

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. 24

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
✓ Dana D. Ong,		1788	1813	1820
✓ Mrs. Ilene Andrews,	1830	1835	1837	
✓ Eula Hitchcock,	1839			

Vol 24 to 26

Dana D. Ong	Vol. 24
Mrs. Ilene Andrews	Vol. 24
Eula Hitchcock	Vol. 24
Eula Hitchcock	Vol. 25
Malcolm Loughhead	Vol. 25
George O. Monroe	Vol. 25
George O. Monroe	Vol. 26
Charles Weir	Vol. 26

1 Thursday, June 13th, 1912. 10 o'clock A.M.

2 Defendant in court with counsel. Jury called; all pre-
3 sent. Case resumed.

4 THE COURT: Proceed, gentlemen.

5

6 DANA D. ONG, on the stand for further cross-
7 examination.

8 MR APPEL: When you came into the saloon where was White?

9 A I don't know.

10 Q Where was Mr Lockwood when you went into the saloon?

11 A I don't believe I saw Mr Lockwood before I went in the
12 saloon. No, I don't think I did.

13 Q Did you see Mr Lockwood at any time on the southeast
14 corner of Los Angeles and Third? A No, it was the north-
15 east corner.

16 Q Well, who was with him?

17 MR FREDERICKS: Objected to unless the time is made a
18 little more closely.

19 MR APPEL: When he was there.

20 THE COURT. Objection overruled.

21 A Well, Captain White was with him.

22 MR APPEL:

Q Who else? A No one else.

23 Q Was it the northeast corner -- was it? A The north-
24 east corner.

25 Q How far from the saloon? A Across the street. Directly
26 across the street; that is, directly east across the

1 street.

2 Q And the northeast corner is directly across the street
3 from the saloon? A I think it is directly across, I
4 don't believe there is an angle there.

5 Q So the saloon is at the northwest corner? A North-
6 west corner, yes sir.

7 Q Now, what else did you see White and Lockwood do be-
8 sides standing there? A Well, they seemed to be in con-
9 versation.

10 Q No; what did you see them do; that is all? A Well, I
11 saw Captain White, seemed to hand something to Lockwood.

12 Q Just describe what he did do.

13 MR FREDERICKS: I think the witness is.

14 MR APPEL: "He seemed"; that is a conclusion, your Honor.

15 MR FORD: Describing the appearance.

16 THE COURT: Don't state your conclusions; tell what you
17 saw.

18 MR FORD: The witness has said what they appeared to do.

19 THE COURT: Why don't he say so, what he saw.

20 MR FORD: Seemed is the same thing.

21 THE COURT: I don't think it is a synonymous term.

22 A He appeared to hand.

23 MR APPEL: I insist -- A I didn't see what it was.

24 Q Why don't you say --

25 MR FREDERICKS: Let counsel tell him.

26 MR APPEL: I am just going to illustrate, to describe

1 that; I know what he wants to say. What motions did you
2 see one make and the other one make? Now, to carry out
3 your idea -- now, that is what I am asking for. A I saw
4 Captain White's hand move toward Mr Lockwood's hands, and
5 Mr Lockwood's hands were both together in front of him
6 and he had something in his hands that he seemed to keep
7 moving in his fingers, like, as it rolling or folding;
8 something on that order.

9 Q Like he had something in his hand; seemed to be moving;
10 rolling? A Yes sir.

11 Q And Captain White's hand moved towards Lockwood's
12 hand? A Captain White's hand moved towards him first,
13 as if handing him something.

14 Q But did you see anything pass from Captain -- A No,
15 I did not.

16 Q They didn't seem so, does it? A Just appearance.

17 Q I know. But one of them had his hands in front and the
18 other one's hands moved over towards the other one's hands.
19 Now, did you see anything pass from that hand to the other?

20 A I did not.

21 Q That is all you can state then. Then you said Captain
22 White's hands appeared to move as you saw them there, as if
23 they were rolling something with both hands? A Yes sir,
24 rolling or folding.

25 Q That is what I thought. Well, then, you saw Captain --
26 after you saw Captain White's hands move towards Captain

1 Lockwood's hands, then you saw Captain White's hands come
2 back and go in his pocket? A No, I don't recall that he
3 put his hand in his pocket.

4 Q He kept them right outside? A Well, I don't know;
5 I don't remember that.

6 Q Oh, you don't remember that. Now, what -- after you
7 saw this hand-shaking process, so to speak, you know, what
8 did you see White do? A They continued talking a few mo-
9 ments.

10 Q What did you see White do?

11 MR FORD: He is telling -- I think they talked for a few
12 moments;--continued to state what occurred, and counsel
13 interrupted him.

14 THE COURT: The question is what he saw.

15 MR FORD: Saw them talking.

16 MR APPEL: I mean -- well, they both were doing the same
17 thing, I will put it that way, apparently talking to
18 each other; is that right? A Yes sir.

19 Q They appeared talking to each other? A Yes sir.

20 Q Now, while they appeared talking to each other, what
21 did you see White do after that at any time during the talk
22 or after he talked? A Well, after he talked they both
23 crossed the street.

24 Q Crossed the street to where? A Crossed the street to
25 the west side going towards Main on Third.

26 Q To the west side going towards Main on Third? A Yes

1 sir.

2 Q On which side of Third street did they run, did they
3 both go? A On the north side.

4 Q And you call that the west side of Third, do you?

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1 A No, not the west side of Third. They crossed Los
2 Angeles to the west side and continued west on Third towards
3 Main.

4 Q Oh, yes; well, they were going on the west side of Third?

5 A There isn't any west side to Third.

6 Q The west side of Third? A North side of Third.

7 Q North side of Third, I see. Now, they both together?

8 A Yes, they were together.

9 Q Well, now, before they left the corner where you say there
10 was a meeting of hands there, that is, apparently so, you
11 have indicated, and before they started across the street did
12 you see Franklin with them at all? A No.

13 Q Franklin was not there? A Not up to that time he was
14 not there with them.

15 Q Very well, when they crossed over the street and before
16 they started to go on the north side of Third west towards
17 Main did you see Franklin with them? A Franklin joined
18 them along the side of the saloon. There was at that time
19 a telegraph pole there and Franklin was standing near that
20 telegraph pole, and when they crossed the street going towards
21 Main on the north side of Third, they joined Franklin just
22 about this telegraph pole, and stopped, the three of them
23 stopped there, oh, probably a couple of minutes.

24 Q They apparently talked to each other? A I think there
25 were a few words exchanged there.

26 Q Did you see Franklin do anything with his hands? A No.

1 Q Where did he have his hands? A I couldn't say.

2 Q Where did White have his hands at that time? A I couldn't
3 say.

4 Q Where did Lockwood have his hands? A I couldn't say.

5 Q Which way was Franklin facing, in what direction? A Well,
6 they all went towards Main then.

7 Q When they were talking were they all facing the same way?

8 A No, I think if I remember, Franklin had his back towards
9 Main, that is, he was facing them as they came coming towards
10 him.

11 Q He was facing east, was he? A I think he was.

12 Q And the others were facing west? A They were walking
13 west and I think they stopped just in that position.

14 Q Did they stop? A They stopped a couple of minutes.

15 Q When they stopped, have you indicated their position,
16 that is all I want to know? A I think I have, as far as
17 I can remember.

18 Q Now, could you see Franklin's hands? A No, I don't
19 recall his hands.

20 Q Could you see White's or Lockwood's hands? A No, sir.

21 Q They had their backs towards you? A Well, not exactly.
22 I was going across the street during this time towards the
23 south side and went along parallel to them.

24 Q Going from the side of the saloon over towards which side?

25 A No, I was not--

26 Q From which side to which side, I don't care where you

1 started or where you landed, I just want to know in which
2 direction you were going? A North, starting from this
3 corner, on that northeast corner, I was on that corner
4 myself.

5 Q You were on the same corner? A I was not on the corner,
6 but I was near the corner, consequently, as they crossed the
7 street I crossed to the southwest corner to get on the south
8 side of Third so that I could follow them on the opposite
9 side of the street.

10 Q Who was behind them as they went along west towards Main
11 street, who was behind them, if any one? A Well, Bert
12 Franklin and Mr. Lockwood continued, after they left the
13 telegraph pole, Bert Franklin and Mr. Lockwood walked
14 together and Captain White was a few steps behind.

15 Q Who was behind these three men, that is what I am asking
16 you? A I don't know.

17 Q Did you see any one going behind them, about ten feet
18 behind them? A I don't recall seeing any one back of them.

19 Q Well, there was nobody, as near as you can tell? A Well,
20 I don't recollect of any one, I was watching them.

21 Q Oh, you were watching them, and you couldn't see any one
22 ten feet behind them if you were looking at them?

23 A I didn't notice any one.

24 Q The radius of your vision could not extend that distance
25 at that angle as you looked at things back now, as you
26 remember things? A There were people on the street at dif-

1 ferent places, I was just watching these three men.

2 Q Did yousee anybody passing them? A I don't recall any
3 one.

4 Q Well, did you see any one going in company with Mr. White?

5 MR. FREDERICKS. When, may it please the court?

6 MR. APPEL. We are talking about one time.

7 THE COURT. The time is fixed.

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1 MR FREDERICKS: The place and the time should be fixed
2 very particularly, whether it is the time at the telegraph
3 pole, or when they started or later, so that we do not
4 have to go all over this again on redirect.

