

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. )

Clarence Darrow, )

Defendant. )

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 25

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
✓ Eula Hitchcock,	1858	1864	1888	
x ✓ Malcomb Loughead,	1889	1938	1948	
✓ Geo. O. Monroe,	1955			

B. N. Smith,  
Official Reporter.

AFTERNOON SESSION. June 13, 1912. 2 P.M.

1  
2  
3 Defendant in court with counsel.  
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5 E U L A H I T C H C O C K ,

6 on the stand for further direct examination:

7 MR. ROGERS. Before, if your Honor please, we proceed with  
8 the examination of the witness, I renew and supplement my  
9 request that your Honor make an order directing the official  
10 reporter of this court, Mr. Williams and Mr. Connelly, to  
11 transcribe and deliver to the defendant, upon the payment  
12 of the proper fees, the testimony of George Bean, taken  
13 before the grand jury of this county. I have information,  
14 which I consider to be reliable, that the prosecution is  
15 about to call Mr. Bean to testify of and concerning those  
16 matters which he did testify to before the grand jury. I  
17 am informed that the testimony has been written out and that  
18 it is in the possession of the district attorney, and that  
19 it was brought into court this morning by a person who is  
20 not a deputy district attorney, but, on the contrary, is a  
21 private individual, therefore, it is no longer a secret  
22 transcript and its contents are no longer in the breasts  
23 of the jury, and the reporter, and I therefore think, in  
24 view of the fact that Mr. Bean is to be examined upon matters  
25 and things, and concerning about which he was interrogated,  
26 and concerning which he testified before the grand jury,

1 that it is nothing but fair to a man on trial, that he  
2 should have that testimony, provided he is willing to com-  
3 ply with the usual rule, and except in the interest  
4 of suppressing the truth and suppressing the facts, I can  
5 see no possible objection to our having the transcript, which  
6 has been extended, which has been written up, and which is  
7 in existence.

8 MR. FORD. The court please, Mr. Bean did appear before the  
9 grand jury and did on one occasion refuse to testify and  
10 there were some proceedings by which he was compelled to  
11 testify, and he went into court and did testify of and  
12 concerning some matters that he will again testify to in  
13 court. The secrecy of the grand jury protects all pro-  
14 ceedings that were before the grand jury, except in so far  
15 as counsel desires at any time to show that a witness made  
16 a different statement of fact on one occasion from what he  
17 did before the grand jury--from what he did in court, and  
18 for that purpose it would be perfectly proper for counsel  
19 to call, at the proper time, the reporter or any members  
20 of the grand jury whom they desired to have called to impeach  
21 the witness, but I hardly think that would be necessary in  
22 this case, because it is our intention to introduce the  
23 transcript of what actually occurred--we will not introduce  
24 the transcript, we will probably keep possession of that,  
25 but to introduce the testimony as to what actually was said  
26 by the witness before the grand jury.

1 THE COURT. What objection is there to letting counsel see  
2 it?.

3 MR. FORD. We haven't any objection to him paying for the  
4 transcript at his own expense, but we did object to a court  
5 order--

6 MR. ROGERS. I put into my request--

7 MR. FORD. Yes, this noontime.

8 MR. ROGERS. --that I would pay for the transcript.

9 THE COURT. Then you have no objection?

10 MR. FORD. I have no objection.

11 THE COURT. To the request being complied with?

12 MR. FORD. Counsel has made a statement here in the presence  
13 of the jury and possibly it was only by way of argument,  
14 but we are not going to suppress it, we are going to intro-  
15 duce it ourselves, if we can; we want all the facts to  
16 come out as to what transpired before the grand jury in  
17 connection with Mr. Bean.

18 THE COURT. Sooner or later you want counsel on the other  
19 side to have it?.

20 MR. FORD. I was going to say, I don't think they will be  
21 able to produce a situation where it would really be  
22 entitled, under the law, to have it, but if as a matter of  
23 convenience, they are willing to pay for it and want it, I  
24 have no objection to your Honor giving access to it.

25 THE COURT. All right. The order will be made that the  
26 reporter transcribe the testimony and give it to the counsel

1 for the defendant, by paying the regular fees, of course.  
2 MR. FORD. Q Miss Hitchcock, would you step to the  
3 blackboard there, please, and draw a diagram of the route  
4 you took to Red Wood City, to the place where you found  
5 Mrs- Caplan, just for the purpose, your Honor, of showing  
6 where those people were at that time.

7 MR. ROGERS. Objected to as incompetent, irrelevant and  
8 immaterial and not within the issues, and hearsay and no  
9 foundation laid.

10 THE COURT. Objection sustained.

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1 Q It was not at the camp of La Hunda or the town of La  
2 Hunda that you found them, as I understood you to say this  
3 morning?

4 MR ROGERS: We object to that as leading and suggestive.

5 THE COURT: Objection sustained.

6 MR FORD: Was it at La Hunda itself you found Mrs Caplan?

7 A No sir.

8 Q Would you kindly step to the blackboard and designate  
9 just the exact place where it was you found them?

10 MR ROGERS: I object to that on the ground it is incom-  
11 petent, irrelevant and immaterial, not within the issues,  
12 no foundation laid, hearsay.

13 THE COURT: Objection sustained.

14 MR FORD: Your Honor holds by that ruling that we cannot  
15 show that the place where this woman was was a place ad-  
16 mirably adapted for concealment by her and showing she was  
17 concealed?

18 THE COURT: The court has sustained the objection.

19 MR ROGERS: I take an exception to the statement of coun-  
20 sel.

21 THE COURT: The court agrees with counsel for the defendant  
22 that the statement of the prosecuting attorney is improper.

23 MR FORD: The request on the part of myself for informa-  
24 tion is improper?

25 THE COURT: The statement just made.

26 MR FORD: How far from La Hunda was it that you found Mrs

1 Caplan? A I cannot tell the exact distance, from half a  
2 mile to two miles away, I should say.

3 MR ROGERS: What is the answer, please?

4 (Answer read.)

5 MR FORD: Is that a flat country or a mountainous country?

6 A Very mountainous.

7 Q Was the place where you found them on the main-traveled  
8 road? A No sir.

9 MR ROGERS: We object to that as incompetent, irrelevant  
10 and immaterial, not within the issues, no foundation laid,  
11 hearsay.

12 THE COURT: Objection overruled.

13 MR ROGERS: Exception.

14 MR FORD: This subpoena which you received directed you to  
15 go to San Francisco and subpoena them. Did you go to San  
16 Francisco before going to La Hunda to get Mrs Caplan?

17 MR ROGERS: We object to that on the ground it is incom-  
18 petent, irrelevant and immaterial; not within the issues.  
19 The subpoena speaks for itself. The subpoena cannot direct  
20 anybody to go anywhere to subpoena anybody.

21 THE COURT: Objection sustained.

22 MR FORD: I attract your attention to the address given  
23 in the subpoena as given in San Francisco. Did you go to  
24 San Francisco before going to La Hunda? A Yes sir.

25 MR ROGERS: I object to that method of questioning and I  
26 take exception to it. Counsel is evidently trying to

1 get something in which your Honor has sustained an ob-  
2 jection to. If she went to San Francisco, she does not need  
3 to be told what the address on the subpoena is.

4 THE COURT: Objection sustained.

5 MR FORD: Did you go to San Francisco first before go-  
6 ing to La Hunda? A Yes sir.

7 MR FORD: Cross-examine.

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9 CROSS-EXAMINATION

10 MR ROGERS: Miss Hitchcock -- may I have the subpoena?  
11 You said Mrs Flora Caplan was the wife of William Caplan,  
12 did you? A I don't remember.

13 Q What is that? A I don't remember whether I did or  
14 not.

15 Q Let me call your attention to this: "Q-- Did you ever  
16 make any search for the wife of William Caplan? A -- Yes  
17 sir. Q -- He was otherwise known as Dave Caplan, was he  
18 not? A -- I think so. Q -- What was her name? A -- Flora  
19 Caplan, I understand." So you did make a search for the  
20 wife of William Caplan, didn't you? A Yes sir.

21 Q Now, refreshing your recollection, isn't that the same  
22 William Caplan that is mentioned in the indictment, 6939  
23 against the McNamaras and William Caplan? A To the best  
24 of my knowledge it is.

25 Q So you were going to subpoena a man's wife to testify  
26 in a case to which he was a party?



1 MR FORD: To that we object on the ground it calls for a  
2 conclusion of the witness as to whether or not he was the  
3 party, and as a matter of fact, the only case pending at  
4 that time, as shown by the records of this court which  
5 have been here introduced in evidence, was the case against  
6 J. J. and J. B. McNamara.

7 MR ROGERS: The 64th California, let me have it.

8 MR FORD: And the proceedings show that she went up there  
9 to subpoena him in the case of People against J. B. McNamara,  
10 and I know of no rule of law that would prevent her from  
11 testifying against J. B. McNamara.

12 MR ROGERS: I will call counsel's attention to the deci-  
13 sion in California, which holds that a wife cannot testify  
14 in a case to which her husband is a party, and this Wil-  
15 liam Caplan has just been testified to be a party to this  
16 proceeding.

17 MR FORD: Not to the trial.

18 MR ROGERS: And the subpoena itself does not say at all  
19 People against J. B. McNamara, although counsel, instating  
20 it, tried to make it so appear.

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3p 1 "The People of the State of California against M. A.  
2 Schmidt, J. B. McNamara, J. J. McNamara, William Caplan."  
3 The husband of the woman about to be called as a witness.  
4 I will call your Honor's attention to Section 1322, and the  
5 case of People against Langtry.  
6 MR. FORD. Sure, a man's wife cannot testify against him,  
7 there is no dispute about that.  
8 MR. ROGERS. Section 1322 says, "Neither husband nor wife is  
9 competent witness for or against the other in a criminal  
10 action or proceeding to which one or both are parties, ex-  
11 cept with the consent of both, or in the case of a criminal  
12 action or proceeding for a crime committed by one against  
13 the person or property of the other." Now, Section 1881  
14 of the Civil Code of Procedure--  
15 THE COURT. You need not read them,  
16 MR. FORD. We concede that to be the law.  
17 THE COURT. The question is in regard to the particular  
18 question before the court; it is not a question of law  
19 that is before the court, it is a question of fact, whether  
20 or not the question calls for a conclusion of the witness.  
21 Read it.  
22 (Question read.)  
23 MR. FORD. That is calling for a conclusion, whether or not  
24 he was a party.  
25 MR. ROGERS. She knows that.  
26 THE COURT. Objection overruled.

1 MR. ROGERS. All right.

2 THE COURT. Answer the question, please, Miss Hitchcock.

3 A I would like to have it repeated.

4 THE COURT. Read it.

5 (Last question read by the reporter.)

6 A I was going to subpoena Mrs. Caplan.

7 MR. ROGERS. Q The wife of William Caplan who was a  
8 defendant in this case? A Well--

9 MR. FORD. Just a moment--to that we object upon the  
10 ground that it is calling for a conclusion of the witness  
11 whether or not he was a defendant in a case before the  
12 court, that is a matter for the court to decide on the  
13 evidence now before the court.

14 MR. ROGERS. The 64th California --

15 MR. FORD. Have I the floor?

16 MR. ROGERS. No, you are sitting down.

17 MR. FORD. I am addressing the court.

18 MR. ROGERS. Well, arise.

19 MR. FORD. I object to being directed by counsel for the  
20 defense what I shall do or what I shall not do, or being  
21 interrupted by counsel when I am addressing the court.  
22 The point I make before this court is whether or not Caplan  
23 was a party to this action or whether or not Mrs. Caplan  
24 was a competent witness to appear in that action is a  
25 matter for the court to decide at the time that the witness  
26 appears in court, and is not a matter for this witness to

1 give here conclusions. She is not a lawyer. She doesn't  
2 know whether Mr. Caplan was a party to the action. She  
3 doesn't know whether Mrs. Caplan is a competent witness,  
4 and any guesses on her part would be pure conclusions which  
5 are certainly not admissible. This witness didn't issue  
6 the subpoena; she wasn't subpoenaing them for any particular  
7 purpose. What purpose they were subpoenaed for would be  
8 only a conclusion on her part, if she had any ideas on the  
9 subject at all. The person that issued the subpoena is the  
10 deputy district attorney or the district attorney. She  
11 was there simply for the service of the subpoena, and other  
12 matters would be pure conclusion on her part, and as such  
13 conclusions would be inadmissible, I think the question is  
14 argumentative, also.

15 MR. ROGERS. Would your Honor permit a suggestion? The  
16 evident purpose and intention of this testimony or desire of  
17 counsel, beyond question, is to bring to this jury's atten-  
18 tion the fact Mrs. Caplan on the 28th day of July, in the  
19 middle of the summer was up in the Santa Cruz Mountains, and  
20 that she was wanted as a witness against her husband, and  
21 if that is the purport and intent, the 64th California,  
22 People against Langtry, which holds absolutely that a wife  
23 cannot be examined in a criminal case in which her husband  
24 is jointly indicted with any other person, no matter who  
25 is on trial. Now, that being the purpose, I have the right  
26 to show that this subpoena was issued, not in good faith,

1 was issued by persons who ought to have known the law, for  
2 the books are right in their library, that this woman was not  
3 a competent witness at all; that the woman had a perfect  
4 right to absent herself, if she did so absent herself; that  
5 she had a right to be up there in the mountains and not to  
6 be bedeviled by subpoenas to appear down here in a case  
7 in which she could not by any possibility be called to the  
8 stand without committing error.

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1 Now, if it was wrong for counsel to advise Mrs Caplan that  
2 she did not need to come into court and testify against  
3 her husband, when the law says, "There are particular re-  
4 lations in which it is the policy of the law to encourage  
5 confidence and preserve it inviolate; therefore, a person  
6 cannot be examined as a witness in the following cases:  
7 a husband cannot be examined for or against his wife, with-  
8 out her consent, or a wife for or against her husband with-  
9 out his consent." Now, if there is anything to be said  
10 against Mr Darrow or anybody else -- I am not stating that  
11 he advised her to so absent herself or ignore the subpoena,  
12 I would have done so if I had been in his place; I would  
13 have told her it was not worth the paper it was written  
14 on, but if some intendment is to be apparent, haven't I  
15 the right to say to this jury that there was absolutely  
16 no law that she need not come. The policy of the law as  
17 developed from what I just read you from the Code of Civil  
18 Procedure is that it is the policy of the law that no wife  
19 can be examined; she is not a competent witness at all in  
20 any action in which her husband is a party, and any lawyer  
21 that knew his business, any lawyer that has any knowledge  
22 of the law or had read the books, would have told her that  
23 subpoena was of no consequence, in view of the fact that  
24 she was to be a witness, by bringing her down in a case  
25 where counsel knew that they could not put her on the stand  
26 nor could they ask her a question. Now, haven't I a right

1 to develop that in this case? They have tried to show  
2 there was something crooked because Mrs Caplan was up in  
3 the mountains where everybody in San Francisco who can  
4 get away, goes in the summer. They tried to show some-  
5 thing crooked because she was back among the pines where,  
6 forsooth,, you and I would like to be right now. July  
7 28th, in the summer; something crooked, and Mr Darrow has  
8 to go to the penitentiary because Mrs Caplan and her two  
9 children were up in the pines in the summer. Haven't I  
10 a right to show this subpoena was a fake, and it was issued  
11 under this, and the knowledge of the law makes it a fake on  
12 its face? I certainly have, and if I can develop it by  
13 this witness, I have a right to do it, and of any further  
14 facts that I may try, as to the good faith of this subpoena.  
15 I may get my information anywhere I can. Now, if the  
16 witness who served this subpoena knew that she was going  
17 after the wife of one of the defendants, who could not be  
18 called as a witness under any circumstances, it being  
19 held that she cannot be examined, I have a right to show  
20 that.

