

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)
)
Plaintiff,)
)
vs.)
)
Clarence Darrow,)
)
Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 42

I N D E X.

Direct.	Cross.	Re-D.	Re-C.
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Waldo Fallcon, 3265

✓ Guy Rittinger, 3269

B. N. Smith,
Official Reporter.

1 June 27th, 1922. 2 o'clock P.M.

2 Defendant in court with counsel.

3 MR FORD: Your Honor wishes the jury to be present?

4 THE COURT: Yes, Mr Falloon is on the stand.

5 MR FORD: Counsel for the defense had submitted an addi-
6 tional objection this morning, after we had concluded the
7 other argument.

8 THE COURT: Upon reflection I don,t think we have quite
9 reached that bridge yet. If it appears in the next few
10 minutes we have, I will excuse the jury and hear it, but
11 I will not pass upon that feature of the question without
12 hearing it.

13 MR FORD: I just want to call your attention to two de-
14 cisions without reading them. They are absolutely right
15 on the point.

16 THE COURT: Perhaps you can do that and I can read them
17 before we get to it.

18 MR FORD: People versus Daniels, 105 Cal., page 264, and
19 People vs. Rader, 136 Cal., page 255. I cited the pages
20 at which the precise point is decided, the identical point
21 in this case.

22 THE COURT: All right; I will make it a point to examine
23 those cases.

24 MR FORD: I have a number of those cases, but these are
25 two California cases.

26 THE COURT: I will look it up before the question is

1 raised, if it is not squarely raised this afternoon.

2 ---

3 WALDO FALLOON on the stand for further
4 direct examination.

5 THE COURT: I think perhaps I ought to make the record
6 absolutely clear; it would be as well to have the question
7 and answer read, or either, reframe it. What is the
8 question? (Last question read by the reporter.)

9 MR ROGERS: I have the transcript here. (Reading:)

10 "Mr Rogers -- Let me see what the witness refreshes his
11 recollection from. I call for the enforcement of the rule.
12 The Court -- Yes sir. Mr Fredericks; You are entitled to
13 it. The Court -- While counsel is examining the note-
14 books, you may bear in mind your former admission and so
15 forth", and thereupon you sent the jury out.

16 MR FREDERICKS: I think the record ought to show it was
17 a shorthand book.

18 MR ROGERS: May be conceded to be a book of shorthand
19 notes which your Honor now has in his possession.

20 THE COURT: This book that was examined during the fore-
21 noon and handed to me at recess, I will now return it to
22 the witness.

23 MR ROGERS: I object to the question on the ground it is
24 incompetent, irrelevant and immaterial, and that the pro-
25 visions of section 2047 and 2054 have not been complied
26 with, and that it is incompetent, no foundation has been

1 laid, incompetent, irrelevant and immaterial. We do not
2 object, if your Honor please, to any relation of the com-
3 plete statements made by the defendant at the Hayward
4 Hotel. We recognize that they are entitled to introduce
5 evidence, anything which is complete and accurate of
6 what the defendant said at the Hayward hotel relative to
7 the matter, of course, not relative to other matters which
8 are not germane to this issue, but we do object under
9 the conditions as exhibited by this record to the reading
10 of the notes or refreshing his recollection from the notes
11 because, as I have said, 2047 and 2054 have not been com-
12 plied with.

13 THE COURT: I think your objection is well taken on that
14 ground.

15 MR FORD: If the court please, the objection that they now
16 make is a little different from the ground made this morn-
17 ing. The ground that they now make is that the witness
18 may not testify to what was heard at the time he was in the
19 room listening to the conversation between the defendant
20 and Mr Harrington, on the ground that he did not hear all
21 of the conversation, but only a part of it. That is
22 the objection made at the present time, and is a different
23 objection from the one made this morning, and before your
24 Honor rules on that --

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1 THE COURT. The objection has been made on the ground that
2 the foundation has not been laid by complying with 2047 and
3 2054. The court sustains that feature of the objection
4 without--

5 MR. FORD. Regard to the present one.

6 THE COURT. In regard to the other objection. Objection
7 sustained upon that ground is as complete as if sustained
8 on any ground. Sustained solely on that ground and upon
9 the other ground, that is, the challenge that the fragmentary
10 conversation is fragmentary, is one upon which the court
11 expressly reserves its ruling.

12 MR. FORD. Then, if the court please, we believe the founda-
13 tion has been laid in every respect, but I understand the
14 contention of the defendant at this time to be that the
15 foundation is incomplete because he, the defendant and his
16 counsel, are unable to read shorthand and consequently
17 cannot read the witness's notes to the jury?

18 THE COURT. Yes.

19 MR. FORD. That is the ground upon which it is sustained.

20 THE COURT. That is the ground upon which the court is sus-
21 taining the objection.

22 MR. FREDERICKS. We will have to withdraw the witness for the
23 present.

24 THE COURT. All right, stand aside.

25 -----
26 MR. ROGERS. The note book, if your Honor please, has been

1 marked as an exhibit in this case?

2 THE COURT. No.

3 MR. ROGERS. Mr. Falloon, I desire to mark this note book
4 as an exhibit for identification.

5 MR. FREDERICKS. Just a moment. We have no objection to
6 any marking being put on the notebook that counsel may
7 wish, but we object to the notebook being taken out of the
8 possession of the witness.

9 MR. ROGERS. I assume that I could not do that, under the
10 present state of the record.

11 THE COURT. Yes.

12 MR. ROGERS. But I can mark it?

13 THE COURT. Yes.

14 MR. FREDERICKS. We have no objection to its being marked.

15 THE CLERK. Defendant's Exhibit G for identification.

16 THE COURT. If it is marked for identification, even then
17 that puts it in the custody of the court.

18 MR. FREDERICKS. If the other side stipulate it does not,
19 but they do not seem to ask that.

20 MR. ROGERS. I do not think, sir, by marking it for iden-
21 tification I am entitled to its empounding.

22 THE COURT. All right.

23 MR. FREDERICKS. Let Mr. Rogers write his own name across
24 it in his own handwriting, and that is better than the
25 clerk's mark.

26 MR. FORD. And that will satisfy him.

1 MR. ROGERS. When I write my name it is worth money.

2 MR. FREDERICKS. It wont be worth any this time.

3 (Book referred to marked by Mr. Rogers.)

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5 G U Y B I T T I N G E R,

6 a witness called on behalf of the people, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 MR. FREDERICKS. State your name to the jury.

10 A Guy Bittinger.

11 Q Where do you live, Mr. Bittinger? A Chicago.

12 Q How old are you? A 37.

13 Q What is your business? A I am a detective sergeant
14 for the city of Chicago.

15 Q What official position if any have you held there?

16 A I have been detective sergeant for the last ten years.

17 Q In the city of Chicago? A Yes, sir.

18 Q City police force? A Yes, sir.

19 Q And at present what is your occupation? A I am employed
20 by the William J. Burns National Detective Agency.

21 Q And what is your connection with the city detective
22 deparment of Chicago at present? A I am on a year's leave
23 of absence.

24 Q Do you remember an occasion a little over a year ago
25 when J. B. McNamara and Ortie McManigal were arrested in
26 Toledo? A In Detroit.

1 Q In Detroit? A Yes, sir.

2 Q Michigan? A I followed McManigal over to Toledo that
3 night and we went to Detroit the next day.

4 MR. ROGERS. I move to strike that out as hearsay, incom-
5 petent.

6 THE COURT. Strike it out.

7 MR. FREDERICKS. I do not think it is hearsay.

8 THE COURT. It is not responsive. Strike it out for that
9 reason.

10 MR. FREDERICKS. And the answer, "Yes, sir"?

11 THE COURT. The answer "Yes, sir", is in.

12 MR. FREDERICKS. Q Calling your attention to the time, now
13 after you had arrested J. B. McNamara and, well, I
14 will say at the time you arrested him, who all was in
15 your party?

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

18 MR. FORD. Preliminary.

19 THE COURT. Objection overruled.

20 A Why, Mr. Burns's son Raymond, Malcomb McLauren and
21 Billy Reed my partner in the Chicago police department.

22 Q And after they were arrested in Detroit did you leave
23 Detroit for somewhere else with them?

24 MR. ROGERS. That is objected to as irrelevant, incompetent,
25 immaterial, not within the issues, no foundation laid.

26 THE COURT. Objection overruled.

1 MR. ROGERS. Exception.

2 A We took the 11:25 that night for Chicago.

3 Q For Chicago? A Yes.

4 Q 11:25. How long were you en_route, approximately?

5 MR. ROGERS. The same objection.

6 THE COURT. Overruled.

7 MR. ROGERS Exception.

8 A About nine hours.

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1 Q State whether or not during that time, while you were
2 en route, you had a conversation with J. B. McNamara, in
3 regard to the cause of his arrest and in regard to the dyna-
4 miting of the Los Angeles Times; yes or no. A Yes sir.

5 MR ROGERS: I object to that -- Pardon me -- A Pardon
6 me.

7 THE COURT: Strike out the answer for the purpose of ob-
8 jection.

9 MR ROGERS: I object to that as incompetent, irrelevant
10 and immaterial, hearsay, no foundation laid.

11 MR FREDERICKS: I will state it is preliminary to show-
12 ing --

13 THE COURT: If it is preliminary, I will let him answer
14 it, and you go ahead without stating it; that is, you go
15 ahead and ask the question.

16 MR FREDERICKS: yes sir.

17 THE COURT: I am admitting this only upon the theory that
18 it is preliminary.

19 MR FREDERICKS: I understand. So far it has been pre-
20 liminary.

21 THE COURT: yes.

22 MR FREDERICKS: Relate that conversation in so far as it
23 refers to the matters I have mentioned in my last ques-
24 tion.

25 MR ROGERS: I object to that as hearsay, incompetent,
26 no foundation laid, irrelevant and immaterial. The con-

1 versation between J. E. McNamara and the witness directly
2 after his arrest, no foundation is laid for it, and we
3 must remember that J. E. McNamara is not on trial, but
4 Clarence Darrow is on trial.

5 MR FREDERICKS: The matter is showing that this man, Mr
6 Bittinger, was a witness in the case of People versus
7 McNamara, and that he had facts upon it.

8 MR ROGERS: You have no need to relate a conversation be-
9 tween him and McNamara to show that.

10 MR FREDERICKS: That is one way of doing it.

11 MR ROGERS: Yes, and it is an illegal way, if your Honor
12 please.

13 THE COURT: Read that statement from Captain Fredericks
14 again.

15 (Statement read.)

16 MR FOND: We have to show, not only that he was a witness
17 but he was a material witness.

18 MR ROGERS: If your Honor pleases, if the conversation oc-
19 curred between McNamara, the defendant in the case of Peo-
20 ple against McNamara and the witness, the fact itself
21 is all that is material. What was said by McNamara
22 certainly could not bind the defendant and no foundation
23 has been laid for it; it is collateral in every respect
24 and hearsay of the second degree. Even if McNamara
25 said anything to him that would not bind the defendant in
26 any way.

1 MR FREDERICKS: It would depend on whether that which
2 the McNamara, who was the defendant in that case, said to
3 the witness was a matter which made this witness a witness
4 in the McNamara case; that is, such as a confession or
5 admission, and it is necessary for us to show that Mr
6 Birtinger was a witness in the case of the People versus
7 McNamara; in order to show that, we must show that he had
8 facts within his knowledge which made him a witness and
9 these are the facts that I am endeavoring to show. Any-
10 thing that, for instance, assuming that, a defendant had
11 made a confession -- I simply cite that as a hypothetical
12 case --

13 THE COURT: I see your point now.

14 MR ROGERS: I do not believe Captain Fredericks will say
15 that J. B. McNamara made a confession to Birtinger. He
16 has illustrated by that, but I do not believe he will stand
17 here in the presence of this jury and say that J. B. McNama-
18 ra made a confession to Birtinger.

19 THE COURT: That is precisely the subject of inquiry,
20 now, so as to determine whether or not the witness on
21 the stand --

22 MR ROGERS: Even if he did, that would not bind Darrow.

23 THE COURT: No.

24 MR FORD: Cited by way of illustration, whatever he did
25 say.

26 MR FREDERICKS: Yes, it is an admission and confession of

1 admission.

2 THE COURT: One does not become a witness merely because
3 he has a subpoena served on him; he must know some mater-
4 ial fact.

5 MR ROGERS: And the fact he does know some material fact,
6 must be brought to the attention of the person charged
7 under those circumstances.

8 MR FREDERICKS: We cannot do that all at once.

9 THE COURT: I think Mr Rogers is right about that. Do
10 you avow the intention of so connecting it?

11 MR FREDERICKS: Yes sir.

12 MR DARROW: Mr Ford said he would be a witness whether he
13 knew anything or not, whether it was competent or not.

14 THE COURT: The court never concurred in that definition of
15 a witness.

16 MR DARROW: This is certainly the rankest hearsay, your
17 Honor, to repeat a conversation long before this time with
18 somebody else.

19 THE COURT: Objection overruled.

20 MR ROGERS: Exception.

21 MR FREDERICKS: Read the last question.

22 (Last two questions read.)

