

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. 43

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
✓ Guy Biddinger,		3364	3425 3463	3458 3465
✓ William J. Burns,	3467			

1 FRIDAY, JUNE 28, 1913; 10 A.M.

2 Defendant in court with counsel. Jury called; one
3 absent.

4 THE COURT. Gentlemen, Mr. Leavitt was ill last night and
5 it is thought best that he be allowed to go home, of course,
6 with a deputy sheriff. I made the order permitting him to
7 go. Word reached here this morning about 4:30 that he
8 was suffering greatly, and had two doctors in attendance.
9 At 7 o'clock word came in that he could not be brought to
10 court this morning without taking great chances, but the
11 doctors indulged the hope his trouble was temporary. Under
12 the circumstances I feel it would be time wasted, and the
13 best thing for us to do is to adjourn the further hearing
14 of this case until Monday morning; that will mean until
15 Monday afternoon at 1:30, with the hope that Mr. Leavitt will
16 be recovered at that time.

17 MR. APPEL. Will it be proper for us to inquire what doctors
18 are attending?

19 A JUROR. Doctor Saylin and Doctor Wesh, I believe.

20 THE COURT. You know these doctors?

21 THE JUROR. I know Dr. Saylin, he lives at El Monte; I
22 don't know the other.

23 MR. FREDERICKS. No reason why counsel should not have that
24 information from the court privately at any time.

25 MR. APPEL. I suppose I can ask it publicly? There is no
26 reason why I should not.

1 MR. FREDERICKS. Yes, I think there is.

2 THE COURT. Sheriff Aguirre has just returned.

3 MR. APPEL. You think there is?

4 MR. FREDERICKS. I think there is.

5 MR. APPEL. I don't think so.

6 THE COURT. Sheriff Aguirre, I have just made an announce-
7 ment here that Mr. Leavitt will not be able to come into
8 court today. You have just come from there, have you any
9 additional information?

10 MR. AGUIRRE. Yes, sir.

11 THE COURT. Let me have it. Sheriff Aguirre has just hand-
12 ed me a document purported to be signed, and I presume
13 signed by Dr. Isaac Saylin, which I will file here with the
14 court. The statement reads as follows, addressed to myself:
15 "Barring complications, Mr. Leavitt will be able to attend
16 court tomorrow. (signed) I. Saylin." Mr. Clerk, you
17 will file the statement so any one may see it who wishes.
18 Such a matter, however, is so doubtful, I question the
19 advisability of calling all parties here together for a
20 short two-hour session tomorrow. I believe it can be
21 arranged through the Sheriff's office so that the gentle-
22 men of the jury who have important business matters that
23 they desire to attend to can have a portion of today or a
24 portion of tomorrow, of course, attended with a deputy
25 sheriff to go to their places of business and attend to
26 such matters as may be pressing. That will relieve your

1 minds for the future conduct of the trial, and under the
2 circumstances unless some counsellor has another suggestion
3 I will make an order continuing the case until Monday
4 afternoon at 1:30.

5 Gentlemen of the jury, before this adjournment,
6 which will take place for the reason stated, it is my duty
7 to again admonish you and in this instance more particularly
8 than usual, that you must not talk about this case, you
9 must not permit any one to talk to you about this case,
10 you must not form or express any opinion relative to the
11 merits of this case until the whole matter is submitted
12 to you. The court will now, for the reasons stated,
13 adjourn until 1:30 o'clock on Monday afternoon.

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MONDAY, July 1, 1912; 1;30 P.M.

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

THE COURT. Gentlemen, hereafter there will be a session of court on Monday morning. You can govern yourselves accordingly.

G U Y B I D D I N G E R,

on the stand for cross-examination:

MR. DARROW. Q Where were you born, Mr. Biddinger?

A Cincinnati, Ohio.

Q How long did you live there? A Lived there until the winter before the Worlds Fair in Chicago.

Q How old were you then? A Well, 19 years--I am 37--I was 18 years old then.

Q Were you in business at that time? A No, sir.

Q Then you came to Chicago? A When I first came to Chicago I worked for the O. W. Richardson Carpet Company.

Q What doing? A Assisting the shipping clerk.

Q How long? A Oh, worked there, I don't know, four or five months; I don't know just exactly.

Q Then what did you do? A I don't remember the next place I worked; worked around different places around there.

Q What doing? A Waiting, tending bar, dining car conductor.

1 Q How long were you a waiter? A Five or six years.

2 Q Where? A Vogelsang's Marine Nagel and the
3 Union restaurant.

4 Q Where did you tend bar? A For myself; I had a
5 saloon for myself at Polk and Custom House Place.

6 Q What kind of a--what character is that locality?

7 A Strictly for men only; I never allowed any women--

8 Q That is not what I asked you, what is the character of
9 the locality? A Right across from the depot, you can
10 judge the character of any locality across from a
11 depot.

12 Q I asked you about this one, you know. A The same as the
13 rest; I don't know as any different from any of the rest.

14 MR. FORD. Objected to as irrelevant and immaterial.

15 MR. DARROW. Q How long did you own a saloon there?

16 A About a year, I should judge.

17 Q It is the red light district, isn't it?

18 MR. FORD. Objected to as irrelevant and immaterial.

19 THE COURT. Overruled.

20 A Never heard it called that in my life.

21 MR. DARROW. Q Polk and Custom House Place? A Yes, sir.

22 Q When were you in business there? A I should judge
23 about 12, 13 or 14 years ago, I don't remember exactly.

24 Q Custom House Place was 4th Avenue, wasn't it? A Yes,
25 sir.

26 Q How far the red light district begin from Polk, if you
know?

1 MR. FORD. Objected to as irrelevant and immaterial,
2 having absolutely no relevancy to this case.

3 THE COURT. Objection overruled.

4 A The red light district, from my understanding, is from
5 16th to 22nd.

6 MR. DARROW. Q What was it in those days, Mr. Biddinger?

7 A In those days?

8 Q Yes, sir. A I never heard it called that in those days.

9 Q Didn't you know about it? A Didn't I know about it?

10 I know Custom House street was a street that was frequented
11 by houses of ill-fame, if that is what you are getting at.

12 Q Did you know what I was getting at? A Yes, sir.

13 Q Why did you ask me?

14 MR. FORD. Objected to as irrelevant and immaterial. A
15 witness can be impeached only by certain methods, and not
16 by specific instances of wrong conduct. I suppose that
17 is the only object of this, would be to show that he kept
18 a saloon near what is sometimes called the red light
19 district. Now, supposing he kept one right in the red
20 light district, it would be only for the purpose of showing
21 misconduct, which the law forbids.

22 THE COURT. It hadn't occurred to me that this was for
23 impeachment.

24 MR. FORD. For the purpose of showing character of the wit-
25 ness; I think it is certainly irrelevant for any purpose.

26 THE COURT. What was the question?

1 MR. DARROW. The question has been answered, your Honor.

2 THE COURT. I think so.

3 MR. DARROW. Nothing before the court unless a motion to
4 strike out. Q You were there a year in that business,
5 were you? A I don't know just exactly; approximately
6 about that.

p 7 Q Did you have a partner? A Yes, sir.

8 Q Who? A My father-in-law.

9 Q What is his name? A McCarthy.

10 Q Is he still running the place?

11 MR. FREDERICKS. We object to that on the ground it is
12 immaterial.

13 THE COURT. Objection sustained.

14 MR. DARROW. Q What did you do next? A Run a dining
15 car for the Illinois Central Railroad..

16 Q How long? A I don't remember how long.

17 Q About how long? A I think a month or so, and then I
18 got on the police force then.

19 Q Then you got on the police force? A Yes, sir.

20 Q You put in an application on the police force while you
21 were running a saloon, I suppose? A No, sir.

22 Q You did not? A No, sir.

23 Q When did you get on the police force? A I think it was
24 in 1902; I am not certain, along there, I think.

25 Q Who was Mayor? A Harrison, the same man that is Mayor
26 now.

1 Q Were you traveling beat at first? A What is it?

2 Q Were you traveling beat at first? A Three or four
3 days.

4 Q Then what? A I got some hold-up men and got pro-
5 moted and got put in citizens clothes.

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1 Q Got hold of some hold-up men, and then you went into
2 citizens clothes? A Yes sir.

3 Q What does that mean, exactly? Detective? A Yes sir.

4 Q So in 1902, you became a detective; is that right?

5 A About that time. I am not positive of the date, exact-
6 ly.

7 Q Well, about 1902? A Along in there somewhere.

8 Q I don't care to have you to be positive, but you have
9 been one ever since? A Yes sir, except for four or five
10 months under the Dunne administration I got put in uni-
11 form there at that time.

12 Q Traveling beat again? A Yes sir.

13 Q Where did you go then, what part of the city?

14 A Brighton, Eighth precinct.

15 MR FREDERICKS: We object to that as immaterial.

16 THE COURT: Objection overruled.

17 A What is known as the 8th precinct.

18 Q Brighton? A Yes sir.

19 Q Out at the stockyards district? A No sir, five
20 miles from there.

21 Q West of that district? A Well, I should say a little
22 northwest.

23 Q Well, with the exception of that five months, when you
24 were traveling beat, you have been a detective for ten
25 years? A Yes sir.

26 Q Where have you been located there while you were work-

1 ing for the city of Chicago? A What is known as the de-
2 tective bureau headquarters.

3 Q Out of city hall? A Yes sir.

4 Q All the time? A Well, sometimes the police headquarters
5 moved; we had a temporary place on Randolph street; at
6 the present time it is on La Salle street.

7 Q That is while they were building the new city hall?

8 A Yes sir. Since they have got the new city hall they
9 are on La Salla street yet; they have a building of their
10 own.

11 Q You have been connected with the central department?

12 A Yes sir.

13 Q Doing all kinds of work? A Well, that is pretty broad.
14 I don,t know exactly what you are getting at "all kinds of
15 work". All kinds of police work.

16 Q Detective work? A Yes sir.

17 Q Shadow work? A Sometimes shadow work, yes.

18 Q What kind of work is that? A Well, if I didn't know
19 who you was and wanted to find out I would drop in behind
20 you until I took you home and I would make a few inquiries;
21 find out who you was, and if I didn't -- if I wasn't sure
22 of my man I would follow him.

23 Q If you wanted to find out anything about anybody you
24 would follow them around town? A yes sir.

25 Q Wherever they went? A Yes sir.

26 Q Been in that more or less for the last ten years?

A Well, more or less.

1 Q How much of the time? A I couldn't say, it all depends.
2 If I ever ran into anybody that didn't look right down
3 town, I would pick them up.

4 Q You would do shadow work besides that, wouldn't
5 you, when you wanted to follow somebody? A Yes sir.

6 Q Go where they went and stand outside until they came
7 out and follow along?

8 MR FREDERICKS: That is objected to as not cross-examina-
9 tion; incompetent, irrelevant and immaterial.

10 THE COURT: Objection sustained.

11 MR DARROW: I want to find out his business, your Honor.

12 THE COURT: Yes, to a certain extent, Mr Darrow.

13 MR DARROW: I am not going very far on that.

14 THE COURT: Objection sustained.

15 MR DARROW: A large part of your business in the detec-
16 tive business, has been shadowing, hasn't it? A Part
17 of it, yes sir.

18 MR FREDERICKS: The question was, "a large part of it".

19 MR DARROW: Well, he answered it.

20 MR FREDERICKS: Well, if he understood it.

21 MR DARROW: I object to your correcting him.

22 MR FREDERICKS: I am not correcting him. I wanted to make
23 sure he understood the word "large" was before him.

24 MR DARROW: I asked him that and you have no right to speak
25 at all at this time.

26 MR FREDERICKS: That is probably correct, I ought to have

1 moved to strike it out, but I spoke to save time.

2 MR DARROW: You save time by not interrupting.

3 Q Now, you say you left the service of the city when?

4 A I have never left the service of the city; I am still
5 in the employ of the city.

6 Q Not drawing any salary from them? A No sir.

7 Q When did you get a lay off? A The last one was on
8 the 1st day of last December.

9 Q When did you get one before that? A Why, I think it
10 was the 1st of July.

11 Q That is a year ago now, about? A Yes sir.

12 Q Working for the city up to that time, were you?

13 A Yes sir.

14 Q Did you get a lay-off for any special length of time?

15 A I think the first furlough I took was either 4 or 5
16 months, and then I took a year afterwards, when that ex-
17 pired.

18 Q And you are still under the lay-off for a year? A Yes
19 sir.

20 Q Now, coming down to this matter, Mr Biddinger, you say
21 you met me in the Union restaurant, first in Chicago, is
22 that right? A Yes sir.

23 Q It was not in my office? A The second time I met
24 you was in your office, yes.

25 Q Haven't you got this mixed; you came to the office
26 first, and met me at the Union the second time? A No sir.

1 Q You are sure about that, are you? A Quite positive.

2 Q Have you seen a memorandum about it? A No sir.

3 Q Did you make any? A No sir.

4 Q Haven't looked at any? A No sir.

5 Q Did you report your first meeting? A Yes sir.

6 Q To whom? A R. J. Burns.

7 Q When? A Why, just before I went to meet you, I told
8 Turner that I was going to the police headquarters.

9 Q I didn't ask you that. When did you first make a re-
10 port to R. J. Burns? A Right after talking to you.

11 Q How long after? A Well, within a half hour.

12 Q Have you seen that report since? A That was a verbal
13 report.

14 Q Verbal one? A Yes sir.

15 Q Did you ever make any written one? A No sir.

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1 Q Have you ever made any written reports about this
2 matter? A Yes, sir.

3 Q When was your first written one? A Oh, I don't know
4 the date.

5 Q Well, about when? A As soon as Mr. Burns came back
6 from Europe.

7 Q About when was that? A Well, along in July.

8 Q In Chicago? A Yes, sir.

9 Q Have you seen it since? A No, sir.

10 Q Know where it is? A I presume he has it or Captain
11 Fredericks, I don't know who.

12 Q You haven't seen it? A No, sir.

13 Q Haven't looked at it since? A No, sir.

14 Q Well, now, in that first meeting did you talk about the
15 men that were connected with the structural iron workers
16 that were reporting to Mr. Burns? A In that first talk
17 with you?

18 Q The first talk- A Yes, sir. You was very anxious
19 to discover who the spy was and you asked me to tell you--

20 Q In the first meeting? A Yes, sir.

21 Q Did you tell me? A No, sir.

22 Q Did you tell me there was any? A Yes, sir.

23 Q Was there? A Yes, sir.

24 Q That is, Mr. Burns had some spy in the Structural Iron
25 Workers, is that right? A Well, he was getting some
26 inside information, as you know. You told me that yourself,

1 that you knew that.

2 Q Now, you just answer my questions, Mr. Guy Biddinger--

3 THE COURT. Let me call your attention to the fact that you
4 are here testifying for the benefit of the court and jury, not
5 for the information of counsel who is examining, you, please
6 bear that in mind and make your answers accordingly.

7 A All right.

8 MR. DARROW. Q You told me that he had spies in the
9 Structural Iron Workers council? A Yes, sir.

10 Q Did you tell me how many? A I don't think I knew them
11 all.

12 Q Well, do you know about how many? A No, sir.

13 Q Well, have a dozen? A I don't think so.

14 Q Well, about how many? A I don't know; I am not going
15 to guess, I don't know how many he had.

16 Q More than one?

17 MR. FREDERICKS. That is objected to, may it please the
18 court, as being incompetent, irrelevant and immaterial
19 and not cross-examination. I didn't catch the first of the
20 questions but it appears to be now an inquiry whether Mr.
21 Burnas had informants or spies in the Structural Iron Workers
22 Union, and that is certainly immaterial and hearsay whether
23 he had or whether he had not.

24 THE COURT. It seems so to me. I will hear you, Mr. Darrow.

25 MR. DARROW. If I am heard it wont be any use. Seems to
26 me it is perfectly obvious.

1 THE COURT. Let me hear the question.

2 (Last question read by the reporter.)

3 MR. DARROW. He says he informed me that Mr. Burns had spies
4 in the organization I was representing the first time he
5 met me. I think your Honor can see--

6 THE COURT. It is very broad cross-examination.

7 Mr. DARROW. Doesn't seem so to me, your Honor.

8 MR. FORD. Objected to as not cross-examination.

9 MR. FREDERICKS. What he informed him is perfectly proper,
10 what occurred there. That isn't the point. The question
11 he now asked him whether Mr. Burns--

12 THE COURT. The objection is overruled.

13 MR. DARROW. Q Did you tell me about how many he had?

14 A No, sir.

15 Q You told me he had more than one, didn't you? A You
16 asked me how many he had.

17 Q You told me? A No.

18 MR. FORD. We ask the witness to be allowed to give his
19 statement.

20 THE COURT. Had you finished your answer? A No, sir.

21 THE COURT. You are always entitled to a clear field to
22 finish your answer.

23 A You told me from the information that Mr. Burns had and
24 the stuff he had he certainly had spies on the inside. I
25 said I figred that way myself. You asked me how many he
26 had, if he had more than one and I said I didn't know.

