

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.

Clarence Darrow,)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 3

I N D E X.

Direct. Cross. Re-D. Re-C.

George N. Lockwood,

175

May 27, 1912. 1:30 o'clock P.M.

Defendant in court with counsel.

THE COURT: People vs. Darrow.

MR ROGERS: If your Honor please --

MR FORD: If the court please, there is a matter which counsel desires to present to the court. We ask that the jury be excused while it is being heard.

MR ROGERS: We object to the jury being excused. The thing which we desire to call your Honor's attention to was intended originally for the benefit of the jury, and to prejudice this defendant against -- prejudice the jury against the defendant. It is one of the most outrageous things that ever happened in jurisprudence, and I desire to present it in their presence.

MR FORD: We desire the jury excused until the taking of evidence -- the only thing that is proper to be presented to the jury. It is not a matter to properly come before the jury. It is a matter for your Honor to inquire into. I haven't read the affidavit here, but I can see the nature of it.

MR FREDERICKS: If the court please, it appears to be an affidavit that a certain article appeared in a newspaper and ~~that~~ we assume that this jury does not read the newspapers in regard to this trial. Counsel's affidavit here, as I have read it, goes to the effect that by the publication of this article in the newspaper, an attempt was made to influ-

1 ence this jury. Now, we certainly must assume that this
2 jury has not seen anything of the kind in a newspaper, and
3 will not see anything of the kind in a newspaper, so the
4 matter is one entirely for the court to determine, and I
5 believe that counsel's purpose in bringing this before the
6 jury here, is in order that he may improperly influence
7 this jury against the prosecution, and believing that, it
8 seems to me, if there is to be any discussion of the mat-
9 ter it should be made and contended without the presence of
10 the jury. He thinks that the prosecution wishes to in-
11 fluence the jury improperly, and we certainly think that he
12 does.

13 THE COURT: Gentlemen, I don't think it is necessary to
14 cast any aspersions on each other. Let me see the affida-
15 vit. Mr Aguerre, I assume counsel is correct -- the
16 court assumes the jury has not seen the daily newspapers.

17 THE BAILIFF: All pertaining to the case is cut -- I have
18 the clippings here --

19 THE COURT: Make the statement so everybody can hear it.

20 THE BAILIFF: We cut all the clippings out, anything per-
21 taining to this case.

22 MR ROGERS: The affidavit states we have information that
23 the article was endeavored to be got to the jury. We
24 don't know that it has happened.

25 THE COURT: If that endeavor was a failure, why make it a
26 success at this time?

1 MR APPEL: Your Honor, we ask for more relief than a mere
2 statement. We have the right to have the court protect us.

3 THE COURT: I think, gentlemen, that it would be better to
4 temporarily, at least, excuse the jury until we go into
5 these questions.

6 MR APPEL: Your Honor, we are -- it has been decided that
7 all proceedings in a criminal case after a jury is consti-
8 tuted a part of the court, must necessarily be had in the
9 presence of the jury. Now, we are not going to consent to
10 anything whereby we waive any right. This jury and this
11 court now constitute the court before whom we are being
12 tried, and I don't know any power in this court to dismember
13 itself or excuse the jury from the court, and we are not
14 going to waive that. We may do as your Honor may think
15 best in the matter, but we contend that this proceeding in
16 this case which affects the right of this defendant, we are
17 entitled to protection from any matter or thing that may
18 appear in there as intimidation against this defendant. It
19 has been held by the courts, your Honor, that anything
20 that will intimidate the defendant, that will distract his
21 attention from the issues in the case and will make him turn
22 his mind away from the proceedings of the court, is an
23 intimidation and interferes with the fair and honest trial
24 of the case.

1 Now, of course, your Honor may do as your Honor thinks is
2 pproper in excusing the jury or not. We do not wish it at this
3 time, to waive the right to have the jury, which constitutes
4 a part of this court, excused. We say that in a criminal
5 action of this kind, in a criminal action amounting to a
6 felony, that there is no power in the court, whenever a jury
7 has been empaneled, that the Court before whom we are trying
8 the case, is constituted the judge upon the bench and regu-
9 lates the proceedings according to its judgment and accord-
10 ing with the rule laid down by him and the jury are a part
11 and they constitute part of the court.

12 For that reason, and only for that reason, we are object-
13 ing to the jury being excused.

14 THE COURT: I want to get the defendant's point of this
15 matter. I am afraid I have not got the point. Your protest
16 seems to be, an article appeared in some newspaper which was
17 intended to affect the minds of the jury adversely to the
18 defendant.

19 MR APPEL: Affect this defendant.

20 THE COURT: It now appears that the jury has not seen or
21 heard of that article.

22 MR APPEL: Well, of course, we present an issue, your Honor,
23 by pleadings here. We have a right, that is the only way
24 in which we can bring your Honor's attention to the matter.
25 These are allegations contained in that affidavit, deemed
26 to be true just now. If anyone connected with this prosecu-

1 tion, your Honor please -- I am not prejudging now, I want
2 to be fair to everybody, -- if anyone connected with this
3 prosecution has undertaken here to fix public opinion against
4 our client, if he has undertaken to intimidate him, if he
5 has undertaken to intimidate our witnesses, if he has under-
6 taken to turn your Honor's mind against this defendant, by
7 prejudicing your Honor's mind, although it has not reached
8 that jury, we are entitled to have this proceeding before
9 that jury, so that the jury may be cautioned against any
10 such thing as that. We do not say these things will preju-
11 dice this jury, we are trying to avoid the very thing which
12 is stated in that affidavit to occur. We present this in
13 good faith. Now, having at stake the liberty and life of a
14 man of this kind, ^{an attorney} who would not present this matter to your
15 Honor's fairness and to your Honor's ruling, I say, is not
16 doing his duty, and here we are accused, if your Honor
17 please, right at the outset, with doing this very thing in
18 order to affect this jury's mind. I say, we do not want
19 this jury's mind to be affected, but this jury constitutes a
20 part of this court and the matters and things which we are
21 bringing in this affidavit are brought before your Honor --
22 so far as the punishment you may mete out to anyone who is
23 found guilty of the offense charged, and also for the benefit
24 of this jury, to show to them we are fair in our trial, we
25 want them to hear everything here, that there are no secrets
26 with this defense, that we do not come rummaging around in the

1 neighborhood here, trying to intimidate the other side,
2 that we only want a fair and honest trial. Whatever the ver-
3 dict may be here, then no one can complain. Now, your Honor,
4 it is not in the power of the district attorney nor in your
5 power to say to this jury that they must leave this courtroom
6 in a matter which we think is a part and parcel of this trial
7 and we have decision of that kind and in this state.

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1 MR FORD: There are facts alleged in this affidavit which
2 if true, the parties guilty of it, should be brought before
3 the court and punished for contempt of court. This is
4 not an issue in the trial of the case of People vs. Claar-
5 ence Darrow, and is a matter affecting the integrity of
6 the court, and, if so, constitutes a contempt of court.
7 We would ask that the matter be continued until 9 o'clock
8 tomorrow morning in order that we may make an inquiry into
9 this matter, and find out what the actual facts are in re-
10 lation to it, and if necessary, present affidavits, so
11 that there will be something before the court on which the
12 court may act. It is not a matter relevant or pertinent
13 that is before the jury, of the guilt or innocence of the
14 defendant; it is a matter in which the jury has no inter-
15 est. I presume the jury will meet at 10 o'clock in ac-
16 cordance with the usual custom, tomorrow morning, and we
17 would ask that your Honor set this matter for hearing be-
18 fore the court, before whom it properly belongs, and by
19 whom it must be decided, at 9 o'clock tomorrow morning.
20 We want an opportunity to look into this matter and present
21 our side, if we have any side to the matter, to the court,
22 and would ask your Honor to set this matter for 9 o'clock
23 tomorrow morning before you resume the trial of the case of
24 the People of the State of California, versus Darrow.
25 We certainly have some rights in this matter, and it is a
26 distinct surprise to us.

1 THE COURT: When were the affidavits served on you?

2 MR FORD: Just now; just at this moment in court.

3 MR APPEL: It is a mere matter of courtesy to serve him
4 with an affidavit. These gentlemen do not seem to under-
5 stand their position, your Honor. They are prosecutors.

6 MR FREDERICKS: Now, may it please the court, this issue
7 is very plain, and simple. We donot want to charge counsel
8 on the other side with trying to get something in here, and
9 I am not going to do so.

10 THE COURT: No, don't do it.

11 MR FREDERICKS: This case is the case of the People of the
12 State of California, vs. Clarence Darrow, that is an action
13 we propose to try in this lawsuit. We do not intend in
14 this lawsuit to try anybody else. This is an affidavit
15 upon which might be based a citation for contempt of court.
16 The courts have universally determined that a ^{contempt of} court pro-
17 ceeding is in the nature of a criminal proceeding, and a
18 criminal trial, charging a certain separate person with the
19 crime of contempt of court. Now, if any person has com-
20 mitted the crime of contempt of court, that is a matter for
21 this court to hear and determine at a proper time and in
22 a manner specified in the code by petition filed, and an
23 opportunity to file an answer, and then a hearing on the
24 facts. Now, then, what has that to do with this case
25 in which this jury is impaneled. They know nothing now of
26 the proceedings or of the affidavit about which counsel

1 complains, and certainly, they should be kept in that sit-
 2 uation. That is the thing that counsel is arguing for,
 3 keep the jury so it will only hear the evidence, and that
 4 is what we wish. The two cases are absolutely separate
 5 and have nothing to do with each other. This is a separ-
 6 ate charge which counsel makes against another man that
 7 probably this court never heard of before.

8 MR ROGERS: I beg your pardon, his name was mentioned time
 9 and again. You deny it has anything to do with the case.
 10 We have the affidavit, "I will convict Clarence Darrow".

11 MR FREDERICKS: That is what your affidavit is.

12 MR ROGERS: That is what he says.

13 MR FREDERICKS: No, he didn't say anything of the kind.

14 MR ROGERS: That is what the paper says.

15 MR FREDERICKS: But we are not chargeable with whatever
 16 newspaper may say in this town in regard to this case or any
 17 other case, and the People do not propose to be chargeable
 18 with what newspapers may say. I do not believe, without
 19 knowing anything about the case, that the man who is guilty
 20 there, made any such statement.

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1 I do not believe that that is a true statement, and I do not
2 believe that he ever made such a statement to a newspaper,
3 and I do believe, if the newspaper had any object in publish-
4 ing that that object was friendliness for the defense.

5 That is what that means, if it means anything. It does not
6 come from the prosecution, and it is not friendly to the
7 prosecution and any newspaper that would publish an article
8 such as that does it ignorantly or does it intentionally
9 in opposition to the prosecution. That is what that article
10 means, it doesn't mean that it is inspired by the prosecu-
11 tion in any way, shape or form. I can see through a grind-
12 stone that has a hole in it. Now, this jury has nothing
13 to do with that affidavit, that is another matter that we
14 will take up and fight out on its merits at the proper time,
15 and this is not the proper time nor the proper occasion.

16 MR ROGERS: If your Honor pleases, the court consists,
17 according to Blackstone, of the Judge, the jury, the clerk,
18 the sheriff and place --

19 THE COURT: I think that in a measure, at least, the District
20 Attorney's position here should be conceded ^{to} this extent,
21 that the hearing on this matter be continued until the regu-
22 lar hour when court will convene, which will be 9:30 tomorrow
23 morning. The jury will be here present and the question of
24 whether or not a jury should hear this matter is one that can
25 best be determined at that time. It will be necessary that
26 I should read the affidavit here very carefully and it is

1 proper that the District Attorney should have an opportunity
2 to go into it.

3 MR ROGERS: If your Honor please, he says, "in order to pre-
4 sent our side." There cannot be "our side" to this thing.

5 MR FREDERICKS: Then, we will not present any side.

6 MR ROGERS: This is one of the most outrageous things that
7 ever happened in a trial of any case. I went through San
8 Francisco, and I know what I am talking about. Now, if your
9 Honor please, I do not object to a continuance until to-
10 morrow morning, we are entitled to protection right now.
11 This affidavit says there were efforts to get this outrageous
12 thing to this jury, and before we go on we want to know what
13 has happened. We want to know whether this thing has got to
14 the jury or not.

