

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,

Plaintiff,

vs.

Clarence Darrow,

Defendant.

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 2.

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
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1 May 25, 1912, 9:30 o'clock A.M.

2 Defendant in court with counsel.

3 THE COURT: You may proceed, gentlemen, with the case of
4 People against Darrow.

5

6 GEORGE O. MONROE, on the stand for
7 further direct examination.

8 MR FORD: Now, if ^{you} will I will show you what purports to
9 be an order of Court drawing a jury on November 25th, 1911.
10 I ask you if that is one of the official records of your
11 department? A Yes sir.

12 Q And the signature attached thereto is the signature of
13 Judge Bordwell? A Yes sir.

14 MR FORD: Offered in evidence as People's exhibit No.4.
15 I showed it to counsel yesterday.

16 MR ROGERS: Objected to upon the same grounds that were
17 urged in support of the objection to a similar document
18 yesterday, incompetent, irrelevant and immaterial, and not
19 valid upon its face.

20 MR FORD: Let the record show that is exhibit 4. I file
21 it for identification.

22 THE COURT: Overruled.

23 MR FORD: Let me read that into the record, will you,
24 Mr Smith. (Reading) "In the Superior Court of the State of
25 California, in and for the county of Los Angeles. In the
26 Matter of drawing a trial jury it is ordered and directed
that a trial jury be drawn in the courtroom of

1 Department 9, of said court, on Saturday the 25 day of
2 November, 1911, at the hour of 11:30 o'clock in the fore-
3 noon of said day, and the number of such jurors to be drawn
4 as aforesaid, is to be designated to be fifty. It is
5 further directed that this order be filed this day with the
6 county clerk of said county. Signed Walter Bordwell,
7 Endorsed 6939, Department 9, People vs J. B. McNamara.
8 Order of Court drawing jury. Filed November 23, 1911,
9 H/W. Lelande, By George O. Monroe, Deputy." Will you now
10 turn to the minutes of November 25th, 1911, for your depart-
11 ment, department 9 of the Superior Court of this county, and
12 read to the jury the minutes of that day in reference to
13 case No. 6939? A The minutes pertaining to the drawing
14 and pursuant to that order.

15 MR ROGERS: The same objection as made to the order, the
16 form / ^{of the} paper.

17 THE COURT: Overruled.

18 MR ROGERS: Exception.

19 A Preceding the minute order is the order just intro-
20 duced, People's exhibit 4. (Reading) Saturday, November
21 25th, 1911, In open Court, Hon. Walter Bordwell, Judge pre-
22 siding, the clerk, sheriff and reporter present. In pur-
23 suance of the order made, filed and entered on the 25th day
24 of November, 1911, that a jury should be drawn, and this
25 being the time set for the drawing of said trial jury, the
26 clerk in open court in the presence of the Court, proceeded
by order of the Court to draw said trial jury, and after

1 duly shaking the trial jury box containing the names of
2 persons selected by the judges of the Superior Court of Los
3 Angeles County, State of California, to serve as trial
4 jurors, regularly drew therefrom fifty slips of paper
5 containing the names of the following persons written
6 thereon, to-wit: --

7 Q Now, I attract -- then follows a list of the fifty
8 persons drawn? A Yes sir.

9 Q Now, I ask you whether or not the following name
10 appears thereon, No. 28.

11 MR ROGERS: I think your Honor please, that the counsel
12 should offer the document, and offer the order and let the
13 order go in for what it is worth.

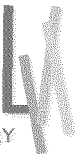
14 MR FORD: It may be stipulated that the order can be copied,
15 the entire list of names attached therein, by the reporter.

16 MR ROGERS: Yes.

17 "Fred Anthony, William Bryant, Robt. Theo. Blackney,
18 J. H. Blagge, Chas. W. Brockman, George Beck, F. P. Bald-
19 esser, Alex. Culver, H. D. Crutcher, Will E. Chapin, Wm.
20 B. Cullen, Isaac S. Carter, Geo. Cloots, Chas. G. Davidson,
21 R. E. Dolly, Elmer E. Elliott, C. R. Freeman, Frank E. Green
22 Geo. H. Hampshire, James Hay, Frank A. Hulett, Raymond
23 Huston, C. D. Hubbard, C. I. Ijams, Mark G. Jones, A J.
24 Krueger, Max Kahn, Geo. N. Lockwood, Harry J. Mercer,
25 Carl F. Mesman, Dr. J. H. Martin, Henry Parlee,
26 H. T. Paddock, Thurston H. Pratt, Arthur Rivers, Edwin A.

Rogers, J . FO Roth, J. P. Stockdale, Geo. W. Aylsworth,
John G. Staub, Chas. S. Sanderson, A. W. Stewart, Wm. A.
Sackett, Cass Schlweter, W. L. Stewart, Roy B. Sumner, L.
C. Turner, J. W. Van Horne, C. R. Watson and Homer Wil-
liams."

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1 MR FORD: I will ask you to read -- I just want to ask you
2 if upon that record, appears, just so the jury's attention
3 can be attracted to it, the name of George N. Lockwood,
4 1352 Newton street. The question is leading but I put it in
5 that form to save time. A Yes sir, it does.

6 MR ROGERS: Pardon me, Judge. To save time Mr Ford, come
7 here and let me show you something.

8 MR FORD: The name George N. Lockwood appears without any
9 address? A The address is only given in the time book
10 with the jurors.

11 Q The name, George N. Lockwood appears in the list of
12 persons whose names were drawn at that time. Read the rest
13 of the order, after the names of the persons.

14 A Following the names of the fifty jurors, immediately
15 after the drawing was completed, it was ordered that the
16 Clerk make a copy of the list of names of persons drawn,
17 as aforesaid, and certify the same as required by law,
18 stating in his certificate the date of the order and of the
19 drawing and the number of jurors drawn and the time when
20 and place where such jurors are required to appear, to-wit,
21 Tuesday the 28th of November, 1911, at 10 o'clock in the
22 forenoon of said day in the court house of said Los Angeles
23 county, in the courtroom of Department 9 of the Superior
24 Court of said county, and it is further ordered that a list
25 of the jurors drawn be certified and delivered to the
26 Sheriff of said county for service, as required by law, by

1 proper proceess, and that the Sheriff make legal service and
2 due return of his action in the premises, and the list of
3 names as drawn was duly certified to the Sheriff as ordered
4 by the Court. It was further ordered that the persons whose
5 names were drawn as aforesaid, appear and attend at this
6 Court in department 9 thereof, Tuesday the 20th day of
7 November, 1911, at 9 o'clock of the forenoon of said day.

8 Q Did you draw the certificate and deliver the same to
9 the Sheriff as ordered by the Court at that time? A I did.

10 Q I show you this document already exhibited to counsel.
11 I show you what purports to be a certificate of return of a
12 trial jury for department nine, to which has been attached
13 what purports to be a return from the Sheriff's office.
14 Directing your attention to the certificate of drawing, I
15 ask you if that is the certificate which you drew on that
16 date? A Yes sir.

17 Q Did you deliver the same to the Sheriff? A I did.

18 Q Was it returned to you by the Sheriff? A It was.

19 Q And when returned to you by the Sheriff did those papers
20 which purport to be the return of the Sheriff, were those
21 papers attached? A They were.

22 Q Did you file the entire document as a record of your
23 Court? A I did.

24 MR FORD: We offer it in evidence as People's exhibit 5.

25 MR ROGERS: We object to that as irrelevant, incompetent
26 and immaterial; not the best evidence; no foundation laid.

1 THE COURT: Objection overruled.

2 MR ROGERS: Exception.

3 MR FORD: This may be deemed copied into the record, as
4 read to the jury and copied into the record. in order to
5 save time, with your permission?

6 MR ROGERS: Of course, the document, if your Honor please,
7 contains many notations, notations and corrections, and
8 erasures, which I have no doubt were made at other times.
9 For instance, through the name of Lockwood there is drawn a
10 pencil, through the name of Curley there is drawn a pencil.
11 After each name there may be a check mark or some word,
12 and I do not understand that those matters are part of the
13 document or evidence.

14 MR FORD: I might state here, that the only purpose for which
15 it is offered is with its relation to the name of George N.
16 Lockwood, and I am asking the witness further with regard to
17 that matter.

18 MR ROGERS: If the document shall be filed, I will waive the
19 reading, of course.

20 MR FORD: It may be deemed copied into the record.

21 Q MR FORD: Now, in the certificate, Mr Monroe, I notice
22 that a pencil mark has been drawn through the name of
23 "George N. Lockwood". Was that drawn through that name
24 before or after its return to you on the 28th day of Novem-
25 ber, 1911? A That was drawn the morning of the 28th, the
26 day they were turned into court, in calling the roll, they

1 were asked if they had any excuses to make them, from this
2 list, while the minutes were not written up, I make that
3 excuse, if a person is excused, a juror, for defective
4 hearing, I state it here, "excused, hearing". "excused, busi-
5 ness", whatever it is.

6 Q I will direct your attention to the name George N.
7 Lockwood, with the pencil mark. Was that pencil mark drawn
8 through after the certificate had been returned to you?

9 A Yes, the Sheriff's return showing --

10 MR APPEL: We move to strike out the answer of the witness,
11 and we object to the question because the rule is it is
12 not permissible to contradict or explain a writing of this
13 kind. You cannot add or subtract from a record made in
14 Court. This offer is a record and for that reason counsel
15 offers it, and for no other reason. If it is no record,
16 then he has no right to offer it.

17 THE COURT: But, he can explain the modifications.

18 MR APPEL: This is a record and must speak for itself, and
19 if the witness wants to explain when that line was drawn
20 over that name, we certainly do object to his undertaking
21 to explain a document of this kind.

22 THE COURT: The motion to strike out is denied, and the ob-
23 jection is overruled.

24 MR APPEL: We take an exception.

25 MR FORD: I wish to state, that the only purpose for which
26 the document is offered is to show that the name of

1 George N. Lockwood was drawn on the 25th day of November,
2 1911, as a juror, and that any pencil marks appearing thereon
3 were made three days subsequent to that date, and that as
4 it now appears, does not express the true status of affairs
5 on the 25th day of November, ~~when~~ nor the true status at
6 any time until the day the pencil mark was drawn through it.

7 MR FORD: Then the name of George N. Lockwood was drawn as
8 a juror and appeared on the certificate when you sent it
9 to the Sheriff?

10 MR APPEL: We object to that on the ground it being not the
11 best evidence, or examination of that kind.

12 MR FORD: I withdraw the question. I think counsel is
13 correct, that would be a question which the record itself
14 can demonstrate.

15 I believe this document has been admitted in evidence.
16 We offer it in evidence as people's exhibit No. 5.

17 THE COURT: It has been admitted, but not marked.

18 MR FORD: Yes sir, and we ask that it be marked as exhibit 5.

19 THE COURT: The reading has been waived.
20

21 MR FORD: Now, I ask you if this document, purported to be
22 the Sheriff's return, contained the following item when it
23 was handed to you: George N. --- directing your attention ---

24 MR APPEL: Wait a moment. We object your Honor, to any ex-
25 planation by the witness of any document coming from the
26 Sheriff. You cannot contradict a return, that is elementary

1 law. If he offers this as a return, there is no power on
2 earth under the law here, that can contradict a return.

