

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.

---o---

The People of the State of California,)

Plaintiff,)

vs.)

Clarence Darrow,)

Defendant.)

No. 7373.

---o---

REPORTERS' TRANSCRIPT.

VOL. 28

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
X Anton Johannsen,		2195	2237	
O. A. Tveitkoe,	2242			
X C. L. Fried,	2245	2348		
George Behm,	2252			

Monday, June 17, 1912. 1:30 P.M.

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

THE COURT: Are you ready to proceed, gentlemen?

MR FREDERICKS: Ready for the People.

MR APPEL: In this matter, if your Honor please, I am here, of course; I will do whatever your Honor thinks best, but I don't think I will be able to do very much talking, your Honor -- look after Mr Darrow's interest very long. Since Saturday night, I kept my bed until this morning, contrary to the doctor's orders, I am here. Mr Rogers is not here. I understand he is sick a bed, and it will be impossible for me to carry on this examination in the condition in which my throat is. I have congestion of the lungs. Of course, I am willing to sacrifice anything and go on with the trial, but I don't think I could possibly do it, if your Honor please.

THE COURT: Very unfortunate; the court regrets exceedingly your condition, on your personal account, and on account of the necessity of interfering with the progress of the case, but there is nothing to do under the circumstances. You say Mr Rogers is sick?

MR DEEM. Yes, your Honor; sick in bed.

MR APPEL: I have been coughing a good deal, and I understand from the reporter many times when I was coughing, I was interfering with the questions and answers, but I

1 didn't think it was assuming the condition that it is in
2 now.

3 THE COURT: What length of time do you ask for an adjourn-
4 ment?

5 MR APPEL: Until tomorrow morning.

6 THE COURT: And in the event either Mr Rogers or Mr Appel
7 cannot go on, will you be ready to go on, Mr Dehm?

8 MR DEHM: I cannot speak, your Honor. Mr Rogers is famil-
9 iar with these witnesses that have been introduced. I
10 have not prepared myself at all in regard to the case.

11 I was not consulting with these witnesses at all; I know
12 nothing about what they will testify to. I think probably
13 Mr Appel or someone will be able to go on in the morning.

14 MR APPEL: I certainly will be here tomorrow.

15 THE COURT: Well, under those conditions that cannot be
16 foreseen or prevented, I see nothing to do but continue
17 the case until tomorrow morning at 10 o'clock, unless there
18 is some other suggestion.

19 MR FREDERICKS: May I just say a word, lest by keeping
20 silent, I should be deemed to have acquiesced in the con-
21 tinuance. We are not lacking in courtesy, I think, and we
22 certainly wish to extend to counsel all the courtesy pos-
23 sible, but we think there are times when courtesy becomes --
24 extending of courtesy becomes impossible by reason of nec-
25 essities and the exigencies of the circumstances and the nec-
26 essity to drive on and get this case through and the jury

1 be released and the matter stopped. Of course, we will
2 bow to any decision the court may make in the matter, but
3 we wish to be understood as opposing the continuance, be-
4 lieving Mr Darrow is able to carry the case on without
5 counsel.

6 MR APPEL: Of course, your Honor will see I haven't asked
7 for anything here. I didn't expect at this time there
8 would be any courtesies extended to me. I am not asking
9 for that. I simply submitted myself to your Honor,
10 whatever your Honor thought was right. I said, although
11 I am sick, I am willing to come here and try this case as
12 far as I can.

13 THE COURT: Well, I think it is entirely proper that
14 the court should adjourn until tomorrow morning, but I
15 feel and I say to Mr Darrow personally, and his attorney,
16 Mr Dehm, who is here, the matter, in justice to all par-
17 ties, should proceed tomorrow morning.

18 MR DARROW: I don't feel in my position I would like to
19 take personal charge. If it goes until tomorrow, I will
20 do it; I don't want to do it this afternoon.

21 THE COURT: No, I am not going to ask you to do it this
22 afternoon, but I feel unless there is some definite pros-
23 pect tomorrow morning, you should be ready with such asso-
24 ciate counsel as are in court.

25 MR DARROW: I will take care of it tomorrow morning.

26 THE COURT: Gentlemen of the jury, you have heard and

1 seen the conditions here that render it obvious the court
2 should adjourn, in my opinion until 10 o'clock tomorrow
3 morning, and the order will be, on account of the sickness
4 of Mr Earl Rogers who is unable to be in court, and the
5 very evident sickness of Mr Appel, who is barely able to
6 be in court. The further hearing of this case will be
7 now ordered continued until tomorrow morning at 10
8 o'clock.

9 (Jury admonished. Recess until 10 o'clock A.M., June
10 18, 1912.)
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TUESDAY, JUNE 18, 1912: 10 A.M.

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

4 -----
5 THE COURT. Ready to proceed, Gentlemen?

6 MR. FREDERICKS. Yes, your Honor, as far as the People are
7 concerned.

8 A N T O N J O H A N N S E N,
9 on the stand for further cross-examination.

10 MR. FREDERICKS. At the time court adjourned, Mr. Johannsen,
11 last Saturday, I was asking you in regard to a telegram
12 which was introduced in evidence, which you say was in
13 your handwriting, and I asked you why you sent it in cipher,
14 and I believe you answered that. Well, what do you think
15 now, Mr. Johannsen? You think you sent that telegram from
16 Reno, Nevada to John R. Harrington?

17 A I guess I did.

18 Q All right, and without taking the time to get the tele-
19 gram again, the telegram read, "All right. Flora Caplan
20 is fine, all on train." Is that correct?

21 MR. APPEL. Wait a moment--object to that as leading and
22 suggestive; it is incompetent, irrelevant and immaterial;
23 has already been asked and answered.

24 THE COURT. Objection overruled.

25 MR. APPEL. We except.

26 A I couldn't remember the exact contents of the telegram;
that is the substance of it.

1 MR. FREDERICKS. Q The telegram I read to you the other
2 day, wasn't it? .

3 MR. APPEL. We have to insist on the same objection on the
4 same ground last made; it is incompetent, irrelevant and
5 immaterial for any purpose whatsoever.

6 MR. FREDERICKS. Well, I will withdraw the question. The
7 witness says that is the substance of it.

8 THE COURT. Objection overruled.

9 MR. APPEL. We except.

10 MR. FREDERICKS. What did you mean by telling John Harrington
11 that it was all right?

12 A Meant that Burns was outwitted.

13 Q When had you heard of Burns being interested in Mrs.
14 Caplan last, before you took her away? A I never heard
15 anything else.

16 Q Well, you testified Saturday morning that the last time
17 Mrs. Caplan told you about the Burns people bothering her
18 was between the 1st of December and the 1st of May, didn't
19 you?

20 MR. APPEL. Now, wait a moment--we object to that as not a
21 correct statement of what the witness stated.

22 MR. FREDERICKS. Well, when was it. Withdraw the question.
23 When was it that Mrs. Caplan told you--the last time she
24 told you that the Burns people were bothering her?

25 A When she went to the country.

26 Q The 1st of July?

1 A between the 1st and the 15th, I couldn't say exactly --
2 I don't remember exactly.

3 Q That was the month before you took her away, if it was
4 the 1st of July, wasn't it?

5 MR. APPEL. Wait a moment--we object upon the ground that
6 it is a matter of calculation.

7 MR. FREDERICKS. Withdraw the question. Q At any rate
8 she hadn't told you anything about the Burns people bother-
9 ing her after she had gone down to the country? A That
10 is because they didn't know where she was.

11 Q She hadn't told you anything about it, had she? You
12 can give the cause afterwards--as a matter of fact she hadn't?

13 A Well, I didn't see her from the time she went until I
14 took her to Reno.

15 Q Now, Mr. Johannsen, you were trying to get her away from
16 the Burns people at that time? A That was my motive.

17 Q Didn't you know that Burns's--the principal office of the
18 Burns Detective Agency is in the city of Chicago? A I
19 understood they were in all cities.

20 Q But their head office, don't you know it is in the city
21 of Chicago? A That wouldn't cut any figure.

22 Q It would not. You took her right into the city of
23 Chicago where Burns's head offices were to get her away from
24 Burns out here on the coast, that right?

25 MR. APPEL. We object upon the ground that the witness has
26 not testified to where the head offices of Burns's is, and

1 the District Attorney testified to it, that is not a sworn
2 statement.

3 THE COURT. Objection sustained.

4 MR. FREDERICKS. Q Don't you know the head office, the
5 place where William J. Burns stays himself most of the time
6 and the place where all the administration of the entire
7 Burns Detective Agency throughout the United States, is
8 located in the city of Chicago? Don't you know that? Haven't
9 you been so informed?

10 MR. APPEL. We object upon the ground it is incompetent,
11 irrelevant and immaterial and not cross-examination; that
12 the witness knows that, he must know it from hearsay and
13 we object to any hearsay evidence on the part of the witness
14 in reference to that matter.

15 MR. FREDERICKS. Goes to his motives.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.
18
19
20
21
22
23
24
25
26

1 A I had heard that, yes.

2 Q Now, when you got to Reno, Nevada, on this trip, did
3 you stay at Reno any length of time, or did you go right
4 through? A Stayed there until the first fast train came.