15 MR FORD: I ask that a citation be issued for the party named
16 in there, as counsel could have done.

17 MR ROGERS: His name is Robert J. Foster.

18 MR FORD: We ask that a citation be issued for Robert J.
19 Foster and that he be brought before the Court and your Honor
20 determine this matter in the proper manner and at the proper
21 time, as it should be, and if Robert J. Foster has done these
22 things, your Honor can act upon it. This jury is not going
23 to act and decide on these facts, this is a proper matter
24 for your Honor to hear, and if they were honest and sincere
25 in the matter they should have asked for a citation in the
26 affidavit. We ask that it be issued.

1 MR ROGERS: We do ask for it.

2 MR FORD: And your Honor is the only tribunal which can
3 pass upon the matter.

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1 THE COURT: You join with the defense?

2 MR FORD: We join with the defense.

3 MR APPEL: We don't think, under the present conditions,
4 that we should be proceeding with the trial of this case
5 until this matter is -- until we commence anew.

6 THE COURT: There is this important feature that you have
7 suggested, if there has been an attempt made that is suc-
8 cessful --

9 MR APPEL: There is another thing, your Honor. These
10 gentlemen cannot represent this man. They cannot speak for
11 him. They ought to join us --

12 MR FREDERICKS: We are not speaking for him --

13 MR APPEL: You did say that.

14 MR FREDERICKS: We are speaking for the prosecution of Clar-
15 ence Darrow. We don't propose that the defense shall get
16 anything before this jury that they should not get before
17 them. That is our side.

18 MR APPEL: You got this in there. We have a right to
19 answer.

20 THE COURT: Whatever may have been said, it appears now the
21 defense, by its affidavit, and the prosecution by its state-
22 ment made through Mr Ford, asks the court to issue a cita-
23 tion for Mr Foster to show cause why he should not be pun-
24 ished for contempt of court. The court is, at the present
25 time, not fully advised as to the basis upon which that
26 application is made. The newspaper article referred to

1 was hastily glanced over by me this morning. I just had
2 a very brief glance at it, and other important matters at-
3 tracted my attention, and I did not read it, and have not up
4 to this good hour, read it, and I think the matter should
5 have more deliberation and consideration and really go over
6 until tomorrow morning at 9:30 o'clock. As to whether or
7 not it shall be taken up in the presence of the jury is a
8 matter to be determined at that time, and is not determ-
9 ined now. If there is any question, however, as to whether
10 or not an attempt was made to get this particular article
11 to the jury, that is a matter I think that calls for im-
12 mediate investigation at this time. If counsel for the de-
13 fense desire to make any showing along that line --

14 MR ROGERS: If you will cite Mr Foster here, I want to put
15 h im on the stand. MR Foster has been here in the court
16 room -

17 MR FREDERICKS: I want to say this has gone about as far
18 as a man with red blood in his veins can stand.

19 MR ROGERS: I have some and you can start any time you want
20 to.

21 MR FREDERICKS: The absurdity to inject the National Erec-
22 tors Association before this jury. Now, keep it out.

23 THE COURT: When you have all cooled off, we will go on
24 with this argument.

25 MR FREDERICKS: There is just one thing I want to call the
26 court's attention to --

1 THE COURT: Mr Rogers has the floor.

2 MR FREDERICKS: Let us confine it to the case and not in-
3 ject things in here.

4 MR FORD: If the court please, I ask that the court excuse
5 the jury while we argue any legal point before the
6 jury, and I think it is the duty of the court, and I ask
7 the court to do it.

8 THE COURT: I am not aware there is any legal point before
9 the court. It is a question whether or not the citation
10 that the defense and prosecution have joined in requesting
11 shall be taken up. It does not seem to me there should be
12 so much heat over something you both want.

13 MR FREDERICKS: What has the jury to do with it?

14 THE COURT: I have no idea what Mr Rogers expects to ad-
15 dress himself to, unless it is an improper attempt to get
16 something before the jury.

17 MR FREDERICKS: Well, we will listen to Mr Rogers' argument
18 and see if he doesn't get something before this jury that
19 is improper.

20 THE COURT: I have every confidence in Mr Rogers.

21 MR ROGERS: Mr Robert J. Foster, the man mentioned in the
22 affidavit, and for whom citation has been requested to be
23 issued, has been in the court room, and as I understand it,
24 every day during the trial, and in view of the fact that
25 we desire an immediate hearing, I suggest that the cita-
26 tion issue forthwith, and I think Mr Foster can be pro-
cured forthwith, and thereupon we will proceed to the in-

1 vestigation of the most material matter connected with the
2 affidavit, and that is the attempt to reach the jury
3 with his statement,
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1 which we believe he had reason to believe, according to our
2 affidavit, would be excluded from evidence, and which we con-
3 tend and swear, according to the affidavit, were made for
4 the purpose of reaching the jury. Now, I think that that kind
5 of a question, if your Honor please, takes precedent over any
6 other question, and while I express here now the absolute
7 confidence which I feel, that the jury has not been and
8 cannot be influenced or reached by any such consideration,
9 that does not alter the fact that it is one of the prides of
10 our jurisprudence that this kind of thing cannot happen,
11 and I ask your Honor, to investigate it forthwith. If your
12 Honor wants to put this jury out, good and well; it is with-
13 in your Honor's discretion so to do. Mr Foster ought to come
14 in here and tell, before we take one more syllable of evidence
15 how he tried to influence this jury, and how, so far as he
16 was concerned, he sought to convict this defendant upon abso-
17 lutely illegal means.

18 MR FREDERICKS: We are perfectly willing.

19 MR ROGERS: Let a citation issue forthwith and we will
20 put Foster in here and see what Foster has done.

21 THE COURT: I am not going to issue a citation for any man
22 to show cause why he should not be punished for contempt of
23 Court until I know more about the basis for it than I do here
24 but we will stop proceedings at this point, while I read this
25 over. It will take a little time. The jury may be excused
26 for ten minutes and the Court will be in recess for ten minutes.

1 (After recess.)

2 MR ROGERS: Before the jury comes in I think that it might be
3 well to file a supplemental affidavit in which shall appear
4 all the situation of the article upon the page of the news-
5 paper which was on the front page, an affidavit showing
6 that the Examiner is placed all along the route of the jury,
7 in windows and upon display stands where the large heading
8 which appears in the affidavit, might undoubtedly be seen
9 by the jury, and the heading, contains the vicious part of
10 the article.

11 MR FREDERICKS: I don't know whether it would be of any
12 assistance to the court to state that matters of this kind
13 in the twelve years that I have been engaged in the practice
14 of criminal law, coming into court in the middle of a trial,
15 it has been the universal custom of the Court to put them
16 off and have them heard outside of the Court or outside of
17 the hearing of the case. I never have known, and I have seen
18 this thing happen a dozen times or attempted a dozen times -
19 I have seen it attempted a dozen times, and there never has
20 yet been precedent where the Court has given it one moment's
21 time in the presence of the jury.

22 MR ROGERS: If counsel will mention any case in which it
23 happened, I will be glad to hear it.

24 MR FREDERICKS: It happened at the bribery cases at Ocean
25 Park, where the District Attorney himself was cited for
26 contempt of court and the attempt was made to try that matter

1 It happened in the Connors case before Judge Willis, when
2 Judge Willis at once put it on to the next day. Those are
3 two that come to my mind right now.

4 THE COURT: In view of the request Mr Rogers made to file
5 supplemental affidavits, --

6 MR ROGERS: -- I didn't request it, I simply said it might be
7 well to file it, if your Honor desires it. I think the affi-
8 davit is sufficient for a citation and the other matters
9 is a matter of proof, but if your Honor has any doubt about
10 it, --

11 THE COURT: It strikes me that the matter you have stated
12 in the last few minutes is more important than anything
13 set forth in the affidavit. These matters, no matter how
14 vicious, if they never did reach the jury or the eyes of
15 the jury never did rest upon it, -- these matters would be
16 reprehensible, there is no doubt about that, but the sting
17 would be taken away from it if it never reached the eyes of
18 the jury.

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1 If, as you say, the situation you have just suggested, you
2 want to set that out, it strikes me, on first thought, that
3 would be the most important factor.

4 MR ROGERS: Aside from that, if your Honor desires such an
5 affidavit, we will file it, but aside from that, whether
6 or not the attempt to reach the jury, was successful, the
7 purpose is plain, and aside from whether it reached the
8 jury or not, we are entitled to have the court unaffected,
9 we are entitled to have witnesses unaffected by any such
10 things as that.

11 THE COURT: It is a most reprehensible practice for par-
12 ties connected directly or indirectly, remotely or simply
13 as a matter of sentiment, with one side of the other, to
14 try their cases in the newspapers, and attempt to prejudice
15 public opinion in a matter of this kind. Lawsuits of this
16 kind must be tried in court, and in open court, must be
17 determined by the evidence that is introduced in open court
18 and no other. That is the purpose and object of the jury
19 system, that is the reason we spent days here in selecting
20 jurors who are men of such standing in the community that
21 whatever their verdict may be, their verdict be based
22 entirely upon what is heard and what they hear and see in
23 open court, and whatever their verdict may be, it is one
24 that the public generally will recognize to be a just one.
25 That is the reason we spent all these days in selecting
26 that class of men.

1 Mr Fredericks: That is our position, your Honor. We want
2 to keep everything away from them. There is another fea-
3 ture I would like to call to the attention of the court,
4 the petition and citation for contempt of court, as your
5 Honor knows, is a criminal proceeding, a separate criminal
6 charge, charging a man with the commission of an offense,
7 and, as counsel says, it will be the duty of the District
8 Attorney to represent the state in that case as in any
9 other, and representing the state in that case, and repre-
10 senting the state in this case, you can readily see, is
11 not a matter that one man would dare to undertake. While,
12 if those things are true -- and I do not believe they are --
13 if those things are true, there is a case for someone to
14 prosecute. Mr Foster has no connection with this case, so
15 far as I know, at present is not a witness in this case,
16 so far as I know, at present his advice and consideration is
17 not asked for, sought or given in this case, neither is
18 that of the National Erectors Association given in this
19 case. This is a case in which the People of the State of
20 California are plaintiff, and we are endeavoring to per-
21 form our sworn duties. It is true there are undoubtedly
22 those who sympathize with us, and there are undoubtedly
23 those whose sympathies are against us; there are those who,
24 by reason of their sympathies would be glad to help us and
25 have helped us, and do help us, just as there are those who,
26 by reason of their sympathies, would be glad to hinder us.

1 but, through it all, the state of California by its sworn
2 officers, has a firm grip on this prosecution, and does not
3 propose to permit anyone else than the state of California,
4 to participate in this prosecution in its management or di-
5 rection. Now, that is as far as we can go. Now, if some-
6 one who has in his sentiment, allowed himself, as counsel
7 alleges Mr Foster to be, has done something that is indiscret,
8 something that is worse than that, and that is contempt of
9 court -- and I do not think he has, -- but if he has, of
10 course, we are not in a position where we would care to go
11 and say, "I am the public prosecutor, and I am going to
12 prosecute this man and you must keep your hands off." We
13 do not wish to put ourselves in that position; we cannot
14 do that. If he is to be prosecuted, then that prosecution
15 must be taken by some disinterested person, by someone who
16 has no interest in this case, in order that it may be a fair
17 and proper hearing. But, as it stands now, it should be taken
18 entirely out of this case, and if he has committed an of-
19 fense, he should be punished for it, but it should not be
20 permitted to influence this case.

21 THE COURT: The only question is, whether you desire the
22 time to file further affidavits.

23 MR ROGERS: Yes sir, I desire to file affidavits, unless
24 citation has been ordered as agreed to.

25 THE COURT: There has been none ordered.

26 MR FREDERICKS: Then, there are proceedings that the de-

1 fendant is entitled to, and opportunity to answer and to
2 hire an attorney to defend him, and all that.

