses?
2 The sheriff will show you a room in which you may wait.
3 This general order excluding witnesses at this time does
4 not include the representatives of the newspapers who are
5 engaged in the performance of their professional work in
6 the court room.

7
8 K U R T A. D I E K E L M A N,

9 a witness called on behalf of the prosecution, being
10 first duly sworn, testified as follows.

11 DIRECT EXAMINATION

12 BY MR. FREDERICKS. Q What is your name? A Kurt

13 A. Diekelman.

14 Q Where do you live, Mr. Diekelman? A In San Fran-
15 cisco.

16 Q What is your business? A I am chief clerk of the
17 Court Hotel San Francisco.

18 Q Where do you live on--what was your business in the year
19 1910 on the first of October? A 1910 I was chief clerk
20 at the Baltimore Hotel.

21 Q Where? A In Los Angeles.

22 Q Do you remember the time when the Los Angeles Times was
23 destroyed? A Yes, sir.

24 Q Where were you working at that time? A At the Baltimore
25 Hotel.

26 Q At the Baltimore Hotel? A Yes, sir.

Q Here in the city of Los Angeles. Whereabouts is that

1 hotel? A Fifth and Los Angeles.

2 Q And what was your business there at that time? A I
3 was chief clerk, had charge of the office.

4 Q At that time state whether or not you met a man here in
5 Los Angeles giving the name of J. B. Brice at your hotel,
6 whom you afterwards identified as J. B. McNamara?

7 MR. APPEL. Just a moment--we object to that upon the
8 ground that it is incompetent, irrelevant and immaterial for
9 any purpose whatsoever in this case.

10 MR. FORD. Preliminary to laying the foundation.

11 THE COURT. One at a time. Mr. Appel, you have the floor.

12 MR. APPEL. That it is incompetent, irrelevant and imma-
13 terial to prove any issue in this case; that it is hearsay,
14 no foundation laid and upon the further ground that the
15 question is leading and suggestive; that it assumes two
16 names of the same person, assumes that the witness did
17 recognize or identify the person in question at some other
18 time.

19 THE COURT. The objection is overruled.

20 MR. APPEL. We except.

21 A You want me to state the full particulars?

22 MR. FREDERICKS. Just read the question.

23 (Last question read by the reporter.)

24 A Yes, sir.

25 Q And where did you see this man, J. B. McNamara, after
26 the time when you saw him down in the hotel as J. B. Brice?

1 A When I --

2 THE COURT. Wait a moment.

3 MR. APPEL. We object to that upon the ground that it is
4 incompetent, irrelevant and immaterial for any purpose
5 whatsoever in this case; hearsay; doesn't tend to prove
6 any issue in this case and no foundation laid.

7 THE COURT. Objection overruled.

8 MR. APPEL. We except.

9 A The next time I saw him down at the city prison or county
10 jail I guess it was.

11 MR. FREDERICKS. County jail. Q State whether or not you
12 informed the district attorney after you had seen J. B.
13 McNamara over in the county jail that he was the same man
14 whom you had seen on the night or on the day previous to the
15 Times explosion at the Hotel Baltimore here in Los Angeles?

16 MR. APPEL. Wait a moment--we object to that upon the ground
17 that it calls for hearsay; incompetent, irrelevant and
18 immaterial for any purpose whatsoever; no foundation laid;
19 not binding upon the defendant.

20 THE COURT. Objection overruled.

21 MR. APPEL. Exception.

22 A Why, I identified him almost as positively as I could.

23 MR. APPEL. I submit, your Honor, he is not answering the
24 question. The question is very leading and suggestive and
25 calls for yes or no.

26 THE COURT. I think it is.

1 MR. FREDERICKS. I think the witness's answer, however,
2 is a comprehensive answer to the question, if your Honor
3 will notice it, it should stand as it is.

4 THE COURT. Read the answer.

5 (Answer read by the reporter.)

6 A Under the circumstances.

7 MR. APPEL. I move to strike out the answer of the witness
8 as not responsive to the question. We still insist that
9 the question is not a proper question and object on all of
10 the grounds of the objection heretofore made.

11 THE COURT. Motion to strike out denied.

12 MR. APPEL. Exception.
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6-S 1 MR FREDERIEKS: Were you informed -- state whether or not
2 you were informed by the District Attorney that you would be
3 needed as a witness for the People in the prosecution of the
4 State against the case of the People against McNamara, wherein
5 he was charged with murder in blowing up The Times?

6 MR APPEL: Wait a moment. We object upon the ground that it
7 is incompetent, irrelevant and immaterial; hearsay, and no
8 foundation laid; leading and suggestive, and upon the further
9 ground that the defendant is not bound in any way, shape or
10 manner by the conversations had between the District Attorney
11 and anyone else, not in the presence of the defendant, im-
12 material for any purpose.

13 THE COURT: I think the question has the thought of being
14 leading, but harmless under the circumstances. Objection
15 overruled.

16 MR APPEL: Exception.

17 A Yes sir, I was.

18 MR FREDERICKS: Now, Mr Diekelman, how long did you remain
19 at the -- I withdraw that. About what time was it, if you
20 remember, that you saw J B McNamara over in the county jail?