23 MR DARROW: Is that the one that the objection is made to?

24 MR ROGERS: And overruled?

25 THE COURT: That is the question to which objection was
26 made and overruled.

1 MR ROGERS: Exception.

2 A During that conversation that took place between Mc-
3 Namara and myself --

4 MR FREDERICKS: That is the question. A Why, when I
5 first arrested McNamara, was in the lobby of the Oxford
6 Hotel in Detroit. He wanted to know what he was arrested
7 for, and who I was. I told him that I was a United States
8 government officer, and he was wanted for blowing the post-
9 office safe in Chicago, and we took him down -- this was
10 about a quarter to one. We took him down to the Michigan
11 Central depot -- knew there was a train leaving there at
12 1:30 -- when we got to the depot he began to accuse us of
13 being Pinkerton detectives, and wanted us to show some
14 authority for arresting him.

15 MR DARROW: Just a moment. Is this witness to be permitt-
16 ed to relate the whole conversation between himself and
17 J. B. McNamara?

18 THE COURT: That was the question.

19 MR DARROW: Your Honor mean to let him relate all the con-
20 versation he had betwe n himself and J. B. McNamara?

21 MR FREDERICKS: That was the ruling.

22 MR DARROW: In this case --

23 THE COURT: precisely.

24 MR ROGERS: Don't argue; it has been argued.

25 MR DARROW: There might have been many prejudicial and ir-
26 relevant things between him and J. B. McNamara over which

1 we have no control.

2 MR ROGERS: I am going to quit practicing law if every
3 statement of my client to every police sergeant on earth
4 is to be admitted against him; so would every lawyer who
5 practices law.

6 MR FREDERICKS: The court has ruled and we are proceeding.

7 THE COURT: That was the objection and the objection was
8 overruled.

9 MR ROGERS: Exception.

10 A I showed him my star as sergeant of police of Chicago,
11 and there was some lady in the depot; he hollered to the lady
12 "Will you call a police officer; we are being kidnapped."
13 I asked him if he wanted to go back to Chicago without any
14 requisition papers. He said he wanted requisition papers.
15 A uniformed officer came in and I asked him to call the
16 wagon --

17 MR FREDERICKS: Don't say anything that was said to anyone
18 else except what was said in the presence of Mr McNamara.

19 A This was all said in the presence of McNamara. The
20 wagon came; we got in and we all went up to headquarters.
21 About 9 o'clock that night Mr McNamara signed a waiver and
22 agreed to go back. At 11:25 we took the train and went
23 back to Chicago. We got a drawing room and an apartment--

24 MR ROGERS: Signed a waiver? A Yes sir.

25 MR ROGERS: Is that covered by our objection. A The
26 waiver is here, if you want to see it.

1 THE COURT: Do you want that statement stricken out?
2 That is not responsive to the question. All right, go on.

3 MR. FREDERICKS: Go ahead.

4 MR. ROGERS: I desire to have it stated in the record my ob-
5 jection that it is incompetent and no foundation laid,
6 covers ^{the} statement of the witness in toto and all that he
7 has stated.

8 MR. FREDERICKS: The court, on the motion of the prosecu-
9 tion strike out the statement that he signed a waiver?

10 THE COURT: Yes, it should be stricken out, and the witness
11 is again admonished to confine his answers strictly to the
12 conversations between himself and J.B. McNamara.

13 MR. DARROW: We want to allege error on the statement being
14 made.

15 A After we had been en route an hour or two, why, Mc-
16 Namara said to me, "Why, you haven't got me for the blowing
17 up of any safe. You have got me for that job out in Los
18 Angeles." I said, "I don't know anything about any job
19 in Los Angeles that you are referring to". He said, "Oh,
20 yes, you do." He said, "You want to make a little money?"
21 I said, "I always like to make a little money. How much
22 you got?" He said, "I will give you \$2000 to let me go."
23 I said, "No, there is five of us; that is not enough."
24 He finally increased it to \$50,000. He said, "If you
25 don't want to take that money Clarence Darrow will get it."
26 That he "had the American Federation of Labor behind him,

1 and it would be impossible to convict him or do anything
2 to him." I asked him how he would get that money. He
3 said, "Why, to let one of them hold one of them and the
4 other one go, and inside of six hours he would get the money
5 to us." All he wanted to do was to get a long distance
6 phone. When we got to Chicago, about 7:30 in the morning,
7 took him to Reid's house, and sent for Mr Burns.

8 Q Before you come to that, in the conversation --

9 THE COURT: Wait a moment. Counsel has asked for a consulta
10 tion.

11 MR ROGERS: Go ahead. That is covered by our objection.
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5s. 1 THE COURT. Proceed.

2 MR. FREDERICKS. Q Now, coming back to the time in the
3 sleeping car, Mr. Bittinger, I wish you would take your
4 time and relate, if you can, all the conversation that
5 occurred in the sleeping car.

6 MR. APPEL. Just a moment. It is objected to on the
7 ground that it is incompetent, irrelevant and immaterial,
8 hearsay and no foundation laid, the defendant not being
9 present, being declarations of a third party to the witness,
10 not in the presence of the defendant, and long prior to the
11 time alleged in the indictment as the day of the alleged
12 commission of the offense and no foundation laid.

13 THE COURT. Overruled.

14 MR. APPEL. Exception.

15 A Why, he related--

16 MR. FREDERICKS. Don't--well, give the conversation that
17 occurred, the substance of it, all the conversation that
18 occurred in the sleeping car.

19 MR. ROGERS. The same objection applies to this question
20 as was made to the last.

21 THE COURT. Yes; objection overruled.

22 MR. ROGERS. Exception.

23 MR. FREDERICKS. Q What one said and what the other said.

24 A Well, he got--he told me about the Altoon Brothers who
25 had been throwing some bombs around Chicago, said the
26 police caught them coming out of the building red-handed,
with the sawdust and cobwebs on them right after the

1 explosion occurred, and they were not able to convict them
2 and they wouldn't be able to convict him, and we were
3 making a mistake, we better take his money, if we didn't
4 take \$30,000 why, Mr. Darrow would get it.

5 MR. ROGERS. I think he said that once.

6 MR. FREDERICKS. Anything said about the Los Angeles Times
7 or any of the people in the Times?

8 MR. APPEL. Wait a moment,--we object upon the ground it is
9 incompetent, irrelevant and immaterial, and hearsay, no
10 foundation laid, too remote, ^{to} the time of the alleged com-
11 mission of the offense as charged in the indictment here,
12 hearsay, and the defendant not having been shown to be
13 present.

14 THE COURT. Overruled.

15 A After we had set upon \$30,000 as the price to let him
16 go, he got very friendly and told me that the only thing
17 he ever regretted out in Los Angeles he didn't blow up
18 that son-of-a-bitch Chandler. He wished he blew him so
19 high they didn't find a piece of him. I asked him how it
20 was they didn't get Chandler. He said he didn't have
21 time. He went to a telephone booth and looked in the book
22 to get his address and couldn't find it, had to get out
23 of town too quick that night.

24 MR. FREDERICKS. Q Now, did you have any conversation
25 with him at the Reed House in Chicago? A I talked
26 very little--I slept with him the first two nights but

1 talked very little with him.

2 Q Now, do you know Clarence Darrow the defendant in this
3 case? A Yes, sir.

4 Q How long have you known him? A I first met him to
5 talk to him about the 5th day of last June a year ago.

6 Q 5th day of last June. Where did you meet him? A In
7 the Union restaurant in Chicago on Randolph street right
8 around from his office.

9 Q Down in the restaurant, in the restaurant? A In the--
10 I went into the bar with a friend of his and the friend
11 of his came and told me he was in the hallway and asked me
12 to go upstairs and talk with him.

13 MR. ROGERS. That is very anonymous, suppose we have the
14 name of his friend. I move to strike that out as a con-
15 clusion or opinion.

16 MR. FREDERICKS. Wait a minute--

17 THE COURT. The words of the witness are entitled to be
18 stricken out as a conclusion or opinion and it is so ordered

19 MR. FREDERICKS. Counsel wants the name of the friend?

20 MR. ROGERS. Yes.

21 MR. FREDERICKS. Q What is the name of the friend?

22 A William Turner.

23 Q What did you do after you talked to Turner? A Turner
24 came and told me that I had a chance to make a lot of
25 money, that I could quit the police--

26 MR. FREDERICKS. Just a moment--

1 MR. ROGERS. I move to strike that out as hearsay and
2 incompetent.

3 THE COURT. Stricken out.

4 MR. FREDERICKS. Mr. Darrow was not present? A No, sir.

5 Q Well, go right to--where did you go after you talked
6 to Turner? A I went upstairs on the second floor where
7 the ladies restaurant is, Union restaurant, and Turner
8 introduced me to Mr. Darrow; Mr. Darrow asked for a private
9 room in the hotel, asked for a room and we were shown to a
10 bed room. When we got into the bed room Turner said,
11 "I am going to leave you two men alone to get together and
12 talk things over," and Turner left the room.

13 Q Now, Mr. Bittinger, I wish you to relate that conversa-
14 tion that you had with Mr. Darrow at that time and place.

15 MR. APPEL. Wait a moment--we object upon the ground it is
16 incompetent, irrelevant and immaterial, and collateral
17 to any issue in this case, being a conversation long
18 before ^{the} corpus delicti is said to have existed, according
19 to the allegations of the indictment herein, not compe-
20 tent or relevant to any issue in this case.

21 THE COURT. Overruled.

22 MR. APPEL. Exception.

23 MR. FREDERICKS. Q You remember that question?
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1 A Yes sir. Well, Mr Darrow asked me what I knew about
2 the case. I told him a little of J.B.McNamara's conver-
3 sation. He asked me if I had made an affidavit to it,
4 and I said, no, I had not. Well, he said, "I wish you
5 would forget it"; he said, "Forget it, as much as you can;
6 don't do the boys any harm." He said, "I am going down to
7 Indianapolis tomorrow to see the boys and get some money,
8 and I will take care of you." I said, "What do you mean
9 by 'take care of me'?" He said, "How would \$5000 do?"
10 I said, "No, that is not enough." He said, "You want to
11 come with me and help me," he said, "I will give you
12 \$5000." I said, "Well, I will see about it." I got up
13 and walked out of the room and went and told Turner --

14 Q Wait a minute. Was Darrow present when you told
15 Turner? A No.

16 Q Then don't relate that. Do you remember how long
17 you were in the room with him at that time? A Oh, about
18 15 minutes.

19 Q And have you related -- is there anything further
20 that you think of? A Not at that time, no.

21 Q Now, did you see Mr Darrow again? A Yes sir.

22 Q And when and where? A A few days after that in his
23 office in Chicago.

24 Q In Mr Darrow's office? A Yes sir.

25 Q Who was present? A Why, Mr Turner, Mr Darrow and
26 myself.

1 Q What was the conversation that occurred in the pre-
2 sence of MR Turner and MR Darrow and yourself?

3 MR APPEL: The same objection, as last, your Honor; incom-
4 petent, irrelevant and immaterial; collateral to any issue
5 in this case; too remote; far removed from the alleged
6 commission of the offense; not tending to prove any ele-
7 ment of the offense charged here; to-wit; the bribing of
8 Juror Lockwood.

9 THE COURT: Objection overruled.

10 MR APPEL: Exception.

11 A Why, they wanted to convince me it was to my interest-

12 MR FREDERICKS: No, that would lead you into objections
13 by the defendant. Don't say "they want", say what they
14 said. A Well, Turner started in to tell me how liberal
15 MR Darrow was with everybody up in Idaho, and it was to my
16 interest to go in with MR Darrow and help him win this
17 case.

18 Q Do you know whether MR Turner was with MR Darrow in
19 Idaho? A Yes sir.

20 MR ROGERS: That is objected to.

21 MR FREDERICKS: All right.

22 THE COURT: All right; strike out the answer for the pur-
23 pose of the objection.

24 MR ROGERS: Objected to as incompetent and immaterial and
25 no foundation laid and hearsay.

26 THE COURT: Objection sustained.

1 MR ROGERS: Move to strike out the answer and ask that the
2 jury be instructed to disregard it.

3 THE COURT: The answer is stricken out and the jury in-
4 structed to disregard the answer.

5 MR ROGERS: I assign the asking of the question under the
6 conditions, as misconduct.

7 MR FREDERICKS: Now, Mr Bittering, state what was said be-
8 tween you and Mr Darrow or Mr Turner when you three were
9 present.

10 MR ROGERS: That is, you were stating it.

11 MR APEL: Subject to the same objection made.

12 THE COURT: The same objection, the same ruling and excep tio

13 MR FREDERICKS: Yes, I had forgotten that the witness had
14 already started to answer the question and the witness was
15 saying what Mr Turner had said.

16 THE COURT: yes.

17 A Shall I answer that question?

18 THE COURT: yes, go ahead, Mr Bittering.

19 A Why, Turner told me that I was making a great mistake
20 not to be friendly with Darrow, not to do everything I
21 could for him, that he was the most liberal man in the
22 world, he gave one man up there \$15,000 and another \$10,000
23 and threw the money away like it was water, up around
24 Idaho, and I was making a great mistake by not joining with
25 him, so then I told him I would take the matter under con-
26 sideration and I left.

1 Q Did you talk to Mr Darrow alone at that time or was
2 any part of the conversation alone, or just with the three
3 of you? A Just with the three of us.

4 Q State whether or not you reported this conversa-
5 tion to your employers?

6 MR APPEL: Wait a moment.

7 MR ROGERS: Let us hear who his employer was. It is ob-
8 jected to as being a conclusion and hearsay. If it was
9 William J. Burns, why let him remain anonymous?

10 MR FORD: He stated he was employed by William J. Burns.

11 MR FREDERICKS: I can only ask him one question at a time.

12 MR APPEL: That is not the way to corroborate a witness.
13 I can cite your Honor to decisions to the effect that that
14 a witness knows, a third person, can never be given in
15 evidence.