1 MR. DARROW. Q Didn't you tell me that Mr. Burns had some
2 spies on the inside of the structural iron workers?

3 A That is not the way I put it.

4 Q Didn't you tell me that? A No, sir.

5 Q Will you please read back there five or six questions
6 and read his answer.

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

8 MR. DARROW. I want to examine him on it.

9 MR. FREDERICKS. Whatever the record is it is.

10 THE COURT. Counsel has a right to be informed of the
11 record. You may read the questions.

12 (Last questions and answers referred to read by the repor-
13 ter.)

14 MR. DARROW. Q Do you want to take that back? A No, sir,
15 I don't want to take anything back.

16 Q Did you tell me there was spies there? A You men-
17 tioned the name--I told you there was a spy there, yes.

18 Q Wait a moment--I asked you did you tell me there was
19 spies there?

20 MR. FORD. We object, the witness has got a right to
21 explain his answer. He has asked for an explanation and
22 the witness is entitled to give an explanation.

23 MR. DARROW. I am going to insist--

24 MR. FORD. He said, "You want to take anything back,"
25 and he said explain why.

26 MR. DARROW. That is not the question at all, you are asleep.

1 THE COURT. There is a question there that maybe is not
2 fully answered. You wish to answer it more fully?

3 A I can answer it more fully.

4 MR. DARROW. I asked him a question, if he told me there
5 was spies.

6 THE COURT. He hasn't answered that question yet. He has
7 a dear field to answer the question.

8 MR. DARROW. It isn't responsive; let him read back.

9 THE COURT. The witness has a right to finish his answer
10 if he wants to. Proceed, Mr. Biddinger.

11 MR. DARROW. Let's see if it is responsive.

12 THE COURT. I have no idea what it is.

13 MR. DARROW. He started--I asked to hear what he said.

14 THE COURT. The question of which the witness has not
15 responded in full, if I understand his statement, was the
16 question as to whether or not he wished to take anything
17 back. He answered no, and I assume from his statement
18 now that he wants to add something to that. If he does, he
19 has a right.

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1 MR FORD: Let's read the last question and answer as far as
2 it goes, and then the court will permit the witness to
3 finish it.

4 THE COURT: The court has already presented the matter to
5 Mr Biddinger. Do you wish to supplement your answer to
6 that question?

7 MR DARROW: Your Honor, I would like to have the question
8 read as it is.

9 THE COURT: Perhaps I am mistaken.

10 MR DARROW: Read the question.)

11 (Last question referred to, read by the reporter.)

12 MR FREDERICKS: That is the answer, we think, counsel inter-
13 rupted the witness on.

14 THE COURT: Have you finished your answer? A No sir.

15 THE COURT: Finish it. A You named over every member of
16 the executive board and tried to get me to commit myself
17 as to which one was the spy.

18 MR DARROW That is not an answer to the question. Did you
19 tell me there was spies there?

20 MR FREDERICKS: Let him finish his answer.

21 THE COURT: Strike it out. I think it is not responsive.

22 MR FORD: If the court please, we would like to be hard
23 on the matter just a moment. A person has two ways of con-
24 veying information; sometimes it is done expressly by
25 distinctly asserting such and such to be the truth, at
26 other times it is by asserting things --

1 THE COURT: The court has ruled.

2 MR DARROW: You did tell me there were spies in the execu-
3 tive board, did you not? A I don,t know whether I used
4 the word spy or spies. I think I used the word spy.

5 Q Giving information to Mr Burns? A Yes sir.

6 Q And I tried, then, to find out who they were? A Yes
7 sir.

8 Q And named over various members on the executive board?

9 A Yes sir.

10 Q And asked you to find out for me? A yes sir.

11 Q And you told me you were? A Yes sir.

12 Q How long were you there at that time? A Where is
13 this; in your office?

14 Q Wherever the first meeting was. A In a room of the
15 Union Hotel, about, maybe, 15 minutes.

16 Q Did you have any further conversation about spies at
17 my office? A No, we didn't talk very long in your office,
18 that day.

19 Q Very little said there? A Very little said there.

20 Q Did you tell me that you would let me know about spies,
21 sir? A I don,t remember whether I did or not.

22 Q You would not say one way or the other. Were you going
23 to write me in reference to it? A Not directly, I was not,
24 no.

25 Q You were going to have me written to? A Yes sir.

26 Q Did you? A Well, I don,t know what Turner did; I

1 don't know what he wrote to you.

2 Q Did you ask him to write about it? A Why, he come
3 to me three or four times a week, wanted to know what I
4 knew, and if I had found out anything for you and I was
5 stringing him along.

6 Q You were stringing him, Turner? A Yes sir.

7 Q And did you give him any information at all, sir?

8 A Oh, I told him I had 27 or 28 hotel registers with
9 the McNamarras, and stuff like that that didn't amount to
10 anything.

11 Q Did you give him any information about spies? A No
12 sir.

13 Q Or any information about the case? A No sir.

14 Q You don't know whether he wrote me or not; is that
15 right? A I know he wrote you, that is, sent you the
16 telegram on one occasion.

17 Q When was that? A Why, we were trying to find out
18 where you were getting your secret mail at, and I told him
19 I had some stuff to send to you and then I found out he was
20 sending mail to Cavanaugh at Venice for you.

21 Q Did you send me any stuff then? A No sir.

22 Q Never did send me any stuff? A No sir.

23 Q Through Turner or anybody else? A No sir.

24 Q Did you get any replies through Turner's letters from
25 me? A I saw some of the telegrams you sent Turner.
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- 1 Q About where to send mail? A Well, I couldn't say as
2 to that, but I saw where Turner sent it to you.
- 3 Q You saw where he sent a telegram to me? A Yes sir.
- 4 Q Was that about your departure for California?
- 5 A No sir.
- 6 Q The next time you saw me you saw me in California?
- 7 A Yes sir.
- 8 Q Here in Los Angeles? A Yes sir.
- 9 Q When was that, sir? A The 15th of August.
- 10 Q Up to that time you had not given me any information?
- 11 A No sir.
- 12 Q And you had not received any money? A No sir.
- 13 Q On the 15th of August, where did you see me? A At the
14 bar of the Alexandria hotel.
- 15 Q Was that by appointment or accident? A By appoint-
16 ment.
- 17 Q How was the appointment made? A I talked to you
18 the night before over the automatic phone at your house.
- 19 Q And then I met you there? A Yes sir.
- 20 Q Did I ask you about spies? A Yes sir.
- 21 Q What did you tell me? A Why -- do you want me to tell
22 the whole answer?
- 23 Q I asked you what you told me about spies? A You asked
24 me if he had anybody out here in the western country that
25 was tipping off stuff to him, and I said I was under the
26 impression he had.

1 Q Yes. A And you asked me who he was, and I says, "Who
2 do you suspect?", and you told me you suspected Clancey
3 up in Frisco and I thought as long as you figured that I
4 would let you go along figuring that.

5 Q Did you mention Clancey? A No sir, not -- not until
6 after you did.

7 Q Did you at any time? A After you did.

8 Q Did you before? A No sir.

9 Q Did you tell me he had anybody tipping off in the
10 western country? A Yes sir.

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6p 1 Q Did you know whether he did or not? A No, sir; I
2 just wanted to worry you a little.

3 Q Just tried to worry me a little? A Yes, sir.

4 Q Just for the sake of worrying me? A That is it.

5 Q Had you consulted with Burns about this at that time?

6 A Yes, sir.

7 Q Did he tell you to worry me? A He told me to find out
8 what you wanted and he would make it to order for you, give
9 you any information you wanted.

10 Q Make it to order? A Yes, sir.

11 Q Any kind of information? A Anything you wanted.

12 Q Now, you remember testifying the other day, don't you?

13 A Yes, sir.

14 Q I am reading from page 3299: "Then he said--" referring
15 to me--"there was someone on our organization who is
16 tipping everything off to Burns, I would like to get the
17 credit of finding out who the spy is, so I told him--"
18 meaning Biddinger--"I told him, I named one of the labor
19 leaders up in San Francisco, and I said, 'I am under the
20 impression he is the one who is tipping the stuff off to
21 Mr. Burns'." Is that right? A Yes, sir.

22 Q Then you did name a labor leader? A That is after you
23 had named him, yes.

24 Q You didn't say so on Saturday, the last day of this
25 court. A There was lots of things I didn't say that
26 comes back to me.

1 Q You didn't say it on Saturday, or the last day,
2 rather, Thursday? A No, sir.

3 Q Did you name anybody?

4 MR. FORD. You mean in Saturday's testimony?

5 MR. DARROW. I mean the last day, whatever it was.

6 MR. FORD. We object to that on the ground the record is the
7 best evidence of what he stated and this is merely argu-
8 mentative.

9 THE COURT. Objection sustained.

10 MR. APPEL. We want to know whether Mr. Darrow named this
11 labor leader--

12 THE COURT. Objection sustained.

13 MR. APPEL. Let me explain to your Honor what we are trying
14 to get at. The witness has just stated, your Honor, it was
15 Mr. Darrow who first named this labor leader and he says
16 after Mr. Darrow named him he also named him.

17 THE COURT. Yes, I see your point precisely.

18 MR. APPEL. Now, we want to show that the evidence here,
19 your Honor, is not in that respect, that it is in some
20 respects, indicates that he named him himself without
21 Mr. Darrow's assistance, that is all.

22 THE COURT. All right.

23 MR. APPEL. There is nothing very wrong about that.

24 THE COURT. All right. There is a way to do it, and not the
25 way the question is presented. The objection is sustained.

26 MR. APPEL. We take an exception.

1 MR. FARROW. Q Did you name Mr. Clancy at any time there,
2 sir? A Yes, sir.

3 Q Did I ask you about anybody in the east at that meeting?

4 A Why, before I ever came out you said Leglighter from
5 Pittsburg was the fellow.

6 Q At that meeting did I ask you about anybody in the
7 east? A Yes, sir.

8 Q I am now referring to the meeting in Los Angeles.

9 A Oh, in Los Angeles?

10 Q Yes, sir - A Well, we talked, you talked over every
11 member of the executive board.

12 Q That is not the question A You are asking me if you
13 named anybody back in the east.

14 Q Will you read the question. Now, answer my question,
15 please.

16 (Last question read by the reporter.)

17 Q Do you understand it? If you don't I will ask you so
18 that you will? A Yes, I understand it.

19 Q Answer it, please. A We talked over every member of
20 the executive board and some of them were from the east.

21 Q Then, in the meeting at the Alexandria Hotel I asked
22 you about the various members of the executive board in the
23 east, as to whether they were tipping off stuff to Burks,
24 did I, is that right? A You tried to pin me down to name
25 one single man.

26 Q And I asked you about it in general? A Yes, sir.

1 Q And what did you say on that subject, as to whether there
2 was anybody in the east tipping off stuff to him? A I
3 said there was.

4 Q Well, did you know whether there was or not? A Why, not
5 positively; I had my suspicions.

6 Q You thought there was? A Yes, sir.

7 Q Did I ask you whether you had already got the informa-
8 tion for me that you had promised me in Chicago? A Yes,
9 sir.

10 Q What did you say? A I said no, I had not.

11 Q Did you tell me that you were going to get it? A I
12 told you I would try to get it.

13 Q Did you tell me when you would try? A I never set any
14 date, no.

15 Q Did you ask me for any money for it? A No, sir.

16 Q Didn't you ask me to give you \$15,000? A No, sir.

17 Q Or any other sum, sir? A No, sir.

18 Q You did not? A No, sir.

19 Q Well, now, you said you would try to get that informa-
20 tion? A Yes, sir.

21 Q What did you say about trying to get any information
22 in reference to somebody on the Pacific Coast? A Why, I
23 said there was somebody out there.

24 Q What did you say? A I told you I would try to find out
25 who he was and let you know and as soon as I get to San
26 Francisco I would wire you.

1 Q You said you told me you had some hotel registers?

2 A Yes, sir.

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1 Q Did you have any?

2 A At that time I think we had about 130 or '40.

3 Q I asked if you had any? A No sir.

4 Q Did you tell me you were going to take an office next
5 to Mr Burns up here during the progress of this trial?

6 A Yes sir.

7 Q And would tip off anybody who was spying in our camp?

8 A Yes sir.

9 Q And I told you I would like to have you do it, didn't
10 I? A Yes sir.

11 Q And you said you would do it? A Yes sir.

12 Q And of course, you did not intend to do it? A Not in
13 a million years.

14 Q But you knew there were men in our camp tipping off
15 to your people, didn't you? A Yes sir. I am not positive,
16 I had my suspicions.

17 Q You thought so? A Yes sir.

18 Q And told me so? A Yes sir.

19 MR FORD: I move to strike out the answer of what the wit
20 ness though on the ground it is not the best evidence.

21 MR APPEL: That is what he told him.

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

23 MR FORD: It is incompetent evidence.

24 MR DARROW: Did you say when you were going to take this
25 office next to Mr Burns to furnish this information?

26 A I said I thought when the trial started.

1 Q How? A I said I thought when the trial started.

2 Q Did you think you were? A I had no intention unless
3 it was to get you up in there.

4 Q Well, did you have that intention? A Yes sir.

5 Q You did? A Yes sir.

6 Q So you really had an intention of taking one, did you?

7 A I done whatever Mr Burns and Captain Fredericks said
8 in the matter.

9 Q Did you have any intention of taking an office there?

10 A If it was necessary to get you, yes.

11 Q And did you have an intention when you told me that?

12 MR FREDERICKS: That is objected to on the ground it is
13 already answered.

14 THE COURT: I think the witness can answer more clearly.

15 MR FORD: He has answered he intended to do what he was
16 told, and he certainly cannot do anything that is in the
17 minds of Captain Fredericks and Mr Burns.

18 MR APPEL: We want to know what he has tried to get money
19 for.

20 THE COURT: Objection overruled.

21 MR DARROW: Now, can you answer? A Yes sir.

22 Q Answer it, please? A Well, if it become necessary, I
23 would have taken the office.

24 Q Do you understand that question? A Yes, I understand
25 it.

26 Q Is it plain enough for you? A Yes.

1 MR FORD: I object to that.

2 MR DARROW: You have been on the witness stand many times?

3 A yes sir.

4 Q Will you answer the question?

5 MR FORD: We object to the question on the ground that
6 is not the proper tone of voice, and not the proper method
7 to address the witness.

8 The Court; I think the point is well taken. If you
9 want a further answer, all you have to do is to ask the
10 court to direct the witness.

11 MR DARROW: Well, will your Honor direct the witness to
12 answer the question?

13 MR FREDERICKS: We object to it further on the ground it
14 calls for an answer that has been given fully.

15 THE COURT: I do not think so. I think the witness can
16 give an answer more clearly. The question asks for what
17 was in his mind at that time and counsel is entitled to
18 it. Mr Biddinger, I think it is your duty to answer
19 the question more fully.

20 A yes sir. If I could have arranged to have taken the
21 office, I would have taken the office.

22 MR DARROW: That is not the question I asked you. I asked
23 you if at that time you intended to do it.

24 MR FORD: We object to that and I would like to be heard
25 just a moment -- on the ground it has been fully answered.
26 And the point is this; your Honor has indicated it is

1 for getting what is in this witness' mind. I believe
2 the witness has answered fully that the only thing that
3 was in his mind was to obey the orders of Captain Fred-
4 ericks and Mr Burns and his intention was to obey their
5 orders whatever they may have been.

6 THE COURT: Objection overruled.

7 MR DARROW: I want to allege error on counsel instructing
8 this witness, who, I think, needs no instruction in this
9 matter, if he does, he can get it from Mr Burns or some-
10 body out of court.

11 THE COURT: Now, Mr Darrow, that is unnecessary.

12 MR DARROW: I predicate error on it.

13 THE COURT: Let us be regular.

14 MR DARROW: I try to be.

15 THE COURT: Now, Mr Biddinger, what is your answer?

16 MR APPEL: Just a moment. Let us take an exception to the
17 court's remark indicating that we are proceeding in an
18 irregular way. We are taking exceptions as we see them.

19 THE COURT: Yes.

20 MR APPEL: And the defendant himself is the one who is
21 examining the witness and the observation by the court is
22 a reflection on the defendant himself, as we construe it.

23 MR DARROW: I do not think the court meant that.

24 THE COURT: Mr Biddinger, answer the question now.

25 A Well, I would have taken the office, your Honor, if
26 Mr Burns or Captain Fredericks would have wanted me to get

1 Darrow up in that office, I would have taken it. That is
2 the only way I can answer that.

3 MR DARROW: Mr Biddinger, at the time you told me you were
4 going to take that office -- A I told you that, yes sir.

5 Q -- wait a minute until I get through with this ques-
6 tion. A All right.

7 Q At the time you told me that you thought you were going
8 to take that office that would keep me informed of the
9 spies in our camp, did you intend to take the office?

10 A Well, I would say at that time, no, I had no intention
11 at that time.

12 Q Now, you have answered it. A All right.

13 Q You have never talked with anybody about an office, is
14 that right? A At that time, I had not, no, except you.

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9s 1 Q I mean anybody on the other side? A No, sir.