21 MR FORD: If the court please, counsel is entirely mistaken  
22 as to what the law is on that subject, but whether he be  
23 right or whether he be wrong, has got nothing to do with  
24 the evidence that is before the court. The question is  
25 that it calls for a conclusion of the witness. He has a  
26 right to show by way of defense anything that he can le-

1 gally show, and he will be given opportunity to do that  
2 but on cross-examination he is confined to what this wit-  
3 ness knows of her own knowledge, and not as to her conclu-  
4 sions, guesses or speculations, and that is the ground  
5 upon which this objection is based. Counsel, I think, is  
6 entirely wrong as to what a subpoena is. A subpoena means  
7 two things to be done. One that the witness appear and  
8 the other that they testify, and it has been held in sever-  
9 al cases that I can cite your Honor, I haven't them at  
10 hand. I think one of them is the Vermont case, and one  
11 case, I think, was decided by the Supreme Court of the  
12 United States, that they must obey the subpoena and as to  
13 whether or not they are allowed to testify will be a mat-  
14 ter for the court to decide upon the proper showing in  
15 court, but they must obey the subpoena to be and appear ;  
16 whether they testify or not is an entirely different ques-  
17 tion protected by law under certain relations which we do  
18 not concede exists in the case of this particular wit-  
19 ness,

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5s 1 and we think that the examination here as to this witness  
2 on the facts, and cross-examine on facts concerning which  
3 she knows herself, her own personal knowledge, not as to her  
4 conclusions, guesses or speculations or hearsay.

5 MR. ROGERS. Your Honor, I would like to have the question  
6 read and show it doesn't call for a conclusion, calls for  
7 what she knew about it when she started, the good faith  
8 of the subpoena itself.

9 THE COURT. Read the last question.

10 (Question read by the reporter.)

11 THE COURT. Objection overruled.

12 A I didn't know that William Caplan was a defendant. I  
13 know his name was on the paper.

14 Q BY MR. ROGERS. You had this subpoena with you? A Yes,  
15 sir.

16 Q You had been in the district attorney's office--well, not  
17 a long time, Miss Hitchcock, but quite a long time, under  
18 the circumstances, haven't you? A I been there nearly  
19 four years.

20 Q Well, then, you know what it is when you look at a paper.

21 MR. FORD. We object to that as irrelevant and immaterial and  
22 speculative.

23 THE COURT. Overruled.

24 MR. FORD. Calling for a conclusion of the witness.

25 A I know Mr. Caplan's name is there. I thought J. J. McNamara  
26 and J. B. McNamara were the men to be tried October 11th.

1 MR. ROGERS. But you noticed that the People of the State  
2 of California is plaintiff?

3 A Yes, sir.

4 Q And that the action and name is among others, William  
5 Caplan? A I know his name is there.

6 Q You knew he was a defendant in that case? A Knew his  
7 name was there.

8 Q Now, you have drawn a good many legal papers yourself  
9 up there, or seen a great many? A I don't know anything  
10 about law, no, sir.

11 Q Well, are you any different from any other members of the  
12 office?

13 THE COURT. Mr. Rogers

14 MR. KEETCH. That is also a conclusion of Mr. Rogers.

15 MR. FORD. We haven't any objections to his conclusions, he  
16 has stated them right along.

17 MR. ROGERS. Q Did you know when you served that subpoena,  
18 when you were given that subpoena to go up there/<sup>and</sup> derive  
19 that that if the husband of a witness was a party to the  
20 action she could not be examined at all without his consent,  
21 and that she could not be examined in regard to any matters  
22 whatever because if relevant her testimony would be in some  
23 degree for or against him, whether he was on trial or not,  
24 did you know that?

25 MR. FORD. We object upon the ground that this witness is  
26 not posing as an attorney; is not claiming to have any know-

1 ledge of the law. It is not cross-examination. He might  
2 as well ask her if she understood the theory of gravitation--  
3 THE COURT. Objection overruled.

p 4 Q Did you know that? A I didn't think about the legal  
5 point of it- I saw Mrs. Caplan and served the paper, that  
6 is all I know about it.

7 Q Did you know, before you served that subpoena--by the  
8 way, when you went up to San Francisco, did you go to the  
9 chief of police at all? A Not to the chief.

10 Q You went to the police station? A I had the help of a  
11 police detective who was quite familiar with the case.

12 Q Which one was that? A Detective Burke.

13 Q Burke. You went to the police station or you saw him  
14 there? A I met detective Burke, yes, sir.

15 Q Did you know Mrs. Caplan just before she went up into  
16 the mountains went to the chief of police on two occasions  
17 and complained that she was being hounded and shadowed and  
18 followed by private detectives, and that they had driven her  
19 out of her employment and she asked the protection of the  
20 very police you went to see?

21 MR. FORD. We object to that as the worst kind of hearsay  
22 in the 99th degree. They are trying to prove that this  
23 woman went up into the mountains--it is not cross-examina-  
24 tion and if they want to--they are trying to prove it by  
25 hearsay testimony, which I do not believe-

26 MR. ROGERS. I am asking if she knows.

1 THE COURT. Objection overruled.

2 A I didn't hear it; no, sir.

3 Q Mr. Burke didn't tell you that she went to the chief  
4 of police before she went up there and told the chief of  
5 police that she could not stay in San Francisco any longer  
6 with all these private detectives following her about, did  
7 he?

8 MR. FORD. We object to that on the ground it is not cross-  
9 examination, it calls for hearsay, incompetent, irrelevant  
10 and immaterial and it is only done for the purpose of putting  
11 matters before the grand jury that they cannot introduce  
12 in any other manner and taking this method of doing it, and  
13 we assign it as misconduct.

14 MR. APPEL. Before the grand jury?

15 MR. FORD. Before the trial jury.

16 THE COURT. Objection overruled.

17 A May I have the question, please?

18 THE COURT. Read it.

19 (Question read.)

20 A No, sir.

21 Q Well, now, the place where you went was up in the Santa  
22 Cruz mountains, was it? A Yes, sir.

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1 Q And it was a mountainous country where there are many  
2 tall trees? A Yes sir.

3 Q And Mrs Caplan had taken to the tall timber, is that  
4 right? A Yes sir.

5 Q And you followed her into the tall timber? A Found  
6 her there.

7 Q And that was 20 miles, you say, from Redwood? A I  
8 don't know the exact distance, but as far as I can guess  
9 the distance.

10 Q Now, the road from Redwood turns over to go to Half Moon  
11 Bay, doesn't it? A I don't know.

12 Q Didn't you go over that road? A I went from Redwood  
13 City to where Mrs Caplan was.

14 Q Didn't you go by the Half Moon Bay route? A I don't  
15 know the name of the road; it was a very crooked road.

16 Q How did you go to La Hunda, if you didn't go by the  
17 Half Moon Bay road, do you know? A I don't know the name  
18 of the road.

19 Q Don't you know the road to La Hunda is the Half Moon  
20 Bay road, and the Half Moon Bay is one of the big resorts  
21 of that country, summer resorts?

22 MR FORD: We object to that as incompetent, irrelevant and  
23 immaterial, not cross-examination. There was nothing said  
24 about Half Moon Bay, and we were not permitted to ask about  
25 the population in the vicinity of La Hunda.

26 THE COURT: Objection overruled.

1 A I didn't hear of Half Moon Bay, and I didn't see any  
2 big summer resorts all the time I was there.

3 Q BY MR ROGERS: Redwood City, you got an automobile  
4 there, did you? A No sir.

5 Q Buggy? A Yes sir.

6 Q Who went with you? A W. H. Brown of San Francisco.

7 Q Who is W. H. Brown? A He lives in San Francisco.

8 Q What is his occupation or business, a police officer?

9 A No.

10 Q Something of that sort? So about 20 miles from Red-  
11 wood -- Well, Redwood City is the county seat of San Mateo  
12 County, isn't it? A I don't know.

13 Q Don't you know that the court house is there and law-  
14 yers and judges and the District Attorney, etc., and so on,  
15 did you know that? A No sir, I was not looking for them.

16 Q You didn't look for the court house? A No sir.

17 Q It is quite a sizeable city, isn't it -- Redwood? A A  
18 small city, a nice little town.

19 Q It is very good, as cities go up around through that  
20 country? A Yes.

21 Q Had you ever been on the Santa Cruz mountains before?

22 A No sir.

23 Q Do you know how far La Honda is from some of the most  
24 populous resorts of that country? A No sir.

25 Q Did you run into any resorts beyond La Honda? A No  
26 sir.

1 Q Did you run into any summer hotels and camping places  
2 and things of that kind on your way up? A We passed  
3 one very small hotel.

4 Q Are there camping places around there? A Beyond the  
5 place of Mrs Caplan I found the camp of La Hunda.

6 Q Beyond the place? A Yes sir.

7 Q She was there with her two children? A Yes sir.

8 Q Little children? A I don't know their ages; I should  
9 say a <sup>boy</sup> about 6 or 7, and the girl a little older.

10 Q And there was Mr Morton and Mrs Morton and their daugh-  
11 ter there? A Yes sir.

12 Q And they were living in the house with them, or camping  
13 in a tent? A Well, I don't know whether it was a frame  
14 or perhaps part canvas; I think the building was part  
15 canvas, it looked like a temporary affair.

16 Q Did it look like it had been put up long? A I couldn't  
17 say as to that.

18 Q Did it appear to be an old house or a new one? A I  
19 couldn't say.

20 Q Well, now, this was the 21st day of July, wasn't it,  
21 that you got up there? A Yes sir.

22 Q Well, the McNamara case didn't come up for -- August or  
23 September -- two months later, did it? A The 11th of  
24 October.

25 Q When? A The 11th of October, I think.

26 Q Well, it is two months and approximately 2 weeks --

1 two months and a half from the time you subpoenaed her.  
2 What did you want her to do, come right down here, right  
3 then?

4 MR FORD: Just a moment. The subpoena is the best evidence  
5 of that, the 11th of October.

6 Q What did you expect her to do, come straight to San  
7 Francisco, or come down here, after you served this sub-  
8 poena on her?

9 MR FORD: We object to that as not a proper question to  
10 this witness, not proper cross-examination.

11 THE COURT: Objection sustained.

12 MR ROGERS: Did you tell Mrs Caplan as to whether or not  
13 she was to come on telegram from the District Attorney?  
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7p 1 A I cannot answer that direct. I told her she was under  
2 subpoena from the 11th of October and she told me she would  
3 keep our office informed as to her whereabouts.

4 Q What is that, I didn't get the answer?

5 (Answer read.)

6 Q Keep your <sup>office</sup> informed as to her whereabouts? A yes, sir.

7 Q Didn't you tell her, asking you to refresh your recollec-  
8 tion, didn't you tell her you would telegraph her when she  
9 was needed, that John D. Fredericks would telegraph her  
10 when she was needed, or words to that effect? A I don't  
11 remember that. I may have told her she would be notified.  
12 I may have told her.

13 Q You may have told her she would be notified when she  
14 was needed? A The exact date, yes, sir, and she was to  
15 notify us when she would make a change.

16 Q Did she tell you she was going to stay there in the  
17 mountains during the summer? A She asked me if she could  
18 remain there for two weeks in the mountains, that she  
19 enjoyed the summer vacation so and asked if she would be  
20 permitted under the subpoena to stay in the mountains for  
21 two weeks longer?

22 Q Mrs. Caplan had been working in a sweat shop, hadn't  
23 she, sewing slothes in a hot sweat shop?

24 MR. FORD. To that we object on the ground it calls for  
25 hearsay, incompetent, irrelevant and immaterial.

26 MR. ROGERS. If she knows--

1 MR. FORD. Just a moment--and it is not cross-examination.  
2 This witness has not testified to Mrs. Caplan or what she  
3 was or who she is or anything else about her, certainly is  
4 not cross-examination.

5 MR. ROGERS. We want to identify her, see what she knows  
6 about her.

7 MR. FORD. And whether or not she worked in a sweat shop is  
8 immaterial.

9 THE COURT. Objection sustained.

10 BY MR. ROGERS. Q Did you know Mrs. Caplan before that,  
11 had you seen her? A I think I have seen her, but I never  
12 talked with her before that.

13 Q You knew she was a tailoress? A yes, sir.

14 MR. FORD. I object to that--

15 MR. ROGERS. Q And you knew she worked in a sweat shop,  
16 didn't you, before she went up in the mountains in the  
17 midsummer?

18 MR. FORD. I want the answer stricken out and I think you  
19 ought to be courteous enough to allow me to object.

20 MR. ROGERS. When my question is finished--

21 MR. FORD. --I want to make an objection and you shut me  
22 off.

23 THE COURT. I didn't understand you wished the last answer  
24 stricken out.

25 MR. FORD. I started to object and the witness answers very  
26 quickly and Mr. Rogers shut me off.

1 THE COURT. You sat back in your chair and I didn't know  
2 that you asked to have the answer stricken out.

3 MR. FORD. I asked him to wait a moment.

4 THE COURT. Now, you want it stricken out?

5 MR. FORD. If you will read the last answer, I will ask  
6 that it be stricken out.

7 THE COURT. Strike it out for the purpose of making objec-  
8 tion.

9 (Last question and answer read.)

10 MR. FORD. We object to that on the ground it is hearsay and  
11 calls for hearsay, pure and simple; the witness having already  
12 said she didn't know, that she might have seen her, and as  
13 to whether or not her occupation was that of a tailoress  
14 would be purely hearsay and we move to strike it out on  
15 ~~that~~ ground and object to the question on the same ground.

16 MR. ROGERS. It could not be hearsay --

17 THE COURT. Objection overruled. Restore the answer.

18 MR. FORD. The next answer I would like to have read, if it  
19 is before the court.

20 (Question read.)

21 MR. FORD. We object to that as not being cross-examination.  
22 This witness has not testified as to the character of pre-  
23 vious life of Mrs. Caplan. She said she didn't know her,  
24 and calls for hearsay, and a conclusion of the witness  
25 and it is incompetent, irrelevant and immaterial.