5 Q The first one. Well, what day was it you left Reno?

6 A Monday night.

7 Q Monday night. Do you remember what day of the month
8 that was? A Well, I don't remember now.

9 Q Was it the same day you sent the telegram back to
10 Harrington? A Yes, I guess it was.

11 Q Did you stop anywhere on your way to Chicago? A No.

12 Q What railroad did you get into Chicago on? A North-
13 western.

14 Q The Northwestern? A Yes.

15 Q Didn't you stop off somewhere about a week, Mr Johann-
16 sen, on your way in? A No.

17 Q Did you get a drawing room? A No.

18 Q Ride out in the car? A (No response.)

19 Q Didn't get a state-room or compartment? A No.

20 Q Do you remember what day you got to Chicago? A No, I
21 don't remember exactly.

22 Q What name did you travel under?

23 MR APPEL: We object to that as immaterial.

24 THE COURT: Objection overruled.

25 MR APPEL: We except.

26 A I traveled under the name of Jones.

1 Q The same name you registered under down in San Jose?

2 A Yes.

3 Q You traveled as John Jones and wife? A That is cor-
4 rect.

5 Q When you got to Chicago, where did you go; where
6 did you take Mrs Caplan?

7 MR APPEL: We object to that as immaterial; not cross-ex-
8 amination.

9 THE COURT: Objection overruled.

10 MR APPEL: We except.

11 A I went to the Briggs House.

12 Q And then you took her to Ed Nockles?

13 MR APPEL: We object to that as immaterial, not cross-ex-
14 amination, has nothing to do with this case.

15 THE COURT: Objection overruled.

16 MR APPEL: We take an exception.

17 A No.

18 Q Well, Ed Nockles met her there shortly after you got
19 there, didn't he?

20 MR APPEL: We object to the declarations of third parties
21 not connected with the defendant; not cross-examination.

22 THE COURT: Objection overruled.

23 MR APPEL: We except.

24 A No.

25 Q Well, her trunk was afterwards sent, on the 19th day
26 of August, from San Francisco, by Wells Fargo to Ed

1 Nockles in Chicago, wasn't it?

2 MR APPEL: We object to that on the ground it is not cross-
3 examination; incompetent, irrelevant and immaterial;
4 calling for hearsay; calling for the acts and declarations
5 of third parties not connected with the defendant; not
6 cross-examination.

7 THE COURT: Objection overruled.

8 MR APPEL: We except.

9 A I don't know anything about her trunk.

10 Q Didn't you leave orders for her trunk to be packed
11 up and sent on there? A No.

12 Q How long did you stay in Chicago at that time? A To
13 the end of the convention, the Sheet Metal Workers.

14 Q Well, that does not give any date; about how long?

15 A Well, they opened their convention on the 7th of August,
16 and had their convention for a week, I think.

17 Q The Sheet Metal Workers. Have you anything to do with
18 the Sheet Metal Workers? A Nothing except to get
19 \$18,000 from them for the defense of the McNamaras.

20 Q Did you get \$18,000 from them? A Yes.

21 Q What did you do with the money?

22 MR APPEL: Wait a moment --

23 A I didn't get the money --

24 MR APPEL: Wait a moment, now. We object to that as not
25 cross-examination.

26 MR FREDERICKS: It shows the interest of this witness,
and the connection.

1 MR APPEL: The only purpose for which this witness was
2 put upon the stand, was to show he took this woman from
3 there and under what circumstances. Now, they are branch-
4 ing off to find out what was done at some date that he was
5 over there at Chicago, and what he did with that money,
6 and that does not throw any light upon his motives in tak-
7 ing this woman or connection with the defendant, and does
8 not connect this defendant with the matter. This does not
9 open the door to cross-examine upon that subject that may
10 be involved in this question I submit to your Honor that
11 the cross-examination already has gone beyond what it
12 should have gone. Now, they are going on and have him say
13 as to what he did with the \$18,000. What has that got
14 to do with this?

15 THE COURT: I can see where it might have something to do
16 with it, I think it is proper cross-examination. Objection
17 overruled.

18 MR APPEL: We take an exception.

19 A What is the question?

20 (Question read.)

21 A I didn't get the money personally. We don't do bus-
22 iness that way.

23 Q BY MR FREDERICKS: Who did get it?

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

26 MR FREDERICKS: You said you raised it.

1 MR APPEL: I object to that as incompetent, and immater-
2 ial, calling for hearsay evidence; calling for the acts and
3 declarations and conduct of third parties; not cross-
4 examination.

5 THE COURT: Objection overruled.

6 MR APPEL: We take an exception.

7 A I don't know; I didn't send it. You will have to ask
8 the Sheet Metal Workers.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

4p 1 MR. FREDERICKS. Q How do you know it was raised? A The
2 convention unanimously pledged itself for a dollar assess-
3 ment on every member of the union throughout the country.

4 Q And you went there for that purpose? A Yes.

5 Q To raise the money for Mr. Darrow, who was defending the
6 McNamaras, and--

7 MR. APPEL. Wait a moment--

8 MR. FREDERICKS. Wait until I finish my question, Mr. Appel.

9 THE COURT. Let him finish his question.

10 BY MR. FREDERICKS. (Continuing) --and at the same time
11 you were helping Mr. Darrow raise money to defeat the case
12 against the McNamaras, you were also taking one of the prin-
13 cipal witnesses of the prosecution out, to help Mr. Darrow,
14 weren't you?

15 MR. APPEL. We object to that question on the ground it is
16 immaterial, first; it has nothing to do with this case;
17 that it is putting a lot of facts for an effect before the
18 jury; that the question is incompetent, irrelevant and
19 immaterial for any purpose whatsoever; that it assumes
20 facts not testified to by the witness and we assign the
21 conduct of the District Attorney in putting all these facts
22 for the purpose of making an argument to the jury, and in
23 the form of the question.

24 THE COURT. Objection sustained.

25 BY MR. FREDERICKS. Q Well, did you help Mr. Darrow in any
26 other way, during the progress of the McNamara trial, except
by raising the \$18,000 in the Sheet Metal Workers' conven-

1 tion, and taking Mrs. Caplan away?

2 MR. APPEL. We object to that statement of the District
3 Attorney as assuming that the witness has testified to helping
4 Mr. Darrow in any other way or that he helped him in any way.
5 We object to it on the ground that it is made, not for the
6 purpose of asking a question, but it is made
7 for the purpose of arguing the case to the jury at this
8 time by putting these arguments in the form of a question;
9 and upon the further ground it is not cross-examination;
10 it is incompetent, irrelevant and immaterial for any other
11 purposes whatsoever. We assign the question, the assump-
12 tion of facts, as misconduct on his part, as one of the acts,
13 a series of acts, forming general misconduct on his part.

14 THE COURT. Objection overruled.

15 MR. APPEL. We except. Now, read the question.

16 (Last question read by the reporter.)

17 THE COURT. Wait a moment--that is not the question I had
18 in mind. I will have to sustain the objection to that
19 question.

20 MR. FREDERICKS. Did you help Mr. Darrow in any other way
21 than you have indicated, either by raising money or other-
22 wise?

23 MR. APPEL. Wait a moment--we object to that on the same
24 grounds stated in our previous objection; that it assumes
25 that the witness was helping Mr. Darrow. The witness said
26 he was helping the defense, the McNamaras.

1 THE COURT. Objection sustained.

2 MR. FREDERICKS. I guess I didn't get the point then, your
3 Honor. Q Did you--what other acts, if any, did you do to
4 assist in the defense of the McNamaras?

5 MR. APPEL. Wait a moment--we object upon the ground that it
6 is incompetent, irrelevant and immaterial for any pur-
7 pose whatsoever; it is not cross-examination. It calls for
8 facts and declarations of the witness not testified to by
9 him in his direct testimony, and calls for acts or declara-
10 tions of the witness upon which no foundation has been laid,
11 and don't tend to bind the defendant in any way, shape
12 or manner.

13 THE COURT Overruled.

14 MR. APPEL. We take an exception.

15 A What is the question.

16 (Last question read by the reporter.)

17 A I was not defending the McNamaras.

18 MR. FREDERICKS. Q Will you kindly answer my question, Mr.
19 Johannsen, if you can?

20 A I don't consider that a question, that is a pumping process

21 Q That is what all questions are. A I refuse to answer
22 that.

23 Q I insist upon an answer.

24 THE COURT. On what ground do you refuse?

25 A Because that will come in--I think that will have material
26 effect on my indictment.

1 MR. FREDERICKS. Q On the ground that the answer might
2 tend to incriminate you, is that your ground? That is the
3 only ground that I have a right to be stopped on. I want
4 it clearly stated.

5 MR. APPEL. Your Honor, the witness has already stated that
6 it is a fishing expedition here, called it pumping, and I
7 call it a very bad fishing expedition. I don't mean it
8 in disrespect--

9 THE COURT. I don't see that we need waste any time on this.
10 I regard the witness's statement, that it might affect his
11 indictment, as being substantially the statement provided by
12 law--

13 MR. FREDERICKS. Very well, your Honor.

14 THE COURT. A little different in wording but means the same
15 thing, as I understand it.

16 MR. FREDERICKS. I leave it stand that way for the present.

17 Q You stated Saturday morning that you saw Mr. Darrow every
18 time you came to Los Angeles during the time that he was here
19 defending the McNamaras. Now, I didn't ask you how
20 often you came to Los Angeles, say from the first of June,
21 1911 to the time when the two McNamaras plead guilty,
22 about how often did you come to Los Angeles?

23

24

25

26

1 A I don't remember.

2 Q Oh, about once a month, twice a month; once a week?

3 A Oh, perhaps down here two or three times.

4 Q And how long did you stay each time? A I don't rem-
5 ember.

6 Q As a matter of fact, you put in about 6 weeks down here
7 in the time from the 1st of June to the 1st of December,
8 didn't you?

9 MR APPEL: We object to that as immaterial for any pur-
10 pose whatsoever. Couldn't be possibly cross-examination
11 what he did in taking this woman away, your Honor. I
12 think I can state it -- what I have in my mind so as to ex-
13 plain my objection. The prosecution showed this witness
14 was taken away by a chauffeur, with the assistance of a
15 chauffeur and who mentioned Mr Johannsen. Mr Johannsen
16 goes on the stand and admits all that, and then he says under
17 what circumstances he took her. Now, the only question as
18 to whether or not Mr Johannsen acted under the directions
19 of Mr Darrow is the simply issue involved in his examina-
20 tion. Now, he may have stayed here 6 months or a year --

21 MR FREDERICKS: It is a preliminary question.

22 MR APPEL: -- that fact would not tend to illustrate the
23 statement of the witness. He can ask him anything Mr Dar-
24 row said to him upon any occasion or anything that he said
25 to Mr Darrow in reference to this subject, but as to travel-
26 ing over several weeks of his residence here in the city

1 would not tend to prove whether the witness is telling
2 the truth or not in respect to the point at issue.

3 THE COURT: Objection overruled.

4 MR APPEL: We except.

5 A What is the question? (Last question read by the
6 reporter.) I am absolutely certain I put in no 6 weeks.

7 MR FREDERICKS: About how much did you put in? A I don't
8 remember. I never stayed very long when I came down, two
9 or three days.