3 THE COURT: Sufficinatunto the day is the evil thereof.

4 MR FREDERICKS: That is not a matter to be taken up now.

5 MR ROGERS: I think it is, if your Honor pleases, if the
6 jury, through this outrageous article --

7 THE COURT: I have read it. I have read it since the court
8 adjourned, although I read the heading this morning.

9 MR FREDERICKS: Must we go on and hang this defendant on
10 a tree without his having a chance to having a lawyer and
11 being heard?

12 MR ROGERS: No, no. He can have the District Attorney to
13 defend him, as it is appaerent he will have, because
14 the District Attorney says he does not believe he committed
15 the crime, of course, he is not in a very good mood to pro-
16 s ecute him.

17 MR FREDERICKS: For that reason I decline to.

18 MR ROGERS: He says he does not wish to prosecute him.

19 MR FREDERICKS: I did not say that.

20 THE COURT: That is not fair to the District Attorney.

21 MR ROGERS: Then, I withdraw it --

22 THE COURT: He can call upon the State's Attorney.

23 MR FREDERICKS: The court can appoint a special prosecu-
24 tor.

25 MR ROGERS: I do not think we ought to go on with this
26 jury with that article staring before them from one place

1 to another along the route.

2 THE COURT: If it is true, then that is another question.
3 Have you made such an investigation?

4 MR ROGERS: Yes sir, I have sent a man along the road, and
5 I have found place after place and newsboy after newsboy
6 had that article on the front page, and there is nothing to
7 it but four-inch big black type at the top, undoubtedly
8 for the purpose of displaying it before the jury, it is
9 not a front page story.

10 MR FREDERICKS: Those are matters Mr Foster is entitled to
11 have tried. He is presumed to be innocent until
12 proven guilty, and he ought to be given time to hire a
13 lawyer.

14 MR APPEL: Mr Foster -- why is counsel so solicitous to de-
15 fend him?

16 MR FREDERICKS: A square deal, that is all.

17 MR APPEL: We ask that an injunction be issued on our affi-
18 davit restraining him in the citation. Now, this is a mat-
19 ter that is due to us in the course of this trial.

20 MR ROGERS: I will tell you what has happened, that arti-
21 cle says that Mr Foster is stopping at the Union League
22 Club, not a public hotel at all, where one of the jurors,
23 Mr Golding, is a member, a most unique and remarkable con-
24 dition of things, and I want to know something about this,
25 if your Honor pleases, and I think I am entitled to it.

26 MR FREDERICKS: I do not think counsel is serious.

1 MR ROGERS: I am serious about this. Why does a man like
2 W. J. Foster stop at the Union League Club where Mr Gold-
3 i ng , one of the jurors, is a member?

4 MR FREDERICKS: But he is not in attendance.

5 THE COURT: I cannot follow you. Golding, although a mem-
6 ber of the Union League Club, I think he said in his exam-
7 ination, is not and will not be at the Union League Club
8 until this case is over. I cannot follow you.

9 MR ROGERS: You might look into it and see what this thing
10 shows for.

11 THE COURT: Yes, I am perfectly willing to and will help you
12 look into it. The court is interested in this matter; if
13 these things that you suggest, if they are true, why, it
14 is undoubtedly an unlawful interference with the process and
15 proceedings of the court and is contempt, but it must be
16 shown in an orderly and proper manner.

17 MR ROGERS: If your Honor desires that affidavit, we will
18 file supplemental affidavits forthwith.

19 THE COURT: In regard to the matters you have suggested as
20 being of prime importance here.

21 MR ROGERS: All right, sir.
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1 MR FREDERICKS: In the meantime, are we going to trial in
2 the case of Clarence Darrow for bribery?

3 MR ROGERS: Yes, we are going to try him squarely and we are
4 going to try him without interference of Robert J. Foster or
5 any member of the steel trust or the erectors' association.

6 MR FREDERICKS: That is what we want to do, we want to try
7 him on the level and we want to try him squarely.

8 MR ROGERS: Your Honor, you will remember I called your
9 attention to another attempt to interfere with this case, I
10 called your Honor's attention, in the presence of Mr Ford,
11 to an article published in the same paper which we both
12 agreed was an attempt to interfere with this case. Your
13 Honor expressed then, if I may be permitted, the desire that
14 that sort of thing stop. Your Honor said at that time, and
15 said it with the approbation of the District Attorney as
16 well as myself, that that kind of thing ought not to exist
17 in this country, and that no man ought to be put to trial
18 under those circumstances, but your Honor thought at that
19 time, and I agreed with you, there was nothing your Honor
20 could do, and immediately there follows this scandalous thing
21 and we do not want to go on with this kind of thing,
22 coming up day after day against us, with every attempt to
23 intimidate and prejudice our witnesses, to give us the most
24 queer trial in America, we do not intend to stand that
25 unless we have had this produced --

26 MR FREDERICKS: The question is, are we going to try Clarence
Darrow.

1 MR ROGERS: Yes, and we are going to try him fairly and
2 squarely.

3 MR FREDERICKS: The prosecution has nothing to do with
4 that --

5 MR ROGERS: Then how did General Otis send that dispatch?

6 MR FREDERICKS: General Otis has no more to do with this
7 prosecution than you have to do with it.

8 MR FORD: I would suggest that your Honor assign this
9 contempt proceeding to some other Court, and that we proceed
10 with the trial of this case.

11 MR ROGERS: I do not wonder, your Honor, that counsel wants
12 to get out from under.

13 MR FORD: I object to any such ungentlemanly language, as
14 "trying to run out from under".

15 THE COURT: I really fail to see what this is all about.
16 There is no difference of opinion between counsel on either
17 side, and the court, but what ought to be done here, perhaps
18 aside from the question that I wonder how much excitement
19 there would be here if there was a real difference of
20 opinion. There is no question, but what under the facts
21 set forth in this affidavit, and the facts stated by Mr Roger
22 and presented in the affidavit, there should be a citation
23 issued to R. J. Foster and he should be brought before the
24 Court to show cause why he should not be punished for con-
25 tempt.

26 MR ROGERS: Will your Honor give me fifteen minutes to
draw that affidavit? I need that time, because I want to

1 investigate it before we go on , I have some information I
2 do not care to disclose until I see whether we will get
3 the process of this court.

4 MR FREDERICKS: Here is a man named Foster who is charged
5 with contempt of court, he has a right to be heard, he will
6 hire lawyers, and they will file their answers to the
7 petition and the matter has to be heard, there is a regular
8 orderly way, for this proceeding.

9 THE COURT: And that regular orderly way will be followed.
10 But the question is, whether or not the exigency of the case
11 is such that the Court will take a recess at this time, to
12 enable Mr Rogers to prepare his affidavit.

13 MR ROGERS: Fifteen minutes will do.

14 THE COURT: He knows and what might be required -- if you
15 insist on the matter -- ?

16 MR ROGERS: Yes sir, I do.

17 THE COURT:: -- I will compromise with you and I will give
18 you ten minutes.

19 MR ROGERS: I do not think I can get a stenographer and this
20 affidavit cannot be made out in ten minutes.

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-Petel 1 THE COURT: Cannot you dictate it to one of the court re-
2 porters and file it a little later?

3 MR ROGERS: I would ask your Honor to investigate it,
4 there has been too much of this case.

5 THE COURT: I fully agree with you there has been too much
6 of it. I think there is nothing more reprehensible in this
7 country than the attempt to prejudice either one side or the
8 other in the minds of the public by newspaper articles be-
9 fore the case is presented. There is only one way to try
10 a lawsuit.

11 MR FREDERICKS: We have been trying to avoid that.

12 THE COURT: I am not criticising you in any shape or form,
13 I am trying to agree with Mr Rogers' statement. I think
14 we are all of one notion. The Court will take a recess for
15 fifteen minutes.

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17 (After recess)

18 THE COURT: Gentlemen, I have carefully read the affidavit
19 of Mr Earl Rogers, H H Appel, W H Dehm and H L Giesler, and
20 the supplementary affidavit filed within the last few minutes-
21 I should not say they are filed, but I order them now to be
22 filed, and from the reading of those affidavits it appears
23 there has been some attempt, at least, by R J Foster, to act
24 and unlawfully interfere with the process and proceedings
25 of the Court and it is ordered that a citation be issued
26 directing Mr R J Foster to appear before this Court tomor-

1 row morning at 9:30 o'clock to show cause why he should not
2 be punished for contempt.

3 MR FREDERICKS: If the Court please, in that connection,
4 as I stated a while ago, it is the duty of the prosecution
5 to represent the prosecution in a contempt case, and I feel
6 by reason of my personal knowledge of matters and my posi-
7 tion in this case, that I am disqualified from acting with
8 that deliberation which a prosecutor should, and I would
9 like to ask the Court to appoint someone to represent the
10 prosecution from the bar from Los Angeles, someone disin-
11 terested in this case, and I should also like to ask that
12 the citation include the writer of the Examiner who wrote
13 that article and those articles, and also the man on the
14 Examiner who wrote the headings, because I believe that if
15 there is any contempt been committed it has been committed
16 there, and the affidavit is sufficient to cover such a cita-
17 tion.

18 THE COURT: I doubt the sufficiency of the affidavit, but
19 I assume there are a great many writers on the Examiner and
20 there are probably several men engaged in the business of
21 making headings on the Examiner; For all I know . I do
22 not know who to cite.

23 MR FREDERICKS: Well, a custom that has been followed in
24 the Courts in cases of that kind, I remember once when the
25 Los Angeles Times was cited for contempt of court for
26 the publication of an article, and the heads of the paper

1 were cited and they are responsible. I think your Honor --
2 THE COURT: But there will have to be some particular
3 person cited. I cannot simply issue a citation to whoever
4 wrote that article?

5 MR FREDERICKS: We will be sufficiently interested to fur-
6 nish the name of that person to the Court, because we be-
7 lieve there is a systematic attempt on the part of someone
8 on the Examiner to get the stuff before the public, and it
9 is inimicable to the prosecution, and we want the matter
10 thrashed out. We want to find out who is doing that. We
11 want to include the other article published the other day
12 purporting to be the statement of General Otis, and we will
13 sift this thing out, if the Court will appoint a prosecutor
14 to handle it.

15 THE COURT: Who is Deputy Attorney General here now?

16 MR BREDERICKS: George Beebe.

17 THE COURT: Mr Beebe, will you act in this matter? I will
18 appoint you as special prosecutor to look into this matter.
19 I think it is proper the Deputy Attorney General, not being
20 interested -- I assume you are not interested or have parti-
21 cipated on either side of this matter?

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1 MR BEEBE: I cannot say I am interested. I don't know any
2 reason why I should be.

3 THE COURT: I will appoint Mr George Beebe, Deputy Attor-
4 ney General, to act as Special Proescutor in this matter.
5 Anything further relative to the contempt proceedings?

6 MR ROGERS: No.

7 THE COURT: Call in the jury.

8

9 (Jury returned into court room.)

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11 GEORGE N. LOCKWOOD, recalled on behalf of
12 the People, testified as follows:

13 DIRECT EXAMINATION resumed

14 THE COU T: What was the number of the indictment on trial
15 in department No.9 at the time of the occurrence referred
16 to?

17 MR FORD: 6939.

18 THE COURT: Are you sure that is the number?

19 MR FORD: Yes sir.

20 THE COURT: When court adjourned Saturday, a somewhat
21 i mportant ruling was taken under advisement, and numerous
22 and very helpful authorities were submitted. The court
23 has examined those authorities with as much care as the
24 time would permit, and unless counsel on either side have
25 something which they desire to say in amplification of
26 the authorities submitted, the statements made and argument

1 presented before adjournment on Saturday, the court is ready
2 to rule.

3 MR FORD: I do not believe, if your Honor please, that I
4 called your attention to the case of People versus Glass.

5 THE COURT: I read that case very carefully, the defend-
6 ant called it to my attention, and I read it very carefully
7 and I expect to base my ruling almost entirely on the case
8 of People versus Glass.

9 MR FORD: In that case the distinctions of the class of
10 evidence, whether another offense which should be rejected
11 and those which should be admitted, were brought in evi-
12 dence --

13 THE COURT: I read that case, and I expect to base my de-
14 cision on that very case. It is the case I have given most
15 especial attention to with reference to this ruling.