26 MR. APPEL. Your Honor--

1 THE COURT. Objection overruled.

2 MR. FORD. I would ask that the witness be cautioned to  
3 state only what she knows of her own knowledge, and not  
4 just hearsay.

5 THE COURT. Yes, that is entirely proper. You must state  
6 what you know only of your own knowledge.

7 A May I have that question again?

8 THE COURT. Answer the question, if you know.

9 A May I have that question read, please?

10 THE COURT. Read it.

11 (Question read.)

12 A I knew she worked in a tailor shop.

13 MR. FORD. Of your own knowledge.

14 MR. ROGERS. Just a moment.

15 MR. FORD. This witness may know somethings that I don't  
16 know, and if she does it will save time.

17 THE COURT. The witness has been admonished by the court to  
18 answer only as to those matters of her own knowledge and  
19 if she disregarded that admonition, you will have to  
20 develop that on redirect.

21 MR. FORD. I want to save objections, if she knows these  
22 things of her own knowledge, if she does, I don't know it--

23 MR. APPEL. But the rule of law is, certain things may be  
24 known of a person by general reputation.

25 The Court. Yes, you have already answered.

26

1 MR FORD: There is nothing before the court now.

2 THE COURT: You have the answer.

3 MR ROGERS: Let me have the subpoena again, please.

4 Q Did you, when you got up there into this camp in the  
5 mountains, did you observe a stream of water thereabouts?

6 A I saw one small stream of water.

7 Q What were the children doing around there when you  
8 were up there?

9 MR FORD: We object to that as not cross-examination.

10 MR ROGERS: Wait a minute --

11 THE COURT: Objection overruled.

12 A Why, they seemed to be playing around the house.

13 Q Playing around? A Yes, running around the woods.

14 Q In the woods? A Yes sir.

15 Q Well, did it occur to you that at that time, in view of  
16 the climate that you observed in San Francisco and then  
17 the climate you observed up in the mountains where these  
18 children were playing around over the hills on the 28th day  
19 of July, did it occur to you that Mrs Caplan had committed  
20 a crime in going up there? A I don't know as a crime --  
21 I knew she was hiding.

22 Q You knew she was hiding? A I judged she was.

23 Q You judged she was. 20 miles from Redwood City?

24 A Yes sir.

25 Q Up in the mountains? A Yes sir.

26 Q Her children in the woods? A Yes sir.

1 Q You knew she was hiding? A I did, I knew she was  
2 hiding.

3 Q You think she was hiding? A Yes sir.

4 Q You are a detective? A Yes sir.

5 Q Now, detectives when they cannot find anything quick,  
6 they always think somebody is hiding, don't they?

7 MR FORD: We object to that as calling for a custom and  
8 conclusion of the witness and argumentative.

9 THE COURT: Objection sustained.

10 MR ROGERS: Well, were the kids -- were the children hid-  
11 ing? A Yes sir, when they saw me they hid.

12 Q When they saw you they hid? A Yes sir.

13 Q What was the matter with those children, were they  
14 blind? A Mrs Caplan hid, too.

15 Q Did you blame her for not wanting to come down and  
16 testify against her husband when she was not obliged to?

17 MR FORD: Just a moment. Whether or not this witness  
18 blames her or not, is irrelevant and immaterial.

19 THE COURT: Objection sustained.

20 MR ROGERS: How far from the main road did you have to go  
21 to find this place? A I don't know the exact distance.  
22 It was down a path in amongst the trees.

23 Q Down a path in among the trees? A Yes sir.

24 Q And how long did you stay up there? A At this  
25 place?

26 Q Yes. A I talked with Mrs Caplan perhaps ten minutes,

1 and started right back.

2 Q How long did it take you to go from Redwood City up  
3 there? A I left San Francisco on the early morning train  
4 and got there as quick as I could and got back on the late  
5 train.

6 Q And it took you an hour to come from San Francisco to  
7 Redwood City, about? A Perhaps so, I don't know.

8 Q Then you got a horse and buggy and went up there and  
9 made the round trip and all in one day, didn't you?

10 A Yes sir.

11 Q You saw Mr and Mrs Morton up there? A Yes sir.

12 Q Didn't see Mr Darrow, did you? A No sir.

13 Q Well, now, the taking of testimony had not commenced,  
14 had it, in this case, even against J. B. McNamara, never  
15 did commence taking testimony, did you? A Not to my  
16 knowledge.

17 Q You don't know whether when Mrs Caplan's name was call-  
18 ed she would not have walked into the court room, do you?

19 MR FORD: We object to that as purely speculative and  
20 idle; it is not cross-examination.

21 MR ROGERS: I withdraw it.

22 Q Was Mrs Caplan's name ever called in the McNamara case  
23 as a witness?

24 MR FORD: We object to that as calling for a conclusion  
25 of the witness, not the best evidence; this witness was not  
26 in court, not cross-examination.

1 THE COURT: Objection sustained.

2 MR ROGERS: Did you ever notify her to be here?

3 MR FORD: We object to that as irrelevant and immaterial,  
4 not cross-examination. The records show the case never  
5 did start for trial.

6 THE COURT: Objection overruled. What is the answer.

7 A I never notified her.

8 MR ROGERS: You told her you would, though, didn't you?

9 A I told her she would be notified, probably.

10 MR ROGERS: yes, that is all.

11

12

#### REDIRECT EXAMINATION

13 MR FORD: Who is this Morton you found up there with Mrs  
14 Caplan? A Eric B. Morton, San Francisco.

15 Q What is his business? A I don't know his official  
16 position. Labor leader.

17 MR FORD: That is all.

18 THE COURT: That is all.

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M A L C O M B      L O U G H E A D,

called as a witness on behalf of the prosecution, having  
been first duly sworn, testified as follows:

DIRECT EXAMINATION-

MR. FORD. Q State your name? A Malcomb Loughead.

Q How old are you? A 25.

Q Where do you live? A San Francisco.

Q What street and number in San Francisco? A 456 Turk  
Street.

Q What is your occupation? A Chaffeur,

Q How long have you been engaged in that business? A About  
ten years.

Q During the month of July and August, 1911, were you  
engaged in that business? A Yes, sir.

Q And for what company or concern, if any? A The Alco  
Taxicab Company.

Q What is their business? A Well, it is renting touring  
cars and taxicabs.

Q What was their place of business at that time? A 360  
Golden Gate avenue.

Q In San Francisco? A San Francisco.

Q Do you know Mr. Breed? A Yes, sir.

Q Was he your employer? A Yes, sir.

Q What are his initials? A I don't know what his initials  
are.

Q Do you know Anton Johanneson? A Yes, sir.

1 Q Did you see him on/<sup>the</sup>last Sunday of July, 1911? A Yes,  
2 sir .

3 MR . APPEL . I object .

4 THE COURT . Wait a moment--strike out the answer .

5 MR . APPEL . We object upon the ground that it is incompetent,  
6 and irrelevant and immaterial and hearsay, and no founda-  
7 tion laid .

8 MR . FORD . It is a preliminary question .

9 MR . APPEL . Everything is preliminary that--they ought to  
10 show some foundation for a preliminary question .

11 MR . FORD . This is the foundation, all right .

12 THE COURT . Objection overruled . Restore the answer .

13 A Yes, sir .

14 MR . FORD . Q Where did you see him? A Up at Metropolis  
15 Bank, that is on Market street .

16 Q In San Francisco? A San Francisco .

17 Q In the building? A Yes, sir .

18 Q On what floor? A I think the 8th floor .

19 Q Do you know in whose offices it was that you saw him?

20 MR . APPEL . Wait a moment--we object to that as incompetent,  
21 irrelevant and immaterial, hearsay and no foundation laid .

22 MR . FORD . Designating the place where he met him .

23 THE COURT . Objection overruled .

24 MR . APPEL . We except .

25 A Treitmoe's office .

26 Q Olaf Treitmoe? A yes, sir .

1 Q That was the office of the State Building Trade Council  
2 also, was it?

3 MR. APPEL. Wait a moment, we object upon the ground it is  
4 leading, suggestive, incompetent, irrelevant and immaterial  
5 and no foundation laid.

6 THE COURT. Objection sustained.

7 MR. FORD. On the ground it is leading?

8 THE COURT. Yes.

9 MR. FORD. Q Do you know where the office of the State Build-  
10 ing & Trade Council were at that time?

11 MR. APPEL. The same objection.

12 THE COURT. Objection sustained.

13 MR. FORD. I don't know how to reach it--Q Were there any  
14 signs on the door of the place where you met Mr. Treitmoe?

15 MR. ROGERS. I suggest, if your Honor please, this witness,  
16 with all due respect to my long knowledge of automobiles,  
17 this witness is a chauffeur, and probably he has been in  
18 court a number of times, as we have all been, and I think  
19 possibly a little warning to wait until the objection--

20 THE COURT. yes, don't be in too big a hurry about your  
21 answer.

22 MR. APPEL. We object upon the ground it is incompetent,  
23 irrelevant and immaterial, and hearsay and no foundation  
24 laid, calling for a matter not connected with the case?

25 THE COURT. Objection overruled.

26 MR. APPEL. We except.

1 (Last question read by the reporter.)

2 A I think it was the Asiatic Exclusion League on one side.

3 MR. FORD. Were there any other signs? A I am not sure.

4 Q What time of the day was it when you met Mr. Johanneson  
5 at that place? A About between 3 and 4.

6 Q Morning or afternoon? A Afternoon.

7 Q Who else was present when you met Mr. Johanneson?

8 MR. APPEL. The same objection as last, incompetent, irrele-  
9 vant and immaterial and no foundation laid and hearsay.

10 THE COURT. Overruled.

11 MR. APPEL. We except.

12 (Last question read by the reporter.)

13 A His clerk, Mr. Gillson is the name.

14 Q Anybody else? A Nobody else that I remember.

15 Q At that time what conversation, if any, did you have  
16 with Anton Johanneson?

17 MR. APPEL. We object upon the ground it is incompetent,  
18 irrelevant and immaterial, hearsay and no foundation laid,  
19 not purporting to prove any element of the offense charged  
20 in the indictment herein.

21 MR. FORD. We will show--

22 THE COURT. Objection overruled.

23 MR. APPEL. We except.

24 (Last question read by the reporter.)

25 A Well, he had sent for a car, he wanted to hire it, and  
26 wanted to know if I was prepared to take a trip, and I asked

1 him how far and he said it might be into Nevada, and I told  
2 him I would have to go back to the garage and do some work  
3 on the car, that is, get some supplies before I could  
4 start. He told me to go and be back as soon as possible.

5 Q What next occurred, if anything? Was that all the con-  
6 versation that was had at that time?

7 MR. APPEL The same objection.

8 THE COURT. Overruled.

9 MR. APPEL. We except.

10 A That is all I remember.

11 MR. FORD. Q Then what did you do, if anything? A I  
12 went to the garage and got the car prepared for the trip,  
13 went back to the office and notified Johanneson that the  
14 car was there waiting for him.

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1 Q By the way, what kind of a car was that? A Pierce-  
2 Arrow touring car, 1910 model.

3 Q How many passengers? A Seven-passenger.

4 Q Is that a high-powered car or low-powered car?

5 A High-powered car.

6 Q When you went back to the office after procuring your  
7 supplies, did you see Mr Johanneson? A Yes sir.

8 Q Anyone else? A I think the clerk was there, Gillson.

9 Q What conversation, if any, did you have with Mr Johan-  
10 neson at that time?

11 MR APPEL: We object upon the ground it is incompetent,  
12 irrelevant and immaterial, calling for hearsay; no foun-  
13 dation laid; not connected with the issues in this case,  
14 not tending to prove any element of the offense charged  
15 in the indictment.

16 THE COURT: Overruled.

17 MR APPEL: We except.

18 MR ROGERS: If your Honor please, may I offer a suggestion?  
19 There has never been -- I offer the suggestion -- this re-  
20 cord is going to get in very peculiar condition. They do  
21 not prove any connection between Mr Johanneson and Mr Dar-  
22 row. They promised to, but they don't, and after a while  
23 we will be called upon, I suppose, to move to strike out  
24 unless they do.

25 THE COURT: Unless they do.

26 MR ROGERS: Now, that throws upon us the burden of going

1 through this record and specifying, which we ought not be  
2 compelled to submit to. That ought not be thrown upon us,  
3 the burden of going through and moving to strike out  
4 where the District Attorney does not fulfil his promise to  
5 connect. The District Attorney, <sup>right</sup> to first establish his con-  
6 nection with the defendant. He should not throw the burden  
7 upon us of going through the record, and at the risk of  
8 not specifying, having incompetent testimony where he has  
9 objected. Now, that record is going to get, sir, and I  
10 speak from some years' of experience in these matters,  
11 that the record is going to get in a position where  
12 there won't be a living human being know: what to do  
13 with it; the jury won't know what is in and the jury won't  
14 know what is out.

15 MR FORD: We will keep an index of the connection.

16 MR ROGERS: I venture to say we will not trust the index.  
17 It is a most unheard-of proceeding in a criminal case; your  
18 Honor will pardon me if I say that in criminal cases the  
19 rule has been held to be somewhat stricter with reference  
20 to admission of testimony until the foundation is laid,  
21 because in that case the harm is done by the relation of  
22 the testimony and you cannot eradicate it, and the Supreme  
23 Court has said over and over again, that even if testimony  
24 is stricken out as incompetent without foundation laid,  
25 that the effect remains. It is pretty hard to tell what,  
26 in the minds of the jury, is out and what is in. I can

1 show you decisions to that effect, many of them. Seems  
2 to me we ought not to have forced upon us the burden of  
3 going through and calling your Honor's attention to mis-  
4 takes which have been made, but we are content to take our  
5 objections, if your Honor pursues this course. We have  
6 stated our objection, and I believe, even if we should  
7 not move to strike out that it will be absolutely the duty  
8 of the court to strike out, without motion, and in that  
9 event the Supreme Court has said that the harm has been done,  
10 and that the motion to strike out does not, as it does in a  
11 civil case, The harm has been done, and there is no  
12 telling what effect it might have ; the impression remains,  
13 although the evidence goes out.

14 MR FORD: Don't worry; we will connect it.

15 MR ROGERS: Here is Mr Johanneson right here, and I ven-  
16 ture when you say "don't worry, you will connect it", I  
17 venture to say you will never connect it. Here is Johan-  
18 neson right here.