16 MR FREDERICKS: That is not the question.

17 THE COURT: I will hear from you, irrespective of who his
18 employer may be.

19 MR FORD: What he reported to anybody would be hearsay, un-
20 questionably. The fact that he made a report is the fact,
21 however, which is not hearsay. If I said I went to such
22 and such a case and I saw Mr so and so or spoke to Mr so
23 and so, that is a fact, but if I try to introduce any
24 evidence as to what was said and what was spoken on that
25 occasion, that would be hearsay. We just simply wish to

26 show the relation of the witness to the case and show that
the witness was not an accomplice but was merely remaining
passive reporting to his employers and having no intention
at any time of assisting our ladies that were offered to be

1 simply for the fact of making these reports.

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1 MR. ROGERS. "Did you report these conversations?" If
2 that is not asking him for the contents of conversations
3 there never was such a question in the world, if your
4 Honor pleases.

5 THE COURT Objection sustained.

6 MR. FREDERICKS. Very well. Q Now, Mr. Bittinger, did you
7 see Mr. Darrow again the third time in Chicago? A No, sir.

8 Q Before I go into anything further I want to go back
9 further. State whether or not you--well, this will be
10 leading but I think it is harmless--whether or not you
11 brought also J. J. McNamara from Indianapolis out to
12 Los Angeles? A Yes, sir.

13 Q And state whether or not you had conversations with
14 him on the way out? A yes, sir.

15 MR. APPEL. Wait a moment--

16 THE COURT. Strike out the answer for the purpose of the
17 objection.

18 MR. APPEL. We object to that on the ground it is incom-
19 petent, irrelevant and immaterial, hearsay; calling for
20 acts and declarations and conditions not affecting the
21 defendant, not made in his presence, collateral to any
22 issue in this case, no foundation laid.

23 THE COURT. Objection overruled. Restore the answer.

24 MR. FREDERICKS. The answer was "Yes, sir." We will go
25 back to that later. Q Now, when was the next time, if
26 ever, that you saw Clarence Darrow, the defendant in this
case?

1 A August 15th, in the Alexandria Hotel here in Los Angeles.

2 Q Had you had any communications with him since the last
3 time you saw him in Chicago before you saw him here in Los
4 Angeles? A Through another party.

5 MR. ROGERS. That is hearsay.

6 MR. FREDERICKS. Well, let us see; I will see whether it
7 is, whether it can be made material or not.

8 MR. ROGERS. I move to strike out the answer as a conclu-
9 sion.

10 THE COURT. Strike it out.

11 MR. FREDERICKS. Q Did you have a conversation with Mr.
12 Darrow at any time in regard to whom you should communi-
13 cate, in regard to the channel through which you should
14 communicate with him while he was in Los Angeles and you
15 were in Chicago?

16 MR. APPEL. We object to that on the ground it is incom-
17 petent, irrelevant and immaterial; leading and sugges-
18 tive; no foundation laid; it is hearsay; collateral to
19 any issue in this case, not tending to prove any element
20 of the offense charged in the indictment.

21 THE COURT. Objection overruled.

22 MR. APPEL. We except.

23 A Yes, sir.

24 MR. FREDERICKS. Q And what was that?

25 A I was to communicate with William Turner and he was to
26 communicate with a man named Cavanaugh at Venice, and he

1 would get in touch with Darrow.

2 Q Now, when you met Mr. Darrow here in Los Angeles on the
3 15th of August what time of the day was it you met him
4 first? A About 8 o'clock in the morning.

5 Q And what occurred between you at that time, what was
6 said and done?

7 MR. ROGERS. Who was present and the place? We object to
8 that no foundation laid.

9 THE COURT. Objection sustained.

10 MR. FREDERICKS. Yes. I will amend the question.

11 Q At the time you met him here in the Alexandria, who was
12 present? A Just Mr. Darrow and myself.

13 Q And where did you meet him? A In the bar of the Alex-
14 andria.

15 Q Did you have a conversation with him? A yes, sir.

16 Q Relate that conversation.

17 MR. APPEL Wait a moment--we object to that on the ground
18 it is incompetent, irrelevant and immaterial for any pur-
19 poses, no foundation laid; it is hearsay; collateral
20 to any issue in this case; not tending to prove any
21 element of the offense charged in the indictment.

22 THE COURT. Objection overruled.

23 MR. APPEL. Exception.

24 A we wanted to know what evidence we had against the
25 McNamaras and where the evidence was kept and whether I
26 had been able to get hold of any evidence for him. I told

1 him that I had the keys that I had taken off of J. J.
2 McNamara when I searched him at police headquarters in
3 Indianapolis, they were the same duplicates of keys Mc-
4 Namara had when he had been arrested in Detroit. He
5 says, "That is ^a damn strong piece of evidence against
6 him., I wish you could get hold of that." I said, "I have
7 already got hold of it. I have hold of 27 or 28 hotel
8 registers. I have one register where J. J. McNamara signed
9 for his brother as J. B. Brice at a roadhouse outside of
10 Indianapolis at a dinner, and J. J. McNamara's own hand-
11 writing." He said, "Can you get hold of that?" I said,
12 "Yes." He asked me how I would get possession of or get
13 hold of it and I said I was the only one Mr. Burns would
14 trust and he was going to send me out. He wanted to know
15 if I couldn't arrange for a couple of his boys to hit me
16 on the head when I got on the train and take it away
17 from me. I said, "I will see, I will let you know when I
18 am going out with that evidence." He said, "I will bring
19 up some money tomorrow " I said, "All right, how much
20 will you bring, and he says, "I will bring down \$1,000."

21 So we parted and made an appointment to meet at 8 o'clock.

22 Q Did you see him between that and the next morning?

23 A No, sir.

24 Q Did you see him the next morning? A Yes sir.

25 Q Where? A At the same place, in the bar of the Alexan-
26 dria Hotel.

1 Q And that was the morning of what? A The 16th of
2 August.

3 Q And just state what occurred down there at that time.
4 ME. APPEL. We object to that on the ground it is incom-
5 petent, irrelevant and immaterial, hearsay; no foundation
6 laid; collateral to any issue in this case, not tending
7 in the slightest degree to prove any element of the of-
8 fense charged in the indictment.

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1 THE COURT: Overruled.

2 MR APPEL: We except.

3 A Why, he came in there in the morning.

4 Q BY MR FREDERICKS: Who was first, you or he? A I got
5 down about half an hour or so ahead of him; I sat in the
6 lobby of the hotel where I could watch both entrances,
7 and about 8 o'clock I seen him come in from the bar through
8 that little hallway there, coming towards me. I went up
9 to meet him, and as I went up to meet him I met a newspaper
10 man from the Times there.

11 Q What is his name? A Porter. So I didn't want to
12 speak to him in front of the newspaper man. Porter called
13 us over, and he says, "Here is a funny combination; here is
14 Darrow and McNamara's lawyer" --

15 MR APPEL: All this is admissible, all this that Porter
16 said?

17 MR FREDERICKS: I think it is.

18 THE COURT: Is this in the presence of Mr Darrow?

19 MR FREDERICKS: Yes sir, this is in the presence of Mr Dar-
20 row.

21 THE COURT: I am asking the witness. A Yes sir, in the
22 presence of Mr Darrow.

23 MR APPEL: The opinions and statements of third parties in --

24 MR ROGERS: Make your objection.

25 MR APPEL: We make the objection to this: we object to
26 any statements made by the reporter of the Times or any

1 observations made by him in the presence of the defend-
2 ant or of the witness on the ground they are hearsay,
3 incompetent, irrelevant and immaterial; no foundation
4 laid, and we add to this objection the former objection
5 to the question propounded to the witness.

6 THE COURT: Overruled.

7 MR APPEL: We take an exception. A Why, I was probably
8 20 feet away and Porter called me over to Mr Darrow and
9 when I got over there he said, "Here is a funny combina-
10 tion --"

11 MR FREDERICKS: Who said? A Porter. He said, "Here is
12 Darrow, the McNamara lawyer and a Burns detective and a
13 Times representative." He says, "Let us all go in and have
14 a little drink." I said, "No, I am not drinking anything"
15 and I went down into the little wash room and when I came
16 back Mr Darrow was alone, and we went in to the bar, and he
17 said, "I have got that money for you this morning." I said,
18 I don't want to take it in here; we may be watched."

19 He said, "Do it here, ^{open and} above board, suppose you are being
20 watched; I know you in Chicago, and you know me and we
21 have a right to meet and talk and have a drink. Suppose
22 some of Burns' men are around, what is the difference,
23 the bolder you do it the less they will think of it.

24 I said, "No, I won't do it here;" He says, "You go up to
25 the mezzanine floor; you go upstairs and I will meet
26 you."

*border you do it the
bar they will think of it.*

1 MR ROGERS: What kind of a floor? A Mezzanine floor.

2 So as we stepped to the elevator, he handed me --

3 MR FREDERICKS: I don't think I follow you after that,
4 after you left the bar, where did you go? A We turned
5 around to the elevator and went downstairs into the
6 basement, through the washroom and around where the eleva-
7 tor is, and as we stepped on the elevator, Mr Darrow hand-
8 ed me a roll of bills, which I thought was the \$1600. He
9 got off at the parlor floor and I went on upstairs.

10 Q State whether or not you got into the elevator?

11 A I got into the elevator with him.

12 Q After you got into the elevator, state whether or not
13 Mr Darrow got into the elevator with you? A yes sir.

14 Q And then did the elevator go up? A Yes sir.

15 Q And then what occurred? A He got off at the parlor
16 floor and I went upstairs to the top of the house and ^{met} Mr
17 Burns and gave him the money.

18 Q How much money was it? A I didn't count it until I
19 got back to your office and found out it was \$500.

20 Q Now, after you got off the elevator, and handed this
21 roll of bills to Mr Burns -- that is Mr William J. Burns?

22 A Yes sir.

23 Q What did you do?

24 MR APHEL: Wait a moment. We object to that on the ground
25 it is incompetent, irrelevant and immaterial for any pur-
26 poses; it is hearsay; collateral to any issue in this case;

1 no foundation laid; does not tend to prove any element of
2 the offense charged in the indictment.

3 THE COURT: Overruled. A I went back to the parlor
4 floor and met Mr Darrow and made arrangements with him
5 to let him know when I was to start west with the evi-
6 dence.

7 MR ROGERS: That is more or less a conclusion.

8 THE COURT: Strike out that answer.

9 MR FREDERICKS: We have no objection to this part "made
10 arrangements with him" being stricken out.

11 THE COURT: Yes, strike it out.

12 Q State what was said between you and Mr Darrow when you
13 went back? A I told Mr Darrow as soon as I left Chicago
14 with the evidence that I would wire him and let him know.

15 Q Was anything said about the money, the amount?

16 MR APPEL: Wait a moment. We object to that on the same
17 ground stated in our previous objection, and on the fur-
18 ther ground he is leading the witness.

19 THE COURT: Objection overruled.

20 MR APPEL: We except.

21 MR ROGERS: Does that objection, "the same as our previous
22 objection" cover it, your Honor?

23 THE COURT: I think it does.

24 MR APPEL: The last objection.

25 MR ROGERS: Very well.

26 THE COURT: It will be so understood by this court.

1 MR ROGERS: Very well.

2 MR FREDERICKS: Just relate the entire conversation.)

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9p1 A When I got back on the parlor floor he asked me what
2 I had done with the money. I told him I had planted it.
3 I said, "How much was there?" And he said, "\$500." And
4 I said, "I thought you were going to bring \$1000?" He said,
5 "We are a little bit short this morning," he said, "money
6 ain't rolling in as fast as we expect, so far we have only
7 got \$80,000 and everybody is after our money." He said,
8 "Give me a little time and I will take care of you, you
9 will get it all," he said, "don't worry." He asked me
10 then, he said, "There is some man on our organization who
11 is tipping everything off to Burns, I would like to get the
12 credit of finding out who the spy is." So I told him, I
13 named one of the labor leaders up in San Francisco and I
14 said, "I am under the impression he is the one that is
15 tipping the stuff off to Mr. Burns." He said, "I would like
16 to get the credit of catching that fellow," and I said,
17 "I will try and arrange it for you. I am going to San
18 Francisco next week and I know Burns has an appointment
19 with him and I will let you see them together." And with
20 that understanding we parted. I was to wire him when I
21 got to San Francisco and when this meeting was to come
22 off between this Frisco labor leader and Mr. Burns.

23 Q After you left Mr. Darrow at that time, where did you go?

24 A I went up and met Mr. Burns and came to your office.

25 Q And what occurred, so far as the money is concerned, in
26 my office?

1 MR. APPEL. We object to that on the ground it is hearsay,
2 it is incompetent, irrelevant and immaterial, calling for
3 acts and declarations and conduct of third parties not
4 in the presence of the defendant.

5 MR. ROGERS. Manufactured evidence.

6 THE COURT. Objection overruled.

7 MR. ROGERS. We except.

8 A We came down and went into a room outside of your
9 office and took the numbers of the bills and put them down
10 and marked them for further identification.

11 Q How many were present when you took the numbers of the
12 bills? A Why, some other gentleman, I don't know his
13 name; I don't know his name--Mr. Burns and myself.

14 MR. ROGERS. I object to that. If they have got anybody
15 who took the numbers of the bills when Mr. Darrow had them,
16 not when Mr. Bittinger and Mr. Burns had them, then it might
17 be competent, but to take the number of bills that this
18 witness had, and Mr. Burns, is merely manufactured testi-
19 mony and it is hearsay and incompetent.