5 MR APPEL: No, no. I am asking the witness --- I started
6 on one point --

7 THE COURT: I think you are quite right. Objection over-
8 ruled.

9 MR FREDERICKS: Is it understood it is at the telegraph
10 pole?

11 THE COURT: No sir.

12 MR APPEL: It is not so; it is following up the examina-
13 tion.

14 MR FREDERICKS: Exactly, and the witness did not understand
15 it.

16 MR APPEL: How do you know?

17 MR FREDERICKS: Because I didn't understand it.

18 MR APPEL: If you don't understand a thing, it is no reason
19 that \$100 doesn't understand it.

20 THE COURT: Just a minute. Mr Witness, do you know the
21 time to which Mr Appel's question is directed?

22 MR APPEL: If he does not, I will make it plain. A I would
23 like to have the question again.

24 THE COURT: If at any time, you do not fully understand
25 the question, just say so, and Mr Appel will make it clear,
26 you must understand the question before you answer.

1 MR APPEL: Mr Witness, in my previous questions you have
2 already stated Mr White and Mr Lockwood and Mr Frankdin at
3 some period or time started from about the telegraph
4 post or in any direction there, I don't care which -- they
5 started going west on Third street towards Main. Now, I
6 continued questioning you as to who you saw with them along
7 that course, and my last question refers to any point on
8 Third street as they went west; did you see anyone join Mr
9 White? That is my question -- as they went along, or
10 whether they stopped, or as they left the telegraph pole,
11 on the way towards Mainstreet, in which direction, concern-
12 ing that situation? A Is that a question?

13 Q Yes. A Well, when they were within probably 20 or
14 25 feet of the corner of Third and Main, I saw Mr Browne
15 cross the street, cross towards them. I had not seen Mr
16 Browne before that.

17 Q I didn't ask you that; I simply asked you who you saw
18 join them. A All right. And he walked up and stopped
19 Mr White, and then I saw a third man, who afterwards turned
20 out to be George Home, and Mr Browne left White, seemed to
21 have turned White over to Mr Home and Mr Browne started on
22 around the corner following Lockwood and Bert Franklin,
23 and at that time had turned the corner.

24 Q They had turned the corner and he started in the direc-
25 tion; that is what you mean? A I think that is what I
26 said.

1 Q No, you said "following them". You mean he went in that
2 vicinity. A And he was following them, I mean, follow-
3 ing them.

4 Q Yes, following them. A Yes, he went after them.

5 Q You were at a distance and you knew he was following
6 them? A Well, I think he was going after them.

7 Q You thought he was going after them, and for that
8 reason you swear he was following them?

9 MR FORD: Just a moment.

10 MR APPEL: I want to get at the way you are reasoning; I
11 want to analyze this detective's mind for my benefit.

12 Q Now, Mr Ong, on which side of the -- I want to know on
13 which side of Third street was Mr Lockwood and where Mr
14 White went when this alleged hand-shaking or hand-joining
15 occurred; on which side of Third street?

16 MR FREDERICKS: That is objected to, may it please the court
17 as assuming a fact not in evidence, that is, that there was
18 any hand-shaking.

19 MR APPEL: No, no; Your Honor knows what I mean.

20 MR FORD: Fully answered, anyway.

21 THE COURT: Read the question.

22 MR FREDERICKS: If there is ^{not} any hand-shaking, let us keep
23 it out.

24 THE COURT: Read the question. (Question read.) Objec-
25 tion overruled.

26 A Which side of Third street?

1 MR APPEL: Yes. A Well, they were on the northeast
2 corner.

3 Q Northeast corner of what? A Third and Los Angeles.

4 Q Northeast corner of Third and Los Angeles? A Near the
5 curb.

6 Q Now, you are sure of that, are you --

7 THE COURT: Just a moment --

8 MR APPEL: Withdraw that question.

9 THE COURT: Just a moment.

10 MR ROGERS: If your Honor please, I desire to make an appli-
11 cation to your Honor for an order for a transcript of the
12 testimony before the grand jury of George Bean; it was taken
13 down as he testified before the Grand Jury and unless
14 counsel has a copy which we have not been furnished, I would
15 like to have an order from the court to transcribe it.

16 MR FORD: I don't recall he was ever before the grand jury.

17 MR DARROW: He was before the grand jury on the contempt
18 case.

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1 MR. ROGERS. Have you any objection?

2 MR. FORD. I can't see there is any reason why his testimony
3 before the grand jury should be transcribed and given to the
4 defense at this time. They were his attorneys at that time-
5 I beg your pardon, I believe you were not.

6 MR. ROGERS. No, sir.

7 MR. FORD. But it is violative of the secrecy of the grand
8 jury. I cannot see the object of it and generally when I
9 don't see the object of anything I am opposed to it.

10 THE COURT. Was the witness before the grand jury?

11 MR. FORD. Not on this proceeding he was not, your Honor.

12 THE COURT. If he was not a witness in this proceeding I
13 scarcely see how the court could make the order.

14 MR. ROGERS. Was it not before the same grand jury which
15 found this indictment?

16 MR. FREDERICKS. I don't think so.

17 THE COURT. May have been before the grand jury on some
18 matter entirely foreign to this.

19 MR. FORD. I think it was another grand jury preceding
20 this.

21 MR. FREDERICKS. No, it was not this grand jury he was
22 before, I am quite sure; but it was not this case, I am
23 perfectly sure of that.

24 MR. FORD. Sure it was not before this grand jury also.

25 MR. ROGERS. I think where a witness is called to testify
26 concerning any matter now pending before the court it is

1 always jurisdictional for the court to permit his testimony
2 formerly given to be used against him, the Code of Civil
3 Procedure provides that wherever they may be called in any
4 proceeding where he is a witness, and I can see no harm that
5 might come from it. Of course, we can put the reporter on
6 the stand under the Code and ask him to state it in open
7 court.

8 THE COURT. I can see no harm unless it should develop that
9 the witness before the grand jury, this or some other grand
10 jury on some matter that may at the present time, may be under
11 investigation for aught I know, I know nothing about the mat-
12 ter, except what has been stated here this morning.

13 MR. ROGERS. I know practically nothing about it because I
14 don't recall that I ever heard his name until a few days
15 ago.

16 MR. FORD. I think we can look the matter up, perhaps we have
17 no objection. If you continue this until this afternoon,
18 I have forgotten the exact situation.

19 MR. ROGERS. All right, counsel take his time to investigate
20 the matter, counsel may have the transcript.

21 THE COURT. All right.

22 MR. FORD. We will look it up for counsel.

23 THE COURT. I will take it up with you gentlemen before court
24 convenes a little before 2 this noon.

25 MR. APPEL. Q Now, attracting your attention again to one
26 or two points only, attracting your attention-- how far were

1 you ~~from~~ Mr. White and Mr. Lockwood when their hands came to-
2 gether as you have described? A I was probably 30 feet.

3 Q And in plain view of them, is that right? A Yes, I
4 could see them.

5 Q Who was the next closest person to them that you now
6 remember? A A detective from the office by the name of
7 Allison,

8 Q Have you described all of the actions and all of the
9 circumstances you remember of Mr. Lockwood and of Mr. White
10 just at that very time? A I think I have.

11 Q Didn't you see Mr. Lockwood drop something and then bend
12 over and pick up something from the ground? A No, I didn't.

13 Q At any time while Mr. Lockwood and Mr. White were there
14 at that corner where this hand motions were made that you have
15 described here, don't you remember seeing Mr. White leave Mr
16 Lockwood, walk away a few feet, either towards the east or
17 the west on Third or in any other direction, and stand by
18 himself momentarily, and then turn around and come back to
19 where Mr. Lockwood was? A No, when I saw them they were both
20 together.

21 Q Well, I say, but after that or before that you didn't see
22 it? A I didn't see that.

23 Q Now, another point. Did you hear what they said? A No,
24 sir.

25 Q When Mr. Browne came somewhere in the course of your
26 testimony you testified that you saw Mr. Browne come there

1 either across Third street going north at some particular--
2 where he seemed to ^{be} to put Mr. White under arrest, he appeared
3 and you had--you didn't know where he came from, that is,
4 you didn't see where he came from? A Well, looked as though
5 he came from Main but he was somewhere around that corner,
6 I don't know just where.

7 Q He was somewhere there? A Yes, sir.

8 Q You knew he was, although you hadn't seen him? A I
9 thought he was, I didn't know.

10 Q You thought he was, and-- you got that idea from what
11 you heard subsequently, didn't you? A Oh, I got it from
12 the conversation the night before that he would be there, and
13 I hadn't seen him since the night before.

14 Q He told you that he would be right there on Third and
15 Main, the night before? A No, sir.

16 Q Well, he told you he would be around on Main street?

17 A No, sir.

18 Q What did he tell you, then? A He said he would be in
19 that vicinity.

20 Q Well, Third and Main is in that vicinity, isn't it?

21 A It might be included in it.
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1 Q What do you mean by "vicinity" now? A Third and Los
2 Angeles.

3 Q He told you he would be on Third and Los Angeles; in
4 that vicinity, did he? A Well, he said he would be there.

5 Q Didn't you say he told you he would be there in that
6 vicinity? A I said that my instructions were --

7 Q What did he tell you about where he was going to be?

8 MR FORD: Let the witness finish his answer. A He said
9 he would be there.

10 MR APPEL: There -- where? A Well, in that vicinity.

11 MR FREDERICKS: May it please the court, that is a conclusion.

12 MR APPEL: For that reason you thought he was around on
13 Main and not on Los Angeles street; is that it? A I
14 don't know where he was.

15 Q And you said to this jury a little while ago you
16 thought he was around on Main street. A No, I didn't.

17 Q Now, why do you say he didn't. I submit, your Honor,
18 the record shows that and I am trying to find out how he
19 knew that.