19 MR FORD: If the court please, there is nothing before the  
20 court.

21 MR ROGERS: Don't make remarks to me then.

22 MR FORD: You started it.

23 THE COURT: I don't know but what there is something.  
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11s 1 MR. APPEL. Your Honor, it places the defendant at a  
2 disadvantage. Your Honor can see that if a whole lot of  
3 matter which may possibly be not competent should they  
4 fail to make the connection, having this jury hear those  
5 things, or hearing a whole mass of evidence, or introduced  
6 a whole lot of hearsay that may never be connected, that is  
7 the reason we asked the jury whether they had heard anything  
8 about the case, any fact might affect their mind. There is  
9 no use examining a jury whether they know anything from hear-  
10 say and so on, what impression they have formed from hearsay,  
11 if afterwards, after we get them here on the jury and we rely  
12 upon their unprejudiced minds to decide the case fairly,  
13 according to the evidence, that those impressions should be  
14 upon their minds. They are human beings like we all are;  
15 they get impressions. The evidence may be stricken out  
16 but still there remains something in their minds. There is  
17 some impression in their mind. In one case the Supreme Court  
18 said where evidence was introduced improperly that way that  
19 the defendant was left in the same position that he formerly  
20 occupied before evidence of that kind was introduced, that  
21 it was improper, and in case--that is the reason why it is  
22 a good rule always in cases of conspiracy to first establish  
23 a conspiracy; in cases of agency, first establish the  
24 agency; establish the extent of the agency, then go and  
25 show what the agent said and did and bind the principal.  
26 In a long case like this, your Honor, you can see what the

1 probable injury will be to us .

2 THE COURT I see your point, I think, Mr. Appel. Mr. Ford,  
3 it seems to me that when you made a statement, unchallenged,  
4 that you will connect this testimony up, it is the duty of  
5 the court to assume that statement for its full force and  
6 value. Counsel on the other side is now challenging your  
7 ability to make that connection. It seems to me it is your  
8 duty to withdraw this witness and connect the defendant  
9 in this case.

10 MR. FORD. Your Honor, they have challenged our ability on  
11 every occasion; as I have stated before, the courts have  
12 ruled time and again that the order of the proof is dis-  
13 cretionary with the trial judge.

14 THE COURT I quite agree with that.

15 MR. FORD. If I will be only permitted to state my reasons  
16 so I can explain why I cannot withdraw this witness at the  
17 present time. A conspiracy is something that is not  
18 entered into like an agreement is entered into. It is not  
19 possible to prove that the conspirators gathered together  
20 and said, we will do this and we will do that. They do not  
21 meet out in the public and verify their acts or swear to  
22 it before a notary or record it. They are not making  
23 their acts public. The conspirators meet in secret.  
24 They decide upon these things from time to time, different  
25 things that they seek to do in the carrying out of the con-  
26 spiracy. The only possible way in which a conspiracy can

1 be proven in criminal cases is by showing what each  
2 individual belonging to the group did to show that they all  
3 did things moving towards the common object, that they  
4 acted together in concert from which the jury may infer  
5 that the conspiracy did exist, in other words, it is going  
6 to be proven by circumstantial evidence. Now, as to whether  
7 or not they can consider the acts of this other conspirator,  
8 your Honor, at the proper time will instruct the members  
9 of the jury that they are not to consider the acts or  
10 declarations of any persons other than the defendant, un-  
11 less they are convinced by the evidence beyond a reasonable  
12 doubt, that those other persons were involved in the  
13 common conspiracy with the defendant. They have a right  
14 to consider all of the evidence, all of the circumstances,  
15 all of the acts, and all of the declarations of other people  
16 to ascertain whether or not a conspiracy existed, but they  
17 cannot consider the acts of those other people as binding  
18 upon the defendant until they have first been convinced  
19 that a conspiracy did exist. Now, we have put on one  
20 little piece of evidence at a time and then another  
21 little piece of evidence,

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1 and fitted it together. I think your Honor has stated  
2 heretofore they have not challenged our ability to connect  
3 the acts and declarations of alleged conspirators with the  
4 defendant. I don't think that is correct. They have at  
5 all times challenged it, and they have at all times claimed  
6 it was a frame-up. They have at all times claimed that  
7 any particular witness was a conspirator of the defendant.

8 THE COURT: I don't think you quite got my point there, Mr  
9 Ford. You have, on former occasions, avowed your inten-  
10 tion of connecting this testimony up with the defendant,  
11 and the court has accepted that fully at its full face value,  
12 but when counsel on the other side declares that he has in  
13 his possession knowledge that justifies him in saying that  
14 you will find yourself unable when the time comes to make  
15 that connection, then, I think it is time for you to with-  
16 draw that witness.

17 MR APPEL Pardon me just a moment.

18 THE COURT: Mr Ford has the floor, Mr Appel.

19 MR FORD: I will leave it to counsel themselves if they  
20 will admit the connection of any other witness --

21 MR ROGERS: I don't decline to answer that question, but  
22 I do say so far as this is concerned, I am absolutely  
23 sincere. You have asked me a question and I purpose to  
24 answer it. Counsel will never prove or be able to estab-  
25 lish that Mr Darrow knew anything about this, had anything  
26 to do with it in the remotest fashion or degree, and I have

1 called your attention right here in the court room to the  
2 name of the man that the witness is testifying about, and  
3 to his presence in the court room, and I don't think you  
4 can prove by truthful evidence of any kind, to show that  
5 Mr Darrow had one single --

6 MR FORD: If the court please, counsel is entirely out of  
7 order -- all of his argument. The proper way for him to  
8 show anything is to put his witnesses on the stand. Several  
9 times people have come into court and they have had their  
10 attention attracted to them, and certain avowals have been  
11 made about those witnesses. I don't think that it is pro-  
12 per. I don't think the statement about what the witness  
13 is going to testify to is proper on the part of counsel.  
14 If counsel has any defense he desires to put before this  
15 jury, let him put witnesses on the stand at the proper  
16 time, and ~~put~~ the witness on the stand, rather than counsel,  
17 make the statement. I don't think that is proper. I  
18 simply say as far as this witness is concerned, our sit-  
19 uation is exactly the same with regard to any other wit-  
20 ness, and our statements in regard to this witness, and as  
21 to the connection between the parties involved in this tes-  
22 timony, is exactly the same as it is between the statements  
23 made by other witnesses on the stand and their connection  
24 with the defendant, and our good faith in the matter is  
25 just as sincere and just as great in this case with this  
26 witness as it is in the case of every other witness.

1 The order of proof is entirely discretionary with the  
2 court, and the court has decided this identical proposi-  
3 tion early in the trial of this case, but I think it is  
4 made only for the purpose of disconcerting either  
5 the witness or the prosecution, and your Honor is going  
6 to instruct the jury at all times to pay no attention to  
7 the testimony of any witness, even though the court admits  
8 it. It is for the jury finally to determine whether or  
9 not the connection has been shown. If the jury doesn't  
10 believe that as far as the action of Mr Johanneson and  
11 Mr Tveitmoe are concerned, if the jury does not believe  
12 that they are conspirators with the other agents or con-  
13 spirators, with the defendant, then even though the  
14 court admits testimony, it will be your duty to instruct  
15 them that they are not to regard statements of others,  
16 declarations of these people, unless they are convinced  
17 beyond a reasonable doubt of that fact in going towards the  
18 common end that the defendant --

19 MR ROGERS: Towards the common end, may I inquire if  
20 that means conspiracy? Never has in the world.

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1 MR. FORD. With regard to whether the defendant contemplated  
2 or specified--

3 MR. APPEL. Let's argue the law.

4 THE COURT. I think that is very desirable.

5 MR. FORD. They sit around here, your Honor, and indulge  
6 in certain maneuvers that I cannot help replying to at times,  
7 and I ask pardon of the court for having forgotten myself.

8 I call the court's attention to People versus Morton  
9 in the 27th Cal--

10 THE COURT. There is no difference between you and the  
11 court and opposing counsel on the other side as to the law  
12 in the matter in this case, but there is evidence here that  
13 the defendant in this case never saw or heard of at all or  
14 either of the gentlemen who were mentioned before with this  
15 witness.

16 MR. FORD. Our testimony with regard to the connection of Mr.  
17 Johanneson and Mr. Tveitmoe with this defendant will consist  
18 of a large number of specific individual acts and the cir-  
19 cumstances are such as to justify us in believing that  
20 it will convince the jury beyond a reasonable doubt as to the  
21 connection of these people with this defendant, but we can  
22 only introduce that evidence bit by bit. If we put on any  
23 particular witness they would make the same objection, we  
24 haven't shown the connection, and therefore we have to put  
25 on our testimony bit, as to showing how they were acting  
26 together, how they were operating together in this proposition

1 and bit by bit build up the circumstances from which this  
2 jury can decide whether or not a conspiracy existed of  
3 which this defendant was one member and these people were  
4 other members.

5 THE COURT. The court has no doubt at all and I don't think  
6 counsel on the other side have any doubt about your good  
7 faith in the matter. Sometimes testimony in spite of the  
8 best of good faith doesn't materialize, but the discretion of  
9 the court should not be exercised in requiring you to put  
10 on all the testimony you have at this time connecting the  
11 defendant here with a matter under consideration. The court  
12 does hold that before you can proceed with this line of  
13 testimony you will have to introduce some evidence to connect  
14 him, some scintilla of evidence showing the connection  
15 between the defendant and this witness. We are about to  
16 take a recess now for ten minutes.

17 (Discussion between juror and the court.)

18 THE COURT. Gentlemen of the jury, bearing in mind the  
19 admonition heretofore given you, we will take a recess for  
20 ten minutes.

21 (After recess. Jury returned to court room.)

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23 M A L C O M B L O U G H E A D,

24 on the stand for further examination.

25 THE COURT. Parties are all present. You may proceed,  
26 gentlemen.



1 MR. FORD. Q You saw Mr. Johanneson when you returned  
2 after getting your supplies? A Yes, sir.

3 Q State what was then said and done

4 MR. ROGERS' We object to that as no foundation, incompetent,  
5 irrelevant and immaterial, hearsay.

6 THE COURT. That is the very question, as I remember it,  
7 that has just been ruled upon.

8 MR. FORD. There was no question before the court at all.

9 THE COURT. The question that was discussed, perhaps you are  
10 right about that.

11 MR. FORD. The admissibility of the witness's <sup>entire</sup> testimony  
12 was discussed, without our showing anything that has occurred  
13 yet.

14 THE COURT' That was the question the court had in mind, at  
15 least. Objection sustained.

16 MR. FORD. Withdraw the question.

17 BY MR. FORD. Q Did you and Mr. Johanneson leave the building

18 A Yes, sir.

19 MR. ROGERS. I make--

20 THE COURT. Strike out the answer.

21 MR. ROGERS. I make the same objection, that no foundation  
22 has been laid, incompetent, irrelevant, hearsay, not within  
23 the issues.

24 THE COURT. Objection sustained.

25 MR. FORD. On which ground, your Honor, no foundation has  
26 been laid?

1 THE COURT. precisely.

2 MR. FORD' I want to state to the court right now that our  
3 ability to show the connection between Mr Tveitmoe and the  
4 defendant will rest upon acts concerning which this witness  
5 will testify as well as other witnesses in the case, and  
6 that this witness's testimony will give a part of the con-  
7 nection--we expect this witness to testify as to what was  
8 done on the part of one of Mr. Tveitmoe's agents, Mr. Johanne-  
9 son after Mrs. Caplan, and upon the return of this witness;  
10 we will show that the bills were paid for for that trip by  
11 Mr. Tveitmoe and we will show by other evidence Mr. Tveit-  
12 moe's connection with Mr. Darrow, but the testimony will  
13 have to come out piece by piece and bit by bit, we cannot  
14 prove all by one act. This is a witness who was not  
15 present at any arrangement or any conversation held with  
16 the def endant or any of these people, we are not going  
17 to be able to produce any witnesses that will show that.  
18 We will have to show little statements, little bits by  
19 bits, each one showing connection with one another.

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1 THE COURT: I thought the ruling of the court and its  
2 position was made plain before recess, the avowal of the  
3 District Attorney, or counsel on either side will always  
4 be accepted by this court at full face value of the decla-  
5 ration and bona fide intention, and it is so accepted at  
6 this time, but counsel on the other side absolutely chal-  
7 lenged the ability of the District Attorney to introduce  
8 ine scintilla of evidence connecting <sup>in</sup> this case with either  
9 Mr Tveitmoe or this witness or the other gentleman pre-  
10 sent.

11 MR ROGERS: In this matter at all.

12 THE COURT: The court does not require the District At-  
13 torney at this time to introduce all of the bits and por-  
14 tions of evidence that he may have, but in the face of  
15 that avowal by the attorney on the other side, which the  
16 court accepts at its full face value and in good faith,  
17 I deem it is the duty of the District Attorney to intro-  
18 duce some evidence, perhaps it may be slight, but some  
19 evidence at this time connecting the defendant with either  
20 of the parties whose names have been mentioned.

21 MR FORD: If the court please, ~~is~~ relying upon the rul-  
22 ing of the court on similar questions presented to this  
23 court during the progress of this trial, wherein, your  
24 Honor was abundantly supported by the authorities of this  
25 state as well as in other states --

26 THE COURT: MR FORD, let us be clear. In the absence of the

1 positive declaration by counsel on the other side, which is  
2 just as emphatic as the District Attorney's declaration and  
3 avowal on his part, which has not occurred heretofore in  
4 this trial --

5 MR FORD: I want to state to the court, this witness is a  
6 witness from out of town, from San Francisco. He is being  
7 kept hereat our expense, at the state's expense, and we  
8 want to ask leave to allow this witness to testify as to  
9 what he did in the company of any persons present with him  
10 in regard to Mrs Caplan and we avow our intention to intro-  
11 duce evidence to show the connection between the parties  
12 involved and this defendant. Now, that is as far as we can  
13 go at the present time, and the testimony as to the connec-  
14 tion of Tveitmoe with this transaction and the testimony as  
15 to the connection as to Mr Tveitmoe particularly with re-  
16 gard to this man, will be absolutely unintelligible with-  
17 out showing first what was done.

18 MR ROGERS: I take this position, if your Honor pleases,  
19 in the matter. Now, I have no doubt that counsel will  
20 show that Mr Tveitmoe, who is an official of the State  
21 Buildings Trade Council, that Mr Johanneson, who also is  
22 an official of the State Buildings Trades Council, having,  
23 from necessity and from the circumstances, some connection  
24 with the defense of the McNamara case -- there is no  
25 question about it, that is as far as I understand their  
26 ability to make the proof, but what I am contending

1 for is this: here is a specific act, here is a thing which  
2 they desire to charge against the defendant, which they  
3 desire to say he is guilty of, and he must be guilty of it  
4 if it is an offense, therefore the proof must not only be  
5 that the act was committed, but that the defendant himself  
6 participated, aided, abetted, advised in its commission.  
7 Now, as a matter of common knowledge, a lawyer knows, so  
8 far as Mrs Caplan's presence upon the witness stand is  
9 concerned, that under the abundant authorities she could not  
10 be called as a witness.

11 MR FREDERICKS: Why not, being the wife of Caplan?

12 MR ROGERS: Being the wife of Caplan, under section 1322.

13 MR FREDERICKS: She was not the wife of Brice and Schmidt,  
14 though.

15 MR ROGERS: People against Langtry, which I have offered  
16 for counsel's elucidation many times --

17 MR FORD: That is not the point before the court at the  
18 present time.

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MR. ROGERS.