21 A I don't quite remember the date. I think it was some-
22 time in April.

23 Q In what year? A 1911.

24 Q And after that time where did you go? A Why, I was
25 out to Arrowhead Hot Springs, and when the season was over
26 I came to Los Angeles; then I went out for the Harvey System

1 to --

2 Q Let's just get your movements in a general way. Where
3 were you working at the time you saw McNamara in the county
4 jail? A I was at Arrowhead Hot Springs.

5 Q And how long did you stay at Arrowhead after that?

6 A Why, it was a little over a month.

7 Q And then where did you go? A I came to Los Angeles,

8 Q Did you work anywhere here in Los Angeles? A No sir,
9 I did not.

10 Q Then where did you go? A Then I signed up with the
11 Harvey System to go to Needles, California.

12 Q State whether or not you kept the District Attorney
13 advised as to where you were and where you were going when
14 you left? A Yes sir, I did.

15 MR APPEL: We object to that.

16 THE COURT: Strike out the answer for the purpose of the
17 objection.

18 MR APPEL: We object to that upon the ground that it is in-
19 competent, irrelevant and immaterial for any purpose; it is
20 hearsay, not binding upon the defendant; no foundation laid;
21 doesn't tend to prove any issue in the case; it is leading
22 and suggestive, conversations between the witness -- communi-
23 cation between the witness and the district attorney are im-
24 material for any purpose whatsoever.

25 THE COURT: Overruled.

26 MR APPEL: Exception.

1 THE COURT: Restore the answer.

2 MR FREDERICKS: Do you remember the date when you want to
3 work out at the Needles? A No, but I can look it up.

Pete 4 Q You can look it up. Have you any data here by which
5 you can look it up? A No, I have not. I think it was
6 sometime in July.

7 Q July? A No, June.

8 Q June or July, 1911? A June or July, 1911.

9 Q Then where did you go from there? A I was over
10 there two days and they transferred me to their house at
11 Williams, Arizona, as clerk at that house.

12 Q How long did you remain there as clerk at the house at
13 Williams, Arizona? A I just stayed there a month.

14 Q Then where did you go? A I went up to Albuquerque,
15 New Mexico, awaiting to be changed to another house.

16 Q Albuquerque, New Mexico? A Yes.

17 Q What were you doing in Albuquerque, New Mexico?

18 A I had charge of the Fashion Cafe up there as head
19 waiter.

20 Q How long did you stay there in Albuquerque? A How
21 long?

22 Q Yes. A I was there about a month and a half.

23 Q Now, calling your attention to the occasion of your
24 leaving Albuquerque and the time and the circumstances
25 surrounding your leaving Albuquerque, I will ask you if you,
26 at about that time, met a man there by the name of Bert

1 Hammerstrom? A Yes sir.

2 Q How long before you left Albuquerque did you meet Mr ✓
3 Hammerstrom?

4 MR APPEL: We object to that upon the ground it is incompe-
5 tent, irrelevant and immaterial for any purpose; it is hear-
6 say, not binding upon the defendant; no foundation laid.

7 THE COURT: Read the question.

8 (Question read)

9 THE COURT: Overruled.

10 MR APPEL: We take an exception.

11 A I met him on the 16th, three days before I left ✓
12 Albuquerque.

13 Q The 16th of what month? A The 16th of September.

14 Q What year? A 1911.

15 Q Had you ever seen Mr Hammerstrom before you met him
16 there?

17 MR APPEL: Wait a moment --

18 A I never saw him.

19 Q By Mr Fredericks; Now, when you left Albuquerque, at
20 the time you speak of, where did you go?

21 MR APPEL: We make the same objection, upon each and all of
22 the grounds stated in our last objection.

23 THE COURT: Objection overruled.

24 MR APPEL: We except.

25 A We went to Chicago.

26 Q Now, then, I want to go back to the time when you

1 first met Mr Hammerstrom. State the circumstances of your
2 first meeting with Mr Hammerstrom.

3 MR APPEL: We object to that as incompetent, irrelevant and
4 immaterial; hearsay, and no foundation laid; not tending to
5 prove any issue in this case; not binding upon the defend-
6 ant. It is collateral to any issue in this case.

7 THE COURT: Objection overruled.

8 MR APPEL: We except.

9 A Why, one morning at about 11 o'clock, Judge Craig --

10 MR FREDERICKS: Just a moment, Mr Diekelman, don't say
11 anything that Judge Craig said to you, or anything that
12 anybody else said to you, except Mr Hammerstrom.

13 A You want the actual meeting?

14 MR FREDERICKS: Yes.

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7p 1 MR. APPEL. Then, your Honor, the question as propounded
2 was the question your Honor allowed. He asked him to
3 state the circumstances surrounding the meeting of Hammer-
4 strom, that would call for everything. Now, the district
5 attorney instructs the witness not to answer the question.
6 MR. FREDERICKS. I did it out of fairness to the defendant.
7 MR. APPEL. We object/^{ed}to the question as propounded and
8 we do not wish to be disarmed as to the point we make,
9 because we think it is absolutely good.
10 THE COURT. I deem the question withdrawn and it will have
11 to be reframed, under the instruction given to the witness
12 that amounts to a withdrawal of the question.
13 MR. FREDERICKS. Simply out of fairness to the defense,
14 simply that he should not state what somebody else said.
15 THE COURT. Better reframe the question.
16 MR. FORD. I think the witness is correct, only the dis-
17 trict attorney cautioned the witness not to say anything
18 that was hearsay.
19 THE COURT. The Court has passed upon this matter, Mr. Ford.
20 BY MR. FREDERICKS. Q Now, Mr. Diekelman, calling your
21 attention to the time when you met Mr. Hammerstrom there,
22 state what was said and done between you and Mr. Hammerstrom.
23 MR. APPEL. We object to that question on the ground it
24 calls for the conversation or for acts and declarations
25 of the witness and a third party not in the presence of the
26 defendant, therefore, it is hearsay, not binding upon the