20 MR FREDERICKS: We submit counsel is not trying to find out
21 what he knew; rather, trying to keep him from telling what
22 he saw.

23 THE COURT: What is the question?

24 MR APPEL: I object to counsel saying he didn't say what
25 I said.

26 THE COURT: Let's have the question. (Last question read

1 by the reporter.)

2 MR APPEL: So you didn't say that, did you? A What, that
3 last question?

4 Q I don't want to ask you any more questions if you
5 don't understand that. I won't ask you anything in ref-
6 erence to that. Now, Mr witness -- I congratulate you.
7 Now, Mr Ong, did you -- you knew Lockwood before you saw
8 him there that day? A Yes sir.

9 Q Seen him up in the District Attorney's office? A No,
10 I don't think I ever did.

11 Q Where did you see him; see him around the District
12 Attorney's office? A I saw him at his home the night be-
13 fore.

14 Q That is the only time you ever saw him? A The only
15 time I remember of ever seeing him, yes sir.

16 Q You had been told who he was? A No, I don't think I
17 ever heard of him until the night before.

18 Q Oh, never heard before? A No sir.

19 Q Going out there in the machine towards Lockwood's
20 home the night before, you were together with Mr Browne?

21 A Yes sir.

22 Q And going along, you persons going on the same issue,
23 didn't talk about what you were going to do; who you were
24 going to see; who you were going to meet, and Lockwood's
25 name was not mentioned? A Wasn't anything said of what
26 we were to do.

1 Q Went along in the machine just looking at the stars and
2 the moon if there was a moon; is that right? A There
3 was not.

4 Q So you talked about there not being any moon, I sup-
5 pose; not talking about the matter that you were going to
6 do.

7 MR FORD: Now, if the court please, we object to that upon
8 the ground it is immaterial whether there was a moon there
9 or not.

10 THE COURT: I think the witness has answered the question;
11 said they were not talking about the matter. Objection sus-
12 tained.

13 MR APPEL: Exception.

14 MR FREDERICKS: No objection to counsel bringing out when
15 he first learned what he was going out there for.

16 THE COURT: The objection is sustained.

17 MR APPEL: Now, Mr Ong, you saw Lockwood the night before
18 at his home, you say? A Yes sir.

19 Q Whereabouts did you see him? A I saw him out in the
20 yard and I saw him in his house.

21 Q Inside of his house? A Yes sir.

22 Q And you heard him talk? A Oh, yes.

23 Q And who was talking with him in your presence, if any-
24 one? A Mr Browne.

25 Q And what did he say to Mr Browne? A I don't know
26 as I remember what was said.

1 Q You don't remember now what was said. Do you remember
2 what Mr Browne said to him? A No, I don't.

3 Q Don't know. So you don't remember what was said be-
4 tween them? A No, I don't.

5 Q You were there acting as a detective, you were right
6 close to them in the same room? A Well, we were
7 waiting in the same room; we were sitting there, the boys
8 that I was with.

9 Q The boys? A The other boys.

10 Q The boys you were with, were in the room that Lock-
11 wood and Browne were in? A Yes sir.

12 Q And they were talking in that same room? A Well, no,
13 Lockwood kept walking around. He was doing his chores,
14 he was in and out.

15 Q Was he talking there in the same room? I don't care
16 whether he was sitting or standing up or walking, Was he
17 talking. A He talked a little.

18 Q Talked a little and you didn't remember that little he
19 said? A No, I don't believe I can recall any of it.

20 Q And you don't remember what the other ones said to
21 him? A No, I do not.

22 Q Do you remember what anybody else said in the presence
23 of Lockwood?

24 MR FREDERICKS: We object to that on the ground it is
25 hearsay and not cross-examination.

26 THE COURT: Objection overruled.

1 A I only know there was something for the plans of the
2 evening, but what they were, I do not recall any words.

3 Q You cannot recall? A No.

4 Q Now, you knew Franklin very well, didn't you? A I
5 didn't know Franklin at all.

6 Q Had never seen him? A Not to know him.

7 Q Had not seen him around the court house? A No sir, not
8 to know him. I had heard the name, but I didn't know the
9 man.

10 Q And you were a detective and working in that depart-
11 ment? A Working in that department.

12 Q That is all, and you are a detective --

13 MR FREDERICKS: The witness said he was working in that
14 department. Is that all, Mr Appel?

15 MR APPEL: Just a moment.

16 Q Now, where was the door in the back part of that
17 saloon; on which side of it?

18 MR FORD: Are you referring to the one going out on the
19 street or the one to the toilet?

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1 MR. APPEL. "The back door", I said. I suppose that
2 is the door--if the doors are on the outside in the streets,
3 they are front doors, that is the way I understood it always.

4 MR. FORD. Sometimes they are side streets.

5 MR. APPEL. I don't know which door you call the front door,
6 you might go in the back door and call it the front door,
7 I don't know.

8 Q You talked about there being a back door to the saloon,
9 now, where was that back door? A I did?

10 Q Yes. A I don't think so; I don't think I said anything
11 about a side door or back door.

12 Q You never mentioned in your testimony the back door
13 yesterday? A No, sir.

14 Q Of that saloon? A No, sir.

15 Q Did you say that this man went out through the back door
16 of the saloon and that then you left? A I said he
17 went towards the back of the saloon.

18 Q Well, now, as you look to the back of the saloon, did
19 you see a door there? A I don't recall any door, but I
20 know there was a door I saw from Third street on the side,
21 the Third street side.

22 Q I am talking of the inside of the saloon. A I didn't
23 see it on the inside.

24 Q You cannot see the back door there from the street?

25 A I seen a side door.

26 Q The door that leads out to the toilet, you didn't see it?

1 A No, I do not recall it.

2 Q Did you stand in front of the bar? A Yes, sir.

3 MR. APPEL. Can I make a rough sketch?

4 MR. FREDERICKS. If counsel will make a sketch of the corner
5 there we can both use it.

6 MR. APPEL. I am talking about the saloon now. (Drawing
7 on board.)

8 Q Mr. Witness, assuming that is the northeast corner of--

9 MR. ROGERS. Perhaps it might be better to let Mr. Dehm draw
10 it, owing to his greater familiarity with the saloon.

11 MR. APPEL. You gentlemen seem to be more familiar with
12 that saloon than I.

13 MR. FORD. We will stipulate to Mr. Dehm's qualifications.

14 BY MR. APPEL. Q Now, assuming this to be the saloon in
15 question, Los Angeles street and Third street comes along
16 here? A yes, sir.

17 Q And the sidewalk along here?

18 THE COURT. Mark that Third street.

19 MR. APPEL. All right, Third street. (Marking on board.)

20 Q Now, I understand, if I am correctly informed, that the
21 bar runs in that direction, here is the back of the bar and
22 here is the front of the bar? A It did at that time.

23 Q Has been so for a long time, hasn't it? A I have not
24 been in it since that morning; that is the way it was
25 that morning.

26 Q Now, that is the corner door? A yes, double doors.

1 Q Now, is there a door there? A There is a door on that
2 side.

3 Q Now, was there a door there? A I didn't see any door
4 there.

5 Q Now, you stood here at the bar? A Yes, not away down
6 on that end, though.

7 Q Over here? (Indicating.) A Yes, about right in there.

8 Q Now, this man that was suspicious, did you see him come
9 to this door? A No, that is the front door.

10 Q Over here? A Yes. I call them the front doors, those
11 doors there.

12 Q Some call them the corner doors? A Yes.

13 Q Did you notice a door over here? A I didn't notice the
14 back of that saloon, it was rather dark and smoky.

15 Q Dark and smoky? A It was that morning.

16 Q 9 o'clock in the morning, smoky. How many people were
17 in there? A There were several people in there.

18 Q It was very smoky? A It seemed dark and smoky and a
19 gloomy place.

20 Q It seemed that way to you on that morning, and so you
21 didn't notice that door? A I did not.

22 Q Did you notice the ice chest over here? A No, I did not.

23 Q What color was the walls inside of that saloon? A Dark
24 red, I believe, or some dark red color.

25 Q Things looked red. Was that the first drink you had
26 taken that morning, Mr. Ong? A Yes, sir.

1 Q And nothing the night before? A No, sir .

2 Q No effects from any-- A No, sir .

3 MR. APPEL. That is all.

4
5 REDIRECT EXAMINATION

6 BY MR. FREDERICKS .

7 Q Mr. Ong, I do not like to destroy this architecture here--

8 (erasing the sketch on board and drawing another) now, Mr.

9 Ong, assuming that what I have drawn there is the corner of
10 Third and

Los Angeles street and that this top here is north on Los

11 Angeles street and this down here is south on Los Angeles

12 s treet, and that this street across here is Third street,

13 that this is east and that little box or square place that

14 I have made here--is that about where the saloon would be

15 that you have been talking about? A Yes, sir.

16 Q And that this cut-off corner, is that the corner entrance

17 you have been talking about? A Yes, sir .

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1 Q Does that set in in your memory? A yes sir.

2 Q Now, you say there was a door up there somewhere?

3 A Yes, I think I saw a door from the Third street; I
4 didn't see any from the inside.

5 Q All right; from the outside. Where was the telegraph
6 pole Franklin was standing beside when you came around here?

7 A Just behind that door and the corner, not far from the
8 door.

9 Q About there somewhere? A About there, yes.

10 Q Now, when you were in the saloon here and you and
11 Franklin were in there together, you said you looked out of
12 the corner -- did -- or Franklin came and looked out of
13 these doors? A Yes sir.