16 The question before the court was an objection to certain
17 evidence and a motion to strike out. The objection is
18 overruled and the motion to strike out will be denied. It
19 may simplify matters by making a very brief statement of
20 the connection. The ruling is based upon the rule that
21 evidence of other similar acts must be confined to attempts
22 to bribe or unduly influence some other person connected
23 with the trial of People vs. J. B. McNamara, under indict-
24 ment No. 6939. It is not for the mere purpose of showing
25 other distinct crimes, but as showing that the specific
26 act of bribery charged, was but a part execution of one

1 conspiracy or scheme which contemplated the certainty of a
2 plot of conspiracy to prevent the jury bringing in a
3 verdict of guilty. If such testimony can be presented it
4 will be competent and will be received by this court.

5 MR FREDERICKS: I was just reading the record, your Honor,
6 to see where I had left this witness in the narrative.

7 THE COURT: I might add, in connection with that ruling,
8 that the introduction of evidence will not be allowed to go
9 any further, the introduction of evidence will not be per-
10 mitted to go any further than to evidence, if any there be,
11 of acts or attempts to bribe or ^{unduly} influence some other juror
12 or other person connected with the trial of People vs.

13 J. B. McNamara, under indictment No. 6939.

14 MR FREDERICKS: All right, your Honor. Shall we proceed?

15 THE COURT: Yes sir.

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1 MR FREDERICKS: The last answer, if I may read it, just two
2 lines, in order to get the witness at the point where he
3 left off. You remember, Mr Lockwood, you were narrating --

4 THE COURT: One moment, Captain. I had my transcript but
5 left it in the courtroom. I want to have that before me.

6 MR ROGERS: I do not believe that this question presented
7 the subject generally at all, but I believe your Honor's
8 view is undoubtedly correct as to this question. I have so
9 argued it at all times, as I said to your Honor the other
10 day, -- I do not believe this question presented the issue
11 at all, and while your Honor --

12 THE COURT: I was assuming that it did.

13 MR ROGERS: I do not think it did.

14 THE COURT: And acted accordingly. However, it is just as
15 well, it came perilously near it.

16 MR ROGERS: I understand your Honor's view of it.

17 THE COURT: I think it is a good time to settle that ques-
18 tion, as you suggested at one time, it coming in by infer-
19 ence or one way or another, and we had better settle it and
20 have a plan on which to proceed.

21 MR ROGERS: Just so we understand the situation.

22 THE COURT: Statement made in court, for the information of
23 counsel, as to what the rulings along this line will be?

24 MR ROGERS: Yes sir.

25 MR FREDERICKS: We will govern ourselves accordingly,
26 your Honor, in our questions. Page 138. You were narrating,

1 Mr Lockwood, the conversation which occurred between you and
2 Bert Franklin in his office here in Los Angeles, being the
3 first conversation that you had had with Mr Franklin, as
4 you stated, in Los Angeles or elsewhere, in regard to the
5 question of accepting a bribe for purposes you have referred
6 to. And you stated, I think, what the date of that meeting
7 was; I think the 9th. A The 9th.

8 Q Of November? A Yes sir.

9 Q Along about in the forenoon, sometime, you said?

10 A Yes sir.

11 Q And the last answer you made was, "He told me that he
12 had already one juror there, that was fixed, and that I
13 knew that juror better than I did him." Now, then/^{calling} your
14 attention to that answer, did you know through reading the
15 press or otherwise, who had been accepted on the McNamara
16 jury at that time?

17 MR ROGERS: Objected to as incompetent, irrelevant and
18 immaterial and hearsay, and no foundation laid.

19 THE COURT: Overruled.

20 MR ROGERS: Exception.

21 A Yes sir.

22 MR FREDERICKS: And did you know one of the jurors there?

23 A One and only one.

24 MR ROGERS: The same objection.

25 THE COURT: Overruled.

26 MR ROGERS: Exception.

1 (MR FREDERICKS: That is you did not know any others, but
2 the one? A Just one.

3 (Q What was the name of the one you knew? A Robert Bain.

4 MR ROGERS: The same objection, please, to that question.
5 It was answered before --

6 THE COURT: Overruled. Yes.

7 MR FREDERICKS: Now, I haven't in mind, and don't know
8 whether you have everything you stated as to that first
9 conversation at that time, and do you now remember anything
10 further that was stated at that conversation that you did
11 not give Saturday morning? A I remember nothing only the
12 mode in which he answered me, as to how the balance of the
13 payment could be made.

14 Q What did he say? A He offered the name of a man
15 living out in Inglewood, as a proper person to hold that
16 money.

17 Q Now what money was that? A [That was the money that was
18 to be paid -- the \$2000 or \$1500 and \$2000 if he could get
19 the money, in case I accepted the proposition, and went on
20 the jury and brought in a verdict of not guilty, and further
21 he told me, he said, "Now if this thing goes through, your
22 wife wants to be careful about how she spends money just now
23 don't want to flourish too much of it."]

24 MR APPEL: We move to strike that out, your Honor, on the
25 ground that that is a matter outside of the issue in this
26 case, and outside of the evidence; that it is not a declara-
tion or act on the part of a juror, which in itself shows that
it was in view of any conspiracy. Incompetent, irrelevant and
immaterial and hearsay.

Smith MR FREDERICKS: We think it is very material, your Honor;
2 part of the conspiracy showing the method to be used to
3 conceal a crime.

4 THE COURT: Overruled.

5 MR ROGERS: Exception.

6 MR FREDERICKS: Now, anything else at the first meeting
7 that you think of? A I told him that in case that the
8 matter went through as outlined, that my wife would be
9 the last person that I would want to know anything about it.

10 MR APPEL: We move to strike out that statement on the ground
11 it is incompetent, irrelevant, immaterial and hearsay, and
12 that the views of the witness on the stand at that time was --
13 at this time, or at any time, are not binding upon the
14 defendant.

15 MR FREDERICKS: Part of the conversation.

16 THE COURT: Overruled.

17 MR APPEL: Exception.

18 A And that, as far as I can tell, is all the conversation
19 that took place at that time.

20 MR FREDERICKS: About how long were you up there? A I should
21 judge a half hour, that is exclusive -- that was all in regard
22 to this case. There was some other little matters.

23 Q I only want it approximately. Then where did you go;
24 that is, generally -- A Went home.

25 Q Out to your ranch? A Yes sir.

26 Q What day of the week, now, was that? A That was Thurs-
day.

1 Q Thursday the 9th of November? A Yes sir.

2 Q Now, when did you see Franklin again, if at all?

3 A On the following Saturday night.

4 Q What day of the month would that be? A That would be
5 the 11th.

~~6 Q~~ That was the 11th? A 11th.

7 Q Where did you see him then? A At my house near Covina.

8 Q And who was present? A No one but himself and myself.

9 Q What time in the evening was it? A I should judge it
10 was about 10 o'clock.

11 Q How did he come out, do you know? A In an auto.

12 Q Was there a driver with him? A There was, and other
13 people, I don't know who. There was one or more ladies in
14 the auto.

15 Q Where did the conversation occur with reference to
16 the automobile? A On the lawn, at the corner of the house,
17 the southwest corner.

18 Q About how far away from the automobile? A One hundred
19 feet.

20 Q And what was that conversation?

21 MR ROGERS: That is objected to as hearsay, incompetent, and
22 no foundation laid; irrelevant and immaterial.

23 THE COURT: Overruled.

24 MR ROGERS: Exception.

25 A We passed the time of day, "Hello Bert", "Hello George",
26 and I stated to him: "Bert, no use for to go any further

1 with this transaction for I won't have anything more to do
2 with it at all". He said he was sorry and told me that the
3 proposition was still open, and if I concluded to accept it
4 to let him know. Bid him good-night, and that closed that
5 conversation. /

6 Q Anyone else in hearing? A I think not.

7 Q What was the next thing you did with reference to that
8 matter?

9 MR APPEL: Wait a moment. We object now, if your Honor
10 please, to any acts, declarations of this witness, on the
11 ground it is incompetent, irrelevant and immaterial, and no
12 foundation laid; hearsay and not binding upon this defendant.
13 Whatever he did after that, your Honor, is not proper evidence

14 MR FREDERICKS: It will be seen it is absolutely material,
15 showing the status and relation of this witness to the fur-
16 ther transactions in the case.

17 MR APPEL: Whatever he did or said to anyone else is not
18 material.

19 MR FREDERICKS: I am not asking what he said.

20 MR FORD: Showing his relation to the case.

21 MR APPEL: His relation to the case would not bind this
22 defendant.

23 MR FREDERICKS: It would be important why his testimony --
24 the jury must know the relation of the witness to the case.

25 MR FORD: What he did will not affect the defendant, but it
26 does affect his credibility.

1 THE COURT: His credibility is not attacked.

2 MR FREDERICKS: Well, it is absolutely a link and part of
3 the res gestae of the case. Without that the jury --
4 without the next step in this case the jury would not under-
5 stand the further transaction, and they must have those
6 things, for they must understand. They will be in the dark
7 with regard to the proceedings.

8 THE COURT: Well the object of this lawsuit, of course, is to
9 enlighten the jury as to what has happened.

10 MR FREDERICKS: That is the idea exactly.

11 MR APPEL: You cannot enlighten the jury by hearsay evidence.

12 MR FREDERICKS: We are not asking for hearsay evidence.

13 MR ROGERS: You don't claim the defendant was there?

14 MR FREDERICKS: I am not asking him for hearsay evidence.
15 Haven't asked him for anything that was said.

16 THE COURT: Read that last question. (Last question read by
17 the reporter)

18 THE COURT: I guess we will have to answer and you may have
19 a right to strike it out. I cannot anticipate what the
20 answer will be. The motion will be denied.

21 MR APPEL: Exception.

22 A I went to the District Attorney and told him what had
23 happened.

24 MR FREDERICKS: And when was that? A I can't place the
25 date. It was some time during the following week, I think.

26 MR APPEL: Now, does your Honor still insist that your

1 Honor's ruling is right?

2 MR FREDERICKS: Most assuredly.

3 MR FORD: Merely preliminary.

4 THE COURT: Want to move to strike it out?

5 MR FREDERICKS: Mr Lockwood, this was sometime in the fol-
6 lowing week? A I think so.

7 Q Now, let's see, that week began with Sunday the 12th and
8 by the district attorney, you reported it to J D Fredericks?

9 A Yes sir.

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1 Q When was the next -- when was the McNamara case and
2 your participation in it as a juror, next brought to your
3 attention by anyone? A On Saturday, the 25th day of
4 November.

5 Q Saturday, the 25th day of November? A Yes sir.

6 Q Had you seen anyone in anyway connected with the case
7 between those times?

8 MR APPEL: We object to that as immaterial, incompetent,
9 irrelevant; calling for a conclusion; no foundation laid,
10 calling for negative evidence without notice to this defend-
11 ant.

12 MR FREDERICKS: Well, I cannot ask him about one day --
13 everything he did in that day.

14 MR APPEL: Not binding upon this defendant.

15 THE COURT: I do not see why.

16 MR FREDERICKS: Every day, it would take so long, and it
17 is so useless -- to say between those times --

18 THE COURT: I think that is the only way to present it un-
19 der that objection. Objection sustained.

20 MR FREDERICKS: Very well.

21 Q Between the time that you told me, talked to me about
22 this matter -- I suppose the record will show that "me"
23 refers to J. D. Fredericks, District Attorney, -- did you
24 discuss it with anyone else up until the time which you men-
25 tioned.

26 MR APPEL: Wait a moment. We object to that on the

1 ground it is incompetent, irrelevant and immaterial, hear-
2 say, no foundation laid, not binding upon the defendant.

3 MR FREDERICKS: Why, it shows this witness' acts.

4 MR APPEL: His acts do not bind the defendant.

5
6 THE COURT: The sheriff informs me two witnesses are here
7 who have been subpoenaed in connection with the contempt
8 proceedings. Where are the witnesses?

9 (Here the witnesses come forward.)