3 MR FORD: I assure counsel I am not trying to contradict it.
4 I want to show it is in the same state as when it was re-
5 turned into Court.

6 MR APPEL: It is presumed to be.

7 MR FORD: I would like to corroborate a presumption, once
8 in a while.

9 MR APPEL: I object to this man corroborating anything of
10 that kind, your Honor, whatever speaks for itself needs no
11 corroboration.

12 MR FORD: I wish to show it has not been added to since that
13 time, that it is in exactly the same condition it was in at
14 that time, and I think I have a right to do so.

15 THE COURT: All right. Objection overruled.

16 MR APPEL: We take an exception.

17 MR FORD: Directing your attention to what purports to be
18 the Sheriff's return, attached to this document, I attract
19 your attention to the following entry on the first page of
20 the return: "George N. Lockwood" under the column headed
21 "names", and in the column headed "manner of service" --
22 "Left county year and a half ago," By whom "W. D. Reynolds"
23 Those entries were upon that document when it was filed with
24 you, were they? A Just as they are now.

25 Q Just as they are now; and it is in the same condition?

26 A Yes sir.

1 MR FORD: Exhibit 5.

2 (Document last referred to was here marked people's
3 exhibit, 5, and is as follows:)

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1 Sheriff's Office,)
2 County of Los Angeles.) ss.

3 I hereby certify, That I received the within and here-
4 unto annexed venire for 50 jurors, on the 25th day of
5 November, A.D., 1911, and by virtue of the same, have sum-
6 moned the hereinafter named persons to be and appear at the
7 time and place therein named to act as term trial jurors.

8 That such persons were summoned by giving personal
9 notice to them in writing when such persons could be
10 found, and when they could not be found by leaving a no-
11 tice in writing at their respective places of residence with
12 some person of suitable age; that such service was made at
13 the time and in the manner particularly set out as follows,
14 to-wit:

15	Names.	Manner of Service.	By Whom.	Date.
16	1. Anthony, Fred.	Personal	J.S.Sepulveda,	Nov.27
17	2. Bryant, William,	Personal	W.Reynolds,	Nov.26
18	3. Brackney, Robert Theo.	Out of State	J.A.Cather.	Nov.26
19	4. Elagge, J.H.	Left ar Res.	J.S.Sepulveda	Nov.27
20	5. Brockman, Charles W.	InRiverside	Bam Miller	Nov.27
21	6. Beck, George,	Moved to Riv-	erside County.J.Cather	Nov.26
22	7. Galdosser, F.P.	Personal.	G.VanVliet,	"
23	8. Culver, Alex.	Left at Res.	J.S.Sepulveda	Nov.27
24	9. Crutcher, H.D.	In Riverside	Co. J.A.Cather,	Nov.25
25				
26	1'.Chapin, Will E.	No such address	J.A.Cather	"

1	11. Cullen, Wm. B.	Personal: Geo. VanVliet,	Nov. 26
2	12. Carter, Isaac S.	Personal Geo. VanVliet	"
3	13. Clotts, Geo.	Left at Res. J. A. Cather,	"
4	14. Davidson, Chas. G.	Left with A. R. McIntosh, D. Larimer,	"
5	15. Dolley, R. E.	Personal D. Larimer,	"
6	16. Elliott, Elmer E.	Personal D. Larimer,	"
7	17. Freeman, C. R.,	Personal D. Larimer,	"
8	18. Green, Frank E.,	Left county W. D. Reynolds,	
9	19. Hampshire, Geo. H.	Personal W. D. Reynolds	"
10	20. Hay, James,	Left with Mrs Grace Estman D. Larimer.	Nov. 26
11	21. Hilwig, Frank A.	Personal W. D. Reynolds,	"
12	22. Huston, Raymond,	Personal. A. L. Manning,	" 28
13	23. Hubbard, C. D.	Personal J. A. Cather,	Nov. 26
14	24. Ikams, C. I.	Personal J. A. Cather,	"
15	25. Jones, Mark G.	Unable to locate, W. D. Reynolds	
16	26. Krueger, A. J.,	Personal W. D. Reynolds,	Nov. 26
17	27. Kahn, Max,	Moved from ad- dress given W. D. Reynolds	Nov. 26
18	28. Lockwood, Geo. N.	Left county year and half ago. W. D. Reynolds,	

22 Dated at Los Angeles, November 27th, 1911. W. A. Hammel,
23 Sheriff, By R. T. Brain, Deputy Sheriff.

24 Sheriff's Office,)
25 County of Los Angeles.) ss:

26 I hereby certify that I received the within and here-

1 unto ~~annexed~~ venire for 50 jurors, on the 25th day of
 2 November, A.D., 1911, and by virtue of the same, have
 3 summoned the hereinafter named persons to be and appear
 4 at the time and place therein named to act as term trial
 5 jurors.

6 That such persons were summoned by giving personal
 7 notice to them in writing when such persons could be found,
 8 and when they could not be found by leaving a notice in
 9 writing at their respective places of residence with some
 10 person of suitable age; that such service was made at the
 11 time and in the manner particularly set out as follows, to-
 12 wit.

13	Names.	Manner of Service.	By Whom.	Date.
14	29. Mercer, Harry J.	Left with wife.	Dan Miller	Nov. 27
15	30. Mesman, Carl F.	Personal	W.D. Reynolds,	Nov. 26
16	31. Martin, Dr. J. H.,	Personal	Dan Miller	Nov. 27
17	32. Parlee, Henry,	Out of city.	W.D. Reynolds,	
18	33. Padlock, H. T.,	Left at Res.	J. A. Cather,	Nov. 26
19	34. Pratt, Thurston H.	Unable to locate.	Geo. VanCliet,	Nov. 25
20	35. Rivers, Arthur,	Deceased		
21	36. Rogers, Edwin A.	Personal	D. Larimer,	Nov. 26
22	37. Roth, J. F.,	Personal	Geo. VanVliet,	"
23	38. Stockdale, J. P.	Personal	W.D. Reynolds,	" 27
24	39. Sylfworth, George W.	Left at res. with daughter.	W.D. Reynolds	" 27
25	40. Staub, Jno. G.	Left at Res.	J. A. Cather,	Nov. 26.

1	41. Sanderson, Charles S.	Personal	D. Larimer	Nov. 26
2	42. Stewart, A. W.,	Personal,	J. A. Cather,	Nov. 26
3	43. Sackett, Wm. A.	Personal	D. Larimer,	"
4	44. Schuleter, Cass,	Left at Res.	J. A. Cather.	"
5	45. Stewart, W. L.,	Left at Res.	with daughter. W. D. Reynolds	"
6	46. Sumner, Roy B.,	Left at Res.	J. A. Cather.	Nov. 25
7	47. Turner, L. C.	Personal	W. D. Reynolds,	Nov. 26
8	48. Van Horne, J. W.	Moved 6 mos.	ago. W. D. Reynolds	
9	49. Watson, C. R.,	Personal	J. A. Cather,	Nov. 25
10	50. Williams, Homer,	Left at Res.	with wife. Geo. VanVliet,	Nov. 26.

12 Dated at Los Angeles, Nov. 28th, 1911. W. A. Hemmel,
 13 Sheriff, by R. T. Brain, Deputy Sheriff.
 14

15 ---
 16 Department No. 9.

17 Superior Court of the State of California In and for the
 18 County of Los Angeles.

19 State of California,)
 20 County of Los Angeles.) ss.

21 I, H. J. Lelande, County Clerk and ex-officio Clerk of
 22 the Superior Court in and for the County and State afore-
 23 said, do hereby certify that, pursuant to an order made by
 24 the Hon. Walter Bordwell, Judge of the Superior Court
 25 Department No. 9, in and for the County and State aforesaid,
 26 directing me to draw from the jury box containing the names

1 of persons selected by the Judges of the Superior Court of
 2 said County to serve as Trial Jurors Fifty slips of paper con
 3 taining the names of persons to form a Trial Jury to serve
 4 until discharged, I did in open Court on the 25th day of
 5 November, 1911, at the hour of 11.30 o'clock A.M. of said
 6 day, after duly shaking the jury box, and in the presence
 7 of the Court draw therefrom 50 slips of paper containing
 8 the names of the following persons written thereon, to
 9 serve as said Trial Jury, to-wit:

10	No. Name.	Residence.
11	1. Anthony, Fred Ex.business	230 1/2 So. Spring.
12	2. Bryant, William, Ex Hearing,	Gardena.
13	3 Brackney,--Robert-Thee.	2033 Monticella av.S.Holly'd
14	4. Blaggs, J.H. Ex.	332 Security bldg.
15	5. Breckman,--Charles-W.	3509 Monon.
16	6. Beck,--George,	1925 Glendale ave.
17	7 Baldosser, F.P. 29	Covina
18	8. Culver, Alex.	321 E. 2nd st.
19	9 Crutcher, H.D.,	Glendale.
20	10. Chapin, Will E.	413 Park View.
21	11. Cullen, Wm. R. Ex Health	Glendora
22	12. Carter, Isaac S.	Azusa.
23	12. Clotts, Geo. Ex Health.	1529 2nd av.
24	14. Davidson, Chas.G. Ex Business	Compton.
25	15. Dolley, R.E., 29	Artesia.
26	16. Elliott, Elmer E. Ex Business.	Compton.

- 1 17. Freeman, C.R. Ex.Hearing Downey.
- 2 18. ~~Green, Frank E.~~ 422 E. 68th st.
- 3 19. Hampshire, Geo.H. 1874 E. 41st St.
- 4 20. Hay, James. Ex. Norwalk.
- 5 21. Hilwig, Frank A. Hulett Ex. 133 S. Hudson av.
Pasadena.
- 6 22. Huston, Raymond Ex. Hearing. 1347 Walnut st.
- 7 23. Hubbard, C.D., Huntington Park, San
8 Fernando.
- 9 24. Ijams, C.I. Ex.Health of wife. Lankershim.
- 10 25. ~~Jones, Mark G.~~ 2095 Broadway.
- 11 26. Krueger, A.J., Palms
- 12 27. Kahn, Max. 1028 Santee.
- 13 28. Lockwood, Geo. N. 1350 Newton st.
- 14 29. Mercer, Harry J. Ex. Atty. 125 N.Soto st.
- 15 30. Mesman, Carl F. Ex. Alhambra.
- 16 31. Martin, Dr. J.H. ~~Ex Business.~~ 415 Court st.
- 17 32. ~~Parlee, Henry,~~ 513 Euclid av.
- 18 33. ~~Padlock, H.T.~~ Padack. Ex.Health. 248 Cahuenga blvrd.
- 19 34. ~~Pratt, Thurston H.~~ Covina.
- 20 35. ~~Rivers, Arthur.~~ 1020 E.43rd. (or) 1007
W.36th Place.
- 21 36. Rogers, Edwin A. Ex.Health, Clearwater.
- 22 37. Roth, J.F., Ex.Health. Claremont.
- 23 36. Stocksdale, J.P. Ex.Business. 5311 Pasadena av.
- 24 39. Sylfworth, George W. Ex. on Jury 1911. 220 N.Hancock St.
- 25 40. Staub, Jno.G. Ex. Business. 1835 3rd ave. west of
L.A. limits.
- 26 41. Sanderson, Charles S. 29 Whittier.