1 defendant and no foundation laid for the introduction of the
2 evidence, on the ground it is incompetent, irrelevant and
3 immaterial for any purpose whatsoever, and it is collateral
4 to the case, and does not tend in the slightest degree to
5 prove any issue of this case.

6 THE COURT. Objection overruled.

7 MR. APPEL. Take an exception.

8 A I met Mr. Hammerstrom and he started to open the con-
9 versation, that he had been looking for me for sometime, and
10 he says, "We have looked all over the country for you and
11 it seems the district attorney has tried to keep you away
12 from us and we have had a hard time to locate you and we
13 finally got word where you was through your mother up in
14 San Francisco." So he told me that I was practically
15 on their side of the case, that I was really their witness,
16 and if I had not been subpoenaed yet that I would never be
17 called by the State, because I was not their witness and I
18 was not favorable to the State. So I told him I didn't
19 know about that, I told him I promised to appear there and
20 promised Mr. Fredericks I would be there and they said they
21 wanted me, and he asked me if I had been subpoenaed and I
22 said No at the time, and he said, "Well, they will never
23 call you then." So I said, "I will have to wait and see",
24 and he says, "I understand from your folks that you intend
25 going to Chicago very soon." I said I was probably
26 figuring on that very shortly and so he asked me how would

1 I like to take a trip with him and I said it would be all
2 right, but I would not care to at the present time. So he
3 started to tell me, he says, "Now, we have found out that
4 you have not positively identified this man down there",
5 and he says, "you would not send an innocent man to the
6 gallows, if there was any chance of saving him?" And he
7 says, "We are trying our best efforts to save this man, he
8 is perfectly innocent", and everything like that, and he
9 says, "Don't you think it would be right for you to consider
10 the least doubt there is and consider that and be on our
11 side?" And I told him I didn't think there was any doubt,
12 in a way, I said, of course there was a slight doubt, very
13 slight--so he asked me to consider the thing. He says, ✓
14 "Now, you are a very valuable witness for us" and he says,
15 "Of course we cannot do like the people can with all of the
16 witnesses, give them fifteen or twenty thousand dollars",
17 "but", he says, "you are valuable to us, your services are
18 valuable to us and whatever your price is we will give it
19 to you."

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8-P 1 So I told him I had no price,
2 and he asked me to consider the things over, and promised me
3 several good positions in Chicago if I would make the trip
4 with him, and I told him I didn't think I would consider
5 any positions if I did, if I went with him, I would get a
6 position of my own. So then he asked me if I knew Rector's
7 Restaurant in Chicago. I said "Yes". He said "Well, I think
8 Mr Darrow is interested in that", and he says, "How would
9 you like to be Assistant Manager in there"? I said, "It
10 would be pretty nice, but", I says, "I don't think I could
11 hold it, it is too big a job for me." He says, "Well, we
12 can fix that all right." I said, "I don't think I would
13 care to try it." So he asked me if I would not like to
14 consider going with him to Chicago, if I had any objection
15 to going. I told him I would like to have him wait a
16 couple of weeks, and I says, "You can go to Chicago, and if
17 I find I am not wanted, I can come on your side, then, if
18 I am favorable to your side." He says, "Well, it is a
19 matter we are in a big hurry, I am up here to see you, and
20 I have to get through with you, and as soon as you can give
21 me an answer I want to come and go with you, I have to go to
22 Chicago and come back to Los Angeles on important busi-
23 ness and we are delayed at the present time, we are awfully
24 rushed and crowded." So I told him I would not consider
25 anything at that time, I would wait a while before I would
26 decide on it. In the meantime, I had put them off, expect-

1 ing word from the District Attorney --

2 MR ROGERS: We move to strike out that last portion, that is
3 not a conversation.

4 THE COURT: Strike out the words "expecting word from the
5 District Attorney".

6 A Oh, --

7 MR ROGERS: I have no doubt the witness does not understand
8 the rules of evidence, and naturally, he would not know he
9 was not answering the question.

10 THE COURT: Yes. Just confine your answer to the conversa-
11 tion you had there.

12 A So I had no further conversation with him that day, to
13 my knowledge. Probably there was some little items I cannot
14 recall just now.

15 Q By Mr Fredericks; Where did this conversation occur?

16 A This took place in Miller and Judge Craig's office in
17 Albuquerque.

18 Q And who was present? A Just Mr Hammerstrom and my-
19 self.

20 Q Mr Fofd just coughed then -- (Answer read).

21 A Mr Hammerstrom and myself --

22 Q What name did Mr Hammerstrom give you when he first
23 ^{there,} came/ as his name?

24 MR APPEL: We object to that as incompetent, irrelevant and
25 immaterial, hearsay, no foundation laid; collateral to any
26 issue in this case. It does not tend to prove any element

1 of the offense charged in the indictment here, or any
2 element, or the remotest element connected therewith, not
3 binding upon the defendant.

