

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.

Clarence Darrow,)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 27

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
X Anton Johannsen,	2121	2139		

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B. N. Smith,
Official Reporter.

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1s 1 SATURDAY, JUNE 15, 1912; 10 o'clock A.M.

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

4 -----
5 THE COURT. Before we go into this subject this morning,
6 lest I may convey some wrong impression to the district
7 attorney in regard to Mr. Rogers's call on me yesterday
8 morning, I want to say that the subject of the conversation
9 was confined solely to his embarrassed position, and not
10 in any sense in reference to any solution of the problem,
11 nor was there even a suggestion, and as far as that feature
12 of it is concerned I was quite as much surprised after the
13 offered solution yesterday of counsel for the prosecution.
14 I want to say this lest it may be assumed the entire matter
15 was gone into in the morning as it was in the afternoon,
16 which was not the case, and with that knowledge in my mind
17 I still think there was no impropriety. You wish to be
18 heard on the matter, Captain Fredericks?

19 MR. FREDERICKS. No, your Honor, if the ruling of the court
20 is clear now so we know where we stand on this new matter,
21 how far it can go--we felt in the argument with counsel
22 yesterday that his position was not logical and the court
23 must have some basis for ruling, some basis we were not
24 able to see, and did not understand, and we felt it was so
25 illogical--

26 THE COURT. That is the reason I made the explanation.

1 There is nothing in the mind of the court or within the
2 knowledge of the court except what was presented here, and
3 nothing was presented to me at any time except in open
4 court yesterday afternoon, except Mr. Rogers's apology, as
5 it were, for his continued absence from the court room, and
6 the embarrassment he labored under, as stated, but the method
7 of procedure, the plan that he had in view was not hinted at
8 or suggested until yesterday afternoon.

9 MR. FREDERICKS I didn't mean to criticise the court--
10 THE COURT. It is only fair you should know exactly what
11 happened, and if there is any misunderstanding--

12 MR. FREDERICKS. Of course, we don't agree with the right
13 of the court to take the step that the court has taken, but
14 we bow to the will of the court, perhaps not very gracefully
15 but nevertheless we bow, and we want to have the matter
16 surrounded, if possible, now, so we know how far counsel
17 can go. As we understand, the court has permitted him
18 to put on two witnesses, Mr. Johannsen and Mr. Tveitmoe.

19 THE COURT. To inquire of them only as to such matters as
20 may necessarily explain Mr. Rogers's personal connection
21 with the movement or the automobile trip or the different
22 trips that--

23 MR. FREDERICKS. We understand that they are going, as Mr.
24 Rogers says, to testify that Mr. Darrow had nothing to do
25 with this, and that, of course, makes the issue, and with
26 that idea in mind --

1 THE COURT. It is a very unusual order of proof, I grant
2 you.

3 MR. FREDERICKS: We have no objection--we have objected--

4 THE COURT. That is all right, but under the circumstances
5 I think it is a privilege--

6 MR. FREDERICKS. Of course, we suppose counsel for the defense
7 will stipulate that he severed his connection with the
8 Merchants & Manufacturers Association in December, 1910, and
9 he made his financial settlement with them as to fees on
10 the 13th day of January, 1911, and that Mrs. Caplan was
11 taken away, as the testimony shows, some--I think the 31st
12 of July, about 7 months afterwards.

13 MR. ROGERS. I haven't the dates in mind exactly, but
14 counsel is approximately correct, sufficiently so, so I do
15 not differ with him at all, if he says that is true.

16 MR. FREDERICKS. We are prepared to proceed.

17 THE COURT. All right.

18 MR. ROGERS. Your Honor will, under the circumstances,
19 excuse me from the court room.
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1 A. JOHANNSEN, a witness called on behalf
2 of the defense, being first duly sworn, testified as fol-
3 lows:

4 DIRECT EXAMINATION

5 MR DARROW: What is your full name? A Anton Johannsen.

6 Q Where do you live? A Courte Madero, Marine County,
7 California.

8 Q Are you acquainted with me, the defendant in this
9 case? A Yes sir.

10 MR FREDERICKS: I suppose the record shows the examination
11 is by Mr Darrow personally?

12 THE COURT: Yes, the record will so show.

13 MR DARROW: You know Mrs Flora Caplan, do you not? A I
14 do.

15 Q How long have you known her? A About four or five
16 years.

17 Q Before I get to that, did you occupy any position with
18 the Building Trades Council of California? A I am
19 general organizer for the State Building Trades of Cal-
20 ifornia.

21 Q That is an organization which includes the whole state,
22 does it? A Yes.

23 Q And who is the secretary-Treasurer of it? A O. A.
24 Tveitmoe.

25 Q How long have you been general organizer? A Three
26 years last March.

1 Q You were subpoenaed down at Los Angeles to appear be-
2 fore the grand jury during their investigation of the
3 Times matter, were you not? A I was.

4 Q And were you before the grand jury a number of times?

5 A I was.

6 Q Was Mrs Caplan subpoenaed here? A Mr Caplan?

7 Q Mrs Caplan. A She was.

8 Q Were you here at the same time she was? A I was.

9 Q You know about how many times she was before the
10 grand jury? A So far as I can remember she was before
11 the grand jury either two or three times, twice, to my
12 positive knowledge, perhaps three times.

13 Q Who was representing the prosecution in that matter?

14 A Earl Rogers.

15 Q You knew Mr's Caplan afterwards in San Francisco, did
16 you not? A I did.

17 Q How often did you see her? A At what time do you
18 mean with reference to?

19 Q Well, from the time that she was here before the grand
20 jury until July, say, following, six months? A I seen
21 her perhaps 20 or 30 times, I don't know.

22 Q Did she have a family? A She had two small children.

23 Q How old, about? A I think one is four and the other
24 one six.

25 Q One is four and the other -- a girl? A A boy and a
26 girl.

1 Q What was her business? A She was a buttonhole maker,
2 whatever that is.

3 Q In a clothing shop of some kind? A Yes, in tailor
4 shops.

5 Q Had she been for long? A That was her business, she
6 had worked for that off and on, I presume, for many years.

7 Q About how old a woman is she? A Oh, I don't know
8 exactly; I would judge about 33 or 34.

9 Q Did she talk with you at different times in relation
10 to her affairs? A She did.

11 Q Where did she live in San Francisco? A I don't rem-
12 ember the names of the streets, but she had lived in dif-
13 ferent places.

14 Q How often would she move? A As often as the Burns
15 people compelled her to.

16 Q Do you know about how often that was? A Yes, moved,
17 so far as I know, five or six or seven times.

18 Q During how long a period of time? A Oh, from the mid-
19 dle of November, 1910, up until the time that she left.

20 Q Had you talked with her at various times about her
21 having some protection against the Burns people? A I did.

22 Q How was it as to her being able to pursue her trade
23 there in San Francisco? A She was not able to pursue her
24 trade -- she was for a while, but they abused her until she
25 could not hold a position.

26 Q Did she have any means excepting what she earned and

1 what was given her by some of her friends? A So far as
2 I have any knowledge she had three or four hundred dollars
3 that they received from insurance when she first came down
4 here.

5 Q When she came to Los Angeles? A Yes.

6 Q And do you know what became of that? A Oh, I guess--

7 Q Whether it was used up for the family or what? A It
8 was used up in the family affairs, I guess.

9 Q And was she helped by her friends after that? A She
10 was.

11 Q When she was down here before the grand jury, do you
12 know whether she was thrown into jail or not? A No, she
13 was not thrown into jail, that would have been a relief.

14 Q Where was she stopping? A At the Chapman Hotel.

15 Q What was her treatment there by the Burns People and
16 others?

17 Q Well, there was no particular indication except that
18 the detectives were at the doorsteps all the time watching
19 every move and following her every place she went.

20 Q Did they follow her through the city generally?

21 A Yes, every place.

22 Q About how many of these people did you see around there?

23 A They had four at the Chapman hotel, two worked
24 nights, and two worked days.

3p 1 Q Did she have her little children there? A No, she had
2 her children in San Francisco.

3 Q Do you know where they were staying? A They were
4 staying with some friends of her's, I don,t remember their
5 names.

6 Q And how long, about, was she down here with the Burns
7 detective? A She was here about two weeks, a little over

8 Q Do you know how she was handled here in this city at that
9 time by the representatives of the prosecution and counsel?

10 A Well, I wasn't there, I know only what she told me.

11 Q When did she tell you this? A When she came from the
12 grand jury.

13 Q And did you at different times talk with her about it
14 before she went away from the state? A I did.

15 Q What did you learn about it?

16 MR. FREDERICKS. This "it", I suppose, refers to the grand
17 jury occasion in November, 1910, is that the time?

18 MR. DARROW. The time she was here in Los Angeles.

19 MR. FORD. November, 1910.

20 A Yes.

21 BY MR. DARROW. Q It all led up to the departure--

22 MR. FORD. We do not think the counsel need to testify.

23 THE COURT. I think the time ought to be fixed, Mr. Darrow.

24 MR. DARROW. Very well, your Honor. I was not sure of the
25 time.

26 Q When was this? A This was in November, 1910.

1 Q That is the time to which I referred.

2 Q Now, state what she informed you as to that before you
3 went away, and before she went with you.

4 MR. FREDERICKS. That is what Mrs. Caplan told this witness.

5 MR. DARROW. Leading up to the cause for her getting some
6 peace of mind outside of California.

7 THE COURT. There are no objections.

8 MR. FREDERICKS. No objections, go ahead.

9 MR. DARROW. Your grins might indicate an objection to the
10 testimony.

11 MR. FORD. I think it is clearly hearsy.

12 THE COURT. There is no objection.

13 MR. FORD. I was not saying a word, but I objecte to being
14 talked about grinning.

15 MR. APPEL. Nobody referred to you.

16 THE COURT. Gentlemen, there is only one objection to be
17 considered by this court and that is in the form of an ob-
18 jection.

19 BY MR. DARROW. Q Go ahead and state it.

20 A She told me that Earl Rogers had, in his examination,
21 referred in every manner that he was capable of, questioning
22 her character, her veracity, her integrity, her marriage
23 relations, her relations with men, for the purpose of
24 humiliating her.