14 Q Once or twice, and then you looked out of the door?

15 A Yes sir.

16 Q And you looked across here onto this corner? A Yes
17 sir.

18 Q Now, when you looked out over there onto this corner,
19 did you see anybody there, and if so, who?

20 MR APPEL: We object to that on the ground it is not re-
21 direct; he has been asked as to what he saw there, and
22 I cross-examined him simply as to what positions these
23 men were in when they saw him; that is all there is to it,
24 he has gone over that.

25 MR FREDERICKS: No, I think counsel confused the real
26 facts in the case, and I am trying to straighten them out.

1 MR APPEL: I submit, your Honor, I didn't confuse anything
2 of the kind. The witness answered very exact, and an-
3 swered my question, I just wanted to get the positions of
4 the parties, and when he saw them; that is all.

5 MR FREDERICKS: I don't want to lead the witness.

6 MR APPEL: It is not redirect.

7 MR FREDERICKS: I think it has been made to appear on cross-
8 examination from a different answer as to whom he saw
9 across here as to what he did on direct examination.

10 MR APPEL: Suppose he did? That would not make it redirect
11 if a man says he saw John Brown on the northeast corner of
12 the street, and on cross-examination he says the north-
13 west corner; that is cross-examination.

14 MR FREDERICKS: But in reality he did not say anything
15 different, it was only made to appear so by the form in
16 which the questions were asked.

17 MR FORD: Because the questions were so inexact that the
18 answers were ambiguous.

19 MR APPEL: I will have to start in again and rejuvenate
20 myself and start in and learn a little law and practice
21 at the dictation of my friend.

22 MR FORD: I will give you all the assistance I can.

23 THE COURT: Let us get at this question. That does not
24 seem to be redirect, I am inclined to agree with Mr Appel
25 that it was gone into on direct examination and again on
26 cross-examination, and that this is not redirect.

1 MR FREDERICKS: Well, there is in my mind. I think from the
2 way counsel asked his question that made something appear
3 in the record which is not correct.

4 MR APPEL: I only asked questions; I don't make anything
5 appear.

6 MR FREDERICKS: I suppose counsel asked the question and
7 very skillfully, too.

8 THE COURT: Objection on the ground it is not redirect ex-
9 amination, is sustained.

10 MR FREDERICKS: Now, after you looked out of this door,
11 Mr Ong, the second time, or after Franklin had looked out
12 of it the second time, you say you went up there, then went
13 across, and then came down here? A Yes sir.

14 Q Where were you on your way -- where were you in that
15 walk when White and Lockwood walked across and came over
16 here? A I was standing right near the doors of that --

17 THE COURT: Just step to the diagram and indicate. A There
18 is a wholesale house right here; I think it was the Tay
19 Company, wholesale plumbers, I believe it was. There is an
20 entrance -- their entrance was here, and I stepped right
21 there in front of that door, kind of got in close to the
22 door.

23 Q Now, when you were walking up this way before you went
24 across here, did you see what was going on here on the corner?

25 MR APPEL: Wait a moment. We object to that upon the
26 ground that it is incompetent, irrelevant and immaterial

1 and not redirect, the witness stated what he said and
2 done there, and we cross-examined him, went over the
3 route that he took, and there is nothing to ask of him
4 in reference to anything else, but what he testified to on
5 direct examination.

6 MR FORD: I think his movements north on Los Angeles, back
7 south --

8 THE COURT: Objection overruled.

9 MR APPEL: We except.

10 A I didn't see until after I had crossed the street and
11 started back on this side.

12 MR FREDERICKS: Did you see Captain White go across from
13 this corner over to this?

14 MR APPEL: Wait a moment. I object to that because it as-
15 sumes a fact not testified to by the witness on redirect.

8s 1 MR. FREDERICKS. I am asking if he saw it.

2 THE COURT. Objection overruled.

3 MR. APPEL. We except.

4 A I did not.

5 MR. FREDERICKS. Q When you first looked out of the door
6 here was Captain White over on that corner that you know of?

7 MR. APPEL. That is very leading, your Honor. He might as
8 well tell him he was not there or he was there, just what he
9 wants him to state.

10 MR. FREDERICKS. I will withdraw the question.

11 Q When you went out--when you looked out of the door here
12 just before you started out did you see Captain White at
13 all? A No, sir.

14 Q Now, after these two men--or did you see any one over
15 here on this corner? A I saw Mr. Lockwood there.

16 Q Now, after you had come down--

17 MR. APPEL. He is going over the same evidence that he
18 testified to.

19 THE COURT. Object to it.

20 MR. APPEL. I have been objecting; what is the use of
21 objecting, I don't like to be embarrassed; it is disagreeable
22 Your Honor can easily see it. I don't like to be interrupt-
23 ing counsel and the witness.

24 THE COURT. If you object and the court thought it was im-
25 proper redirect I would sustain it.

26 MR. APPEL. It only embarrasses counsel, it only makes

1 counsel look ridiculous to object to things that are not
2 correct.

3 THE COURT. That is the only way to get it in the record.

4 MR. APPEL. Your Honor understands why I don't object.

5 I object to his asking him concerning his movements he
6 testified to on direct examination were not redirect.

7 THE COURT. No question here at this time to rule on.

8 MR. FREDERICKS. Q When you were over about here, say, you
9 saw Captain White and Lockwood coming across here and then
10 as you say you went down to that corner, is that correct?

11 A Yes, sir.

12 MR. APPEL. Wait a moment--

13 THE COURT. Strike out the answer for the purpose of the
14 objection.

15 MR. FREDERICKS. I will not finish the question then.

16 MR. APPEL. Here is the way I get at it--

17 MR. FREDERICKS. Q When you first saw Mr. Franklin--

18 MR. APPEL. I will get at this way: The defendant here
19 through his counsel object to the manner of the district
20 attorney in leading the witness around where he wants him
21 to testify where he saw things and where he was and what
22 he did and by leading the witness in the manner he is doing,
23 and we assign the conduct of the district attorney as error,
24 and we assign the conduct of the court in allowing the
25 district attorney to proceed in that way as error.

26 MR. FREDERICKS. Q Now, I will start the question again.

1 Where were you--just point to it, Mr. Ong, when you first
2 saw Franklin by the telegraph pole? A I didn't see Frank-
3 lin until these men were almost over to the telegraph pole.

4 When I saw these men standing there and I was standing
5 over here at the time going to this side of the street.

6 Q How long were you and Franklin together in this saloon
7 here, approximately in minutes, before you went out and
8 went over there? A All of ten minutes.

9 MR. FREDERICKS That is all.

10
11 RE-CROSS-EXAMINATION.

12 MR. APPEL. Q I understood you to say just now to the
13 question by the district attorney that you didn't see
14 Franklin until you saw Captain and Captain Lockwood there
15 on the outside of that saloon, didn't you say that?

16 A I don't think that was the question.

17 Q Didn't you answer in that way, substantially in that
18 way?

19 MR. FORD. He has answered it. He has answered his under-
20 standing of it.

21 MR. APPEL. Now, your Honor, I again protest against this
22 man interrupting my questions for the purpose of enabling
23 the witness to give him a tip how to answer that question.
24 I say it is the most outrageous conduct as ever happened
25 or perpetrated in any court.

1 THE COURT. No occasion at all for the interruption.

2 MR. APPEL. I can give his position--

3 MR. FORD. Objected to upon the ground it has been answered.

4 THE COURT. Objection overruled. Answer the question.

5 (Last question read by the reporter.)

6 A I will have to answer that--I will have to go back to the
7 question I gave that answer to.

8 MR. FORD. I think the witness can give his answer without
9 being interrupted.

10 THE COURT. What is your answer? Answer it the best way you
11 can.

12 A Well, Judge, the thing is that I would like to have the
13 question read that I gavethe other answer to, because if I
14 remember right Captain Fredericks asked me where was I at
15 the time Mr. Lockwood and Captain White crossed the street
16 when Mr. Franklin was standing by the telegraph pole and that
17 is the question that Mr. Appel wants me to answer is the first
18 time I saw Franklin, I don't think that is right.

19 THE COURT. It seems to me the question is a very simple one.

20 MR. APPEL. You are afraid of what I said.

21 THE COURT. Wait a moment, Mr. Appel. You haven't an answer
22 yet and you are entitled to one. What is your answer to
23 the question, Mr. Ong?

24 A I will have to have it again.

25 THE COURT. Read the question.

26 (Last question read by the reporter.)

1 MR . FORD. The Court please, I wish counsel would make his
2 remarks so low we could not hear them. They are dis-
3 concerting, the side remarks, they were not intended to be
4 overheard.

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1 MR APPEL: I will tell you what I said. You didn't hear
2 it, I will tell you if you want to hear.

3 THE COURT: I will attend to this now, gentlemen,--
4 Mr Appel, and gentlemen on both sides, it is true that
5 any conversation between counsel on the side between them-
6 selves in view of the arrangement of the tables here,
7 which is for your convenience and the better carrying on
8 of this work, it is desirable --

9 MR APPEL: I am addressing this man and if he wants to
10 hear an ear-drop --

11 THE COURT: Let me finish.

12 MR APPEL: If he wants to know what I say, I will tell him
13 to his face.

14 THE COURT: I want to say a word. In view of the arrange-
15 ments that have been made of the tables here for the con-
16 venience of all parties, it is desirable that counsel try
17 and confer among themselves as quietly and in as low a tone
18 as possible so that the record will not pick up things
19 that do not belong in the record. You have a right to con-
20 fer between yourselves --

21 MR APPEL: He didn't pick it up.

22 THE COURT: But it is confusing to the court and the re-
23 porter and the witness and counsel on the other side to
24 determine whether or not the conversation which is properly
25 being held between counsel on one side, is intended for
26 the court and the record or not. There has been some lit-

1 the confusion --

2 MR APPEL: Your Honor prohibit me from talking?

3 THE COURT: No, Mr Appel.

4 MR APPEL: Your Honor allows them to sit there close to
5 the jury and everything they say can be heard by the
6 jury. We sit over here, and no one can hear.