10 Q About how long, how many times -- I withdraw that.
11 How many times were you up to the Higgins Building, Mr
12 Darrow's office here in the city of Los Angeles, between
13 the 1st day of August -- well, between the time when you
14 got back from Chicago, and the time when the McNamaras
15 plead guilty?

16 MR APPEL: We object to that as immaterial, covering a time
17 in the testimony of the witness by matters and things
18 which occurred after the witness had been taken to Chicago;
19 not cross-examination; immaterial for any purpose.

20 THE COURT: Overruled.

21 MR APPEL: We except.

22 A I am not certain I was in that building after I came
23 back from Chicago. I may have been once or twice; I am
24 not certain.

25 MR FREDERICKS: Were you in it before you went to Chicago?

26 A Oh, yes.

1 Q In the Higgins Building? A Sure.

2 Q In Darrow's office? A I don't know whether he had
3 an office before or not.

4 Q You remember -- getting back to dates, it was the 31st
5 of July that you got to Reno. Now, getting back to the
6 22nd of July, about 10 days before you left for Chicago,
7 you and Mr Darrow and Mr Tveitmoe had a conference in
8 San Francisco, didn't you? A Not that I know of.

9 Q Will you say that you didn't meet Mr Darrow on the 21st
10 day of July in San Francisco?

11 MR APPEL: Wait a moment. We object upon the ground that
12 the question as a question calculated or intended to
13 call the witness' attention to a particular circumstance,
14 lacks all of the elements necessary and required by law
15 for that purpose. It is incompetent, irrelevant and imma-
16 terial, and too general.

17 THE COURT: Objection sustained.

18 MR FREDERICKS: I don't think counsel's objection is correct
19 in the matter. I am not asking an impeaching question. Did
20 you meet Mr Darrow in San Francisco on the 21st day of
21 July last year?

22 MR APPEL: Wait a minute. We object upon the same grounds
23 stated in our last objection, that the time, place and
24 persons present is not called to the attention of the
25 witness.

26 THE COURT: Counsel states that it is not an impeaching

1 question, and therefore, he is entitled to it. What is
2 your answer? A What is the question. I didn't keep
3 no note-book. That was over a year ago. You can't ex-
4 pect me to remember where I was on the 21st of June.

5 MR FREDERICKS: July. A July, or whatever it was.

6 Q When did you see Mr Darrow in San Francisco last be-
7 fore you went to Chicago with Mrs Caplan? A I don't
8 remember.

9 Q About how long was it before you went? A It is pos-
10 sible I seen him a couple of weeks before.

11 Q Yes; at the Fairmont Hotel. He was stopping at the
12 Fairmont Hotel? A yes, I remember meeting him there.

13 Q That is the time I am talking about. Well, he only
14 stopped at the Fairmont Hotel once, didn't he? A I don't
15 know.

16 Q July 20th and July 21st, that would be about right
17 with your memory, wouldn't it? You said about two weeks be-
18 fore? A That is possible.

19 MR APPEL: He stated he didn't know the date he met him
20 there at that hotel.

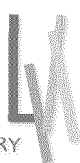
21 MR FREDERICKS: Is there any objection in?

22 THE COURT: I understand there is.

23 MR APPEL: Mr Darrow stoppe d there at the Fairmont Hotel,
24 no foundation laid; not cross-examination.

25 A What is the difference?

26 THE COURT: Objection overruled.



1 MR FREDERICKS: He did answer it, your Honor; I don,t know
2 if the reporter got it.

3 THE COURT: Did you answer the question?

4 A I say that is possible. I remember seeing him at the
5 Fairmont.

6 MR FREDERICKS: About that time. A About what time? It
7 was sometime in July.

8 Q Well, you never saw him there but once, did you?

9 A I guess that is all.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q Tveitmoe was there too, wasn't he? A No.

2 Q You and Tveitmoe and Darrow together had a meeting there?

3 A No.

4 Q Did you and Mr. Tveitmoe and Mr. Darrow have a meeting
5 in San Francisco at this time when he was there at the Fair-
6 mont, or at any place? A Not that I remember of we had
7 anything particular.

8 Q Well, do you say you did not?

9 MR. APPEL. Wait a moment--that I object to, that question--

10 MR. FREDERICKS. All counsel has to do is to put his objec-
11 tion.

12 THE COURT. He is doing it.

13 MR. APPEL. I am going to do it but I am not going to be
14 in any greater hurry than it takes you to ask questions.
15 Objected to upon the ground it is incompetent, irrelevant
16 and immaterial and not consistent with the series of ques-
17 tions and answers propounded to the witness and answered
18 by the witness. The witness has not denied that he met
19 him, and that the witness has testified too that he don't
20 remember the time only except that it was in July. He has
21 testified he don't remember the number of times. It is
22 asking him to state if he will or will not swear he didn't
23 meet him only once. That kind of evidence would not prove
24 anything. Doesn't establish any fact that the witness will
25 or will not swear to. He says, No, I will not swear to
26 that, doesn't establish that he met him more than once.

1 THE COURT. Objection sustained.

2 MR. FREDERICKS. I do not think counsel is arguing the
3 question I asked, at all. Counsel is rolling around.

4 THE COURT. Read the question; I thought he was.

5 MR. FREDERICKS. That is not the question I asked.

6 THE COURT. I thought it was.

7 MR. APPEL. It is right squarely to the point, and counsel
8 has not rolled around.

9 THE COURT. Wait a moment, Mr. Appel, I want the question.

10 (Last question read by the reporter.)

11 THE COURT. I understood the question to be, "Did you swear
12 you were not?"

13 MR. APPEL. That amounts to the same thing.

14 THE COURT. Not quite.

15 MR. APPEL. He is under oath.

16 THE COURT. He is swearing to everything he says here. I
17 misunderstood the question. Objection overruled.

18 A. What is the question?

19 MR. FREDERICKS. Never mind, I will reframe the question.

20 Q. Will you say or do you say or can you say you did not meet
21 Mr. Darrow and Mr. Tveitmoe together at that time in San
22 Francisco and have a conference with them, and I will add a
23 little to that so as to refresh your memory, having had a
24 conference with them and arranged this dictionary code which
25 you used in sending the telegram from Reno?

26 MR. APPEL. We object to that on the ground it is incompetent

1 irrelevant and immaterial for any purposes whatsoever, not
2 cross-examination; it calls for a conclusion and opinion of
3 the witness, does not call for any statements then and there
4 made by either of the parties or in the presence of the
5 defendant in respect to any material fact in this case, and
6 that you cannot lay the foundation for impeaching upon
7 collateral matters, nor for contradicting upon collateral
8 matters.

9 THE COURT. Objection overruled.

10 MR. APPEL. We except.

11 A I don't remember any particular conference.

12 BY MR. FREDERICKS. Q When was it you arranged this dic-
13 tionary code?

14 MR. APPEL. We object to that on the ground it assumes he
15 did arrange it, and it assumes that the witness or someone
16 else arranged it, and it assumes--

17 MR. FREDERICKS. I will use the word "learn" instead of
18 arrange, and amend the question to when did you learn?

19 MR. APPEL. That is pretty good, it might be used for teach-
20 ing. We object to that on the ground it is incompetent,
21 irrelevant and immaterial, not cross-examination; assumes
22 that the witness ever learned it or ever arranged it. The
23 witness has not been questioned upon that, has never testified
24 and it is purely collateral, it is a collateral issue and
25 we are wasting a lot of time here on collateral matters.
26 The court ought not to tolerate the propounding of questions

1 to the witness/^{to}contradict him or impeach him on collateral
2 matters.

3 THE COURT. Objection overruled.

4 MR. APPEL. We except.

5 A Just before I went east.

6 Q How long before? A I don,t know exactly; perhaps a
7 week or so.

8 Q Well, you talked that over with Mr. Darrow, didn't you?

9 A No.

10 Q How is that?

11 MR. APPEL. Wait a moment. We object to that upon the ground
12 it is incompetent, irrelevant and immaterial, not cross-
13 examination, collateral to any issue, no foundation laid.

14 THE COURT. Objection overruled.

15 MR. APPEL. We except.

16 MR. FREDERICKS. Read the question.

17 (Question read by the reporter.)

18 A What do you mean by that question?

19 Q The code, the manner in which the code could be used.

20 A Well, it is possible I did.

21 Q Yes--

22 MR. APPEL. We move to strike that out as--

23 BY MR. FREDERICKS. Q Aren't you--

24 MR. APPEL. Wait a moment--as mere guesswork on his part.
25 This defendant is entitled to an answer one way or the
26 other, not mere guess coming from this witness, mere guess

1 work of that kind as not being evidence; the defendant
2 is entitled to the question being answered properly and not
3 by guess work .
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 THE COURT: I assume the witness' answer is equivalent to
2 using his best recollection, but you can clear that up on
3 redirect.

4 MR APPEL: We take an exception to the court's saying,
5 "That is my best remembrance".

6 A It is impossible for me to remember every detail over a
7 year ago.

8 MR FREDERICKS: Certainly, but you do remember, your best
9 recollection is -

10 MR APPEL: Wait a moment.

11 THE COURT: Just a moment, the court has not ruled on the
12 last objection.

13 MR FREDERICKS: I have not heard any objection.

14 THE COURT: There was an objection before the court.

15 MR FREDERICKS: I beg your pardon; I didn't think there was
16 any.

17 THE COURT: Objection overruled.

18 MR APPEL: We except.

19 MR FREDERICKS: Now, what was the question.

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

21 MR FREDERICKS: Oh, I thought that was disposed of.

22 MR APPEL: And enter our exception to the construction of
23 the language by the court.

24 MR FREDERICKS: As a matter of fact, of course, you did
25 talk this code over with Mr Darrow sometime or other before
26 you went East, didn't you? That is your best recollection?

1 MR APPEL: We object to that as incompetent, irrelevant
2 and immaterial for any purposes whatsoever. The witness
3 has already been asked and answered about it, and we ob-
4 ject to the question upon the ground that it assumes as a
5 matter of fact it did occur, when the witness has not tes-
6 tified to any such thing as that.