25 Q Was that before the grand jury or outside?

26 A In the grand jury.

1 Q Did she say anything about whether she had been pro-
2 tected in the grand jury room?

3 MR. FREDERICKS. That is objected to, may it please the
4 court, on the ground that everything that was said in the
5 grand jury room was taken down and written up by a shorthand
6 reporter, written up by the reporter in typewriting, and a
7 copy of what transpired and what questions were asked of Mrs
8 Caplan at that time were furnished Mr. Darrow, and it is the
9 best evidence.

10 MR. DARROW. It does not appear that is true, consequently
11 it wouldn't make any difference whether it was true or not.

12 MR. FREDERICKS. We withdraw the objection.

13 THE COURT. The objection is withdrawn. Answer the
14 question.

15 Q What is the question? (Question read.) She had no
16 protection in the grand jury room any more than the rest
17 of us did.

18 Q You were in there a good many times yourself? A Yes,
19 I got the same deal.

20 Q Now, did you go back to San Francisco at the same time
21 she did? A No, I did not.

22 Q Before or after? A I went back afterwards.

23 Q How soon after you got back did you see her or hear from
24 her again? A Oh, I came in contact with her very occasion-
25 ally.

26 Q Did she apply to your organization for aid? A No, she

1 applied to me and some of her friends.

2 Q Did you aid her from time to time? A I did.

3 MR. FREDERICKS. We object to that as immaterial.

4 THE COURT. Objection overruled.

5 A I did.

6 BY MR. DARROW. Q By this time you knew where she was
7 living, didn't you? A I did.

8 Q Now, what was done towards intimidating her in San Fran-
9 cisco, or what did she relate to you about that, state what
10 you know and what she told you?

11 MR. FREDERICKS. We object to that as no time specified.

12 Q After she left here?

13 MR. FREDERICKS. That is objected to as too indefinite,
14 that indicates the time from then up to the present time.

15 THE COURT. I think it should be made a little more definite.

16 BY MR. DARROW. Q Well, up to July 1st.

17 MR. FREDERICKS. What year? The same objection, not defi-
18 nite.

19 THE COURT. Can you make the question more definite?

20 MR. DARROW. Yes, I think I can. Q About when did she
21 come back to San Francisco? A She went back to San Fran-
22 cisco, I think, about along the middle of November or the
23 latter part of November, about the third week in November,
24 I think.

25 Q Know whether she went to work again as a button hole
26 maker? A Yes, she got a job.

1 Q Do you know about how many different places she work-
2 ed between that time and the coming July? A Well, there
3 was only one place she could work -- or two places.

4 Q Now, the first -- dividing it up, the first two or
5 three months, January and February -- December, January
6 and February, what information have you or what did she
7 say to you about the way she was treated and threatened
8 and humiliated by the Burns men and the prosecution in
9 that case?

10 MR FREDERICKS: We think that is hearsay, pure and simple.

11 MR DARROW: The question as to the motive.

12 THE COURT: Any objection?

13 MR FREDERICKS: Yes. Objected to on that ground.

14 THE COURT: Objection overruled.

15 A She came to me and told me that detectives were follow-
16 ing her every place she went, and had actually went so far
17 as to grab hold of her on the street, and on one particular
18 occasion she had found it necessary to slap one of them
19 in the face. I wouldn't believe they went that far, so I
20 went to her home with her, and seen with my own eyes,
21 seen the detectives. They got on the street cars and
22 off the cars, into the restaurant, any place she went;
23 they hounded her and followed her, threatened and bulldozed
24 her.

25 MR FREDERICKS: I move to strike the answer out on the
26 ground that it is indefinite as to time. Like the witness

1 to specify at what time these occurrences occurred.

2 THE COURT: Can you tell what time those occurrences oc-
3 curred? A I can't remember the exact date.

4 THE COURT: Approximately? A Between the 1st of
5 December and the 1st of May.

6 MR DARROW: Do you know how often she moved during that
7 time, about? A Well, she moved five or six times to my
8 knowledge.

9 Q Was that up to the 1st of July? A Up until about
10 the 1st of June, I guess.

11 Q And what did she say -- what do you know as to why
12 she moved? A She asked me on several different occasions
13 as to what she should do in order to avoid that disagree-
14 able advertising. I advised her to leave the state and told
15 her that I would go with her as soon as an occasion pre-
16 sented itself.

17 Q And what did she say about the cause of her moving
18 from place to place? A Well, she was rooming in a place,
19 those detectives they went so far as went right in her room
20 in the night. They annoyed her until nobody would permit
21 her to room in a rooming house; they didn't like the ad-
22 vertising or annoyance.

23 Q What did she say as to whether they searched her room?

24 A Well, I don't know whether they searched her room or
25 not.

26 Q How much space did she have, one room or more? A Just

1 one room.

2 Q Whereabouts? A It was up around McAllister, between
3 McAllister -- on McAllister, around in that neighborhood,
4 or near Fillmore; I forgot just exactly the name of the
5 street. I could find it.

6 Q We don't know. That would be like Wilshire Boule-
7 vard -- A It is between Sutter and Polk and Fillmore,
8 in that neighborhood.

9 Q Lots of working people? A No, it isn't a bad loca-
10 tion.

11 Q You know about what she paid for her room rent there?

12 A I don't know exactly. I should judge about \$2 a week.

13 Q Now, she had her two little children with her during
14 this time? A No, she had the children with some girls;
15 I don't know their names. They called them the French
16 girls. They were taking care of her children. She was
17 paying them \$25 a month to take care of the children.

18 Q What can you say as to her employment or her ability
19 to hold a job under those circumstances? A She said her
20 employer had been very kind to her, but had advised her
21 that it was very disagreeable, this annoyance.

22 Q What did she say about these individuals or detectives
23 coming to her place of work, following her there?

24 MR FREDERICKS: Objected to upon the ground it is hearsay.

25 THE COURT: Overruled.

26 A She said at first they tried to coax her and plead with

1 her, offered her bribes and offered her money consideration.
2 Told her that the unions -- that organized labor was
3 simply making a tool of her husband. He came back he
4 would not be prosecuted, and they could go to a foreign
5 country and live with ease ever after, when that would not
6 work they bulldozed her.

7 Q How long did this continue? A Continued up until
8 the time she served notice on the chief of police of
9 San Francisco unless she got protection from this annoy-
10 ance of the detectives, she would have to leave the state.

11 Q Read that answer.

12 MR FREDERICKS: I think it was very plain.

13 THE COURT: Read it. (Last question read by the reporter.)
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1 MR. FREDERICKS. I suppose this is not admitted, your Honor,
2 showing the truth of the facts that she did all these things
3 or that all these things happened?

4 MR. APPEL. That is a matter of argument, your Honor.

5 MR. FREDERICKS. It is pure hearsay.

6 MR. APPEL. It is just as good evidence-

7 MR. FREDERICKS. I withdraw everything I have said.

8 MR. APPEL. Then don't argue it.

9 MR. FREDERICKS. I take it all back, every word of it.

10 MR. DARROW. Q You know about when it was she applied
11 for protection to the chief of police? A I couldn't say
12 positively, but I should judge it was from--must have been
13 between the middle of May and the 1st of July, 1911.

14 Q Do you know anything about that yourself? A No, only
15 through another party.

16 Q Who was the chief of police at that time? A I don't
17 remember who was the chief of police. They had so many
18 chiefs of police I couldn't keep tab of them.

19 Q Do you know about when she went out into the country?

20 A Yes.

21 Q About when was that? A She went out there about the
22 fore part of July, 1911.

23 Q What did she say about going to the country? A She
24 wanted to go camping with some other people that were going
25 out there.

26 Q Did she have any talk with you in reference to her going?

1 A Yes .

2 Q Any money given her? A I don't remember whether I gave
3 her money that time or not.

4 Q By her friends or others? A I don't know at that par-
5 ticular time or not.

6 Q Did you know where she was in the country? A Well, I
7 could not find the place myself. I know where the camp was,
8 approximately .

9 Q Where was it, approximately? A Well, it was about half
10 a mile from La Honda right off of the county road or what-
11 ever road it is, I don't know the name of that road.

12 Q In a sort of a summer resort there? A There is a regular
13 camp there that certain people go to every year, that par-
14 ticular camp.

15 Q Is it mountainous country? A Oh, yes.

16 Q She went about the 1st of July, you say? A Well, I
17 can't say exactly, but somewhere between the 1st and 15th
18 of July .

19 Q What had she said to you about going where she could make
20 a living or get out of the way of these people who were
21 following her? A She simply says she would like to be in a
22 a place where she could work at her trade without being
23 interferred with and have a little enjoyment out of life and
24 not be hounded every place she went .

25 Q And what had you said to her about that? A I told her
26 to gett away from those Burns men as soon as she got ready to,

1 told her I would help her .

2 Q Did the sleuths follow her up to the mountains, do you
3 know? A No, they lost track of her, I guess .

4 Q You don't know whether they were up there or not?

5 A Not that I know of.

6 Q How long before this time had you promised her to help
7 her get away from these people? A About the middle of May .

8 Q Any chance to get away in San Francisco, as far as your
9 judgement went? A Not without them fellow seeing you un-
10 less you can do it in a machine .

11 Q Were you ever up to the camp before this night you went
12 away with her? A No, I never was up there before that
13 night .

14 Q You say you never was there before? A I was there once
15 yes, I went there to get her .

16 Q How long before? A Before what?

17 Q That night or day when you took her away? A I was
18 never there before that day .

19 Q That is what I understood, Mr. Appel understood different.
20 YOU didn't know the directions? A No .

21 Q You had somebody show you the directions? A Sure .

22 Q Now, what did you go up there for? A Went up there
23 to get her, get her away from those Burns men .

24 Q Did you consult with anybody before you went, any lawyers?

25 A I should say not, I never consult lawyers on those
26 matters .

1 Q How long before you went had you made up your mind to go
2 at that time? A Well, I couldn't go until I got some op-
3 portunity, and I was requested to attend the two conven-
4 tions in the east. I had to go east, so I took advantage
5 of that opportunity.

p 6 Q Did you consult with me about it? A I did not.