7 THE COURT: My remarks are addressed to both sides and I
8 hope it will not be necessary to turn the tables around the
9 other way; it is harder to work that way, but if counsel
10 will comply with the suggestion --

11 MR APPEL: What is it that I said that is improper?

12 THE COURT: I don't know.

13 MR APPEAL: You don't know! I would like to know, your
14 Honor. If I said anything improper I certainly don't want
15 to say --

16 THE COURT: Surely there can be no misunderstanding
17 about that, I think.

18 MR APPEL: I addressed a remark to counsel.

19 THE COURT: If it isn't clear I will have the record read.
20 I think it is perfectly clear.

21 MR APPEL: Well, are we going to have an answer to my
22 question? That is all I want to know just now.

23 THE COURT: What is your answer? A I don't remember
24 what I did say to that question now.

25 MR APPEL: Now, you said that you and Franklin were inside
26 of the saloon for about 10 minutes; didn't you say that?

1 A Yes sir.

2 Q Now, when I examined you you didn't say it was Frank-
3 lin that you had seen in the saloon; you said it was a man
4 who acted suspicious, and you thought that was the man
5 you were after, didn't you? A Yes, I guess I said that.

6 Q Now, when the District Attorney says, "How long you
7 and Franklin" -- assuming that you knew that it was Frank-
8 lin -- you had seen in the saloon; how long you and Franklin
9 were inside the saloon, you very kindly and generously
10 said to him; for ten minutes.

11 MR FREDERICKS: Just a moment. That is objected to, may
12 it please the court; it is not fair to the witness. He
13 said on direct examination this man whom he saw there he
14 afterwards learned to be Franklin.

15 THE COURT: Read that question. (Last question read by
16 the reporter.) Objection overruled. A Yes, I said that.
17 I thought it was understood this was Franklin.

18 MR APPEL: Who did you expect understood that, I?

19 MR FORD: Oh, that is objected to as irrelevant and imma-
20 terial; assuming that the witness expected counsel to
21 understand anything. I don't think he does.

22 THE COURT: Objection overruled.

23 MR FREDERICKS: Read the question.

24 (Last question read by the reporter)

25 A No, not you, Mr Appel in particular, but from my tes-
26 timony of yesterday when it came out that this man whom I

1 thought was Franklin, turned out to be Franklin, and when
2 Captain Fredericks asked me this morning how long Franklin
3 and myself were in the saloon, naturally thought that is
4 who he meant -- Franklin.

5 MR APPEL: Did you at any time see Captain White and Cap-
6 tain Lockwood at the southeast corner of Los Angeles and
7 Third street together? A To the southeast corner?

8 Q Yes sir. A No sir.

9 MR FREDERICKS: We submit, counsel is not pointing to the
10 southeast corner.

11 MR APPEL: This is the southeast corner.

12 MR FREDERICKS: Down there.

13 MR APPEL: You have it here --- anywhere you want it --
14 did you see Captain White and Captain Lockwood together
15 upon this corner which the District Attorney says is the
16 southeast corner of Los Angeles and Third street? A I
17 did not.

18 Q This is the southeast corner, Mr Fredericks?

19 MR FREDERICKS: Yes, that is the southeast corner.

20 MR APPEL: This is north in this direction?

21 MR FREDERICKS: Yes, straight up.

22

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10p 1 MR. APPEL. And the left hand side is east.

2 MR. FREDERICKS. The left hand side is west.

3 MR. APPEL. Thank you.

4 Q Well, now, I will ask you whether upon that day at any
5 time you saw Captain Lockwood and Captain White, according
6 to the district attorney, on the southwest corner of
7 Los Angeles and Third streets?

8 MR. FORD. Come across diagonally to the southwest, you have
9 the northeast.

10 MR. APPEL. Is this northeast?

11 MR. FORD. Yes.

12 MR. APPEL. All right. We are at the northeast corner of
13 Los Angeles and Third streets, this corner, anyhow,--
14 did you see them together? A Yes, I saw them on the north
15 east corner.

16 Q Where did White come from to that corner? A I don't
17 know.

18 Q Was he up here inside of the house on the corner--
19 wasn't there a house, a building of any kind, and a fence?

20 A Yes, there was a building there.

21 Q Did he come from the inside or from the top or where
22 did he come from? A I don't know where he come from.

23 MR. FORD. We object to that on the ground it has been
24 gone fully into.

25 MR. APPEL. Fully gone into--

26 THE COURT. Overruled. You have the question?

MR. APPEL. Fully, yes, I think it is fooling on your part.

1 MR. APPEL. Q Now, did you see Captain White and Captain
2 Lockwood on this corner, on the --what corner is that?

3 MR. FREDERICKS. The southwest corner.

4 BY MR. APPEL. Q The southwest corner? A No, I did not.

5 Q You didn't see him? A No.

6 Q Now, when you were inside the bar there and you saw
7 Franklin looking through this door, is it? A Yes, sir.

8 Q You looked out yourself through the same door? A Yes,
9 sir.

10 Q Franklin was inside of the saloon when you looked through
11 the door? A yes--well, I don't know, he went towards the
12 back.

13 Q He went towards the back? A Yes, sir

14 Q Did you see him go out? A No, he went towards the back
15 of the saloon as I went towards the front and looked out
16 and I left.

17 Q You went out? A Yes, sir.

18 Q You saw Lockwood over here on this corner? A Yes, sir.

19 Q What was he doing there? A Standing there.

20 Q Did he have his hand in his pocket? A I don't remember.

21 Q Which way was he looking? A I think he was looking
22 east--west.

23 Q Looking west? A I could see his face, I could see his
24 face.

25 Q What is the width of the street there? A That street is
26 quite wide, I suppose it is a 90 foot street.

1 Q 90 foot street? A I am just approximating it.

2 Q You are a doctor, aren't you? You follow the profession
3 of a doctor? A No, sir.

4 Q You are not Doctor Ong? A No, sir.

5 Q All right, I am glad to hear it. That is all.

6 MR. FREDERICKS. That is all.

7 THE COURT. Gentlemen of the jury, bear in mind your former
8 admonition. We will take a recess for five minutes at this
9 time.

10 (Here the court took a recess. After recess. Jury returned
11 to court room.)

12 THE COURT. Who is your next witness?

13 MR. FORD. If the court please, there were some exhibits
14 introduced in the case of People versus Franklin at the pre-
15 liminary examination, the exhibits were brought up to the
16 court room while we were in the court room of Department 11
17 and handed at that time to Mr. Keetch and delivered by Mr.
18 Keetch to the clerk and they were mislaid and among them was
19 a memorandum we desired to examine the witness on, but
20 we are unable to locate it.

21 MR. ROGERS. Was that read into the record?

22 MR. FORD. At the preliminary examination. It was that
23 telephone memorandum of Miss Prouty.

24 MR. ROGERS. That is all right.

25 MR. FORD. Counsel stipulates she may refresh her recollec-
26 tion--

1 MR. ROGERS. If the memorandum has been mislaid, if your
2 Honor please, we see no objection to counsel using the
3 official transcript of the preliminary examination, into
4 which the memorandum was read.

5
6 M R S. I L E N E A N D R E W S,
7 called as a witness on behalf of the prosecution, having
8 been first duly sworn, testified as follows:

9 DIRECT EXAMINATION.

10 MR. FORD: Q State your name in full, please.

11 A Mrs. Ilene Andrews.

12 Q Mrs. Andrews, your name was formerly Ilene Prouty?

13 A yes, sir.

14 Q Mrs. Andrews, you were called as a witness in the case
15 of the People of the state of California, Plaintiff versus
16 Bert H Franklin in Judge Young's court, Justice court
17 on December 11, 1911, and testified as a witness? A Yes,
18 sir.

19 Q Prior to that time on November 28th--27th, 1911, what
20 business, if any, were you engaged in? A Telephone
21 operator.

22 Q And at what place? A El Monte.

1 Q El Monte, this county? A Yes sir.

2 Q And do you know Mr George N. Lockwood? A Not person-
3 ally.

4 Q But you know who he is? A When I see him.

5 Q Did you see him on the 27th day of November, 1911?

6 A Yes.

7 Q At what place? A The telephone office.

8 Q At the telephone office at El Monte? A Yes sir.

9 Q At that time did he have a telephone conversation with
10 anyone? A Yes sir.

11 Q You recall writing a slip, telephone slip, as to the
12 time the call was made and to whom it was made? A Yes.

13 Q And that slip was introduced in evidence at the pre-
14 liminary examination? A Yes.

15 Q The slip has been lost, Miss Prouty, and I attract your
16 attention to page 47 of the transcript in the case of
17 the People of the State of California, versus Bert H.
18 Franklin, preliminary examination being held on the 11th
19 day of December, 1911, and I will ask you to state whether
20 or not that slip was as follows: "5:20 P.M. No.371;
21 sent paid. E.B. Minutes, 2, sec.; Toll, 15, mess: total,
22 15; Monte 11-27-11. Operator No.3; O.K. from office
23 at B.Branklin at A 4899 L.A." Was that the memorandum
24 made by you and to which you have now referred? A Yes
25 sir.