4 THE COURT: Objection overruled.

5 MR FORD: It is stipulated that objection is made.

Sm 6 MR FREDERICKS: Answer the question.

7 A He gave me the name as Mr Higgins.

8 Q Now, did you meet him again after that? A I met him
9 the next day.

10 Q Where? A At his room.

11 Q How did you come to go to his room? A Why, he told
12 me to let him know whether I decided on going with him or
13 not, and I decided I would not go, and I went up at noon
14 right after lunch and told him that I --

15 Q All right. You went up to his room, then? A Yes.

16 Q Now, you had some conversation together there at his
17 room? A No, we had hardly any conversation then.

18 Q What was said and done between you at that time?

19 MR APPEL: Wait a moment. We object to any conversation
20 at the room. We object to any conversation called for by
21 the question of the District Attorney on the ground no
22 foundation has been laid. It hasn't been shown that the
23 defendant was there present or had any notice of the con-
24 versation. Upon the further ground that it is hearsay for
25 any purpose whatsoever It is leading and suggestive, and
26 it is incompetent, irrelevant and immaterial; doesn't tend
to prove any elements of the offense charged in the indict-

1 ment, nor the remotest element thereof.

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2 THE COURT: Objection overruled.

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1 MR. FORD. If the Court please, I want to make a sugges-
2 tion--

3 THE COURT. The objection is overruled.

4 MR. FORD. I want to make a suggestion to further objections
5 along that line, that we are offering this for the purpose
6 to show acts and declarations on the part of Hammerstrom, an
7 agent and coconspirator with the defendant.

8 THE COURT. The Court quite understands the purpose of the
9 offer and there is no occasion for taking up time.

10 MR. APPEL. We move to strike out the statement of the
11 counsel--

12 THE COURT. Mr. Ford, you will not be allowed to at this time.

13 MR. APPEL. We move to strike out the statement of the
14 district attorney, there being absolutely ^{NO} statement before
15 the court and jury to sustain his statement and the state-
16 ment is based on absolutely no evidence.

17 THE COURT. The statement will be stricken out.

18 MR. APPEL. We ask the court to instruct the jury to pay no
19 attention to it.

20 THE COURT. The jury are admonished that the statement of
21 the district attorney is stricken out and they are entirely
22 to disregard it.

23 MR. FREDERICKS. When you consider our evidence has been
24 introduced in substantiating the fact--

25 THE COURT. The statement as made is out of the record and
26 will be disregarded.

1 MR. FREDERICKS. Now, Mr. Diekelman, relate just what was
2 said between you and Mr. Hammerstrom at this time when you
3 went up to his room.

4 MR. APPEL. We will again have to repeat the same objection,
5 the question was pending, of course.

6 THE COURT. I will withdraw this last question and have it
7 read.

8 MR. FREDERICKS. The better way was to have the question
9 read, no doubt about that. I withdraw the question and
10 ask the reporter to read the first question.

11 (Last question read by the reporter as indicated.)

12 A At that time I went up and told him that I had decided
13 not to do anything for several days, and ^{if} he wanted to wait
14 that length of time, why, all right, and so he said, "Well,
15 can't you stay a little while and have a little talk?" I
16 said, "No, I am in a hurry to get back." I says--he
17 says, "Well, can't you drop up this evening then and see me
18 a while?" I said, "Well, I will think it over, and if I
19 have time I will come up," so I left then. That is the
20 only conversation we had.

21 MR. APPEL. I move to strike out the answer of the witness
22 on the ground it was said in such a low tone of voice it
23 was not brought home to the defendant. He didn't hear it and
24 I didn't hear it.

25 THE COURT. Mr. Reporter, did you get the answer? Read it
26 please.

1 (Last answer read by the reporter.)

2 THE COURT. Motion to strike out is denied.

3 MR. FREDERICKS. Q Now, when did you see Mr. Hammerstrom
4 again? A I am not positive whether I saw him that night
5 or the following night; I think it was--

6 Q Well, was it one or the other, either that night or the
7 following night? A I think it was the following night,
8 Monday night.

9 Q All right. And where did you see him then? A Up at
10 his room.

11 Q Who was present? A Mr. J. W. Bibby.

12 Q Who is Mr. Bibby? A Why, he told me was--

13 Q Who told you? A Mr. Bibby.

14 MR. APPEL. We object to any more as hearsay.

15 MR. FREDERICKS. Just a moment--I will get at that.

16 Q When did you first meet Mr. Bibby? A That night for the
17 first time.

18 Q That the first time. Did Mr. Hammerstrom say anything to
19 you about who Mr. Bibby was?

20 MR. Appel. We object to that on the ground it is hearsay and
21 no foundation laid, irrelevant and immaterial for any pur-
22 pose whatsoever and no foundation laid.