7 Q If any? A I did not.

8 Q Or anybody connected with the defense of the McNamara case?

9 A Not with any attorneys.

10 Q Did you ever give me or any attorney connected with the
11 defense any information you were going to do it? A No, sir.

12 Q And were you requested by me or any member of the defense?

13 A No, sir.

14 Q Any of the attorneys? A No, sir.

15 Q And did I have any knowledge of it whatever? A Not
16 that I know of.

17 Q How long before you started had you made up your mind
18 to go at this time? A About a week, I guess.

19 Q Had you communicated with me in any way about it? A No.

20 Q Or sent me any word about it? A I did not.

21 Q Or did I at any time send you any word, directly or in-
22 directly, or did you get any word from me about it? A No.

23 Q Or any other lawyers connected with the defense? A No.

24 Q Well, was your purpose at any time communicated to me?

25 A No.

26 Q Did I know anything about it? A Not that I know of.

1 Q Do you know any way I could have known about it? A Not
2 unless I told you.

3 Q That is what I am getting at. You didn't send word
4 to Mr. William J. Burns or any of his agents, so that it
5 should be communicated to me? A No, I was not working for
6 him.

7 Q Well, what did you do when you went down to camp, then
8 what? A Do you want me to tell that story?

9 Q Yes. A Well, that man that was on the stand here the
10 other day told essentially the facts. If you want it
11 repeated I can tell you about the same story.

12 Q No, you don't need to repeat it. Were there any other
13 facts in connection with it? A Except that I told him
14 why this woman was leaving the state.

15 Q What did you tell him? A I told him she had been
16 hounded and abused and interfered with by the Burns
17 Detective agents until she was no longer able to reside
18 anywheres unless she could reside in a place unbeknown to
19 them.

20 Q Did you call the attention of the chauffeur to that mat-
21 ter since he went on the stand? A I talked to him about
22 it afterwards.

23 Q Did he recall it--is he here in court--
24 THE COURT. He is available if you want him.

25 MR. FREDERICKS. We object to that.as --

26 THE COURT. Mr. Darrow made an inquiry as to the witness.

1 MR. DARROW. When he talked to the chauffeur about it,
2 since he went on the stand, whether the chauffeur remembered
3 the conversation. A He said he remembered it since
4 I called his attention to it.

5 MR. FREDERICKS. We move to strike out the answer.

6 THE COURT. There is an objection to that and the objec-
7 tion is sustained. The chauffeur is available.

8 MR. FREDERICKS. We move to strike out the answer.

9 THE COURT. Strike it out. The chauffeur is available.

10 BY MR. DARROW. Q Where did Mrs. Caplan go? A Where did
11 she go?

12 Q Yes. A She went to Chicago.

13 Q Did you go to Chicago? A I did.

14 Q Do you know whether she had previously lived in Chicago?

15 A She had.

16 Q Whether she had worked at her trade in Chicago? A She
17 had.

18 Q And do you know about how long she had lived in Chicago?

19 A I don't know how long she had lived there, perhaps a
20 couple of years; I don't know exactly.

21 Q Now, what was your purpose, state it generally, in help-
22 ing her out of the state of California? A I felt--

23 THE COURT. Hasn't he answered that fully?

24 MR. DARROW. I guess he did. Q Did you give her any
25 money? A Yes, I gave her some money.

26 Q And where did you get it? A Where did I get it?

1 Q Yes, whether it came from the Buildings Trades Council--

2 A Where I get everything else.

3 Q If it was your own money, I wont go into that.

4 THE COURT. The witness has not answered.

5 MR. FREDERICKS. He has not said it was his money.

6 BY MR. DARROW. Q Did you get it from the Buildings Trades
7 Council or the unions? A I did.

8 MR. FREDERICKS. That is not leading at all.

9 MR. DARROW. Q Did you get any money from me or from any
10 of the attorneys for the defense? A I did not. You were
11 too stingy.

12 Q What is that? A I said you were too stingy.

13 Q Did you ask for any from us?

14 MR. FREDERICKS. We object to that as indefinite.

15 THE COURT. Objection overruled.

16 BY MR. DARROW. Q Did you ask me for any for any such pur-
17 pose? A No.

18 Q Your purpose in going, as far as you were concerned at
19 that time, was to attend a convention? A I went to the
20 Amalgamated Sheet Metal Workers' International Convention
21 and also to the Firemen's International Convention in Mil-
22 waukee.

23 MR. DARROW. Cross-examine.

24
25 CROSS-EXAMINATION.

26 BY MR. FREDERICKS. Q You say the Burns people had compelled

1 her to move from time to time and that they had told her
2 that they didn't want her husband or her but if she would
3 tell them where the husband was they would let them go off
4 into some foreign country and live alone, and so forth,
5 unmolested. Do you know whether--

6 THE COURT. I didn't get your answer.

7 MR. FREDERICKS. He nodded "Yes".

8 A Yes.

9 THE COURT. The reporter cannot get a nod.

10 BY MR. FREDERICKS. Q Did she tell you who the Burns
11 people were after at that time? A They were after the
12 higher-ups, according to their statements.

13 Q And you were one of them, weren't you? A No, I am just
14 an organizer.

15 Q Just an organizer. They were after one Mat Schmidt,
16 weren't they? A I don't know, I suppose they were.

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1 Q Yes. He was indicted at the same time Caplan was,
2 wasn't he? A Yes.

3 Q They were after him, too, weren't they?, Matt
4 Schmid was a great friend of yours, used to live in your
5 house, didn't he? A No.

6 Q Didn't stop over in your house and used to work for
7 you?

8 MR DARROW: We object to that as immaterial, not cross-
9 examination.

10 MR FREDERICKS: We will show the witness' connection with
11 the defen dant in this case.

12 MR DARROW: It wouldn't make any difference at all. I
13 object to it.

14 MR FRE DERICKS: Oh, yes it will.

15 THE COURT: Objection overruled.

16 MR APPEL: We ask for an exception.

17 A I refuse to answer any question in connection that
18 might interfere with my own indictment.

19 MR FREDERICKS: Are you under indictment? A I am.

20 Q For what? A For being too faithful to labor, I
21 guess.

22 Q And what is the outrageous charge filed against you?

23 MR APPEL: I object to that matter; that facetious manner,
24 I object to this manner of examining the witness.

25 THE COURT: Objection sustained.

26 MR FREDERICKS: Is it any more facetious than the answer?

1 All right.

2 MR APPEL: We object to this sing-song and this tone.

3 MR FREDERICKS: Oh, I can sing it if I want to.

4 MR APPEL: It does not fit him, and it looks very ridicu-
5 lous.

6 MR FREDERICKS: If I want to sing, I will sing it.

7 A It doesn't bother me any, Appel.

8 MR FREDERICKS: What were you indicted for? A On the
9 charge that they make against labor when they cannot find
10 any other charge.

11 Q What was that in particular? A Conspiracy.

12 Q And you also knew you were very strongly suspected of
13 being the man who was behind Matt Schmidt and Caplan and
14 Brice and that you were very strongly suspected of being
15 the man who engineered the blowing up of the Times, didn't
16 you?

17 MR APPEL: I object to that --

18 Q You know that is a fact, don't you?

19 MR APPEL: We object to that as immaterial, assuming the
20 witness knows anyone suspects him of that.

21 MR FREDERICKS: If he doesn't know, he may say no.

22 MR APPEL: Not cross-examination, and if he wants a
23 stipulation we will stipulate with him that he suspi-
24 cions anyone that had anything to do with labor as being
25 implicated in blowing up the Times.

26 MR FREDERICKS: No, we don't want any stipulation.

1 MR APPEL: So far as his suspicions --

2 MR FREDERICKS: I am asking if he knows.

3 A Suspected by whom?

4 MR FREDERICKS: There is a question pending, let us have
5 the ruling on it.

6 THE COURT: Objection overruled.

7 MR APPEL: We except.

8 (Question read.)

9 A Suspected by whom?

10 MR FRED ERICKS: By the duly and properly constituted
11 legal authorities of the state of California?

12 MR APPEL: We object to that, if your Honor please, on the
13 ground it is incompetent, irrelevant and immaterial,
14 that that is no manner of impeaching the witness, that
15 you cannot impeach a witness by what others suspicion him
16 of, and it is in relation to specific acts of other people,
17 specific opinions of other people and you cannot impeach
18 a witness that way, you cannot cross-examine a witness that
19 way under any authorities, coming from the legally consti-
20 tuted authorities of the state of California, or from any-
21 one else who ever read any law; that is not the way to
22 examine any witness to ask the witness what I am thinking,
23 and what I am suspicioning of, who ever heard of any
24 such a thing as that? Before they ought to be legally
25 constituted, they ought to learn some law.

26 A I have no means of knowing what their suspicions were.

1 Q You have not? A They never told me.

2 MR APPEL: Enter an exception there.

3 Q Didn't you tell Mr Sawyer the reporter of the Record
4 in Los Angeles, that you expected to be indicted for
5 the blowing up of the Times?

6 MR APPEL: We object to that as the question is incom-
7 petent, absolutely incompetent, does not contain the ordi-
8 nary provisions of the code.

9 THE COURT: Objection sustained.

10 MR FREDERICKS: All right; I will reframe it and give it
11 the ordinary provisions of the code. Didn't you say to
12 Mr Sawyer here in the city of Los Angeles, in the month
13 of November, 1911, at the time you were down here as a wit-
14 ness before the grand jury, you and Mr Sawyer being alone
15 together, and the further time and place I am not able
16 to specify, that you expected to be indicted for the des-
17 truction of the Times and the murder of the 21 men who
18 were killed there?

19 MR APPEL: We object to that on the ground it is incompe-
20 tent, irrelevant and immaterial for any purpose whatsoever
21 that it does not tend in any manner to contradict or im-
22 peach the witness and upon the further ground that it is
23 collateral and that if the witness testified he didn't do
24 so they would not be permitted to contradict him, therefore,
25 it is immaterial for any purposes whatsoever on cross-
26 examination.