15p 1 But my contention is this, Mr. Darrow being a lawyer, knowing  
2 she could not be used as a witness, would not advise her  
3 departure from the state, he would not do it, could not do  
4 it, had no reason to do it. If any one else took her  
5 from the state for their own reasons and because of their  
6 own interests, that is another matter. That she was a  
7 competent/<sup>witness</sup> and a material and necessary witness, nobody  
8 who knows the law would immediately dispute. Now, there-  
9 fore, under those conditions, she was not a witness at all,  
10 under the law. Why, therefore, should Mr. Darrow send her  
11 out of the state? Therefore, these indefinite, evanescent  
12 diaphanous assurances to connect that Mr. Darrow knew Mr.  
13 Tveitmoe and knew Mr. Johanneson, officials of the State  
14 Buildings Trades Council, is not going to establish the  
15 foundation, and I challenge them, as I said to your Honor  
16 before, to show by any witness at all or by any circumstance  
17 at all that Mr. Darrow had any connection whatever in either  
18 advising, consenting to, conniving at, or participating in  
19 anything that was done in reference to Mrs. Caplan. Mr.  
20 Tveitmoe is in the city, Mr. Johanneson is in the court room.  
21 Now, why have we not the right to insist, if they are  
22 going to charge Mr. Darrow, because he knows Johanneson and  
23 knows Tveitmoe and had some business relations with them  
24 of one kind or another by reason of his position as counsel  
25 in the case, if they are going to charge Mr. Darrow with it,  
26 I say, it is nothing but right and fair that they should

1 show Mr. Darrow had something to do with it.

2 This proposition of bit bit and circumstance by cir-  
3 cumstance, and a little thing by a little thing, that  
4 cannot be done, it is impossible to be done. These  
5 collateral matters, if your Honor please you are admitting  
6 for the purpose of showing what? For the purpose of showing  
7 the connection of general conspiracy. Now, in order to do  
8 that the acts of conspirators are never admissible one  
9 against the other until the conspiracy is first shown.  
10 That is the law, and it is not a question of order of  
11 proof, it is a substantial right and I maintain my position  
12 that in this matter, as well as in all other matters, they  
13 must show Mr. Darrow's connection with it and they must show  
14 beyond the mere diaphanous and evanescent connection as  
15 I said a moment ago of acquaintanceship. Suppose Mr. Tveit-  
16 moe did pay for this trip, we shall contend there is nothing  
17 criminal at all about this trip. We shall show what  
18 happened to Mrs. Caplan, we shall show what was done with  
19 Mrs. Caplan, if the evidence is admissible, but why should  
20 Mr. Darrow, who is on trial here in a matter that is said  
21 to have happened on Third and Los Angeles street, come in  
22 here with the witnesses whose faces we never saw and whose  
23 names we never heard on this occasion, come in here to  
24 face this situation and be compelled to meet it without  
25 any knowledge whatever? I say, if your Honor please, it  
26 is unheard of in criminal jurisprudence, absolutely un-

1 unheared of and I do not believe there is any possibility  
 2 of the connection being made under even their own avowal  
 3 of it, but your Honor has a right to say that it must come  
 4 with such a foundation as shall connect Mr. Darrow with it.  
 5 I will tell you, Sir, where witnesses--

6 MR. FREDERICKS. (Interrupting) We do not differ with  
 7 counsel on that.

8 MR. ROGERS. (Continuing) --where witnesses are--where  
 9 numerous persons are interested in the defense, whereas  
 10 in this case the funds for the defense come from all over  
 11 the country, whereas in this case thousands of men are  
 12 interested in the defense and participate in it, isn't  
 13 it right, if your Honor pleases, that where hundreds of per-  
 14 sons are just as much interested as Mr. Darrow --

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1 where there were other counsel as well as Mr Darrow,  
2 isn't it right that they should establish a direct and ab-  
3 solute connection of Mr Darrow with it? Is it going to  
4 be sufficient to put us upon trial here to go through this  
5 matter and take four or five days to do it until they have  
6 shown Mr Darrow himself had guilty knowledge of the matter,  
7 if there was any guilt connected with it, and it must  
8 have been prior guilt and not subsequent guilt.

9 MR FREDERICKS: I do not think we differ with counsel.

10 THE COURT: I do not care to hear from you. The situation  
11 is somewhat changed by Mr Rogers' remarks. At this time,  
12 perhaps I misunderstood the avowal made by Mr Rogers be-  
13 fore recess, but I understood it was a statement that in  
14 his opinion, the District Attorney would be unable to con-  
15 nect the name of Mr Tveitmoer or Mr Johanneson in any way,  
16 shape or form with the defendant.

17 MR ROGERS: He cannot do it, sir.

18 THE COURT: He now states those gentlemen were connected  
19 with the defense in the McNamara case, of which the de-  
20 fendant here was chief counsel. I think that takes away  
21 the sting of the condition heretofore existing, and brings  
22 it within the general rule that has been followed in this  
23 case; for that reason the objection to the question is  
24 overruled.

25 MR ROGERS: We take an exception.

26 MR FORD: Q Will you now state what was said and done be-

1    between you and Mr Johanneson, or whatever was done by Mr  
2    Johanneson in your presence, after you arrived at the Metro-  
3    politan Bank Building, on your return from getting your  
4    supplies?

5    MR ROGERS: Shall we have an objection and exception to all  
6    of this matter?

7    MR FORD: It is stipulated it may be entered to all of it.

8    THE COURT: Yes, to all of this testimony, to what this wit-  
9    ness has to say with Mr Tveitmoe and Mr Johanneson, under  
10   the instructions and otherwise, it will be understood that  
11   the same objection and the same ruling and the same excep-  
12   tion is taken.

13   MR ROGERS: May I inquire, your Honor, if you are intend-  
14   ing to hold that in view of the fact there were numerous  
15   other counsel, one of whom is dead, undoubtedly, and num-  
16   erous other counsel in the McNamara case, it is going to  
17   point to Mr Darrow because they had connection with the  
18   defense?

19   THE COURT: No, I hold that it does show some connection;  
20   it may be a mere scintilla of proof, but it is something  
21   that justifies the order being adopted at this time.  
22   If they could not establish the defendant here did not  
23   even even know those gentlemen, that would be a different  
24   thing.

25   MR APPEL: This inquiry is not over the case in chief. I  
26   read to your Honor some decisions to the effect upon col-

1 lateral matters, that the proof must be exact and to the  
2 point connecting the defendant with the commission of  
3 these collateral matters. Now, that is the only issue.  
4 Now, the declarations, your Honor, by a party who acts in  
5 my interest, if I am a defendant in this case, he comes to  
6 this witness and says, "I am going to take you away; I am  
7 going to hide you in the mountains; I am acting for Mr  
8 Appel," his declaration does not prove any conspiracy  
9 against me. The law is that testimony of conspirators  
10 is not evidence. For that reason the law says you must  
11 establish and connect the principal with the conspiracy  
12 and show that the co-conspirator started to act in view  
13 of his understanding with the principal. That is the foun-  
14 dation that must be laid. In other words, we demand here  
15 in this court that before the declarations of Mr Johanneson  
16 or the declaration of Mr Tveitmoe here on behalf of what  
17 occurred, must first be shown to have been authorized and  
18 to have been with previous knowledge, and with previous  
19 consent of this defendant, that their declarations to this  
20 witness away up there in San Francisco, do not prove that  
21 Mr Darrow had previous knowledge of those things, or did  
22 them or consented to it, even if Mr Darrow had known of it  
23 after it occurred, it would not prove conspiracy and  
24 it would not prove him guilty of any offense.  
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17p 1 That is the law of this state and the law of every state  
2 in the Union. That is what we are demanding. The mere  
3 fact that I may know some man connected with the defense  
4 of this case and to say I can go out here and bribe a  
5 witness out in the outskirts of this state and say I am  
6 acting for Mr. Appel, I say, that could not be introduced  
7 to connect me and showing a conspiracy. It must be previous  
8 knowledge, consent and aiding and abetting before the same  
9 occurred before I am charged with that. Now, here are  
10 statements that are to come from this witness as to what  
11 Mr. Johanneson did or what he said. Now, where is this  
12 evidence here that Johanneson was talking for Darrow?  
13 Where is the evidence here that Darrow authorized Johanne-  
14 son to say or to do anything concerning a specific act which  
15 counsel on the other side say is a crime? How is it going  
16 to be done. Suppose, if your Honor pleases, I have taken  
17 out of my pocket \$100 and give it to some person to go and  
18 do something in the case and he should so far forget him-  
19 self that he goes out here and bribes a witness in this  
20 case, can it be said that the mere statement of this man  
21 to this party, "I have Appel's money, in my pocket, I am  
22 going to pay you \$50 of it to get you to leave the state",  
23 can it be said that his statement can connect me with the  
24 case. There would be no security anywhere on earth with  
25 such evidence. It must show I gave him that money with  
26 the knowledge and understanding and in a slight degree, at

1 least, that he was authorized to go and do the specific  
 2 act, that I had some guilty knowledge of what he was going  
 3 to do before he did it and that I did it for that purpose,  
 4 and that I sent him for that purpose, in some slight  
 5 degree at least. That is the foundation we are seeking for  
 6 and that is the foundation that the books say, that before  
 7 the acts or declarations of a conspirator are evidence against  
 8 a party on trial the fact of the conspiracy concerning that  
 9 specific conduct on the part of the person who acts must  
 10 first be shown between him and the principal. It must  
 11 be previous knowledge, not a subsequent knowledge, or mere  
 12 relation of client and attorney, it would put the attorney  
 13 or client in a perilous condition in any case, your Honor,  
 14 and the defendant might as well come out of the court room  
 15 here because I am defending him and go and bribe a witness  
 16 and because I knew him, because he is my client and the  
 17 district attorney can show that which would be apparent  
 18 from my conduct of the case, would that show I had conspired  
 19 with him and aided and abetted in the commission of a  
 20 specific offense? These are collateral matters, collateral  
 21 matters that require a more strict rule than the other.

22 MR. FORD. I do not think that point is before the court  
 23 at all.

24 MR. FREDERICKS. We do not rely on those things counsel is  
 25 arguing about, but will connect Mr. Darrow with the taking  
 26 away of Mrs. Caplan by direct and positive testimony, your

1 Honor.

2 MR. APPEL. Now, let us see if he does it, if he doesn't  
3 do it he will get himself in a hole.

4 MR. FREDERICKS. All right.

5 MR. APPEL. Remember what you said, and don't take it back.

6 MR. ROGERS. Read it to me, the district attorney's avowal,  
7 read it to me, please.

8 (The last statement of Mr. Fredericks read.)

9 THE COURT. Objection overruled.

10 MR. APPEL. Ex cept.

11 MR. FORD. Answer the question.

12 (Question read.)

13 A He told me to take Mr. Gillson home first and I took him  
14 home, then proceeded down to, I think, 23rd and Folsom  
15 street.

16 Q Did Mr. Johanneson accompany you? A Mr. Johanneson  
17 accompanied me and he got out there and went to get another  
18 man. I waited until he got him and then he directed me to  
19 go to Red Wood City.

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1 Q Do you know who that other man was? A I don't know  
2 who he was.

3 Q Describe him, please. A He was a man about 5 feet 6  
4 in height with a mustache, I believe.

5 Q Apparent age? A I should say about 40 years old.

6 Q Proceed? A I went to Redwood City.

7 Q You say he directed you, you mean the other man or  
8 Mr Johanneson? A Mr Johanneson directed me to go Red-  
9 wood City; after getting there --

10 Q Getting where? A After getting to Redwood City.

11 Q Did you go alone, or were you accompanied by anyone?

12 A I was accompanied by Mr Johanneson and this other gen-  
13 tleman.

14 Q How far is Redwood City from San Francisco? A About  
15 35 miles.

16 Q On the way to Redwood City, did you have any further  
17 conversation with him about the business of your trip, any-  
18 thing at all? A None that I remember.

19 Q After you got to Redwood City, what occurred? A Af-  
20 ter -- The other man -- the man that was with Johanneson,  
21 got in the front seat and directed me from there on.

22 Q Mr Johanneson still in the machine? A Still in the  
23 back seat.

24 Q Where did you proceed then? A To La Honda.

25 Q Anything occur on the way to La Honda? A About half a  
26 mile this side of La Honda --

1 Q That is between La Honda and Redwood City? A Yes --  
2 this gentleman that was with Johanneson directed me to  
3 stop and Mr Johanneson got out and went down the trail.

4 Q Mr Johanneson got out? A Yes, Mr Johanneson.

5 Q What became of the other man? A He stayed in the  
6 machine and rode down the road with me.

7 Q Did you notice where Mr Johanneson went? A He went  
8 down into a little creek, down a trail.

9 Q What time of day or night was it? A I don't know the  
10 exact time; it was just getting dark.

11 Q Did you receive any directions from Mr Johanneson  
12 at that time what you were to do? A He told me I was to  
13 drive on down the road and be back in an hour.

14 Q At the same spot? A At the same place.

15 MR APPEL: Do not lead the witness, please.

16 THE COURT: No, don't lead him.

17 MR APPEL: That is not included in our objection, but I  
18 should say common courtesy and decency would prevent  
19 counsel from leading the witness.

20 MR FORD: The same motive that would prevent him making  
21 such remarks.

22 Q Did you receive any directions as to the manner in  
23 which you should come back?

24 MR APPEL: We object to that as leading; of course, sub-  
25 ject to the other objections.

26 THE COURT: Objection sustained.



1 MR FORD: Did you return? A. Yes sir.

2 Q When you returned, was it light or dark? A It was  
3 dark.

4 Q Did you have your lights lit? A Yes.

5 Q What occurred then? A I picked Mr Johanneson up and  
6 a woman and two children.

7 Q Were you introduced to the woman? A No sir.

8 Q Did Mr Johanneson say who she was?

9 MR APPEL: We object to that as leading .

10 THE COURT: Objection overruled.

11 MR APPEL: Exception.

12 A Not that I remember of.

13 Q Did he address her by any name?

14 MR APPEL: We object to that as leading and suggestive,  
15 object to it on that ground.

16 THE COURT: Objection overruled.

17 MR APPEL: Exception.

18 A I think he called her "Flora".

19 Q Did you, at any time during the trip, learn who she  
20 was?

21 MR APPEL: We object to that on the ground it is immater-  
22 ial, irrelevant, leading and suggestive.

23 MR FORD: I am not suggesting anything that I can see.

24 THE COURT: Objection overruled.

25 MR APPEL: Exception. A I didn't get the question. What  
26 is the question?

1 (Question read.)

2 A No.

3 Q The only name that you heard her addressed by was that  
4 which you have given us, "Flora"? A Yes.

5 Q How old were the children? A Between 4 and 6,  
6 I think.

7 Q Boys or girls? A A boy and a girl.

8 Q After leaving Redwood City, where did you go -- or,  
9 after picking up this lady and the two children, where did  
10 you go? A To San Jose.