26 Q At the time the telephone conversation was had? A Yes.

1 Q At what time on that day did that telephone conver-
2 sation occur? A About 20 minutes past 5 in the evening.

3 Q 5:20 P.M. Just state what occurred at that time when
4 Mr Lockwood came to the telephone office? A Why, they ask
5 ed me to call Bert Franklin.

6 MR ROGERS: This, of course, your Honor please; we make
7 the general objection that it is incompetent, irrelevant
8 and immaterial and hearsay and no foundation laid. I ec-
9 cept from the objection my statement that they might use
10 the transcript of the preliminary instead of the original
11 document to the same effect for the same purpose if the
12 original document was here.

13 THE COURT: Overruled.

14 MR ROGERS: May I have the same objection right straight
15 through to this line of testimony?

16 THE COURT: Yes sir.

17 MR ROGERS: The same ruling and exception .

18 MR FORD: Just state what occurred. A He said to call
19 Bert Franklin at 4899 at Los Angeles.

20 Q That is, Mr Lockwood said that? A Yes sir, and I call-
21 ed him, or got him at the phone through the other oper-
22 ator, and they had their conversation.

23 Q Now, at the time they had the conversation, who else
24 was present in the office with Mr Lockwood besides your-
25 self? A The District Attorney.

26 Q J. D. Bredericks? A Yes.

1 Q At that time did you make -- did you listen to the con-
2 versation that was held between A-4899 and Mr Lockwood at
3 your office? A I was asked to. I listened to it.

4 Q At whose request did you listen to it? A At the re-
5 quest of both Mr Lockwood and the District Attorney.

6 Q Did you make a memorandum at that time? A Yes.

7 Q As to what was said over the telephone? A Immediately
8 afterwards.

9 MR ROGERS: My objection, of course, runs to this as well
10 as to the other.

11 THE COURT: Yes sir. The same objection, the same ruling
12 and the same exception.

13 MR FORD: That memorandum, where is it now? A Why, in
14 the District Attorney's office.

15 Q Well, the memorandum was used by you at the time of
16 your testimony in Judge Young's court and was introduced
17 in evidence at that time, was it not? A Yes.

18 Q That memorandum has been mislaid, Miss Prouty, and I
19 will attract your attention to the record on page 49 of
20 the said preliminary examination, the exhibit being as fol-
21 lows: "To B. Franklin, A-4899, L.A.; hello, do you know
22 who this is? Well, I couldn't get in today as I had some
23 hay down --" That is erroneously spelled d-a-y, but it
24 was h-a-y. "I had some hay down. Yes. Well, did you do
25 that to make certain things safe? Yes. Well, come quietly
26

1 so as not to wake the folks up. I will be there at 8:30.

2 Better make it 9. All right. Shall I bring the other
3 party along? What party? The big fellow? Yes, bring him.

4 Signed, Ilene Prouty." Was that what you wrote down at
5 that time? A Yes.

6 Q Now, attracting your attention to the conversation,
7 "Hello", who said that? "Hello", do you know who this is?"

8 A Mr Lockwood said that.

9 Q The next one, "Well, I couldn't get in today as I
10 had some hay down", who said that? A Mr Lockwood.

11 Q The next word, "Yes." A Mr Franklin.

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3s 1 Q The next, "Well, did you do that to make certain things
2 safe?" A Lockwood, I think.

3 Q Mr. Lockwood said, "Well, did you do that to make certain
4 things safe?" "yes." A Mr. Franklin.

5 Q The next, "Well, come quietly so as not to wake the
6 folks up." ? A Mr. Lockwood.

7 Q The next, "I will be there at 8:30." ? A Mr. Franklin.

8 Q The next, "Better make it 9" ? A Lockwood.

9 Q Next, "All right" ? A Franklin.

10 Q "Shall I bring the other party along?" A Franklin.

11 Q Next, "What party?" A Mr. Lockwood.

12 Q Next, "The Big Fellow?" A Franklin.

13 Q The next, "Yes, bring him." A Lockwood.

14 Q That was the substance of the conversation held on that
15 occasion? A yes.

16 Q Do you remember it any more in detail now than what that
17 memorandum contains? A No.

18 THE COURT. Mr. Williams, did you hear the testimony of this
19 witness?

20 A JUROR. I did.

21 THE COURT. Any jurors like to have it read? All right.

22 MR. FORD. Cross-examine.

23
24 CROSS-EXAMINATION.

25 MR. ROGERS. I didn't get your name, what was it, please?

26 What is it, please? A It is Ilene Andrews.

1 Q Mrs. Andrews? A Yes.

2 Q Mrs. Andrews, did you ever see this gentleman before?

3 A No.

4 Q Did you ever hear him talk over a telephone? A No.

5 Q Those that you did hear talk over the telephone, so far
6 as you know, were Lockwood and a voice at 4899 A?

7 A Yes.

8 Q Did you ever see Franklin? A At the trial.

9 Q Did you ever see him before that? A No.

10 Q--Preliminary Examination? A No.

11 Q Did you know his voice? A No.

12 Q Are you able to write shorthand? A No.

13 Q This was taken in longhand? A Yes.

14 Q Did you take it as they spoke it or did you write it
15 directly afterwards? A Directly afterwards.

16 Q Now, Mr. Lockwood and the district attorney requested you
17 to listen to the conversation and make a memorandum of it,
18 is that right? A yes.

19 Q And you have given us the time as 5:20 in the afternoon?

20 A yes

21 Q When you reached Mr. Franklin, that is, do you recall
22 whether you reached him directly or whether someone called
23 him to the 'phone?

24 A He was called to the 'phone.

25 Q Someone called him after you had gotten the number?

26 A Yes.

1 Q Was it a woman's voice or a man's voice that replied at

2 A 4899 first? A It was a woman's voice.

3 Q A woman's voice? A yes.

4 Q Who paid for the message? A Mr. Lockwood.

5 Q And who ordered the message? A Mr. Lockwood.

6 Q A 4899 did not call El Monte? A No.

7 Q Lockwood called Franklin up? A Yes.

8 Q Or whoever was at A 4899? A yes.

9 Q And the district attorney, as you call him, Mr. Fredericks,
10 stood where he also could listen to the conversation?

11 A No.

12 Q I beg your pardon? A No, he did not.

13 Q Was he in the office at the time? A Yes.

14 Q Is there a booth there? A Yes.

15 Q Did Mr. Lockwood go into the booth? A Yes.

16 Q And where did the district attorney stand when Mr. Lockwood
17 went into the booth? A He stood at the window.

18 Q At the-- A At the office window.

19 Q When the order was put in by Mr. Lockwood to call up A
20 4899 the district attorney heard that? A Yes.

21 Q And the district attorney joined in the request that you
22 should listen to the conversation? A Yes.

23 MR. ROGERS. That is all.

24 REDIRECT EXAMINATION .

25 BY MR. Ford. Just a moment, Mrs. Andrews. You called up

26 A 4899? A Yes.

1 Q And the man who answered at the other end responded to
2 the name of Franklin?

3 MR. ROGERS. pardon me, that is a bit leading and suggestive,
4 and moreover, it is not the correct relation of what the
5 witness has said. She said when she called up A 4899 a
6 woman's voice responded.

7 MR. FORD. I directed her attention to the woman and then
8 to the man.

9 Q First a woman responded, and a man responded? A Yes.

10 Q Did he respond to the name of Franklin?

11 MR. ROGERS. Pardon me, leading and suggestive. Let her
12 state what was said.

13 MR. Ford. I was doing it to save time.

14 THE COURT. It is leading, but harmless in this instance.

15 MR. ROGERS. Yes, I don't think it amounts to anything, as
16 far as we are concerned, anyhow.

17 MR. FORD. Well, then, don't object. Was the question
18 answered?

19 THE REPORTER No.

20 (Question read.) A Yes.

21 MR. FORD. That is all.

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1 EULA HITCHCOCK, a witness called on behalf
2 of the People, being first duly sworn, testified as fol-
3 lows:

4 DIRECT EXAMINATION

5 MR FORD: State your name? A Eula Hitchcock.

6 Q Try and answer so that all the jurors can hear you,
7 Miss Hitchcock. Where do you reside? A 1245 Court
8 street.

9 Q Los Angeles, California? A Yes, sir.

10 Q What is your occupation? A I am a detective.

11 Q Connected with what office? A The District Attorney
12 of Los Angeles County.

13 Q And how long have you been acting in that capacity with
14 that office? A Why, I think about four years.

15 Q Do you know one Flora -- Mrs Flora Caplan? A Yes sir.

16 Q Who is she?

17 MR ROGERS: Pardon me; I think that is calling for a con-
18 clusion and I object on that ground.

19 THE COURT: Objection sustained.

20 MR FORD: Did you do any work on the case of the People
21 of the State of California against J. B. McNamara and J.J.
22 McNamara, William Caplan and others? A Yes sir.

23 Q Did you ever make any search for the wife of William
24 Caplan? A Yes sir.

25 Q Who was otherwise known as Dave Caplan, was he not?

26 A I think so.

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1 Q What was her name? A Flora Caplan, I understood.

2 Q Did you ever meet Flora Caplan? A Yes sir.

3 Q I hand you a document which I have already shown to
4 counsel for the defense, which purports to be a subpoena
5 for Flora Caplan in the case of the People versus J.B.