2 Q So they were not even directing you to get me up in the
3 office to get me caught, is that it? A Not at that time.

4 Q Did they afterwards? A Yes, sir.

5 Q When?

6 MR. FREDERICKS. That is objected to as calling for a
7 fact outside of the conversation, being a matter that is
8 not cross-examination, hearsay and immaterial.

9 THE COURT. Overruled.

10 MR. DARROW. Q When? A Why, right after getting through
11 talking with you I went back and told Mr. Burns the result of
12 our conversation and told him what I had said about getting
13 the office, that you wanted to slip up in the office and
14 look at the evidence and so forth. He said, "We will fix
15 up something for him to look at, and get him right here in
16 the office."

17 Q That was at that time? A Yes, sir.

18 MR. FREDERICKS. I move to strike out the answer as hearsay.

19 THE COURT. Motion denied.

20 MR. DARROW. It is cross-examination.

21 THE COURT. Motion denied.

22 MR. DARROW. Did you have a talk with Mr. Fredericks about
23 it too? A I don't remember whether I did or not at that
24 time.

25 Q Did you take any steps then towards getting the office?

26 A No, sir.

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1 Q Now, you say you had a hotel register in your possession
2 anywhere, and under your control? A Not under my direct
3 control.

4 Q Where were they? A Well, some of them were in Captain
5 Fredericks's office, some in Mr. Burns's office in Chicago,
6 some were in the Pittsburg, office, the nearest location
7 to the hotel where the McNamaras stopped, where we picked
8 them up.

9 Q Do you say I said to you you should have these hotel
10 registers on the train and some man should come and biff
11 you over the head and take them away from you? A We
12 both talked over the best method.

13 Q Was that your method? A You suggested that.

14 Q What did you suggest? A I suggested to wait until we
15 got out to the Hall of Records and then get it.

16 Q We were discussing over the matter? A Yes, sir.

17 Q And you suggested the Hall of Records? A Yes, sir.

18 Q Was anything said as to what kind of a club it should
19 be, stuffed club or white ash or elm club? A No, sir.

20 Q Was there anything said as to where this capture should
21 be? A No, sir.

22 Q Or what part of your head you should get hit over?

23 A No, sir.

24 Q Nothing of that? A Nothing of that.

25 Q Was there anything said whether the train should be
26 held up and boarded on the desert? A No, said you would
have a couple of your boys get on the train with me that

1 night.

2 Q Whereabouts? A In Chicago.

3 Q Where was this operation on your head to take place?

4 A Why, wherever you wanted, I suppose; men working under
5 your orders.

6 Q We were to make that train and tell where to do it?

7 A I was to send you a telegram the night I was to leave
8 Chicago.

9 Q whereabout was this operation to take place? A I
10 hadn't any idea.

11 Q While the train was in motion? A Yes, sir, I suppose so.

12 Q And then they were to take this stuff and jump off the
13 train and leave you there, is that it? A I suppose that
14 is the way it was to be.

15 Q You haven't been reading Burns detective stories, have
16 you, and dreaming? A No, sir; I have not.

17 MR. FORD. Just a moment--

18 THE COURT. Don't answer that question.

19 MR. DARROW. Q Did you suggest any other ways and means
20 there besides that? A No, sir, outside of what I told
21 you up in the Hall of Records.

22 Q Well, you can't think of any other suggestion you
23 made? A In reference to what?

24 Q In reference to the way to get these records? A No, sir.

25 Q This plan was not gone into any more fully in detail
26 than you have mentioned? A No, sir; just talked it over

1 there.

2 Q When was I to see you again? A In Frisco.

3 Q Didn't I see you twice down to the Alexandria? A Yes,
4 sir.

5 Q When was this conversation, the first time or the second
6 time? A Well, we talked about it on both occasions.

7 Q The money was given you the second time, as I understand
8 it? A Yes, sir.

9 Q You thought for the information you had already given
10 me you wanted \$1,000? A You suggested a thousand dollars.

11 Q Didn't you suggest it? A No, sir; I originally
12 expected--

13 Q Didn't I tell you \$500 was enough? A No, sir--I ori-
14 ginally expected \$5,000 from what you said in Chicago.

15 Q You expected 5,000? A Yes, sir.

16 Q For what you had already given me? A You was going
17 to give it to me for my good will.

18 Q Didn't you think I was estimating your good will pretty
19 round figures?

20 MR. FORD. Just a moment.

21 THE COURT. You need not answer that question.

22 MR. ROGERS. Take an exception.

23 MR. FORD. Objected to upon the ground it is argumentative
24 and not cross-examination, incompetent, irrelevant and
25 immaterial and not the proper method of questioning the
26 witness.

1 MR. DARROW. Wait a moment--we take an exception to the--
2 THE COURT. The objection is sustained.

3 MR. APPEL. We take an exception to the court instructing
4 the witness--

5 THE COURT. Mr. Rogers has already taken an exception.

6 MR. APPEL. Before there was any objection.

7 MR. DARROW. You valued the good will pretty high, didn't
8 you?

9 MR. FORD. Objected to as irrelevant and immaterial what
10 the witness values--

11 THE COURT. Objection overruled.

12 A I didn't place any value on it at all.

13 MR. DARROW. Q All you was doing was getting what you
14 could out of it? A All I was doing was trying to trap
15 you.

16 Q From the beginning you were setting a trap, were you?

17 A Yes, sir.

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1 Q Wanted to get me? A Yes sir.

2 Q And all you did in this case was for the purpose of
3 catching me? A Yes sir.

4 Q And you thought you had \$5000 when you got 500; is that
5 right? A Oh, no; you told me the night before you were
6 going to bring down a thousand.

7 Q Didn't you ask me for a thousand? A No sir, when you
8 parted, the last words you told me, "I will bring you down
9 a thousand dollars in the morning." I said, "All right."

10 Q Didn't I tell you you hadn't given me any information
11 that would warrant a thousand dollars? A The exact words
12 you used, you said, "You will have to loosen up good and
13 strong tomorrow". Those are the words you used.

14 Q Yes sir, that you would have to loosen up good and
15 strong? A Yes sir.

16 Q You didn't loosen up very much? A Not with anything
17 that amounted to anything.

18 Q You didn't loosen up a great deal? A No sir.

19 Q But promised me in the future and didn't I tell you
20 that 500 was all that it was worth so far, and more than
21 it was worth? A I didn't even know it was 500 until after
22 I had left you.

23 Q Wait a moment. Answer it? A No sir.

24 Q Didn't I tell you at that time? A No sir.

25 Q That 500 was all it was worth and more? A No sir.

26 Q Well, where did you say I gave you that money? A Why,

1 just as we stepped on the elevator in the basement of the
2 Alexandria hotel.

3 Q In the basement? A Just as we stepped on the ele-
4 vator, yes sir, in the basement.

5 Q We went down to the basement? A Yes sir.

6 Q Didn't I give it to you in one of the compartments in
7 the saloon on the first floor? A No, we sat there and had
8 a drink.

9 Q We sat there and had a drink and had our talk? A Yes
10 sir.

11 Q Didn't I give it to you right there? A No sir.

12 Q Didn't you then tell me you were going to San Francisco
13 and would find out about who was tipping off things here?

14 A Yes sir.

15 Q You did? A Yes sir.

16 Q And how soon after that did you go? A Well, within
17 three or four days.

18 Q Within three or four days? A Yes sir.

19 Q And you told me then that you were going up right away
20 and would then find out who was tipping things off to Burns
21 on this coast, didn't you? A I told you I would try and
22 find out.

23 Q Didn't you say you thought you could? A I said I
24 thought I could, yes.

25 Q Didn't you say you would find out, if you could, who
26 was tipping things off in Indianapolis? A I don't think

1 Indianapolis was mentioned.

2 Q Well, the East? A Back East.

3 Q That was discussed at that meeting, wasn't it? A Yes
4 sir.

5 Q You have already testify to that, haven't you?

6 A Yes.

7 Q But you didn't see me again until you went away, did
8 you? A I saw you before -- are you referring now to the
9 16th or the 15th? A I am speaking of the time after those
10 two meetings? A I didn't see you then until in the Palace
11 hotel, San Francisco.

12 Q You telephoned me, didn't you? A Well, I am not clear
13 on that whether I telephoned you or sent you a telegram.

14 Q Didn't you telephone me first before you left? A I
15 may have; I am not positive.

16 Q I gave you an address so you could telephone me, didn't
17 I? A You gave me an address the first time I met you.

18 Q That was the purpose of it, wasn't it? A Yes sir, well--

19 Q No doubt about that, was there? A The purpose of
20 it.

21 Q Of me giving you the address and the telephone so you
22 could call me up? A Yes sir.

23 Q Didn't you do it? A Yes sir.

24 Q Told me you were going the next day and you would let
25 me know as soon as you found out anything, didn't you?

26 A Told you I would, yes sir.

1 Q And you sent me a wire from San Francisco to come up,
2 didn't you? A I don't just exactly remember the wording
3 of that wire, but it was something to the effect that
4 the meeting would take place.

5 MR FORD: Objected to upon the ground the telegram is the
6 best evidence.

7 MR DARROW: We haven't the same facilities -- did you
8 send me a telegram? A yes sir, I think I did.

9 Q Saying the meeting was to take place and to come up?

10 MR FORD: Objected to upon the ground it is not the best
11 evidence, secondary evidence of the telegram.

12 MR APPEL: He is the author of the telegram.

13 THE COURT: Gentlemen, I can only hear one gentleman at
14 a time. Mr Ford is making an objection.

15 MR FORD: My point is it isn't the best evidence, the writ-
16 ten evidence is the best evidence of its own contents,
17 and upon that ground we object. The telegram is right
18 here in the jurisdiction of the court and counsel can have
19 it brought in. It is not cross-examination.

20 MR FREDERICKS: The further objection that I have been
21 trying to whisper to Mr Ford is the witness has never said
22 he sent a telegram. He said he either sent a telegram or
23 telephoned here; he is not sure which.

24 THE COURT: Read the last answer.

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

26 THE COURT: The objection is overruled.

1 The question has been overruled and if there is a motion
2 to strike out, the motion to strike out is denied.

3 MR DARROW: What meeting are you referring to? A Re-
4 ferring to the meeting that was to take place in San Fran-
5 cisco between Mr Burns and Mr Clancey.

6 Q Clancey was one of the executive board of the Struc-
7 tural Iron Workers, was he? A I think so.

8 Q What? A I am pretty sure he was. I never met him
9 and I wouldn't know him if he came in here.

10 Q You understand who the executive board were? A I
11 know the names of them.

12 Q Clancey was one of them? A E. A. Clancey was one of
13 them.

14 Q The telegram said to come up?

15 MR FREDERICKS: That is objected to, may it please the
16 court, on the ground that this evidence shows this witness
17 says he don't know whether he sent a telegram or a telephone.

18 THE COURT: Objection overruled.

19 MR DARROW: I object to that statement. He said he sent
20 a telegram and told part what was in it.

21 THE COURT: The objection is overruled. Proceed with the
22 examination.

23 MR DARROW: That is right, isn't it? A I am not sure
24 whether it is right or not.

25

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1 Q When I went to San Francisco you met me, didn't you?

2 A Yes, sir.

3 Q You knew that I was coming? A I didn't know when you
4 was coming. Your telegram said, "Suggestion has been fol-
5 lowed." Didn't say when you was coming.

6 Q I said, "Suggestion has been followed"? A Yes, sir.

7 Q And that was the suggestion in your telegram, wasn't it?

8 A Well, I presume it was.

9 Q Didn't you know that? A I don't know what I put in that
10 telegram; I am not going to try to say

11 Q Didn't you know you asked me to come up? A I didn't
12 ask you to come up; I told you the meeting would take
13 place, I don't know the exact wording.

14 Q Don't you know your telegram meant for me to come up
15 there and find out what the meeting was.

16 MR. FORD. Objected to upon the ground it calls for a con-
17 clusion of the witness what it meant. The telegram itself
18 would be the best evidence of the contents.

19 THE COURT. Objection overruled.

20 MR. DARROW. Q That is right? A I meant for you to come
21 up there, yes.

22 Q And you got a telegram back that I would come, you so
23 understood? A You said, "Suggestion has been followed,"
24 that is what your telegram read.

25 Q Didn't say, suggestion has been forwarded? A Didn't
26 read that way, said suggestion has been followed.

1 MR. FREDERICKS' I think Mr. Darrow is correct. I think
2 the telegram said, "Suggestion has been forwarded."

3 MR. DARROW. If it doesn't I will admit it.

4 MR. FREDERICKS. That is what the telegram reads.

5 MR. DARROW. Q You knew by that I was coming up?

6 A Yes, sir.

7 Q To get that information which you said you could get?

8 A Yes, sir.

9 Q Namely, to find out whether Mr Clancy and Mr. Burns were
10 connected? A Yes, sir.

11 Q And you wanted more money? A I didn't ask you for any
12 money? A You didn't? A No, sir.

13 Q Did I force it on you? A yes, sir.

14 Q Didn't you tell me that that was not near enough? A No,
15 sir.

16 Q And when I gave you \$200 didn't you laugh at it? A No,
17 sir.

18 Q But took it, still? A I will tell you just the exact
19 words I used.

20 Q No, I am asking you this question. Now you can answer.

21 A No, sir.

22 MR. FORD. The witness has said No, sir, and wishes to give
23 the exact language.

24 THE COURT. He has a right to explain the answer if he
25 wishes to.

26 A When you handed me the \$200 bills I said, "It is an awful

1 difference between 200 and 5000, isn't it?

2 MR. DARROW. Q Did that mean anything, just casual con-
3 versation like the time of day? A Just casual conversation.

4 Q You wanted more, then, didn't you? A Oh, no.

5 Q What? A No, sir.

6 Q Didn't you want more for turning up Mr. Clancy? A I was
7 satisfied we had you on what we had, we had enough.

8 Q Had me? A Yes, sir.

9 Q That your trap you set back in Chicago had sprung, is
10 that it? A Yes, sir.

11 Q And you wanted more, didn't you, for turning up Mr
12 Clancy? A No, sir.

13 Q Then what did you make that remark for? A Well, because
14 at your first meeting you wanted to give me \$5000.

15 Q Why didn't you mention that at the Palace Hotel? A I
16 didn't want you to think I was that easy and that easily
17 satisfied.

18 Q Is that the only reason? A That is the only reason.

19 Q You didn't want me to think you was easy? A That was it.

20 Q Now, Mr. Biddinger, what did you take that for? A I
21 don't see why I should refuse it.

22 Q You never did refuse money yet, did you?

23 MR. FORD. We object to that as not the proper form of a
24 question to address to the witness.

25 THE COURT. Objection sustained.

26 MR. DARROW. Q You promised on receipt of the \$200 to tele-

1 phone me when this meeting was to take place, did you?

2 A That I was to telephone you when the meeting took place?

3 Q To telephone me so I could come up there? A Yes, sir.

4 Q And I told you--And the meeting you refer to is the
5 meeting between Clancy and Burns? A Yes, sir.

6 Q Did Mr. Burns suggest that to you or did you make it out
7 of your own head? A Mr. Burns suggested it.

8 Q And there was to be no meeting and there wasn't a word
9 of truth in it, is that right? A Well, Mr. Burns thought he
10 could use a little subterfuge and get Clancy to come in
11 to see Mr. Older, and by him coming in at the same time it
12 would create that suspicion in your mind.

13 MR. FREDERICKS. We object to the answer and ask that it be
14 stricken out on the ground that it is a conclusion of the
15 witness as to what someone else thought, and therefore, in-
16 competent, immaterial and hearsay.

17 THE COURT. Motion to strike out is denied.

18 MR. DARROW. Q So Mr. Burns told you that he was rigging
19 up some scheme of deceit to get himself and Mr. Clancy in
20 Mr. Freemont Older's office so we would think Mr. Clancy was
21 the spy, is that right?

22 MR. FREDERICKS. Objected to upon the ground it is hear-
23 say.

24 THE COURT. Overruled.

25 MR. DARROW. Q Is that right? A That is right.

26 Q And you were helping carry that out, were you? A Yes,

1 sir .

2 Q And that is why you got the 200? Is that right? A I
3 don't you know why you gave me the 200; I can't answer that.

4 Q You knew why you took it? A Yes, sir .

5 Q And that same conversation in reference to Burns and
6 Clancy coming in Mr. Older's office was at the time you got it,
7 wasn't it? A In the Palace Hotel, yes, sir .

8 Q Do you know why Mr. Burns or you sought to get Mr.
9 Clancy and Mr. Burns together in one office?

10 MR. FREDERICKS. That is objected to upon the ground that it
11 is--

12 MR. DARROW. To fool me?

13 MR. FREDERICKS. That is objected to on the ground it is
14 incompetent, irrelevant and immaterial, the question is
15 the conversation that occurred between this witness and Mr.
16 Darrow.

17 THECOURT. Objection overruled.

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1 (Last question read by the reporter.)