20 THE COURT. Objection overruled.

21 MR. FREDERICKS. This is the second time counsel has
22 used that term. He can argue it when it goes to the jury.

23 MR. APPEL. That is what the law calls it, your Honor,
24 manufacturing.

25 THE COURT. The objection has been stated into the record
26 and overruled.

1 MR. APPEL. For the purpose of using it against the
2 defendant.

3 THE COURT. Mr. Appel, the objection is overruled.

4 MR. APPEL. Exception.

5 MR. FREDERICKS. Q Mr. Bittinger, did you see the man who
6 was taking down the numbers of the bills?

7 MR. APPEL. Wait a moment--we object to that on the ground
8 it is incompetent, irrelevant and immaterial, hearsay, no
9 foundation laid, calling for acts and declarations and
10 circumstances not in the presence of the defendant, not
11 binding upon the defendant.

12 MR. FREDERICKS. The purpose is simply to introduce the
13 bills.

14 THE COURT. How does this witness know that they were the
15 same bills?

16 MR. FREDERICKS. That is what I am going to prove, your
17 Honor, I am going to show he does.

18 THE COURT. You have to show that and lay a foundation.

19 MR. FREDERICKS. I cannot show it all by one witness.

20 MR. FORD. We are endeavoring to lay the foundation by
21 showing the memorandum made at that time and we are trying
22 to identify the memorandum so that the witness may refresh
23 his recollection as to the numbers from that. Remembering
24 a large number of numbers is a very difficult thing and
25 usually a memorandum is made.

26 THE COURT. You will have to avow your intention to connect
it up and show they were the same bills.

1 MR. FREDERICKS: That is our intention, your Honor. We
2 will put Mr. Burns on the stand when we get through with this
3 witness and show these are the same bills.

4 THE COURT. All right. With that avowal, the objection is
5 overruled.

6 MR. APPEL. We except.

7 MR. FREDERICKS. What is the question?

8 (Question read.)

9 A Yes, sir.

10 Q Who read the numbers off the bills?

11 MR. APPEL. Wait a moment--we object to that on the ground
12 it is calling for acts and declarations made in the absence
13 of the defendant, not binding upon the defendant, it is
14 hearsay; incompetent, irrelevant and immaterial for any
15 purposes whatsoever in this case; not tending in the
16 slightest degree to prove any fact alleged in the indictment
17 herein.

18 THE COURT. Objection overruled.

19 MR. APPEL. We except.

20 Q Do you remember the question? A Yes, sir. Why, I
21 called off some of the numbers to him and Mr. Burns called
22 off some. We would pick up a bill and call off the number
23 and serial and the number to it and put it on.

24 Q Did you observe the man as he was writing them down?

25 A Yes, sir.

26 MR. APPEL. Wait a moment.

1 THE COURT: Strike out the answer for the purpose of the
2 objection.

3 MR. APPEL. We object to that question on the ground it is
4 incompetent, irrelevant and immaterial, hearsay, calling
5 for acts and declarations and conduct of third parties
6 not in the presence of the defendant, not tending to prove
7 any element in the slightest degree of the offense charged
8 in the indictment.

9 THE COURT: Objection overruled. Restore the answer.

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1 MR FREDERICKS: What was the question and answer?

2 (Question and answer read.)

3 MR FREDERICKS: I wish to show you a memorandum which I
4 will now show to counsel for the defense. (Memorandum
5 handed to MR Rogers, who examines the same.)

6 THE COURT: Gentlemen of the jury, bear in mind your former
7 admonition. We will take a recess for 10 minutes.

8 (After recess.)

9 MR ROGERS: If your Honor please, William J. Burns, a witness
10 referred to in the testimony of this witness has sat
11 in this court room while this witness was on the stand testifying.
12 I am informed by persons who were watching that
13 signals passed between the two. Whether that is true or
14 not, I don't know, but I do know that William J. Burns was
15 in the room while this witness was on the stand.

16 THE COURT: MR Sheriff, you will see that the court's orders
17 are obeyed in that respect. I understand MR Burns is to
18 be a witness in this case; it has been so stated by the
19 District Attorney. You will inform him of the court's order
20 that all witnesses are excluded from the court, and
21 that includes him and see that the order is carried out.
22 Any question in regard to a matter of that kind will have
23 to be taken up at the time the witness is presented, if he
24 is presented.

25 MR FREDERICKS: Did you pass any signals with Mr Burns
26 while you were on the stand? A No sir, none at all,

1 even refrained from speaking to him out there in the hall
2 at all.

3 Q Now, Mr Bittinger, do you remember where you were --

4 MR ROGERS: Did I understand that statement was volunteer-
5 ed, that he refrained from speaking to him out in the hall?

6 THE COURT: It was.

7 MR ROGERS: Then, I may cross-examine upon that?

8 MR FREDERICKS: Undoubtedly.

9 THE COURT: You may cross-examine when the time comes.

10 MR FREDERICKS: No question about that.

11 (Last question read by the reporter.)

12 Q Mr Bittinger, you have stated that you saw the gen-
13 tleman write the numbers. I will ask you if you observed
14 whether he wrote the numbers correctly at the time he wrote
15 them? A yes sir.

16 Q I will now hand you a piece of paper which I have
17 exhibited to counsel.

18 MR APPEL: just a moment, your Honor. We object to the
19 witness refreshing his memory from that document for the
20 reason that it appears in evidence that this document was
21 made up from declarations made by a third party. He said
22 your Honor, that another person called the number and
23 somebody took them down; that he also called some numbers
24 and the other person took them down. Now, he hasn't
25 laid the foundation in that -- he couldn't lay the founda-
26 tion for the using of the document to refresh his memory,

1 because he could not, under the circumstances, show from
2 his own knowledge, the document is correct. I think the
3 word "correct" is used in the statute. Your Honor will see,
4 if your Honor calls a number there from a piece of paper
5 and the reporter takes it down and I call a number from
6 here and the reporter takes it down, that neither you nor
7 I could afterwards state except as to those numbers I call-
8 ed --

9 THE COURT: I have your point.

10 MR APPEL: Now, the whole --

11 THE COURT: I have your point. I will hear from the Dis-
12 trict Attorney.

13 MR FREDERICKS: Counsel is mistaken in regard to the facts.
14 I will state the facts, and then if there is any law, Mr
15 Ford will state it. The facts that the witness testified to
16 here are that he saw the man who wrote them down and that
17 he wrote the numbers down correctly, that he saw the numbers
18 that Mr Burns called off, saw the bills that he called
19 them off from, saw the numbers that he called.

20 THE COURT: Let's have the testimony read. Wait a moment.
21 Read the testimony; that is the first thing.

22 MR FREDERICKS: You will have to go back quite a ways.
23 I could probably cover it better by asking it again.

24 THE COURT: There is a difference as to recollection as
25 to that.

26 R FREDERICKS: I can cover it without taking the time.

1 THE COURT: The defendant has a right to have it reread.

2 MR APPEL: We are basing our objection upon our recollec-
3 tion of the testimony, and if we are wrong, we are wrong
4 in our objection, and the basis of our objection may be at
5 variance.

6 THE COURT: Go ahead, let's clear it up.

7 MR FREDERICKS: Calling your attention to the fact you said
8 Mr Burns read the numbers on some of the bills and you read
9 the numbers on some of the bills, I will ask you if you ob-
10 served Mr Burns -- the bills in his hand and the numbers
11 on them at the time that he called them off to the reporter-
12 or to the man who took them down, as well as the numbers
13 on the bills that you called off and had in your hand.

14 THE COURT: Don't answer that until we get an objection.

15 MR APPEL: Is this for the purpose of proving the competency
16 of the paper, your Honor? The question whether he saw
17 them or not depends on the situation of the parties. He
18 can state how they were; how they handled these bills, of
19 course, subject to the objection that it is hearsay.

20 MR FREDERICKS: If a man says he saw anything, he saw it.

21 THE COURT: Your objection here is it is leading?

22 MR APPEL: Yes sir.

23 THE COURT: Objection sustained.

24 MR FREDERICKS: State whether or not you saw the numbers
25 on all the bills that were called off both by you and Mr
26 Burns? A Yes sir.

1 Q State whether or not at the same time you saw the
2 numbers written by the man who wrote them down? A Yes
3 sir.

4 Q State whether or not he wrote down correctly the
5 numbers that you saw on the bills? A Yes sir.

6 Q I now ask you to refer to the document which I have
7 just handed you and ask you if you can identify these
8 bills?

9 MR APPEL: Wait a moment; we have a right to cross-examine
10 him.

11 THE COURT: You wish to examine him on the voir dire? Go
12 ahead.

13 MR APPEL: Let's have that document. You know, Mr Bittinger
14 how many bills you called off?

15 MR FORD: That is objected to upon the ground it is not
16 cross-examination, as to this document which is the only
17 thing they are entitled to cross-examine on at the present
18 time.

19 THE COURT: Objection overruled.

20 A No, I don't remember.

21 MR APPEL: And you know how many bills Mr Burns called
22 off? A No sir, I do not.

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11s 1 Q Now, how far were you from Mr. Burns when Mr. Burns called
2 off the bills? A I don't know; we were all in a radius
3 of 3 or 4 feet, just sitting around a small table there.

4 Q Did you, while he was calling the bills, did you have
5 a bill in your hand, for instance? A He would pick up
6 one bill and call it off and I would look at it. I would
7 pick up the next--the money was laying on the table there.

8 Q I know, they were called very rapidly one after the
9 other? A Oh, no.

10 Q Slowly? A We were quite a while at it.

11 Q You were overlooking the bill that he was calling off?

12 A I wasn't overlooking anything.

13 Q Were you looking at the bill that he called off? A Yes,
14 sir.

15 Q Well, why that precaution, can you tell us? A Why, that
16 was Mr. Burns idea and suggestion.

17 Q He told you to look over to see that he got them right?

18 A Oh, no.

19 MR. FREDERICKS. State whether the document that you now
20 have was the one prepared by the man under your observation
21 that you have been talking about? A Yes.

22 Q By the way, you say you don't remember that man's name.

23 Do you think you would know it if I mentioned it? A I
24 don't think I would; I didn't pay any attention to it
25 at the time.

26 MR. ROGERS. Who was it, Captain?

1 MR. FREDERICKS. Mr. Veetch.

2 MR. ROGERS. Of your office?

3 A I haven't seen him in 14 or 15 months, but if you
4 bring him in I will pick him out.

5 MR. ROGERS. An old man?

6 MR. FREDERICKS. The old man. Q Now, Mr. Bittinger, I
7 hand you appears to be a hundred dollar bill and ask you
8 whether or not that is one of the bills that were counted
9 out at the time and place that you have mentioned and
10 turned over as you say to the District Attorney? A Yes,
11 sir.

12 Q I hand you another bill which purports to be a hundred
13 dollar bill and ask you the same question. The first bill,
14 in order that the record may show it, is P 9502, \$100?

15 A Yes, sir.

16 Q The second bill is P 4287, \$100. I now hand you what
17 purports to be a \$20 bill and ask you the same question
18 in regard to it? A Yes, sir.

19 Q I now hand you what purports to be another \$20 bill.
20 The bill which the witness just answered is about S 6167.

21 A yes, sir.

22 Q The bill about which the witness has just answered is
23 5493. It has another number on it too? A We didn't
24 put that number.

25 Q \$20. I hand you another bill which purports to be a
26 \$20 bill and ask you ^{the} same question in regard to that.

1 A Yes, sir .

2 Q The bill which the witness has just answered about is
3 P 8377 . I now hand you another \$20 bill and ask you the
4 same question? A Yes, sir .

5 Q The bill is numbered 5224 . I now hand you another \$20
6 bill and ask you the same question . A Yes, sir .

7 Q 1974 . I now hand you another \$20 bill and ask you the
8 same question . A Yes, sir .

9 Q That number is P 8857 . I now hand you another \$20
10 bill and ask you the same question . A Yes, sir .

11 Q The number is 5736 . I now hand you another \$20 bill
12 and ask you the same question . A Yes, sir .

13 Q The number is M 9172 . I now hand you another \$20 bill
14 and ask you the same question . A Yes, sir .

15 Q The number is M 4424 . I now hand you another \$20 bill
16 and ask you the same question . A Yes, sir .

17 Q The number is P 4341 . I now hand you another \$20
18 bill and ask you the same question . A Yes, sir .

19 Q The number is E 6427 . I now hand you another \$20 bill
20 and ask you the same question . A Yes, sir .

21 Q The number is P 9141 . I now hand you another \$20 bill
22 and ask you the same question . A Yes, sir .

23 Q The number is 1946 . I now hand you another \$20 bill
24 and ask you the same question . A yes, sir .

25 Q The number is W 649 . I now hand you another \$20 bill
26 and ask you the same question . A Yes, sir .

1 Q The number is P 9935. We now offer these bills, pur-
2 porting to be \$100 to be marked for identification as peoples
3 exhibit, whatever the number is.

4 THE COURT. Purporting to be what did you say?

5 MR. FREDERICKS. Purporting to be \$500.

6 MR. APPEL. We object upon the ground it is incompetent,
7 irrelevant and immaterial and no foundation laid.

8 THE COURT. Objection overruled.

9 MR. APPEL. Exception.

10 THE COURT. The exhibit will be placed in an envelope
11 as one other exhibit of currency, I believe, and sealed
12 up and put in the vaults of the clerk for safe keeping and
13 may be available on a few minutes notice any time it is
14 called for. Need not remain in the court room.