7 THE COURT: Objection overruled.

8 A What is the question?

9 (Question read.)

10 A I answered that before; it is possible I did.

11 Q BY MR FREDERICKS: Well, "It is possible I did" -- you
12 mean by that that is your best recollection; is that right?

13 MR APPEL: Wait a moment. We object to that upon the
14 ground that the language used by the witness is plain
15 English language and does not need any interpretation
16 either by the District Attorney or anyone else.

17 MR FREDERICKS: I will withdraw the question.

18 Q Why do you think it is possible you did?

19 MR APPEL: That is objected to upon the ground it calls
20 for a conclusion of the witness which would not aid any
21 in establishing the fact to answer the question; you cannot
22 argue the reason why he thinks it is possible he did.

23 THE COURT: Objection overruled.

24 MR APPEL: We except.

25 A I think I am the man that suggested the code.

26 Q To Mr Darrow? A No, I think I am the man that

1 suggested the code.

2 Q To Mr Darrow? A It was not a code for any particular
3 individual; it was for anybody except Burns.

4 Q Sure. You suggested it to Mr Darrow? A I don,t know
5 whether I did or not; I am not sure; it is possible I
6 did.

7 Q It is quite probable you did? A I know I did to
8 Tveitmoe.

9 Q It is quite probable you did?

10 MR APPEL: Wait a moment; he has been asked that question
11 time and time again.

12 MR FREDERICKS: I withdraw the question.

13 THE COURT: The question is withdrawn.

14 MR APPEL: yes, but we except to the conduct of the Dis-
15 trict Attorney in asking the question.

16 MR FREDERICKS: I am withdrawing my question, may it please
17 the court, not because the question is improper, because
18 I believe it is proper, but simply to save a long, big
19 argument on something I can get in another way; that is my
20 reason.

21 THE COURT: What is the next question?

22 MR FREDERICKS: Do you know how John Harrington, the chief
23 investigator for Mr Darrow, got that code?

24 MR APPEL: Wait a moment. That assumes the witness has
25 testified that that code was in the hands of Mr Harrington.

26 MR FREDERICKS: I will withdraw the question oh that

1 ground.

2 MR APPEL: The fact of the matter is, counsel put so many
3 objectionable questions that it makes us object to these
4 on these matters here, he assumes something --

5 MR FREDERICKS: These questions are not objectionable.

6 THE COURT: There is no objection. Go ahead with the next
7 question.

8 MR FREDERICKS: Did you ever give this code to Mr John
9 Harrington?

10 MR APPEL: We object to that as incompetent, irrelevant
11 and immaterial; not cross-examination.

12 THE COURT: Objection overruled.

13 MR APPEL: We except.

14 A I guess I did.

15 Q At the time you -- do you remember where you gave
16 it to him? A No, I do not.

17 Q You don't remember; is that it? A I don't know; I
18 don't remember, no.

19 Q You don't remember? A No.

20 Q Well, do you remember the day you left San Francisco
21 to go down to the mountains and get Mr Caplan at La Honda?

22 A yes, I remember that day.

23 Q Did you see John Harrington that day? A I think perhaps
24 I did; I am not sure.

25 MR APPEL: He was asked about that, your Honor, on Sat-
26 urday.

1 THE COURT: I think that was gone into, Captain.

2 MR FREDERICKS: yes. How long had you known John Harrington
3 at that time? A I never knew him until he came out
4 to the coast here.

5 Q Well, he came out here about a week before that, didn't
6 he? A I don't know when he came out .

7 Q You had not known him over a week? A I don,t remember
8 how long I had known him.

9 Q What is your best recollection as to how long you had
10 known him at that time? A I thought he had come out
11 here in June; I am not sure, however.

12 Q Where did you first meet John Harrington?

13 MR APPEL: That is immaterial for any purpose whatsoever,
14 when he first met him.

15 THE COURT: Objection overruled.

16 A I think I met him in jail first.

17 MR FREDERICKS: Where? A When he was in jail in Frisco.

18 Q In Frisco? A Yes. I might have met him before that,
19 I don,t remember for sure.

20

21

22

23

24

25

26

8p

1 Q When was he in jail in Frisco?

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

3 THE COURT. Objection overruled.

4 MR. APPEL. It has nothing to do with this case, not/cross-
5 examination.

6 A I don,t remember what date it was or even what month it
7 was, he was there in June or July, I guess.

8 MR. APPEL. Exception.

9 Q Sometime after you had been to Chicago and returned?

10 A Was it, I didn't remember?

11 Q It was after you had been in Chicago, wasn't it?

12 A I don't know.

13 Q That was along in September? A I don't remember.

14 Q You just wanted to get that answer in, didn't you, Mr.
15 Johannsen? You know that was got the first time you met
16 him?

17 MR. APPEL. "He wanted to get something in", just a moment--

18 A You are judging me by yourself.

19 MR. APPEL. I move to strike out the statement of the Dis-
20 trict Attorney there.

21 THE COURT. Strike it out.

22 MR. FORD. You ought to leave it in and assign it as error.

23 BY MR. FREDERICKS. Q Now, then, when do you say you first
24 met John Harrington before this time when you went to
25 Chicago?

26 MR. APPEL. We object to that as asked and answered time and

1 time over again.

2 MR. FREDERICKS. I have not got an answer yet.

3 A I am willing to admit any date you give, I don't remember.

4 THE COURT. That is not an answer. Objection overruled.

5 BY MR. FREDERICKS. Q About a week before that, wasn't it?

6 MR. DARROW. I object to that question on the ground it has

7 been asked and answered several times, three or four times

8 and he said he thought he had been here a month or more and

9 he has answered this specific question several times.

10 THE COURT. Objection overruled.

11 MR. DARROW. Exception.

12 BY MR. FREDERICKS. Q Do you remember why John Harrington

13 was in jail in San Francisco? That it was on a charge of

14 contempt of court for attempting to influence State's

15 witnesses, wasn't it?

16 MR. APPEL. We object to that. We would beg your Honor

17 not to allow him to make statements of that kind in these

18 questions and to ask him such a thing as that and to try

19 to by asking a question to introduce here some other collateral

20 proceedings about someone concerning some one else not

21 connected with this matter, not connected with the subject

22 to which the witness has testified to here on his direct

23 examination. Certainly there is a proper way to examine

24 a witness and it is not proper to bring out collateral

25 matters of that kind.

26 THE COURT. I am unable to see any connection between the

1 motives of this witness in taking Mrs. Caplan to Chicago and
2 the question.

3 MR. FREDERICKS. Withdraw the question.

4 Q Now, Mr. Johannsen, when did you last see Mrs. Caplan?

5 MR. DARROW. We object to that question on the ground it is
6 incompetent, irrelevant and immaterial, indefinite, might
7 not have anything to do with this question upon which this
8 witness is testifying.

9 THE COURT. Objection overruled.

10 MR. DARROW. Exception.

11 A I don't remember, I think I seen her, the last time I seen
12 her was about the 10th or 11th of December.

13 Q Of December, where? A Chicago.

14 Q And had a little talk with her then?

15 MR. APPEL. We object to that as immaterial. What year
16 December?

17 MR. FREDERICKS. December of last year.

18 MR. APPEL. December of 1911.

19 A Right after the plea of guilty.

20 Q Yes.

21 MR. APPEL. We object to that as immaterial, has nothing
22 to do with this case whatsoever.

23 THE COURT. Objection overruled.

24 MR. APPEL. Except.

25 MR. FREDERICKS. Answer the question.

26 THE COURT. He answered it.

1 MR. FREDERICKS. I said, "Did you have a little talk with
2 her at that time", and that has not been answered yet.

3 A I had a little dinner with her.

4 Q You had a little dinner with her. All right. And you
5 learned at that time, you know now that Mrs. Caplan has
6 not had any employment in Chicago since she left San
7 Francisco, is that correct?

8 MR. APPEL. We object to that on the ground it is incompetent
9 irrelevant and immaterial, not cross-examination.

10 MR. DARROW. It does not affect the issues of this case.

11 MR. APPEL. Calls for hearsay, and does not affect the issues
12 of this case.

13 THE COURT. What has that to do with his motives in taking
14 her to Chicago?

15 MR. FREDERICKS. We want to show that Mrs. Caplan was taken
16 to Chicago by the defense in that case referred to and that
17 she has been kept by them there ever since, she has not
18 got a job, and has not gone to work and she has been main-
19 tained there by them and has been so maintained ever since.

20 MR. DARROW. What has that to do with the issues here?

21 MR. APPEL. How does that show Mr. Darrow guilty of anything?

22 MR. FREDERICKS. Well, it is a part of, it shows she was
23 not taken out for the purpose he claims she was.

24 MR. APPEL. Every hotel man, wherever she stopped, that fed
25 her, and so on, was a member of the conspiracy, a general
26 conspiracy.

1 THE COURT. Objection sustained.

2 BY MR. FREDERICKS: Q Well, Mr. Johannsen, you paid Mrs.

3 Caplan's fare, bought her ticket, and so forth? A I did.

4 Q And paid all her expenses until you left her in Chicago?

5 A I did.

6 Q And do you remember about how much, about, that amounted

7 to? A No. I could give an estimate approximately.

8 Q All right, estimate it. A About \$175.00, I guess.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q Did you ever get that money back from any source?

2 A I put in my bill of expenses to my organization.

3 Q And that was a part of your bill of expenses, was it?

4 A Yes.

5 Q What organization do you refer to? A State Buildings
6 Trades Council.

7 Q Yes. But, as a matter of fact, that bill went into the
8 McNamara defense fund, didn't it? A No sir.

9 MR APPEL: We object to that.

10 Q How? A No sir.

11 Q It did not? A No sir.

12 Q Who was it reimbursed you for that? A The secretary-
13 treasurer of the State Buildings Trades.

14 Q That is O. A. Tveitmoe, isn't it? A Yes.

15 MR APPEL: Does that go into the record, your Honor, his
16 facial expressions and his purring? Is that part of this
17 examination? I want to know if it is part of the examina-
18 tion, if so, I want to object to it.