10 THE COURT: The witnesses subpoenaed who appear here at this
11 time, are excused until tomorrow morning at 9:30, and direct
12 ed to report tomorrow morning at 9:30 without further
13 process. What are the names of the two witnesses?

14 MR MORTON: Mr Morton and Mr Green.

15 THE COURT: Thank you. Have you the names, Mr Clerk?

16 THE CLERK: Yes sir.

17 THE COURT: All right. Proceed with this case.

18
19 MR FREDERICKS: There was a question pending.

20 THE COURT: I didn't hear it. Read it.

21 (Last question and objection read by the reporter.)

22 THE COURT: That objection was sustained.

23 MR FREDERICKS: Was sustained?

24 THE COURT: yes, I think I sustained the objection to that.
25 Read it again, Mr Reporter.) (Question read.) All right, I
26 have it.

1 A I think Mr Brown was called in --

2 Q Well, up until the time --

3 MR APPEL: Wait a moment. Does your Honor sustain the ob-
4 jection here, and the witness goes on and answer? That is
5 my understanding.

6 MR FREDERICKS: The answer may be stricken out by consent
7 until the ruling.

8 THE COURT: I think your understanding is based upon my
9 misstatement. I supposed, when the reporter read it, that
10 was the question I had sustained the objection to, but it
11 seems there was another question, and there seems to be
12 no objection.

13 MR APPEL: Oh, yes, the reporter read my objection.

14 THE COURT: The reporter didn't read it, when I requested
15 it a moment ago. What is the objection? Strike out
16 the answer.

17 MR FREDERICKS: It may be stricken out. I will withdraw
18 the question.

19 THE COURT: Very well. The question is withdrawn and
20 strike out the answer.

21 MR FREDERICKS: You say on the week beginning with the
22 12th of November, you reported this matter to the District
23 Attorney, and you said -- I asked you then, when was the
24 next time that this matter was brought to your attention,
25 what was the date when it was, the next time it was brought
26 to your attention? A The 25th November.

1 Q 25th day of November? A Yes.

2 Q What occurred at that time, in connection with this
3 case?

4 MR APPEL: We object to that as incompetent, irrelevant
5 and immaterial; no foundation laid; it is hearsay.

6 THE COURT: Objection overruled.

7 MR APPEL: Exception. A I came to Los Angeles at the re-
8 quest of the District Attorney --

9 MR APPEL: Now, your Honor, that is just exactly what we
10 are objecting to, the District Attorney asked him what oc-
11 curred; he didn't ask him at whose request he came or his
12 motive, and that we are objecting to his going on here.

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1 MR FREDERICKS: There is a point here which the Court will
2 probably want to consider, that is the witness' status must
3 be established, whether as an accomplice or not. Whether
4 he was an accomplice depends on the relation which he bore
5 to the case and that relation must be understood by the
6 Court, and the jury, and unless it is understood the jury
7 will get the mistaken idea that he was an accomplice, perhaps
8 so that his relation to the case and the district attorney
9 must be understood by the jury.

10 THE COURT: The witness has not finished his answer, and
11 there has been no objection.

12 MR FREDERICKS: All right. Now, Mr Lockwood, what day of the
13 week was the 25th of November? A Saturday.

14 Q Saturday was the 25th, Sunday was this matter discussed
15 by you with anyone on Sunday? A Yes, in a measure.

16 Q With whom? A Bert Franklin.

17 Q Bert Franklin? A Yes sir.

18 Q And was it discussed with anyone on Monday after?

19 A yes sir.

20 Q Any time during the day? A Yes sir.

21 Q With whom? A The District Attorney.

22 Q Who else? A Mr Browne.

23 Q Who else? A And over the phone with Bert Franklin.

24 Q And in the night of Monday? A Well, the discussion
25 or the phone call was in the evening, and later in the night
26 with Bert Franklin.

1 Q Himself? A Yes sir.

2 Q Now then, coming back to the first time when this matter
3 was discussed, or brought to your attention, after you
4 reported it to the District Attorney, which you say was
5 the 25th of November, Saturday, --

6 MR ROGERS: That is not what he said.

7 MR FREDERICKS: Well, am I correct? A It was before that
8 I reported it to you.

9 Q Yes, I know you reported it to me. A Yes.

10 Q Yes. But the time you discussed it with someone, after
11 you reported it to me, the next time you discussed it with
12 someone, after you reported it to me, was the 25th?

13 A Yes sir.

14 Q And that was approximately how long after you reported
15 it to me? A About two weeks, I should judge.

16 Q And during that two weeks where had you been?

17 A At my ranch.

18 Q Now, on Saturday, who did you discuss the matter with?

19 A The District Attorney.

20 Q Where? A At his residence.

21 Q On Saturday?

22 MR APPEL: What did he say? (Answer read.)

23 THE COURT: Won't you speak a little louder, please, so that
24 everybody can hear what you say? A Yes sir.

25 Q MR FREDERICKS: Now, on Sunday, who did you discuss it
26 with? A Bert Franklin.

1 Q Where? A At my residence.

2 Q Do you know when your name was drawn out of the jury box?

3 MR ROGERS: That is objected to as a conclusion, hearsay,
4 and incompetent, irrelevant and immaterial.

5 MR FREDERICKS: The question is not to prove when it was
6 drawn, but when he knew it was drawn.

7 THE COURT: That was not quite your question.

8 MR FREDERICKS: Do you know when it was drawn, that was
9 the question, yes or no would be the answer.

10 THE COURT: You can answer that yes or no.

11 MR FREDERICKS: Well, I will get at it in another way.

12 THE COURT: What is your answer? No?

13 A I didn't answer, I couldn't --

14 Q On Sunday, the 26th, now what time of day was it you met
15 Franklin? A I should judge between 1 and 2 in the afternoon

16 Q And who was present? A No one but myself.

17 Q And where was it you met him? A At my residence.

18 Q Do you know how he came out there? A In an auto.

19 Q Anybody with him in the auto? A There was, I don't
20 know who.

21 Q Was the other man a passenger or driver? A Driver,
22 I think.

23 Q Now, whereabouts, on your place, your premises, was it
24 that those conversations with Franklin took place? A Out
25 at the barn.

26 Q And with reference to the house, where is your barn?

1 A In the rear of the house.

2 Q How far in the rear? A Possibly a little more than
3 one hundred feet.

4 Q And did you stay at the barn or in the barn? A Both at
5 the barn and in the barn, outside and in.

6 Q Now then, relate that conversation.

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

9 THE COURT: Objection overruled.

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1 A He came out there about 2 o'clock, I should judge, and
2 I met him on the lawn, and we walked around the house and
3 out to the barn. The wind was blowing hard, and we walked
4 in the lee of the barn. He says, "Have you been served yet?"
5 And I told him no. Well, he says, "Your name was drawn
6 yesterday, and you will be served between now and tomorrow
7 morning, and he says, "George, there is \$4000 in it for you,
8 and I want you to have it." I said to him, "Bert, if I go
9 into this, I don't want no mistake about the money; I want
10 it, if I accept this proposition, I want to be sure of it."
11 Well, he says, "There isn't a shadow of a doubt but what you
12 will get it." He says, "Let's go into the barn." Then
13 we passed on into the barn. / I said to him, "Bert, the
14 500 proposition seems all straight, but this \$3500, I cannot
15 see how I could be at all sure that it would be paid over
16 after the matter was accomplished." /

17 Q I didn't get the exact figure you mentioned? A \$3500.
18 \$500 down.

19 Q All right. A Why, he says, "There won't be any trouble
20 at all;" and again he mentioned Captain White's name as a
21 proper custodian for the money.

22 Q Now, just pause right there and let me ask you who is
23 Captain White? A Why, he was the jailer under the White
24 administration as sheriff.

25 Q And while you were deputy? A Yes sir.

26 Q And while Franklin was a deputy? A Yes sir.

1 Q You both knew him? A Yes sir.

2 Q What are his initials? A C. E.

3 Q Now, go back to your conversation in the barn.

4 A I said to him, "I don't like that proposition; when the
5 case would be over, why, there might no one know anything
6 about the balance of that money." / Franklin says, "Well,
7 I will tell you what I will do. I can't see any other way
8 out of it, but Captain White, and I will talk the matter over
9 with Clarence Darrow, and he will fix it." I said, "All
10 right", and I agreed with him that I would come to Los
11 Angeles the following day, Monday, and would call him up
12 on the phone.

13 Q Now, at the time you made this -- had this talk with him
14 about this money, did you have any intention of actually taking
15 the money and going on the jury and voting as he wished?

16 A No sir.

17 Q State whether or not you were acting with the knowledge
18 and advice of the District Attorney, in what you said in that regard?

19 MR ROGERS: Objected to as incompetent, irrelevant and imma-
20 terial, and calling for a conclusion or opinion; no founda-
21 tion laid and hearsay.

22 THE COURT: Overruled.

23 MR ROGERS: Exception.

24 A I was.

25 MR FREDERICKS: Do you remember any other conversation
26 that occurred at that time in the barn or at that visit?

1A Nothing only that in arranging for the meeting the next day
2 he gave me his telephone number on a card.

3 Q He gave you ^{that} on a card, and you kept the card?

4 A Yes sir, until the preliminary examination.

5 Q How was the name -- how was the telephone number put
6 on the card? A With a lead pencil.

7 Q Who put it on? A Bert Franklin did.

8 Q And you turned that card in, you say, at the prelim-
9 inary examination? A Yes sir.

10 MR FREDERICKS: Has the clerk the exhibits in this case?

11 THE CLERK: No sir, they have been unable to find them yet.

12 MR FREDERICKS: The Clerk will look for them; is that the
13 idea?

14 THE CLERK: They are still looking for them. They have never
15 been brought over here.

16 MR FREDERICKS: We will proceed and come back to that when
17 it is found. Now, any further conversation occur at that
18 time that you have not thought of? A No sir, I think not,
19 but I suggested --

20 Q Just what did he say - A I suggested a different
21 name for the holding of the \$3500.

22 Q The name of another man? A Yes, another man. That
23 was the extent of the conversation there, I think.

24 MR ROGERS: I move to strike that out as not even the sub-
25 stance of a conversation. No foundation laid, and not suf-
26 ficient --

1 MR FREDERICKS: I think that is the substance of the con-
2 versation.

3 MR ROGERS: Oh, no.

4 THE COURT: Motion to strike out is denied.

5 MR ROGERS: Exception. I will elaborate that a minute.

6 I move to strike it out on the ground it is incompe-
7 tent, irrelevant and immaterial, and not the substance or
8 purport of the conversation, and the witness knows what the
9 conversation was, and doesn't give it.

10 MR FREDERICKS: Give the conversation as you remember it.

11 MR APPEL: We have a motion here, Mr Fredericks.

12 MR FREDERICKS: I withdraw the question.

13 THE COURT: The objection is good, but I assumed counsel
14 has withdrawn the question.

15 MR FREDERICKS: I withdraw the question. Give the conver-
16 sation in regard to the suggesting of another name as a man
17 to hold the \$3500.

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7-Smith A When he had suggested Captain White and I had objected
2 to him, he asked me to suggest someone and I said H H Yon-
3 kin as the proper man to act in that capacity, and he ob-
4 jected to Yonkin and said he would trust Captain White a
5 thousand times where he would Yonkin once. X

6 Q And what further -- give the conversation as near as
7 you can remember it in regard to -- relating to his propo-
8 sition to have Captain White hold this thirty-five hundred;
9 how long he was to hold it, and all you remember about it.

10 A Why, he said like this: "There is Captain White; we
11 both know him and he is straight, and it will be perfectly
12 safe in his hands, and he will turn it over to you when the
13 trial is ended."

14 Q And what was said about the five hundred, that part,
15 to come down? A He would pay that before I went into the
16 jury box, and he said: "I ain't got that much money with me,
17 but I have got--" I think he said "two hundred dollars" with
18 him, and I objected to making any partial payment.

19 Q You just better put it in the first and second person,
20 I said -- A I said: "I didn't want any dividing up of
21 payments; we better have it all to once."

22 Q Did he show you the two hundred, or any money at all, --
23 MR ROGERS: That might be leading, you know, under ordinary
24 circumstances. Objected to.