- 1 42. Stewart, A.W., 2802 Ellendale Place.
 2 43. Sackett, Wm.A. Artesia.
 3 44. ~~Schluter, Cass.~~ Ex.Hearing. 1446 Malvern
 4 45. Stewart, W.L. Ex. Bridgen Ranch, Lamanda Pk
 5 46. Sumner, Roy B. Ex. Bus. 1167 W. 28th St.
 6 47. Turner, L.C. Ex. on Jury. 404 Cypress av., Pasadena.
 7 48. ~~Van Horne, J.W.~~ 5115 Pasadena av.
 8 49. Watson, C.H. Ex. Health. Alhambra, 212 Grand av.
 9 50. Williams, Hober, tEx P.O.M. Lordsburg.

10 And I do further certify that by the said order of the
 11 said Judge of the Superior Court, Department No.9, made as
 12 hereinbefore stated, the above named citizens of said
 13 County are required to be and appear in the Superior
 14 Court, Department No.9., at the Court Room thereof, in the
 15 County and State aforesaid, on the 28th day of Nov. 1911,
 16 at 9:00 o'clock A.M.

17 Signed this 25th day of Nov. 1911.

18 H. J. Lelande, County Clerk.

19 By Geo.O.Monroe, Deputy.

20 (SEAL.)

21 (Endorsed:)

22 6939. Department No.9. In the Superior
 23 Court of the State of California in and for the County of
 24 Los Angeles. Certificate of Drawing Trial Jury for Depart-
 25 ment No.9. Filed this 28 day of Nov. A.D., 1911. H. J.
 26 Lelande, Clerk, By Geo. O? Monroe, Deputy Clerk. No.11.

1 7373. People vs. Clarence Darrow. People's exhibit
2 5 filed May 25 1912. H.J.Lelande, Clerk, By Sherman Smith,
3 Deputy.
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1 MR FORD: Now, having looked at Exhibit No. 5, the Sheriff's
2 return, and looking at that pencil mark through the name of
3 George N. Lockwood, state whether or not you drew the pencil
4 mark on the certificate through the name of George N. Lockwood
5 before or after you had seen the Sheriff's return?

6 MR ROGERS: If your Honor pleases, I take it, from counsel's
7 questioning, that he has been refreshing the memory of the
8 witness. He says, "Now, after looking at exhibit No. 5".
9 The rule of law is, you may refresh your recollection from a
10 document made by you at the time, or under your direction
11 at the time, or so close to the time that it is fresh in
12 your memory. ~~xxx~~ I do not understand it is permissible for
13 one witness to refresh his memory from a document made by
14 an entirely different person, not under his direction, nor
15 a document with which he had anything to do. Now, the ques-
16 tion, as your Honor will observe, is founded upon that,
17 "after looking at this".

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1 MR FORD: I will withdraw the question in that form. I
2 am not trying to refresh his recollection.

3 Q Did you look at the sheriff's return when it was made
4 and brought into court? A Yes sir.

5 Q Did you see that entry, "George N. Lockwood, left
6 county a year and a half ago" in the return? A Yes sir,
7 and for that reason I checked over my original.

8 Q And so, after looking at it you made that pencil mark
9 through the entry, "George N. Lockwood"? A Yes sir.

10 MR ROGERS: Wait a minute.

11 THE COURT: Strike out the answer.

12 MR ROGERS: We object to that as incompetent, irrelevant
13 and immaterial, leading and suggestive.

14 THE COURT: It is leading and suggestive, and the objection
15 is well taken on that ground. Objection sustained.

16 MR FORD: State when, with reference to your having looked
17 at this return, state when you drew the pencil mark through
18 the name of "George N. Lockwood" -- before or after.

19 MR ROGERS: The same objection.

20 THE COURT: Objection overruled.

21 MR ROGERS: Exception.

22 A The morning the sheriff's return was handed to me,
23 in order to prepare to call the roll, all who were not serv-
24 ed or out of the county or deceased, I ran the pencil mark
25 through it in calling off, from my original, I would skip
26 those names and not fall them out when calling the roll.

1 MR APPEL: He is giving an explanation. He was only asked
2 if he had -- his anxiety to show why a man mutilated a
3 record that goes out of court, to show it, but this wit-
4 ness certainly knows what they want to get at, and they
5 ask him what he did and then he goes on and states the
6 reason why he did it and all that sort of thing.

7 MR FORD: I think a witness is entitled to show why they
8 did it.

9 MR APPEL: They are always entitled to show their mistakes.

10 THE COURT: There is no question before the court to be
11 ruled on. Proceed.

12 MR FORD: Now, will you turn to your minutes of November
13 28th, 1911. A November 28th?

14 Q Yes. Have you any entry on that date in reference to
15 the case of J. B. McNamara, defendant, upon indictment No.
16 6939? A Yes sir.

17 Q Will you read it to the jury please?

18 MR ROGERS: You offer it in evidence?

19 MR FORD: I intend to offer all of those propositions read
20 later on, in evidence, in one bunch. I am reading it to
21 save time. A (Reading:) Tuesday, November 28th, 1911.

22 In open court, Hon. Walter Bordwell, Judge Presiding, --

23 MR ROGERS: Wait a minute. That is not the proper way, if
24 your Honor please, to introduce a record. The record must
25 be --

26 MR FORD: If they want to be technical, I think, your Honor,

1 they are correct. To save time, I was reading it -- I in-
2 tend to read the whole record, and all these portions read
3 as one offer, but if the objection is raised, I now offer
4 the record of November 28th, 1911, the minutes of the court
5 in department 9 of the Superior Court of the State of Cal-
6 ifornia, in and for the county of Los Angeles, in evidence.

7 MR ROGERS: I don't object to the record, except I object
8 to the statement of the record. They do not, as a matter
9 of fact, contain any order of court or any statement of pro-
10 ceedings upon the ground that they are hearsay and not the
11 best evidence, incompetent. I don't understand a recital
12 in the record of matters which the record need not contain
13 under the law are proof of the facts in the record; that is
14 my objection.

15 THE COURT: Overruled.

16 MR ROGERS: Exception.

17 A (Reading:) Tuesday, November 28th, 1911. In open
18 court, Hon. Walter Bordwell, Judge presiding; the clerk,
19 sheriff and reporter present. People vs. J.B. McNamara.
20 Case resumed; all jurors, counsel and the defendant, J.B.
21 McNamara, present. Examination of Juror Edward Haskell,
22 resumed, and challenged by the People for cause. Said
23 challenge resisted by the defendant. Guy L. Rockwell,
24 and William C. Doan are sworn to testify on the part of the
25 people in examination of Juror Edward Haskell. Further
26 hearing continued to Wednesday, November 29th, 1911 at
9 A.M.

1 MR FORD: Now, will you read what you have in reference to
 2 the impanelment of the trial jury? A (Reading.) In re
 3 impanelment of a trial jury. Now, at this time, being
 4 the time and order set by the court in its order of Novem-
 5 ber 25th, 1911, for the drawing of a panel of 50 term
 6 trial jurors, drawn on said November 25th, 1911, the sher-
 7 iff's return shows 39 served, and 13 not served. The 13
 8 not served being Robert Theo. Brackney, Chas. W Brock-
 9 man, George Beck, H. D. Crutcher, Will E. Chapin, Frank
 10 E. Green, Mark G. Jones, Max Kuhn, Geo. N. Lockwood,
 11 Henry Parlee, Thurston H. Pratt, Arthur Rivers and J. W.
 12 Van Horne.

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1 Of the 39 served, 39 were present.

2 Q Well, I only want to get that portion showing that
3 although the name Lockwood had been drawn that he was not
4 served.

5 MR APPEL: Your Honor, it seems to me counsel ought not to
6 comment what he wants to show, and all that, after he gets
7 the evidence in here before this jury. He has that way
8 of doing that, your Honor. I don't mean that he does it
9 purposely or anything like that, but it seems to be inher-
10 ent in him to tell this jury just exactly what he wants to
11 show. Now, he can offer the evidence here, and it is
12 admitted in evidence, and whatever effect that evidence has,
13 we ought not to tell the jury what, in our opinion, he
14 wishes. We don't do that. It would be wrong; would be
15 improper. How much more improper is it here for the Dis-
16 trict Attorney to be arguing his case to the jury on every
17 item of evidence that goes in. We have been watching this,
18 We ~~don't~~ didn't want to say anything about it, but we are
19 compelled to do that. Now, we ask, as a matter of fact,
20 as a matter of courtesy, and as a matter of fairness to
21 this defendant, that he resist from doing that.

22 MR FORD: If the court please, I have no desire to influence
23 the jury by anything except evidence. I presume they are
24 all intelligent men; that they will look at the record for
25 themselves and they will not be influenced by my comments
26 to the witness. I was simply attracting the witness' at-

1 tention to the portion I desired read, and I think the jury
2 will understand that my remarks to the witness as to the
3 portion I desired to have read , are not evidence. I think
4 that they are men of sufficient intelligence to know that
5 the record itself, is the only evidence.

6 THE COURT: Well, Mr Appel is quite right. It is the duty
7 of counsel always to refrain from commenting on the evi-
8 dence while it is being introduced and to argue their case
9 at the proper time.

10 MR FORD: Does the court hold that the remark I made was a
11 comment?

12 THE COURT: It hadn't occurred to me until Mr Appel sug-
13 gested it, that there was any impropriety about it, but it
14 impressed him in the nature of an argument.

15 MR FORD: I would like, your Honor, to have it read.

16 THE COURT: He suggested it was an argument.

17 MR FORD: I would like to have it read in order that the
18 court may determine whether it is a comment or not.

19 I will try to refrain from commenting, if that is a com-
20 ment.

21 THE COURT: I don't think it is necessary to re-read or
22 take up the time.

23 MR FORD: As far as commenting is concerned, I agree with him
24 but I don't admit I commented. Mr Monroe, have you any
25 record of when the case of People vs. J. B. McNamara, under
26 indictment No.6939 terminated? A Yes, I have.

1 Q What date was that? A Friday, December 1st, 1911.

2 Q Will you read the record of that date? A (Reading.)

3 Hon. Walter Bordwell, Judge Presiding, Clerk, Sheriff

4 and reporter present. Case No.6939, People vs. J. B.

5 McNamara. Cause resumed. The jurors, counsel and the de-

6 fendant, J. B. McNamara, present. By request of the People

7 and consent of the defendant, cause ordered continued to

8 2 P.M. Cause called this 2 P.M. All jurors, counsel and

9 the defendant, J. B. McNamara, present. On application of

10 Le Compte Davis, attorney for the defendant, J. B. McNamara,

11 said defendant J. B. McNamara hereby withdrew his plea of

12 not guilty of the offense charged in said indictment, and

13 at this time duly interposed his plea of guilty of the

14 offense charged in said indictment, and cause is continued

15 by consent of the defendant, to Friday, December 5th,

16 1911, at 10 o'clock A.M. for sentence.