19 THE COURT: I don't think the witness is offended by it.

20 A No, Oscar wants that information.

21 MR APPEL: I don't know whether it was purring or part of
22 the question.

23 MR FREDERICKS: I have lived a long time, and I hope Mr
24 Appel will grow up sometime.

25 THE COURT: Any other questions?

26 MR FREDERICKS: yes, a few, your Honor; not many.

1 Q When did you last hear from Mrs Flora Caplan before
2 you went down to the mountains and took her East?

3 A Before I went to the mountains or before I went East?

4 Q How long before you went to the mountains?

5 MR APPEL: We object upon the ground it has been fully cov-
6 ered.

7 MR FREDERICKS: No, it has not been fully covered. The
8 question was asked about it, and then objection was inter-
9 posed, and I withdrew the question.

10 THE COURT: That is my recollection of the testimony.
11 What page are you referring to? However, it won't do any
12 harm to get it again. Objection overruled.

13 MR APPEL: Exception. (Last question read by the re-
14 porter.) A Sometime in June, I guess.

15 MR FREDERICKS: Had you heard from her after she went
16 down to La Honda at all, either directly or indirectly,
17 through anyone else? A No, not that I know of. I might
18 have heard that she was O.K.

19 Q Well, did you send word to her that you were coming to
20 get her? A No.

21 Q When you left in the machine, you were going down to
22 Mrs Caplan's, and came back with Mrs Caplan and the two
23 children and you were only gone an hour. How long did it
24 take you to walk down to the camp? A About five minutes.

25 Q About 5 minutes? A Not that long; just -- down below
26 the road. You can see it from the road.

Q You were gone about an hour? A No, they were gone

1 an hour. I was down in the camp.

2 Q You were gone. Put it either way you want to. You
3 were gone from the road about an hour; in an hour's time,
4 you were back with Mrs Caplan? A Yes.

5 Q Had you sent her any word to be ready for you? A No.

6 Q None at all. Why didn't you? A It wasn't necessary.
7 She told me along in April, if I had an opportunity to
8 go East, she wanted to go with me.

9 Q You think it was better to go with her East than it
10 would be to send her East by herself?

11 MR APPEL: Wait a moment. That is immaterial what he
12 thought in that respect; it is immaterial.

13 THE COURT: Objection sustained.

14 MR FREDERICKS: She was staying down there with Mr Mor-
15 ton, who is a brother-in-law of Mr Tveitmoe, wasn't she?

16 A Morton a brother-in-law of Tveitmoe?

17 Q Mr Eric Morton? A Brother-in-law of Tveitmoe?

18 Q Yes. A Not to my knowledge.

19 Q She was staying down there with Mr Eric Morton?

20 A Yes, Morton was down there.

21 Q Well, Mrs Caplan was staying there with Mr Morton?

22 A Morton was there every year, every summer.

23 Q I am not asking you about any other summer but this
24 one. Mrs Caplan was staying down there with Morton,
25 wasn't she, this time?

26 MR APPEL: He has testified to that.

1 THE COURT: Yes, he said yes.

2 MR FREDERICKS: I didn't so understand. That is all I
3 want.

4 A She was there, and so was Morton, of course.

5 Q That is not an answer to my question. She was there
6 and Morton was there and possibly there were others there
7 that had nothing to do with them. I am asking was she not
8 stopping with Morton? A Well, you can put it that way;
9 that is the same thing, I guess.

10 Q Do you know J. W. Bibby, a member of the executive
11 board from Alameda? A Sure, I know him well.

12 Q J. W. Bibby with you when you went down there? A No
13 sir. I will give you the man that was with me, if you
14 want it.

15 Q Who was it? A Fred Cole.

16 Q Who is Fred Cole? A A member of the Iron-Workers'
17 Union.

18 Q And he knew where she was, did he? A Yes, he knew
19 where she was. I didn't know where the camp was.

20 Q How did you know that Fred Cole knew where Mrs Caplan
21 was? A Because he camped there every year himself.

22

23

24

25

26

1 Q When did you find out that Fred Cole knew where Mrs.
2 Caplan was? A When did I find out that he knew?

3 Q Yes. A I wasn't concerned whether he knew or not.
4 I knew he knew where the camp was.

5 Q You took him down? A Took him down to show me the
6 camp.

7 Q When did you learn--when did you meet Fred Cole on that
8 occasion first? A I went down to his house to get him.

9 Q Had he been down to the camp that year? A I think he
10 had. I think he had come back.

11 Q Yes, just the day before, didn't he? A Not that I know
12 of. He can answer that better than I can.

13 Q Didn't he come back the day before and tell you that she
14 had been subpoenaed and took you down there to get her?

15 A No, he didn't.

16 Q Now, about J. W. Bibby, do you remember where Bibby was
17 on the last week of September this year?

18 MR. APPEL. We object to that as immaterial, this examination
19 refers--

20 MR. FREDERICKS. All right, I will withdraw the question.

21 A I didn't keep tab on him.

22 Q Now, J. W. Bibby was also assisting in the defense of the
23 McNamaras, wasn't he?

24 A We can answer that I guess better than I can.

25 MR. APPEL. That is not cross-examination.

26 THE COURT. You want the answer stricken out?

1 A I am not speaking for anybody else on this witness stand.

2 MR. APPEL. I object--

3 THE COURT. He says he don't know.

4 MR. APPEL. It is not cross-examination, your Honor.

5 THE COURT. Read the last answer.

6 (Last answer read by the reporter.)

7 MR. FREDERICKS. Well, Mr. Bibby is a member of the Executive
8 Board and you are the business agent? A I am not the
9 business agent.

10 MR. APPEL. Objected to as immaterial and not cross-examina-
11 tion.

12 THE COURT. Is it preliminary?

13 MR. APPEL. He can get him on the stand as his own witness.
14 It isn't preliminary, it is asking him for something that
15 he wants to show as a substantive fact now to be used here-
16 after.

17 MR. FREDERICKS. I withdraw it for the present.

18 Q At the time you got down to the camp there, was Mrs.
19 Caplan looking for you, prepared for you? A No.

20 Q And she left with you for Chicago in an hour, that right?

21 MR. APPEL. Now, wait a moment--we object to his going
22 over the same ground over and over, and over and over and
23 over again.

24 THE COURT. Objection sustained. Answer stricken out.

25 MR. FREDERICKS. When was the last time that Mrs. Caplan
26 complained to you about the Burns detectives?

1 MR. APPEL. Now, that has been all asked, your Honor, cover-
2 ed on cross-examination.

3 THE COURT. I think it has. Objection sustained.

4 MR. FREDERICKS. What did she say to you in her complaining?

5 MR. APPEL. The same objection; it has already been asked
6 and answered in full.

7 THE COURT. Objection sustained.

8 MR. FREDERICKS. Q Well, as a matter of fact, Mr. Johannsen,
9 all she ever told you was that the Burns detectives were
10 trying to get her to tell where her husband was, isn't that
11 correct? A That is not correct.

12 Q Well, that is a part of what they were trying to do, isn't
13 it?

14 MR. APPEL. Wait a moment--that is asking for what somebody
15 else was trying to do.

16 THE COURT. Objection sustained.

17 MR. FREDERICKS. That was gone into by the defendant.

18 MR. APPEL. No, we asked her what she said.

19 MR. FREDERICKS. Did the court rule?

20 THE COURT. Objection sustained.

21 BY MR. FREDERICKS. Q Didn't she tell you that what they
22 were trying to do was to get her to tell where her husband
23 was so that he could be apprehended as one of those charged
24 jointly with the murder of the men who lost their lives when
25 the Times was blown up, isn't that what she told you?

26 MR. APPEL. That was asked a little while ago.

1 THE COURT. Objection overruled.

2 MR. APPEL. Except.

3 A That was part of what she told me.

4 MR. FREDERICKS. Q And one of the reasons why you took her
5 away was for fear she would tell that she knew J. B.

6 McNamara under the name of Brice and Schmidt in San
7 Francisco, and knew what they were doing just prior to the
8 blowing up of the Times, isn't that correct? A I am abso-
9 lutely certain she did not know J. B. McNamara as J. B.
10 Brice.

11 Q How do you know she didn't know J. B. McNamara?

12 MR. APPEL. Now, that is immaterial, your Honor. Now, we
13 have gone into a discussion between them, that don't affect
14 this defendant at all, what she knew or didn't know, now
15 how does he know?

16 MR. FREDERICKS. I will ask him. I have asked him how do
17 you know she didn't know J. B. McNamara? Did you know
18 J. B. McNamara? Did you know him in San Francisco?

19 THE COURT. What is the question?

20 MR. APPEL. Objected to as not cross-examination.

21 MR. FREDERICKS. I withdraw the question. That is all.

22 THE COURT. Gentlemen of the jury, bearing in mind your
23 former admonition we will take a recess for 5 minutes at
24 this time.

25 (After recess.)

26 THE COURT. Have you finished with the cross-examination,

1 Captain?

2 MR. FREDERICKS: I have finished, your Honor.

3 THE COURT: Proceed with the redirect.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

REDIRECT EXAMINATION

1
2 MR APPEL: Mr Johanssen, you have been asked with respect
3 to the number of times that you were here in Los Angeles
4 during the progress and pendency of the McNamara case.
5 Upon those occasions, do you remember whether or not there
6 was an election pending here? A No.

7 Q Do you remember whether or not an election had been
8 called before that time, whether or not you were interested
9 in some respects
10 in politics, or other?

11 MR FREDERICKS: We object to that on the ground it is
12 leading and suggestive.

13 THE COURT: It is fixing the date, it is leading, but harm-
14 less.

15 MR FREDERICKS: I do not think it is for the purpose of fix-
16 ing the date.

17 THE COURT: I think your statement in regard to an election
18 is very indefinite, there are so many elections. Make it
19 more definite.

20 MR APPEL: I will put it this way: do you remember
21 whether or not Mr Fredericks was a candidate for District
22 Attorney the fall before? A Yes.

23 Q You were here at that time?

24 MR FREDERICKS: We object to that on the ground it is
25 not redirect examination, incompetent, irrelevant and imma-
26 terial.

THE COURT: Objection overruled.