23 THE COURT. Objection overruled.

24 MR. APPEL. Exception.

25 A No, he didn't tell me who he was at all. Mr. Bibby
26 told me later himself.

1 MR. FREDERICKS. We will not ask you what Mr. Bibby said
2 at present, when Mr. Bibby told you who he was and what he
3 was there for at this conversation or at a later one.

4 A At a later one.

5 Q Very well. Now, relate the conversation.

6 MR. APPEL. I suppose we have no right here, your Honor.

7 THE COURT. Yes, you have, you will be accorded all the
8 right you have when you wish to object.

9 MR. APPEL. We said, "Wait a moment."

10 THE COURT. If you say you are objecting, why, you will
11 always be accorded a clear field for your objection.

12 MR. APPEL. I know, but the district attorney would not
13 stop.

14 THE COURT. If you will just state your objection--

15 MR. APPEL. I can't make it while he is asking one question
16 after another. I said, "Wait a minute".

17 THE COURT. I assume that is equivalent to an objection.
18 You want the answer stricken out?

19 MR. APPEL. Why, two questions one after the other, they
20 were both answered.

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1 The Court. Read them over now. (Last two questions and
2 answers read by the reporter.)

3 MR. ROGERS. Your Honor can see that is the substance of
4 the conversation and a separate conversation and entirely
5 different, and we desire to have objection interposed to it,
6 because it is not covered by the objection to the conversa-
7 tion of Hammerstrom. We ask counsel to refrain from
8 asking another one until we object to that.

9 THE COURT. You are quite right, but strictly speaking it is
10 your duty to say you object and not demand that counsel wait
11 a minute. If you object that gives you the field at
12 once.

13 MR. APPEL. I will accept your Honor's suggestion and here-
14 after I will start in with, "I object".

15 THE COURT. If you do so the court will endeavor to see
16 you get a clear field.

17 MR. FREDERICKS. I would say I would have paused if I
18 thought counsel wanted to go any further. The impression I
19 got was that he said "Wait a moment", and then reconsidered
20 and didn't want to object any further, and I drove on.

21 MR. APPEL. May I object now?

22 THE COURT. Yes.

23 MR. APPEL. We ask that the answer of the witness be stricken
24 out for the purpose of allowing me an opportunity to object.

25 THE COURT. Strike it out for the purpose of the objection.

26 MR. APPEL. We object to the question asked to the witness

1 concerning what transpired between him and Mr. Bibby on the
2 ground that the question assumes a state of facts not testi-
3 fied to by the witness and upon the further ground--

4 MR. FREDERICKS. We are willing that it should be stricken
5 out.

6 THE COURT. All right, strike it out.

7 MR. FREDERICKS. Q Now, Mr. Diekelman, relate the conversation
8 which you had with Mr. Hammerstrom at the time you have
9 related you and Mr. Hammerstrom and Mr. Bibby being present.

10 MR. APPEL. We object upon the ground that it is incompetent,
11 irrelevant and immaterial and it is hearsay and no founda-
12 tion laid. It doesn't tend to prove any element of the
13 offense charged nor prove any notice to the defendant of any
14 conversation or knowledge of the conversations and the
15 defendant not being present and not being bound by what Tom,
16 Dick and Harry said, in reference to the case.

17 THE COURT. Objection overruled.

18 MR. APPEL. We except.

19 A Now, I recall this conversation was Sunday night when
20 Mr. Hammerstrom and Mr. Bibby were there.

21 MR. FREDERICKS. What day of the month would that be?

22 A The 17th of September, 1911, so it was practically the
23 same conversation that we had before when he first met me
24 in reference to begging me to join their side and to con-
25 sider the doubt, if slight doubt there was, and said "You
26 will never be called by the state." He said that "they

1 would have subpoenaed you long ago."

2 MR. APPEL. I object to the witness talking so low we
3 cannot understand what he says.

4 MR. FREDERICKS. The acoustics in the room are very poor.
5 I think I can hear what he said.

6 THE COURT. The def_endant is some seven or eight feet fur-
7 ther away. Speak up, Mr. Diekelman.

8 MR. FREDERICKS. Go on from where you were, let the reporter
9 read the answer.

10 THE COURT. Read the answer.

11 (Last answer read by the reporter.)

12 A So I told him that I would rather wait a few days and
13 then if he wanted me, and he said the State don't want me,
14 "why, you go on to Chicago and I will come on. I will drop
15 you a line and if you want I will come on later." He said,
16 "Well, he couldn't think of doing that", he said "my
17 mission is to see you and Mr. parrow sent me to see you and
18 I got to get back to Chicago as soon as I could. I got
19 my business there and I thought I would just stop off and
20 get you on my way"; so I told him I didn't think about
21 going at that time, so he started to tell me, says, "Well,
22 now, if you decide on going," he said, "we will make
23 things very good for you in Chicago, and if you want to go
24 to work there, if you don't want to go to work, why, we
25 will pay you \$30.00/^{a week} every week until you are through with
26 the trial, and your expenses. He says, "Now, if you want--"

1 then he started to ask me why I would not leave with him
2 at this time, so I told him that the first excuse I told
3 him--