15 MR. FREDERICKS. Q I now ask you, Mr. Bittinger, I may
16 have asked this before, but my memory is not clear:

17 Who produced those bills there when the three of you
18 were present and they were counted out and numbered off?

19 MR. APPEL. We object upon the ground that it is hearsay,
20 calls for the acts and declarations of third parties not
21 in the presence of the defendant, not binding on him, it
22 is incompetent, irrelevant and immaterial to any issue
23 in this case, collateral to any issue in this case, and
24 not tending in the slightest degree to prove any element
25 of the offense charged in the indictment.

26 THE COURT. Objection overruled.

1 MR. APPEL. Exception.

2 A Read the question.

3 (Last question read by the reporter.)

4 A Mr. Burns .

5 MR. FREDERICKS. Q Mr. W. J. Burns? A yes, sir .

6 Q How long was that after you had, as you testified, given
7 Mr. Burns the roll of bills down in the Alexandria Hotel?

8 MR. APPEL. The same objection, upon the same ground
9 stated .

10 THE COURT. Objection overruled.

11 MR. APPEL. Exception.

12 A Probably 15 or 20 minutes, as quick as we could get
13 to your office.

14 MR. FREDERICKS. Q How long after you gave the money to
15 Mr. Burns were you in conversation with Mr. Darrow?

16 MR APPEL. The same objection on the same ground.

17 THE COURT. Overruled.

18 MR. ROGERS. I don't think that question is quite clear.
19 Read it.

20 (Last question read by the reporter.)

21 MR. ROGERS. I don't think he said he was in conversation
22 with Mr. Darrow after he gave the money to Mr. Burns.

23 MR. FREDERICKS Oh, yes. A Why, within 3 or 4 minutes,
24 just as quick as the elevator could go upstairs and back to
25 the parlor floor.

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1 MR FREDERICKS: The witness didn't quite get my question,
2 but that answers another question that I would have asked.
3 Now, I ask again the one -- you say it was three or four
4 minutes after you gave the money to Mr Burns before you saw
5 Mr Darrow. Now, how long was it that you talked to Mr Dar-
6 row; that is, approximately.

7 MR ROGERS: The same objection.

8 THE COURT: Overruled.

9 MR ROGERS: Exeeption.

10 A Why, we talked there five to ten minutes.

11 MR FREDERICKS: And then, state whether or not you -- where
12 you met Mr Burns again that morning and when.

13 MR ROGERS: The same objection; incompetent, irrelevant
14 and immaterial, and hearsay.

15 THE COURT: Overruled.

16 A Why, after I -- Mr Darrow went downstairs, I got on
17 another elevator and went upstairs and met Mr Burns and
18 went to your office.

19 MR FREDERICKS: All right. State whether or not you saw Mr
20 Darrow again and when you saw him the next time, if at
21 all. A The next time I saw him was in the Palace hotel
22 in San Francisco, on -- I am not positive about the date;
23 about the 21st of August; somewhere along there.

24 Q Did you have any conversation with him at that time
25 and place? A Yes sir.

26 Q Who was present? A Mr Darrow.

1 Q Anyone else? A That is all, and myself.

2 Q What was the conversation?

3 MR APPEL: Wait a moment. We object upon the ground it is
4 incompetent, irrelevant and immaterial, collateral to any
5 issue in this case and no foundation laid; too remote in
6 point of time; calling for acts and declarations of other
7 parties long prior to the alleged commission of the of-
8 fense and not connected therewith, being collateral to any
9 issue in this case.

10 THE COURT: Overruled.

11 MR APPEL: We except.

12 A I met him in the bar of the Palace Hotel and I told him
13 that I thought Mr Burns and Clancey, one of the executive
14 officers of the Iron Workers Union, was going to meet
15 that afternoon, and I would try and arrange for him to see
16 it. I also asked him at that time if he had Schmitty
17 planted. He said, yes, and I asked him if he knew where
18 Schmitty was. He said, well, some of our boys have got
19 him put away. He said, why do you ask me that? I said,
20 I am under the impression Mr Burns is going to bring him in
21 when the trial starts. He knows where Schmitty is at
22 now. He said, that is what I have been afraid of all
23 along. He said, if you can get any inkling where Burns
24 suspicions that Schmitty is, I wish you would let me know
25 as soon as possible, so we can get him out of the way.
26 That afternoon I learned that-we had some men shadowing

1 Clancey --

2 MR APPEL: Wait a moment.

3 MR ROGERS: That is a conclusion.

4 THE COURT: Strike it out, the last part, as a conclusion
5 of the witness.

6 MR FREDERICKS: Do you remember anything more that was
7 said and done at the Palace Hotel between you and Mr Darrow?

8 A Yes.

9 MR APPEL: just a moment. The same objection.

10 THE COURT: Strike out the answer for the purpose of the
11 objection.

12 MR APPEL: We object upon the ground it is incompetent,
13 irrelevant and immaterial, and no foundation laid, collat-
14 eral to any issue in this case, hearsay, not tending in
15 the slightest degree to prove any element of the offense
16 charged in the indictment.

17 THE COURT: Overruled.

18 MR APPEL: Exception.

19 THE COURT: Restore the answer.

20 A Yes, he gave me \$200 there in the bar that day in
21 the Palace. Told me that was just a little starter, he
22 was going to see I got enough to buy a nice little home,
23 and went along on those lines. Asked me to be sure and tell
24 him the minute Clancey and Burns got together, as he want-
25 ed the credit of trapping Clancey. I asked him where he
26 would be. He said he intended to go out automobile riding

1 with Mr Older of the Bulletin and for me to leave word at
2 the hotel the minute they got together. That afternoon I
3 went -- I parted with him then.

4 MR FREDERICKS: Now, don't tell anything that was said
5 between you and anybody else, except when you and Mr Dar-
6 row were together. You parted with him then? A Yes sir.

7 Q And did you meet him again or have any connection with
8 him again? A Well, I received a telegram from him.

9 MR APPEL: Wait a moment. We object to the contents of
10 the telegram, as not being the best evidence.

11 THE COURT: Don't state the contents of the telegram.

12 MR FREDERICKS: I will go back.

13 Q When you left Mr Darrow in Los Angeles or when you last
14 met him in Los Angeles, state whether or not anything was
15 said about a telegram between you?

16 MR APPEL: The same objection as before.

17 THE COURT: Overruled.

18 MR APPEL: Exception.

19 A We made arrangements, that is, he asked me to notify
20 him the minute I left for Frisco, to notify him the moment
21 I thought the meeting between Burns and Clancey would take
22 place. I told him I wasn't sure just what time Mr Burns
23 would leave, but when he left I would go with him and I
24 would notify him. I so notified him.

25 Q How did you notify him and when?

26 MR ROGERS: Wait a moment. If that is the contents of a

1 written instrument --

2 THE COURT: Strike it out as a conclusion.

3 MR FREDERICKS: How did you notify him?

4 MR APPEL: Wait a moment.

5 MR FREDERICKS: How did you communicate with him in re-
6 gard to that? A I called him up on his house, the auto-
7 matic phone.

8 Q Where were you at that time? A I used one of the
9 phones at the Alexandria Hotel.

10 Q And when was it that you called him up? A I think it
11 was the 17th or 18th of August; I am not positive on that
12 date.

13 Q And what was the conversation you had with him over the
14 phone?

15 MR APPEL: Objected to upon the ground it is immaterial, ir-
16 relevant and incompetent and not relating to any matter
17 with the alleged commission of the offense contained in the
18 indictment, collateral thereto.

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13s 1 THE COURT. Objection overruled.

2 MR. APPEL. We except.

3 A I told him we was going up to Frisco that afternoon or
4 the next afternoon and while--I stopped at the St Francis;
5 while there I received a telegram from him. He told me
6 he would sign any telegram he sent me by the name of
7 Johnson.

8 Q When did he tell you that? A That was the arrangement
9 made on the 16th of August.

10 MR. FREDERICKS. Now, you say when you got to San Francisco
11 in your hotel you received a telegram? A Yes, sir.

12 MR. ROGERS. Suppose we have the original telegram in
13 Mr. Darrow's handwriting, that would be competent; not a
14 telegram merely received. Anybody can send a telegram
15 under any name.

16 MR. FREDERICKS. Well, that is the argument to be made when
17 I offer the telegram.

18 THE COURT. I have no idea what ounsel is about to offer,
19 perhaps he has that.

20 MR. FREDERICKS. I show the telegram which I am about to
21 ask the witness about--

22 MR. ROGERS. This is a telegram received. This is not a
23 telegram sent. One cannot be bound by telegrams received.
24 It is marked received at St. Francis Hotel San Francisco.
25 It would be an easy matter to go down and get the telegram
26 that is sent.

1 THE COURT' There is nothing before the court. You will
2 have to reserve your objection to the proper time. You
3 have a right now to inspect the document and make up your
4 mind.

5 MR. ROGERS. They have shown me the document.

6 MR. FREDERICKS.Q Now, ^{would} you recognize that telegram that you
7 received that you have been talking about if you were to see
8 it again?

9 MR. ROGERS. Objected to as incompetent, irrelevant and
10 immaterial and not the best evidence and no foundation laid.

11 MR. APPEL_ That is, it is immaterial whether he recognize
12 the telegram received, your Honor.

13 THE COURT. Yes, I will hear from the District Attorney
14 on that.

15 MR. FORD. If the Court please, this witness has testified
16 that Mr. Darrow told him that he would choose another name
17 and he would send the telegram under the name of Johnson.
18 Now, assuming--

19 THE COURT. If so, why wouldn't the original be the best
20 evidence?

21 MR. FORD. If the Court please, the very conversation shows
22 that there was an intent to disguise the original, not
23 only that he shows a different name and have a different
24 person write the telegram.

25 MR. APPEL. We are not bound by his declarations.

26 MR. FORD. That is true, but this witness is showing the

1 connection. Now, when he said he would receive a tele-
2 gram signed Johnson, now the witness is showing that he
3 received a telegram signed Johnson, and the fact that he
4 had told him that he would receive a telegram signed
5 Johnson is sufficient connection and sufficient foundation.
6 Now, assuming, and we must assume that the witness is speak-
7 ing the truth as to his conversation with Mr Darrow, wouldn't
8 it be reasonable to assume that if he chose the name of
9 Johnson he would choose some other method also of having
10 the telegram sent. If he had a charge account to himself
11 he would not have it charged; if he would assume a name to
12 disguise his handwriting, a man who was a lawyer, knowing
13 the chances to identify it by handwriting, even if the name
14 was assumed, would choose--would have it written by somebody
15 else, so we don't have to go into any other telegrams. All
16 we have to do is to show that this defendant told the
17 witness this, you will receive a telegram signed Johnson,
18 and if the witness did receive the telegram--

19 THE COURT. I will hear from the other side now.

20 MR. ROGERS. Your Honor please, suppose I were at San Fran-
21 cisco and I said I had made arrangements with your Honor
22 to render a certain decision, and in corroboration of my
23 statement that I had made an arrangement with your Honor
24 against the law to render a certain decision, I should pro-
25 duce a telegram signed Johnson. Would that in any wise
26 corroborate my statement that I had received a telegram

1 from you? Wouldn't you, if you were on trial for that
2 sort of thing, wouldn't it be right and proper that they
3 should produce the telegram that you sent? Not the one
4 I said I received. Anybody can have a telegram sent to
5 himself, especially a man who is in this business, it is
6 easy enough. Where is the original telegram? If it is
7 in Mr. Darrow's handwriting, if it comes from the station
8 near about where he sends his telegrams, if it was charged
9 to his account well and good. I don't care anything about
10 it, but you cannot be bound, sir, because I say that I made
11 an arrangement to render a certain decision and thereby
12 produce a telegram signed Johnson and say Judge Hutton sent
13 me that telegram. No, sir; you would want, and so would
14 every other man, want the original telegram that you sent.

15 MR. APPEL. Your Honor--

16 MR. FREDERICKS. That goes to the order--

17 MR. APPEL. I suppose what the Supreme Court said has no
18 weight with your Honor or what I may say.

19 THE COURT. Mr. Appel has the floor.

20 MR. APPEL. Now, a copy of an instrument purported to have
21 been the production of the defend_{ant} is, in the first place,
22 by the provisions of our code secondary evidence. Now,
23 secondary evidence is never admissible unless the founda-
24 tion is made for its introduction, that is, first you must
25 prove the existence of the original to have been caused by
26 the act of the defendant, that he wrote it, and directed it

1 to be written, and if the original cannot be produced under
2 those circumstances then a copy may be admissible, but
3 without any of those precautions, a mere telegram received
4 by one person is not even admissible, without the founda-
5 tion for that introduction being first laid.

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1 Not even in a civil case, much less in a criminal case.
2 Under the constitution a defendant must be confronted by
3 the witnesses against him, a copy of a paper alleged to have
4 been signed by the defendant is not the production of
5 the witness, the original is the production, what the wit-
6 ness may have a right to inspect it, may have a right to
7 meet that original evidence.

8 : You cannot substitute secondary evidence against
9 a defendant. In the case of Brownlee versus Reiner, in
10 the 147 Cal., page 647, the Supreme Court said this,
11 without reading the other facts of the case -- plaintiff's
12 offer in evidence --

13 THE COURT: I will not interrupt you any further at the
14 present moment. How are you going to get in this evidence
15 without at least accounting for the primary evidence?