1 THE COURT: Objection overruled.

2 MR APPEL: We except.

3 A What is the question?

4 (Last question read by the reporter.)

5 A No.

6 MR FREDERICKS: Well, make that a little more particular,
7 the time being just after you were in the grand jury room
8 and testified there.

9 MR APPEL: Wait a moment.

10 MR FREDERICKS: Now, having called it to your attention
11 a little further, do you still maintain the same answer?

12 MR APPEL: Wait a moment. We object upon the ground
13 it is incompetent, irrelevant and immaterial, and not cross-
14 examination. If the witness were to answer in the affir-
15 mative, it would not tend to impeach him on any matter tes-
16 tified to by him. It is collateral, therefore, it is not
17 tending to impeach any issue; furthermore, the present ques-
18 tion of the District Attorney contradicts the statement of
19 the District Attorney that he didn't know the particular
20 time and place as he stated in the original question.

21 MR FREDERICKS: I didn't at the original time, but I got
22 it since then.

23 THE COURT: Objection overruled.

24 MR APPEL: Exception.

25 A Just read that question.

26 (Last question read by the reporter.)

1 A I at no time told him anything of the kind.

2 MR FREDERICKS: And you never did in substance, or ef-
3 fect, tell him? A I would like to tell you what I
4 did tell him.

5 Q Well, what did you tell him?

6 MR APPEL: Wait a moment. . We object upon the ground it is
7 hearsay, immaterial and not cross-examination.

8 MR FORD: The witness is entitled to explain his answer.

9 MR APPEL: We are entitled to have him keep his mouth
10 closed up.

11 THE COURT: Objection overruled.

12 MR APPEL: Your explanation to the witness --

13 MR FREDERICKS: Answer the question.

14 A Mr Sawyer approached me in the ante-room of the grand
15 jury and advised me that he was tipped off that the Mer-
16 chants & Manufactur ers Association had a de sire to have
17 me indicted, and I told him that I would not be surprised
18 if I were indicted.

19 Q This charge that you are under indictment for is a
20 charge of transporting dynamite? A It is a political
21 charge, I guess.

22 MR APPEL: Wait a moment. We object upon the ground it
23 is incompetent, irrelevant and immaterial; it is not
24 cross-examination; it doesn't tend to impeach the witness
25 and he cannot be impeached by showing that there is an
26 accusation pending against him for any purpose. He can
only ^{be} impeached by the record of a conviction or by testimony

1 concerning his general reputation, whatever traits are
2 involved in the issue, and that is the code. The code
3 says that a witness cannot be asked those questions; cannot
4 be questioned in any such manner as that. We protest
5 against allowing the District Attorney to violate the
6 plain provisions of the law of this state.

7 THE COURT: Objection overruled.

8 MR APPEL: We take an exception.

9 (Last question and answer read by the reporter.)

10 MR FREDERICKS: Answer the question, is that not correct?

11 A Conspiracy, I think it is, to transport dynamite.

12 Q And you were very much interested yourself, then, in
13 whether or not Mr Caplan -- Mrs Caplan should bring Mr
14 Caplan back into the state and have him tell what he knew
15 about the destruction of the Times, weren't you?

16 MR APPEL: We object to that on the same ground as stated
17 in our last objection and not cross-examination.

18 THE COURT: Objection overruled.

19 MR APPEL: Exception.

20 A I was interestd -- Read that question.

21 (Last question read by the reporter.)

22 A I was not aware that she was going to bring him back
23 into the state.

24 MR FREDERICKS: Did you see Mr Matt Schmidt and Mr J. B.
25 Rice, whose true name is J. B. McNamara and Caplan --

26 A I refuse to answer all those questions.

1 Q In San Francisco just a short time before the times
2 blew up?

3 MR APPEL: Wait a moment. We object upon the ground it
4 is not cross-examination; it is immaterial for any pur-
5 pose whatsoever, and the witness is advised now by me,
6 unless he wants to answer that question, he may do so,
7 and I say here to him, that in my opinion, he don't have
8 to answer any matter that is not addressed to the subject
9 upon which he was speaking, not cross-examination.

10 MR FREDERICKS: He said he has refused to answer. I will
11 pass it for the present and come to something else. You
12 testified before the grand jury down here in Los Angeles
13 shortly after the Times blew up that you had known Matt
14 Schmitt for a great many years, didn't you?

15 MR APPEL: Wait a moment. We object upon the ground that
16 it is incompetent, irrelevant and immaterial for any pur-
17 pose; it is not cross-examination, it doesn't tend to
18 impeach the witness. The question as a question is abso-
19 lutely incompetent; doesn't contain any of the ordinary
20 provisions of the law that such a question as that should
21 contain, that every lawyer ought to know, and upon the
22 further ground that whatever he testified to there is a
23 record of it, and he is entitled to see before he answers
24 the question, and I say to him now that under the provi-
25 sions of the code that he need not answer what his testi-
26 mony was. The record of it was made, and unless that re-

1 cord is first shown to him.

2 THE COURT: Read the question.

3 (Question read by the reporter.)

4 THE COURT: Objection sustained.

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9s 1 MR. FREDERICKS. All right, we will come to that again.

2 Mr. Mat Schmidt worked at your house and lived there for
3 three months a short time prior to the time the Times blew
4 up, didn't he?

5 MR. APPEL. The same objection as last and the same instruc-
6 tion to the witness.

7 THE COURT. Objection overruled.

8 MR. APPEL. We except.

9 A I refuse to answer that.

10 MR. FREDERICKS. He had a work bench down in your place,
11 didn't he?

12 MR. APPEL. The same objection. It is not cross-examination;
13 it is incompetent, irrelevant and immaterial, not addressed
14 to any matter being brought out on direct examination,
15 collateral to any issue here in this case.

16 THE COURT. Objection overruled.

17 MR. APPEL. Exception.

18 A I refuse to answer.

19 Q BY MR. FREDERICKS. And Mr. Schmidt was your best friend,
20 wasn't he, and you so stated to a great many people, did
21 you not?

22 MR. APPEL. We object to that on each and all of the grounds
23 stated and on the further ground that the question is very
24 incompetent.

25 THE COURT. Objection sustained.

26 MR. FREDERICKS. Q Mat Schmidt was one of your very
best friends, wasn't he?

1 MR. APPEL. The same objection.

2 MR. DARROW. Whatever Mr. Schmidt was doesn't have any bearing
3 on his testimony in this case, where the only issue is
4 whether he had relations with me in this matter.

5 THE COURT. Let's not have any misunderstanding here.
6 The court is admitting this line of testimony on the
7 theory that his motives in doing the things he has testified
8 he did are proper subject of cross-examination. These ques-
9 tions all go to motive. If I am wrong about that--

10 MR. APPEL. Not his motives, your Honor, whether he knew
11 Mr. Matt Schmidt or not doesn't in anyway impute any bad
12 motives in doing what he said he did himself, don't concern
13 us. He may have the most trivial motives for doing that;
14 he may have the most justifiable motives or he may have the
15 most wrongful motives, so far as the question here concern-
16 ing his condition.

17 THE COURT. You are quite right, his motives do not concern
18 you, unless the District Attorney under his avowal connects you
19 up.

20 MR. APPEL. Doesn't concern us in the least. The only
21 question to try here is whatever he did at Mr. Darrow's
22 advice, and that is the only reason why we put him on the
23 stand, to show affirmatively that his acts, no matter
24 how corruptly they were, if you wish to put it that way, no
25 matter how wrongful they were, that they were not our acts,
26 that is all there is to it.

1 THE COURT: Well, of course, the District Attorney must
2 have the right to cross-examine upon that.

3 MR. APPEL: Yes.

4 THE COURT: The motives surrounding it.

5 MR. APPEL: There is--

6 THE COURT: Of course, certain questions that the witness
7 has declined to answer on the ground that it might incriminate
8 him, is a proper ground.

9 MR. APPEL: The witness didn't say that, I submit.

10 THE COURT: I so understood him.

11 MR. FREDERICKS: Well, we will ask him: Q You refused
12 to answer these questions on the ground that they will in-
13 criminate you, is that the reason you refused to answer the
14 questions you refused to answer?

15 MR. APPEL: We object upon the ground that he has no right
16 to ask him that, and the witness need not answer that.
17 He has no right to say that anything may or may not in-
18 criminate him, the witness has a right to decline to answer
19 on the ground what is asked of him is immaterial to the
20 issue, immaterial to his cross-examination. The code
21 says you cannot examine a witness in court upon any matter
22 that is not material.

23 THE COURT: You are quite right, you cannot upon immaterial
24 matter.

25 MR. APPEL: Why, to let this man answer whatever answer he
26 would give would tend to incriminate him, if I was on the

1 stand there is no power on earth could make me answer a
2 question of that kind.

3 A What is the difference, anyway?

4 THE COURT. What is the question or is there a question.

5 MR. FREDERICKS. Q You refused to answer these questions
6 on the ground that they would incriminate you, is that it?

7 MR. APPEL. We make the same objection.

8 THE COURT. Objection overruled.

9 MR. APPEL. It is a privilege of the witness himself to
10 state it or not.

11 MR. DARROW. It isn't the right of cross-examination at all;
12 it is a privilege of the witness to claim himself when
13 he wants to.

14 THE COURT. The form of the question, perhaps, as presented
15 is not proper. The witness has declined to answer some
16 questions--

17 MR. FREDERICKS. What is the ruling?
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10s 1 THE COURT. Objection sustained as to the form of the ques-
2 tion.

3 MR. FREDERICKS. Upon what ground do you refuse to answer
4 the questions that I have asked of you to which you have
5 replied, "I refuse to answer"?

6 MR. APPEL. We object upon the ground it is not competent,
7 relevant or material, and upon the ground the matters and
8 things asked of him which the witness has refused to answer,
9 has no bearing on the subject of direct examination and
10 irrelevant and immaterial for any purpose whatsoever, and the
11 witness has already testified in reference thereto.