1 A I was before the grand jury at that time.

2 Q Did you visit the District Attorney's office? A Well,
3 I was in Ford's office.

4 Q Well, Mr Ford was representing the District Attorney ?

5 A I suppose he was; I don't know.

6 Q Do you know how many times you visited Mr Ford's of-
7 fice? A Just once.

8 Q Were you then interested in politics? A Well, only
9 in the sense, we wanted to have Rogers removed from the
10 grand jury as a special prosecutor, and Joe Nolan, who at
11 that time was a deputy sheriff, came to me and told me if
12 I would go out and campaign for Fredericks down at the
13 Labor Temple, he thought Fredericks was a pretty decent sort
14 of a fellow, and he would be willing to remove Rogers af-
15 ter the election, from the grand jury, and I went with Nolan
16 up to Ford's office and we talked with Ford, and Ford struck
17 me as a pretty decent sort of a fellow. Anyway, I was im-
18 pressed that if we could reelect Fredericks, Rogers
19 would be removed from the Grand Jury, so I went to the
20 Labor Temple and asked all the boys to work for Fred-
21 ericks.

22 Q You made the arrangement with Mr Ford? A I wouldn't
23 say that I made the arrangement with Mr Ford, not exactly;
24 it was through Nolan I done the business.

25 Q But you did do something after that meeting? A Cer-
26 tainly. I went down the line and got everybody to vote for

1 Fredericks.

2 Q And Rogers was removed? A No. They gave me hell for
3 that afterwards.

4 Q Now, when you took this woman, Mrs Caplan to Chicago,
5 you remember whether or not -- I don't know whether you
6 testified to that or not, therefore I am going to ask you
7 this question: whether or not you then instructed her to
8 report to the District Attorney's office here as to where
9 she was and as to when she was to come here as a witness.

10 MR FREDERICKS: We object to that on the ground it has al-
11 ready been gone into, and not redirect examination.

12 THE COURT: Objection sustained.

13 MR APPEL: We offer to show by the witness that when he
14 took Mrs Caplan from California to Chicago, that while he
15 knew that she had been subpoenaed, that Mrs Caplan told
16 him that the agents, or deputy sheriff in lady's clothes --
17 the lady that was here --- told her they would notify her
18 when she would be needed as a witness, and that the witness
19 upon that information being given to him by Mrs Caplan,
20 did instruct her to inform the sheriff's office or the
21 District Attorney's office as to where she was so that she
22 could be notified to come whenever she was needed as a
23 witness.

24 THE COURT: The court has sustained the objection upon the
25 theory that the witness has so testified. If there is any
26 doubt about it, let him testify again.

1 MR FREDERICKS: I think not only the witness, but counsel
2 has added his testimony to it.

3 THE COURT: If there is any serious doubt, let him testify
4 again.

5 MR APPEL: Is it stipulated he so testified?

6 MR FREDERICKS: We will stipulate to nothing.

7 THE COURT: Let him answer the question; that is the short-
8 est way.

9 A She asked me as to whether she would get into any
10 conflict with the authorities because she perhaps wanted
11 to come back to California some time, and she also inform-
12 ed me when she was served with the subpoena, she was
13 served the same as the rest of them, with the instruc-
14 tion not to go to Los Angeles until she received a tele-
15 graph from John D. Fredericks, and I advised her that upon
16 the completion of the jury in the McNamara trial, to notify
17 the District Attorney as to her whereabouts and ascertain
18 as to when she might be wanted. She is still waiting for
19 that telegram.

20
21
22
23
24
25
26

1 MR. FREDERICKS. So is the District Attorney .

2 MR. APPEL. That is all.

3 MR. FREDERICKS. That is all.

4 THE COURT. That is all.

5 MR. APPEL. Now, then, your Honor, in going over the testi-
6 mony of the chauffeur here, I found he had testified in
7 reference to the payment of the machine they used in taking
8 Mrs. Caplan to Nevada, and the witness here has also testi-
9 fied in reference to that satisfactorily to us, and that
10 fact being in the record we do not think it necessary to
11 put Mr. Tveitmoe on the stand to testify the same facts,
12 so that we, so far as this issue is concerned, submit it
13 temporarily .

14 MR. FREDERICKS. You are not going to put Mr. Tveitmoe on?

15 MR. APPEL. I just made a statement, if you understand it,
16 you have the benefit of it. You understand it.

17 MR. FREDERICKS. Of course, counsel should have given us some
18 notice of that. We are preparing here to go on. Now, it
19 leaves us without a witness and we will have to have a
20 moment's consultation, your Honor.

21 THE COURT. All right. You may have it.

22 MR. FREDERICKS. Mr. Tveitmoe is here and we will put him
23 on. Take the stand.

24 MR. ROGERS. On the same matter?

25 MR. FORD. Yes .

26 MR. ROGERS. I will have to ask your Honor to excuse me.

1 THE COURT. Very well.

2 MR. ROGERS. On the same matter?

3 MR. FREDERICKS. partially, not entirely.

4 MR. FORD. Largely that, maybe some other matters.

5
6 O. A. T V E I T M O E,

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

9
10 MR. FORD. I will ask your Honor to read Section 1324 of the
11 Penal Code to the witness.

12 THE COURT. Mr. Tveitmoe, at the request of the District
13 Attorney, I will read you Section 1324 of the Penal Code
14 of this state, which reads as follows:

15 "1324. New Witnesses. Competency of--Refusal to
16 Answer."

17 MR APPEL. Wait a moment, your Honor.

18 MR. DARROW. I see no occasion for reading this.

19 MR. APPEL. We object to the Court reading anything to the
20 witness. He is a witness called forth here to answer ques-
21 tions of the District Attorney, and now the District Attor-
22 ney requests your Honor to read a section of the Code there
23 which we all know applies to accomplices, and they want to
24 make it appear here by the situation, indicated here before
25 the jury, that not only they consider him an accomplice of
26 Mr. Darrow here, but your Honor considers him an accomplice

1 of Mr. Darrow. The only time when that Section ought to be
2 read to a witness is at any time whenever any questions
3 would be asked of the witness, if ever, any question is
4 asked him in which he himself claims a privilege, and we
5 do certainly object to any exhibition here, or any mani-
6 festation upon the part of the court or upon the part of the
7 District Attorney establishing prima facie the fact that he
8 is at once taken for granted to be an accomplice of the
9 defendant upon any matter or thing, and your Honor will see
10 that that assumption is correct. If Mr. Tveitmoe were named
11 in an indictment here, or if it was a matter which was ad-
12 mitted in court that any act that he did, and anything he
13 said made him an accomplice of the defendant here and he
14 refused to answer any question upon the ground that he
15 might incriminate himself, I say it is right, but I say it
16 is not correct, it is not right, it is not just, to give
17 this jury the impression now, "Here comes one of the con-
18 spirators," and we want him to testify and we are going to
19 read him this section and we will assume that he is an
20 accomplice of the defendant." I say, we object to an ex-
21 hibition of that kind or to any assumption of that fact
22 as prejudicial to the rights of the defendant.

23 MR. FREDERICKS. Just a moment, your Honor. There is a
24 point I would like to consult.

25 MR. FORD. I think the section explains it, your Honor, and
26 we would ask that that be read to him anyway.

1 MR. FREDERICKS. Just a moment, your Honor.

2 THE COURT. It is somewhat long and it might be well for
3 the jury to retire while it is being read.

4 MR. FREDERICKS. Just a moment. We would like a little
5 further time to consider this matter. There is another
6 witness I can put on.

7 MR. FORD. We ask that he be considered under subpoena.

8 THE COURT. All right.

9 THE WITNESS. Mr. Fredericks, do you want me here this after-
10 noon?

11 MR. FREDERICKS. Did you want to get away this afternoon?

12 THE WITNESS. Yes, I intended to get away this afternoon?

13 MR. FREDERICKS. What time does your train go?

14 THE WITNESS. I guess about 6 o'clock.

15 MR. FREDERICKS. I will see you at 2 o'clock.

16 THE WITNESS. All right. (Witness leaves stand.)

17 MR. FREDERICKS. I am not sure we have another witness, but
18 we are trying to accommodate them as much as possible. I
19 will call Mr. Breed.

20

21

22

23

24

25

26

1 C. L. BRIED, a witness called on behalf of
2 the prosecution, being first duly sworn, testified as fol-
3 lows:

4 DIRECT EXAMINATION

5 MR FORD: What is your name? A C. L. Bried.

6 Q How old are you? A 33.

7 Q Where do you reside? A San Francisco.

8 Q State the number please? A 3786 Twentieth street, San
9 Francisco.

10 Q What is your business? A I am manager of a Taxicab
11 Company.

12 Q What Taxicab Company? A The Alco Taxicab Company.

13 Q Where is their place of business? A 360 Golden Gate
14 avenue.

15 Q During the months of July and August, did you employ
16 a chauffeur by the name of Malcomb Loughead? A Yes sir.

17 Q Do you remember the occasion of Loughead taking a trip
18 to Reno, Nevada? A Well, not particularly. I remember
19 there was a trip taken.

20 Q You remember there was a trip taken? A I didn't know
21 at the time where it went, but there was a country trip
22 taken in July.

23 Q You are the manager of the concern? A Yes sir.

24 Q And as such have charge of the business, the employment
25 of the men, the keeping of the books and so forth; super-
26 vision of it all? A Yes sir.

1 Q At that time did you have an account with O. H. Tveit-
2 moe? A yes sir..

3 Q What was the amount charged for that trip of Mr Lough-
4 ead's?

5 MR APPEL: Wait a moment. We object on the ground it is
6 incompetent, irrelevant and immaterial, that it calls
7 for the contents of an account, no foundation laid for the
8 introduction of the evidence; the witness has not been
9 shown to have any knowledge of the facts upon which the en-
10 try was made, or to have been the enterer or author of
11 the entry.