4 MR. ROGERS. Now, your Honor please, he is designating
5 what it was.

6 THE COURT. State the conversation or the substance of it.
7 A First I told him that I didn't want to leave on account
8 of being hard for my boss to get a man in my place at that
9 time. He said, "Why, we can fix that easy; I will get one
10 of the Harvey men; I will pay them to come over here and
11 take your place," so I told him I rather give him time to
12 get his own man, so then he--so he kept asking me again, he
13 said, "Well, is that your only reason for not going?" He
14 says, "Probably you have got a girl here that you don't want
15 to leave." I says, "No, not exactly." He says, "Well,"
16 he says, "we can fix that very easy, if you have any girl
17 here that you want to--don,t want to leave, we just arrange
18 we take her right along with you." So I said it would be
19 very nice, all right, and very accommodating of you; so
20 I told him I thought I would consider it at the time.
21 "Well," he says, "I will tell you what I will do, if you
22 don,t think everything is all right I will advance you
23 expense money, give you about \$100.00, that will pay your
24 way back from Los Angeles to Chicago, but if yougo to
25 Chicago with me and we find things not just exactly right,
26 why, yougot the expense money you can get right onthe train

1 and come back to Los Angeles whenever you want to," so I
2 told him I didn't know what I would do. I told him I
3 would rather wait a day or so. "Well," he says, "let me
4 know tomorrow sure what you will do," so that practically
5 ended the conversation that night, and so the following
6 day, why, I didn't see him again until I received a wire
7 from the district attorney and so I took this wire up there
8 and showed him, he says, "Well, that is just a bluff, to
9 scare you not to go with us." He said, "They dassen't
10 stop you from going with us, they know better than that, they
11 are just bluffing you so you wont go with us." So I told
12 him of course I didn't know or say that night. He said,
13 "Well, if you think you are going to go", he said, "I will
14 leave the money here with Mr. Bibby." First he wanted me
15 to go. He said, "We will get a drawing room tonight and
16 we will all go to Chicago," so I says no I wouldn't do
17 that. I said, "If I go I want to go by myself," so he
18 said, "I will leave the money with Mr. Bibby, and relying
19 on you to go tomorrow then;" so I said, "I would think it
20 over if I would I would be up and see Mr. Bibby the following
21 day." So the next day, why, Mr. Hammerstrom I guess left
22 that night, I don't know, the next day--

23 MR. ROGERS. He said Mr. Hammerstrom left that night, I
24 guess.

25 THE COURT. Strike it out.

26 MR. FREDERICKS. Go ahead. A Want the conversation with

1 Mr. Bibby?

2 MR. FREDERICKS. Wait a minute.

3 A I forgot to mention in the conversation there he also
4 stated about he knew I had been in the restaurant business
5 and said, "You would like to go into the restaurant business
6 when you get to Chicago we have always got a string of restau-
7 rants on hand, we can put you in one of these places,"
8 he said, "we will fix you up as nice a place as you have got
9 in Albuquerque," the place I had charge of. He said, "We
10 are interested in a lot of places all the time." He said,
11 "The Federation Labor there we always got a string of restau-
12 rants." He said, "We can put you in one of them, if you
13 don't want to go to work at something else." That about
14 concluded the conversation with Mr. Hammerstrom at that time.

15 Q Who introduced you to Mr. Bibby? A Mr. Hammerstrom.

16 Q What, if anything, did he say in regard to Mr. Bibby at
17 that time?

18 MR. APPEL. Wait a moment--we object to that as incompetent,
19 irrelevant and immaterial, and hearsay, and not binding
20 upon the defendant and no foundation laid.

21 THE COURT. Objection overruled.

22 (Last question read by the reporter.)

23 MR. FREDERICKS. Q This refers to the time of the intro-
24 duction? A At the time of the introduction he just
25 introduced Mr. Bibby and said he just happened to be coming
26 this way on a business trip and he is with me here, he has

1 got nothing to do with the case, he don't know anything
2 about the case. That is about all he said at the time of
3 the introduction.

4 Q And did he say anything later about Mr. Bibby?

5 MR. APPEL. We object upon the ground it is incompetent,
6 irrelevant and immaterial.

7 MR. FREDERICKS. State--excuse me.

8 THE COURT. Go ahead with your objection.

9 MR. APPEL. On the ground it is incompetent, irrelevant and
10 immaterial and no foundation laid, it is hearsay, not
11 binding upon the def_endant.

12 THE COURT. Overruled.

13 MR. APPEL. We except.

14 (Last question read by the reporter.)

15 A Why, he did not, that I recall, except that he said he
16 would leave the money with him, and he would go on ahead,
17 because he had very pressing business, and I told him--he
18 said, "Well", he says, "you and Mr. Bibby can get a drawing
19 room together and go on the Limited." I said, "No, I
20 rather go by myself, he can take the train following me or
21 he can take the train ahead of me if he wants," so he said,
22 "Well," he said, "Mr. Bibby has got pressing business, of
23 course he will have to stay here to give you the money and
24 he cannot be delayed and take the next train the following
25 day." He said, "Of course, you wouldn't mind traveling with
26 him, I have traveled with worse than he is", and laughed

1 about it. So I told him, "Well, I guess it wouldn't be
2 any objection, but I want to get my own ticket and have a
3 berth by myself", and that was about all.

4 MR. FREDERICKS. Q After Mr. Hammerstrom had left you and
5 you didn't see him any more--that is, you didn't see him
6 any more in Albuquerque, did you see Mr. Bibby? A Saw
7 him the following--saw him Monday night.