2 A Yes sir.

3 MR DARROW: Who did it, you or Burns or both of you? A Why,
4 Mr Burns was the one that suggested it to me.

5 Q What did you do towards it? A Why, I went and told
6 you about what was to take place.

7 Q What was done towards getting them together in that of-
8 fice?

9 MR FORD: Objected to unless the witness knows of his own
10 knowl edge.

11 MR DARROW: Well, through himself or through Mr Burns.

12 THE COURT: The question calls for his knowledge, of
13 course.

14 MR DARROW: What was done towards it? A Nothing.

15 Q Do you know whether Mr Burns made any effort to do it?

16 A He never made any effort at all.

17 Q You said about three questions back he did.

18 A I said that day he didn't make any effort at all be-
19 cause Clancey was moved to a hospital that day.

20 Q Do you know whether he did at any time? A I just
21 told you Clancey was moved to the German hospital that day.

22 Q Do you know whether he made any effort to do that
23 at any time?

24 MR FORD: Let the witness finish his answer.

25 THE COURT: Have you finished? A No sir. After I had a
26 talk with Mr Darrow, you asked me if it was not possible

1 to get Clancey over there and further fool Mr Burns,
2 and I got a report from one of the men that he followed
3 Clancey over to the German hospital, they took him over
4 there sick, therefore it was impossible to get Clancey
5 there.

6 MR DARROW: That is the reason you didn't get him
7 there by some subterfuge that time? A Yes sir.

8 Q And Mr Burns was to go there at the same time? A Yes
9 sir.

10 Q So as to leave the impression that Mr Burns and Mr
11 Clancey were having a meeting that was going to come by
12 Mr Elder --

13 MR FORD: Objected to upon the ground it is calling for a
14 conclusion of the witness as to what impression was left,
15 and on the furtherground that the matter has been fully
16 covered by examination and not cross-examination.

17 THE COURT: Objection overruled? A Yes sir.

18 MR DARROW: You told me at this time, did you, where this
19 meeting was to take place between Burns and Clancey?

20 A I told you that they tried to arrange the meeting in
21 Older's office, I thought.

22 Q Did you tell me any steps had been taken towards it?

23 A I don't remember whether I did or not.

24 Q You don't. Well, then, think of it a minute and
25 see. A Well, I know we sent out and found out where
26 Clancey was, and as I told you I found out afterwards
Clancey was taken to the German hospital that day.

1 Q Did you send out before I came or afterwards? A After
2 you came, I think.

3 Q Did you do anything before I came? A Why, wait a
4 minute. I may be a little mistaken on that. I think
5 that morning we sent out a couple of men. I think we sent
6 out a couple of men that morning to find out about Clancey.

7 Q Before you saw him, that right? A Yes sir.

8 Q And did you find where he was then? A I had not re-
9 ceived the information as to where he was up to that time;
10 I had talked with you.

11 Q You didn't know but you could pull it off, is that
12 right? A That is right.

13 Q Did you know whether there had been any meetings be-
14 tween Burns and Clancey at all? A I knew nothing at
15 all about any meetings taking place between them.

16 Q Did you say anything to me about it? A I might have
17 said that they were friendly, or something to that ef-
18 fect, I am not sure.

19 Q Well, did you? A I am not sure; I don't remember.

20 Q Can you remember what was said there at that time?

21 A I remember a good deal, but I don't remember every-
22 thing.

23 Q You don't remember all of it? A No sir.

24 Q Do you remember whether or not you said anything about
25 their meeting right along? A No, I do not.

26 Q Did you say you did or did not? A I don't remember

1 telling you that.

2 Q Did you not say you did not? A I don't know; I wouldn't
3 say I did not; I might have told it to you.

4 Q What was said about Mr Older in this connection?

5 A Why, you was going to try to get Older to pull Burns
6 off; that is what you told me.

7 Q Pull him off of what? A Out of this case.

8 Q You didn't mention that the other day, did you?

9 A No sir, I did not.

10 Q That I was going to get Mr Older to get Burns out of
11 the McNamara case? A Yes sir.

12 Q That just now popped into your head, didn't it?

13 MR FORD: We object to that.

14 Q Anyway, you didn't think of that the other day.

15 THE COURT: The question has been withdrawn and another
16 one put.

17 MR FORD: When I make an objection --

18 MR DARROW: I withdrew the question and that cuts you
19 off, of course.

20 Q You didn't think of it the other day, did you?

21 MR FORD: We object to that as incompetent, irrelevant
22 and immaterial, and it is not cross-examination. The wit-
23 ness is answering questions that are propounded to him on
24 direct examination, he is simply responding to questions
25 asked him, and it is apparent that he didn't reply to it
26 the other day, and the record is the best evidence of

1 what he replied the other day.

2 THE COURT: That is not the question. The objection is
3 overruled.

4 A No, I had not thought of it the other day.

5 MR DARROW: What else was said, if anyhthing, about Mr
6 Older at that time, in this connection? A You started to
7 tell me what a great friend Older was of yours, and you
8 knew that you could not get Burns with money, but you
9 thought you might be able to get to him by influence with
10 Mr Older, with Burns --

11 Q Anything else you had not thought of the other day?

12 A Oh, there is a lot of things I didn't think of the
13 other day that will come back to me.

14 Q In reference to Mr Older? A Well, that you told me
15 that day that you were going out automobile riding with Mr
16 Older and if the meeting took place to try to get you, I
17 think you said Mr Older stopped at the Fairmont Hotel.

18 Q Did you tell me whether Mr Older had already arranged
19 meetings between Clancey and Burns? A No sir.

20 Q Or whether they had met before? A No sir.

21 Q With Mr Older? A No sir.

22 Q That Mr Older had understood it all the time? A No
23 sir.

24 Q You did not? A NO sir.

25 Q You are sure about that? A I knew you would find it
26 out the minute you talked with Older.

1 Q I don't care what you know, I want an answer now.

2 A No.

3 Q You are sure about that? A Pretty sure.

4 Q Pretty sure? A Yes sir.

5 Q Aren't you very sure? A I am not positive, I am tell-
6 ing you the best of my opinion.

7 Q Are you afraid that I might confront you with some
8 evidence I have? A I am not afraid of anything.

9 MR FORD: We object to that.

10 MR DARROW: You have answered it, have you not?

11 MR FORD: We object to counsel's addressing the witness
12 in such a manner, and we ask that your Honor admonish the
13 counsel to refrain from it.

14 THE COURT: I don't think the witness was at all offended
15 with the manner of the question; he answered it promptly.

16 MR DARROW: Suppose we let Mr Ford do the admonishing.

17 MR FORD: We object to the language of counsel, if the
18 court please.

19 THE COURT: Proceed, Mr Darrow.

20 MR DARROW: Why are you less certain now than you were a
21 minute ago?

22 MR FORD: We object to that on the ground it is argumen-
23 tative.

24 THE COURT: Objection sustained.

25 MR DARROW: I do not think it is argumentative.

26 A After I told you that, as I told you, for the reason

1 the minute you would talk with Older, you would know, you
2 would find out differently.

3 Q So you didn't think you would tell me any lie if you
4 thought I would find it out; find out the truth? A I
5 told you a lot of subterfuges.

6 Q Do you know the difference between a subterfuge, and a
7 lie?

8 MR FORD: I object to that as incompetent, irrelevant and
9 immaterial, not cross-examination.

10 MR DARROW: I want an answer to the question.

11 THE COURT: Objection overruled.

12 MR DARROW: Do you know the difference between a lie and
13 a subterfuge? A I can't tell it, no.

14 Q Well, then, why do you use the word subterfuge, instead
15 of a lie? A Well, it sounds a little better.

1 Q You do not like the sound of a lie? Did you tell me
2 any or not, sir? A I told you many of them, you bet.

3 Q Those were not subterfuges, those were lies, weren't they?

4 A May have been.

5 Q You testified to this the other day, didn't you, now?
6 see whether you recognize this language, reading from page
7 3337, near the top of the page, referring to me: "He
8 asked me where I thought the meeting would take place and
9 I thought, I told him I thought the meeting would take
10 place in Mr. Older's office, and he said he could hardly
11 believe that, that Older was a great friend of his, very
12 great friend of his and he didn't think Mr. Older would
13 arrange a meeting between Burns and Clancy. I said,
14 'The chances are that has been going on for a long time
15 with Mr. Older's knowledge'." Did you say that? A I said,
16 "The chances are it was going on." I didn't say positively
17 it was going on.

18 Q What was there that made you think the chances were that
19 had been going on for a long time?

20 MR. FORD. We object to that as incompetent, irrelevant
21 and immaterial what the motives were that prompted the
22 witness at that time to make that remark and that there is
23 anything--

24 MR. DARROW. Q What did you know--

25 MR. FORD. Inconsistent in the two answers and if it be
26 given with the intention for impeachment, it does not im-

1 peach the witness's testimony given before.

2 THE COURT. Objection overruled.

3 A I told you that to worry you, as I told you before.

4 MR. DARROW. Q Worry me or lie to me, which? A Both,
5 if you want it that way.

6 Q Both? A Yes.

7 Q That is, to worry me with a lie, is that it? A Yes,
8 sir, and to create trouble in your ranks.

9 Q What? A I wanted to create trouble in your ranks,
10 that is what I was after.

11 Q You wanted to create trouble in our ranks? A Yes, sir.

12 Q You knew, or at least believed and had information that
13 different people pretending to be with us were giving in-
14 formation to your side?

15 MR. FORD. We object to that on the ground it has already
16 been answered, irrelevant and immaterial, not cross-
17 examination.

18 MR. DARROW. I am asking him in connection with this
19 answer, that is all.

20 MR. FORD. It doesn't make any difference what other con-
21 nections he might have, when it is once answered it is
22 answered for all time, it is in the record and they can
23 argue it to the jury. I think these questions are merely
24 repeated by the way of argument--we are not objecting on the
25 ground of argument, but upon the ground that the question
26 has been fully answered.

1 THE COURT: I think that counsel's declaration that it is
2 for the purpose of directing the witness's attention to
3 this matter, he is entitled to that.

4 MR. DARROW: That is the only purpose and I am not going
5 to waste a lot of time on this witness. Read the question,
6 please.

7 (Question read.)

8 A I was pretty sure they were.

9 Q And you further wanted me to believe that men who were
10 not giving information to your side were traitors to us?

11 A Yes, sir.

12 Q All for the purpose of fooling us? A Yes, sir.

13 Q And creating havoc and consternation in our camp?

14 A Yes, sir, and to protect those that were giving us in-
15 formation.

16 Q And to what? A And to protect those who really were
17 giving information.

18 Q To whom? A Mr. Burns.

19 Q That is, to protect those men in our camp who were
20 giving information to you, is that right? A None of them
21 ever gave any information to me.

22 Q I mean to Mr. Burns? A Yes, sir.

23 Q That is right, is it?

24 MR. FREDERICKS. Just a moment--that is objected to as
25 assuming a fact not in evidence; that is, that anybody in
26 their case ever did give any information.

1 MR. DARROW I object to that statement.

2 MR. FREDERICKS Let me finish--

3 MR. DARROW This witness has just now made a statement--

4 THE COURT. I will have to hear counsel's objection.

5 MR. FREDERICKS. That is, it is assuming a fact that any-
6 body in their camp actually ever did give any information
7 to Mr. Burns.

8 THE COURT. Objection is overruled.

9 MR. FORD. There is another objection I want to add.

10 THE COURT. All right.

11 MR. FORD. On the further ground it is hearsay, inasmuch as
12 this witness has testified he thought no information was ever
13 given to him, consequently, if he has any knowledge upon that
14 subject at all it would be hearsay if he derived it from
15 lips of others.

16 THE COURT. It goes to the question of his motives and
17 purpose. Objection overruled.

18 MR. FORD. Asking him what he believed is all right.

19 MR. DARROW. Oh, I think I ought to be allowed to cross-
20 examine the witness without being prompted.

21 THE COURT. Objection overruled.

22 MR. DARROW. Q The other reason besides what I suggested
23 was that you wanted to steer us onto Mr. Clancy and protect
24 the men who were really giving you information out of our
25 camp? A That is about it.

26

1 Q Did you get that out of your own head or did Mr Burns
2 tell you, or both? A Well, we talked it over; both of us
3 talked it over.

4 Q So the reason I was to be brought up there and you were
5 to take this money was to catch me, to protect your spies
6 in our camp, and to create distrust in our own; are those
7 the reasons?

8 MR. FREDERICKS. That is objected to, may it please the
9 court, as being complex and compound and not clear,
10 several different elements included in the question.

11 THE COURT. Mr. Witness, do you understand that question?

12 A Yes, sir.

13 THE COURT. Objection overruled.

14 A Well, partly that was.

15 MR DARROW. What else? A That is about all I know of.

16 Q Why do you say "partly"? A Well, to protect our
17 people, and as I said, to cauce you to think your people
18 that were right were wrong, so as to worry you.

19 Q Cause me to think so. A That the people who were
20 right on your side were wrong?

21 Q In other words, to lie to us in these various ways?

22 A Yes, sir.

23 MR FORD: We object to that upon the ground it has already
24 been asked and answered.

25 THE COURT. He has answered it again.

26 MR. DARROW. When was this meeting in San Francisco?

1 A What do you say?

2 Q When was this meeting in San Francisco? A You and
3 I, took place?

4 Q Yes, where I was getting caught by you? A Either the
5 24th or 25th of August; I am not positive as to the date --
6 24th or 25th.

7 Q Where did you go from there? A After I left you?

8 Q Yes. A Went back to Mr Burns' office.

9 Q Made a report? A Verbal one.

10 Q Didn't make it in writing? A No sir.

11 Q What report did you ever make in writing about all
12 these matters? A Why, the ones down at the Alexandria
13 Hotel I made in writing here.

14 Q Any other? A Well, I sent you a couple of letters
15 from Chicago, and I took carbon copies of them.

16 Q Have you got those -- have you? A I don't know.

17 Q Get any answers? A Through Turner, yes.

18 Q Did you get the letters? A Telegram.

19 Q Did you get any answer to the letters? A No sir,
20 not directly.

21 Q Indirectly? A Yes sir.

22 Q Did your letters call for telegraphic answers? A Well,
23 I didn't know whether you would reply by telegraph or
24 letter, but I told Turner, strung him along for a little
25 time, and he wanted me to meet your brother-in-law,
26 Hammerstrom. I told him I would not talk to him and he

1 sat down to wire you I had a lot of keys, registers, etc.

2 Q Was that after San Francisco or before? A That was
3 after.

4 Q How long did you stay in San Francisco, at that time?

5 A About a week, I think.

6 Q Then where did you go? A Portland.

7 Q You were traveling with Mr Burns? A Yes sir.

8 Q Bodyguard? A No sir, he can take care of himself.

9 Q How about you? A I think I can take care of myself;

10 I don't know.

11 Q You were traveling together? A Yes sir.

12 Q And then you went to Chicago? A Went to Seattle.

13 Q Finally got around to Chicago? A Yes sir.

14 Q Didn't come back here again until this time? A No sir.

15 Q You were with Mr Burns all the time, were you not?

16 A Yes sir.

17 Q How long have you been with him all the while? A Why,
18 since a couple of months before the arrest of the McNamaras.

19 Q Up to the present time? A Yes sir, off and on, at
20 different times, why, --

21 Q All this time you have been under salary from Mr
22 Burns? A Practically all the time.

23 Q You are looking for part of the reward in the McNama-
24 ra case, aren't you?

25 MR FREDERICKS: That is objected to as immaterial in this
26 case.

1 THE COURT: Objection overruled.

2 MR DARROW: Is that right? A Yes sir.

3 Q About a third of it?

4 MR FREDERICKS: We object to that.

5 MR FORD: We object to that as irrelevant and immaterial,
6 a reward in the McNamara case has nothing to do with any
7 reward in the Darrow case. There are no rewards.

8 MR DARROW: You will have one.

9 THE COURT: Objection overruled.

10 MR FREDERICKS: In Heaven.

11 MR FORD: I am doing my duty is the only reward I have.

12 MR DARROW: You are. A I don't know how much I will get,
13 I figure I will get my share, whatever that may be.

14 Q Have you made any application for it? A No sir.

15 Q You have talked it over.

16 MR FORD: We object to that as irrelevant and immaterial.

17 MR DARROW: Discussed it with Mr Burns?

18 THE COURT: Wait a minute, let's see if I am right. You
19 are referring to the reward in the McNamara case?

20 MR DARROW: yes, in the McNamara case.

21 THE COURT: Objection overruled.

22 MR FREDERICKS: That is the reward for the capture of the
23 McNamaras.

24 THE COURT: I know.

25 MR DARROW: You and Mr Burns are working together on the
26 reward question, aren't you? A Yes sir.

1 Q Mr Ford is your attorney, isn't he? A yes sir.

2 Q That is the assistant District Attorney, I refer to as
3 Mr Ford; isn't he? A Yes sir.

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REDIRECT EXAMINATION.

MR. FREDERICKS. Q Do you know of any rewards in this case, the case of People vs Darrow?

MR. DARROW I object to that, nobody has asked for any reward in this case or talked about any.