11 Q Who was in the machine going to San Jose? A Mr Johanne-  
12 son, this other gentleman we picked up and the lady and  
13 the two children.

14 Q After you got to San Jose, what occurred? A I took  
15 them to a hotel.

16 Q Took whom to a hotel? A Johanneson, the gentleman  
17 that was with him, and the lady and the two children.

18 Q Then, where did you go? A Then I put the car up at a  
19 garage and went to another place myself.

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1 Q What time of night was it that you left them at the  
2 hotel? A About 11 o'clock.

3 Q When next did you see Mr. Johanneson or the lady?

4 A The next morning, about 6.

5 Q A. M. ? A Yes, sir.

6 Q Whom did you see at that time? A Mr. Johanneson, the  
7 gentleman who was with him, and the lady and the two  
8 children.

9 Q What did you do, if anything? A I was directed to  
10 start up towards Sacramento, I think, was the directions  
11 at that time.

12 Q By whom? A by Mr. Johanneson.

13 Q Did you start to Sacramento? A Yes.

14 Q Who were with you, if any one? A Mr. Johanneson and  
15 the gentleman who was with him, the lady and the two  
16 children.

17 Q What occurred, if anything, on the trip towards Sacramento?

18 A I stopped at Haywards and received two tires that I  
19 telephoned for the night before, and this gentleman that  
20 was with Johanneson left us there.

21 Q And where did you and Mr. Johanneson and the lady and  
22 children go? A We went right to Sacramento.

23 Q Did you stop at Sacramento? A We stopped there just long  
24 enough to fix a tire.

25 Q What time did you get into Sacramento? A About 12  
26 o'clock.

1 Q At night? A At noon.

2 Q From Sacramento where did you proceed? A We went from  
3 there to Auburn.

4 Q What time did you get into Auburn? A About an hour  
5 before dark. I don't know what time it was.

6 Q Where is Auburn? A It is, I guess, about 25 miles the  
7 other side--east of Sacramento.

8 Q 25 miles east of Sacramento. How long did you stay at  
9 Auburn? A About an hour.

10 Q Where did Mr. Johanneson and the lady go? A They went  
11 below the garage there down into the shade to cool off a  
12 little bit, it was very hot.

13 Q How long did you stay at Auburn? A About an hour.

14 Q And from Auburn where did you go? A To Colfax,

15 Q Did you stay over night at Colfax? A We stayed over  
16 night at Colfax.

17 Q What time did you get in there? A It was just about  
18 dark then.

19 Q Where did they go and where did you go after you  
20 arrived at Colfax? A They put up at the hotel and I  
21 put up-- the hotel was full and I put up in a little  
22 place back of the hotel.

23 Q Did you hear the lady's name--did she register at that  
24 time? A I didn't see under what name she registered.

25 Q From Colfax where did you go and when? A The next  
26 morning we started as soon as we had finished breakfast and

1 went to Truckee.

2 Q Still accompanied by Mr. Johanneson and the children?

3 A Yes.

4 Q How long did you stay at Truckee? A Just long enough  
5 to fill up with gasoline and oil.

6 Q And from Truckee? A Reno.

7 Q Reno, Nevada? A Reno Nevada.

8 Q What time did you get into Reno, Nevada? A Between 12  
9 and 1 I think.

10 Q 12 and 1 in the daytime? A At noon.

11 Q What if anything occurred at Reno, Nevada? A Well, we  
12 put up at the hotel there and later on went across the  
13 street to the cafe and ate supper, and I took a letter from  
14 Mr. Johanneson to deliver to Mr. Tveitmoe on the way back when  
15 I got back to San Francisco.

16 Q Was that letter in an envelope or open? A In an envelop

17 Q Sealed? A yes.

18 Q The address of Mr. Tveitmoe written on it? A Yes.

19 Q What did Mr. Johanneson say when he gave you the letter?

20 A Asked me to deliver it and also to deliver a black over-  
21 coat that belonged to this other gentleman, to leave it  
22 there at the office.

23 Q At what office? A At Mr. Tveitmoe's office.

24 Q What did you do next? A I left that evening and went  
25 to Truckee that night.

26 Q Where did you leave Mr. Johanneson and the lady and the

1 children? A At Reno, Nevada.

2 Q Was that the last time you saw him? A I saw him just  
3 before I left, then, that is the last I saw him, just  
4 before I left.

5 Q At Reno, Nevada? A Yes.

6 Q Did you deliver the letter to Mr. Tveitmoe? A I did.

7 Q When and where? A I think it was the second day of  
8 August and it was in his office.

9 Q When did you get back to San Francisco? A I got back  
10 on Tuesday the 1st, I think.

11 Q Of August? A Of August.

12 Q About what time, 1911? A 1911. I went across the  
13 Bay on the 12:48 boat.

14 Q Was the end of Tuesday or the beginning of Tuesday?

15 A It was Tuesday night, that was the end of Tuesday.

16 Q If it was 12:48 it would be early Wednesday morning then?

17 A Wednesday morning.

18 Q And you delivered the letter the next day to Mr. Tveitmoe?

19 A I am not sure whether I delivered it the next day or the  
20 day following.

21 Q At any rate you delivered it? A I delivered it, yes,  
22 sir.

23 Q At his office? A At Mr. Tveitmoe's office in the  
24 Metropolis building.

25 Q Anybody else present when you delivered it? A I think  
26 Mr. Gillson let me in.

1 Q What if any conversation did you have with Mr. Tveitmoe  
2 at that time?  
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1 MR APPEL: We object to that upon the ground that it is  
2 incompetent, irrelevant and immaterial and hearsay and not  
3 relevant to any issue in the case.

4 THE COURT: Objection overruled.

5 MR APPEL: We except.

6 A He asked me what kind of a trip I had. I told him  
7 everything went through very well; had very little trouble  
8 with the car and delivered the letter to him and he read it  
9 and afterwards gave me, I think it was \$25.

10 Q For yourself? A For myself, yes.

11 Q Or was it pay for the machine? A No, it was not pay  
12 for the machine.

13 Q Did you collect the payment for the machine? A No, I  
14 turned the charge in to the garage.

15 Q What was the amount of the charge you turned in to  
16 the garage?

17 MR APPEL: Objected to upon the ground it is incompetent,  
18 irrelevant and hearsay; what he did himself is certainly  
19 immaterial.

20 THE COURT: Objection sustained.

21 MR FORD: Did you have any talk with Mr Tveitmoe about  
22 whether the bill should be charged or collected at that  
23 time? A He asked me what the bill would be. I told him I  
24 would leave it to the company to make the charge.

25 Q That is all the conversation you had with Mr Tveitmoe  
26 on the subject of charging? A That is all I remember.



1 Q Did you have any conversation with him whom it  
2 should be charged to?

3 MR APPEL: That is very leading and suggestive. It is  
4 incompetent, irrelevant and immaterial for any purpose  
5 whatsoever, hearsay and no foundation laid.

6 THE COURT: Overruled.

7 MR APPEL: Exception.

8 A Well, it was understood when I took the car away from  
9 the garage that it was to be charged to Mr Tveitmoe.  
10 I don't remember having any conversation with him in re-  
11 gards to who it was to be charged to.

12 MR FORD: You also delivered an overcoat, I believe you  
13 testified? A Yes.

14 Q To Mr Tveitmoe? A To Mr Tveitmoe.

15 Q Did you tell him anything about the overcoat?

16 MR APPEL: Now, that is immaterial, your Honor, and hear-  
17 say.

18 MR FORD: Give all the conversation you remember with  
19 Mr Tveitmoe.

20 THE COURT: Objection sustained.

21 MR FORD: Give all the conversation that occurred with Mr  
22 Tveitmoe at that time.

23 MR APPEL: We submit that the witness has already stated  
24 what the conversation he had with him was, and he has  
25 stated to the best of his recollection what occurred.

26 THE COURT: Overruled.

1 MR APPEL: We except.

2 A Well, on that, do you mean to go over all I have gone  
3 over so far?

4 MR FORD: Everything that you have not testified to as yet.

5 A Well, after delivering the note I delivered an over-  
6 coat to him and told him that it belonged to the man that  
7 we had picked up that had gone part way on the trip with  
8 us.

9 Q Did you know that man's name at that time? A No,  
10 I didn't know his name.

11 Q Anything else said about the overcoat? A Nothing that  
12 I remember.

13 Q Did you tell him why you brought it to his office?

14 MR APPEL: I submit that is not the way to examine the wit-  
15 ness.

16 THE COURT: Objection sustained.

17 MR FORD: This occurred sometime ago and it may not be  
18 very important to the mind of the witness at that time,  
19 and simply directing him without asking him what to say or  
20 telling him what to say.

21 THE COURT: Objection sustained.

22 MR FORD: Was anything further said about the overcoat?

23 A I don't remember anything further being said.

24 Q Have you ever at any time, learned who this man was?

25 MR APPEL: Wait a moment. We object to that as irrelevant  
26 and immaterial. He can only know it by hearsay by someone

1 that told him, being hearsay or hearsay.

2 THE COURT: Overruled.

3 MR APPEL: Exception.

4 MR APPEL: We object to it on the ground that it is incom-  
5 petent, irrelevant and immaterial, hearsay and no founda-  
6 tion laid.

7 THE COURT: Objection overruled.

8 MR APPEL: Exception.

9 A I don,t know of any proof that I ever had of who she  
10 was.

11 MR FORD: Describe her, please? A She was about 5 feet  
12 5 in height, I should think, and I think an Italian.  
13 She talked with kind of a foreign accent, I should judge.

14 Q What nationality? A I should think Italian.

15 Q You think Italian? A Yes.

16 Q Apparent age? A About 30, I should think; 30, 32.

17 Q Was she heavy-built or slim? A About medium build.

18 Q What apparent weight? A About 130, 135.

19 Q What complexion? A A little dark.

20 Q Hair dark? A Not exceptionally dark.

21 Q Can you describe the children? A Well, I think the  
22 boy was a little the oldest, about 6; and the girl, maybe  
23 4 or 5.

24 Q Referring to the overcoat again, was any conver-  
25 sation had on the trip while you were going up to Reno be-  
26 tween Mr Johanneson and anyone else concerning the overcoat?

1 MR APPEL: Wait a moment. e object to that upon the  
2 ground it is incompetent, irrelevant and immateria for  
3 any purpose, hearsay, no foundation laid.

4 THE COURT: Objection overruled.

5 MR APPEL: Exception.

6 A At Haywards, this Mr Johanneson made some remark about  
7 not having an overcoat, and this gentleman offered to loan  
8 him his.

9 MR FORD: Anything further about it? A I think he said  
10 when he got through with it he would return it, leave it at  
11 Mr Tveitmo's office.

12 Q Who said, Mr Johanneson? A Mr Johanneson, yes.

13 Q On the trip to Reno, Nevada, did Mr Johanneson give  
14 you any directions as to what information you should give  
15 out concerning this woman?

16 MR APPEL: Wait a moment. We object to that upon the ground  
17 it is incompetent, irrelevant and immaterial for any pur-  
18 pose whatsoever; it is hearsay, and no foundation laid.

19 THE COURT: Objection overruled.

20 MR APPEL: We except.  
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21s

1 A I don,t remember any talk to that effect.

2 MR. FORD. Q When you arrived at Colfax there were how  
3 many hotels there?

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

5 THE COURT. Overruled.

6 MR. APPEL. Except.

7 A Just two that I know of.

8 MR. FORD. Q Did you at Colfax have any conversation with  
9 Mr. Johanneson? A I believe he said something.

10 MR. APPEL. Wait a moment--object to the question on the  
11 ground that it is incompetent, irrelevant, hearsay and no  
12 foundation laid.

13 THE COURT. Objection overruled.

14 MR. APPEL. Exception.

15 MR. FORD. Go ahead.

16 A As I remember he was--he was giving people to understand  
17 that it was his wife and he made some remark it was easier  
18 to get along that way, save asking--if people asked questions  
19 about it.

20 Q Said that to you? A Yes.

21 MR. APPEL. We move to strike out the evidence of the  
22 witness as to what Mr. Johanneson was giving people to under-  
23 stand on the ground it is not responsive to the question.

24 THE COURT. Strike it out.

25 MR. FREDERICKS. He say, though, your Honor, he said that  
26 to him. I think that puts it in again.

1 MR. FORD. He said so, if you will just hear the last  
2 question and answer.

3 THE COURT. I don't think he made that statement.

4 MR. FORD. What did Mr.--withdraw the question. Where  
5 were you and Mr. Johanneson when this conversation came up?

6 A on the porch in front of the hotel.

7 Q At Colfax? A At Colfax.

8 Q Now, what did Mr. Johanneson say to you on that subject?

9 MR. APPEL. Wait a moment. We object upon the ground it is  
10 incompetent, irrelevant and immaterial for any purpose  
11 whatsoever; it is hearsay, the declarations of Mr. Johanneson  
12 concerning his apparent relations with the woman in question  
13 cannot possibly be binding upon the de\_f~~ead~~nat.

14 MR. FORD. Shows whether they considered the act at that  
15 time an innocent act, and they wanted to conceal this woman's  
16 identity.

17 THE COURT. Objection sustained.

18 MR. FREDERICKS. Will your Honor permit me to make a further  
19 statement in regard to it? I think your Honor doesn't under-  
20 stand the purpose.

21 THE COURT. Yes, maybe.

22 MR. FREDERICKS. The purpose is simply to show the effort  
23 on the part of Mr. Johanneson to conceal the identify of the  
24 woman, not to show any improper relations or anything of  
25 that kind between Mr. Johanneson and the woman, but a state-  
26 ment endeavoring to conceal the identity of the woman.

1 That is the purpose of the question, directed to that and  
2 that only.

3 THE COURT. With that avowal on the part of the district  
4 attorney--read the question.

5 (Last question read by the reporter.)

6 THE COURT. Objection overruled.

7 MR. APPEL. We except.

8 A Well, he was giving people to understand that it was  
9 his wife. I think registered so in the hotel at Colfax.

10 THE COURT. Strike out that answer. What did they say is  
11 the question that is asked you?

12 A Well, he said it was easier to give people to understand  
13 that it was his wife, as people would not ask questions that  
14 way in traveling that way.

15 MR. FORD. When you arrived at Reno did Mr. Johanneson tell  
16 you where he was going at that time or where they were  
17 going?

18 MR. APPEL. We object upon the ground it is leading and  
19 suggestive; it is immaterial for any purpose whatsoever;  
20 it is hearsay and not binding upon the defendant and no  
21 foundation laid.

22 THE COURT. Objection overruled.

23 MR. APPEL. We except.

24 A I didn't understand the question.

25 (Last question read by the reporter.)

26 A I don't remember any exact conversatio n onthe subject,

1 but I understood that they were going to catch the Overland  
2 train east.