17 Q Now, do you know of your own knowledge, independent of

18 the record, whether or not Juror Robert F. Bain was sworn

19 and accepted as a juror in that case? A I do.

20 MR ROGERS: Wait just a moment.

21 MR FORD: Just preliminary to introducing the record.

22 THE COURT: He has answered that he knows.

23 MR ROGERS: I was about to object. I have some difficulty --

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1 THE COURT: The next question wait until Mr Rogers gets a
2 chance to object. You haven't any objection to his stating
3 whether he knows or not?

4 MR ROGERS: No.

5 MR FORD: I think any witness has a right to state a matter
6 that is in his own knowledge, independent of the record.

7 MR ROGERS: I haven't made any objection. I just wanted to
8 see what the question was.

9 MR FORD: Have you a record -- was he sworn, Mr Monroe, and
10 accepted as a juror in that case?

11 MR ROGERSE Objected to as incompetent, irrelevant and im-
12 material, at this time, and no foundation has been laid for
13 it.

14 THE COURT: Objection sustained.

15 MR FORD: You are the clerk of Department 9 of the Superior
16 Court of the county of Los Angeles, during the pendency of
17 the McNamara case. I will state it a little more specifical-
18 ly. During the pendency of the trial on Indictment No. 6939,
19 wherein J. B. McNamara was defendant, and The People of the
20 State of California was plaintiff? A I was.

21 Q And you administered the oath to the jurors when they
22 were sworn and accepted? A I did.

23 Q Did you administer the oath to Robert F. Pain, in that
24 case, to try the case?

25 MR ROGERS: Objected to as incompetent, irrelevant and im-
26 material, and no foundation laid at this time, not within the

1 issues of the indictment. The corpus delecti has not yet
2 been proven.

3 THE COURT: Overruled. A I did administer an oath.

4 MR FORD: Now, have you a record of that transaction?

5 A I have.

6 Q Will you turn to it, please, and read the record?

7 MR ROGERS: Well, do you offer the record?

8 MR FORD: Yes, I will offer the record in order that counsel
9 may make his objection.

10 MR ROGERS: Objected to as incompetent, irrelevant and
11 immaterial. Your Honor will see -- I don't want to be tech-
12 nical, but there is no objection to the statement, "read
13 the record", which has not been introduced in evidence
14 except that it is not proper to read it.

15 THE COURT: I think you are quite right. Objection overruled.

16 MR ROGERS: Objected to as incompetent, irrelevant and im-
17 material, and no foundation laid, at this time.

18 MR FORD: Will you read the record which has been offered
19 in evidence?

20 MR APPEL: I understand by a decision of the Supreme Court,
21 that you are, ^{not} allowed to go into transactions concerning
22 matters which may or may not be admissible in evidence, as
23 helping the principal transaction, must be gone into first.
24 Now, this man Bain is not mentioned in the indictment.

25 MR FORD: The Court please, I agree with counsel in this much
26 -- pardon me --

1 MR APPEL: Counsel doesn't know whether this matter will
2 ever come up. Now, we understand the rule of law that there
3 must be a prima facie case made first. The main case,
4 before any collateral matters are gone into. That is held
5 in a great many cases, because the collateral matters become
6 immaterial, unless a prima facie case is made, so far as
7 the case really is concerned. Now, we are simply saying, to
8 go into the question of Mr Bain at this time is immaterial,
9 because he is not mentioned in this indictment.

10 THE COURT: I thought of that yesterday, but I think there
11 ought to be a statement from the District Attorney, as to
12 what he expects to prove.

13 MR FREDERICKS: That is all very true, but we have this
14 witness here on this stand. This is a record. It is true
15 we have stated we intend to introduce evidence showing that
16 this defendant bribed Juror Bain, and it would probably be
17 a little more logical and correct if we would introduce the
18 case showing the evidence that we have against Lockwood,
19 in the Lockwood case first, but we have this witness on the
20 stand, he has got the record there, and the record hurts
21 nobody, one way or the other. It simply establishes the
22 record. It is much more convenient than the rule of proof-
23 the order of proof, is discretionary with the Court, and
24 certainly is a big convenience, and hurts no one, to estab-
25 lish this record. Now, while we have this witness on the
26 stand here. That is the idea of asking the question.

1 MR ROGERS: If your Honor please, if the matter were insub-
2 stantiated, why we would not make any objection, Time and again
3 we have permitted them to just say, "Read the record", and
4 so forth, without putting it in in the legal form, but
5 here is a matter about which your Honor will readily see
6 there may be some controversy as to its admissibility in
7 the end, and if with that very easy way --

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1 well, let's do it for convenience sake, that we are all
2 in the habit of saying, when we want to get something over,
3 with all due respect in that particular, I think that that
4 matter ought to come up at once. Your Honor declined to
5 pass on it yesterday, because the matter was not presented
6 in such form that your Honor could readily take the whole
7 matter up. Now, here comes another little matter into the
8 record without the question being presented, and pretty
9 soon we will get a record pretty well filled up with a lot
10 of conveniences which may, perchance, be prejudicial.
11 It compels us to object to each one of these questions as
12 it comes up, upon the main ground, because we intend to ob-
13 ject, of course, to the evidence, when the really substan-
14 tial part of it is introduced, but we cannot afford to allow
15 it to go in without objection, and therefore, while I am
16 desirous of saving time, we are not saving time, because
17 it compels us to object to each question in order to save
18 our rights.

19 MR FORD: I want to call the court's attention to just one
20 thing. At the present time we are offering only the record.
21 We are not offering proof of any other offense at the pre-
22 sent time. We are offering proof of the entire record of
23 the case, and it is of no value whatever, so far as the Juror
24 Bain is concerned, until such time as we desire to offer
25 proof of another offense,--Proof of another offense at the
26 present time. It is proof we are reading of certain

1 technical foundation which must be laid before proof of
2 another offense can be introduced, but it is not doing any
3 harm at the present time whatever. It is not affecting
4 the minds of the jury.

5 THE COURT: It seems that you are -- why wouldn't this be
6 just as good time as another to settle that law? It is
7 obvious there is a question of law to discuss.

8 MR FORD: But we are not at the present time offering proof
9 of another offense, and consequently, it would ^{be} only a mute
10 question until the counsel presents the evidence of another
11 offense in court. It is possible that as far as the Lock-
12 wood offense is concerned, that this would be surplussage,
13 but ^I ~~evendoubt~~ ^{offense} that, because the ~~defense~~ ^{itself} don't show
14 the pendency of this action at this time which we have
15 a right to show, and we also desire to show, if the court
16 please -- I might as well state it now, that in the Lock-
17 wood case, the evidence will show reference to the Juror
18 Bain, which will be necessary to establish, -- will consti-
19 tute part of the proof of the Lockwood case, independently
20 of any proof that Bain was actually bribed.

21 MR FREDERICKS: It is really a part of the Lockwood case.

22 MR ROGERS: Well, the matter of order of proof, of course,
23 is in the court'd discretion.

24 THE COURT: I don't want to pass upon a mute question.
25 When this question comes up I want it to be alive.

26 MR ROGERS: All I want to do is expeditiously to save my

1 point, it occurs to me I should make my objection to save
2 the substantial point when it comes up.

3 MR FREDERICKS: Counsel should make objection, and I
4 think it ought to be overruled.

5 THE COURT: I think you better follow that course, and
6 when the real question comes up, take it up and dispose of
7 it.

8 MR ROGERS: Will you stipulate that all matters of this
9 sort that we may have an objection to as incompetent, ir-
10 relevant and immaterial and no foundation laid at this time,
11 in addition to the general objection which we will present
12 later when the substantial matter comes up.

13 MR FORD: I think the counsel will have a right to move to
14 strike out and argue it independently.

15 MR APPEL: If our rights can be preserved right along, that
16 whatever we object to here now, may be deemed as if we ob-
17 jected to it at that time, so we may not forget. Your
18 Honor's ruling at that time may be considered made and all
19 those matters, if they were repeated or gone over again, so
20 we may not be bound by the fact that we didn't move to
21 strike out after your Honor's ruling, if your Honor should
22 rule in our favor.

23 MR FREDERICKS: On the principle that we will introduce
24 evidence of other offenses, we will stipulate that until
25 the matter is finally passed on, that counsel will not
26 lose any rights to object or move to strike out.

1 THE COURT: I think counsel is entitled to that, when evi-
2 dence comes in out of order. All right, that disposes of
3 it, Proceed.

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1 MR FORD: The record of that date then is admitted in evi-
2 dence, I understand?

3 THE COURT: Yes.

4 MR FORD: Will you read the record of that date to the jury,
5 Mr Monroe? A (Reading) "Wednesday, November 8th, 1911.
6 In open Court, Hon. Walter Bordwell, Judge presiding. The
7 clerk, sheriff and reporter present. Case No. 6939, People
8 against J. B. McNamara, cause resumed. All jurors, counsel,
9 and the defendant J. B. McNamara present. By request of Jurors
10 William F. Clark, and Samuel Mendenhall, and by consent of
11 counsel, and by order of Court, the said Juror William F.
12 Clark is excused on account of his health and Juror Sam
13 Mendenhall is excused on account of the health of his aged
14 mother; and there being three jurors passed by counsel for
15 cause and peremptory, and on order of Court the following
16 jurors were sworn to try the case, to-wit: Byron Lisk,
17 F. D. Green, and Robert F. Bain."

18 Q Continue reading the full minutes?

19 Q That is all I care for, unless counsel desires we read
20 the full record.

21 MR ROGERS: I don't know what is in it. Let's see.

22 (After examining) No, it can be referred to as read.

23 THE COURT: You heard ~~of~~ the reading of the rest of the
24 record?

25 MR ROGERS: Yes.

26 THE COURT: Then it will be extended into the stenographer's
report in full.

1 "By order of the Court the Clerk proceeded to draw from the
2 Jury Box the names of nine persons to fill the jury and the
3 following named persons being drawn to-wit, Wm. R. Beards-
4 ley, F. W. Bennett, Henry G. Burbank, Brewster C. Kenyon,
5 Geo. Green, Edward H. Royce, John S. Redfern, W. M. Bryte,
6 and Clark McLain, who were sworn as to their qualifications.
7 Juror Wm. R. Beardsley is excused on account of defective
8 hearing; Juror F. W. Bennett is excused on account of not
9 being on the assessment Roll; Juror Edward H. Royce is
10 excused on account of not believing in Capitol Punishment.
11 By order of the Court the Clerk proceeded to draw from the
12 Jury Box the names of four persons to fill the jury, and
13 the following named persons being drawn to-wit: W. E.
14 Henry, Charles Roth, Beverly Crockett and Howard S.
15 Sweeting, who were sworn as to their qualifications.
16 Juror W. E. Henry was excused on account of not believing
17 in Capitol Punishment; Juror Geo. Green was excused for
18 cause on the part of Defendant. By order of the Court
19 the Clerk proceeded to draw from the Jury Box the name of
20 one person to fill the Jury and the following named person
21 being drawn, to-wit, J.B.Sexton, who was sworn as to his
22 qualifications. Examination continued to Thursday, Nov.
23 9, 1911, at 16 A.M.