12 THE COURT. Objection overruled.

13 MR. APPEL. Except.

14 A What is the question.

15 (Last question read by the reporter.)

16 A Upon the grounds that the District Attorney of the
17 State of California is cooperating with the District Attor-
18 ney of the Federal Government for the purpose of persecuting
19 our people.

20 MR. FREDERICKS. That is the ground you refuse on, is it?

21 A That is the ground.

22 Q All right.

23 THE COURT. Just a moment, Mr. Johannsen; this court will not
24 participate in any attempt to persecute either you or your
25 people, and will not knowingly permit any persecution of
26 either you or your people in this court, and will not re-

1 quite you to answer any questions that might be deemed
2 as a persecution.

3 MR. FREDERICKS. Q Now, Mr. Matt Schmidt, I will ask you if
4 you did not testify --

5 MR. APPEL. Wait a moment--the witness has already
6 directed to your Honor-- .

7 A He is talking to Mr. Schmidt.

8 MR. APPEL. The witness has already indicated to your Honor
9 that they have an indictment there pending against him--

10 THE COURT. yes--

11 MR. APPEL. (Continuing)--in the United States Court. The
12 district Attorney, Mr. Lawler, who is none of the gentlemen
13 in charge of those prosecutions, a very able gentleman and
14 a very wise selection for that purpose, is here.

15 MR. FREDERICKS. Yes, sir .

16 MR. APPEL. He has a right to be here, your Honor, but this
17 witness has a right to defend himself from any means--any
18 unfair means .

19 MR. FREDERICKS. What is there before the court?

20 MR. APPEL. The District Attorney here is trying to drag
21 from this man any information that might be used in the pro-
22 secution, and we have a right to advise him that he need not
23 make any statements here that may be used against him, and
24 because of your Honor's position in that regard we appeal
25 to your Honor not to allow the cross-examination that might
26 bring out matters that may be used against him here.

1 MR. FREDERICKS' The court says he wont be unfair to him.
2 Now, I would like every once in a while to get a little
3 testimony in, with all this speechifying, because I realize
4 this jury is going to find a verdict on the testimony.

5 Q Now, Mr. Johannsen, when you were before the grand jury
6 down here in November, 1910, in which the subje^dt of the
7 explosion of the Times was being investigated, I will ask
8 you if you were not asked the following questions, to which
9 you made the following answers, found on page 814 of the
10 transcript at that occasion?

11 MR. APPEL. Wait a moment--we object to his asking any ques-
12 tion from the transcript unless--

13 THE COURT. Objection sustained.

14 MR. APPEL. Unless counsel has a right to see it.

15 MR. FREDERICKS. You want to see it?

16 MR. APPEL. The witness wants to see it.

17 A I don't care to see it.

18 MR. APPEL. Let us see it.

19 MR. FREDERICKS' There it is.

20 THE COURT. Gentlemen of the jury, bearing in mind your
21 former admonition we will take a recess for five minutes.

P 22 (After recess. Jury returned to court room.)

23 A. J O H A N N S E N,

24 on the stand for further cross-examination testified as
25 follows:

26 THE COURT. The parties are present. You may proceed.

CROSS-EXAMINATION (Resumed)

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2 BY MR. Fredericks. Q Mr. Johannsen, at the time that I
3 referred to in my question before the recess, the place and
4 under those circumstances, having shown you and counsel for
5 the defense the transcript, I will ask you if you didn't
6 testify as follows:

7 "Q Well, you knew Schmidt too, didn't you? A What
8 Schmidt have you reference to? Q M. A. Schmidt, sometimes
9 called Schmidtie, and sometimes known as Schmidie. A I
10 knew a man by the name of M. A. Schmidt. Q Where did
11 you first meet him? A In Chicago. Q A member of the
12 same union with you? A Yes, a member of the same union.
13 Q He was business agent too, wasn't he? A No, he was
14 assistant business agent for a couple of months. Q He
15 was a friend of yours, wasn't he? A Yes. Q How long
16 has he been a friend of yours? A Six or seven years.
17 Q Commencing in Chicago? A I met him in Chicago. Q How
18 did you come to meet him there? A I met him in the union
19 meetings there." Did you so testify?
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1 MR APPEL: We object to that on the ground it is incompe-
2 tent, irrelevant and immaterial; does not tend to impeach
3 any of his testimony; he has not answered anything on
4 cross-examination contrary to the statement therein
5 made or in any way therein contradicted the statement
6 therein made, therefore, what he testified to becomes
7 immaterial; the only way you can call the attention of
8 the witness here to a statement he made at some other
9 time and place is if he made a statement in court that is
10 at variance with something he said somewhere else than in
11 court, but where he has made any statement either affirm-
12 ing or denying a fact, the fact that he made the statement
13 somewhere else becomes hearsay and does not tend to con-
14 tradict him.

15 MR FREDERICKS: This witness took the stand and refused
16 to testify when I asked him about his friendship to this
17 man Schmidt, and now I ask him if he didn't testify be-
18 fore the grand jury that he was his friend.

19 THE COURT: Objection overruled.

20 MR APPEL: We except.

21 A I refuse to answer.

22 THE COURT: On what ground? A On the ground I don't
23 propose to repeat my testimony in court here that I re-
24 peated before the grand jury, because it involves me per-
25 sonally.

26 MR FRED ERICKS: All right. It involves you personally.

1 All right. Now, Mr Johannsen, Mr Darrow and you were very
2 closely associated in the defense -- in preparing the de-
3 fense in the case of the People versus McNamara and
4 Schmidt, weren't you? A Well, if you will tell me what
5 you mean by "closely associated" I can answer it.

6 Q Well, make a try at it and we can see how near you
7 get to it.

8 THE COURT: The witness has stated he doesn't understand
9 the question with sufficient clearness to answer, and I
10 think you better make it clearer.

11 MR FREDERICKS: All right. You knew Mr Darrow, of course,
12 in the summer of 1911, the summer that Mr Caplan was taken
13 away, and had known him for sometime? A Yes, I had
14 known him.

15 Q How long? A By general reputation is all, not per-
16 sonally.

17 Q Now, very well. I say you knew him by general repu-
18 tation. But you knew him also personally here along
19 about that time? A Yes.

20 Q When did you first meet him here in California, in
21 the summer of that year, when he was here preparing the
22 defense of the McNamaras? A I think it was in June.

23 Q In June. All right. Where? A In the Alexandria
24 Hotel.

25 Q And you used to meet him very often on every time you
26 came to Los Angeles, didn't you? A Every time I came

1 to Los Angeles?

2 Q Yes. A Yes, I guess I did.

3 Q And every time he went to San Francisco you met him
4 also? A No.

5 Q Didn't you, if you were there in San Francisco when
6 he was there, you met him, didn't you? A Not necessa-
7 rily.

8 Q Well, quite often, didn't you? A I met him once
9 or twice up there, I guess.

10 Q And you used to talk with him a great deal about the
11 witnesses in the case that was being prepared, didn't you?

12 A I don't know what you mean by "a great deal".

13 Q Well, some, then; we will see how much. A I didn't
14 talk much to him about the witnesses.

15 Q You were helping him prepare the defense in the case
16 of the People versus McNamara in your field of action,
17 weren't you? A No. I understood that Davis and some other
18 lawyers were helping him.

19 Q I know, you are not a lawyer, but you were helping him
20 in other ways, weren't you? A Not --

21 Q When did you first learn Flora Caplan had been sub-
22 poenaed? A When I went to the camp after her.

23 Q Didn't know it before that? A No sir.

24 Q How did it come you got there just three days after
25 she was subpoenaed to take her away? A I got there soon-
26 er than that.

1 Q How much sooner? A I got there the next day.

2 Q Did you get a telephone or telegram from her or any-
3 body at all telling you? A No.

4 Q You didn't know she was subpoenaed when you went
5 there? A No sir.

6 Q How do you account for the fact you got there the next
7 day after Flora Chaplan was subpoenaed by the state and
8 took her out of the state? A How do I account for
9 it?

10 Q Yes. A It was about a week before my time due
11 in Chicago, and I had to leave and she had requested
12 three or four weeks previous to that, perhaps 5 or 6
13 weeks to assist her to get away from the Burns men and I
14 went out there and told her I was now in position to give
15 her that assistance.

16 Q She had not seen any Burns men, had she, down there at
17 the camp for a month? A I don't think so.

18 Q As a matter of fact, she had not seen any Burns men
19 or talked to any Burns men? A She talked to your people
20 and that is the same thing.

21 Q Call them my people if you want to. She had not seen
22 or talked to any detectives after the filing of the first
23 indictment against Schmidt and Caplan, Price and others;
24 that was in December, 1910, wasn't it? A She had not seen
25 any between that time?

26 Q Yes. A She had seen many of them.

1 Q She had? And how close up to July had she been both-
2 ered by the detectives? A Up until the time she went
3 to the woods.

4 Q And that was the 1st of July? A Well, between the
5 1st of July and the 15th.

6 Q That is the usual time for taking an outing up in
7 that part of the country, isn't it? A Yes.

8 Q And she was down there taking an outing in a small
9 camp, wasn't she? A Yes.

10 Q And she had been working up in San Francisco up to that
11 time? A No, she had not been working since, I guess,
12 about the middle of May.

13 Q And she always worked at one establishment up there?

14 A I think one or two, I am not certain.

15 Q You were going away from there because these Burns
16 detectives were trying to get her to tell where Caplan was,
17 and they would get Caplan and get you? A No.

18 Q That had nothing to do with it? A No.

19 Q You didn't get her away from the defense at all in
20 this case against -- A I had no motive except help her
21 protect herself.

22 Q There was not anybody in the defense that knew you
23 were going to take her away, was there, anybody that was
24 working with Mr Darrow? A No.

25 Q No. You never talked to anybody in the defense and
26 told them you were going to take her away before you took

1 her, did you? A No.

2 Q Never told anybody after you took her away, for the
3 defense, that you had taken her away, did you? A What
4 do you mean by "the defense"?