3 MR. APPEL We move to strike out what he understood.

4 THE COURT. Strike it out.

5 MR. FORD. What is the substance of what you heard and what  
6 Mr. Johanneson said.

7 MR. APPEL We object on the ground that no foundation has  
8 been laid or any reason he should state the substance of the  
9 conversation, the witness has already stated that he didn't  
10 remember any specific conversation on the subject and it is  
11 hearsay, incompetent, irrelevant and immaterial.

12 THE COURT. Overruled.

13 A I don't remember the exact words but I know he spoke of  
14 catching a train; that he bought some clothes for her and  
15 they were going to catch the Overland train.

16 MR. APPEL I move to strike out the answer of the witness  
17 on the ground that it is an assumption of the witness, his  
18 own conclusions, the witness has already stated in his  
19 previous answer in connection with the answer he now gives  
20 that that was what he understood and it was not responsive  
21 to the question.

22 THE COURT Motion to strike denied.

23 MR. APPEL Exception.

24 MR. FORD. Q What was said about clothes for her?

25 MR. APPEL We object to that as incompetent, irrelevant and  
26 immaterial for any purpose whatsoever, hearsay and no founda-



1 tion laid.

2 THE COURT. Overruled.

3 MR. APPEL. We except.

4 A I was a little short on money and I asked him for some  
5 money for my expenses going back and he said that he was  
6 pretty short at the time, having to buy her some clothes  
7 and a few things for the trip and couldn't let me have very  
8 much. I forget how much he did let me have.

9 MR. FORD. Q At the time that Mr. Tveitmoe gave you that  
10 \$25 in his office did he say anything when he handed you that  
11 money?

12 MR. APPEL. The same objection as before.

13 THE COURT. Overruled.

14 MR. APPEL. Except.

15 A Well, he just gave it to me and I told him at the time--  
16 he told me it was for myself.

17 Q Did he say anything about your trip or his appreciation  
18 of it? A Of what?

19 Q Of your trip and his appreciation of it?

20 MR. APPEL. It is immaterial one way or the other. A man  
21 expresses his own sentiments so that couldn't be binding  
22 upon Darrow. They want to hang me on that they can do it.

23 MR. FORD. I suppose Tveitmoe did appreciate it very much  
24 getting through there and gave him \$25, a tip for doing it,  
25 it would strike me as being of some importance to Mr. Tveitmoe  
26 and as being binding upon Mr. Tveitmoe and if evidence is

1 introduced to show that the acts and declarations of Mr.  
2 Tveitmoe were the acts and declarations of a coconspirator  
3 with this defendant as we shall endeavor to prove later on  
4 I think it would be quite important.

5 THE COURT. Objection/sustained.

6 MR. FORD. That is all.

7  
8 CROSS-EXAMINATION.

9 MR. APPEL. Q Well, you were working on a salary, I sup-  
10 pose? A On commission basis.

11 Q On commission basis? A Yes, sir.

12 Q Did you ever see Mr. Darrow here before that time of this  
13 trip? A I don't remember ever seeing him before.

14 Q Did you see him after that? A I don't remember ever  
15 seeing him outside of the court room here.

16 Q When? A About three days after the trail started.

17 Q This trial? A Yes.

18 Q And who pointed him out to you, some detective of the  
19 district attorney's office? A I don't know as anybody.  
20 I think I recognized him from his picture in the paper.

21 Q Now, in going up there to the mountains that you spoke  
22 of where Johanneson left you, is that a public road?

23 Did you go on a public road? A Yes, public road--public  
24 highway.

25 Q Met people on the road? A Why, yes, met some people.

26 Q People passed you on the road? A I don't know--I don't

1 think anybody passed me, I met them going the other way,  
2 mostly.

3 Q Did you travel in the daytime? A Yes.

4 Q Stopped and ate on the way? A I didn't understand you.

5 Q Did you stop for food on the way? A Yes.

6 Q Got gasoline on the way? A Yes.

7 Q Got oil too? A Yes.

8 Q Anything to drink? A I think we got some soda water.

9 Q Now, when you got your soda water this lady sat in the  
10 auto or got out? A Well, it was at French Camp, and if I  
11 remember right they sat in the machine.

12 Q French Camp? A Yes.

13 Q Any camping parties up there? A No, that is the name  
14 of the town in California.

15 Q Oh, French Camp, oh, yes.

16 Q She didn't get under the machine when you passed anybody,  
17 this lady? A Not that I remember of.

18 Q Did Johanneson get under the machine when they passed  
19 anybody? A I didn't see him do so.

20 Q Now, the children were not concealed in any way, they  
21 were traveling along with you in the ordinary manner?

22 A Well, I didn't pay any attention to the back seat.

23 Q Talked among themselves? A Yes.

24 Q Now, when this other gentleman who had the overcoat and  
25 afterwards loaned it to Mr. Johanneson, he was on the front  
26 seat for a part of the time? A part of the trip, yes.

1 Q Where was it that he got on the front seat? A At Red  
2 Wood City.

3 Q Did you go right into the city or in the suburbs of the  
4 city? A Of Redwood City do you mean?

5 Q Yes. A We got to a little saloon but I don't know what  
6 the name of the saloon was.

7 Q How did you go up to San Jose, what road did you take?  
8 A You mean from La Honda to San Jose?

9 Q Yes. A We took the back road from Redwood City to Palo  
10 Alto  
/and then out on the main county road.

11 Q Good wide road? A From Palo Alto down, yes.

12 Q Great many people passing to and fro on that road?

13 A No, not very many that night.

14 Q That night? A Yes.

15 Q Well, you got in San Jose in the nighttime? A Yes.

16 Q Stayed all night? A Yes.

17 Q At a public hotel? A Yes.

18 Q What hotel was it? A I think the Imperial Hotel was  
19 on 1st street.

20 Q First street is a public street, I hope? A I think so.

21 Q How close to the depot? A About 12 blocks; 14 blocks.

22 The next morning you had breakfast, I suppose? A You  
23 mean myself personally?

24 Q Yes. A Yes.

25 Q At the hotel? A I ate at a little hotel right near the  
26 garage.

1 Q Where did the party that you were conveying eat breakfast?

2 A I don't know.

3 Q They were there at the hotel at 6 o'clock? A About 6.

4 Q And what time did you start away from there? A About 6.

5 Q What road did you travel from San Jose, into San Jose and  
6 out of San Jose? A From the Geish road over to Warm  
7 Srpings and from there up to Haywards.

8 Q Is Warm Springs, many people there at that time?

9 A Just a little corner, that is all.

10 Q That is the main road from San Jose? A That is the  
11 main county road.

12 Q You go over to Warm Springs? A I went through Warm  
13 Springs onthe way up.

14 Q And from there which way did you turn from there--  
15 Uncle Tom's Cabin? A No, Uncle Tom's Cabin is onthe other  
16 side of the bay.

17 Q Didn't you turn at Uncle Tom's Cabin at all? A Goig  
18 down, yes, I went past Uncle Tom's Cabin.

19 Q Isn't there an Uncle Tom's Cabin on the east side?

20 A No, onthe west side of the bay.

21 Q on the west side of the bay? A Yes, sir.

22 Q That must be some other Uncle Tom. Went through Palo  
23 Alto? A Going down, yes.

24 Q And went through Pleasenton? A No, didn't go through  
25 Pleasenton.

26 Q How close to Pleasenton? A I don't know how close I

1 went. I went over the Dublin grade.

2 Q What other towns? A Leaving from San Jose to Reno?

3 Q Yes. A Through Haywards, Dublin, Livermore--

4 Q Went through Haywards? A Turned off at Haywards over  
5 the Dublin road, from there to the Dublin road, over the  
6 Dublin road to Livermore, Livermore to Lathrop--Tracy  
7 first and then Lathrop, French Camp, Stockton, Sacramento.

8 Q Went through Stockton, did you? A Yes, sir.

9 Q What street did you go on in Stockton? A I don't know  
10 the streets very well there.

11 Q You know Main street, the main road? A Well, I took  
12 the shortest cut I could to get on the main road to Sacramento

13 Q But as you passed through Stockton you went through  
14 the inhabited portion of the city? A I went to a little  
15 garage there and filled up with more gasoline.

16 Q And as you went along on the way your party stopped at  
17 different places to get necessities of life, didn't they,  
18 what they wanted to eat? A They brought some things at  
19 Stockton in some bags, fruit, that we ate in the machine.

20 Q Didn't you have breakfast anywhere? A We had breakfast  
21 in San Jose, our lunch we ate on the road in the machine.

22 Q Now, you went to Sacramento and from there what road  
23 did you take? A We took the road that goes up past Rock-  
24 land.

25 Q What towns did you go through? A We went through Rockland  
26 That is the only town I remember outside of Auburn, that is

1 in going to Auburn.

2 Q Main traveled road? A Well, there was two roads. I  
3 was to take the shortest and quickest route.

4 Q But that is the main traveled road? A Yes, as I under-  
5 stand it.

6 Q Of course, you were looking for the shortest? A I mean,  
7 the route was left to me.

8 Q It was left to you? A Yes.

9 Q They didn't direct you to go out in the woods or anything  
10 like that? A No, I only had the one direction, shortest  
11 and quickest way.

12 Q Now, from Auburn how did you travel? A From Auburn  
13 there is no towns I remember between, and only one road to  
14 Colfax.

15 Q After you left Colfax where did you go? A Only one  
16 road, straight through to Truckee.

17 Q A main road, traveled road? A It is the only road, yes  
18 the only road running through.

19 Q And up to Reno how did you go? A Through the only road  
20 there is through to Verdi to Reno.

21 Q When you got to Reno you left the party there? A yes.

22 Q Arrived at Reno in the daytime? A About 12 as I remember  
23 it.

24 Q Put up at the hotel? A At the Golden Hotel.

25 Q That is the principal hotel there? A I am not sure.

26 Q Well, it is a large hotel? A It is a large hotel.

1 Q Saw many people there? A Well, I didn't notice how  
2 many people.

3 Q Well, the principal hotel in Reno, ain't it? A I am  
4 not sure, I don't know much about the town.

5 Q How long did you stay there? A Well, I didn't leave  
6 there until about an hour before dark.

7 Q Well, now, you say this lady was Italian? A No, I  
8 should judge she was; I just thought that only.

9 Q She talk Italian? A I didn't hear her, no.

10 Q Did she talk Dutch? A No, she had a little foreign  
11 accent.

12 Q Might have been Polish. A Well, gave me the impression  
13 as Italian; I don't know.

14 Q Russian, couldn't she have been Russian? A Didn't give  
15 me that impression.

16 Q What made you think she was Italian? A Just a general  
17 impression that she gave me only.

18 Q Could you tell from a person speaking broken English,  
19 could you tell whether they were Mexicans, Spanish, Cali-  
20 fornia Spanish, Italians or Greeks or Polish? A No, but  
21 by the looks and accent I just would judge a person by that.  
22 I don't think I could tell--I don't think I could swear to  
23 any one.

24 Q I understand. Purely impression. Now, did you hear  
25 this lady on the way make some statements in regard to having  
26 been followed or hounded by detectives and so on? A No,



1 I don't remember any remark made that way .

2 Q Do you remember anything she said? A At the present  
3 I don't remember any remark made by her .

4 Q You heard her talking? A I heard her talking, yes;  
5 I don,t remember, I was paying most of the attention to  
6 getting through . I was traveling pretty fast all the time  
7 and really didn't pay much attention to what she said .

8 Q Now, this gentleman-- A I do remember one little  
9 thing too .

10 Q All right. A Why, she said something about children.  
11 It was very hot and they were very tired, they were laying  
12 down sleeping, pretty well tired. She made some remark about  
13 stopping over--we was near Auburn. I remember that one  
14 little part of the conversation. That is all I remember,  
15 because the children were pretty well tired and I was  
16 asked to put up the top there .

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1 Q You was not paying attention to their talk in the  
2 back? A The reason I remember that, they asked me to put  
3 the top up.

4 Q You were not paying any attention to the conversa-  
5 tion they were carrying on in the back of the automobile?

6 A Only that one time.

7 Q You heard them talking, but you didn't pay any at-  
8 tention to what she said? A Yes.

9 Q Now, this man that was -- that had the overcoat --  
10 say, what size man was he? A Man about 5 feet 6, I think.

11 Q Red-headed? A No, dark hair.

12 Q Brown or black? A I don't remember.

13 Q Eyes blue? A I don't remember.

14 Q Or brown or gray? A I don't remember.

15 Q Had a mustache? A Dark mustache.

16 Q No beard? A I don't think so.

17 Q Gray hair? A No, dark hair.

18 Q No streaks of gray? A Well, I didn't notice that  
19 close; didn't pay enough attention to that.

20 Q What kind of clothes did he wear? A They were fairly  
21 good clothes; they were workman's clothes.

22 Q Now, this -- where did you first see that man?

23 A At the hardware store, I think, 23rd near Folsom in  
24 front of the hardware store.

25 Q Hadn't seen him before? A Never had seen him before  
26 that I remember.

1 Q Did you, during any time on that trip, from the time  
2 that you met Mr Johanneson at the office mentioned by you,  
3 or Mr Tveitmoe, up to the time that you turned back to  
4 San Francisco at the end of your trip, did you upon any  
5 of those occasions at any time hear the name of Davis  
6 mentioned? A I don't remember hearing it mentioned.

7 Q Did you hear the name of Harriman mentioned? A I  
8 don't remember. It was quite a while ago. Might have  
9 been mentioned, but I don't remember hearing it.

10 Q Did you hear the name of McNutt mentioned? A I don't  
11 remember.

12 Q Did you hear the name of Darrow mentioned? A I don't  
13 remember.

14 Q And of course, you didn't hear the name of Joe Scott  
15 mentioned? A No, I don't remember.

16 Q Now, when was it you started from San Francisco, what  
17 is the date? A It was on Sunday afternoon, I think,  
18 July 30th, 1911.

19 Q July 30th; and when did you get back to where this  
20 lady got into the auto, what date was that? A July 30th,  
21 1911; that is Sunday. I think it was July 30th.

22 Q What day did you get to Reno? A That would be Tues-  
23 day the 1st.

24 Q 1st of August? A It was the third day, I am sure.  
25 I think the first Tuesday.

26 MR APPEL: That is all.

## REDIRECT EXAMINATION

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MR FORD: When did you raise the top on that machine?

A In the garage at Sacramento.

Q You said you were directed to travel by the shortest and quickest route you could travel. Who gave you those directions?

MR APPEL: I submit he didn't say anything of the kind. He said the route was left to him and of course I took the shortest and quickest route.

THE COURT: Overruled.

MR APPEL: Exception.

A I was given instructions by Mr Johanneson to take the shortest and quickest route to get to Reno.

MR FORD: Did you travel the quickest? A As quick as I could, using my judgment, the best of my judgment.

MR FORD: That is all.