8 Q And what was said and done between you and Mr. Bibby at
9 that time?

10 MR. APPEL. Wait a moment--we object upon the ground that
11 it is incompetent, irrelevant and immaterial and hearsay,
12 has nothing to do with this case, no foundation laid, in-
13 competent for any purpose whatsoever.

14 THE COURT. Overruled.

15 MR. APPEL. We take an exception.
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Al-P1 I went up and saw Mr Bibby and told him I guessed I would
2 go, and so he said, "Well," he says, "I am glad you decided."
3 "You will find you have done the right thing". So he gave
4 me the money there, he gaveme the \$100 for expenses, and
5 gave me the fare so that I could buy my own ticket and my
6 own berth.

7 Q How much? A \$145, he gave me altogether. I think
8 the ticket amounted to something like \$44.15, including the
9 berth. So he said, "I have made a reservation for two perths,
10 and you can have the lower or the top, it doesn't matter",
11 and I said, "I would rather make my own reservation", so
12 I went down and cancelled his reservation and got my own
13 ticket and berth, and he got one in the next car. So that
14 night, why, we left on the Santa Fe Limited for Chicago.

15 Q Well, what was the date of that you left, now?

16 A It was September 19, 1911.

17 Q State whether or not you went right through on the
18 Chicago Limited to Chicago? A Yes sir.

19 Q State whether or not Mr Bibby remained in the same
20 train with you? A Yes sir.

21 Q Now, when you got to Chicago where did you go?

22 A Well, in the meantime, before we got to Chicago, I had
23 wired a friend of mine to meet me at the depot -- one of the
24 clerks at the Metropole Hotel there, and he met me; and so
25 I told Mr Bibby I wanted to be with him a while --

26 MR APPEL: Just a moment. I object to any conversation

1 between the witness and Mr Bibby at Chicago or anywhere
2 else, upon the ground that they are incompetent, irrelevant
3 and immaterial, hearsay, not binding upon this defendant,
4 particularly conversations between the witness and his
5 friend.

6 MR FREDERICKS: He has not related any yet.

7 MR APPEL: On this theory --

8 MR FREDERICKS: I will ask the questions so the matters can
9 be ruled on when they come up. He has not told any conver-
10 sation.

11 THE COURT: The witness has not finished the answer. The
12 objection is overruled, and the reporter will read the
13 answer as far as it has gone.

14 (Last answer read)

15 THE COURT: Have you finished your answer?

16 A No.

17 THE COURT: Go ahead and finish it.

18 A So I wanted to see if he would leave me go by myself,
19 and so he said he would rather have --

20 MR ROGERS: I move to strike that out, "I wanted to see --".

21 MR FREDERICKS: I think that is material.

22 THE COURT: Strike it out. I don't know who he means by "he".

23 Q By Mr Fredericks: Who do you mean by "he"?

24 MR ROGERS: Pardon me.

25 A So Mr Bibby --

26 MR ROGERS: It is what the witness wanted or did not want,

1 even in the most wide construction possible by the rules
2 of hearsay evidence --

3 THE COURT: Not what he wanted, but what he said.

4 MR ROGERS: He said "I wanted to see" something.

5 THE COURT: Do I understand you to say that is what you
6 told?

7 A No sir.

8 THE COURT: Well, then, strike it out.

9 MR FREDERICKS: No. The witness said "I wanted to see
10 whether he would let me go by myself".

11 MR ROGERS: Now, that is --

12 MR FREDERICKS: Now, it seems to me if this witness had a
13 fear and was getting a fear, that that fact, of that fear --

14 THE COURT: If your theory is correct, Captain Fredericks,
15 ask questions that will bring them out so that counsel can
16 get a proper objection, and we will get a square ruling on
17 it one way or the other.

18 MR FREDERICKS: All right. I see.

19 Q Well, when you got to Chicago, where did you go?

20 A I went to the Morrison Hotel.

21 Q Did anyone go with you? A Except my friend.

22 Q Your friend. That friend was not Mr Bibby? A No,

23 Mr Leonard is his name.

24 Q Now, how long did you remain at the Morrison Hotel?

25 A Remained there two days, or a day and a half.

26 Q Then where did you go? A Then I returned to Los

1 Angeles.

2 Q Now, who selected that hotel for you, the Morrison
3 Hotel? A I did, myself.

4 MR APPEL: Wait a moment --

5 THE COURT: Proceed. There is no objection.

6 MR ROGERS: We cannot make an objection after the answer.

7 MR FREDERICKS: Do you want the answer stricken out?

8 MR APPEL: The answers come so quickly, because the answers
9 are so leading, they are improper questions. The witness is
10 not --

11 MR FORD: We consent to strike out the question and the
12 answer.

13 MR FREDERICKS: No, let us drive on.

14 THE COURT: Go right on.

15 Q By Mr Fredericks: When did you see Mr Hammerstrom in
16 Chicago? A I met him about 1 o'clock in Mr Darrow's
17 office -- I suppose it was Mr Darrow's office.

18 Q One o'clock of what day? A I guess it was the 21st
19 day of September.

20 Q How did you come to go up to Mr Darrow's office?

21 MR APPEL: That is objected to as incompetent, irrelevant
22 and immaterial, hearsay, not binding upon the defendant,
23 and calling for a conclusion of the witness.