12 THE COURT: Objection overruled.

13 MR APPEL: We take an exception.

14 A Kindly repeat the question. (Last question read by
15 the reporter.) A I believe it was \$200.

16 MR FORD: Do you recall that you had any discussion as to
17 the amount at that time?

18 MR APPEL: Wait a moment. We object upon the ground it
19 calls for hearsay; it is immaterial.

20 THE COURT: Objection overruled. The witness is directed
21 to answer the question yes or no.

22 A I believe there was.

23 MR FORD: Who fixed the amount at \$200? A I did.

24 MR APPEL: Wait a moment.

25 THE COURT: Strike out the answer for the purpose of the
26 objection.

1 MR APPEL: Objected to upon the ground it is incompetent,
2 irrelevant and immaterial for any purpose whatsoever.

3 THE COURT: Overruled.

4 MR APPEL: We take an exception.

5 THE COURT: Restore the answer.

6 MR FORD: How did Mr Tveitmoe pay his account; by check or
7 by cash?

8 MR APPEL: Wait a moment. We object upon the ground it is
9 incompetent, irrelevant and immaterial for any purpose
10 whatsoever; hearsay, not connected with the defendant;
11 collateral to any issue in this case.

12 THE COURT: Objection overruled.

13 MR APPEL: We take an exception.

14 A Paid it by check.

15 MR FORD: Who paid for this trip that Malcomb Loughhead
16 took -- this \$200-trip to Reno, Nevada?

17 MR ROGERS: He didn't testify it was Reno, Nevada.

18 MR FORD: I withdraw the question. The \$200-trip you re-
19 ferred to as the one that Mr Loughhead returned on August
20 1st, 1911? A I believe that was the date, along that
21 time.

22 Q Who paid for that trip? A It was paid by Mr Tveitmoe.

23 Q O. A. Tveitmoe? A Yes sir.

24 MR FORD: That is all.

25

26

CROSS-EXAMINATION

1
2 MR APPEL: Did Mr Tveitmoe make the payment personally to
3 you? A Well, the check --

4 Q Just answer my question, did he make it personally to
5 you? A Well, I don't quite understand.

6 Q Well, did he come --

7 MR FORD: The witness is entitled to answer the question.
8 I think the witness' answer will answer it.

9 THE COURT: I think he can answer the question. He says
10 now he doesn't just know what you mean. Go ahead; make
11 your question so he will understand it.

12 MR APPEL: What I want to know is this: did you see Mr
13 Tveitmoe at the time of the payment; did you see him at
14 the moment of the payment? A No sir.

15 Q Now, did you -- did Mr Tveitmoe pass over to you
16 personally the payment? A No sir.

17 Q Then you didn't see Mr Tveitmoe make the payment?

18 A No sir.

19 MR APPEL: We move to strike out the testimony of the wit-
20 ness that Mr Tveitmoe made the payment in question, on
21 the ground it is only an assumption or opinion of the wit-
22 ness, and not a matter within his own knowledge.

23 THE COURT: Motion to strike out denied.

24 MR APPEL: No foundation laid. We take an exception.

25 Now, did you -- they asked you something about a charge;
26 what the charge was, and the amount of the charge, and

1 you stated that the charge was made to Mr Tveitmoe; is that
2 right? A yes sir.

3 Q By that, you mean that the charge was made on the books
4 to Mr Tveitmoe? A yes sir.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q Did you make the charge yourself personally? A I
2 ordered it entered.

3 Q No, no, you answer my question: Did you make it per-
4 sonally? A I did not.

5 Q Sir? A No, sir.

6 Q Was Mr. Tveitmoe present when you directed the charge to
7 be made to Mr. Tveitmoe? A No, sir.

8 Q And when you testified to what the charge was you
9 testified to what the charge was in some book? A Yes, sir.

10 MR. APPEL. We move to strike out the testimony of the
11 witness as to the contents of the book and what the charge
12 was or any matter in reference thereto on the ground that
13 no foundation was laid for the introduction of the evidence;
14 it is incompetent, irrelevant and immaterial and hear-
15 say and not the best evidence.

16 THE COURT. Motion to strike out is denied.

17 MR. APPEL. We take an exception.

18 Q Now, since the transaction to which you have testified
19 to has any one visited you and asked you what you know about
20 the matter? A You mean visit me?

21 Q Yes. A Well, I was subpoenaed, no one visited--

22 Q You know the difference between being subpoenaed and
23 an interview? A No, sir.

24 Q No one interviewed you? A No, sir.

25 Q No one talked to you before you testified in this case?

26 A Yes, they did.

Q Where? A In San Francisco.

1 Q Who? A The Department of Justice.

2 Q The Department of Justice? The whole Department came to
3 San Francisco and asked you? A The Department of Justice.

4 Q From Washington? A Washington, D.C., represented by
5 Judge Harrington.

6 Q Judge Harrington? A Yes, sir.

7 Q And the Department of Justice moved to San Francisco and
8 asked you? A Well, he represented it, yes, sir.

9 Q Wudge Harrington, who is Judge Harrington? A He re-
10 presented the Department of Justice at San Francisco.

11 Q You mean the Federal authorities? A Yes, sir.

12 Q Was he alone or was he with any detective? A I believe
13 he had a stenographer with him.

14 Q When was that? A Why, to the best of my knowledge it
15 was in the latter part of January.

16 Q This year? A This year.

17 Q Of this year? A Yes, sir.

18 Q Did you attend the Federal grand jury? A No, sir.

19 Q Did you go to Indianapolis? A No, sir.

20 Q Before that time was any Burns man up there to see you?

21 A No, sir.

22 Q Didn't see any Burns agent there? A No, sir.

23 MR. APPEL. That is all.

24

25

26

1 G E O R G E B E H M,

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

4 D I R E C T E X A M I N A T I O N

5 BY MR. FREDERICKS. Q George Behm, where do you live,
6 Mr. Behm, where is your home? A Portage, Wisconsin.

7 Q And what is your business or occupation? A I am a loco-
8 motive engineer but I live on a farm.

9 Q How long have you been a locomotive engineer? A I have
10 been a locomotive engineer about 22 years.

11 Q What railroad are you with? A Yes, sir. Chicago, Mil-
12 waukee & St. Paul.

13 Q Do you know Ortie A. McManigal? A yes, sir.

14 Q Is he any relative of yours? A Yes, sir, he is my sis-
15 ter's boy.

16 Q Your sister's boy? A Yes, sir.

17 Q Your nephew. A Yes, sir.

18 Q How long have you known Ortie McManigal? A Since the
19 day of his birth.

20 Q Very intimately? A Yes, sir, up to two years--until
21 '79, when I left home.

22 Q The answer is not just intelisible to me. How long
23 have you known him intimately? A Well, I known him ever
24 since his birth until '79 when I came west, and I been
25 backwards and forwards, home quite often.

26 Q How far is your home from his home? A Well, from Bloom-
ville Ohio to Portage, it is about 500 miles, as near as I

1 can figure it.

2 Q After you left home and went out to Wisconsin to live
3 and established your home there, state whether or not you
4 saw McManigal occasionally, Ortie McManigal? A Yes, as I
5 went home on my visits I always met him when he was a boy
6 and on up to the time after he went to the war. After he
7 went to the war he came out to my place just on a visit.

8 Q How long did he stay? A Well, he made his home with me
9 about 18 months, as near as I can figure now.

10 Q And that was about when? The war you have been referring
11 to was the Spanish-American war? A The Spanish-American
12 war, yes.

13 Q Immediately after that? A Immediately after that.

14 Q When did you first hear that he had been arrested, if
15 ever, in connection with the dynamiting charges against the
16 McNamaras?

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

20 MR. FORD. Preliminary.

21 THE COURT. Objection overruled.

22 MR. ROGERS. Exception.

23 MR. FREDERICKS. Q Answer the question.

24 A That is along in April, 1911.

25 Q You understand, Mr. Behm,--

26 THE COURT. Just a moment. What is the trouble?

1 THE BAILIFF. I cannot open the window until I get the
2 janitor.

3 MR. FREDERICKS. Q You understand, Mr. Behm, I am asking
4 you about the time you heard he had been arrested, that is,
5 when the information came to you? A Through the paper.

6 Q Now, at that time where were you? A I was on my run
7 between Portage and LaCrosse.

8 Q Do you know Ortie McManigal's wife? A Yes, sir.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 Q Had you met her before you heard of McManigal's ar-
2 rest? A No, not.---

3 Q Had you ever met her before the time when you heard
4 that McManigal was arrested; were you acquainted with her
5 before that? A Oh, yes, well acquainted with her. She
6 worked in my family as a girl.

7 Q And did you know where they lived in Chicago, Ortie Mc-
8 Manigal and his wife and family? A Yes, I did.

9 Q Now, did you ever meet Clarence Darrow, the defendant
10 in this case? A Yes sir.

11 Q Do you remember when and where you met him first?

12 A At his residence, as I understand, on Sixtieth
13 street, in Chicago.

14 Q And when was that with reference to the time when you
15 first heard of McManigal's arrest? A The first time I ever
16 met him was just a year ago today.

17 Q A year ago today. This is the 18th of June. A 18th
18 of June.

19 Q At the time and place you have indicated? A Yes.

20 Q What day of the week was it? A On Sunday.

21 Q And how did you come to go there?

22 MR ROGERS: That is objected to as calling for a conclu-
23 sion or opinion; incompetent and no foundation laid; ir-
24 relevant and immaterial.

25 THE COURT: Objection sustained.

26 MR FREDERICKS: Why did you go there?

1 MR ROGERS: The same objection as just stated to the last
2 question.

3 MR FREDERICKS: I think it is material, your Honor, to show
4 whether he was sent for.

5 THE COURT: He may state what occurred.

6 MR FREDERICKS: This was before he got there.

7 THE COURT: His secret reasons would not be competent.

8 MR FREDERICKS: No, I am not asking. But he got a tele-
9 graph or a telephone or a letter; that would be competent
10 to show that he came there in response to something of
11 that kind.

12 THE COURT: Well, ask him that.

13 MR FREDERICKS: Well, that would be leading.

14 THE COURT: Not leading to ask a witness what occurred.

15 MR FRED ERICKS: What occurred just prior to your going to
16 Darrow's house that induced you to go there -- caused you
17 to go there?

18 MR ROGERS: Objected to as calling for a conclusion or opin-
19 ion. State what occurred immediately before.

20 MR FREDERICKS: yes; then he must narrate everything that
21 was done from 6 o'clock in the morning until 10 o'clock at
22 night.