THE COURT. Objection overruled.

A No, sir.

MR. FREDERICKS Q If there are any, as far as you know, you are not interested in that in any way, shape or form?

A Not interested in any way, shape or form.

Q The reward you were asked about was the reward for the capture of the man who blew up the Times, was it not?

A Yes, sir.

MR. ROGERS. Just a moment. That is not the best evidence. It is incompetent, and I make the objection because Captain Fredericks is not stating the conditions.

MR. FREDERICKS. Well, I tried to.

MR. ROGERS. Captain Fredericks stipulated right here in open Court that Mr. Browne is entitled to the reward.

MR. FREDERICKS. We are not talking about that. No, I didn't stipulate that, either.

THE COURT. What is the question?

(Question read.)

MR. FREDERICKS. Q Does that reward, in your judgment, depend in any way, shape or form on the outcome of this case?

MR. APPEL. Wait a moment--we object to that, your Honor.

1 because it is calling for an opinion and conclusion of the
2 witness, that is for the jury to determine those things.

3 THE COURT. Objection overruled.

4 MR. APPEL. We take an exception.

5 A No, sir.

6 MR. FREDERICKS. Q There was an exhibit in here yesterday,
7 I think the witness is mistaken about, and I would like
8 to show it to him again. It is an exhibit on a little slip
9 of paper--

10 MR. ROGERS. He testified it was in Mr. Darrow's handwriting,
11 did he not?

12 MR. APPEL. He testified he saw him write it.

13 MR. ROGERS. He had given it to him. Subsequent investi-
14 gation shows--

15 MR. FREDERICKS. Why, no--

16 THE COURT. Mr. Rogers, you are out of order. There is noth-
17 ing before the court at this time.

18 MR. ROGERS: A. I object to that it is not redirect, he
19 says he saw him write it.

20 MR. FREDERICKS. We intend to maintain he saw him write it,
21 why wont you wait until you know what I want?

22 MR. APPEL. We have a chance to object, I suppose?

23 THE COURT. certainly.

24 MR. FREDERICKS. Certainly. Now, I think I didn't read
25 this to the jury, possibly didn't read it to you--the
26 exhibit I am showing you is People's Exhibit No. 29,
being a little slip of a newspaper with some writing on it.

1 I wish you would look at that now, Mr. Biddinger. (Handing
2 same to witness.) What are those figures on there?

3 MR. APPEL. We object to that as not redirect examination.
4 Your Honor, we have not even cross-examined the witness
5 on this.

6 MR. FORD. It is not offered as redirect examination.

7 MR. APPEL. It is not redirect at all, and the figures
8 themselves speak for themselves.

9 MR. FORD. If the Court please, it is not offered as re-
10 direct.

11 THE COURT. One at a time. Have you finished, Mr. Appel?

12 MR. APPEL. Yes, sir. We object to it upon that ground.

13 THE COURT. I can only hear one counsel at a time.

14 MR. FORD. He never sits down, your Honor, and we do not
15 know when he is through and we do not know when we are
16 interrupting him.

17 THE COURT. Now, Gentlemen--

18 MR. APPEL. That certainly is not right. That calls for
19 a denial on my part, in view of the bare statement that is
20 almost untrue, your Honor. I do not want to offend him,
21 your Honor.

22 THE COURT. Mr. Appel, have you finished? If you will
23 indicate you have finished, either by sitting down or
24 in some other way--

25 MR. FREDERICKS. I would like to state the point--the point
26 is not it is redirect, but it is a correction of an error

1 or possible error in his testimony on direct examination,
2 that is the point, and that the statement that the numbers
3 --well, this little slip of paper was introduced in evi-
4 dence, and the record shows it was not read to the jury
5 and probably was not read by the witness. Now, that is my
6 point.

7 MR. APPEL. Now, your Honor, because they fail to read the
8 paper to the jury here--there have been papers offered, a
9 number of papers here, and the record is just plumb
10 full of them, I have been taking notes, the papers intro-
11 duced in evidence that have never been read to the jury.

12 MR. FREDERICKS. That is not the point.

13 MR. APPEL. Counsel states it is a correction of an error,
14 the witness himself has not said himself on the stand that
15 he wants to correct anything.

16 THE COURT. Read the question.

17 (Question read.)

18 THE COURT. Objection overruled.

19 MR. APPEL. We take an exception.

20 A I made a little mistake in this. Those are figures
21 of the number of the room he had in the Palace Hotel in
22 San Francisco when I met him.

23 MR. ROGERS. If your Honor please, the witness stated when
24 he was on the stand before that in the Alexandria Hotel--

25 MR. FREDERICKS. Yes, the witness stated--

26 MR. ROGERS. He saw that telephone message and subsequent-

1 investigation has shown him?-

2 MR. FREDERICKS. That is not so--

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1 MR ROGERS: -- that there was no such telephone number.

2 THE COURT: What is the objection, if you have any?

3 MR ROGERS: I object to it as not redirect.

4 THE COURT: The objection has already been overruled.

5 MR FORD: In order that the matter may be straight before
6 the court and jury --

7 THE COURT: The record speaks for itself as to whatever
8 it is. I assume that the jury will remember it, I think
9 I do. Proceed with your examination.

10 MR FREDERICKS: Yes sir.

11 Q Mr Biddinger, when was this slip of paper with these
12 numbers given to you by Mr Darrow?

13 MR APPEL: We object to that on the same grounds stated,
14 not redirect examination, incompetent, irrelevant and imma-
15 terial.

16 THE COURT: Objection overruled.

17 MR APPEL: We except.

18 A On the 24th or 25th of August there in the bar at
19 the Palace hotel.

20 Q State whether or not -- state what, if anything, was
21 said by him at that time in regard to these numbers, if
22 you remember?

23 MR APPEL: We object to that on the same ground already
24 stated.

25 THE COURT: Objection overruled.

26 MR APPEL: We except.

1 A I told him I had called up for Mr Darrow and there
2 was another Darrow and I got in conversation with the wrong
3 Darrow, so he tore that piece of paper and he says, here is
4 the number of the room, you don't have to ask for my name,
5 ask for the number of the room."

6 MR FREDERICKS: This was never read, and I would like to
7 read it to the jury.

8 THE COURT: You may.

9 MR FREDERICKS: (Reading:) "number 6097 ro" apparently
10 after it.

11 THE COURT: I think we will take a recess at this time.
12 Gentlemen of the jury, bear in mind the former admonition.
13 We will take a recess for 10 minutes.

14 (After recess.)

15 THE COURT: You may proceed.

16 MR FREDERICKS: I have finished.

17 MR DARROW: Just a moment. What did you do to refresh
18 your remembrance on this matter? A On that slip of
19 paper?

20 Q On that slip of paper, yes sir? A I got to looking
21 over the other pieces of paper there, notes that I had
22 between you and myself, got to thinking it over --

23 Q You got your notes that you looked over? A I said
24 I got to looking over that figure on that envelope you
25 gave me there at the Alexandria and some notes.

26 Q Where did you do that? A Sir?

1 Q Whereabouts did you do that? A Upstairs in Captain
2 Fredericks' office.

3 Q What did you look over to make you change your mind?

4 A Nothing made me change my mind. I realized I was wrong
5 and I told Captain Fredericks --

6 Q What did you look over -- that is the question I am
7 asking you? A I looked over -- read a report I had writ-
8 ten.

9 Q A report of what? A About what had taken place be-
10 tween you and I.

11 Q And from that you say you were wrong, do you? A Well,
12 I read the number.

13 Q Well, after looking over the report? A yes.

14 Q Where is the report? A I don't know where it is.

15 Q Where did you see it? A Upstairs.

16 MR DARROW: I want to see that report, Captain.

17 MR FREDERICKS: I don't know what report he refers to.

18 MR DARROW: What do you refer to? A I refer to the re-
19 port that I wrote here in the Alexandria hotel.

20 Q A report of your conversation in the Alexandria Hotel?

21 A Yes sir.

22 MR DARROW: I want to see it.

23 MR FREDERICKS: The witness must mean the one in the
24 Palace hotel.

25 MR DARROW: He said the Alexandria hotel. Which one was
26 it? A I just told you that I thought it was the one from

1 the Alexandria hotel on Alexandria Hotel stationery.

2 Q And that you saw in Mr Fredericks' office? A Up
3 on that floor; not in his office.

4 Q Well, in his suite? A yes.

5 Q When? A This morning.

6 MR DARROW: I want to see it.

7 MR FREDERICKS: I will dig it up for you.

8 MR DARROW: I want to see it while he is on the stand.

9 MR FREDERICKS: You said you were going to put him on in
10 the morning.

11 MR DARROW: I don't know whether I am. Can't you send
12 for it now?

13 MR FREDERICKS: No; nobody else can find those things.

14 THE COURT: Counsel says he will produce it within a reason-
15 able time.

16 MR DARROW: Isn't it right here now? Your Honor, I want
17 it now.

18 MR ROGERS: I saw Mr Keetch reading it here, your Honor.

19 THE COURT: It will be necessary to take a recess in or-
20 der to let counsel leave the court room to find it. If it
21 is important enough, I will do so.

22 MR DARROW: His office is very handy.

23 MR FREDERICKS: I don't think that counsel is entitled to
24 it, to begin with.

25 MR DARROW: He has refreshed his memory from a report and
26 we want to see the report, and I want it now.

1 THE WITNESS: The thing that refreshed --

2 MR DARROW: Now, wait; there is nothing for you to talk.

3 THE COURT: There is nothing before the court for you to
4 talk about.

5 MR FREDERICKS: Did the witness say he saw the report
6 himself or somebody else talked to him about what was in
7 the report.

8 THE COURT: I understood him -- read it.

9 MR DARROW: Is there any reason why we shouldn't have it?

10 MR FREDERICKS: Oh, no.

11 MR DARROW: It doesn't seem to me there could be any.

12 MR FREDERICKS: I don't think there is any reason why
13 you should have it.

14 THE COURT: Gentlemen, what is the use of quibbling about
15 it. There is nothing to quibble here. Captain Fredericks
16 stated he will produce it. He desires it should not be
17 done at this time. It will be necessary to take a recess
18 to let him go and hunt for it.

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18s 1 MR. DARROW. I should like to know.

2 MR. FREDERICKS. What does the record say there about
3 whether the witness actually saw it?

4 MR. DARROW. Read it over.

5 (Testimony of the witness read by the reporter.)

6 MR. FORD. If the Court please, the question we urge is one
7 merely of right. If the defendant is entitled to the
8 document we want to give it to him. There is a question
9 in our mind whether he is entitled to it. He is not entitled
10 to the Alexandria Hotel portion by reason of any matter
11 brought out on redirect examination. The only one he
12 could be entitled to would be the one concerning the trans-
13 action in San Francisco at the Place Hotel where this memo-
14 randum was given to him. Now, I am not sure, but my memory
15 as to what occurred, if the witness actually saw the report,
16 whether he did, why, the defendant is entitled to it, but
17 I want to be absolutely fair on it. I don't remember
18 whether he did see the report or not. If he did, counsel
19 is entitled to it, but I think perhaps the witness might be
20 mistaken with regard to that.

21 THE COURT. I think the witness said he saw the report.

22 MR. FORD. He might answer it that he read it. I think
23 the facts are I held the report in my hand and asked him
24 where that piece of paper was that he received at the
25 Palace Hotel and he said, "That is what you had down there."

26 THE COURT. We will have to go by the record here.

1 MR. APPEL. We object to any statement by the District
2 Attorney concerning unsworn evidence and allowing the jury
3 to receive statements not under oath; we take an excep-
4 tion to the matter and we assign his conduct as error.

5 THE COURT. The court will admonish the jury to disregard
6 the statement purported to state the fact from the District
7 Attorney.

8 MR. FORD. The only point I desire to make is this: It is
9 a matter we want to decide for ourselves. We will produce
10 it in the morning if we believe the defense is entitled
11 to it. There is absolutely nothing to conceal, only we
12 don't care to reopen the examination time after time. We
13 haven't the paper here at the present time.

14 THE COURT. How long will it take you to get it?

15 MR. FORD. That would be a matter to discuss among our-
16 selves as to whether or not the defense is entitled to it.

17 MR. DARROW. I ask for it right now.

18 THE COURT. Any reasonable objection to producing it?

19 MR. FORD. We might ask the witness a question.

20 THE COURT. All right, ask the witness a question.

21 MR. FORD. Q. Do you remember, Mr. Biddinger, whether or not
22 you read that memorandum? A. The thing that recalled it
23 to my mind, I asked McLauren to look over the hotel regis-
24 ters and the number of the room that Darrow occupied up to
25 that time. When I saw the number of the room running up
26 in the six thousand I remember then, it came back to me,

1 that was a slip of paper with the number of his room on.
2 MR. FORD. At that time I had some reports in my hand, did I
3 not? A Yes.

4 Q Did you read them? A You told me that I had made a
5 mistake and I said to you I would like to look over the
6 Hotel register and see what room Darrow occupied up there
7 at that time. McLauren got it out and I looked over it and
8 I remembered.

9 Q The point I want to get at, Mr. Biddinger whether or not
10 you read the memorandum of your report which I had in my
11 hand. Did you yourself read it at any time? A No, sir.

12 MR. DARROW. This witness has already said he read it.

13 THE COURT. Read his answer just before where counsel
14 was conferring with Captain Fredericks. Let the witness
15 tell what it was he looked over.

16 MR. DARROW. The witness stated on direct examination. Now,
17 because counsel put some other words in his mouth that
18 doesn't change it. He said he looked over this memorandum
19 on the Hotel Alexandria paper.

20 THE WITNESS. What brought it all back to me was seeing
21 the number of the room that Darrow occupied up there last
22 August on the 24th and 25th.

23 MR. APPEL. That is not the question.

24 THE COURT. Q What document was it that you looked over
25 that caused you to remember that? A That is the document
26 there, the report from the hotel of the time Darrow got in,

1 what day he paid out and the amount of his bill and the
2 number of his room.

3 THE COURT. Q And that was on the stationary--

4 A Of the Palace Hotel of San Francisco.

5 MR. APPEL. He said awhile ago he read the report on the
6 stationery of the Alexandria Hotel.

7 A I made a mistake.

8 THE COURT. Q The document you looked over is written
9 on the stationery of the Palace Hotel? A The printed
10 form of the Palace Hotel sheet.

11 THE COURT- Q And you are positive that ^{that is} the document that
12 you looked over? A Yes, sir.

13 Q And when you looked that over you remembered that?

14 A That was the number of the room, the slip of paper that
15 he had given me.

16 THE COURT. Well, I think primarily, at least, counsel
17 is entitled to that document.

18 MR. DARROW. I didn't ask for that document, I asked for
19 the document that he described here to me. He said he looked
20 over the report of his conversation at the Alexandria
21 Hotel. It was on the Alexandria Hotel stationery. He looked
22 over his report of the conversation, that is what he said.

23 THE COURT. I think you are quite right about that, Mr. Dar-
24 row.

25 MR. DARROW. Then have they any reason for keeping it
26 out?

1 THE COURT. Just a moment. You are quite right about that.
2 He did say that. He now says that was a mistake.
3 MR. DARROW. He said it after counsel told him.
4 MR. FORD. Told him the truth.

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1 MR DARROW: I don't know whether you did or not. Perhaps
2 he told the truth the first time. How do I know. We are
3 entitled to it. We ought not to be --

4 MR APPEL: We are entitled to both mentioned -- anything
5 he saw.

6 THE COURT: Yes, everything he saw to refresh his memory.

7 MR FREDERICKS: If they are entitled to it under the law,
8 of course, we are perfectly willing they should have it,
9 but as it has appeared here from our conversation there
10 was several of us there know just what happened. Now, we
11 are not testifying; we are trying to ask the questions
12 in such a way that it will recall the matter to the witness
13 and if the witness is entitled -- if counsel on the other
14 side is entitled to the record at which this witness
15 looked, why, of course, we have no objection to their hav-
16 ing it, but it is not a record made by this witness and
17 we doubt if they are --

18 MR DARROW: I ask for the report made by this witness.

19 MR FREDERICKS: He never saw that report and he has so
20 stated.

21 MR DARROW: He said he wrote it -- a record of his conver-
22 sation at the Alexandria hotel and it was written on
23 Alexandria Hotel stationery.

24 MR APPEL: He saw the report, your Honor.

25 MR DARROW: I don't care to make --

26 MR FORD: I don't think he said it, if the court please, I

1 think the facts appear from the testimony that I had the
2 report in my hand and I asked him the question --

3 MR APPEL: We object to this man stating here before this
4 jury what the situation was there as they know it.

5 They are not under oath. We are simply asking on the re-
6 cord here what the witness himself said, now, your Honor.

7 MR FORD: I would like to finish my remarks without being
8 interrupted.

9 MR APPEL: I will interrupt you, because I am addressing my-
10 self to the court. They are not being --

11 THE COURT: Wait a moment, gentleman. I think there is one
12 point I can settle. Let's settle one at a time. There
13 is at least one report that counsel for the defense is
14 legally entitled to; that is the report that the witness
15 has just testified to written on the letterhead of the
16 Palace hotel.