24 Re Drawing of Trial Jury. It is ordered and directed
25 that a Trial Jury be drawn in the court room of Department
26 Nine of said Court on Wensday the 8th day of November,

1 1911, at the hour of 9 o'clock in the forenoon of said day;
2 and the number of said jury to be drawn as aforesaid, is
3 ordered and designated to be forty. It is further directed
4 that this order be filed this day with the County Clerk of
5 said County. Walter Bordwell, Judge.

6 In pursuance of the order made, filed and entered on the
7 8th day of November, 1911, that a trial jury should be
8 drawn, and this being the time set for the drawing
9 of said trial jury, the clerk, in open court, in presence
10 of the court, proceeded, by order of the court, to draw
11 said trial jury; and after duly shaking the trial jury box
12 containing the names of persons selected by the judges of
13 the superior court of Los Angeles County, State of Cal-
14 ifornia, to serve as trial jurors, regularly drew there-
15 from forty slips of paper containing the names of the
16 following persons written thereon, to-wit. Edwin M.
17 Atkinson, Frank C. Adamson, Luke Barton, Nathan P. Bailey,
18 James E. Baker, J. J. Burr, Willett Brunner, R. D. Bronson,
19 Geo. J. Birkel, J. M. Brooks, D. M. Cowan, James E. Crosby,
20 John I. Dillon, Clarence Drown, John W. Fisk, Wm. A. Hunter,
21 Henderson Hood, Joseph Hill, F. D. Jones, L. W. Kindman,
22 Taylor Mendenthal, N. O. P. McComb, E. Nichols, George
23 Phillips, Squire Gooch, T. J. Green, A. Bribling, W. C.
24 Thomas, B. L. Vickrey, C. E. Stone, Charles H. Schwam,
25 Frank R. Smith, George W. Scheaff, Walter J. Wrenn, George
26 W. Walker, Fred M. Webb, W. M. Warren, John T. Wilson,

1 Frank G. Wride and W. W. Weller. Immediately after the
2 drawing was completed, it was ordered that the clerk make a
3 copy of the list of names of persons drawn as aforesaid,
4 and certify the same as required by law, stating in his
5 certificate the date of the order and of the drawing, and
6 the number of the jurors drawn, and the time when and place
7 where such jurors are required to appear, to-wit, Friday,
8 the 10th day of November, 1911, at ten o'clock in the fore-
9 noon of said day in the court house of said Los Angeles
10 County, in the court room of Department Nine of the Superior
11 Court of said county; and it is further ordered that the
12 list of the jurors drawn be certified and delivered to
13 the sheriff of said county for service, as required by law,
14 by proper process, and that the sheriff make legal service
15 and due return of his action in the premises, and the list
16 of names as drawn was duly certified to the sheriff as order-
17 ed by the court. It was further ordered that the persons
18 whose names were drawn, as aforesaid, appear and attend at
19 this court in Department Nine thereof, on Friday the 10
20 day of November, 1911, at 9 o'clock of the forenoon of said
21 day.

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1 MR FORD: Now, at this time, in order that counsel may save
2 their objections to the testimony, I offer in evidence all
3 the record of Department 9, which has been read by the
4 witness and read to the jury, as an exhibit on behalf of
5 the people.

6 MR ROGERS: I make the objection to it -- I make the same
7 objection I made as I went along.

8 THE COURT: The same objection as heretofore made to the
9 offer of the different portions of the record?

10 MR ROGERS: Yes.

11 THE COURT: The objection is overruled.

12 Q By MR FORD: Now, with reference to the record, itself,
13 is this record in use in Department 9? A No sir.

14 MR FORD: I guess there will be no objection then to leaving
15 it here with the court, although we have no right to do it.

16 THE COURT: For the purpose of reference?

17 MR FORD: For the purpose of reference, and in order that
18 the jury may be able to look at the actual record if they
19 desire to do so at any time.

20 THE COURT: There will be no difficulty about that, it is
21 all one Court.

22 MR FORD: Mr Monroe, this minute record, concerning which you
23 have testified, and portions concerning which you have tes-
24 tified, was made either by you or under your supervision?

25 A yes sir.

26 Q And corrected by you at all times? A Yes sir.

1 Q And independently of the record do you remember that
2 the case of The People of the State of California vs
3 J. B. McNamara, on Indictment No. 6939, was on trial during
4 the dates indicated by the record? A Yes sir.

5 Q And recites the facts as you remember them correctly?

6 A They do.

7 MR FORD: That is all.

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CROSS-EXAMINATION

10 MR ROGERS: Mr Monroe, will you turn to that part of the
11 record which refers to the return or the certificate of the
12 panel that was said to come in on the morning of November
13 28th? A (Witness does so.)

14 Q I call your attention to page 293. A I have not got
15 it yet.

16 Q Yes, you have. You have it right in front of you.

17 A Here is November 28th.

18 Q That is what I had right here. I call your attention to
19 page 293 of the book. You observe, do you, that the name of
20 George N. Lockwood was recited among those who were not
21 served and who were not present? A Yes sir.

22 Q Do you know who put that blue pencil mark in your record?

23 A I did.

24 Q When? A A few days ago when I was asked to testify.

25 Q For what purpose did you put it there? A To bring
26 it clear, to find it without having to read it all over,

1 the same as I did this check mark opposite the drawing.

2 Q Why did you, in the court records, why did you under-
3 score the official records in that fashion? A Simply
4 underlined that I might bring it out, that I may see it
5 with regard to it, and not read over all the record.

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1 Q You have an idea you have a right? A That is erasable
2 and simply put there for convenience at the time.

3 Q At the same time did you make this pencil memorandum
4 that was referred to yesterday where one name was stricken
5 out in pencil and another one written in in pencil?

6 A That correction I made.

7 Q When? A At the time the minutes were approved, at
8 the time they were read back and verified from the sheriff's
9 return.

10 Q Read back from the sheriff's return? A Yes sir.

11 Q Have you gone over those records, comparing them with
12 the sheriff's returns, since called as a witness? A No sir

13 Q Now, you spoke of the record of indictment No.6939,
14 and at the time you gave the record concerning many other
15 indictments, 6939 to -- A 6936, I think.

16 Q -- 6936 to 69-- A -- 6955, inclusive.

17 Q Well, those indictments were each for different of-
18 fenses, were they not, different charges? A No sir.
19 One was.

20 Q Have you got those indictments? A They are here at
21 the desk.

22 Q Let me have them, please.

23 MR FORD: They were not offered in evidence. (Witness
24 produces documents.)

25 MR ROGERS: You produce them, do you, Mr Monroe? A Yes sir

26 Q Now, are these the indictments referred to in that

1 portion of the record which you read yesterday? A They
2 are.

3 MR ROGERS: I offer those in evidence.

4 MR FREDERICKS: They are objected to as incompetent, ir-
5 relevant and immaterial.

6 THE COURT: Objection overruled. A I may say that the
7 one, 6939 is not there.

8 MR ROGERS: I understand that, but I have here indictment
9 No.6936, '37, '38 -- you say '39 is at the desk -- A Yes
10 sir.

11 Q 6940, '41, '42, '43, '44, '45, '46, '47, '48, '49,
12 '50, '51, '52, '53, '54, and '55.

13 MR FORD: If the court please, I would desire to particu-
14 larly make an objection, I think, to a portion of these.
15 I submit, indictment No.6555 to the court, and object
16 to its introduction on the ground that it does not relate,
17 to and is not pertinent to any issues involved in this case,
18 at the present time, and is not cross-examination.

19 MR ROGERS: The record of its filing at the time 6939 was
20 filed is already in and on the part of the people, and intro-
21 duced, and we have a right of making a record of it.

22 MR FORD: It is not a matter of importance. I don't care
23 one way or the other. Let it go.

24 THE COURT: The objection is withdrawn.

25 MR ROGERS: I do not care to read all of those, of course,
26 but possibly I can reach an understanding of their meaning.

1 Would it be sufficient to say that each one of these indict-
2 ments is a separate charge of murder against J.B.Mc-
3 Namara, among others, and that the only difference be-
4 tween these indictments except as to 6955, these indictments
5 from 6936 to 6954, the only difference between them and
6 the indictment 6939 is that it charges the murder of a dif-
7 ferent person?

8 MR FREDERICKS: I think that is correct.

9 MR ROGERS: And on the same day.

10 MR FREDERICKS: And on the same day. There may be some,
11 one or two in there that do not.

12 THE COURT: The reading will be waived, then.

13 MR FREDERICKS: But there is enough of them that do.

14 THE COURT: The reading is waived, Captain Fredericks?

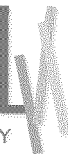
15 MR FREDERICKS: Yes, your Honor.

16 THE COURT: Do you want these documents extended into the
17 record?

18 MR ROGERS: I do not need them, no sir. And with respect
19 to 6955, that is an indictment which reads as follows:
20 it being different from the others: "In the Superior Court
21 of the State of California, in and for the County of Los
22 Angeles. The People of the State of California, Plaintiff,
23 vs. O. E. McManigal, J. J. McNamara, John Doe, Richard
24 Roe, John Styles and Jane Doe, defendants. Indictment.
25 The grand jury of Los Angeles County, in the name and by
26 the authority of the people of the State of California,

accuse O. E. McManigal, J. J. McNamara, John Doe, Richard
Roe, John Styles and Jane Doe,

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1 whose true names are to the Grand Jurors aforesaid unknown,
 2 of the crime of maliciously depositing and exploding and
 3 attempting to explode, dynamite, nitro-glycerine, nitro-
 4 gelatin, and other chemical compounds and explosives, with
 5 intent to injure and destroy buildings, and to injure,
 6 intimidate and terrify human beings, a felony, committed as
 7 follows: "

8 MR FREDERICKS: We stipulate counsel can state it.

9 MR ROGERS: I couldn't state it much better than you do, it
 10 is pretty well drawn. (Reading) "heretofore, to-wit: On the
 11 25th day of December, 1910, at and in the county of Los
 12 Angeles, state of California, and before the finding of
 13 this indictment, the said O. E. McManigal, J. J. McNamara,
 14 John Doe, Richard Roe, John Stiles and Jane Doe, did then
 15 and there wilfully, unlawfully, feloniously and maliciously
 16 deposit, attempt to explode, and explode at, in and under
 17 and near the building, office and foundry of the Llewellyn
 18 Iron Works, a corporate body, at and near the corner of Main
 19 street and Redondo street, in the city of Los Angeles,
 20 county of Los Angeles, state of California, dynamite, nitro-
 21 glycerine, nitro-gelatin, and other chemical compounds and
 22 explosives, with the intent then and there and thereby to
 23 injure and destroy said building, office and foundry of the
 24 said Llewellyn Iron Works, and with the intent then and there
 25 and thereby to injure, intimidate and terrify certain human
 26 beings, to-wit: Reese Llewellyn, John Llewellyn, William

1 Llewellyn, David W. Llewellyn, Waller Taylor, Sprigg Harwood,
2 and the stockholders, proprietors, directors and employes
3 of said Llewellyn Iron Works, in the said building, office
4 and foundry; that said building, office and foundry was,
5 then and there, a place where human beings usually inhabited,
6 assembled, frequented, passed and repassed. Contrary to
7 the form, force and effect of the statute in said cases
8 made and provided, and against the peace and dignity of the
9 People of the State of California. J. D. Fredericks,
10 District Attorney in and for the County of Los Angeles,
11 State of California. Witnesses examined by the Grand Jury.
12 J. F. Towlen, William Cahill, R. Llewellyn, O. E. McManigal.
13 Endorsed: "Original. Department 9. 6955. In the Superior
14 Court, of the State of California, in and for the County of
15 Los Angeles. The People of the State of California, Plaintiff
16 vs O. E. McManigal, J. J. McNamara, John Doe, Richard Roe,
17 John Stiles and Jane Doe, Defendants. Indictment. A true
18 bill. J. E. Carr, Foreman of Grand Jury. Presented by the
19 foreman of the Grand Jury, in the presence of the Grand Jury,
20 in Open Superior Court of the State of California, within
21 and for the county of Los Angeles, and filed as record in
22 said Court, this 5 day of May, 1911. W. J. Ielande, Clerk,
23 By Geo. O. Monroe, Deputy Clerk. J. D. Fredericks, District
24 Attorney."