6 McNamara. Did you ever see that document before? A Yes
7 sir.

8 MR ROGERS: Pardon me; I think counsel has not correctly
9 stated the document. May I see it just a moment.

10 THE COURT: You are entitled to see it before it is shown
11 the witness.

12 MR FORD: I did show it to him.

13 MR ROGERS: Counsel says that purports to be a subpoena in
14 the case of the People against J. B. McNamara. As a mat-
15 ter of fact, it does not. It purports to be a subpoena
16 in the case of the People of the State of California
17 versus M. A. Schmidt, J. B. McNamara, J. J. McNamara,
18 William Caplan, John Doe, Richard Roe, John Styles and
19 Jane Doe, not J. B. McNamara.

20 MR FORD: It begins with J. B. McNamara and others, if
21 counsel prefers to have the whole of it read.

22 MR ROGERS: We might as well understand what it is.

23 MR FORD: I will have the whole of it read in evidence be-
24 fore long.

25 Q I will correct my question to include all of them,
26 which purports to be a subpoena in the case of the People

1 of the State of California, versus M. A. Schmidt, J. B.
2 McNamara, J. J. McNamara, William Caplan and others. Did
3 you ever see that document before? A Yes sir.

4 Q Where? A Well, I carried ^{it} with me from Los Angeles to
5 San Francisco.

6 Q Did you see the document on the date it was issued by
7 the District Attorney who issued the subpoena, Mr Hill?

8 A Why, I think it was the same day; I saw it previous
9 to the time I served it.

10 Q Did you see it about that date? A Yes sir.

11 Q I attract your attention to a return made on the back
12 of the document dated the 28 day of July, 1911. Did you
13 make that return? A yes sir.

14 Q And on what date did you make that return? A On
15 the 28th day of July, 1911.

16 MR ROGERS: Just a little louder, if you please, Miss Hitch-
17 cock. A The 28th of July, 1911.

18 Q BY MR FORD: Now, what did you do with that document --
19 did you receive it before the 28th day of July, 1911?

20 A Yes sir.

21 Q What did you do with it after you received it?

22 A I kept it in my possession until I found Mrs Caplan.

23 Q Where did you find Mrs Caplan? A At La Honda,
24 California.

25 Q What county is that in? A San Mateo County.

26 Q Just describe the place where you found Mrs Caplan?

1 A Why --

2 MR APPEL: We object to all of this as being collateral
3 to any issue in this case; it is incompetent, irrelevant
4 and immaterial. We do not think we are concerned whether
5 Mr Caplan was in a tomb or whether she was anywhere else;
6 what have we got to do with that where she slept or where
7 she went around; what has that to do with this case?

8 MR FORD: I do not want to lead the witness, and I do not
9 want to state what I expect her to testify to, because I
10 would be accused of tipping the witness.

11 MR APPEL: You seem to admit --- we object to that on the
12 ground it is immaterial, hearsay, no foundation laid. The
13 court and counsel on the other side ought to have some
14 foundation laid so that we can see the trend of the testi-
15 mony. How is your Honor going to rule on matters of
16 this kind unless the foundation is laid?

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1 MR. FORD. I think it appears, she is a witness, and we
2 will show some acts on the part of the defendant or his
3 co-conspirators as affecting the witness.

4 MR. APPEL. Now, there is another one of those--

5 MR. FORD. I have not said what the acts were, and have
6 refrained from doing so.

7 MR. APPEL. You are accusing flies of doing something.

8 There are promises here, your Honor, and these promises

9 to the court will lead to an abundance of hearsay matter to

10 come before the court, assuming under your Honor's ruling

11 it would be proper to admit it, there should be some founda-

12 tion laid, otherwise after a while we will have a mountain

13 of testimony and your Honor does not know, nor do we know

14 where the connection is to be made so as to make it reasonably

15 admissible, and I think they ought to show the acts of the

16 defendant first.

17 THE COURT. Let me see that subpoena. (Same is handed to
18 court.)

19 MR. FORD. On the point raised by counsel, if the court

20 please, the authorities have frequently said that seldom do

21 conspirators enter into any express or written agreement

22 saying we will conspire together to do this or to do that,

23 the only proof as to the existence of a conspiracy in many

24 cases is by showing acts on the part of various people.

25 THE COURT. Is this question preliminary?

26 MR. FORD. It is a preliminary question, laying the founda-

1 tion .

2 THE COURT. That is all you need to do is to say it is pre-
3 liminary.

4 MR. FORD. Very well, then.

5 THE COURT. And the court must, of course, assume that
6 statement to be made in good faith and act on it and overrule
7 the objection .

8 MR. APPEL. Exception.

9 MR. FORD. Read the question .

10 (Question read.)

11 A In the Santa Cruz mountains , about, I think about 20
12 miles from Red Wood city.

13 Q Can you describe a little more particularly, the exact
14 spot where you found her? A Well, La Hunda is a small
15 camp and this place where I found Mrs. Caplan was near this
16 camp.

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1 Q Well, what sort of a place was she in? A It was a
2 small summer -- small house.

3 Q Many people there? A No, there was no one except Mr
4 Morton, Mr Morton's wife, and the two Caplan children and
5 Mr Morton's little daughter at this house.

6 MR ROGERS: In the house? A In the house, yes sir.

7 MR ROGERS: I would like to have the answer read.

8 (Last answer read by the reporter.)

9 MR FORD: Were there any other houses near this place?

10 A Well, there were -- there was one house, be perhaps
11 one city block away from there.

12 Q Is the place -- was the place at that time sparcely
13 populated or thickly populated?

14 MR ROGERS: I object to that as absolutely immaterial.

15 THE COURT:" Objection sustained.

16 MR FORD: Were there many other people in the vicinity?

17 MR ROGERS: That is objected to for the same reason and
18 upon the same ground.

19 THE COURT: Objection sustained.

20 MR FORD: Can you describe the place in more particular
21 terms than you have done -- the court will pardon me;
22 I can probably reach it by one leading question.

23 THE COURT:" I think you had better refrain from asking
24 leading questions.

25 MR FORD: Was it in the woods?

26 MR ROGERS: Objected to as incompetent, irrelevant and

1 immaterial, because anybody who lives in San Francisco
2 during the month of July --

3 THE COURT: Objection sustained.

4 MR FORD: If the court please, part of my object was to
5 show that this woman was hidden away there to prevent
6 her from being served with a subpoena.

7 MR ROGERS: To prevent her from being served with a sub-
8 poena when there are 75,000 people out of San Francisco
9 in the Santa Cruz mountains.

10 THE COURT: You have shown where she was.

11 MR FORD: Well, on the 28th day -- let me have that docu-
12 ment. You may refresh your recollection by this return
13 and state what day you saw Mrs Caplan up there? A July
14 28th, 1911.

15 Q What did you do when you saw her? A I addressed her
16 as Mrs Caplan and she asked me how I found her, and I read
17 the subpoena to her.

18 MR ROGERS: I object to that as hearsay, of course, incom-
19 petent, and move to strike it out as hearsay.

20 MR FORD: Part of what transpired there.

21 MR ROGERS: Of course, we can always be bound by what Mrs
22 Caplan said up in the Santa Cruz mountains.

23 MR FORD: I don't care anything about that. Did you serve
24 this subpoena on her? A Yes sir.

25 Q This is the subpoena which you served on her at that
26 time? A Yes sir.

1 MR FORD: I offer it in evidence as people's exhibit 14,
2 I think it is, and I will read it in the record.

3 MR ROGERS: We object --

4 MR APPEL: Object to that as incompetent, irrelevant and
5 immaterial and hearsay for any purpose whatsoever; the con-
6 tents of it cannot be evidence of any fact.

7 THE COURT: Objection overruled.

8 MR APPEL: We except.

9 MR ROGERS: Just a moment before you read that. Mr Dehm
10 called my attention to a remark that I did not notice,
11 and if I may be permitted, I desire to enter an exception
12 to the remark of counsel "That Mrs Caplan was hidden away".

13 MR FORD: I think the jury has been frequently admonished
14 if I did make such remark, it was addressed to the court,
15 and not to regard my remarks as evidence. If I did make
16 such a remark to the court, I didn't make it to the jury,
17 and I ask your Honor to instruct the jury.

18 THE COURT: Gentlemen of the jury, you are not to regard
19 the remarks as evidence in this case.

20 MR APPEL: Yes.

21 MR FORD: (Reading:) "In the Superior Court of the
22 County of Los Angeles, State of California. The People
23 of the State of California, against M. A. Schmidt, J. B.
24 McNamara, J. J. McNamara, William Caplan, John Doe, Richard
25 Roe, John Stiles and Jane Doe. Subpoena. The People
26 of the State of California: To Mrs Flora Caplan, 1241

1 Golden Gate avenue, San Francisco, California. You are
2 commanded to appear before the Superior Court of the
3 County of Los Angeles, state of California, at the court
4 room of said court in the court house of said Los Angeles
5 County, on the 11th day of October, A.D., 1911, at 10
6 o'clock A.M., as witness in a criminal action prosecuted
7 by the People of the State of California, against M. A.
8 Schmidt, J. B. McNamara, J. J. McNamara, William Caplan,
9 John Doe, Richard Roe, John Stiles and Jane Doe, on the part
10 of the People. Given under my hand this 17th day of July,
11 A.D., 1911. J.D. Fredericks, District Attorney of Los Ange-
12 les County, by A. J. Hill, Deputy. State of California,
13 County of Los Angeles. ss. A. J. Hill, of said Los Angeles
14 County, state of California, being first duly sworn, s
15 says that Mr's Flora Caplan resident of the city and county
16 of San Francisco, state of California, is a necessary and
17 material witness for the People in the action of the People
18 of the State of California, against M. A. Schmidt --
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16s 1 MR. ROGERS. I think the affidavit is not part of the
2 subpoena.