25 MR FREDERICKS: Was there any money shown there to you?

26 A No, there was not. He said he had it.

1 Q What time of the day, or how long did he stay?

2 A Oh, I should judge a half hour.

3 Q Now what was said by him and by you in regard to the
4 meeting next day? A He asked me if I would call him up
5 when I came to town the next day. I told him I would, and
6 asked him what his telephone number was, and he took a card
7 out of his pocket and wrote a number on and handed it to me
8 and said, "Call that number".

9 Q And then went away? A Yes sir.

10 Q And what did you do with regard to this case if any-
11 thing on that day further? A Nothing that day.

12 Q The next day? A The next day I came to Los Angeles.

13 Q What time did you come into Los Angeles? A I think
14 about ten in the morning. *see next page for something*

15 Q That next day was Monday? A Yes sir.

16 Q The 27th? A Yes sir. I would like to correct my
17 testimony in just one particular.

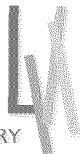
18 THE COURT: You may do so.

19 A The day that I called on John D Fredericks at his
20 residence was on Monday, instead of Saturday.

21 MR FREDERICKS: Now do you remember what time on that Mon-
22 day -- that is the Monday you are talking about now? A Yes

23 Q You remember that time on Monday when you left my house
24 to go out to El Monte, do you remember what time of the day
25 that was? A Why, somewhere along towards 5 o'clock.

26 Q In the evening? A Yes sir.



1 Q Now, do you remember how long you stayed there at the
2 house talking? A Why, I should judge I was at the house
3 altogether perhaps three-quarters of an hour.

4 Q Now, what time was it when you got to town?

5 A About 1 o'clock.

6 Q Is that what you answered first? A No, that is not;
7 that is the correction which I wish to make.

8 Q When you got to Los Angeles about 1 o'clock on Monday
9 morning the 27th what did you do first? A I went into a
10 telephone booth at the Pacific Electric station and called
11 up the District Attorney.

12 Q Did you get him? A I did.

13 Q Then what did you do? A I asked for a meeting with
14 him and he directed me over the 'phone to come to his resi-
15 dence, and I went out there.

16 MR ROGERS: This is assumed to be under our objection?

17 MR FREDERICKS: No, your Honor, that is hearsay.

18 MR ROGERS: It is apparent this witness is shooting it in
19 so fast we cannot object.

20 MR APPEL: We objected to the same line of testimony once
21 before, the acts between the District Attorney and him, and
22 your Honor overruled us, and we thought, of course, it was
23 under the same objection.

24 MR FREDERICKS: The question was perfectly proper.

25 THE COURT: Read the question. (Last question and answer
26 read by the reporter)

1 MR ROGERS: I move to strike it out as not responsive, and
2 hearsay.

3 THE COURT: Strike out the answer.

4 MR FREDERICKS: It can hardly be expected a witness would
5 understand what part of a conversation would be admissible
6 and what would not, and that this witness would not be --

7 THE COURT: Answer stricken out.

8 MR FREDERICKS: We are willing to go ^{into} this part, but we
9 know if counsel objected to it that cannot be gone into.

10 Well, you went out to the house? A Yes sir.

11 Q And stayed there how long? A Why, after I got there
12 I think I was there not to exceed three-quarters of an hour,
13 possibly an hour.

14 Q And who all did you talk with there?

15 MR ROGERS: That is hearsay,--

16 MR FREDERICKS: I am not asking what he said.

17 MR ROGERS: Wait a moment until I get my objection. --
18 hearsay, incompetent and no foundation laid, irrelevant and
19 immaterial.

20 THE COURT: Overruled.

21 MR ROGERS: Exception.

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1 A I talked with the District Attorney and with Browne.

2 MR FREDERICKS: Do you know what Mr Browne's position was.

3 A Detective in the District Attorney's office.

4 Q When is the first time you ever met Mr Browne in connec-
5 tion with this case? A The first time I went to the Dis-
6 trict Attorney's office to report it.

7 Q Well, when was the first time you ever met him in connec-
8 tion with this case, and discussed this case in his presence?

9 MR ROGERS: I think he has answered? I don't think counsel
10 is entitled to change his testimony by intimating that he
11 does not like the answer. I call your Honor's attention to
12 the record.

13 THE COURT: Read it.

14 MR FREDERICKS: Knowing the facts as I do I didn't think the
15 question was understood. (Last question and answer read by
16 the reporter.)

17 THE COURT: Objection overruled.

18 MR ROGERS: Exception.

19 MR FORD: Read the last question to the witness.

20 (Last question read.)

21 A To the best of my knowledge and belief it was the first
22 day I went to the District Attorney's office with this matter.
23 That is my memory of it.

24 MR FREDERICKS: Well, you were up at my house, and then what
25 did you do? A I went with the -- after discussing the matter
26 I went with the District Attorney out to El Monte.

1 Q How did you go? A In his auto.

2 Q Who all in the party? A Myself and himself.

3 Q Anybody else? A No sir.

4 Q Out to El Monte? A Yes sir.

5 Q What time did you get to El Monte ?

6 A Why, it was dark. I don't remember the time, it was
7 getting dark, though.

8 Q Your home is how far from El Monte? A About six miles
9 beyond.

10 Q On the other side or this? A Yes sir.

11 Q On the other side? A Yes sir.

12 Q What did you do when you got to El Monte? ~~ME~~

13 MR ROGERS: That is objected to as hearsay, incompetent,
14 irrelevant and immaterial; no foundation laid,

15 THE COURT: Objection overruled.

16 A Went to the telephone office.

17 Q Public telephone office? A Public telephone office.

18 And asked to have the number on the card that Bert Franklin
19 had given me, called long distance to Los Angeles.

20 Q What telephone was that, Home or Sunset? A Home.

21 Q And what happened? A I requested the operator to
22 listen --

23 MR ROGERS: This is certainly hearsay, incompetent.

24 THE COURT: Yes.

25 MR FREDERICKS: Well, yes. You need not state what you
26 requested the operator to do. Do you know who the operator

1 was? A I never met her until that time.

2 Q Do you remember her name now? A Prouty, I think it is.

3 Q prouty? A Yes sir.

4 Q You went into the booth and telephoned? A Yes sir.

5 Q Who did you get on the telephone? A Bert Franklin.

6 Q What was the conversation?

7 MR ROGERS: That is objected to as irrelevant, incompetent
8 and immaterial; no foundation laid; hearsay.

9 THE COURT: Objection overruled.

10 A I told him I had been unable to make the engagement in
11 town and that I had gone to El Monte and was telephoning him
12 from there, and he said he would come out to the house.
13 I told him all right. He asked me if he should bring the big
14 fellow with him, and I said yes, and he said he would be right
15 out, and I suggested about 9 o'clock was the proper time for
16 him to get there, and he said all right and rang off.

17 Q And then what did you do? A Went on out to the house.

18 Q How did you go out to the house? A In the District
19 Attorney's auto.

20 Q You were driven out to your house then? A Yes sir.

21 Q And was it dark or not? A Why, it was getting real dark
22 at that time.

23 Q What occurred when you got to your house? A I discover-
24 ed that my wife had gone over to the station to meet me.

25 Q Don't relate the conversation. A You don't want me
26 to relate that? Q Not now.

1 A Well, he left me there.

2 Q That is, I left you there?

3 Q Yes, the District Attorney left and later other people
4 came.

5 Q Now then, how long was it until somebody else came?

6 A Just a few minutes.

7 Q And who came? A Mr Browne and four or five others.

8 Q Do you remember any of them? A Yes, Mr Campbell was
9 amongst the bunch.

10 Q Do you know what his business is? A Yes sir. He was
11 employed in the District Attorney's office as a detective.

12 Q Who else came, if you remember? A Mr Browne, and the
13 other names I cannot think of, excepting one, and that man
14 went with us from El Monte, and that was Mr Hicks.

15 Q Now, go back to Monte, after the telephoning, where did
16 we go? A We went to Mr Hicks' house, and afterwards over
17 to his barn where he was milking.

18 Q And then what? A And then back to his house, and then
19 on over to my house.

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1 Q And who went then along? A Mr Hicks.

2 Q Mr Hicks? A Yes, deputy sheriff.

3 Q And then after I had gone away and left you, you say
4 Browne and Campbell, and how many others came? A I
5 think there were four besides Mr Browne, or five -- four
6 or five of them.

7 Q And what time was it when they got there? A It was
8 only a few minutes afterwards.

9 Q Yes. Well, about what time was that? A I should judge
10 it was 7 o'clock.

11 Q How were the conditions as to light or dark? A/ Oh, it
12 was getting dark, the lights were lit on the auto^{we} saw
13 coming; we saw them before you got away from there.

14 Q And then what did these men do, what occurred there?

15 MR ROGERS: We object to that as incompetent, irrelevant
16 and immaterial; no foundation laid; hearsay.

17 THE COURT: Objection overruled. A They putaway their
18 auto and concealed themselves about the place.

19 Q Do you know where they concealed themselves? A Yes
20 sir.

21 Q Where? A There was three of them concealed --

22 MR ROGERS: I object to that as hearsay and incompetent,
23 in the third degree. Let me explain, your Honor; it is
24 nothing but fair, I should tell you where this thing is
25 getting this record into, if your Honor will look at it a
26 moment, even if they call Franklin an accomplice, which they

1 have not proved yet, but your Honor is letting that part
2 in under the idea that they will -- this man is not an ac-
3 ccomplice under the statement he is an agent of the District
4 Attorney. Now, for Heaven's sake, how can it be possible --
5 and the defendant has not come into this thing at all; he
6 has not shown up on the scene any more than a mediary; he
7 is not mentioned among those present at any time, they are
8 talking about Franklin -- but, supposing Franklin is to
9 come, suppose for the sake of argument, how can it be
10 possible that this man, this witness, and Fredericks and
11 Browne and Campbell, not one of whom says he ever saw the
12 defendant or had anything to do with him, can bind the de-
13 fendant? This is a good deal like a piece of evidence I
14 saw introduced in court once, seventh degree hearsay, this
15 is seventh degree hearsay. How does it bind the defendant?
16 He has not been out at El Monte at all with Lockwood and
17 Fredericks and Campbell, nor out to the barn, he is here
18 in Los Angeles in the meantime.

19 MR FREDERICKS: I do not think your Honor wants to hear any
20 argument on that.

21 MR ROGERS: He better, because it is reversable error.

22 MR FREDERICKS: Very well --

23 MR ROGERS: I will take chances.

24 MR FREDERICKS: Then, withdraw your objection.

25 MR ROGERS: No, we will not.

26 MR FORD: We are simply laying the foundation for the intro-

1 duction of the testimony of these other people to show
2 where they are, that is all; and as to the discussions or
3 conversstions of Franklin, we have already avowed our inten-
4 tion of connecting him up with it. If we fail to do it,
5 it all should be stricken out right now.

6 MR APPEL: But, the fact of the matter is, you are right
7 out of court now.

8 THE COURT: Objection overruled.

9 A Will you read that question again to me, please?

10 (Question read.) Three of them were concealed in the barn,
11 one of them went up on the tank tower.

12 Q Where did the tank tower stand? A Between the house
13 and the barn.

14 Q Yes. A And Mr Campbell and Mr Browne went into the
15 house.

16 Q Whereabouts into the house? A The screen porch, at
17 the rear.

18 Q Now, where was the automobile put, just in a general
19 way?

20 MR ROGERS: What automobile is that?

21 MR FREDERICKS: The automobile -- I will amplify the ques-
22 tion.

23 Q Where was the automobile left? You say it was put
24 away, the automobile in which Mr Browne, Mr Campbell and
25 the other gentlemen came, you say it was put away -- where
26 was it put?

MR ROGERS: That is objected to as hearsay, and by incompe-

1 tent, entirely outside of the hearing of the defendant, and
2 even if the man whom they avow they are going to connect
3 it with --

4 THE COURT: Objection overruled.

5 MR ROGERS: Exception. A It was taken over in the field
6 a quarter of a mile away.

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0-Pete1 Q Now, state whether or not Mr Franklin came out that
2 night? A He did.