16 MR FREDERICKS: That is not the point at all.

17 MR FORD: There are two pieces of primary evidence in this
18 case: one would be the telegram which was put in the re-
19 ceiving office at Los Angeles, or at the sending office
20 at Los Angeles; the other piece of primary evidence would
21 be the telegram which was delivered to the witness on the
22 stand, from the receiving office in San Francisco. Now,
23 it is true that the only connection shown between this
24 telegram received and the defendant is the testimony of
25 the witness that Mr Darrow had told him that he would re-
26 ceive a telegram signed Johnson. Now, if we could secure

1 in Los Angeles the original telegram signed by the defend-
2 ant, instead of Johnson, if we secured it in his handwrit-
3 ing instead of the handwriting of some other person, if
4 we could find it charged to his account instead of being
5 paid for in cash, the evidence would be much stronger;
6 the weight of it would be much greater than it is in the
7 present case where we have the telegram simply received by
8 the witness. The only evidence so far introduced in this
9 case concerning this telegram received by the witness is
10 the witness' own statement that Mr Darrow had told him that
11 he would receive a telegram signed Johnson. He did receive
12 a telegram signed Johnson. Now, on cross-examination, if
13 they can show that no such telegram was ever sent, if they
14 can show that this witness or some confederate of his pre-
15 pared the telegram in San Francisco, and it never went
16 through the office, it would discredit the witness; if
17 they can show that the telegram actually was sent but it
18 was not in the handwriting of the defendant or not in the
19 handwriting of anybody connected with the defendant,
20 then in that case they could thoroughly discredit the wit-
21 ness. And their argument against its relevancy and against
22 its competency is an argument really against the weight or
23 effect to be given to the evidence, and we will admit that
24 the weight is not very great; it is not greater than that
25 which the testimony of the witness could give to it by
26 the conversation which he had with Mr Darrow, that is all.

1 There is one other matter I would like to discuss before
2 I continue my argument.

3 MR APPEL: I would like to present this matter.

4 THE COURT: If necessary, Mr Appel.

5 MR APPEL: The Supreme Court says here -- the arguments
6 of counsel that were made before this court is not an
7 argument for the introduction of evidence.

8 MR FORD: That is all I care to say at this time.

9 MR APPEL: Your Honor, that is not the reason why prepared
10 evidence should be admitted in evidence. If he wants to
11 put the burden of proof upon us to show whether it is true
12 or not, we are not dealing with that subject. We will answer
13 everything when the time comes. The question is, whether
14 the burden is on them that the evidence is competent.

15 THE COURT: I agree with you on that.

16 MR APPEL. The Supreme Court says, "plaintiffs
17 offered in evidence a copy of a telegram from plaintiffs
18 to Reiner and his alleged partner, H. M. Herrin, and an
19 objection that it was secondary evidence, immaterial, etc.,
20 was sustained, and an exception taken. The ruling was cor-
21 rect. Reiner and Herrin were in court and no demand was
22 made for the production of the telegram. The authorities
23 cited by appellant are not in point. Moreover, the tele-
24 gram is in the record and we cannot see its material-
25 ity. Certainly the ruling excluding it, even if erroneous,
26 was not of importance enough to warrant a new trial."

1 And they decide that the copy of the telegram is not ma-
2 terial; it is secondary evidence.

3 THE COURT: I have already ruled your way.

4 MR FREDERICKS: Let me make one suggestion. May I make one
5 suggestion in regard to this?

6 THE COURT: Certainly.

7 MR FREDERICKS: This telegram, your Honor, rests on the
8 weight of this witness' testimony; it rests on the truth
9 of this witness' testimony. We do not maintain that it
10 rests on anything else. Counsel's argument here as to its
11 weight. Now, if it is competent for this witness to tes-
12 tify that the defendant said he would send him a telegram,
13 and certainly, it is competent for him to so testify,
14 isn't it also competent for him to testify this is the tele-
15 gram I got?

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15p 1 It rests solely and alone on his testimony. Now, of course,
2 if we could produce--counsel's argument is entirely as to
3 the weight of it--if we should introduce this telegram, and
4 we don't care so much about it, as far as that is concerned--
5 but if we should introduce this telegram it would rest
6 absolutely upon the weight of this witness's testimony.
7 We make no other claim for it and it is not a matter--
8 THE COURT. I think you will have to produce the original.
9 Objection sustained.

10 MR. FREDERICKS. Q State, Mr. Bittinger, whether or not Mr.
11 Darrow gave you any memorandum at any of the talks that
12 you had with him at the Alexandria Hotel? A Yes, sir.

13 Q And when was that, which talk? A On the 15th day of
14 August he gave me a little slip torn off from his newspaper
15 with his telephone number on it.

16 Q On the 15th day of August? A Yes, sir.

17 Q We exhibit a slip of newspaper that we intend to show
18 the witness--

19 MR. ROGERS. Is that claimed to be in Mr Darrow's hand-
20 writing?

21 A yes, sir.

22 MR. DARROW. Well, it is not.

23 MR. ROGERS. All right--show it is in his handwriting.

24 MR. FREDERICKS. All right. Q Now, this slip from a
25 newspaper which you say he gave you with his telephone
26 number on it, was that given to you?

1 MR. ROGERS. Possibly it would be well enough not to lead
2 the witness.

3 THE COURT. No, do not lead him.

4 MR. FREDERICKS. Q Do you remember where that was given
5 to you, at which hotel? A In the Alexandria here in Los
6 Angeles. I saw him write it myself. He tore it off of
7 his paper.

8 Q State whether or not you saw Mr. parrow write the figures
9 that are on there? A yes, sir.

10 Q Before he gave it to you? A Yes, sir.

11 MR. FREDERICKS. We offer in evidence, may it please the
12 Court, as People's Exhibit, whatever the number is.

13 MR. APPEL. Of course, we would like to have it--

14 THE COURT. Pass it down to Mr. Rogers.

15 MR. APPEL. Yes, sir.

16 (Document handed to Mr. Rogers.)

17 MR. APPEL. For the purpose of getting your Honor's
18 ruling as to the materiality of the instrument in question,
19 we will make the objection, we will have an adjudication
20 from this court, that the evidence is immaterial to the
21 issue now pending and we object to it on the ground it is
22 incompetent and irrelevant and immaterial for any purposes
23 whatsoever.

24 THE COURT. Objection overruled.

25 MR. APPEL. We take an exception.

26 MR. FREDERICKS. Then, I understand it is admitted.

1 THE COURT The document is admitted and will be marked
2 as an exhibit.

3 THE CLERK. 29.

4 THE COURT. No.29.

5 MR. FORD I would suggest, inasmuch as it is a small
6 piece of paper--

7 THE COURT. Anything on the back of it?

8 MR. FORD. --inasmuch as it is a small piece of paper
9 it might be pinned on the back of a large document.

10 THE CLERK. Paste it?

11 MR. ROGERS. No, let us not paste it so that we may have
12 the symmetry of the letters, I would like to have the
13 exact contour of the letters preserved.

14 THE COURT. It can be pinned to some card without inter-
15 fering with the letters, do not let the pin touch the
16 letters at all.

17 MR. FREDERICKS. State whether or not he gave you any other
18 memorandum. A Yes, sir; on the 16th day of August he
19 gave me an envelope with a telephone number on it and
20 Job Harriman's name on it.

21 MR. FREDERICKS. We wish to show the witness a memorandum
22 we have here. (Handing same to Mr. Rogers.)

23 MR. ROGERS. There is no objection to its materiality,
24 and that is the defendant's handwriting, but that it was
25 given to this witness--

26 MR. FREDERICKS. That is an argument--

1 MR. ROGERS. It is not conceded at all.

2 MR. FREDERICKS. That is an argument at another time.

3 THE COURT. The handwriting is admitted?

4 MR. ROGERS. The handwriting is admitted, yes, sir.

5 MR. FREDERICKS. Q I show you now the document, Mr.

6 Bittinger, and ask you if you cannot identify it to know what

7 it is. A Yes, sir.

8 Q It being the one I have just handed to counsel and
9 referred to? A Yes, sir.

10 Q Is that the memorandum that you have been talking about?

11 A Yes, sir.

12 MR. ROGERS. Is that the same one you showed us?

13 MR. FREDERICKS. It is the same one I showed you.

14 MR. ROGERS. All right.

15 MR. FREDERICKS. Q And the handwriting on here, did you see

16 who wrote that? A No, sir, I didn't. When I came back

17 from the top floor talking to Mr. Burns, I told him I had

18 lost the other telephone number and he had that for me

19 when I came back.

20 Q Who gave it to you? A Mr. Darrow.

21 MR. FREDERICKS. We now offer this in evidence, may it please

22 the court, as peoples Exhibit.

23 THE CLERK. No .30.

24 MR. ROGERS. Its competency is not denied, its materiality

25 and relevancy is objected to on the ground it is not

26 within the issues and collateral entirely; but that it is

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1 the defendant's handwriting and that he wrote the name, and
2 so forth, we admit.

3 THE COURT. Objection overruled. People's Exhibit 30.

4 MR. FREDERICKS. We would like to read it to the jury.

5 THE COURT. You may read it and then have it marked.

6 MR. FREDERICKS. "Home 493, Broadway. Job Harriman."

7 MR. ROGERS. No, it has another letter there. Let us
8 read it correctly.

9 MR. FREDERICKS. Oh, yes. "Home 4" and underneath the
10 4 is written "3", the two are written one over the other as
11 though one were a correction of the other, or something
12 like that. (Hands document to jury, who examine same.)
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1 MR FREDERICKS: Now, Mr Bittinger, when did Mr Darrow
2 give you that memorandum? A On the 16th day of August,
3 when I came down from giving Mr Burns the \$500.

4 Q Did you ever attempt to use those telephone numbers?

5 MR APPEL: Wait a moment. We object to that as immaterial.

6 THE COURT: Just a minute. I do not think the jury can do
7 two things at a time; they are examining an exhibit at the
8 present moment.

9 MR FREDERICKS: I see. I withdraw the question.

10 THE COURT: Gentlemen of the jury, inspect the document as
11 quickly as you can, please, and pass it up to the court
12 when you have finished with it.

13 MR FREDERICKS: I see on the other side, I don't know
14 whether I read it or not, the word "Palace". Was that on
15 there when you got it? A Yes sir.

16 MR ROGERS: That is not conceded to be in Mr Darrow's hand-
17 writing.

18 A I --

19 MR FREDERICKS: I beg your pardon. A I wrote that myself,
20 making a memorandum where I was to meet him in Frisco.

21 Q The question was: was that on the envelope at the time
22 you got it from Mr Darrow? A No sir.

23 MR ROGERS: He said so.

24 MR FORD: He corrected it.

25 A I said I made a memorandum of it.

26 MR FREDERICKS: He corrected it at once, probably didn't

1 understand it.

2 Q Now, what did you do with the \$200 Mr Darrow gave you
3 up in San Francisco? A I took it over to the First
4 National Bank Building there to Mr Burns' office and turn-
5 ed it over to him.

6 Q Could you identify those bills if you were to see them
7 again? A Yes sir.

8 Q We wish to show you a couple of bills and show them to
9 counsel first --

10 MR ROGERS: I will admit he will say those are the bills
11 that Darrow gave him, that he will say it.

12 MR FREDERICKS: All right. Hand them over.

13 MR ROGERS: But we do not concede that Darrow gave them to
14 him, remember that.

15 MR KEETCH: Of course not.

16 MR FREDERICKS: I show you two \$100-bills, Mr Bittinger,
17 and ask you whether or not those are the bills that Mr Dar-
18 row gave you? A Well, I remember very distinctly one of
19 them was on the Biddeford, Maine, Bank, this here one.

20 Q It has been admitted that -- well, state whether or not
21 those are the bills? A Those are the bills, yes sir.

22 MR FREDERICKS: We offer them in evidence as people's
23 exhibit.

24 THE CLERK: 31.

25 MR FREDERICKS: 31.

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

1 tent, irrelevant and immaterial for any purposes what-
2 soever, collateral to any issue in this case.

3 THE COURT: Objection overruled. Mark the two bills --
4 put the bills in an envelope and seal them up as the other
5 bills have been dealt with.

6 MR FREDERICKS: Now, give the conversation that occurred
7 between you and MR Darrow at the time that he gave you
8 these two bills?

9 MR APPEL: We make the objection that it is incompetent,
10 irrelevant and immaterial for any purpose; no foundation
11 laid, collateral to any issue in this case, not tending
12 to prove any element of the offense charged in the indict-
13 ment.

14 THE COURT: Objection overruled.

15 MR FREDERICKS: I would like to add -- it won't change
16 the matter, -- the entire conversation at that meeting.

17 MR APPEL: Exception.

18 A Why, we just talked about trapping Clancey and Mr
19 Burns together.

20 MR ROGERS: The witness was not asked what they talked
21 about; he was asked to give the conversation.

22 THE COURT: Yes, state the conversation.

23 A He asked me --

24 MR ROGERS: I move to strike out what he said.

25 THE COURT: Strike it out.

26 A He asked me if I thought Clancey and Burns would meet

1 that afternoon and I said, "Yes." He said he had an
2 appointment to go out automobile riding with Mr Older and
3 he would leave word at the hotel the minute I called up
4 where he would be at so that I could get in touch with him.
5 I told him I was going up to Portland, Oregon, and from
6 there to Seattle and Seattle back to Chicago, and as soon
7 as I got back to Chicago I would know just when I was
8 to take the evidence out here to Los Angeles and made
9 arrangements to wire him on what train, and everything else
10 I was to leave on.