17 MR DARROW: We have not asked for it, so you can dispose of
18 it in a minute. We have asked for the report he swore he
19 examined, of his own conversation written on the Alexan-
20 dria stationery at the Alexandria Hotel, and we are en-
21 titled to it.

22 MR FORD: If the court please, I think the record will
23 show as far as the Palace Hotel record is concerned by
24 the witness' testimony that I had such a report and the
25 witness saw it, but did not read it. I think that is
26 what the record will show. With regard to the Alexandria

1 record there has been no testimony brought out with re-
2 gard to that on the redirect examination. The witness has
3 not testified from anything he heard at the Alexandria
4 nor did he read, and as stated, although he may have made
5 the statement that he read the Alexandria Hotel report,
6 or that he saw the Alexandria Hotel report, he was mis-
7 taken, and when he was referred to the Palace Hotel re-
8 port, and that is evident from the memorandum itself,
9 which refers to what occurred in San Francisco, the
10 newspaper clipping shows that it is the number of the
11 room at the Palace Hotel, 6000--

12 THE WITNESS: And 97.

13 MR FORD: Room at the Palace Hotel, and there may appear
14 in the Palace Hotel report something concerning that mat-
15 ter, but not concerning some matter down here, and the
16 principle with us in this matter is to confine counsel ab-
17 solutely to what they are entitled to, that is the only
18 principle involved.

19 THE COURT: That is the sole question, what they are en-
20 titled to now, under this evidence.

21 MR FORD: As far as the report is concerned, we haven't
22 anything to conceal.

23 MR DARROW: We object to that statement. It is evident
24 they have something to conceal.

25 MR ROGERS: Reading from page 3323 -- "Mr Fredericks--State
26 Mr Biddinger, whether or not Mr Darrow gave you any mem-

1 orandum at any of the talks you had with him at the Alex-
2 andria Hotel? A -- Yes sir. Q -- When was that? Which
3 talk? A -- On the 15th day of August he gave me a little
4 slip of paper torn ^{off} from his newspaper with his telephone
5 number on it.

6 Q On the 15th day of August?" He wasn't then in San
7 Francisco. "A -- Yes sir." And they exhibited the slip of
8 paper. "Mr Fredericks -- Now, this slip from a news-
9 paper which you say he gave you with his telephone ^{number} on it,
10 was that given to you?" After objection, "Q -- Do you
11 remember where that was given to you, at which hotel?

12 A -- In the Alexandria here in Los Angeles. I saw him write
13 it myself, and tear it off." Now, there cannot be any
14 question.

15 THE WITNESS: I am just admitting I made a mistake.

16 MR FREDERICKS: Simply refers to another piece of paper.
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1 MR. DARROW. Your Honor, he stated that directly, that
2 he read this report of the Alexandria Hotel. Mr. Ford tells
3 the court that could not possibly refresh his memory if he
4 read this report, and there was a report of it, it would
5 refresh his memory, and it may show everything else he
6 testified to was not true; he read it, he swore to it and
7 told the kind of stationery it was on.

8 THE COURT. I will ask the witness one other question.

9 Q Mr. Biddinger, did you or did you not read or in any way
10 refresh your memory from the report made on the letter head
11 of the Alexandria Hotel? A It was the letter head of the
12 Palace, I was mistaken on it.

13 THE COURT. Well, you haven't quite answered my question.

14 A No, sir, not from the Alexandria; no, sir.

15 THE COURT. Q You did not see that paper at all to refresh
16 your memory? A No, sir, it was the Palace.

17 MR. ROGERS. There is no accounting for these answers on
18 any other theory.

19 MR. DARROW. As long as he has testified squarely one way
20 we want to have the benefit of it.

21 THE COURT. Now, gentlemen, you are entitled to any docu-
22 ment that he used to refresh his memory. Now, what is the
23 testimony in that regard?

24 MR. DARROW. His testimony directly in answer to my ques-
25 tion was that he used this document.

26 THE COURT. He now states that he was mistaken when he said

1 it was on the letter head of the Alexandria.

2 MR. DARROW_ He stated that after counsel had suggested it
3 to him, and now the question is whether he is or not,
4 but we are entitled to look at it and see. What purpose
5 is there in keeping it from us?

6 THE COURT. That is not a question with which the
7 court is concerned with. It is only a question of whether
8 or not the fact he used it to refresh his memory.

9 MR DARROW. He has laid the foundation himself in answer to
10 my question. If there is any doubt about it we are entitled
11 to it and it is his direct statement.

12 THE COURT. You can clear that up any further by further
13 questioning.

14 MR. DARROW. I don't think it needs any further ques-
15 tioning. Read the record he made.

16 MR. APPEL. Now, if he is mistaken, your Honor, right now,
17 even when the question arises whether he is mistaken or
18 not, we claim he is not mistaken. The witness says he is
19 mistaken, that is, counsel here told him that it could
20 not be something to that effect. We have a right to show
21 he is not mistaken. We are entitled, he having mentioned
22 that report, he having mentioned one time he refreshed his
23 memory from a report of the conversation he had with Mr.
24 Darrow at the Alexandria Hotel in answer to Mr. Darrow's
25 question and afterwards he having said he refreshed his
26 memory from the record concerning the matters at the Palace

1 Hotel, and he having said now that he was mistaken as
2 to the other one, we are entitled to both of them, and to
3 know whether he is mistaken or not. We are entitled to have
4 him look at them there. Nobody would be hurt by it. If
5 it is--if he got this piece of paper here at the Alexandria
6 Hotel he couldn't have gotten it at the Palace, and he said
7 he did here, upon their direct examination, your Honor, and
8 this witness--if they undertake to refresh his memory, the
9 court room is the proper place to refresh his memory where
10 we could have a chance to see what he was looking at. Why
11 let the witness be taken off the stand and be taken some
12 place else and his memory refreshed when the other side has
13 no opportunity to know from what he refreshes his memory?
14 MR. DARROW. If by any peradventure this should help the
15 defense, aren't we entitled to it? Certainly there isn't
16 any reason why anything should be thrown into the scale that
17 is not proper.

18 THE COURT. The court has no power to order the document
19 produced unless it appears in the evidence--

20 MR. DARROW. He said he looked it over; it so appears in the
21 record. Now, if he has sworn two ways that doesn't matter,
22 Your Honor, right here in the presence of the jury knew how
23 that came about.

24 THE COURT. The objection of the District Attorney is su-
25 tained.

26 MR. DARROW. Take an exception.

1 MR. DARROW. Q Mr. Biddinger, you gave the other day the
2 following testimony, didn't you, reading from page 3328:
3 "State, Mr. Biddinger, whether or not Mr. Darrow gave
4 you any--"

5 THE COURT. Mr. Darrow I will interrupt you and hand the
6 witness my copy so he can follow you.

7 MR. DARROW. Page 3328, beginning with the first paragraph
8 at the top: "Q State, Mr. Biddinger, whether Mr. Darrow
9 gave you any memorandum at any of the talks you had with
10 him at the Alexandria Hotel? A Yes, sir. Q When was that
11 and which talk? A On the 15th day of August he gave me a little slip
12 torn off from his newspaper with his telephone number on it.
13 Q On the 15th day of August? A Yes, sir.

14 Q We exhibit the slip of paper that we intend to show the
15 witness. Mr. Rogers: Is that claimed to be in Mr. Darrow's
16 handwriting? A Yes, sir. Mr. Darrow: Well, it isn't.

17 Mr. Rogers: All right, show it is in his handwriting.

18 Mr. Fredericks. All right. Now, this slip from a news-
19 paper which you say he gave you with his telephone number
20 on it, was that given to you? Mr. Rogers: Possibly it would
21 be well to not lead the witness. The Court: Do not lead
22 him. Mr. Fredericks: Do you remember where that was given
23 to you, at which Hotel?"

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1 A -- In the Alexandria here in Los Angeles; I saw him
2 write it myself. He tore it off his paper."

3 MR ROGERS: How could he refresh his recollection by a
4 Palace Hotel document when he has sworn here --

5 MR FREDERICKS: Now, ask the witness and you will find out
6 just exactly how it happened.

7 MR DARROW: We will ask him what we want.

8 MR FORD: You just asked him a question.

9 MR DARROW: Were those your answers? A yes sir.

10 Q That is not true, then? A I was mistaken.

11 Q That is not true? A No sir.

12 Q Now, Mr Biddinger, did you make a report of that Alex-
13 andria Hotel conversation? A I made a report of every-
14 thing I did.

15 Q Will you answer my question? A Yes sir.

16 Q In writing? A I am not positive about that at that
17 time. I told Mr Burns right afterwards, made a verbal re-
18 port to him just as soon as you left me.

19 Q Mr Biddinger, do you say you are not positive of whether
20 you made a written report of that Alexandria Hotel conver-
21 sation? A At that time?

22 Q At that time? A At that time I made a verbal report.

23 Q And you didn't make a written report? A I think I did
24 make a written report later on.

25 Q Didn't make a written report at that time? A No sir,
26 I went then and told Mr Burns.

1 Q When did you make a written report? A Whenever I
2 would get time during the evening, having nothing to do,
3 write up what took place during the day.

4 Q Did you make a written report of that conversation?

5 A I think I did.

6 Q Do you know whether you did? A I am pretty sure I did.

7 Q Do you know when? A Well, I wouldn't be sure, but I
8 think that night.

9 Q To whom? A Mr Burns.

10 Q Did you make any other report? A Why , every day,
11 nearly, I wrote out a report later on.

12 Q Did you make any report of that conversation? A No.

13 Q That was dated on the 16th day of August, wasn't it?

14 A 16th?

15 Q That right? A Dated one the 15th, one the 16th and
16 one the 14th.

17 Q Did you date one on the 16th? A Yes.

18 Q Which date was this conversation that you have been
19 talking about? A The 16th.

20 Q And you made a written report at the time on the 16th?

21 A yes sir.

22 Q Where is it? A I don,t know.

23 Q Have you seen it? A NO sir.

24 Q At any time since you made it? A Yes.

25 Q When? A Well, I read it over when I turned it over
26 to Mr Burns.

1 Q When was that? A Maybe the 17th of August, the
2 day after.

3 Q Have you seen it since? A No sir.

4 Q So what you have testified to here concerning that is
5 purely a matter of memory, is it? A Purely a matter of
6 memory.

7 Q Have you ever inquired for that report since? A No
8 sir.

9 Q And when you said a few moments ago in answer to me that
10 you read that report written on the Alexandria Hotel
11 stationery, you were not stating it correctly; is that right

12 MR FORD: Just a moment. We object upon the ground it is
13 not in evidence he read the Alexandria Hotel report.

14 The witness answered, "I saw the report."

15 THE COURT: Overruled.

16 MR DARROW: How about it? A I had reference to the re-
17 port from the Palace Hotel.

18 Q What you said in reference to reading a report writ-
19 ten on the Alexandria Hotel paper, that conversation
20 at the Alexandria Hotel, is not correct? A No sir, it
21 is not correct.

22 Q Did you read a report of the Palace Hotel conver-
23 sation? A I saw this report that was sent down from the
24 hotel with the printed form of the number of the room that
25 you occupied.

26 Q Did you read a report of the Palace Hotel conversation?

1 MR FORD: Written by himself? A No sir.

2 MR DARROW: Of any sort? A Only that one that I told you
3 about, that printed form that was sent down, nothing that
4 I wrote.

5 Q Have you ever gone over this matter with anybody as
6 to your testimony since you came here? A Yes sir.

7 Q Who? A Mr Burns.

8 Q Anybody else? A Why, Mr Ford there, talked to him
9 about that number.

10 Q Anybody else? A Oh, I talked to Mr McLaren about
11 telephone numbers.

12 Q Have you gone over the question of the conversation in
13 the Alexandria Hotel since you came here? A Yes. This
14 last time; yes sir.

15 Q With whom? A Mr Burns.

16 Q Where? A Up in our room at the Alexandria.

17 Q Did he have any report of it? A No, he didn't.

18 Q Doesn't he carry his reports with him? A No sir.

19 Q Did you ask him if he had any, sir? A No, I never
20 asked him.

21 Q How did you know he didn't have it? A If he had it,
22 it was hidden; he never showed it to me.

23 Q Did you ask him whether he had it? A No sir, I did
24 not.

25 Q We want to ask the District Attorney whether he has
26 the report of the alleged conversation in the Alexandria

1 Hotel.

2 MR FORD: We are not on the stand nor answering questions.

3 MR DARROW: Now, we call for the production of the report
4 of the conversation in the Alexandria Hotel.

5 MR FREDERICKS: The same question, I presume, that was
6 up before.

7 THE COURT: Do you object to its production?

8 MR FREDERICKS: yes, your Honor, at this time.

9 THE COURT: Objection sustained.

10 MR DARROW: We take an exception.

11 Q--MR BIDDINGER, how many people have you talked to with
12 reference to coming down here to testify in this case; do
13 you know? A Haven't any idea.

14 Q Did you with Mr Burns about it in Chicago? A yes sir.

15 Q Don't you know that I gave you the money in the Alexandria
16 Hotel and in the Palace Hotel for the purpose of getting
17 information for me in reference to the people Mr Burns
18 had from our camp on your pay-roll and in your employ?

19 A That was part of the reason -- part of it.

20 Q Don't you know that was the sole reason? A No sir.

21 MR DARROW: That is all.

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REDIRECT EXAMINATION

24 MR FREDERICKS: Let us clear this up --

25 THE COURT: Before you start in. Mr Darrow, do you still
26 reserve your right to call this witness for further cross-

1 examination?

2 MR DARROW: yes sir.

3 THE COURT: I wanted to be clear on that.

4 MR FREDERICKS: What was the other consideration for the
5 money?

6 MRDARROW: I object to that upon the ground this witness
7 has gone all over it, and I have cross-examined him, and it
8 will mean another cross-examination in the same manner.
9 I had a right to ask him this question as final question
10 on cross-examination. He has testified fully.

11 THE COURT: I do not think that has been delved into.

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22p1 MR. FORD. We have a right to close the redirect.

2 MR. DARROW. You have not a right to go into anything that
3 is not redirect.

4 MR. FREDERICKS' The point is this, your Honor: Counsel
5 asked him, "Wasn't it a fact that I gave you that \$ 700
6 to have you get information for me," and the witness has
7 said that was part of the thing I was to do. Now, I asked
8 him what was the other part.

9 MR. DARROW. Now, your Honor, that involves telling the
10 whole story over again, and involves cross-examining the
11 whole thing again.

12 MR. FREDERICKS' Well, I will withdraw it. Withdraw the
13 question, your Honor. That is a matter we can argue to the
14 jury when the time comes, from the testimony that is already
15 in.

16 THE COURT. All right.

17 MR. FREDERICKS. Q Now, in regard to this slip, this
18 newspaper slip of paper, Mr. Bittingery your testimony of
19 Thursday was just read to you. Now, I will ask you whether
20 or not Mr. Darrow did on the 15th day of August give you a
21 slip of paper torn from a newspaper with his telephone
22 number on it.

23 MR. DARROW. To that I object--

24 MR. APPEL. We object to that on the ground if they have
25 such a slip the slip is the best evidence and he cannot
26 interrogate a witness concerning any writing unless the
writing is produced and unless the foundation is laid for

1 the interrogation of the witness upon that subject so as
2 to comply with the provisions of the code.

3 THE COURT. Objection overruled.

4 MR. APPEL. We take an exception. Let the record show
5 that the paper named in the question is not produced and not
6 handed over to us.

7 MR. DARROW. It is not redirect. We object to it on that
8 ground.

9 MR. FREDERICKS. Simply clearing up that situation was all.

10 MR. DARROW. How is that redirect, and redirect on recross?

11 MR. FORD. You have--

12 THE COURT. Objection is overruled. Answer the question.

13 MR. APPEL. Will your Honor have the record show that the
14 slip is not produced here?

15 THE COURT. Yes, sir, that is the fact, that the slip is not
16 on the table and is not before the court.

17 MR. APPEL. That is all we want to show, the facts as we
18 go along.

19 THE COURT. That is the fact, that the slip of paper is not
20 at this time before the court.

21 MR. APPEL. All right.

22 A We gave me a slip of paper with the telephone number
23 on it.

24 Q And do you know where that slip of paper is? A No, sir;
25 I do not.

26 Q Did you think that was the slip of paper that I had in

1 my hand that I was talking about, when I was asking you the
2 other day?

3 MR. APPEL. Wait a moment--we object to that on the ground
4 it is incompetent, irrelevant and immaterial, not redirect,
5 leading and suggestive, asking him what he thinks; trying
6 to correct testimony of the witness by undue and improper
7 methods; suggestive; and on the ground the paper is not
8 produced, no foundation laid for the interrogation of the
9 witness upon another slip of paper than the one introduced.