23 MR ROGERS: Exception.

24 MR FREDERICKS: Read the question.

25 (Last question read by the reporter.)

26 A I got a telegraph message.

1 Q From whom? A From Mrs McManigal.

2 Q Now, after you got that telegraph message, what did
3 you do? A Well, I went in on my run --

4 MR ROGERS: Is that telegram still in existence, may I in-
5 quire?

6 MR FREDERICKS: I think I have a question before the wit-
7 ness.

8 MR ROGERS: I move to strike out the contents of the tele-
9 gram, as not the best evidence, and as incompetent, and
10 secondary.

11 MR FORD: He stated the fact that he had received the
12 telegram without stating anything about its contents.
13 Its contents have not been introduced yet.

14 THE COURT: Objection sustained.

15 MR FREDERICKS: Objection to what?

16 THE COURT: Motion to strike out the answer is granted.

17 MR FREDERICKS: Now, let's see what the question and answer
18 is that was stricken out.

19 THE COURT: Read it.

20 (Last question and part of answer as given, read by the
21 reporter.)

22 MR ROGERS: The motion is directed to the question just
23 before the one read by the reporter.)

24 MR FREDERICKS: Let's have that read.

25 (Question as indicated read by the reporter.)

26 MR ROGERS: That is the question and answer.

1 MR FREDERICKS: Now, let's see what question they want
2 striken out. I don't unde rstand it.

3 MR ROGERS: I move to strike out the question, "From whom
4 did you receive the telegram?" That is the purport of
5 the two questions. If the telegram is in existence it
6 certainly is the best evidence. One cannot know who sent
7 a telegram except from the contents of the message itself.
8 One is not present when the telegram is sent, therefore,
9 the contents are all that give anyone a basis for saying
10 anything.

11 MR FREDERICKS: If the court understands that -- is that
12 the question the court struck out?

13 THE COURT: The court is entirely satisfied with its
14 ruling.

15 MR FRE DERICKS: That was the question and answer stricken
16 out.

17 THE COURT: yes sir. That question taken in connection
18 with the conversation calling for the contents of a docu-
19 ment, if it is in evidence.

20 MR FREDERICKS: I know where it is. I know where I am.
21 Now, after you got this telegram, Mr Behm, where did you
22 go? A I got this telegram at Portage.

23 Q Where did you go? A Oh, I went in on my return to
24 Milwaukee on No.2.

16p 1 Q And then where? A I arrived in Milwaukee on Number
2 2 and I took train 56 to Chicago.

3 Q Where did you go when you got to Chicago? A Went to
4 Mrs. McManigal's residence.

5 Q Did you--whom did you meet there, if any one? A I met
6 Mrs. McManigal's brother.

7 Q And Mrs. McManigal? A She was not at home.

8 Q What is her brother's name? A Herman, I think, I ain't
9 sure.

10 Q Herman. Is that his first name or last name? A I
11 think his name is Herman Swantz.

12 Q Herman Swantz, and when you go there and met Herman Swantz
13 then what did you do? A He told me I should stay there
14 until I got a telephone.

15 MR. ROGERS. I move to strike out that statement as not
16 responsible to the question.

17 MR. FREDERICKS. No objection.

18 THE COURT. Strike it out.

19 BY MR. FREDERICKS. What did you do after you had stayed
20 there a while? A I received a telephone/^{message}from Mrs. Mc-
21 manigal.

22 MR. ROGERS. I move to strike out the answer as hearsay,
23 incompetent, no foundation laid, irrelevant and immaterial.

24 MR. FREDERICKS. Well, I will ask another question.

25 Q Did you know Mrs. McManigal's voice? A I did.

26 Q Did you recognize the party that telephoned to you as Mrs

1 McManigal? A I did.

2 MR. ROGERS. The same objection.

3 THE COURT. Do you want a ruling on your other objection?

4 MR. ROGERS. Yes, sir.

5 THE COURT. Objection overruled. Likewise, the object^{ion}/to
6 the last question is overruled.

7 MR. ROGERS. Exception.

8 BY MR. FREDERICKS. Now, Mr. Behm, after getting the telegram,
9 where did you go, if anywhere? A They told me I should
10 go down and take the Illinois Central and out to 60th
11 street.

12 Q Just omit what they told you.

13 MR. ROGERS. I move to strike that out as hearsay.

14 THE COURT. Strike out what was said.

15 BY MR. FREDERICKS. Q Where did you go? A I went out to
16 60th street and I was met there by Mrs. McManigal, Mr.
17 McManigal, the Ortie McManigal's father, and Mr. Harrington.
18 ton.

19 THE COURT. And Mr. who?

20 A And Mr. Warrington.

21 BY MR. FREDERICKS. Q John R. Harrington? A John R.
22 Harrington.

23 Q Where were you met by them? A 60th street depot, that
24 is where they get off at the end.

25 Q And then where? A Took me over to Mr. Darrow's place.

26 Q Who all went to Mr. Darrow's place? A Mrs. McManigal,
Mr. McManigal and Mr. Warrington.

1 Q That is, Mr. McManigal, you refer to as Ortie's father?

2 A Ortie's father.

3 Q When you got to Mr. Darrow's house, state whom you met
4 there, state whether or not you met Mr. Darrow there. A I
5 met Mr. Darrow there, I was introduced to him.

6 Q Was that the first time you ever met him? A The first
7 time I ever saw the man.

8 Q State whether or not you and Mr. Darrow and Mr. Harrington
9 and Mrs. McManigal, the wife of Ortie and Mr. McManigal,
10 Ortie McManigal's father, had a conversation there that
11 morning? A We did. ✓

12 MR. APPEL. Wait a moment--

13 Q I said that morning--was it morning or afternoon? A Well,
14 it was along about 11 o'clock, as near as I can remember the
15 time of day.

16 Q Now, Mr. Behm, state whether or not you had a conversation
17 with them in regard to Ortie McManigal and in regard to getting
18 him to change his confession or statement? / Answer that yes
19 or no.

20 MR. APPEL. Wait a moment. We object to that on the ground
21 it is incompetent, irrelevant and immaterial; it is hearsay;
22 collateral to any issue in this case; does not tend in the
23 slightest degree to prove or disprove any element of the
24 offense charged in the indictment, and no foundation laid.

25 THE COURT. Objection overruled.

26 MR. APPEL. We except.

BY MR. FREDERICKS. Answer the question.

Read it again, ✓

1 Reporter.

2 MR. APPEL. I might add to that, it is very leading and
3 very suggestive.

4 THE COURT. Objection overruled.

5 MR. APPEL. Exception.

6 (Question read.)

7 A Yes, sir.

8 BY MR. FREDERICKS. Q Relate that conversation.

9 MR. APPEL. The same objection--

10 MR. FREDERICKS. Withdraw that.

11 Q State who was present during that conversation?

12 A Mrs. McManigal, Mr. Harrington, Mr. McManigal and Mr.
13 Darrow.

14 MR. ROGERS. May I inquire whether or not the date of this
15 alleged conversation has been fixed?

16 MR. FREDERICKS. Yes, ^{Sunday} /the 18th of June.

17 THE COURT. Yes, I so understand it.

18 MR. ROGERS. The 18th of something, of June or July?

19 MR. FREDERICKS. June.

20 THE COURT. The witness stated just a year ago today.

21 MR. ROGERS. Oh.

22 BY MR. FREDERICKS. Q Relate that conversation, Mr. Pehm, in
23 so far as it refers to the question I have asked you, and
24 in so far as it refers to the changing of the testimony of
25 Ortie McManigal, and what, if anything, you were to do in
26 connection with it.

1 MR: APPEL. We object to that on the ground it is incompetent
2 irrelevant and immaterial; it is hearsay; collateral to
3 any issue in the case; it has nothing to do with the case or
4 the offense charged in the indictment; no foundation laid.
5 And, we specifically object to the assumption in the ques-
6 tion that there was any testimony of Ortie McManigal then
7 in existence or any confession, or that the witness ever
8 heard of it or knew it or that either of the parties then
9 present ever heard it or knew it. It assumes a state of
10 facts, the existence of facts, not testified to by the wit-
11 ness, not shown to be within the knowledge of the witness
12 or of any one else.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR FREDERICKS: As to the assumption of --

2 THE COURT: Objection overruled.

3 MR APPEL: We except.

4 (Last question read.)

5 MR ROGERS: Would your Honor permit us a suggestion?

6 THE COURT: Yes.

7 MR ROGERS: I think it is a fact undisputed that Ortie
8 McManigal had not testified before that time, and "his tes-
9 timony" is certainly a misnomer.

10 THE COURT: The question is as to the conversation.

11 MR FREDERICKS: Ortie McManigal's name is on the indict-
12 ment as a witness in this case a month earlier.

13 THE COURT: I don't see any materiality as to its exist-
14 ence at that time or not, although the conversation is
15 competent at that time. Objection overruled.

16 MR ROGERS: The conversation may be, but the use of the word
17 "testimony" is not. Very well.

18 MR FREDERICKS: It is rather a long question, and as the
19 court has indicated, it is proper and should be answered,
20 and I will ask the witness though, to suspend the answer
21 to that question, and I will ask him:

22 Q State, Mr Behm, whether or not you had heard through
23 public rumor, and the public press and general notoriety
24 that Ortie McManigal had made a confession of the offenses
25 with which he was jointly charged with the McNamaras,
26 state whether or not you had heard that and understood that

1 at that time?

2 MR APPEL: We object to that upon the ground it is incom-
3 petent, irrelevant and immaterial; hearsay; there is no
4 foundation laid, and irrelevant to any issue in this case.

5 THE COURT: Objection overruled.

6 MR FREDERICKS: Read the question.

7 MR APPEL: We except.

8 (Last question read.)

9 A I did. All I know was what I read in the paper.

10 MR FREDERICKS: Now, then, state, Mr Behm, the conversation
11 that I asked you for in the previous question.

12 THE COURT: I think we might have that after adjournment.

13 (Jury admonished.)

14 The Court will now adjourn until 2 o'clock this after-
15 noon.

16

17

18

19

20

21

22

23

24

25

26