11 MR ROGERS: I move to strike out the statement "made ar-
12 rangements".

13 THE COURT: Strike it out.

14 MR ROGERS: He asked for the conversation. A I told him
15 I would wire him what train, if any, I would leave on.

16 MR FREDERICKS: I am not sure, but what counsel is misled
17 by the answer, and maybe I am. May I have the answer
18 read?

19 THE COURT: Yes, you may have it read.

20 (Last answer read.)

21 MR ROGERS: That was stricken out.

22 MR FREDERICKS: I understand. I thought he used the word
23 "arrangements" in a different sense. Finish the rest of
24 the answer so that the witness can begin where he left off.

25 (Last answer read.)

26 A I also told him that just as soon as Clancey and

1 Burns met that I would phone him so that he could see the
2 meeting. He asked me where I thought the meeting would
3 take place, and I told him I thought the meeting would take
4 place in Mr Older's office. He said he could hardly be-
5 lieve that, that Older was a very great friend of his,
6 that he didn't think Older would arrange a meeting be-
7 tween Burns and Clancey. I said, "The chances are that
8 has been going on for a long time with Mr Older's knowledge."
9 I then told him as soon as I saw -- knew, that the appointment
10 was coming off I would invite him. That afternoon I left
11 a note at the hotel for him, stating --

12 MR APPEL: We object to that on the ground it is not the
13 best evidence.

14 THE COURT: Don't say what the note contained.

15 Q Yes. Well, what was this conversation? What, if any-
16 thing, was said in regard to the money? A Why, he told
17 me he would pay me well for every bit of evidence I could
18 get that would help him out on the case; he had to win this
19 case, for me to assist him if I could, and I wouldn't lose
20 anything by it. He used to tell me that every time I would
21 meet him.

22 Q What do you mean by "evidence"?

23 MR ROGERS: Now, --

24 MR APPEL: Wait a moment, your Honor.

25 MR ROGERS: Let us have the conversation.

26 MR APPEL: We object to any statement of what "evidence"

1 meant.

2 THE COURT: Objection sustained.

3 MR FREDERICKS: Well, what was said about that, whether
4 it was the evidence for the people, or the evidence for
5 the defense that you were to get him.

6 MR ROGERS: That is objected to as leading and sugges-
7 tive. Let him say what was said. Of course, now he
8 knows what to say.

9 THE COURT: Yes, objection sustained.

10 MR ROGERS: He ought not to be led that way.

11 A Well, I told him we had 40 or 50 or 60 hotel regis-
12 ters with the McNamara and McManigal names down in the
13 handwriting of J.B.Brice, that is, J. B. Brice, in the hand-
14 writing of McNamara, told him we had one hotel we had a
15 register taken at the club, the Country Club outside of
16 Indianapolis where all the officials of the Structural
17 Iron Workers Union, different labor officials used to go
18 for their chicken dinners, and J. J. McNamara had signed
19 his brother's name as J. B. Brice in that party, and he
20 said, "That is very damaging; can you get hold of that?"
21 and I said, "Yes, I think I can."

22 MR ROGERS: He said that already, once.

23 MR FREDERICKS: Yes. At what conversation was that?

24 A That was here in Los Angeles.

25 Q Yes. I was only asking you in regard to conversations
26 in San Francisco.

1 A The conversation up there I told you all that took
2 place there.

3 THE COURT: What is that answer?

4 A I told all that took place already at Frisco.

5 THE COURT: Oh, all right.

6 MR FREDERICKS: And the conversation you were giving me
7 about the registers occurred in Los Angeles? A Yes sir.

8 Q Now, tell me all of the conversation that you had
9 with him in regard to getting these registers.

10 MR ROGERS: We object to that as already gone into. He
11 has been asked to give all the conversations in Los Angeles
12 on all different occasions, and we think it is merely an
13 iteration and reiteration.

14 THE COURT: Yes, I think that is true. If he has not given
15 it all, he can give the rest of it.

16 MR FREDERICKS: Well, that is in a measure true. The
17 witness got into another conversation, mistaking my ques-
18 tion, and I thought I would make it clear to the jury as
19 to what time he was talking about. However, I will with-
20 draw the question for the present time.

21 Q Now, did you ever tell him anything about any state-
22 ment that J. J. McNamara had made to you while you were
23 bringing him out from Indianapolis to Los Angeles?

24 MR APPEL: Wait a moment. We object to that, if your Honor
25 pleases, because that matter has been gone into --

26 MR FREDERICKS: Not that part of it.

1 MR APPEL: -- the witness has testified in reference to
2 that subject over and over, over our objection, your Honor,
3 and we now object on that ground, and we object on the
4 further ground that it is incompetent, irrelevant and imma-
5 terial for any purposes whatsoever, it is hearsay, no
6 foundation laid.

7 MR FORD: If the court please, the witness --

8 MR APPEL: Now, let us finish.

9 MR FORD: I didn't you -- you were sitting down in your
10 chair --

11 MR APPEL: I insist on being permitted to finish.

12 THE COURT: Go right ahead and finish.

13 MR APPEL: Upon the further ground, if your Honor pleases,
14 no foundation is laid, it is concerning a matter not involved
15 in this case in the least degree; it has nothing to do with
16 it; it is collateral to any issue, and I wish your Honor
17 would be kind enough to allow us to cite to your Honor
18 the authorities to the effect, so decided by the Supreme
19 Court, that it is not everything that a man tells another,
20 a defendant, that is admissible in evidence. A great
21 deal might be told to a defendant, and what is said to him
22 is not admissible in evidence.

23 THE COURT: But this question, as I understand it, is
24 whether or not this witness talked to Mr Darrow about it.

25 MR APPEL: No, told him something, your Honor.

26 MR ROGERS: That McNamara told him something.

1 MR APPEL: Now, the Supreme Court in this state has held,
2 your Honor, that matters of that kind cannot be given in
3 evidence against the defendant. Now, we have not been
4 making these objections here upon that line, and if your
5 Honor will look at the most recent decisions upon that sub-
6 ject, your Honor will see that what this man told Darrow
7 and what J. J. ⁱⁱⁱMcNamara told him that he reported to Mr
8 Darrow, that is calling for that, as I understand it, is
9 immaterial; what J. J. ⁱⁱⁱMcNamara told him is immaterial,
10 it does not affect this defendant in the least; it is hear-
11 say, and what he said to Mr Darrow is hearsay. How can I
12 make evidence against a man by telling him all sorts of
13 things? I said to him, "Mr J. J. McNamara told me this,
14 told me that and told me this, I heard this from so and so.
15 How can that, your Honor, make evidence against Mr Darrow,
16 long before the alleged commission of the offense, when
17 it has not been shown here that at that time -- and the
18 presumption is in favor of the defendant -- that there
19 was at that time not even the slightest or remotest inten-
20 tion on the part of Mr Darrow or on the part of anyone to
21 commit the offense here charged in the indictment? So
22 remote you might as well go back to the days when Mr Dar-
23 row was a small boy and tell him lots of things. How is
24 that admissible? It is true, your Honor, that after the
25 alleged commission of the offense, and the defendant charged
26 with it, that your Honor can allow evidence of what was

1 said to him for the purpose of extracting some act on his
2 part, for the purpose of showing some conduct on his part,
3 in approval of what he said to him, or assenting to what he
4 said to him, or in some way connecting him with a prior
5 knowledge of the offense, but how in the world, your Honor,
6 before the commission of the offense, what he said to Mr
7 Darrow can afterwards, throw any light upon what was done
8 several months afterwards, is absolutely beyond any compre-
9 hension at all.

10 THE COURT: I think it is competent. Objection overruled.

11 MR APPEL: We take an exception.

12 MR ROGERS: Does your Honor recognize the fact that J. J.
13 McNamara was not even on trial?

14 MR FORD: Read the question.

15 MR FREDERICKS: J. J. McNamara had been arrested and was
16 being brought out here for trial.

17 MR ROGERS: Your Honor's original statement, even in its
18 broadest sense, was in relation to the case of J. B.
19 McNamara.

20 MR FORD: J. J. was a co-defendant of J. B. McNamara, is
21 charged on the same indictment, as appears from the indict-
22 ment introduced as evidence in this case, J. J., J. B.,
23 Dave Caplan and Schmidt were all joint defendants in that
24 case charged with being accomplices, and under the rule the
25 acts or declarations of those accomplices would have been
26 admissible in furtherance of that conspiracy.

1 MR ROGERS: After it had been accomplished?

2 THE COURT: I think the rule is correct. You may proceed.

3 MR ROGERS: Exception.

4 (Last question read.)

5 A Yes sir.

6 MR FREDERICKS: That is, you told him, referring to Mr Dar-
7 row? A I told Mr Darrow what J. J. McNamara said to me,
8 that is what you mean, is it?

9 MR FREDERICKS: Yes, that is the idea? A yes sir.

10 Q And where was that conversation with Mr Darrow, the
11 conversation with Mr Darrow in which you told him what J. J.
12 had said to you?

13 MR ROGERS: That is objected to as leading and suggestive.
14 He has been asked if he had any conversation with Mr Dar-
15 row, if so, where and to relate it fully, and now we are
16 backing up and getting suggestive and leading statements
17 from the witness, which ought not to be.

18 THE COURT: Read that question.

19 MR FORD: Where was that conversation? There is nothing
20 leading about that.

21 THE COURT: Read the question. After I tell you to read
22 the question, Mr Reporter, you proceed to read it, and if
23 counsel make any statements after that, they will not be
24 taken down.

25 (Last question read.)

26 THE COURT: Objection overruled.

1 MR ROGERS: Exception.

2 A That was in the Alexandria Hotel here in Los
3 Angeles.

4 MR FREDERICKS: And what was said in regard to that by
5 either one of you?

6 MR ROGERS: We object to that as irrelevant, incompetent
7 and immaterial, already gone into, collateral, not having
8 any relevancy to the issue, nor even within the ruling of
9 the court previously made.

10 THE COURT: Objection overruled.

11 MR ROGERS: Exception.

12 A I told him that J. J. said they had had a hard time
13 trying to unionize Los Angeles, that it was composed of
14 a lot of finks and the whole lower part of California
15 ought to be blown out into the Pacific ocean; there was
16 a lot of finks in here." He said, "Did you make an af-
17 fidavit to that effect?" I said, "No." He said, "Don't
18 do it", or "Don't do the boys any harm."

19 Q What, if anything, did he say to you in regard to your
20 testimony in the case of the people versus McNamara?

21 MR ROGERS: We object to that as leading and suggestive.
22 He tried three times to have him say all the conversation
23 as asked for, and now he is suggesting subjects in order
24 to get this witness, who is a policeman, and therefore to
25 a certain extent, experienced as a witness to testify to
26 things that he wants.

1 THE COURT: Objection overruled.

2 MR ROGERS: Exception. Leading and suggestive.

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1 A Why, he asked me to be as easy with the boys as I could,
2 that they were all right, that they were fighting their
3 fight in their own way. I told him I hated to do anything
4 for J. B. McNamara. My statement to him was he was the
5 dirtiest cur that ever lived. He gave these men absolutely
6 no chance. He said, "These boys have killed thousands
7 of people, they are fighting their fight in their own way;
8 that is the way they fight their battles." I said, "Well,
9 they take a cruel way to do it." I said I wouldn't mind
10 assisting J. J., I thought J. J. had some principle, but
11 I regarded J. B. as a rat of the first water; I wouldn't
12 do anything for him. He said, "Well, you want to forget
13 that."

14 MR. ROGERS. I move to strike out the conversation as in-
15 competent, irrelevant and immaterial and not within the
16 issues; hearsay and no foundation laid.

17 THE COURT. Motion to strike is denied.

18 MR. ROGERS. Exception.

19 MR. FREDERICKS. Q Anything further that was said in
20 regard to your testimony, the testimony that you should
21 give in the trial? A Only that I be as easy with the
22 boys as I could. He would take care of me. I asked him
23 if I got in trouble through it what he would do. He said
24 he would defend me and take care of me, that is about all
25 that I can think of that took place.

26 Q How were the registers that he told you to get possession

1 of and turn over to him in the manner that you have
2 indicated, what were they registers of?

3 MR ROGERS. That is objected to as putting words in the
4 witness's mouth; incompetent, irrelevant and immaterial.
5 He has not said that he was to get possession of them and
6 turn them over to Darrow; suggestive and leading, already
7 gone into, and calling for a conclusion or opinion.

8 THE COURT. Objection sustained.

9 MR. FREDERICKS. I withdraw that. Q What did Mr. Darrow
10 tell you to do in regard to those registers that were
11 evidence for the People in the case of the People vs
12 McNamara?

13 MR. ROGERS. Objected to as already gone into.

14 THE COURT. Overruled.

15 MR. ROGERS. Exception. Incompetent, irrelevant and
16 immaterial. A Why, he told me he would have a couple
17 of his boys get on the train with me that night and hit
18 me over the head and made it look natural, and get them
19 away from me.

20 MR. ROGERS. Your Honor, that is a reiteration, it has
21 already been gone into.

22 MR. FORD. I think your Honor sustained the objection to the
23 preceding question on the ground it had been gone into. I
24 recollect it was in. Now, it will probably bring it to the
25 court's attention and make the preceding question proper
26 to ask.

1 MR. ROGERS. The Supreme Court has criticised, in criminal
 2 cases, iteration and reiteration of testimony, simply for
 3 the purpose of emphasizing it and bringing it out, and that
 4 is all that is done for, and the answer so shows, and I
 5 take an exception to it.