3 THE COURT. Wait a moment. The affidavit is no part of the
4 subpoena.

5 MR. FORD. If the court please, I have identified the entire
6 document.

7 MR. ROGERS. He has offered the subpoena.

8 THE COURT. I understand the subpoena only has been offered;
9 if you desire to offer the affidavit you will have to make
10 the offer and let them get an exception in the record.

11 MR. FORD. This is a foreign subpoena, and the affidavit
12 is part of the foreign subpoena.

13 MR. APPEL. It is not. It is an affidavit--

14 MR. FORD. Have I a right to talk to the court without being
15 interrupted. We offer the whole document as a foreign
16 subpoena, and a foreign subpoena consists of the subpoena
17 signed by the district attorney, by the affidavit of the
18 person who swears that he is a material witness or she is
19 a material witness, and then the order of the court serving
20 it and ordering it to be served out of the county and requir-
21 ing the witness to appear, certainly that order of the
22 court is absolutely necessary before the witness can be
23 compelled--

24 THE COURT. It may be that was your offer before but I
25 didn't so understand and the record ought to be clear
26 on the subject.

1 MR. APPEL. Your Honor, if I remember rightly, and I
2 haven't read the provisions of the code for about 20
3 years, but I have done this so often--the Code provides that
4 a subpoena may be issued in the usual form but that a witness
5 outside of the county where he is required to be, need not
6 attend unless the order is made by the court.

7 THE COURT. The court agreed with your view of it, Mr. Appel.

8 MR. APPEL. Upon application being made under oath--
9 affidavit being made under oath showing that the testimony
10 of the witness is material to the party seeking the attend-
11 ance of the witness. Now, that affidavit is only for the
12 court. Your Honor will see, to act upon an order to get
13 the court's order. The subpoena itself, you know, is the
14 subpoena issued under the seal of the court by the clerk.
15 The order of the court is attached to it because orders
16 of the court extend beyond the jurisdiction of the county,
17 while the subpoena of the clerk does not extend beyond the
18 county. It is only the order of the court, the court being
19 a court of jurisdiction all over the state, therefore, it is
20 the order of the court that gets the witness down, and that
21 affidavit is only for the court's information.

22 THE COURT. The court is agreeing with you about that.
23 Do you want an objection here?

24 MR. Appel. We object to the affidavit because it is hear-
25 say, it is incompetent, irrelevant and immaterial, and we
26 might as well make the objection at this time, that any-

1 I don't know whether it appears--this witness being the
2 same name as the woman there, that she could not be a
3 witness and no court had jurisdiction in subpoenaing her.

4 MR. FORD. If the court please, the case which was on
5 trial at that time was the case of the People versus
6 J. B. McNamara and Mrs. Caplan would be a competent witness
7 and could be compelled to testify if she were in court.

8 It was necessary, in order to make the subpoena effective,
9 that the district attorney or one of his deputies make
10 affidavit, and that the court make an order. Now, as
11 to the order--we only want the document containing those
12 acts in order to show the things that were done. The order
13 of the court is an order of this court, that is, of one
14 of the judges of this Superior Court, and speaks for itself.
15 The court, I think, could take judicial knowledge of its
16 authenticity, but the witness she took the entire document,
17 including the affidavit and the order of the court, all of
18 which goes to show that the witness was about to be called
19 as a witness, all of which goes to show the steps taken in
20 order to produce her in court. Now, we will introduce
21 other evidence showing that she was not introduced in
22 court, and what became of her, and why, and I think
23 that probably explains it sufficiently to the court to see
24 the necessity of our having the whole document in
25 evidence.

1 The question here is, was this woman a witness, and was
2 she about to be called as a witness in court; what steps
3 were taken to secure her attendance. One of the steps
4 taken to secure her attendance was the procuring of an
5 order from a judge of the court in which the case was
6 being tried, Judge Bordwell, and the thing upon which Judge
7 Bordwell acted was the subpoena and the affidavit, all
8 parts of the same document. That is one complete docu-
9 ment, and I offer the entire document for the purpose of
10 showing what was done in the way of preparing the subpoena
11 for service, and the document speaks for itself what was
12 done.

13 MR ROGERS: May I inquire, if your Honor please, if coun-
14 sel contends that the affidavit of the District Attorney
15 to certain effects, is proof of the fact therein stated.

16 MR FORD: It isn't proof of the fact, and I will concede
17 it is not, and I don't offer it for the purpose of proving
18 the fact she was a material witness. I don't offer it
19 for that purpose, but I do offer it for the purpose of
20 showing that the District Attorney swore that she was a
21 material witness and that steps were taken to procure her
22 attendance, and that the question whether or not she was a
23 material witness, in an event of that kind, is absolutely
24 immaterial. The question is different from perjury --

25 THE COURT: With that statement, you do not offer it for
26 the purpose of showing she was a material witness, that

1 draws the force out of the objection and the objection
2 will be overruled in view of that statement.

3 MR ROGERS: If your Honor please, if it is admitted
4 for a limited purpose, the court must instruct the jury
5 for the purpose --

6 MR FORD: If the court please, we object to the jury being
7 instructed, because it is absolutely immaterial whether
8 the witness was material or not. Section 1337 simply pro-
9 vides that where a person is about to be called as a
10 witness, it is a crime to do certain things with that wit-
11 ness. It is different from a case of perjury. In perjury
12 the person must not have only sworn falsely, but sworn
13 falsely as to a material fact. In the ~~bringing~~ bringing of a wit-
14 ness to leave the state or to leave the country or to
15 swear falsely, in the crime of bribery, it is absolutely
16 immaterial whether that testimony of the witness was mater-
17 ial or otherwise, and so there is no necessity for in-
18 structing the jury in this matter, and we would object to
19 it merely because it may give the jury an erroneous idea
20 that the testimony of such a witness has to be material,
21 and that is not the law.

22 THE COURT: Gentlemen of the jury, you have heard the ad-
23 mission and statement of the District Attorney that the
24 affidavit which has been partially read, that is about
25 to be presented to you in evidence is not offered for
26 the purpose of showing that the person subpoenaed was a

1 material witness, but for the purpose of showing that
2 due form was carried out in the issuance of the execu-
3 tion. You will regard that statement and the court directs
4 you that the statement is a proper one to regard, that
5 the showing does not constitute the person served as a
6 material witness.

7 MR ROGERS: Pardon me just a moment. The affidavit speaks
8 of a necessary and material. Will your Honor add the
9 word "necessary" to your instruction.

10 THE COURT: Yes, the jury will bear in mind the instruction
11 and add the word "necessary".

12 MR FORD: It doesn't prove and is not offered for the
13 purpose of proving that the witness was a necessary and
14 material witness. That is the full scope of the limita-
15 tion necessary or material -- either necessary and material
16 or necessary or material.

17 MR APPEL: Both ways.
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1 MR. FORD. (Reading) " State of California, County of
 2 Los Angeles, SS. A. J. Hill, of said Los Angeles/ State
 3 of California, being duly sworn, says that Mrs. Flora
 4 Caplan, resident of the city and county of San Francisco,
 5 State of California, is a necessary and material witness
 6 for the people in the action of the People of the State of
 7 California against M. A. Schmidt, J. B. McNamara, J. J.
 8 McNamara, William Caplan, John Doe, Richard Roe, John
 9 Stiles and Jane Doe, and he verily believes that the
 10 evidence of the said Mrs. Flora Caplan is material, and
 11 that her attendance at the trial is necessary; wherefore,
 12 he prays for an order for the attendance of said witness.
 13 A. J. Hill. Subscribed and sworn to before me this 18th
 14 day of July, A.D. 1911, H. J. Lelande, Clerk, by Geo. O.
 15 Monroe, Deputy.

16 State of California, County of Los Angeles, SS.

17 Upon reading the foregoing affidavit, it is ordered
 18 by the Hon. Walter Bordwell, Superior Judge of Los Angeles
 19 County, that Mrs. Flora Caplan do attend as witness before
 20 the Honorable, the Superior Court of said Los Angeles
 21 County, as commanded by the foregoing subpoena. Done at
 22 the court house in said County of Los Angeles, this 18th
 23 day of July, A. D. 1911. Walter Bordwell, Judge of the
 24 Superior Court."

25 MR. APPEL. We move to strike out the return, because the
 26 return is incompetent, irrelevant and immaterial for any

1 purpose; that it doesn't appear that the subpoena in
2 question was served by any person authorized to serve the
3 subpoena. Appears to have been served by the witness
4 in question, she could not act as a deputy sheriff under
5 the laws as they existed, therefore, there was no proper
6 return of the subpoena, and no proper service of the sub-
7 poena.

8 MR. Ford. I will concede that the form of the return is
9 defective, but the witness has testified that the writing
10 therein is in her own handwriting, and was used by her to
11 refresh her memory, and the form of the return may be
12 defective, nevertheless, she testified she returned it.

13 MR. ROGERS. Then it has no business in the record; a
14 private individual cannot swear to the service of a subpoena.
15 The name of the sheriff is not on there. The sheriff is
16 blank.

17 MR. FORD. I will withdraw it if there is any fight over it.

18 MR. APPEL. She couldn't hold office; she couldn't be the
19 sheriff of the county at that time.

20 THE COURT. The return is withdrawn.

21 MR. APPEL. Your Honor can see that the service is absolutely
22 void.

23 MR. FORD. The service is not absolutely void, the return
24 is void.

25 MR. APPEL. One who couldn't be a sheriff himself, could
26 not be a deputy--

1 THE COURT. The return is not offered in the record.
2 Gentlemen of the jury it is adjourning time.
3 (Jury admonished.) (Recess until 2 o'clock P.M.)

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