3 Q About what time? A I should judge about 9 o'clock.

4 Q Did he come alone, do you know? A He came there to
5 the house alone, yes.

6 Q What did you first notice in regard to his coming?

7 A Tap at the door.

8 Q Rapped at the door? A Yes sir, the front door.

9 Q Now, state what was said and done there by you and
10 Franklin from then on.

11 MR APPEL: We object to that, now, upon the ground it is
12 incompetent, irrelevant and immaterial; hearsay, no founda-
13 tion laid, that if the evidence were in other respects ad-
14 missible, that it has now become inadmissible for the reason
15 that whatever was said or done between Franklin and this
16 witness at that time would not tend to prove any issue in
17 this case; on the contrary, it would tend to disprove the
18 issues of this case; hearsay; no foundation laid.

19 THE COURT: Objection overruled.

20 MR APPEL: We except.

21 A When the tap come on the door I went out the front
22 door and Franklin was standing over near a small palm tree
23 that grew in the lawn, the left hand side of the door, and
24 he spoke to me and I to him, and at once he suggested that
25 we walk around to the barn. We went out and near a hydrant,
26 close to the tank house or tank tower, we stopped and I

1 asked him where Mr Darrow was. "Why", he says, "did you
2 think Darrow was coming out here?" I says, "I sure did."

3 MR APPEL: Wait a minute --

4 THE COURT: Go on.

5 A (continuing) -- "What made you think Darrow was coming
6 out?" I says: "You told me over the 'phone and asked me if
7 you should bring the big one out", and he remarked he had
8 reference to Captain White. I asked where Captain White was
9 and he said he had a bad cold and couldn't come out that
10 night. I asked him if he brought the money and he said he
11 didn't. He said -- my impression is he said he couldn't
12 get it that night, but he said he had arranged to have me
13 meet him and Captain White on the corner of Third and Los
14 Angeles at 10 o'clock the next morning. I again objected
15 to Captain White as a stakeholder and he argued in his favor.

16 MR ROGERS: I move to strike that out as a conclusion and
17 opinion.

18 THE COURT: Strike it out.

19 MR FREDERICKS: We have no objection.

20 Q By Mr Fredericks -- Without saying he argued in his
21 favor, just state what he said. A He said Captain White
22 was all right and that he had made arrangements for him to
23 meet us in the morning at 10 o'clock at the corner of Third
24 and Los Angeles Street, and then at that time he walked over
25 to the driveway, where we drive out there with the vehicles,
26 and continued walking out with me towards the front of the

1 place. I assured him I would be there on time, as near as
2 I could, considering the running of the cars, and I bid him
3 good-night and he went away.

4 Q During the time you were talking, where were those men
5 to whom you have referred, Browne, Hicks and Campbell, and
6 the others? A One was nearly up even, was on the tank
7 tower, and three of them were in the front, and I left, when
8 I left the house, two of them in the house, when I parted
9 with him and went back to the house I found both of those
10 men out and on the side of the house next the driveway,
11 Campbell and Browne.

with 12 Q Was anything said about when you would be in Court the
13 next morning? A Yes, I told him that 10 o'clock probably
14 would be the time I would have to report, and he told me
15 that I needn't to worry about that at all, that -- I think
16 he said that one of the juror's brothers had died, and that
17 there would be no court that morning, and that anyway, it
18 would take time enough, so I would have ample time to go to
19 Third and Los Angeles and back up to the court house.

20 Q Now let me ask you, go back in your memory, what time
21 you left home that morning, what car you came in on the
22 next morning? What time you got to town?

23 A About 9 o'clock.

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1 Q Well, my question was -- there was so many questions that
2 the 9 o'clock part doesn't answer it. What time did you get
3 to town, is that what you meant to answer? A Well, it was
4 between 9 and 10 when I got to town, I think.

5 Q Do you remember what time you left home that morning?

6 A No, I don't, I couldn't say.

7 Q Now, I wish to call your attention again -- I withdraw
8 that question. Now, I wish to call your attention again --
9 carefully search your memory in regard to the hour you agreed
10 to meet Franklin in Los Angeles.

11 MR ROGERS? Now, if your Honor please, that is a very unique
12 proposition. Here is his own agent on the stand, your Honor
13 please, and he has bawled it up. He has got it a different
14 time from what he said before. Now counsel wants to straighten
15 him out before I get at him, and it is an attempt to cross-
16 examine his own witness. He is not telling his story right,
17 now counsel says, "search your memory and see if you cannot
18 come through like you did before". I object to that as
19 incompetent, and suggestive and very suggestive. He has said
20 twice now 10 o'clock. Counsel knows -- here is the record
21 where he said something else. He wants to straighten him out
22 before we get at him. I object to it as attempting to cross-
23 examine his own witness and bolster him up.

24 THE COURT: Objection overruled.

25 MR FREDERICKS: I wish to make another objection to the
26 language of counsel for the defendant. I am here earning my

1 bread by the sweat of my face in the best way I know how,
2 and trying to get the truth before this jury in my humble way
3 the best way I know how, and I would be a craven if I did
4 not attempt to have a witness speak the truth, and if I
5 noticed by an inadvertence that he had mentioned a wrong
6 hour, it is my duty to call the matter carefully to his
7 attention. I take that to be my duty under the law, and I
8 want this jury to know the truth just as it was, and as
9 for counsel, "getting at him", I object to such language

10 THE COURT: The court concurs with your view of it, by
11 overruling counsel's objection. That seemed to be quite
12 uncalled for.

13 MR FREDERICKS: Now, will you answer the question, if you
14 can? A My memory was 10 o'clock, but this having been
15 brought to my attention so carefully and brother Rogers
16 having apparently voluntarily read it out from the record
17 that it was nine, I expect I am mistaken; it was 9 o'clock.

18 Q Well the record --you testified a few days after this
19 at the preliminary examination, did you not? A Yes sir.

20 Q Your memory was fresher then than it is now? A Yes sir.
21 I would like to say that this matter has not been brought to
22 my attention from that day to this. I haven't thought of
23 that hour from that day to this.

24 Q Have you ever read your preliminary examination testi-
25 mony? A No sir.

26 Q Now then, let us come down to the morning of the 20th --
was there any discussion between you and Franklin in regard

1 to the time when the jury was called to meet in Los Angeles?

2 MR APPFL: Wait a moment. We object upon the ground it is
3 incompetent, irrelevant and immaterial, suggestive, leading
4 and no foundation laid, and hearsay.

5 THE COURT: Overruled.

6 MR APPFL: Exception. A There was. If I remember right,
7 I suggested that at the hour we were to meet there, about the
8 time I would have to be up to the courtroom, and then he
9 made this remark about there going to be no court, and I
10 said that the judge would evidently call the venire that
11 had been issued, the panel, and that I would have to be
12 there to answer to my name. we said I would have ample time
13 to get there.

14 Q Now, what did you do the next morning? A Came to town.

15 Q That is Tuesday morning, the 20th? A Came to town,
16 and before court opened went to the corner of Third and Los
17 Angeles street.

18 Q Where did you get off the car when you came in that
19 morning, do you remember? A I got off at Fifth street.

20 Q And then where did you walk to? A I walked immediately
21 over to the owl drug store, then back up to Sixth and main
22 and then down to Los Angeles, and north on Los Angeles street
23 on the east side to the corner of Third.

24 Q North on Los Angeles, to the east side of Los Angeles?

25 A Yes sir.

26 Q To the corner of Third? A Yes sir.

1 Q Who did you see there, if anybody? A Captain White.

2 Q Where was he standing when you first saw him?

3 A On the northwest corner.

4 Q On the northwest corner. Then what occurred?

5 A He walked across to the northeast corner, and I from
6 the southeast corner to the northeast corner, meeting him
7 on that corner. We shook hands, asked him what was doing or
8 words --

9 MR ROGERS: Just a moment.

10 MR FREDERICKS: I will ask that question --

11 MR ROGERS: I move to strike out that conversation as not
12 responsive.

13 MR FREDERICKS: No objection. The conversation is stricken
14 out.

15 THE COURT: The only conversation related was, "I asked him
16 what was doing." Want that out?

17 MR ROGERS: Surely.

18 THE COURT: Strike it out.

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1 MR FREDERICKS: What corner was it you met on? A North-
2 east corner of the intersection of Third and Los Angeles.

3 Q Now, what conversation did you have there -- with-
4 draw that. Did you have some conversation with him
5 there? A Yes sir.

6 Q Now, who was present when you had that conversation?

7 A Why, so far as recognizing anyone, no one but Captain
8 White and myself at the start.

9 Q And what was that conversation-- don't answer until
10 counsel objects.

11 MR ROGERS: We object to that as incompetent, irrelevant
12 and immaterial, and no foundation laid.

13 MR FREDERICKS: We will show, may it please the court,
14 that Captain White was also an accomplice in this case;
15 accomplice with this defendant.

16 MR ROGERS: Wouldn't it be a good scheme to find out whether
17 or not if Captain White ever saw Mr Darrow before that time?

18 MR FREDERICKS: It will not be necessary to find out if
19 Captain White ever saw Mr Darrow before that time. I
20 don't suppose he ever did, I don't know.

21 MR ROGERS: I don't think he ever saw Mr Darrow in his
22 life.

23 MR FREDERICKS: I don't, either, not as far as I know.
24 He is an accomplice --

25 MR ROGERS: An accomplice of Mr Darrow being a man he never
26 saw.

1 THE COURT: I think that the question of the District At-
2 torney is proper under his avowal. Overruled.

3 MR ROGERS: Exception.

4 (Last question read by the reporter.)

5 A We shook hands and the question that I asked him was,
6 "What is new?" His answer was, "Nothing except a mutual
7 friend of ours intrusted me with some money to be paid to
8 you on certain conditions. Are you ready to receive it?"
9 I said, "How much money, and what are the conditions?"
10 He says, "I am to hand you \$500, and to hold \$3000 for you
11 until such times as a verdict of not guilty is rendered or
12 the jury hung in the McNamara case." I says, "It don't
13 go. There was to be \$3500. held, not \$3000." I said,
14 "Where is Franklin?" Why, he said, "He just went away
15 from here." Well, I said, "It don't go at all, because
16 there was to be \$4000." He said, possibly there is
17 in this roll, I haven't examined it very carefully.
18 Well, I says, go in the store and examine it. He says, "I
19 ain't got no business in the store, and he says, "I will
20 walk up the street a little bit and look." He came back
21 and says, --"

22 Q Did he walk up the street? A Yes sir.

23 Q Which way? A North on the same side of the street.

24 Q North on what street? A Los Angeles street.

25 Q And did you observe him as he was walking along north?

26 A I saw him walking up north, and apparently look at some-

1 thing in his hand. He had the roll of money in his hands
2 when he left me, and he came back and said that there were
3 \$3500 in the roll aside from the \$500 that he was to hand
4 me at that time. I told him all right, that I was ready,
5 and he handed me the \$500 bill, exhibiting to me the other
6 money before he done it. I told him that I thought that
7 the passing of a \$500 bill on a proposition of that kind
8 was decidedly out of the way; that it ought to have been
9 two's or five's. Well, he says, part of the bills of
10 this is thousand dollar bills. Well, I says, that is all
11 wrong in a case of this kind. How would a fellow go to
12 work to dispose of a thousand-dollar bill under these cir-
13 cumstances? Well, he said that they might be changed
14 before the trial was ended. A man about that time rode up
15 on a motorcycle, and stopped there close to us, and I
16 dropped the \$500^{bill} on the ground, and stooped over to pick
17 it up. About that time we saw Franklin across the street,
18 and we walked over to him. Franklin asked what we had
19 done. White says, I have done as I agreed. I have
20 turned over \$500 to Mr Lockwood and I have \$3500 to hold
21 for him when he carries out his part of the contract.
22 At that point I stated to Mr Franklin, "Bert, I am afraid
23 there is something wrong. After you left last night,
24 my wife and I both thought we heard somebody out there at
25 the place, and I got up and went around and didn't see any-
26 body, but I am afraid somebody was out there." He said,

1 "Are you giving me straight goods?" I said, sure. He was
2 looking back towards Los Angeles street. We were just this
3 side of the corner on Third, and he remarked, "Don't look
4 around; don't look around", and said a word I don't care to
5 use unless compelled to in this presence.