6 MR. FREDERICKS. I wish to ask the previous question which
 7 I did, what were those hotel--

8 THE COURT. Now, exception has been noted. Just a moment--
 9 I want to say to you gentlemen at the bar, in a long
 10 trial of this kind, I shall not require you to stand every
 11 time you make an objection, but when you do not rise you
 12 take chances of getting a ruling before stating them.
 13 It is not intentional, and I think it would be a hardship
 14 in so long a case, to require you to rise every time,
 15 and I do not require it, but you will have to make your
 16 statement of the objection so I can catch it. I will do
 17 the best I can. If it happens that way don't complain, it
 18 will not be my fault.

19 MR. ROGERS. I always do rise, and I will hereafter.

20 THE COURT. I call your attention to that matter so as
 21 to get a good record, proceed.

22 A Why, those hotel registers were registers of different
 23 hotels that ^{they} had traced McNamara and McManigal from one
 24 city to another, after different explosions.

25 MR. ROGERS. I move to strike out that answer as not the
 26 best evidence, incompetent, irrelevant and immaterial and

1 no foundation laid, a conclusion or opinion.

2 THE COURT. Objection overruled.

3 MR. ROGERS. Exception.

4 THE COURT. The motion to strike is denied.

5 MR. FREDERICKS. Did he ever ask you anything about the
6 evidence in the McNamara case that was kept, as to where it
7 was kept or anything of that kind, if so when.

8 MR. ROGERS. Objected to as already asked and answered;
9 incompetent, irrelevant and immaterial, leading and
10 suggestive, and nothing but an attempt to emphasize pre-
11 ceding answers, incompetent and not within the issues.

12 THE COURT. Overruled.

13 MR. ROGERS. Exception.

14 A Yes sir.

15 MR. FREDERICKS. Q What was it? A Why, I told him a
16 great deal was in the safety deposit vault of the First
17 National Bank in Chicago, and some of it in his vault in
18 his office in Chicago.

19 Q You have said what you said, the question was what did he
20 say about where it was, if anything? What did he ask
21 you about it? A He asked me where it was, and I told him
22 just what I told you where it was.

23 Q Where was that conversation? A Here in Los Angeles, the
24 Alexandria Hotel.

25 MR. ROGERS. I call your Honor's attention again to the
26 leading character and I take exception to the leading

1 character of the interrogation. He asked him what was
2 the testimony, give it all in full. Now he is picking
3 out matters and asking what did you say about this, that
4 and the other thing. That is not the proper method
5 of examining a witness, and I take exception to it.

A2s 6 MR. FREDERICKS. Q Did you ever have any other conversation
7 with the defend ant in San Francisco than the one you have
8 narrated? A No, sir.

9 Q Do you know who this man Cavanaugh is that you were in-
10 structed to communicate with Mr. parrow through?

11 MR. ROGERS. Objected to as incompetent, irrelevant and
12 immaterial, calling for a conclusion or opinion and no
13 foundation laid.

14 THECOURT. Overruled.

15 MR. ROGERS. Exception.

16 A Why, I heard there was another party.

17 MR. FREDERICKS. Q I ask you do you know who this man
18 Cavanaugh is, who he is, what his business is? A Yes,
19 sir.

20 Q What is it?

21 MR. ROGERS. He said he has heard through another party.
22 Of course, he is ready to testify he knows. He said
23 just a moment before that he heard. We will stipulate
24 that Cavanaugh--there is a Cavanaugh down there that is
25 a Lieutenant of Police of Venice.

26 MR. FREDERICKS. That is all we want.

1 MR. ROGERS. If that is the man you mean.

2 MR. FREDERICKS' That is the man we mean.

3 MR. ROGERS. Don't waste any time on that.

4 MR. FREDERICKS. All right. Cross-examine.

5 MR. ROGERS. Your Honor, I ask to send the jury out for
6 a moment and then remain on the bench.

7 THE COURT. Yes, I will take an adjournment so far as the
8 jury is concerned until 10 o'clock in the morning.

9 (Jury admonished. Recess until 10 A.M. June 28, 1912.)

10 -----

11
12 THE COURT. The court does not adjourn at this time,
13 the jury is excused.

14 MR. ROGERS. I ask that the witness be ordered to remain.

15 MR. FREDERICKS. I don't think the court can order a
16 witness--

17 A I will stay;, I want to stay and answer any questions
18 that he has got.

19 MR. FREDERICKS' Now, let us be careful here, your Honor,
20 we don't want to get into some error. The jury is gone,
21 we cannot take any testimony, there cannot be any proceedings
22 in this case other than argument on questions of law.

23 THE COURT. There will be no proceedings taken in this case
24 other than arguments on propositions of law. I understand
25 Mr. Rogers desires to make some statement to the court.

26 MR. FREDERICKS. Then I don't think that is proper, your

1 Honor . We are going to get into deep water with this
2 record .

3 THE COURT . I can't tell what is going to be made .

4 MR . FREDERICKS . This is being taken down here, being a
5 record made of this . Now the jury is out, there is no
6 legal question pending before the court, and if it is
7 to be an argument on some law or some point, then that
8 should be stated to begin with, and the court should not
9 permit anything else .

10 THE COURT . I will inquire of Mr . Rogers : Mr . Rogers , do
11 you desire your statement to be part of the record in this
12 case ?

13 MR . ROGERS . No, sir .

14 THE COURT . You care to have the reporter here ?

15 MR . ROGERS . Yes, sir .

16 THE COURT . You wish it taken down but outside of the
17 record of this case ?

18 MR . ROGERS . yes, sir .

19 MR . FREDERICKS . Then we have nothing to do with it, we
20 will retire .

21 MR . ROGERS . I think the District Attorney better stay .

22 MR . FREDERICKS . I don't care to stay, I don't know what
23 is going on, I have business elsewhere .

24 MR . ROGERS . I think the District Attorney will have busi-
25 ness here in a moment or two . I request that he remain .

26 MR . FREDERICKS . Oh, that is different . I will stay on a

1 request.

2 THE COURT* Now, what is your statement?

3 MR. ROGERS. If your Honor please, on this morning in the
4 corridor of this court house, and in the room which your
5 Honor permits to be used at your Honor's good nature and
6 courtes y by the reporters attending upon this trial,
7 William J. Burns and this witness stood together, and among
8 other things this witness and William J. Burns called me a
9 name, which the presence of the ladies forbids. I was
10 not present and there was nothing but discussion
11 concerning me came up. I told your Honor today noon what
12 that name was, and I told your Honor that in the presence
13 of this court and while I was an officer of this court and
14 conducting myself in accordance with my duty and required
15 to be here by my duty, that no living human being was going
16 to call me that name. Now, I asked the bailiff of this
17 Court, Mr. Augerre, and during recess I stepped outside, I
18 met Mr. Burns and this man here, and folding my arms and
19 saying, "I am unarmed", which I was at the time, I said,
20 "Did you call me a son-of-a-bitch?" He says, "I have
21 nothing to say to you," and four times did I repeat that,
22 desiring to have information upon the subject. I am an
23 officer of this court and Mr. Burns is under subpoena and
24 this witness is under subpoena too, and is his body guard,
25 and both of them carry 44 weapons and Mr. Burns had a sword
26 cane. I was unarmed, and folded my arms that there might

1 be no question about it. Now, if your Honor cannot
2 protect me under those circumstances, in the departments
3 of this court, set apart for the use of this court and
4 those connected with it, I want to know it, in order that
5 I may protect myself.

6 THE COURT. Mr. Rogers, do you say this witness has come
7 upon the witness stand armed?

8 MR. ROGERS. He was armed night before last with a 44
9 caliber revolver and he may have taken it off now.

10 THE WITNESS. I always carry a couple of them.

11 MR. ROGERS. Have you got them now?

12 THE WITNESS. I will answer if the court asks me. I wont
13 answer you.

14 THE COURT. I will inquire of you if you have come on the
15 witness stand with a revolver on your person?

16 THE WITNESS. No, sir.

17 MR. ROGERS. Did you have a revolver out there this
18 afternoon?

19 THE WITNESS. I will answer if the court asks me, I will
20 answer it. I don't care anything about you.

21 MR. ROGERS. Maybe you will sometime.

22 THE WITNESS. Not at all.

23 MR. FREDERICKS. This seems to be a personal matter--

24 MR. ROGERS. It is not a personal matter for an officer of
25 this court to have that kind of a thing happen. I wont
26 have it.

1 MR. FREDERICKS. Fight it out, then.

2 MR. ROGERS. It would--

3 THE WITNESS. I am down to the Hayward Hotel.

4 MR. FREDERICKS. Simply a personal matter.

5 THE COURT. I assume, of course, that no witness will come
6 into this court room with any gun or article of self defense
7 on his person, either a revolver or anything else, and the
8 court will take very prompt action if anything of the
9 kind occurs.

10 THE WITNESS. When I heard your order I left my guns out
11 side.

12 MR. ROGERS. He has got his gun right outside.

13 THE WITNESS. Certainly I have, and I intend to carry them
14 and you couldn't stop me.

15 THE COURT. An act of the kind which you have suggested,
16 Mr. Rogers, if it constitutes a contempt of court it is
17 an action taking place outside of the presence of the
18 court, but there is a proper way to reach it and I assure
19 you, Mr. Rogers, that the power of this court will be exerted
20 at all times in every proper way to the full extent of
21 the authority vested here to protect you and all other
22 officers of this court while in the performance of their
23 duty, but at the present time, under the present statements,
24 there is nothing that the court can take action on. If
25 you desire to present the matter in the form of an affidavit
26 and the affidavit is sufficient, the court will issue a

1 citation, but the act, if it constitutes a contempt
2 of court, did not take place in the presence of the court.
3 This witness is here without any arms, and I shall be
4 astounded if the fact appears that he did have any arms
5 on him.

6 THE WITNESS. Your Honor, I ask that your bailiff or anybody
7 search me.

8 THE COURT. The Court is not questioning your statement,
9 Mr. Bittinger. You have said you have no arms on you and the
10 court believes you.

11 THE WITNESS. Thank you.

12 MR. ROGERS. I ask your Honor to ask him if his arms were
13 not left just outside the court room.

14 THE WITNESS. Certainly. I have been carrying them for 14
15 years and I intend to continue carrying them.

16 THE COURT. Matters occurring outside of the court room
17 will have to be brought out, as the law provides, by the
18 proper affidavit.

19 MR. ROGERS. I say to your Honor right here, standing
20 as an officer of this court, that if I have got to come
21 into this court room to do my duty as a gentleman, and
22 I have done it in no otherwise, if I have got to come
23 into this court room to be abused by these men and called
24 the name that no living white man ought to take, I ask your
25 Honor now to see that it doesn't happen, because I will
26 not take it.

1 THE COURT. Mr. Rogers, in what manner would you suggest
2 that the court direct these men as to their conduct
3 out on the street?

4 MR. FREDERICKS. As a matter of fact from what is heard
5 in here probably they better carry shillalahs or something
6 Now, if there is going to be gun talk, let's talk gun talk.

7 THE WITNESS. I will take him in the room and make him
8 jump out of the window.

9 MR. FREDERICKS. Witnesses for the defendant have been
10 packing guns in this court room. We don't care anything
11 about it. They can carry a cannon.

12 THE COURT. I will ask you all to be seated, and I will
13 now make a statement. I haven't intended to make any
14 public statement of this matter. It came to my attention
15 today during the noon hour, that some men who are deputy
16 sheriffs and deputy constables, some whose names are known
17 to me and some not, I am not offering any particular
18 criticism upon them, because they have been acting as they
19 supposed within their rights. I do not include either
20 Mr. Burns or Mr. Bittinger, but gentlemen who are engaged
21 in [^] their duty as they see it have been quietly and inoffensively
22 about the court room. It came to my attention today at
23 noon that at different times they had had guns on them, and
24 I instructed counsel, leading counsel on both sides to see
25 to it hereafter that should not occur again. No man
26 should have any gun or weapon upon him coming into this

1 court room or within the ante rooms.

2 MR. ROGERS. Let's say the court house, then.

3 THE WITNESS. Can I say a few words?

4 THE COURT. Just a moment. Within the ante rooms or
5 presence of this court room, with any kind of a weapon.

6 It is only one man and his immediate deputies are entitled
7 to carry any kind of a weapon of self defense in any court
8 room, that is the sheriff who has charge of it.

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1 MR ROGERS: He is a man that needs it least of all.

2 THE COURT: Perhaps he is the only man that can carry it,
3 that includes not only the court room, it means the ante-
4 room and the rooms that are being used in connection with
5 this court-room. You will see to it that that order is
6 strictly and absolutely enforced.

7 MR FREDERICKS: So far as the evidence now shows, the
8 only people that have had guns in the court room has been
9 the defense.

10 MR DARROW: Your Honor, I want to state we haven't got a
11 detective, we haven't had one, and haven't had a gun of any
12 kind.

13 MR FREDERICKS: Then we will not be as careful as we have
14 been.

15 MR DARROW: Mr Fredericks' statement is made out of whole
16 cloth.

17 MR APPEL: Can we keep our artillery at Santa Monica?

18 MR ROGERS: When a man calls me those names --

19 THE COURT: I think your position is one that
20 is^a very serious one, and the court exceedingly regrets
21 that any gentleman who is performing his duty here in the
22 able manner you are, should have been accosted or offended
23 on the streets or in any way, and if it is brought to the
24 attention of this court by an affidavit, and that consti-
25 tutes a contempt, certainly action shall be taken and taken
26 very promptly. I should like to see Mr Rogers and Mr

1 Darrow both for a moment in chambers.

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