5 Q And Mr Darrow or any of the people who were employed by
6 him? A I told several of my people, not any lawyers.

7 Q Any of the people who were employed by MR Darrow, work-
8 ing up the evidence in the case? A No, I don't know that
9 I did.

10 Q Do you know whether you did or not? A I said no.

11 Q Oh, you did not. I didn't so understand you, no.
12 And you never told anybody connected with the preparation
13 of the defense of the McNamaras what you had done in tak-
14 ing Mrs Caplan away, is that the way we understand you?

15 MR APPEL: We object to that as immaterial, incompetent
16 and irrelevant for any purpose; not cross-examination.

17 MR FREDERICKS: That is the point.

18 MR APPEL: If he had informed Mr Darrow after he had done
19 this, your Honor, it would not affect Mr Darrow.

20 MR FORD: He was asked if he had ever directly or in-
21 directly informed him before or after, on direct examina-
22 tion.

23 MR APPEL: You might as well commit some crime, and because
24 you inform me, I might be guilty of it.

25 THE COURT: I think that was brought out on direct exam-
26 ination.

1 MR APPEL: No sir.

2 MR DARROW: Your Honor, there was no question asked as
3 to whether or not I had been informed afterwards.

4 THE COURT: Oh, afterwards.

5 MR DARROW: Yes.

6 THE COURT: I think you better correct that question,
7 better make that one question at a time. Objection is
8 sustained to the question in its present form.

9 MR FREDERICKS: All right.

10 Q Did you ever, after you had taken Mrs Caplan away,
11 report to anybody what you had done, that is, anybody
12 connected with the defense, either Mr Darrow or Mr Davis or
13 Mr Harriman or John R. Harrington or Larry Sullivan or
14 Gillson or Tveitmoe -- no, not Tveitmoe -- eliminate that
15 name -- any of those others I have named?

16 MR APPEL: We object to that on the ground it is incom-
17 petent, irrelevant and immaterial, it assumes that the per-
18 sons named, including Sullivan, a Burns man, were working
19 for the defense, calls for hearsay evidence.

20 MR FREDERICKS: Well, we will eliminate Sullivan then.

21 MR APPEL: Not cross-examination, and whether he informed
22 anyone else after he had done this would be immaterial for
23 any purpose whatsoever, after he had taken her away.

24 MR FREDERICKS: A man goes and does a job, does he come
25 back and report to his boss, "Sir, I desire to report that
26 I have fulfilled the mission"?

1 MR APPEL: We object to the statement that he had a boss.

2 MR FREDERICKS: I am asking if he did that.

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1 MR. APPEL. And we protest against this manner, your Honor,
2 assumed by the District Attorney, testifying here and throw-
3 ing out insinuations that this man had a boss and that Mr.
4 Darrow was a boss, that is what it means.

5 A It don't affect me any, Appel.

6 MR. APPEL. I know, but it is not fair, it is not right.

7 MR. FREDERICKS. My argument is as to the admissibility,
8 that is the natural thing for a man to do, and I am asking
9 if he did it. He will deny it, there is no doubt about
10 that.

11 MR. APPEL. Now, there you are again. We take an exception
12 to that statement and assign it as misconduct.

13 THE COURT. Objection sustained.

14 MR. FREDERICKS. May I not ask this witness whether he
15 reported his acts to any one? Is that the ruling of the
16 court?

17 THE COURT. The objection is it is not proper cross-
18 examination.

19 MR. FREDERICKS. The purpose of putting this witness on the
20 stand is to show his connection with Darrow, and that is the
21 purpose of the cross-examination.

22 THE COURT. Your question assumes a large number of men, who
23 may or may not--

24 MR. FREDERICKS. Oh, I see. I will reframe the question.

25 Q Did you ever report to Mr. Darrow that you had taken this
26 woman out of the state? A No.

1 Q Did you ever report to Job Harriman that you had
2 taken her out of the state? A No.

3 Q Did you ever report to John Harrington that you had
4 taken her out of the state? A No.

5 Q Do you ever report to--let's see, who was John Harring-
6 ton?

7 MR. APPEL. We object to that as not cross-examination.

8 BY MR. FREDERICKS. Q There are two names, Job Harriman
9 and John Harrington. You understand they are two different
10 people?

11 MR. APPEL. We object to the witness being asked who Harring-
12 ton is.

13 THE COURT. Objection overruled.

14 MR. APPEL. We take an exception. The District Attorney
15 uses his name and he ought to know who he is.

16 MR. FREDERICKS. I want to know, let him answer. Read the
17 question.

18 (Question read.)

19 A I know that John Harrington is not Harriman and that
20 Harriman is not Harrington.

21 Q What was Job Harriman's position with the defense, if
22 you know? A Job Harriman?

23 Q Yes. A He was one of the attorneys, as far as I know.

24 Q What was John R. Harrington's position with the defense,
25 if you know? A He was the investigator.

26 Q For whom? A For the defense, I presume.

1 Q Well, you know that, don't you?

2 MR. APPEL. He has testified to it.

3 THE COURT. He has just said he knows.

4 MR. FREDERICKS. He said, "I presume." You know that
5 to be a fact, don't you? A I took it for granted.

6 Q Yes. John R. Harrington was the investigator for the
7 defense and you so accepted and so talked to him and so
8 understood him, is that correct?

9 MR. APPEL. We object to that as not cross-examination,
10 any talk to him, and if he accepted him or anything of that
11 kind, he simply answered the question propounded to him.

12 THE COURT. Objection overruled.

13 MR. APPEL. We take an exception. He assumes that he
14 talked with him.

15 THE COURT. Let him answer.

16 A What is the question?

17 (Question read.)

18 A Yes.

19 Q BY MR. FREDERICKS. And that he was in the employ of Mr.
20 Darrow, is that correct?

21 MR. APPEL. We object to that, it assumes that; the witness
22 has not testified to anything of the kind, your Honor,
23 what he understood and how he took it would not be evidence
24 Let them ask the direct question whether or not he was
25 employed by Mr. Darrow, if he knows and if he doesn't know
26 let him say so.

A What is the difference, anyway?

1 BY MR. FREDERICKS' Q Well, answer the question, anyway.

2 THE COURT. Objection overruled.

3 A What is the question?

4 (Question read.)

5 A I took that for granted.

6 BY MR. FREDERICKS. Q Let me see, you never--was John R.

7 Harrington up in San Francisco when you took this woman

8 away? A Not that I know of. He was not with me.

9 Q He was not with you. Did you see him around about that
10 time? A I don't remember of seeing him.

11 Q Now, when you got on the train where did you get on the
12 train? A At Reno.

13 Q At Reno, Nevada? A Yes.

14 Q Why did you go outside of the state? A I had experience
15 with your detectives, with the hounding methods.

16 Q Couldn't they go across the line into Nevada? A Not
17 very well, I went pretty fast.

18 Q But, why not stop at Colfax and catch the train there?

19 A I wasn't taking any chances.

20 Q You were not taking any chances for what? A Having
21 them detect me.

22 Q Having them find you getting away with a witness?

23 A I was not taking chances of having your men hounding
24 her.

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- 1 Q You knew she was subpoenaed, then? A Yes.
- 2 Q You learned that when? A When I came to get her.
- 3 Q Not before? A No.
- 4 Q Not before. You knew you were taking a witness sub-
5 poenaed by the state out of the state, didn't you?
6 A Yes.
- 7 Q Now, when you got her up to Reno, Nevada, what train
8 did you take? A The Overland Limited.
- 9 Q Where did you go? A Chicago.
- 10 Q Straight through? A Straight through.
- 11 Q Did you telegraph to anybody on the way telling them
12 you were going? A I don't remember; perhaps I did,
13 I couldn't say for sure.
- 14 Q Who did you telegraph to? A I don't remember whether
15 I did or not.
- 16 Q Did you telegraph to anybody after you got to Reno
17 telling them you had got there, or anything of that kind?
18 A It is possible; I don't remember.
- 19 Q Who did you telegraph to? A I don't remember
20 whether I telegraphed or not.
- 21 Q But it is possible you did? A It is possible I did.
- 22 Q Have you any dim idea of telegraphing to anybody?
23 A I might possibly have telegraphed to Tveitmoe, I
24 don't know; I don't remember.
- 25 Q But you didn't telegraph to Darrow, did you? A No.
- 26 Q You didn't telegraph to Davis, did you? A No.

1 Q Didn't telegraph to John R. Harrington, did you?

2 A No.

3 Q You are sure of that? A I am not certain, no.

4 Q You may have telegraphed to Harrington? A I don't
5 remember whether I did or not.

6 Q Send a message to Harrington? A I don't remember
7 whether I did or not.

8 Q Where was Harrington then? A I don't remember.

9 Q You don't know, then? A I don't remember whether I
10 did or not.

11 Q Well, Harrington didn't know you were going East with
12 this woman, did he? A Nobody knew except Tveitmoe.

13 Q When you got up to Reno, Nevada, do you remember of
14 going to a telegraph office up there?

15 MR APPEL: Wait a moment. If he telegraphed, let him
16 show him the tele gram.

17 MR FREDERICKS: We will ask him one at a time.

18 MR APPEL: Wait a moment.

19 THE COURT: Give me your objection.

20 MR APPEL: I object to his being interrogated concerning
21 any telegram unless the telegram is produced to the wit-
22 ness, showing him the telegram, if they have it; if they
23 have not got it, of course, they cannot show it to him.
24 We certainly object to the contents of a telegram proven
25 in this manner.

26 THE COURT: The question does not at this time call for

1 the contents of the telegram.

2 MR APPEL: But he has been asked whether or not he tele-
3 graphed to such and such a name and such and such a per-
4 son, and we will object to any further cross-examina-
5 tion of that kind.

6 THE COURT: I think the question has been already
7 answered, that he says he doesn't know; he says he might
8 have done it. *(Shows the answer the Court says)*

9 MR FREDERICKS: I don't think it has. There would be no
10 harm in his answering it again.

11 THE COURT: All right. Go ahead and answer the question.

12 A I don't remember whether I telegraphed or not.

13 Q You don't. A It wouldn't make any difference anyway.

14 Q It would not? Why not? A Not with my motives.

15 Q At any rate, you didn't telegraph anybody connected
16 with the defense, did you? A I don't remember of tele-
17 graphing.