6 Q What do you mean? A Well, he said, "The sons-of-
7 bitches", just in that way.

8 Q All right, go ahead. A And said, "Don't look around.
9 And then he says, "Let's get out of here." And we started
10 and walked up, he and I, side by each, to the corner of
11 Third and Main. Then we walked north on Main where the
12 jog in Third street goes west, and as we approached that
13 place, I saw a man come across the intersection, and Bert
14 said to me, "Wait a moment;" I want to speak to this man,"
15 and I turned around, just as the two met, and at that
16 point Mr Browne put out his hands like this, and separated
17 them.

18 Q Separated Franklin and the man that came to meet him?

19 A Yes sir, and about that time --

20 MR APPEL: Wait a moment. Your Honor, we move to strike
21 out the statement made by the District Attorney, referring
22 to one of these men as the man that came to meet him.

23 THE COURT: Stricken out.

24 MR FREDERICKS: It may be stricken out. What was the last
25 answer of the juror there? (Last answer read by the re-
26 porter.

Q And who was that man that came there and met Franklin?

1 A I have learned since that it was Clarence Darrow.

2 Q The defendant in this case? A Yes sir.

3 Q And how far was that from the corner of Third and Los
4 Angeles street?

5 MR ROGERS: Let him tell where it was. Let's see if we can
6 tell how far.

7 MR FREDERICKS: What we tell won't count.

8 MR ROGERS: Yes, I know.

9 MR FREDERICKS: It is for the jury to determine by evidence
10 how far it was.

11 MR ROGERS: All right, go ahead.

12 A I should judge that it was about four or five hundred
13 feet.

14 MR FREDERICKS: Well, just state -- from Third and Los
15 Angeles street where you met Cap White. Now, just describe
16 your walk from then on with particular detail as to where
17 you went, you understand. A We went right west on the
18 north side of Third street to the corner of Main.

19 Q How many blocks is that? A That is just one block,
20
21 short way of the block.

22 Q Then, when you got to the corner of Main and Third,
23 you and Franklin, what did you do? A On the east side
24 of Main.

25 Q On the east side of Main, what did you do? A We
26 walked north to about the point where Third street runs

1 west; there is a jog there.

2 Q About how far is that from the corner that you walked
3 north? A I should judge it was about 100 feet, or
4 possibly 150. I never looked at it to get the distance ex-
5 actly.

6 Q Now, then, what occurred when Brown stepped up there
7 and did what you have described? A He placed Mr Franklin
8 under arrest.

9 Q And what did Mr Darrow do? A Well, really, I lost
10 sight of Mr Darrow right there. I saw no more of Mr Dar-
11 row. I had never seen him before, and someone told me that
12 I was under arrest, and I lost sight of Mr Darrow from there.

13 Q All right. Then, what did you do? A Went up --

14 Q In company with who? A With a detective, I think from
15 the District Attorney -- from the city. I think it was Mr
16 Home, and a party of us altogether. There was a number.

17 Q Who all was in that party that you remember? A I
18 don't know all of the employes of the District Attorney's
19 office well enough to give their names, but there was Mr
20 Browne and Mr Home and Mr Campbell finally.

21 Q And now, after you left the corner of Third and Los
22 Angeles streets, do you know what became of White, where
23 White went? A White was brought up about the time that
24 Mr Franklin was placed under arrest, Mr White was brought
25 up about that time and he had been behind us, and we all
26 came along in a bunch from there on, walked to the Hall
of Records, and then upstairs.

-Peter 1 Q When you got to the Hall of Records -- by the way, what
2 had become of the five hundred dollars all this time?

3 A I had it.

4 Q You had it? A Yes sir.

5 Q Whereabouts? A In my pocket.

6 Q And when you got to the Hall of Records, what did you
7 do? A Went up the elevator, in the elevator, to the dis-
8 trict attorney's office.

9 Q Who was with you, aside from the officers? A Bert
10 Franklin and Captain White.

11 Q Bert Franklin, Captain White and yourself, aside from
12 the officers? A Yes sir.

13 Q When you got up to the district attorney's office where
14 did you go? A Into his private office.

15 Q And what occurred in there?

16 MR ROGERS: I object to that as irrelevant, incompetent,
17 immaterial, and even under the avowal of the district attor-
18 ney, no conversation is admissible even against co-conspirators
19 after the conspiracy is ended; that is elementary, your Honor,
20 incompetent, irrelevant and immaterial, and no foundation
21 laid.

22 MR FREDERICKS: Before the Court rules upon that I would like
23 to ask one other question.

24 Q By Mr Fredericks: Who was present when you went into
25 the district attorney's private office? A The district at-
26 torney and Mr Pridham of the Board of Supervisors.

1 Q And in your party who? A Yes.

2 Q Who was present in your party? A Captain White, Mr
3 Franklin and myself, and Mr Holme and I think Mr Campbell,
4 Mr Browne --

5 Q And other officers? A Yes.

6 Q Now, I will ask you the question to which counsel has
7 objected, what occurred?

8 MR ROGERS: I think, if your Honor please, this is absolutely
9 elementary, that while conspiracy is alleged with the object
10 sought, to bind one conspirator with the statement of the
11 other one, it is elementary, if the object of the conspiracy
12 has been affected, that nothing that has been said is ad-
13 missible. Thousands of authorities to that affect.

14 MR FORD: That is a correct statement of the law, your
15 Honor.

16 MR ROGERS: I object to that as incompetent, irrelevant,
17 immaterial; no foundation laid, and hearsay.

18 MR FORD: Counsel is correct in his interpretation of the
19 law, but wrong in his application of it. Acts in furtherance
20 of a general conspiracy, or rather the testimony in reference
21 to of a conspirator is confined to those acts which are done
22 during the existence of the conspiracy and ⁱⁿ furtherance of the
23 conspiracy, but that does not necessarily end at the time
24 that the particular act for which the defendant is on trial
25 is committed; in other words, we will show that this con-
26 spiracy continued after the arrest of Bert Franklin on

1 November 28, and we will show that at that time Bert
2 Franklin still continued to act in furtherance of the
3 general conspiracy, and that the conspiracy was not ended
4 on that day, and another thing, as to what occurred on that
5 date in reference to money, in reference to the things that
6 do not, are part of the res gestae and part of this case,
7 independent of any conspiracy.

8 MR ROGERS: Does your Honor want any authorities upon that?

9 MR FORD: I cite your Honor's attention to Abbott --

10 THE COURT: I have the authority, I think, that is discussed
11 in the Moffatt case. Objection overruled.

12 MR ROGERS: Exception.

13 A Will you read the question? (Question read)

14 A I,--Captain Fredericks wanted to know what was up,
15 Mr Browne had told him that he had arrested Mr Franklin and
16 Captain White, and Captain Fredericks asked Mr Franklin if
17 he had any statement to make and wished to say anything, and
18 he said he didn't. He asked Captain White if he wished to
19 make a statement, and where the money was, and Captain White
20 took the money out of his pocket and gave it to him.

21 MR ROGERS: I move to strike that out as absolutely incom-
22 petent, hearsay and no foundation laid. I specify the
23 statements were made by Fredericks, White and the witness.

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

25 MR ROGERS: Exception.

26 MR FREDERICKS: There has been a motion to strike out the

1 answer?

2 THE COURT: Yes.

3 MR APPEL: That has been ruled on.

4 MR FREDERICKS: I know. I was going on.

5 Q By Mr Fredericks -- How much money did Captain White
6 turn over there?

7 MR ROGERS: That is objected to as hearsay, incompetent,
8 not binding upon the defendant in any way; hearsay, no founda-
9 tion laid.

10 THE COURT: Objection overruled.

11 MR ROGERS: Exception.

12 A First three thousand dollars and afterwards five
13 hundred dollars more.

14 MR ROGERS: What is the answer? (Answer read)

15 Q By Mr Fredericks: What did you do with the five hundred
16 dollars that you had?

17 MR APPEL: Wait a moment. We object to that on the ground
18 it is incompetent, irrelevant, immaterial, hearsay and not
19 binding upon the defendant.

20 THE COURT: Objection overruled.

21 MR APPEL: We except.

22 A Gave it to the district attorney.

-Pete 23 Q Did you take the number of that five hundred dollar
24 bill? A No sir, I did not.

25 Q You say you didn't take it? A No sir.

26 Q Were the numbers of those bills taken in your presence?

1 MR APPEL: We object to that on the ground it is incompe-
2 tent, irrelegant and immaterial, as it calls for acts and
3 declarations, and calls for independ acts of other persons,
4 not members of the conspiracy, who didn't become co-conspira-
5 tors; not binding upon the defendant, in the absence of the
6 defendant; no foundation laid, hearsay.

7 THE COURT: Objection overruled.

8 MR APPEL: We except.

9 A The numbers were taken.

10 Q Do you remember what the denominations of the bills
11 were, did you notice? A Why, as near as I could remember,
12 there was one one-thousand dollar bill, and I think the
13 rest were five hundred dollars, as near as I can remember
14 now.

15 Q I have here a card and call your attention to a card
16 which you say Bert Franklin gave you on the occasion of one
17 of his visits on which he wrote his telephone number.

18 MR ROGERS: That is not leading, at all. He says: "I am
19 going to show you --"

20 MR FREDERICKS: An hour or so ago when examining this witness
21 he said Bert Franklin gave him a card on which he had writ-
22 ten the number of his telephone. I asked the Clerk if he
23 had the card, which had been introduced in evidence in the
24 preliminary; the Clerk didn't have it at the time. I asked
25 for People's Exhibit "A", and I have it, and I simply want to
26 introduce it.

1 MR APPEL: You told him you had a card, that is what you
2 told him.

3 MR FREDERICKS: Did I?

4 MR APPEL: Yes sir, you told him "I have a card given to
5 you by Franklin"; you are telling him.

6 MR ROGERS: I don't know whether we have our rights, but I
7 want to protest we are not getting them. The district at-
8 torney has no business to lead him that way.

9 MR FREDERICKS: I suppose not, but it is such an immaterial
10 matter, it occurred to me it is nearly 5 o'clock and we could
11 get this in and quit. I don't care a rap about it, I won't
12 offer the card. The Clerk can have it back. I don't care
13 about it.

14 MR ROGERS: Then why did you lead him?

15 MR FREDERICKS: Simply to save time.

16 THE COURT: Gentlemen of the jury, the Court is about to
17 adjourn until 9:30 tomorrow morning.

18 MR APPEL: I would submit, good naturedly, some of the
19 jurors are close to the district attorney and I can hear some
20 of those remarks, and it might be possible they hear them.

21 MR FREDERICKS: We are willing the whole thing should be
22 moved down a couple feet further.

23 MR APPEL: You don't want to get into the jury box, now, do
24 you?

25 MR FREDERICKS: No sir.

26 MR APPEL: I say it as a matter of good feeling, that some of

1 the remarks might be heard, there; as a matter of caution,
2 that is all.

3 THE COURT: Gentlemen of the jury, the Court is about to
4 adjourn until 9:30 tomorrow morning, and I want to admonish
5 you especially tonight that you should observe the fact
6 that you are sequestered and living apart from the general
7 community in order that you may keep your minds entirely
8 free from any evidence, free from any newspaper statement,
9 any newspaper headlines, from any comments by passers, or
10 from any other persons, in order that your minds may decide
11 this case solely upon the evidence that you hear in the
12 court room, and admonish you as heretofore that you do not
13 talk about this case, particularly that you should not let
14 anybody talk to you or at you in reference to the merits of
15 this case. Don't form or express any opinion until the
16 whole matter is submitted to you. We will adjourn until
17 9:30 tomorrow morning.

18 MR FORD: We have another matter coming up at that time,
19 and I suggest that the jury might be excused until ten.

20 THE COURT: Perhaps so.

21 MR FREDERICKS: Also perhaps we might be excused, too.

22 THE COURT: The hearing in this case will be resumed at
23 ten o'clock tomorrow morning.

24
25 (Here the Court took an adjournment until Tuesday, May 28,
26 1912, ten o'clock A.M.)