10 THE COURT. Objection overruled.

11 MR. APPEL. Except.

12 A Yes, sir.

13 MR. FREDERICKS' Q Have you any idea what has become of
14 that slip of paper? A No, sir--

15 MR. APPEL. Wait a moment--we object to that upon the same
16 ground stated.

17 THE COURT. Objection overruled.

18 MR. APPEL. Exception.

19 A --I have not any idea at all what become of it.

20 MR. FREDERICKS. Q Have you any memory as to what you did
21 with it? A I am pretty positive I gave it to you.

22 Q And state whether or not that was the piece of paper
23 torn from a newspaper?

24 MR. APPEL. Wait a moment--we object to that on the same
25 grounds stated; no foundation laid for the examination of
26 the witness upon any paper not produced, not shown to the

1 defendant and not shown to the witness and its loss not
2 accounted for; not redirect.

3 THE COURT. I think the last answer of the witness indicates
4 that that objection is well taken. Objection sustained.

5 MR. FREDERICKS. I think that covers the matter.

6 JUROR WILLIAMS. Your Honor?

7 THE COURT. Do you wish to ask this witness any question?

8 JUROR WILLIAMS. Yes, pertaining to some discussion. I don't
9 know whether I understood the witness to tell who heard
10 J. B. McNamara offer him from five to all amounts ranging
11 from five to thirty thous and dollars on the train going
12 from Detroit to Chicago, for his freedom?

13 A I stated that. I will state it again if the court wants
14 me to give the names.

15 MR. APPEL. Wait a moment.

16 JUROR WILLIAMS. What I want to know is, who heard him
17 offer it.

18 MR. APPEL. We wants to know who heard it.

19 THE COURT. Yes. The question is, Mr. Biddinger, who heard
20 the conversation, if anybody?

21 A Why, Mr. McLaren, and R. J. Burns, and William H. Reed
22 and myself, we were the four men that were in the car with
23 them.

24 THE COURT. Is that all, Mr. Williams?

25 JUROR WILLIAMS. That is all.

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RECROSS-EXAMINATION.

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MR. DARROW. Q Mr. McLaren is the man who sits over here,
the second seat? A Yes, sir.

Q Mr. Burns's representative here?

THE COURT. I didn't hear the question.

MR. FREDERICKS. No.

1 MR APPEL: Let the witness answer, your Honor. We ob-
2 ject to his answering for him; is that fair?

3 THE COURT: No, it is not.

4 MR APPEL: I ask your Honor to instruct the District At-
5 torney not to answer for the witness.

6 MR FREDERICKS: Just a moment, I have a word to say.

7 MR APPEL: I ask that it will be done respectfully.

8 THE COURT: I think the witness ought to answer the ques-
9 tion.

10 MR FREDERICKS: Was that a question or was that addressed to
11 me?

12 MR DARROW: Yes, the question was, "Was he Mr Burns' repre-
13 sentative here"?

14 MR KEETCH: You didn't put it as an interrogation.

15 MR DARROW: I meant it as that, and if there is any ques-
16 tion about it, I will put it as a question.

17 MR FREDERICKS: If Mr Darrow desires to put it as a ques-
18 tion I should not have replied.

19 THE COURT: All right. That settles it.

20 MR DARROW: And this is McLaren who sits here? A Yes
21 sir.

22 Q And he is the representative of Mr Burns in Los Angeles,
23 isn't he?

24 MR FREDERICKS: That is objected to as calling for a con-
25 clusion and opinion of this witness, whether he is Mr
26 Burns' representative in Los Angeles.

1 MR DARROW: If he doesn't know, he can say so.

2 THE COURT: Objection overruled.

3 A All I know is he was working for Mr Burns at the
4 time he says we met and I suppose he is working for him
5 yet.

6 Q Have you any doubt about it? A I don't know --

7 Q Now, Mr Reid was a Chicago policeman, wasn't he?

8 A Yes sir.

9 Q And this man was taken in Chicago to Mr Reid's apart-
10 ments? A Yes sir.

11 Q Kept there a week or so? A 12 days.

12 Q Were you folks the only ones who heard the conver-
13 sation there? A Yes sir.

14 Q Do you know Alderman Tierney in Chicago? A Yes sir.

15 Q Was Alderman Tierney there? A Alderman Tierney came
16 in the car to look at him, that is, in the drawing room --
17 they had a private --

18 Q He was there with a baseball crowd? A San Johnson
19 and McClosky and all that crowd, yes.

20 Q They were present? A No, they were not present.

21 Q They were not? A They had a private car in the rear
22 of our car.

23 Q They came into the rear of your car? A That is, three
24 or four of them did. I can name those, if you want them.

25 Q Whom?

26 MR FREDERICKS: That is objected to as being immaterial,

1 unless they were there at the time of the conversation they
2 are talking about.

3 THE COURT: Objection overruled.

4 A The papers came out that day and said there were a
5 couple of safe-blowers arrested and they said they came
6 in to see the safe-blowers.

7 MR DARROW: We object to that as not responsive.

8 THE COURT: Strike it out as not responsive, and we will
9 have the question read.

10 A Well, --

11 THE COURT: Wait a minute and have the question read so
12 as to have it clearly before you.

13 (Last question read.)

14 A A man named Joe Ferrell president of the White Sox
15 Rooters Association, he came in, and a man named Quinn.

16 Q What is Quinn; a baseball man? A I don't know what
17 he does; I never saw him before or since; a man named
18 Harry Grabinger, secretary of the White Six Baseball
19 Team.

20 Q You didn't take this man to jail and lock him up in
21 Chicago? A No sir.

22 Q You took him to Mr Reid's apartments, and kept him
23 for 12 days? A yes sir.

24 Q Now, Mr Biddinger, you come to the conclusion there
25 were two little slips of paper torn off a newspaper,
26 have you? A yes sir.

1 Q When did that occur to your mind? A Well, when I
2 remembered -- when I saw this here from the palace Hotel
3 that that one slip was the number of the room occupied by
4 you up there, then it all came back to me.

5 Q Then you thought there were two slips? A No. Then I
6 remembered I was mistaken, that that came from the Alexandria.

7 Q When did it come to you there were two slips of paper?

8 A About 10 o'clock this morning.

9 Q Where did that come to you? A I was upstairs looking
10 over the hotel register to see the number of the room you
11 occupied.

12 Q Then you thought there were two of these slips?

13 A I remembered getting one from you at the Alexandria,
14 I knew I was mistaken when I said this one came from the
15 Alexandria.

16 Q There was a telephone number on an envelope? A There
17 was an envelope with a telephone --

18 Q Telephone number on that? A That is what brought it
19 back to me when I saw this.

20 Q Answer the question: There was a telephone number on
21 an envelope, I gave you, wasn't there? A Yes sir.

22 Q Do you say there was another slip of paper? A Yes
23 sir.

24 Q With a telephone number on it? A That is the best of
25 my recollection.

26 Q The same telephone number that is on the envelope?

1 A I don't remember what number was on it.

2 Q Do you know why I gave you the telephone number on the
3 envelope and then wrote another slip of paper with another
4 telephone number on it? A No, I do not.

5 Q Had you ever thought of any such thing as that until you
6 found that you testified the slip was given at the Alexand-
7 ria, had you ever thought of such a thing before that?

8 A I found it out when I found out I was mistaken with
9 the room number on it.

10 Q Can you describe that slip? A Similar to the one --

11 Q About the same size and shape? A I don't know about
12 the shape, but the same size.

13 Q Do you know of any figures on it? A No sir.

14 Q What did you do with it? A The best of my recollec-
15 tion is I turned it over to Captain Fredericks.

16 Q And it is gone, just vanished? A I don't know
17 whether it has or not; you will have to ask him.

18 MR DARROW: That is all.

19

20

REDIRECT EXAMINATION

21 MR FREDERICKS: Wait a minute. We have not got that
22 straightened out yet. When was it, the 15th or 16th,
23 when he gave you the newspaper slip or paper down in the
24 Alexandria? A I am not positive now, Captain. I cannot
25 think what day it was, either the 15th or 16th.

26 Q Was it the day before or the same day he gave you the

1 envelope? A The way that came about --

2 MR DARROW: I object to that. You can answer the question.

3 THE COURT: yes, answer the question, Mr Biddinger.

4 A I don't remember, then.

5 MR FREDERICKS: All right.

6 JUROR GOLDING: Your Honor?

7 THE COURT:" Mr Golding.

8 JUROR GOLDING: I want to know if he knows George Lock-
9 wood? A I never saw him, wouldn't know him if I saw him
10 come in here; never saw him in my life.

11 JUROR GOLDING: Do you know what the charge is against Mr
12 Darrow now? A yes sir.

13 JUROR GOLDING: What is it? A Attempting to bribe a
14 juror.

15 JUROR GOLDING: Where were you on the 28th of November?

16 A The 28th of November, I was in French Lick Springs,
17 Indiana, about the 28th of November, right along in there;
18 I had charge of Frank Eckhoff, a witness in the case down
19 there.

20 MR DARROW: That is all.

21 MR FREDERICKS: That is all. Mr Burns. ?

22 MR FREDERICKS: There is one other question I wanted to
23 ask Mr Biddinger.

24 THE COURT: Call Mr Biddinger back again.

25 MR FREDERICKS: I made a note of it, and I didn't ask him.

26

1 (Guy Biddinger resumes the stand and further testified
2 as follows:)

3 MR FREDERICKS: You testified, Mr Biddinger, about two
4 or three or four men, baseball players and travellers or
5 one thing and another, coming into the state room when
6 you had J. B. McNamara. Were they present at any time
7 while you were talking over the \$30,000 proposition?

8 A No sir.

9 MR FREDERICKS: That is all.

10 THE COURT: Mr Biddinger, before you leave, I want to
11 call your attention to the fact that counsel for the
12 defense have reserved the right to ask you some further
13 questions on cross-examination. I presume you expect to be
14 available. A I was going to Catalina for a week or ten
15 days, if you have no objection.

16 THE COURT: Will you be ready for this witness tomorrow
17 morning?

18 MR APPEL: I think so.

19

20 RE-CROSS-EXAMINATION

21 MR DARROW: Wasn't Joe O'Farrell there all night with you?

22 A No sir.

23 Q Drinking together.

24 Q He came in there several times with some whiskey,
25 but he only stayed 5 or 6 minutes each time.

26 Q Did you drink with him? A I never took a drink of

1 whiskey in my life.

2 Q Wasn't he there all the while? A Who, O'Farrell?

3 Q Yes? A He may have come in there 7 or 8 times during
4 the night.

5 Q Any of the fellows drinking? A McNamara was the
6 only fellow doing much drinking.

7 Q Any one of your policemen do any? A No sir.

8 Q Any? A No sir.

9 MR DARROW: That is all.

10 MR FREDERICKS: That is all.

11 THE COURT: Just a moment. About the witness tomorrow.
12 The witnesses should be detained as little as possible.

13 MR DARROW: We will be ready in the morning if we have any.

14 MR APPEL: If we are not ready in the morning, we will
15 make some other arrangements.

16 THE COURT: All right.

17 MR DARROW: He probably cannot get away until Mr Burns
18 goes, anyway.

19 MR FORD: I object to that statement.

20 THE COURT: I didn't hear the statement; what is the
21 statement?

22 MR DARROW: I didn't mean anything by it. I said he
23 probably could not get away until Mr Burns did. If
24 there is anything wrong about it, I will take it back.
25 probably he can.

26

1 WILLIAM J. BURNS, a witness called on be-
2 half of the People, being first duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION

5 MR FREDERICKS: State your name. A William J. Burns.

6 Q Where do you live? A New York.

7 Q What is your business? A I am president of the
8 William J. Burns National Detective Agency.

9 Q How long have you been so occupied? A Going on
10 three years.

11 Q Prior to that what was your business? A I, for three
12 years previous to that, I was making graft investigation
13 in San Francisco.

14 Q Prior to that? A For three years prior to that I
15 was making the land fraud investigation for the Interior
16 Department.

17 Q Of the Government? A Yes sir.

18 Q And do you know Mr Bittinger who has just been on the
19 stand? A Yes sir.

20 Q State whether or not he was in your employ in August
21 of last year. A Yes.

22 Q Calling your attention to the date, August 16th,
23 where were you living at that time? A Chicago.

24 Q Where were you stopping August 16th, 1911? A Here,
25 at the Alexandria Hotel in Los Angeles.

26 Q At the Alexandria Hotel? A Los Angeles.

1 Q You knew Mr Biddinger at that time? A yes sir.

2 Q State whether or not you had a meeting with Mr Biddin-
3 ger that morning on the top floor or near the top floor
4 of the hotel Alexandria, near the elevator? A Yes.

5 Q About what time in the morning was that? A Between
6 8 and half past 8.

7 Q And what occurred, without repeating what was said?

8 MR APPEL: Wait a moment. We object to that on the ground
9 it calls for acts and declarations of the parties not in
10 the presence of the defendant, and they are hearsay;
11 irrelevant and immaterial, and incompetent for any pur-
12 poses whatsoever; collateral to any issue in this case,
13 and the acts or declarations of third parties, not evidence
14 against anyone else, not done or taken place in his pre-
15 sence, nor even, as a matter of fact, the corroboration;
16 it is not allowable to be introduced in evidence.

17 MR FREDERICKS: It is a matter of tracing that money, your
18 Honor.

19 THE COURT: Objection overruled.

20 MR APPEL: We take an exception. A Mr Biddinger came to
21 me on the top floor and gave me \$500 that he stated --

22 Q Just don't state what he stated.

23 MR ROGERS: just a moment --

24 MR FREDERICKS: In what shape was that money; was it gold,
25 silver or currency or what? A Currency.

26 Q What did you do with that money?

1 MR APPEL: Wait a moment. We object to that on the ground
2 it is incompetent, irrelevant and immaterial, calling for
3 the acts of the witness not in the presence of the defend-
4 ant, not binding upon the defendant, and hearsay, no founda-
5 tion laid.

6 THE COURT: Objection overruled.

7 MR APPEL: We take an exception. A I took it to your of-
8 fice, reported to you.

9 MR APPEL: We move that that last statement be stricken out
10 as being hearsay statement, voluntary on his part, and con-
11 trary to the construction --

12 MR FORD: It is an act, what he did with that money.

13 MR APPEL: It is an act, but it is a declaration.

14 MR FORD: He reported to him about the money, would be a
15 fact. If he stated what he said it would be hearsay, but
16 the fact he made a report is an entirely different matter.

17 THE COURT: Yes, I understand.

18 MR APPEL: When he says, "I reported", and reported, it is
19 a conclusion and statement of a declaration, it is a
20 conclusion of a declaration, and they cannot make a decla-
21 ration and he cannot state what the declaration was, whe-
22 ther it was a report or anything else. Can there be
23 anything plainer than that?

24 THE COURT: Objection overruled.

25 MR APPEL: We take an exception.

26 MR FREDERICKS: After Mr Biddinger handed you this roll

1 of money up in the Alexandria here, state whether or not
2 Mr Biddinger left you temporarily.

3 MR APPEL: We object to that as leading and suggestive.

4 THE COURT: objection sustained.

5 MR FREDERICKS: State what Mr Biddinger did after that?

6 MR APPEL: We object to that upon the ground it is call-
7 ing for the conduct, declarations and acts of a third
8 part; not in the presence of the defendant and therefore,
9 they are hearsay.

10 THE COURT: objection overruled.

11 MR APPEL: We take an exception.

12 A After giving me the money he went back downstairs
13 in the elevator.

14 MR FREDERICKS: Where were you standing, with reference
15 to the elevator, when you met him? A I think I was sit-
16 ting on a lounge that was up in the hallway. I may have
17 been standing, but I think I was sitting on a lounge.

18 Q Now, state how soon after that, if at all, you met
19 Mr Biddinger? A Almost directly after that.

20 Q How soon after he left you, after he had given you
21 the bills and left you, how soon after that time did you
22 see him again? A Just as soon as he rejoined me.

23 Q About how many minutes; a quarter of an hour, an hour,
24 or how long? A Oh, 15 minutes, I imagine.

25 Q 15 minutes. And state where you went then, if any-
26 where? A Up to your office, the office of the District

1 Attorney.

2 Q In company with Mr Biddinger? A Yes.

3 Q Now, in the office of the District Attorney where
4 you say you turned this money over, state who were present
5 when you counted the money, if you counted it.

6 MR APPEL: We might as well put in one objection, your
7 Honor, so as to cover this. We have a reason for believing
8 that we know what the question calls for. We will ob-
9 ject, your Honor, to anything that was said by Mr Burns
10 or said by Mr Fredericks or to any acts or declarations
11 there in Mr Fredericks' office, between the parties named,
12 or whoever the witness may name, so as to have my objec-
13 tion complete, on the ground whatever happened there, what-
14 ever was said there, will be incompetent, irrelevant and
15 immaterial, and hearsay, and not binding upon the defendant
16 in any way, shape or manner, and collateral to any issue
17 in this case.