18 Q You would know if you told anybody connected with
19 the defense, wouldn't you, that you took Mrs Caplan, a
20 witness for the State, out of the state, you would remember
21 that, wouldn't you? A I don't think I would telegraph
22 anything like that.

23 Q You don't think you did. Are you sure you didn't?

24 A I am not sure; I am reasonably certain.

25 Q Are you reasonably certain you didn't telegraph any-
26 thing like that to anybody connected with the defense?

1 MR APPEL: Object to that because he has been asked the
2 same question time and time again. He is calling for
3 the contents of the telegram without any foundation.

4 THE COURT: I think the matter has been fully covered.

5 MR FREDERICKS: I don't think it has. (Last question
6 read by the reporter.)

7 THE COURT: All right; answer the question.

8 A I don't remember of telegraphing.

9 MR FREDERICKS: You don't. Well, Mr Johannsen, you saw
10 John R. Harrington up in San Francisco just the day be-
11 fore, or the day that you left to go down to get Mrs Cap-
12 lan, didn't you? A No.

13 Q And you told Tveitmoe in the office, together with
14 Harrington present, discussed the matter of your going
15 down to get Mrs Caplan, since she had been subpoenaed,
16 and get her out of the state, didn't you? A No.

17 Q And when you got up to Reno, Nevada, you sent a tele-
18 gram back to John R. Harrington, the chief investigator
19 for Mr Darrow, telling him that you were all right, and
20 you had crossed the line or something to that effect, didn't
21 you? A I don't remember of telegraphing.

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15s 1 Q You don't. Well, you and Mr. parrington and the other
2 members of the defense had a secret code by which you
3 could telegraph in secret, didn't you?

4 MR. APPEL. Wait a moment--we object upon the ground it is
5 incompetent, irrelevant and immaterial and not cross-
6 examination.

7 THE COURT. Objection overruled.

8 MR. APPEL. We except.

9 A Yes, we had a code.

10 MR. FREDERICKS. And that was a little book, a little dic-
11 tionary? A I guess you know.

12 Q Wasn't it? A I guess they told you about it, all right

13 Q Wasn't it?

14 THE COURT. Mr. Johannsen, you are not testifying here for
15 the benefit of the District Attorney but for the court and
16 the jury; please bear that in mind.

17 THE WITNESS. Your Honor, these people are very impertinent
18 with some of their questions.

19 THE COURT. Mr. Johannsen, whenever you feel that a question
20 is impertinent, you say so and this court will be just as
21 quick to resent any impertinence to you on the witness
22 stand as you would be.

23 THE WITNESS. If the court could know the threats I have
24 received from these men, I think your Honor, for the last
25 year and a half, would know more--

26 THE COURT. The court will see you are properly treated

1 here. Your last answer means nothing because the jury
2 and the court does not understand it. You said the dis-
3 trict attorney knew all about it. Now, the court and jury
4 does not understand. Answer the question in regard to the
5 book.

6 A Read the question.

7 (Last question read by the reporter.)

8 MR. APPEL_ Now, we object to that unless the book is pro-
9 duced and shown to the witness. We insist that the provi-
10 sions of the Code be strictly followed before a witness is
11 asked concerning the document or book, the book must be
12 produced.

13 THE COURT. If he asked about its contents, yes.

14 MR. APPEL. He cannot be examined concerning any instrument
15 unless the instrument is produced.

16 THE COURT. I don't regard it as an examination as to the
17 contents, it is the instrument itself.

18 MR. APPEL. He said he asked whether or not it was a code.
19 Now, he goes on and asks him if it was a little book, all
20 those questions have been permitted, and I imagine that
21 the book--

22 MR. FREDERICKS. Withdraw the question.

23 Q Now, Mr. Johannsen, you don't know whether you sent a
24 telegram from Reno, Nevada to John R. Harrington, the
25 chief investigator for the defense; permit me to show you
26 a document. I will first exhibit to your counsel--to the

1 counsel on the other side. Now, I exhibit to you a docu-
2 ment which I have shown to counsel for the defense, which
3 appears to be a telegram, and ask you if you ever saw that
4 before, and if that is not your handwriting? A That is
5 my handwriting.

6 Q Isn't that your telegram? A I don't remember it.

7 Q But you do know that is your handwriting? A That is my
8 handwriting.

9 Q You don't remember sending that telegram?

10 MR. APPEL. Just let him answer.

11 MR. FREDERICKS. Well, do you remember.

12 MR. APPEL. He has been asked that time and time again.

13 A I don't remember.

14 MR. FREDERICKS. Q All right, that is your handwriting,
15 at any rate. Now, your Honor, we offer this document
16 in evidence, People's Exhibit, whatever number it is, the
17 handwriting of the witness.

18 MR. APPEL. We object upon the ground it is incompetent,
19 irrelevant and immaterial, that on the face of it it don't
20 tend to prove anything.

21 MR. FREDERICKS. We will elucidate the face of it.

22 MR. FORD. It is signed by the witness addressed to the--

23 MR. APPEL. It is not cross-examination, nothing to do with
24 this case.

25 MR. FORD. It is signed by the witness in his handwriting
26 and addressed to John R. Harrington, who he has testified

1 was the chief investigator--

2 MR. APPEL. It isn't signed by anybody.

3 MR. FORD. Well, ^{it.} /is his handwriting.

4 MR. APPEL. He didn't say it was signed by him.

5 MR. FORD. I beg your pardon.

6 THE COURT. Objection overruled. Mark the document.

7 THE CLERK. People's Exhibig 22'.

8 MR. FREDERICKS. Well, while we are waiting for that, Mr
9 Johannsen, I will show you a little red dictionary and
10 ask you if you ever saw such a dictionary before, and
11 if that is not the dictionary which is the key to the code
12 which you used in that telegram?

13 MR. APPEL. Wait a moment--we object upon the ground it is
14 incompetent, irrelevant and immaterial, and no foundation
15 laid.

16 THE COURT. Objection sustained.

17 MR. FORD. We exhibit it to counsel first, your Honor.

18 MR - FREDERICKS. Now, I will read to the jury the document
19 which has been offered in evidence. (Reading) "Postal
20 Telegraph and Cable Company. Night Letter. C 7 P.M.
21 Check 27, Paid 40, John R. Harrington, Hotel Argonot,
22 San Francisco, Cal. 10-43-129-49 A is 54-40- all on
23 156-38", signed "C".

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1 Now, Mr Witness, let's see if we can find out what that
2 means. Just see if I have got that correct: 10-43-129-49-A
3 Is 54 -- 40, all on 156 - 38, signed C. Now, Mr Johannsen,
4 have you one of these little books that I showed you or one
5 like it in your pocket? A No.

6 Q You have not. Did you ever have? A I don't remember.

7 Q Don't remember. Well, do you know? A Let's see the
8 book.

9 Q Do you know what this 10 means? Turn to page 10 and
10 find the 43rd word in the second column.

11 MR APPEL: I object to his doing anything of the kind.
12 What right have they got to instruct the witness to turn
13 over to some book that don't belong to him. He says he
14 never had.

15 THE COURT: The witness has asked to be allowed to examine
16 the book.

17 MR FREDERICKS: I withdraw the question in order that he
18 may examine it. A I don't know whether that is the book
19 or not.

20 Q Is it not a similar book to the one you used in making
21 that telegram there that you say is in your handwriting?

22 A They change the books so often.

23 Q Is it a similar one? A Looks like it.

24 Q Now, Mr Johannsen, on page 10, down at the 43rd word,
25 you find in the dictionary is "all", isn't it?

26 MR APPEL: We object to that upon the ground it is incompe-

1 tent, irrelevant and immaterial. He ought not to refer
2 to a document that is not introduced, that the witness
3 says he never had, was never in his possession, doesn't
4 claim to own it, doesn't claim to be a book with which he
5 is familiar, and he has no right to refer to any book or
6 anything not in evidence, not cross-examination, and it
7 is immaterial.

8 MR FREDERICKS: Interpreting this telegram, your Honor.

9 MR APPEL: Yes, I know.

10 MR FREDERICKS: Well, I will withdraw that question and
11 put it in a little different form. You say you wrote that
12 telegram -- I will ask you if you -- A I didn't say
13 I wrote that.

14 Q Oh, yes, you did, begging your pardon, you said that
15 was your handwriting.

16 THE COURT: Don't contradict the witness like that. He
17 said it was in his handwriting.

18 MR FREDERICKS: I apologize. Now, I will ask you if the
19 10 - 43 there, did not mean the 10th page and the 43rd
20 word in the second column of the page of this little dic-
21 tionary?

22 MR APPEL: We object upon the ground that he is examining
23 the witness concerning a book which he has in his hand,
24 your Honor, which has not been identified by the witness,
25 has not been introduced in evidence, is not proper or
26 legal evidence before the court. It is immaterial, what is

1 contained in that book, not cross-examination.

2 THE COURT: I think the foundation should be further laid.

3 MR FREDERICKS: I haven't offered the book, your Honor.

4 I can just as well put the book in my pocket. Now, didn't

5 that 10 on there and the 43, when you wrote that tele-

6 gram, refer to the 10th page and the 43rd word in the

7 page, which was "All", is that correct? A I don,t know.

8 Q And didn't that 129 refer to the 129th page and the

9 49th word which was "right"? A What page?

10 Q The 129th page of this same dictionary? A What dic-
11 tionery?

12 Q The one you had when you wrote the telegram? A I
13 didn't have any; I don,t remember of having a dictionary

14 Q Ah ! And didn't that A refer to Flora Caplan, accord-
15 ing to the code written in the back of the dictionary,
16 is an English expression, 54, referring to the 54th word --
17 54th page and the 40th line, "Flora Caplan is fine; all
18 on 156 - 38 train, signed C, and wasn't C your code let-
19 ter for Johamsen? A I don,t remember.