24 ²Ag-B MR FREDERICKS: It may be, and I withdraw it.

25 MR APPEL: No foundation has been laid.

26 THE COURT: It has been withdrawn.

1 Q By Mr Fredericks: Did you have a conversation with
2 Mr Hammerstrom, either over the telephone or otherwise,
3 before you went up to Mr Darrow's office? A No sir,
4 I did not.

5 Q Did you with Mr Bibby? A Yes sir.

6 Q Where was that conversation?

7 MR APPEL: Wait a moment. We object to that upon the
8 ground it is incompetent, irrelevant and immaterial; hearsay,
9 no foundation laid, it is irrelevant to any issue in this
10 case, not binding upon the defendant.

11 THE COURT: Objection overruled.

12 MR APPEL: We except.

13 A Well, before we left Albuquerque, Mr Hammerstrom gave
14 me -- had me take down Mr Darrow's office number, I think
15 it was his number -- I got it in my memorandum book, and he
16 said, "Now, we will rely upon you to report there as soon
17 as you get to Chicago, and Mr Bibby will be with you and you
18 go right on up there", and when we arrived Mr Bibby wanted
19 me to go on up there, but as I stated before, I called for
20 this friend of mine first, and I told him I would go up as
21 soon as I got down to the hotel and got located. He told me
22 just where it was. He says, "Come up there as soon as you
23 can, because we will be waiting up there for you." So I
24 got up there, I think it was about 1 o'clock, and I met Mr
25 Hammerstrom there, and -- that is, Mr Higgins, at that time--
26 and Mr Bibby and Mr Nockles.

1 Q Mr Nockles? A Yes.

2 Q Ed Nockles? A Yes sir.

3 Q In Darrow's office. What was said and done at that
4 time between you and Mr Hammerstrom and Ed Nockles and Mr
5 Bibby in Mr Darrow's office?

6 MR APPEL: We object to that upon the ground that it is
7 incompetent, irrelevant and immaterial; calling for a hearsay
8 statement; calling for acts and declarations of third parties
9 not in the presence of the defendant; no foundation laid, no
10 connection has been shown between the defendant and the
11 alleged parties to the conversation; and upon the further
12 ground that it is incompetent, irrelevant and immaterial
13 to prove any other element in the case .

14 THE COURT: Objection overruled.

15 MR APPEL: Take an exception.

16 A Why, I went up there and the first thing Mr Higgins
17 told me, he says -- Mr Hammerstrom -- he says, "Now, my name
18 is not Higgins"; he says, "I want to set you right on that.
19 My name is Hammerstrom, and I am Mr Darrow's brother-in-law."
20 So he says, "I want you to understand that before we go any
21 further so you will know who I am. I want you to feel I am
22 not deceiving you any more." So, they kind of started a
23 conversation again and he said, "Now,-- ", he introduced me
24 to Mr Nockles, and he says "Mr Nockles will have charge of
25 you while you are in Chicago", and he started to ask me
26 again as to whether I had identified this man or not --

1 Q What man? A J B Brice -- and I told him, I said
2 "Not positively". I said, "Almost as positively as I could",
3 and he says, "Well,"-- Hammerstrom said, "Did he have a
4 mustache when you saw him?" Of course, I thought he meant
5 the time I last saw him, and I told him "Yes", and he
6 laughed. "Well, we will have him grow one and see if you
7 know him when you see him." So, just at that time the girl
8 came in with the little clipping in a paper about my
9 going to Chicago, or something like that, and broke up the
10 conversation, and then a little later Mr Hammerstrom told me,
11 he says, "Well, now, you are here", he says, "we want you
12 to take your time a few days, or if you want to go to work,
13 just come and tell Mr Nockles and come to work whenever you
14 want to; and if you do not want to, just go around and have
15 a good time." He says, "Now, how do you want to do with
16 your expense money?" He says, "We will give you any amount
17 you want in advance if you want it", and he says, "You can
18 come up either every Monday morning or any day you want to
19 get your expense money". I says, "Well, I just as well get
20 it at the end of the week." He says, "We would rather have
21 you take it now, to show you we are all right we will give
22 you a week in advance". So he asked Mr Bibby if he had any
23 more money left from his trip, and he did; and he gave me
24 \$30 out of that; and so then Mr Hammerstrom took me down to
25 former Mayor Dunn's office, to have Mayor Dunn assure me he
26 was Mr Darrow's brother-in-law,--Hammerstrom was.

1 So, then we went back up to the office and we had a private
2 conversation again, and Mr Hammerstrom said: "Now, I am
3 going back to Los Angeles tomorrow", and he says, "I want
4 you to give me a little statement to Mr Darrow showing that
5 I brought you here and that you are going to be with us,
6 and I want you to write a little statement to that effect. "
7 So, he said "You won't object to that, will you?" So, I
8 says, "No, I guess not." So I left that afternoon, and
9 that was the last I saw of him.

10 Q Did you ever give him such a statement? A No sir,
11 never did.

12 THE COURT: 12 o'clock; adjournment time.

13 (Jury admonished) Court will now adjourn until 2 o'clock
14 this afternoon.

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