25 Q Now, at the time that the trial of 6939 was going on, is
26 there any record of what was done with respect to these other

1 charges of murder, 18 of them, and the one which I have just
2 read to you, of detroying the building?

3 MR FREDERICKS: We object to that question, unless it is
4 divided. We have no objection to the question as to what
5 was done with the murder charges against J. B. McNamara,
6 We may wish to make an objection to the other.

7 MR ROGERS: I will separate it then, if you wish me to.

8 Q What was the condition, so far as the record shows,
9 of those 18 charges of murder against J. B. McNamara, at
10 the same time that the trial of the one charge was going on?

11 A All of those cases were filed by the Grand Jury, one
12 case, the one that the District Attorney selected, came
13 to trial; the others were continued to be set on motion.

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1 Q What date were they continued to be set on? A They
2 never reached my department. The register of actions, I
3 think will show the only one reached my department was the
4 one that came to trial.

5 Q The other cases were pending, that is, they were in
6 existence, they were pending ready to be brought up on
7 motion? A At this time I was clerk of the presiding judge,
8 the grand jury made the report and I filed them; at the
9 time the case become at issue, I was then acting for Judge
10 Bordwell, who was the trial judge; that one case, 6939,
11 came on regularly for trial and the others were continued,
12 as I think the register of actions will show, to be reset
13 or to be reset on motion; simply continued indefinitely.

14 Q What became of 6955, that is the one indictment which
15 I read in full, the others being charges of murder?

16 MR FREDERICKS: We object to that on the ground it is not
17 cross-examination; incompetent, irrelevant and immaterial,
18 a charge against another man.

19 MR ROGERS: It is merely in response to their original of-
20 fer.

21 MR FREDERICKS: No. It just happened to be in there.
22 There might have been a dozen other cases in there on the
23 same day against other people. This is a charge against
24 McNanigal for blowing up the Llewellyn Iron Works. We
25 think it is particularly immaterial.

26 THE COURT: It would appear to be immaterial.

1 MR ROGERS: Merely in reply to what they brought out, they
2 had 6955 in their record, and I am showing what has hap-
3 pened to it.

4 MR FORD: We have a box full of papers here, and besides
5 we didn't offer, and it is not in evidence; we didn't offer
6 it.

7 MR ROGERS: You offered the record of its being found and
8 if they brought the record in of its being or having been
9 filed, we have a right to show what became of it.

10 MR FORD: I do not think so. I think it is immaterial, even
11 if we did offer the record, it is ~~im~~material if we did of-
12 fer it.

13 THE COURT: Wherein is it material?

14 MR ROGERS: Your Honor, the materiality of it will appear.

15 MR FREDERICKS: I suppose McManigal will be a witness here.

16 THE COURT: Counsel has stated its materiality will appear,
17 I think, on that statement, it can go in.

18 MR FREDERICKS: We withdraw the objection. We don't care
19 enough about it to talk about it.

20 MR ROGERS: ~~Then~~ don't talk about it.

21 MR FREDERICKS: We won't.

22 MR ROGERS: ⁿWhat became of 6955? A Having waived 60 days'
23 time for trial, it remained in the same condition as the
24 others, until Friday, December 1st, 1911, when the record
25 shows -- shall I read that?

26 Q Yes, please. I offer it in evidence.

1 MR FORD: Just a moment. A Change of plea.

2 MR FORD: All right. Read it. A (Reading.) "Friday,
3 December 1st, 1911. In open court, Hon. Walter Bordwell,
4 Judge presiding, clerk, sheriff and reporter present.
5 Case No.6955, People vs. J. J. McNamara. On motion of Le
6 Compte Davis, Attorney for the Defendant, J.J.B. McNamara,
7 said defendant granted leave to withdraw his plea of not
8 guilty of the offense insaid indictment, and at this time,
9 duly interposes his plea of guilty of the offense charged
10 in said indictment, and cause is continued by consent of
11 defendant to Friday, December 5, 1911, at 10 o'clock A.M.
12 for sentence. " Then, Friday, December 5, commences
13 right here.

14 MR FREDERICKS: That was J. J. McNamara, you just read;
15 itwasn't McManigal? A Yes.

16 MR ROGERS: These have been offered as defendant's exhibit.

17 THE CLERK: As one exhibit?

18 MR ROGERS: Yes sir, with the different numerals attached
19 to each one. Are you numbering the prosecution's exhibits?

20 THE CLERK: Yes sir.

21 MR ROGERS: Well, then, we will take A1, A2, A3, A4, with
22 the court's permission.

23 THE COURT: All right.

24 (Documents last referred to were received in evidence
25 and marked Defendant's exhibits A1 to A19, inclusive.)

26

1 Q By MR ROGERS: I call your attention to people's exhibit
2 5, which purports to be a sheriff's return. Would you say
3 that that was in exactly that condition, so far as you ob-
4 served it, as it was when you received it from the Sheriff?

5 A (After examining) Other than being attached to my
6 original order.

7 Q It was not attached when you first saw it? A They
8 were presented together, and I attached them.

9 Q And you have a recollection of the circumstances of the
10 return? A I do.

11 Q Have you a memorandum of it which would tell you any-
12 thing concerning it? A Only the minutes on the date this
13 was returned, showing who were present and who were not
14 present.

15 Q Well, now, it is dated November 27. When did you get it?

16 A On the filing mark on the original will show, on Novem-
17 ber 28th I received it.

18 Q And what time was that? A Let me see when that was
19 returnable, at 9 or --

20 Q Yes sir, 9 o'clock. A 9 o'clock. Then I must have received
21 this either before 9 or on the 27th, the day before.

22 Q Isn't it your recollection, this being dated the 27th,
23 as you will observe, by the Sheriff or by the under-sheriff,
24 who signs it, isn't it your recollection that you received
25 it on the 27th? A No, I cannot state positively. It may be
26 I received it in the afternoon of the 27th.

1 Q And that at that time contained the statement which you
2 have spoken of here, under the head "Manner of service",
3 "George N. Lock left county a year and a half ago,
4 W. D. Reynolds" Is that so? A At the time I received it?

5 Q Yes. A It was just as it is now.

6 Q Have you any recollection as to who personally presented
7 this document to you? A May I see what number is on the
8 outside?

9 Q Yes sir. A I think Under Sheriff Brain presented that
10 to me. He presented most of them, the first one was given
11 were by Mr Brain, I remember that distinctly, the others
12 I cannot; but, either Mr Manning or the Under Sheriff.

13 Q That is Mr Brain? A Mr Brain, who would deliver them
14 at the desk.

15 THE COURT: Bearing in mind the former admonition,
16 gentlemen of the jury, we will take a recess for five
17 minutes.

18 (After recess.)(Jury return into courtroom.)

19 MR ROGERS: Mr Monroe, referring now to the subsequent
20 proceedings, after those which you have read in evidence, in
21 the case of J. B. McNamara, 6939, will you proceed from the
22 place where you left off, and I will introduce the rest of
23 that.

24 MR FORD: We object to that on the ground it isn't cross-
25 examination; irrelevant and immaterial. If counsel has any
26 matters by way of defense, they can call Mr Monroe as their

1 witness, at the proper time.

2 THE COURT: Read that question, again. (Last question read
3 by the reporter.)

4 MR FORD: Objected to upon the ground it is not cross-
5 examination. Counsel can recall Mr Monroe. He is in Court.

6 THE COURT: You introduced part of the record. He has a
7 right to introduce the rest of it, and find out whether it
8 is material or not.

9 MR FREDERICKS: I don't know what the question means,
10 maybe the witness does.

11 MR ROGERS: Well, they carried the record up to a certain
12 point, and I am carrying it on from that point to its final
13 completion.

14 MR FREDERICKS: We carried it up to where these men plead
15 guilty, and you are going on with it?

16 MR ROGERS: Going on.

17 MR FREDERICKS: Go ahead.

18 THE COURT: Objection withdrawn.

19 A (Reading) "Tuesday, December 5th, 1911, In open Court,
20 Hon. Walter Bordwell, Judge presiding; Clerk, Sheriff and
21 reporter present. Case No. 6939. people vs J. B. McNamara.
22 This being the time set for passing sentence upon the defend-
23 ant; the People being represented in Court by District
24 Attorney J. D. Fredericks; Assistant District Attorney,
25 W. J. Ford, and Deputy District Attorney G. Ray Horton, and
26 the defendant present in court with his attorneys, Clarence S.

1 Darrow, LeCompte Davis, Joseph Scott, and Cyrus McNutt, the
2 defendant states his true name to be John Barnabas McNamara.
3 The defendant was then asked if he had any cause to show why
4 judgment should not be pronounced against him, to which he
5 replied that he had none, and no sufficient cause being shown
6 or appearing to the Court, thereupon the Court rendered its
7 judgment. For record and order see Judgment book No. 6,
8 page 27.

9 MR ROGERS: I would like that judgment book.

10 MR FREDERICKS: Before we stipulate what it was, let the Clerk
11 testify what it was if he recollects.

12 MR ROGERS: You remember what it was? A Yes sir, but the
13 book is right here.

14 Q All right, let's have it. Page 27, book 6.

15 A That is Department 11. I want No. 12.

16 MR FREDERICKS: Let him testify what it was. We won't make
17 any point on it.

18 MR ROGERS: Can you remember what it was? A Yes sir.

19 Q Please state it. A He was sentenced to San Quentin for
20 the term of his natural life.

21 Q Now will you take case 6955, which was called to your
22 attention at the time of introducing the record of its
23 filing, and I will ask you to take the record of that case,
24 to its final judgment.

25 MR FREDERICKS: Is that J. J. McNamara?

26 MR ROGERS: Yes sir.

1 MR FREDERICKS: If he knows he can state, so far as we are
2 concerned. A The order of sentence is practically
3 identical.