20 Q Well, you said this book that I handed you was sim-
21 ilar to the one you used. You have gone that far anyhow,
22 haven't you?

23 MR APPEL: He said similar to the one he used.

24 MR FREDERICKS: It was similar to the one you used. Now,
25 we offer this book in evidence, being a book similar to
26 the one which the witness used and which was familiar to

1 him, as a part of his code.

2 MR APPEL: He didn't say he used a book similar to that in
3 writing that telegram, or that he used any book.

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17s 1 MR. FREDERICKS. He said he was familiar with that book or
2 one similar to it.

3 MR. APPEL. He said the paper shown him was in his hand-
4 writing. He didn't say that he used any code or any book,
5 in writing the paper which was introduced in evidence. He
6 didn't say he referred to any dictionary or code or anything
7 in writing or writings was introduced in evidence. He
8 didn't say he had this or one similar to it, only he wrote
9 the paper introduced in evidence. Now, what importance
10 is this, this book?

11 MR. FORD. This witness testified he had a code, it was
12 a dictionary code. This document was in his handwriting
13 and it was a similar book to this, and we are offering
14 this as furnishing the key to this code telegram.

15 MR. APPEL. Similar may be the same color or something
16 like that, but he didn't say it was that or a copy.

17 MR. FREDERICKS. If the book works out the telegram it is
18 pretty good conclusion it was the one used.

19 THE COURT. I observe some marks, pencil marks and pen
20 marks purporting to be some writing in the front and also
21 in the back. Are you offering that as well, or just the
22 printed part?

23 MR. FREDERICKS. Just a moment.

24 MR. Ford. The pencil marks on certain pages is marking
25 it off in tens, made by us.

26 MR. Fredericks. I am not at this time offering the writing

1 on the back, I will offer that later, but I am doing it now.

2 THE COURT. Simply offering the printed part?

3 MR. FREDERICKS. That is the idea.

4 MR. APPEL. We object to the introduction of the book in
5 evidence upon the ground it is incompetent, irrelevant and
6 immaterial, no foundation laid, has no relevancy to any
7 matter testified to by the witness, nor to any issue in this
8 case; it is hearsay for any purpose whatsoever and does
9 not--upon the further ground that no foundation is laid
10 for the introduction of the book in question, that it has not
11 been identified as a book ever used by the witness here
12 in doing anything testified to ^{by} him on the stand.

13 THE COURT. Objection overruled.

14 MR. APPEL. Except.

15 MR. Fredericks. Now, I will call your attention to the
16 tenth page and the fortythird word which is "all", is it
17 not?

18 MR. APPEL. We insist that that book be put in evidence
19 the right way. We insist the document be introduced in
20 evidence ~~must~~ be read.

21 MR. FREDERICKS. Counsel wants me to read the dictionary?

22 MR. APPEL. Certainly, you offered it in evidence.

23 THE COURT. Objection overruled.

24 MR. APPEL. Exception. Your Honor, refuses our demand
25 that book be read after it is introduced inevidence?

26 THE COURT. The book being Webster's dictionary--

1 MR. APPEL. Does your Honor refuse that?

2 The Court: Yes.

3 MR. APPEL. We move to strike it out on the ground that the
4 book has not been allowed to be read to the jury.

5 THE COURT. The motion to strike is denied.

6 MR. APPEL. Exception.

7 MR. FREDERICKS. Calling your attention to the 129th
8 page, line 49 where you will find the word "right"--
9 all right, see it? Now, isn't it a fact that you had an
10 agreement with--

11 THE COURT. Let's get the answer, if there is one.

12 MR. APPEL. There is no answer. He is testifying himself.
13 He is telling the witness what he means and the witness
14 has not said anything.

15 MR. FREDERICKS. All right, I will ask him.

16 MR. APPEL. I didn't hear any answer of the witness.

17 MR. FREDERICKS. Is that correct, Mr. Johansson?

18 MR. APPEL. We object to that question on the ground it is
19 incompetent, irrelevant and immaterial for any purpose
20 whatsoever, no foundation laid for the introduction of the
21 cipher which is attempted by the district attorney with the
22 aid of the witness, it has not been shown that the witness
23 has any knowledge concerning the book in question of that
24 he has any ability to use the book for the purpose of
25 explaining--

26 MR. FREDERICKS. Working out this cipher--

1 MR. APPEL. The figures on the blackboard made by the
2 District Attorney--

3 THE COURT. Doesn't seem to be necessary to have the witness
4 state that the forty-third word on the tenth page is the
5 word; it may be there; that is obvious.

6 MR. FREDERICKS. It is the manner of getting it before the
7 jury. Very well, then instead of calling the witness's
8 attention to it I will figure it.

9 MR. APPEL. I object to the District Attorney testifying.

10 MR. FREDERICKS. Turning to the 154th page at line 40--

11 MR. FORD. 54.

12 MR. FREDERICKS. The 54th page, line 40--

13 MR. APPEL. We object to any exhibition to this man by the
14 district attorney or his reading any matter out of that book

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1 THE COURT: Wait a moment, Captain. I must get this ob-
2 jection .

3 MR APPEL: We object to any reading out of that book on
4 the ground that the request made by the defendant upon
5 the admissibility -- upon that book being read and denied
6 by the court, he has no right to read portions of it and
7 not read it all , and we object to the District Attorney
8 indicating or explaining the figures because he is not a
9 witness, and he is not doing it with the aid of any wit-
10 ness, so as to enable him to explain the figures or to --
11 the figures being the figures presumed to be understood
12 by the jury, and there is no evidence in the case to show
13 they can understand them.

14 THE COURT: Overruled.

15 MR APPEL: Exception.

16 MR FREDERICKS: The 156th page, and 38th word, is train,
17 making the telegram read, "Train", making the telegram
18 read "All right. Flora Caplan is fine. All on the
19 train." Is that what you intended to send? Is that the
20 telegram that you intended to send from Reno, Nevada, just
21 across the California line to John R. Harrington, the Chief
22 Detective for this defendant just at the time that you got
23 across the line on the 31st day of July, 1911?

24 MR APPEL: Wait a moment. We object upon the ground it
25 is incompetent and on the ground that it assumes a state
26 of facts not testified to by the witness, upon the fur-

1 ther ground that the manner of the District Attorney is
2 very apparently attempting to be very dramatic and affective
3 and we object to his manner in pointing his long finger
4 at the short witness.

5 MR DARROW: On the further ground that this witness has
6 not testified that he was the chief detective for the de-
7 fendant, but that he was the chief investigator for the de-
8 fense in this case.

9 MR FREDERICKS: I will amend the question and make it
10 "chief investigator"?

11 MR DARROW: For the defense.

12 MR FREDERICKS: For the defense. I will amend the question
13 to that effect.

14 THE COURT: Objection overruled.

15 MR APPEL: Exception.

16 A What is the question. (Last question read by the re-
17 porter.)

18 A I don't remember of sending the telegram, but it sounds
19 fine; it sounds like it might have been sent by me.

20 MR FREDERICKS: Now, having refreshed your memory with the
21 telegram, what have you to say as to whether or not the
22 defense had anything to do with the getting of Flora Cap-
23 lan out of the state of California the next day after
24 she was subpoenaed?

25 MR APPEL: Now, we object to that question, your Honor,
26 on the ground it is asking him to express his opinion

1 as to what -- not cross-examination, also because it assumes
2 a state of facts not testified to by the witness, and
3 the witness has stated his connection with the matter --

4 A I would like to explain the matter if I am permitted
5 to.

6 THE COURT: All right, you may explain. Objection over-
7 ruled.

8 MR APPEL: Exception.

9 A I had no reason to apprehend that the defense could
10 in any way be interfered with. I told Flora Caplan when I
11 took her to Chicago to pay no attention to any bulldozing
12 or bluffs on the part of the detectives in case they should
13 find her. I told her to wire John D. Fredericks as soon
14 as the jury in the McNamara trial would be completed,
15 her whereabouts, and her willingness to come and testify
16 if they wanted her.

17 MR FREDERICKS: Did you know John R. Harrington was up in
18 San Francisco when you sent that telegram from San Fran-
19 cisco to the Hotel Argonot? A I know that was his head-
20 quarters.

21 Q Did you know he was there that day? A He jumps here
22 and there and jumps here and there , like I do.

23 Q Didn't you see him in your office just the day before
24 you started? A I don't remember seeing him there.

25 Q You knew he was in town? A I don't think I was in
26 the city the day before I started.

1 Q You knew he was in town that day? A I don't remember.

2 Q Well, the day you started you knew he was in town,
3 didn't you? A I don't remember.

4 Q What did you send a telegram to him for just after
5 you got across the California line into Nevada --

6 MR APPEL: The witness has not stated that he sent
7 the telegram.

8 MR FREDERICKS: He said it was his handwriting. A It is
9 likely I did.

10 Q You did. You know you did, don't you? A I don't
11 remember, Fredericks, whether I did or not.

12 Q You are pretty sure you did? A It wouldn't make any
13 difference anyway.

14 Q Why did you send this telegram to John Harrington,
15 the chief detective for the defense in cypher --

16 MR APPEL: We object again, because the District Attorney
17 is again mis-stating the testimony in his question.

18 MR FREDERICKS: The chief investigator for the defense --
19 why did you send it in cypher? A Well, if I sent it
20 the reason that I sent it in cypher, because I wasn't
21 sending it to Burns, that is the only reason I know of.

22 Q And it is the same reason that you registered Mrs Cap-
23 lan when you went through Colfax and when you went through
24 San Jose as Mr. John Jones and wife? A As a matter of
25 convenience.

26 MR APPEL: We object to that as incompetent, irrelevant

1 and immaterial, and not cross-examination, not tending
2 to impeach the witness in any way, shape or manner.

3 MR FREDERICKS: If it is 12 o'clock, I will withdraw the
4 question.

5 THE COURT: Gentlemen of the jury, we are about to take a
6 recess until Monday at 1:30.

7 (Jury admonished. Recess until 1:30 P.M., Monday,
8 June 17th, 1912.)

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