MR ROGERS: If your Honor please, this being a collateral issue, and making no substantial issue of itself, we demand the right at this time to produce witnesses on our behalf on this issue raised by this testimony, to show that Mr Darrow had not the slightest thing to do with this, and we demand the right to be heard before the witness leaves the jurisdiction, so as to base a motion to strike out.

MR FREDERICKS: The witness is here; he is a California witness, lives in San Francisco, and he is within the juris-

1 diction . Counsel's request is something that is unheard  
2 of in practice, and when we are through with our entire  
3 case, they can put theirs on as they see fit, and we are  
4 not through with this incident by a long ways.

5 MR ROGERS: We desire to produce witnesses on the question  
6 of foundation. The question of foundation is a prelimi-  
7 nary matter to the admission of the testimony for consid-  
8 eration on its substantial matter. The lack of founda-  
9 tion is a preliminary consideration for the court, it of  
10 itself as to whether or not he will permit the evidence  
11 to remain in the record. If the foundation is not laid and  
12 the court should order it stricken out, I have the right  
13 at this time, if your Honor please, to call witnesses upon  
14 the foundation. For instance, if your Honor should call  
15 an expert and an expert should be called to the witness  
16 stand and he should attempt to lay the foundation, we might  
17 in the discretion of the court, be permitted to show, by  
18 way of foundation, that he was not an expert at all. We  
19 would be permitted, for instance, when, we will say, an  
20 instrument is testified to, a chronometer, for instance,  
21 and an attempt is made to account for time by that chro-  
22 nometer, before the dial on that chronometer can be used  
23 as a matter of evidence, the foundation must be laid,  
24 and on that question of foundation the court has the  
25 right to admit both sides to be heard as to whether that  
26 chronometer is <sup>an</sup> accurate instrument, whether it can be  
relied on.

25s 1 What counsel desires to do, undoubtedly in this matter, is  
2 to put in incident after incident which the defendant had  
3 nothing to do with, in order that the jury, possibly, may  
4 fog the impressions of the moment, and having nothing but  
5 the vague impression occasioned by day after day of consider-  
6 ing different matters. Now, we have a right as we go  
7 along, of these collateral matters, matters which we con-  
8 tend have no right in the case, but which your Honor has  
9 ruled may come in subject to the laying of the foundation.  
10 Now, upon this question, upon all of these matters, we have  
11 a right to be heard on the foundation, and if we produce  
12 evidence here it is a matter for the court to say whether  
13 the foundation is laid or not. I will call immediately, if  
14 your Honor will permit, evidence to show that Mr. Darrow had  
15 absolutely nothing to do with this collateral matter; knew  
16 nothing about it; is not responsible for it in any way, and  
17 the purpose of it all is to produce an infinite cloud of  
18 suspicion, nothing but suspicion and fog of distrust and  
19 dislike around it, in order, what? To prejudice the  
20 defendant, and as we go along I have the right, if I may,  
21 to call upon them for substantial proof as to foundation.  
22 We object/<sup>ed</sup>to the foundation--counsel said that he would  
23 establish absolutely the foundation. Now, upon that ques-  
24 tion I would like to have the issue made up as to the  
25 foundation and let's go to it and let's see.  
26 MR. FORD. If the court please, the jury--

1 THE COURT. Objection overruled.

2 MR. ROGERS. We are refused permission?

3 THE COURT. Yes, sir.

4 MR. ROGERS. Exception.

5 MR. APPEL. We have the right here for the purpose of  
6 identifying him--

7 MR. FREDERICKS. It is absolutely immaterial to us--

8 MR. FORD. The witness can come--while it is a courtesy to  
9 the witness--the witness can come on a telegram--

10 MR. APPEL. Another witness we wanted to remain here was  
11 allowed to go, and went away, notwithstanding the court  
12 allowed subpoena to be served on him.

13 MR. FORD. We haven't anything to do with that matter.

14 MR. APPEL. He spoke to you. We can prove that you con-  
15 sented to his going.

16 MR. FREDERICKS. He can stay if the court wants him to.

17 THE COURT. One thing at a time. You say you want this  
18 witness in court?

19 MR. APPEL. Yes, sir.

20 MR. ROGERS. He is a working man. I don't want to take his  
21 wages away from him, but we would like to have him subject to  
22 the orders of the court. I am inclined to think if he will  
23 give his absolute word that he will come back, that is what  
24 we want. I would like to take him up now on this matter.

25 THE COURT. You stated your residence a little while ago.  
26 I have forgotten. Will you state it again?

1 A 456 Turk Street, San Francisco.

2 Q And if you are allowed to return to San Francisco to  
3 attend to your work at this time will you return here on  
4 telegraphic communication from Mr. Earl Rogers here?

5 A Yes, sir.

6 MR. ROGERS. Q For whom did you work in San Francisco?

7 A I am not working for anybody at present.

8 Q haven't you a steady job? A Well, I have been up in  
9 the mountains all this time.

10 Q When did you last work in San Francisco? A Well, I  
11 was in the hospital for a while. I couldn't tell you  
12 exactly the date when it was.

13 Q What I was arriving at--

14 MR. FREDERICKS Maybe the witness don't want to go to  
15 San Francisco.

16 A I want to leave town. I want to go back up there.

17 MR. ROGERS. Q You want to go back up there? A Yes.

18 Q How long have you lived in San Francisco? A Why, for the  
19 last, I guess, 11 years.

20 Q For whom have you worked besides-- A Well, I can  
21 get some of their names; I don't know as I can remember all.

22 Q Did you ever work for Travis? A Yes, I worked for  
23 Travis.

24 Q How long did you work for Travis? A I worked for Travis  
25 I guess three months, that is for the California Taxicab  
26 Company.



1 Q Away from the St Francis or the Palace? A The St  
2 Francis before the Palace started up.

3 Q What other places have you worked up there? A I worked  
4 at the Reliance Garage, 547 Fulton street. Worked for  
5 myself twice, had cars of my own.

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1 Q Where was your stand? A I was standing down at Stockton  
2 and O'Farrell, right after the earthquake.

3 Q You got any family there, relatives, people? A I  
4 have a brother and sister there.

5 Q I don't want to take your wages away from you -- A I  
6 will be down at any time.

7 Q I just want to find out something about it, would you  
8 mind -- I don't know that I have a right to ask it --  
9 would you mind giving me the name of anybody that knows  
10 you real well there that I might communicate with in case  
11 I should not reach you by telegraph? A The Alco  
12 Taxicab Company, anyone of the men in there know me well,  
13 at 360 Golden Gate avenue, any of the men of the company  
14 there know me.

15 Q If I telegraphed you, think in case I should not  
16 reach you, might be out somewhere -- A They always  
17 know where I am, because I have done quite a little bus-  
18 iness through them.

19 THE COURT: With that understanding, you are excused.  
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1                   GEORGE O. MONROE, recalled, and testified  
2 as follows:

3 THE COURT: Mr Monroe has been sworn once in this case.

4 MR FORD: Yes, your Honor.

5  
6                   DIRECT EXAMINATION

7 MR FORD: Mr Monroe, have you the records of the proceedings  
8 of the court for November 25, 1911? I believe they were  
9 read in the record, though -- A Yes sir, I have.

10 Q If you will turn to those -- I am not sure whether the  
11 25th was read into the record. What page of your record  
12 is that? A It is page 292.

13 Q Will you read the record of that day's proceedings  
14 into the record here? A "Minutes and orders of the  
15 Superior Court, Department 9, Book 6."

16 THE COURT: Probably counsel would like to look at it.

17 MR FORD: I want to show the record of the 25th, the 27th,  
18 and the 28th, referring to the plea --

19 MR APPEL: That was introduced in evidence.

20 MR FORD: We omitted some of them.

21 A This has been read in.

22 THE COURT: We only want it once. My recollection was  
23 that all that went in.

24 MR FORD: No, they were three or four days there that  
25 were not of importance, but in view of the things that have  
26 developed since, they are of importance. We skipped from

1 the 25th to the 1st of the month, the day they plead  
2 guilty, and we want to show that the trial was in pro-  
3 gress on Monday, on Tuesday and on Wednesday, up until Thanks-  
4 giving day.

5 THE COURT: All right.

6 MR ROGERS: You say you want to do anything else to kill  
7 time?

8 MR FORD: No, I am not killing time at any time.

9 MR ROGERS: All right; go ahead.

10 MR FORD: Read that into the record. A There are various  
11 cases on that date --

12 MR APPEL: We object to anything that occurred, your Honor,  
13 in the court room, or any proceedings of the court on the  
14 25th, because it is immaterial; anything that occurred on  
15 the 26th, we object to as being immaterial, and on the 27th  
16 and on the 28th, upon the ground that it is not connected  
17 with any facts in this case, it is immaterial, a matter  
18 subsequent to the time mentioned in the indictment here as  
19 the time of the commission of the act complained of,  
20 and that the declarations and acts of third parties there  
21 in the court room or out of the court, cannot possibly be  
22 considered a part of the facts, constituting the offense  
23 or tend to prove any element; it does not show any declara-  
24 tions or acts of any person in reference to that matter.  
25 MR FREDERICKS: The purpose is to show that the McNamara  
26 trial went on on the 25th, 26th, 27th, 28th and 29th,

1 and it went right along during that time.

2 MR APPEL: That is, if it did go on --

3 MR FREDERICKS: And that it ended at the end of that time,  
4 and it ended by reason, as I stated in my opening state-  
5 ment to the jury, for the reasons that I there stated.

6 MR APPEL: Those reasons are immaterial.

7 MR FREDERICKS: That is a part of the theory of the prose-  
8 cution of this case.

9 THE COURT: Do you want all of the minutes of those days  
10 read?

11 MR FREDERICKS: Yes, your Honor.

12 MR APPEL: We object to that, we want to be heard on that.

13 THE COURT: One thing at a time. I see one case is the  
14 case of the Title Insurance & Trust Company against the  
15 California Development Company.

16 MR FORD: only that portion relating to the McNamara case.

17 THE COURT: You have not confined your question to that.

18 MR FORD: I will ask the witness to read into the record  
19 the minutes of the court of November 25, 1911, or what was  
20 done during the progress of the case of the People versus  
21 J. B. McNamara.

22 MR APPEL: Your Honor, you can easily see whatever occur-  
23 red there in the court room is between Mr McNamara in that  
24 case and anyone else in the case, does not tend to throw  
25 any light upon the fact whether or not an offense was  
26 committed; it does not show -- those are subsequent acts.

1 subsequent things that occurred there, and it does not  
2 in the least tend to show any element of this offense at  
3 all.

4 MR FORD: Counsel have argued with great vehemence, your  
5 Honor --

6 MR APPEL: It doesn't make any difference what we have  
7 argued, it is a question of whether it is competent or  
8 not, that is all; we can raise all kinds of ghosts, your  
9 Honor, and if they want to follow them, they are welcome  
10 to do it, but that does not make evidence competent, and  
11 because they have theories that does not make it competent,  
12 and because the District Attorney says "I want to prove  
13 this fact", that does not make it competent, and that is  
14 the kind of law we have here; we want to show this and we  
15 will show it. The question is, how can anything that was  
16 said in the court room or in the minutes that this man sign  
17 ed in the court room as to what transpired there, does  
18 not tend to prove any element of this case, and that is the  
19 only theory upon which the evidence must be introduced,  
20 does it tend to prove any fact against this defendant.  
21 Now, I submit, your Honor, it does not tend to prove any-  
22 thing --

23 MR FREDERICKS: I submit, if your Honor please --

24 THE COURT: One at a time.

25 MR FREDERICKS: I thought he was through.

26 MR APPEL: -- ( continuing.) It may become material

1 in rebuttal on some matter that we want to show, but at  
2 this time it does not become material.

3 MR FREDERICKS: I would like to state -- I am not making  
4 an argument --

5 THE COURT: Objection overruled.

6 MR APPEL: We take an exception. We object to their being  
7 read on the ground no foundation has been laid for the  
8 introduction of the minutes referred to by the witness.

9 THE COURT: The objection upon that ground is sustained.

10 MR FORD: He testified the other day he was the clerk.

11 THE COURT: I don't know whether he has the same book  
12 there now or not.

13 MR FORD: Were you the clerk on that day, November 25?

14 A Yes sir.

15 Q All right. Did you write these minutes, or were they  
16 written under your directions? A They were under my di-  
17 rections.

18 Q And you know them to be correct? A Yes sir.

19 Q And they are the official records of the proceedings  
20 of Judge Bordwell's court, being department 9 of the  
21 Superior Court, state of California, in and for the county  
22 of Los Angeles, on the 25 day of November, 1911, in the  
23 case of the People versus J. B. McNamara, charged with  
24 the crime of murder under indictment No.6939; is that cor-  
25 rect? A They are.

26 Q Now, will you read that to the jury?

1 MR APPEL: We object to that and ask permission to examine  
2 the witness to base our objection.

3 THE COURT: You may do so.

4 MR APPEL: You wrote those statements contained in that  
5 book? A I did -- pardon me --

6 Q Is that the original entry? A Pardon me; that is  
7 taken from the rough -- when the minutes are taken up --

8 Q Who made the rough minutes? A I did.

9 Q Where are the rough minutes? A I presume they are  
10 in the desk.

11 Q They are not the original entry? A They are original  
12 entries.

13 Q This is a copy of the original, and you know what  
14 original means, don't you? A It is a copy of the origi-  
15 nal, I think.

16 MR APPEL: Now, we are objecting to the reading of the  
17 minutes. A This is the posting of the minutes --

18 MR APPEL: Hearsay in this case; incompetent, irrelevant  
19 and immaterial. We ask permission to examine them for the  
20 purpose of basing any objection we may have to any particu-  
21 lar portion thereof -- we are now objecting to them gen-  
22 erally and to the whole of them and we have a right to ob-  
23 ject to any particular portions of them and we cannot ob-  
24 ject to them without having the minutes in our possession  
25 for the time being.

26 MR FORD: The rough papers which you prepared are notes



1 ~~taken~~ during the day? A During the day.

2 Q Is this the official record? A After it is read  
3 back I pay no attention --

4 MR APPEL: Whether it is the official record, that is a  
5 matter of law.

6 THE COURT: What is it you want to examine?

7 MR APPEL: We want to examine what he is going to read.

8 THE COURT: The paper of the rough minutes?

9 MR APPEL: Whatever he is going to read.

10 THE COURT: Certainly, you have a right to examine it.

11 MR FORD: I suggest to counsel we are going to offer the  
12 proceedings of each day up until the 1st day of December,  
13 and I would ask that they look it over tonight, so that  
14 if there is any dispute as to the facts therein related,  
15 it will give them an opportunity.

16 THE COURT: Would you like the court to adjourn at this  
17 time? It is 5 minutes to 5 -- so that you can have an  
18 opportunity over night to examine them?

19 MR APPEL: Just as well.

20 THE COURT: All right. The matter will come up the first  
21 thing in the morning.

22 (Jury admonished. )

23 We will now adjourn until 10 o'clock tomorrow morning.

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