4 MR ROGERS: I offer in evidence 6955, in the same way.

5 A That is Tuesday, December 5th, 1911, in open Court, Hon.
6 Walter Bordwell, Judge presiding, The clerk, sheriff and
7 reporter present. Case No. 6955. People vs J. J. McNamara.
8 This being the date set for passing sentence upon the defend-
9 ant, the People being present in Court by District Attorney
10 J. D. Fredericks, Assistant District Attorney W. J. Ford, and
11 Deputy District Attorney G. Ray Horton; the defendant being
12 present in Court with his attorneys, Clarence S. Darrow,
13 LeCompte Davis, Joseph Scott and Cyrus McNutt, the defendant
14 stated his true name to be John Joseph McNamara. The defend-
15 ant was then asked if he had any legal cause to show why
16 judgment should not be pronounced against him, to which he
17 replied that he had none, and no sufficient cause being shown
18 or appearing to the Court, thereupon the Court rendered its
19 judgment, For order and record see judgment --

20 MR ROGERS: The Judgment is contained in judgment book No. 6,
21 at page 27? A Yes sir.

22 Q That book you have not here? A It is in the adjoining
23 room.

24 Q Will you state what that judgment was? A The sentence
25 of that defendant was fifteen years in San Quentin. I am not
26 positive whether it was Folsom or San Quentin, but I think

1 San Quentin.

2 Q Let's get that judgment book. Fifteen years?

3 MR FORD: My recollection is the same, 15 years.

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1 MR ROGERS: Do you remember whether anything was done --
2 has been done up to the present time with the cases,
3 6936 to 6954, inclusive, except 6939. Have they ever
4 passed judgment or been dismissed? A I don't know anything
5 about those cases. They haven't reached my department.

6 Q You can't testify either from an observation of the re-
7 cords, or from your own knowledge? A No sir, without con-
8 sulting the register of actions.

9 MR ROGERS: That is all.

10 MR FORD: You testified, I believe, that the return of the
11 certificate on November 28th, bears the file mark of Novem-
12 ber 28th? A Yes sir.

13 Q You have no personal recollection, independent of that
14 file mark, as to whether it was returned that day or the day
15 before? A My -- must have been returned that day, for
16 my custom is to file at once, personally.

17 Q And you have no recollection independent of your filing
18 marks? A No, I have not.

19 MR FORD: That is all.

20 ---

21 GEORGE N. LOCKWOOD, a witness called on be-
22 half of the prosecution, being first duly sworn, testified
23 as follows:

24 DIRECT EXAMINATION

25 MR FREDERICKS: State your name. A George N. Lockwood.

26 Q May I have that certificate that was filed showing the

1 drawing of Mr Lockwood? What is your name? A George N.
2 Lockwood.

3 Q Where do you live, Mr Lockwood? A Near Covina.

4 Q Here in the county of Los Angeles, state of Califor-
5 nia? A Yes sir.

6 Q Where did you live prior to that time? A 1350 Newton
7 street, for 5 or 6 years in this city.

8 Q Here in Los Angeles? A Yes sir.

9 Q When did you leave 1315 Newtonstreet here in Los
10 Angeles? A In August -- it will be two years coming
11 August.

12 Q Moved out to Covina? A Yes sir, or within four miles of
13 Covina.

14 Q How long have you lived here in Los Angeles County,
15 Mr Lockwood? A About 44 years.

16 Q And what generally, has been your occupation? A Well,
17 I have been a farmer part of the time, and part of the time
18 I was on the police force. Part of the time I was deputy
19 sheriff; city employe, and so on.

20 Q About how old are you? A About 64, past.

21 Q And you are living out near Covina? A Yes sir.

22 Q What is your business out there? A Farming.

23 Q That is your home? Have your home out there? A Yes sir.

24 Q How far from El Monte do you live? A About 6 miles.

25 Q East? A East and a trifle north.

26 Q Do you know Bert Franklin? A Yes sir.

1 Q How long have you known Bert Franklin? A I should
2 think a dozen years or such a matter.

3 Q You ever have any association with him in ^a business way?

4 A We both worked in the Sheriff's office under Bill White
5 when he was sheriff.

6 Q As deputies? A Yes.

7 Q Do you remember where you were living last November?

8 A Yes sir.

9 Q The same place, out on the ranch? A Yes sir.

10 Q Do you remember of meeting Bert Franklin in November
11 the first time? A yes sir.

12 Q Where? A At my home in the evening.

13 Q And do you remember the day when you first met him.

14 A It was the 4th day of November.

15 Q 1911? A 1911.

16 Q Prior to that time -- prior to the 4th day of Novem-
17 ber, 1911, how long had it been since you had met Bert
18 Franklin? A I don't think I had met him within a year.
19 I think it had been a year since I had seen him, until
20 that night.

21 Q At the time and prior to that time -- I withdraw
22 that question. Are you acquainted with District Attorney
23 J. D. Fredericks, myself? A Yes sir.

24 Q Prior to the time when you met Bert Franklin, how
25 long had it been since you had met me, approximately?

26 MR ROGERS: I think that is immaterial. Your Honor

1 please, I object to it on that ground.

2 THE COURT: I suppose counsel intends to connect it up.

3 MR FORD: Relations of the parties.

4 THE COURT: Overruled.

5 A I would say it was several months anyway, before that.

6 MR FREDERICKS: Now, what time of day or night was it that
7 you met Franklin on the 4th of November? A Well, it was
8 in the evening, just the hour I couldn't say. I had gone
9 to bed and was asleep when he rapped on the door.

10 MR ROGERS: Now, just a moment. The relation of the inci-
11 dents of that occasion, I suggest, ought to come in res-
12 ponse to a question which will present the point. This
13 answer is not now going to be responsive from this on.

14 MR FREDERICKS: Oh, I think so. I think he has concluded
15 the answer.

16 THE COURT: Had you finished the answer?

17 MR FREDERICKS: Read the question.

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

19 MR FREDERICKS: What occurred at that time? I presume
20 counsel wants to object to ~~that~~ your saying what was said
21 at that time and I will ask you that question later, but
22 just what did you do when he rapped on the door?

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1 A After my wife woke me up and told me some one --

2 MR ROGERS: I object to that as hearsay. Not harmfully so,
3 of course.

4 THE COURT: Yes sir.

5 A I went to the door.

6 MR FREDERICKS: All right, and was he alone? A I think there
7 was someone in the automobile, but who I don't know.

8 Q Your house is back a little ways from the road?

9 A Yes sir.

10 Q About how far? A I should think in the neighborhood of
11 one hundred feet.

12 Q Anything intervening between you and the road?

13 A Not from where I stood, except some palm trees that were
14 not very high.

15 Q Now you had a conversation, did you, with Mr Franklin
16 there at the door, at that time? A Yes sir.

17 Q State what that conversation was. Just wait until counsel
18 makes objection.

19 MR ROGERS: That is objected to as incompetent, irrelevant
20 and immaterial, and hearsay and no foundation laid.

21 MR FORD: We avow our intention to connect Franklin with the
22 defendant, Mr Darrow. It is part of the res gestae; things
23 that are done.

24 THE COURT: Overruled.

25 MR ROGERS: Exception.

26 A He told me that he wanted to have a conversation with me,

1 and I said to him, "It is late, there is no lights"-- I didn't
2 light no light when I went out -- "and I am awful tired".
3 He said that he would like to see me in his office in Los
4 Angeles, and I told him that I would be going to Los Angeles
5 between that time and the following Wednesday, and that I would
6 call on him; and he gave me his office address; bid me good
7 night, and went on, and I went back to bed.

8 Q He gave you that address, just as a card?

9 MR ROGERS: I wouldn't lead him.

10 MR FREDERICKS: It is almost immaterial. How did he give you
11 the office address? A I think he just told me the number
12 of his room, in the Chamber of Commerce building.

13 Q At that time did you know that your name was in the jury
14 wheel of Los Angeles county? A No, I supposed so, but didn't
15 know it.

16 Q Was anything said that night about jury? A Not a word.

17 Q Now let's see; do you remember what day of the wekk that
18 was? A That was Saturday.

19 Q Saturday the 4th of November? A 4th day of November.

20 Q At night. Have you related all the conversation that you
21 can remember? A All that occurred that night.

22 Q How long was he there? A Oh, I don't think it was over
23 four or five minutes.

24 Q Do you know from your own observations, whether anyone
25 was out in the machine, in the automobile? A I think I saw
26 someone there. Probably the man that runs it.

1 Q You think you saw someone? A Yes sir.

2 MR ROGERS: What was the last part of it. (Last part of
3 answer read by the reporter.)

4 MR FREDERICKS: At any rate, you don't know who it was?

5 A No, I don't know who it was.

6 Q Didn't have any conversation with anyone else? A No.

7 MR ROGERS: We move to strike out the conversation, in order
8 to preserve our rights.

9 MR FORD: Merely preliminary.

10 MR ROGERS: Upon the ground it is hearsay, and incompetent;
11 no foundation has been laid for it. It is immaterial.

12 THE COURT: Under the District Attorney's statement that he
13 intends to connect it up with the defendant here, the motion
14 will be denied.

15 MR FREDERICKS: Now, when was the next time you met Bert
16 Franklin? A The following week, on the 9th day of the month
17 at his office.

18 Q Before I come to that -- prior to that meeting with Bert
19 Franklin, had you ever discussed jury duty in the McNamara
20 case with anybody at all, so far as you know? A No sir.

21 MR ROGERS: What is that question. (Last question and answer
22 read by the reporter.)

23 MR FREDERICKS: Now, coming down, when was the next time you
24 met Bert Franklin? A On the 9th day of November.

25 Q The 9th day of November. You know what day of the week
26 that was? A Yes sir, I think it was Thursday.

Q Thursday, the year 1911? A Yes sir.

1 Q And where? A At his office in the Chamber of Commerce
2 building.

3 Q Los Angeles? A Yes sir.

4 Q You remember the time in the day? A Why, it was to be
5 10 o'clock. I think it was about 15 minutes past 10.

6 Q What did you mean, it was to be 10 o'clock? A He asked
7 me -- when I said that was all the conversation -- he asked
8 me to write him a letter stating the day I would be in.
9 In place of doing that I came to town on the evening of the
10 8th, and called him up at his home, on the telephone,
11 and told him that I was in town and would be at his office
12 the next morning, and he suggested 10 o'clock. I believe he
13 suggested 9, first, and I said I couldn't get there, and then
14 he suggested 10. It was probably a quarter past when I reach-
15 ed there, that is the way it came to be that time.]

16 Q Well, on the telephone conversation then, was there any
17 other conversation? A Not a word.

18 Q That is all? A That is all.

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1 MR ROGERS: I move to strike it out, not being able to ob-
2 ject to it, on the ground it is hearsay, incompetent and
3 no foundation laid.

4 MR FREDERICKS: The same proposition, I presume.

5 THE COURT: Overruled.

6 MR ROGERS: Exception.

7 MR FREDERICKS: Now, when you called at his office on the
8 10th,-- on the 9th at 10 o'clock, approximately, who was
9 in the office, do you remember? A No one but himself.