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26p 1 MR. FREDERICKS. I wish to add to the question: That the
2 witness should not state anything that was said.
3 THE COURT. What is the question now as amended?
4 (Question read.)
5 THE COURT. Objection overruled.
6 MR. APPEL. We except.
7 A Mr. Biddinger, Mr. Veitch, you were present, I think part
8 of the time, and myself.
9 MR. FREDERICKS. And what amount of money did you ascertain
10 to be in the roll?
11 A \$500.
12 MR. ROGERS. Does our objection go to all of this?
13 THE COURT. Yes, it is understood that your objection goes
14 to all of these questions.
15 MR. FREDERICKS. Q State whether or not that is the same
16 money—state whether or not the money that you turned over
17 in the District Attorney's office is the same money you
18 received from Biddinger and all of it? A It was.
19 MR. APPEL. Wait a minute--
20 THE COURT. Strike out the answer for the purpose of the
21 objection.
22 MR. APPEL. No. We want it understood, your Honor, that
23 these objections--
24 THE COURT. All right.
25 MR. APPEL. I might as well put in the objection, for fear
26 we should overlook it. He is leading the witness and

1 suggesting to him the answers--we might as well put that
2 in so as to be technically correct in our objection.

3 THE COURT. What is the question now before the court?

4 (Question and answer read.)

5 MR. FREDERICKS. The answer was stricken out.

6 THE COURT. The answer was stricken out for the purpose of
7 the objection. The objection is overruled and the answer
8 is restored.

9 MR. FREDERICKS. Q Now, state whether or not you after-
10 wards met Mr. Biddinger in San Francisco and were there with
11 him? State whether or not you were afterwards in San Franc-
12 isco with Mr. Biddinger? A Yes, sir.

13 Q When, if you remember? A August 26th, I think.

14 Q State whether or not Mr. Biddinger gave you any bills
15 while you were in San Francisco.

16 MR. APPEL. Wait a minute--we object to any acts or
17 declarations or any conduct on the part of the witness or
18 on the part of Mr. Biddinger not in the presence of the
19 defendant; incompetent, irrelevant and immaterial, hear-
20 say, no foundation laid, collateral to any issue in this
21 case.

22 THE COURT. Objection overruled.

23 MR. APPEL. We except.

24 A Yes, he gave me \$200.

25 MR. FREDERICKS. Q In what kind of money? A Currency.

26 Q And what did you do with that currency? A I sent it

1 to the District Attorney at Los Angeles.

2 Q Did you ever know John R. Harrington? A Never knew
3 him; never saw him in my life until I saw him on the
4 witness stand here.

5 Q Was he ever in your employ? A Never.

6 MR. DARROW. To that I object on the ground it is incom-
7 petent, irrelevant and immaterial; what are we trying to
8 prove here at this time by this wonderful man? X

9 MR. BURNS. I object to your referring to me in that way.

10 THE COURT. The objection of the witness is sustained.

11 MR. DARROW. I withdraw it then, it is not true.

12 A Mr. Rogers is telling him not to withdraw anything.

13 THE COURT. Mr. Darrow has withdrawn the remark.

14 A Your Honor, I want to call your attention to the action
15 of Mr. Rogers.

16 MR. DARROW. I withdraw the word "wonderful".

17 MR. ROGERS. To what action does the witness refer?

18 MR. FREDERICKS. Let us proceed.

19 THE COURT. Gentlemen, let us go on.

20 MR. FREDERICKS. If there is a question pending--

21 THE COURT. Wait a moment, Captain Fredericks. If there
22 is any affront to you, Mr. Burns, that was contained in
23 Mr. Darrow's remarks, he has withdrawn it. So far as
24 what counsel may do at their table in conferring
25 among themselves, it is not a matter that the court can
26 interfere with unless it interferes with the progress of
this trial in some way.

1 A Very well, your Honor.

2 THE COURT. I heard nothing and saw nothing, and Mr.
3 Darrow has withdrawn his remark.

4 A Now, if your Honor please, I would like to at this
5 time, call your attention to statements that have been
6 made by Mr. Rogers in this court room that I carried a
7 sword cane. It is not true.

8 MR. ROGERS. That is not true?

9 A This man also made a statement I was a suborner of
10 perjury, in the presence of this jury.

11 MR. ROGERS. I make it again, sir, and do not take it
12 back.

13 A Your Honor, I ought to be protected and be permitted,
14 if you will allow me, to tell here what I know to be
15 true.

16 THE COURT. Now, the court will take action upon this
17 matter. The statement referred to by Mr. Rogers is one
18 that the court distinctly remembers. Counsel may have
19 a great deal of latitude in arguing a matter, but when a
20 witness is on the stand he cannot be subjected to a remark
21 such as Mr. Rogers has just made.

22 MR. ROGERS. He called for it, sir?

23 THE COURT. Yes.

24 MR. ROGERS. Voluntarily did, and I replied as any man
25 would reply, sir. I did not start anything. I was sitting
26 here very quietly observing him and not in any wise offend-

1 ing the decorum of your Honor's court. But whenever
2 he starts bristling, naturally I feel a little bristling
3 too.

4 THE COURT. I cannot let the matter pass. I think the
5 witness was out of place. He is here for the purpose of
6 answering questions, such proper questions as may be
7 propounded to him and if he has any grievance in regard
8 to the conduct of counsel on either side there will be a
9 time and place to take that up. The Court will hear him,
10 but it is not at this time. There was no occasion for the
11 remark offered by the witness or by Mr. Rogers. The court
12 feels that it should take some action in the premises and
13 will do so before the close of this witness's testimony,
14 but will not take it at this moment. You may proceed,
15 Gentlemen, with the examination of this witness.

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1 MR FREDERICKS: What was the question, Mr Reporter?

2 (Last question read.)

3 MR ROGERS: That was objected to.

4 MR DARROW: The question was objected to on the ground it
5 is incompetent, irrelevant and immaterial.

6 THE COURT: Objection sustained.

7 MR DARROW: And the answer was stricken out.

8 THE COURT: The answer is stricken out.

9 MR FREDERICKS: Well, Mr Burns, did you know Mr Lockwood,
10 or ever hear of him, the juror in the McNamara case?

11 MR APPEL: Wait a moment. We object to that, your Honor,
12 as incompetent, irrelevant and immaterial for any purposes
13 whatsoever; it does not tend to prove any fact or issue
14 in this case in any way, one way or the other; it is
15 calling for negative testimony, your Honor, and negative
16 testimony is never admissible at this time, until something
17 that is affirmative in relation thereto is shown by evidence,
18 then it can be rebuttal.

19 MR FORD: If your Honor please --

20 THE COURT: I will hear you, Mr Ford.

21 MR FORD: If the court please, it has been charged by
22 counsel at various times here that John R. Harrington
23 gave \$4000 to Mr Franklin and it was charged in insinuat-
24 ing questions that Mr Harrington got that money from
25 either the National Erectors Association, the Merchants &
26 Manufacturers Association or William J. Burns Detective

1 Agency or Mr Burns personally. It is our duty, under the
2 law, to convince this jury --

3 THE COURT: I only want to know the theory upon which
4 you are offering the testimony.

5 MR FORD: Yes, your Honor.

6 THE COURT: Now, I will hear from the defendant, if he de-
7 sires to be heard.

8 MR APPEL: Your Honor, the insinuation of counsel in
9 question have nothing to do with the introduction of
10 evidence. Time and time over again I have requested the
11 court to instruct the jury not to pay any attention to
12 remarks of counsel on either side as to matters of fact,
13 which is proper. A witness has been on the stand and he
14 has been interrogated about circumstances leading up to
15 circumstances of that kind, and the witness denied it. We
16 have his denial, Mr Harrington's denial of those things
17 as far as they went, his admissions in respect to associa-
18 tion with men who were, as he thought, employes of Mr
19 Burns here, are here in evidence. We have a right to ar-
20 gue those facts to the jury and what other evidence may
21 possibly show to this jury cannot be anticipated here, be-
22 cause we may insinuate a fact; that is no reason. We might
23 insinuate, your Honor, that the man in the moon bribed
24 Juror Lockwood, and I suppose on that theory the man in the
25 moon would be called upon the witness stand before we
26 introduced any evidence accusing the man in the moon of

1 bribing Juror Lockwood. I suppose they have a right to
2 call the man in the moon to ask him whether or not he did
3 such and such a thing. Now, who ever heard of such logic
4 as that in criminal procedure or any other procedure?

5 The witness is asked, because we have a right to go into
6 his motives, his relation to the case, and his relation
7 to other cases, but you cannot go in and affirmatively
8 show those things unless there is something to respond to;
9 you cannot anticipate what we may show or what we may
10 undertake to prove. The jury are to draw inferences from
11 the circumstances surrounding the witness Harrington.

12 MR HARRINGTON answered for himself. It is not proper.

13 THE COURT: Read the question.

14 (Question read.)

15 THE COURT: Objection overruled.

16 MR APPEL: We except.

17 MR DARROW: Your Honor, may I be allowed to say a word
18 to that?

19 THE COURT: yes, I will hear you, Mr Darrow.

20 MR DARROW: It won't take a moment. It seemed to me in-
21 credible that a lawyer should ask such a question, but
22 he has asked it and so far the court has overruled the
23 objection. Let us think for a moment. The issue
24 here on the part of the state is to prove that I gave
25 that money. That is the issue. We have not reached the
26 defense here. We have a right to cross-examine witnesses

1 any way we see fit -- any way -- and we may seek to prove
2 this or that by the cross-examination or by direct
3 evidence, and follow it by both, either one or neither.
4 The issue for the state is, did I do it? That is all.
5 Can they call John Smith to prove that John Smith didn't
6 do it, Tom Jones -- that Tom Jones didn't do it, the
7 First National Bank, and they didn't do it, or the District
8 Attorney, and he didn't do it, or the Erectors' Asso-
9 ciation, and they didn't do it, or the American Federa-
10 tion of Labor, and they didn't do it?

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Als 1 I never heard anything so preposterous and absurd suggested
2 in a court of justice, and if we could intimate, your
3 Honor, that somebody else may have done it, may they, in
4 their original case, ^{to} prove I did it, call in that man and
5 prove he didn't do it? Why, it is most preposterous.
6 Can they at this time, in making out a case, prove that
7 everybody in the world but I didn't do this act? If they
8 can, there is no end on earth; anybody who had \$4,000
9 might have done it, that is not the question. That is part
10 of their case to prove anybody with \$4,000 didn't do it.
11 If so he would call in every man in the case who had \$4,000
12 and say, "Did you do it?" He would say, "No," all right,
13 then Darrow did it. I scarcely know what anybody could be
14 thinking to ask that question, or to suggest that as original
15 evidence in proving a case against a defendant. They would
16 have a right to prove that somebody else didn't do it no
17 matter what suggestion might have been made.

18 THE COURT. I am not going to change the ruling. The ques-
19 tion is answered.

20 MR. FREDERICKS. Was the question answered.

21 THE COURT. Yes.

22 MR. DARROW. We take an exception to it.

23 MR. FREDERICKS, The question was, "Mr. Burns, did you know
24 Mr. Lockwood or ever hear of him, the juror in the McNamara
25 case," that was the question that we have been arguing.

26 A I never saw him.

1 MR. APPEL. It is a repetition of the question, it avoids our
2 objection.

3 MR. FREDERICKS. I didn't intend it should.

4 MR. APPEL. You didn't intend it should but you do it.

5 THE COURT. You had better withdraw the question as framed
6 and let the reporter read it.

7 MR. APPEL. Because I don't want to--

8 THE COURT. Let the original question to which the argument
9 was made be read and let the witness answer that question.

10 (Last question read by the reporter.)

11 A I never knew him and never heard of him until I read his
12 name in the newspaper, the accounts of this trial--of the
13 McNamara trial.

14 MR. FREDERICKS. Q Do you know John R. Harrington?

15 MR. DARROW. To that we object--

16 MR. APPEL. We object upon the ground it is incompetent,
17 irrelevant and immaterial.

18 MR. DARROW. It has been answered once.

19 MR. APPEL. Not redirect.

20 MR. FREDERICKS. I Withdraw it. Was John R. Harrington
21 ever in your employ in any way, shape or form?

22 MR. APPEL. Wait a moment.

23 MR. DARROW. That has been answered too.

24 A No.

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

1 MR. APPEL. We object on the ground it is incompetent,
2 irrelevant and immaterial for any purpose whatsoever, col-
3 lateral to any issue in this case.

4 THE COURT. Overruled.

5 MR. APPEL. We except.

6 THE COURT. The answer is restored.

7 MR. FREDERICKS. Q Was Bert Franklin ever in your employ
8 in any way, shape or form?

9 MR. APPEL. We object to that on the ground that it is
10 incompetent, irrelevant and immaterial for any purpose
11 whatsoever; it is calling for a conclusion and opinion of
12 the witness, no foundation laid and it doesn't tend to
13 prove any issue in this case affirmatively or negatively
14 in any way against the defendant or to prove any other
15 element of the facts charged in the indictment.

16 THE COURT. Overruled.

17 MR. APPEL. We except.

18 A No, he never was.

19 MR. FREDERICKS. Q Did you ever have any dealings in any
20 way, shape or form, with either Mr. Harrington or Mr.
21 Franklin, either directly or indirectly?

22 MR. APPEL. Wait a moment--we object upon the ground it is
23 incompetent, irrelevant and immaterial for any purpose
24 whatsoever, that it is not direct evidence tending to prove
25 affirmatively any issue in this case or any element of the
26 offense charged, or negatively. It is no proof against the

1 defendant, doesn't tend to prove any fact against the
2 defendant or prove any element of the offense charged in the
3 indictment, and it is collateral to any issue, and upon the
4 further ground that it calls for a conclusion and opinion
5 of the witness.

6 THE COURT. Overruled.

7 MR. APPEL. We except.

8 A No, I did not.

9 MR. FREDERICKS. Q Did you ever have any deals either
10 directly or indirectly with Mr. Lockwood or Captain White
11 or Mr. Bain?

12 MR. APPEL. We object upon the ground that it is incom-
13 petent, irrelevant and immaterial for any purpose whatso-
14 ever, and doesn't tend to prove any issue in this case
15 affirmatively or negatively--

16 A No, I never did.

17 THE COURT. Wait a moment. Strike out the answer.

18 MR. APPEL. Or any element of the offense charged in the
19 indictment, and upon the further ground that the question
20 has never been before asked in any court of law for the
21 purpose for which the question is asked.

22 THE COURT. Objection overruled.

23 MR. APPEL. We except.

24 A No, I never had anything to do with any of them, I didn't
25 know them.

26 MR. FREDERICKS. Q Did you ever have anything to do with

1 or any business dealings either directly or indirectly
2 with any juror or prospective juror in the McNamara case
A2s 3 that you know of?

4 MR. APPEL. Wait a moment--we object to that upon each and
5 all the grounds stated in our last objection to the last
6 question asked by the witness, and on the further ground
7 that it calls for individual testimony not admissible in
8 any court of law or justice.

9 THE COURT. Overruled.

10 MR. APPEL. We take an exception.

11 MR. FREDERICKS Q Were you ever employed either directly or
12 indirectly in the matter of investigating jurors in the
13 McNamara case?

14 MR. APPEL. Wait a moment--we object upon the ground that
15 it is incompetent, irrelevant and immaterial for any pur-
16 pose; that it doesn't tend to prove any element of the
17 offense charged in any way, shape or manner, that neither
18 negatively or affirmatively does it tend in the remotest or
19 in the most imaginary way tend to prove any scintilla or
20 facts against the defendant, and upon the ground that the
21 question has never been before asked in any court of jus-
22 tice for the purposes for which the question is being
23 asked or for any other purpose.

24 THE COURT. Objection overruled.

25 MR. APPEL. We take an exception.

26 A No, I never did.

1 MR. FREDERICKS. Cross-examine.

2 MR. ROGERS. Will your Honor let this cross-examination go
3 until 9 o'clock? I had a physician with me all night and
4 I am not well. I am to cross-examine this witness and
5 I would rather let it go until tomorrow.

6 MR. FREDERICKS. Why not make it 10? I have no objection
7 to its going over but at 9 o'clock.

8 THE COURT. Now, gentlemen, before we adjourn there is a
9 matter here which the court must take action on. It is
10 impossible to proceed properly with the conduct of this
11 trial and allow any parties to bring their personal dif-
12 ferences into this court room. They are here for the sole
13 purpose of trying one issue. The particular instance that
14 occurred here, Mr. Burns-- Mr. Darrow made a remark which
15 he promptly and immediately withdrew and from his manner
16 of so doing I must assume that he meant nothing by it, and
17 no harm by it. Apparently there is some personal difference
18 that has existed between Mr. Burns and Mr. Rogers. The
19 witness as such went out of his way to bring up that
20 personal difference. That cannot be done in this court.
21 When that did occur it was the business of counsel to
22 refer that matter to the court for adjustment. That not
23 having been done the court is left no alternative but to
24 declare--seems to me the very obvious fact that this per-
25 sonal altercation is an unlawful interference with the
26 proceedings of this court, tending to interfere with the

1 due course of the trial and the court constitutes it as
2 a contempt of court for which Mr. Burns is fined the sum
3 of \$25 and Mr. Rogers is fined the sum of \$25.

4 (Jury admonished. Recess until 9:30 July 2nd, 1912.)
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