10 Q Now, Mr Lockwood, state what was said between you,
11 and as near as possible in the order in which it was said.

12 MR ROGERS: I object to that as hearsay and incompetent; no
13 foundation laid for it, it appearing from the statement of
14 the witness, that there was no one present except himself
15 and Franklin, and naturally Mr Darrow cannot be bound by
16 any statements made by other persons outside of the pre-
17 sence and hearing -- the rule -- a very ancient rule, that
18 the declarations of a person outside of his presence and
19 hearing, do not bind him, and he is not to be -- his
20 liberty is not to be jeopardized by them, except upon
21 showing and his authorization.

22 MR FREDERICKS: Also a very ancient rule, grew in existence
23 about the same time, that the statements of an accomplice
24 in furtherance of a conspiracy, were admissible against
25 all members of the conspiracy.

26 MR ROGERS: The conspiracy first being shown.

1 MR FREDERICKS: Not necessary first in order of proof. We
2 will show that.

3 MR FORD: The conspiracy must be shown before the jury
4 can consider it.

5 THE COURT: The District Attorney makes the same avowal as
6 to the offer of this testimony he did a moment ago.

7 MR APPEL: Suppose they fail to show that by proper evi-
8 dence.

9 MR FREDERICKS: We will show it by proper evidence.

10 THE COURT: If they fail, why, that condition will be met
11 when the time comes. The District Attorney can only prove
12 one part of his case at a time. Overruled.

13 MR ROGERS: Exception.

14 (Last question read by the reporter.)

15 A Well, we shook hands, and he invited me to a seat, and
16 I think his first remark was, that he would like to have me
17 as one of the jurors in the McNamara case; and I replied to
18 him at once, that I thought possibly he was taking the ex-
19 act method of preventing me from being a juror in that case,
20 and he said he didn't think so. And then he asked me the
21 question, "Can I talk with you about that case?" I said,
22 "Yes sir." He then remarked that both himself and my self
23 had --

24 MR FORD: Pardon me just a moment for interrupting. Bet-
25 ter state it in the language. A ["Had gone along through
26 life until we had aged perceptibly without properly using

1 our heads;" and that he thought it was time we both ought
2 to do that in order to acquire sufficient for our wants in
3 our old age, and that for that reason he had sent for me to
4 tell me this, and he remarked that there was \$2000 in it
5 for me, if I would act as a juror on that case.

6 MR ROGERS: That is all Franklin's statement? A Yes.

7 MR FREDERICKS: Yes. [A I asked him how that could be.

8 Well, he said he was to work for the defense, and had the
9 handling of the -- looking after the jury, part of it, and
10 that he could assure me that that money and that possibly
11 he could make it \$2500; if he could he would, if I would
12 accept the proposition. He then went into quite a discus-
13 sion of the case, and its different points in regard --

14 Q Just give that discussion as near as you can remember
15 it.

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1 A As near as I remember, he said he had not the slightest
2 doubt but what if I was a juror in that case and heard the
3 evidence, that, without anyone suggesting it, or any induce-
4 ment whatever, other than hearing the testimony, that I
5 would, of my own free will and accord, from the testimony,
6 bring in a verdict of ^{not} guilty. He said, "There was absolutely
7 no evidence against the McNamaras, except such as had been
8 manufactured, and the reason of him offering me that was his
9 friendship for me, and my age," and so on, and it being in
10 his power to do it. I asked him how it could be paid?
11 Well, he said, "I will give you personally \$500 before you
12 enter the jury box at all, and as soon as you are an accepted
13 juror we will place the balance in some one's hands that will
14 be acceptable to you, where it will be perfectly safe,
15 pending the outcome of the case." I asked him specifically,
16 what he wanted me to do in case I accepted the proposition.
17 Why, he said, "Of course, a verdict of not guilty -- vote not
18 guilty." I told him I didn't see how that matter could be
19 arranged so that it would be safe for the man that would
20 accept it to get his money. He said it could be done all
21 right.⁷ As I say, he mentioned different names -- or at least
22 one name, as a proper custodian for the holding of the money
23 that would be left pending the verdict. I told him that I
24 would want to consider the proposition a little bit; that it
25 was a complete surprise to me, that anything of the kind was
26 being done. He said, all right, "How long do you want to

1 consider it?" Oh, I said, "until Saturday" He asked me if
2 I would come to his office again. I told him, no, I didn't
3 think I would be there again. Well, he said, "I will come
4 out to your house". I said, "All right, come out".
5 He said, "I will come out in the evening." "All right".
6 I big him good by there and went out of his office. ⁷ X

7 MR ROGERS: I move to strike out the conversation, as hearsay,
8 and incompetent. That it discloses that Mr Darrow was not
9 present and he cannot be bound by hearsay conversations of
10 other persons than himself, and the mere avowal of the Dis-
11 trict Attorney, that he will connect the testimony, is taking
12 it out of order, and incompetent and no foundation has been
13 laid.

14 THE COURT: Overruled.

15 MR ROGERS: Exception. A I would like to say there was
16 further conversation we had, slipped my mind, temporarily,
17 that I recall now.

18 MR FREDERICKS: Give it, and it may go in as though it had
19 been objected to and ruled on, as far as we are concerned.
20 Go ahead.

21 MR ROGERS: The same objection, applies.

22 THE COURT: Yes.

23 MR FREDERICKS: We stipulate.

24 A He told me that he had already one juror there that was
25 fixed and that I knew that juror better than I did him.

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1 MR ROGERS: I move to strike out that statement upon the
2 ground that it is hearsay and incompetent and irrelevant,
3 and immaterial and no foundation has been laid, and it does
4 not apply to this case, and even under the theory of counsel,
5 that the declarations of one of the so-called conspirators
6 are admissible, as against the others in the conspiracy,
7 it is only declarations with reference to that particular
8 matter that are admissible. All hearsay testimony is not
9 well regarded by the court, as your Honor observes, in order
10 to take any evidence out of the objection that it is hearsay,
11 bearing in mind the unwisdom of admitting anything that
12 savors of hearsay, the law, in making exception, is particu-
13 lar to specify what those exceptions shall be. One of those
14 is, of course, the statement that where the conspiracy has
15 been shown or declarations of one may bind others in the
16 pursuit or in the object under the necessities of that con-
17 spiracy and matters outside of that cannot be adduced.

18 I merely wish to make my objection upon the grounds stated;
19 of course, there ^{might} much be said by way of law, upon the subject.
20 It is elementary law that a recital by one conspirator of
21 past events, which has been, do not come within the excep-
22 tion in any event.

23 MR FORD: If the Court please, we have a brief upon the rule
24 if we are going to discuss conspiracy at all. If the juror
25 recited something that occurred in reference specifically to
26 the alleged bribery or attempted bribery of this particular
juror, and the conversations introduced for that purpose are

1 merely verbal acts, they are all acts, verbal acts for that
2 purpose, and not hearsay. Counsel does not correctly state
3 the law, however, with regard to conspiracy. Everything
4 done or said in furtherance of a conspiracy and during the
5 continuance of the conspiracy is admissible; that is the
6 correct statement.

7 MR APPEL: Your Honor, to illustrate that proposition, --

8 MR FORD: I will introduce five hundred authorities on that.

9 MR APPEL: And every one of them would contradict the law.

10 Suppose, your Honor, the defendant was on the stand himself,
11 and he was asked concerning past transactions, not connected
12 with the case at issue here, he wouldn't be allowed to tes-
13 tify to that under objection. Now, suppose that his co-
14 conspirator is on the stand, and he undertook to say, when
15 testifying concerning this case, that they had committed
16 another crime. Now, all the decisions are that it would be
17 error to admit that kind of evidence. How much more error
18 would it be if a co-conspirator tells a third person, not in
19 the presence of the defendant? Now, there are cases squarely
20 in point on that.

21 MR FREDERICKS: Counsel loses the one point, however. That
22 the statement of Mr Franklin was in furtherance of his efforts
23 to get Mr Lockwood to accept this bribe by saying to him,
24 and he used it as an inducement -- stating to him that
25 another juror, whom he knew, had accepted a bribe, so, that
26 it was really part of the inducement to this juror -- to this

1 this witness. His statement that the other juror had been
2 bribed.

3 MR APPEL: That might have been used as against Franklin,
4 himself, but it cannot be used against Mr Darrow.

5 THE COURT: It seems to me, gentlemen, that this question
6 brings us pretty close, at least, to some of the very
7 interesting legal propositions that have to be settled in
8 this law suit. It is almost adjourning time,-- I don't want
9 500 authorities from either side, but if you have one or two
10 leading cases on each side, bearing on the subject that I can
11 read between now and the time court convenes on Monday, I
12 will be glad to avail myself of it and save your time and
13 the Court's time.

14 MR FORD: I will send your Honor a list of them immediately.

15 MR ROGERS: So will I.

16 THE COURT: And perhaps that being done we can get at this
17 matter very quickly, and take up the thread where we now leave
18 off, at 1.30 Monday afternoon. Is there anyone here who can-
19 not be here at 1:30?

20 MR FORD: I want to call your Honor's attention to People
21 vs Rodley, 131, Cal.; People vs Rueff, in the 14th Appellate,;
22 State vs Collins, 64 Cal., 295; Abbotts Criminal Brief 547,
23 page 315. That is the best Criminal brief or work of its
24 nature that I am acquainted with, and of Section 547 page
25 315, will appear a list of authorities in support of that
26 proposition which I will not bother the Court with.

1 MR ROGERS: I differ with counsel about the authority
2 of Abbotts Trial Brief. It is not regarded as an authority
3 and is never cited by Courts.

4 THE COURT: Did you say in the Rueff case there has been a
5 re-hearing granted in that case?

6 MR ROGERS: In the Rueff case there was a re-hearing granted,
7 by the Court unanimously, and thereupon the Attorney General
8 called attention to the fact that they had no jurisdiction
9 to grant the re-hearing because of the lapse of time.

10 Judge Henshaw being absent from the state at the time.

11 THE COURT: I remember the circumstances very well.

12 MR ROGERS: You remember the circumstances very well.

13 THE COURT: So it stands now, that there was no re-hearing
14 granted?

15 MR ROGERS: There was a re-hearing granted, upon the merits
16 of the decision itself, as a rule of law.

17 MR FREDRICKS: There were about 5,000,000 different points
18 involved.

19 MR FORD: We submit it as an opinion of the Appellate Court
20 on that subject.

21 THE COURT: I will read the case between now and 1.30 Monday.
22 Mr Rogers, have you anything you want to hand me, other than
23 the document that you let me have yesterday at my request?

24 MR ROGERS: 158th Cal., and I will send up a list of cases
25 in other states. There are some very excellent decisions
26 in other states.

1 THE COURT: I wont undertake to read decisions outside of
2 this state, between now and Monday.

3 MR ROGERS: I call your Honor's attention to the Mouillineaux
4 case.

5 MR FORD: When your Honor is looking at the Mouillineaux
6 case I would suggest the 62nd L.A.R. That is an excellent
7 note on the case.

8 MR ROGERS: That is a week's work to read that case alone.

9 MR FORD: Well, we are satisfied with the authorities sub-
10 mitted there. That is not, however, conspiracy, but other
11 offenses. We are making a statement here in regard to con-
12 spiracy. That is outside of the Mouillineaux case.

13 THE COURT: Gentlemen of the jury, we will take a recess now
14 until 1:30 o'clock Monday afternoon, May 27th, 1912.

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