

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

---o---

The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.

Clarence Darrow,)

Defendant.)

---o---

REPORTERS' TRANSCRIPT.

VOL. 44

I N D E X.

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

William J Burns,

3488

**LOS ANGELES COUNTY
LAW LIBRARY.**

B. N. Smith,
Official Reporter

VOLUMES 44 to 46 (Inc.)

WITNESSES:

William J. Burns, Vol. 44

William J. Burns, Vol. 45

William J. Porter, Vol. 45

F. A. Manatt, Vol. 45

E. R. Parmelee, Vol. 45

Guy W. Yonkin, Vol. 45

A. J. Krueger, Vol. 46

Frank R. Smith, Vol. 46

Newman Essick, Vol. 46

TUESDAY, JULY 2, 1912; 9:30 A.M.

1
2 Defendant in court with counsel. Jury called; all pre-
3 sent. Case resumed.

4 -----
5 W I L L I A M J. B U R N S,

6 on the stand for cross-examination.

7 THE COURT. Proceed with the cross-examination.

8 MR. ROGERS. Q Mr. Burns, I purpose to cross-examine you
9 fully upon the testimony you gave yesterday. Any differ-
10 ences you and I have I intend to forget in cross-examining
11 you, therefore, I direct your attention first to the
12 statements that you made that Biddinger showed you \$500
13 in currency. Can you tell what time of day that was?

14 A I think it was about--it was between 8 and 8:30.

15 Q Morning or evening? A Morning.

16 Q Was it by agreement that you were there? A Yes.

17 Q It was an understanding between you and Biddinger that
18 you would be at a certain place? A Yes.

19 Q And you were where he--where you had told him you would be?

20 A Yes.

21 Q He came up in the elevator and handed you the \$500?

22 A Yes.

23 Q You put it in some receptacle and took it to the district
24 attorney's office? A Yes.

25 Q Did you subsequently personally receive any other moneys
26 from Biddinger? A \$200 at San Francisco.

1 Q At what time and at what place? A I think he brought
2 it to my office, I think it was on the 26th day of August,
3 he brought it to my office and told me that that was the--

4 Q I beg your pardon. A At my office, I think; may pos-
5 sibly have been the hotel.

6 Q At any rate, some place or other he brought you \$200?

7 A Yes.

8 Q And you subsequently did what with that? A I mailed it by
9 a registered letter to the District Attorney.

10 Q Did Mr. Biddinger make any written reports of his conver-
11 sations with parrow to you? A To me?

12 Q Well, to the agency of which you are president? A No,
13 I think the only report he made was to the District Attor-
14 ney.

15 Q Have you read that lately? A No.

16 Q Have you ever seen it? A No.

17 Q Never made any to you? ^{A No,} except the verbal report.

18 Q How long before the receipt of this \$500 had he been
19 working for you? A Well, he really began working for me,
20 I think, from the time of the arrest of the McNamaras.

21 If you wish I will describe just how he--

22 Q I don't care for the description, I only want the date,
23 if you have it handy. A Well, I think from April, 1911.

24 Q About April 1911 continuously-- A I think at the time
25 of the arrest of the McNamaras.

26 Q --continuously until the present? A That is my recol-

1 lection.

2 Q You carry him on your pay roll at one office or another,
3 at whichever office he may be attached to, as one of your
4 employees? A Yes.

5 Q You said yesterday that you did not know of the employ-
6 ment of Harrington. Will you tell me, then, every man
7 whom you had employed here on your pay roll and at Chicago
8 on your pay roll, by number or name, so we may determine
9 whether or not Mr. Harrington was on that roll.

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

11 MR. ROGERS. In September and October of 1911.

12 MR. FREDERICKS. That is objected to upon the ground that
13 it is incompetent, irrelevant and immaterial, not cross-
14 examination, and an inquiry into the private affairs, not
15 warranted by cross-examination.

16 THE COURT. Objection sustained.

17 MR. ROGERS. Exception. Q You carry men on your pay rolls
18 do you not, by number? A No, they always have a name,
19 then they are given a number afterwards.

20 Q Do they always have the correct name or the true name
21 or some name that they are chanced to be known? A Well,
22 my understanding is and my instructions are that the pro-
23 per name of every man on my pay rolls should be there.

24 Q Do you know Golden M. Roy of San Francisco, or Roy M.
25 Golden as he is sometimes called? A yes.

26 Q Did he ever work for you in Chicago? A yes.

p 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Q Did ^{he} you know anything about your pay rolls? A No.

Q Are you aware that he says that Franklin was carried on your pay roll in Chicago during the months of August and September, October and November of last year? ↑

MR. FORD. Just a moment--all right, go ahead, no objection.

A This is the first time I have ever heard that.

Q Ever heard that. But he was working for you during that period, wasn't he? A What period?

Q Sometime in August, September or October.

MR. FORD. Franklin or Roy?

MR. ROGERS. Q No, Golden. A Golden M. Roy?

Q Yes. A Roy worked for me at Chicago, at Chicago in the Illinois Central Railroad Graft Investigation for just, I think, perhaps two or three months; I cannot say the exact length of time; then he went to work regularly for them.

Q Do you mean to say, Mr. Furns, that you know the name of every man working on your pay roll at any of your offices and at every one of your offices? A No, I do not know the names of those men, but I would know the name if--

Q For instance, do you know the names of all the Los Angeles men working for you? A Of what?

1 Q Of all the men working for you at Los Angeles?

2 A No, I do not.

3 MR FREDERICKS: We would ask that the witness be permitted
4 to finish the answer to the question "But I would know if--
5 counsel interposed another question.

6 THE COURT: Yes. Did you leave an answer unfinished, Mr
7 Burns? A I think I did, your Honor.

8 THE COURT: You may finish the answer. Would you like to
9 have it read? A Yes.

10 THE COURT: Read the question and answer just previous
11 to this. (Question and answer read.)

12 A -- Harrington or Franklin or any of those men had been
13 on my pay-roll.

14 MR ROGERS: Do you mean any men employed by any of those
15 men, do you mean men employed by you who were pretending
16 to be employed by the defense? A Well, I would not know
17 some obscure person that might be employed by the manager
18 of my local offices, and they, in turn, be sent there by
19 Franklin or somebody else.

20 MR ROGERS: Will you read me the answer?

21 (Last answer read.)

22 Q Were you aware or cognizant of the fact that there
23 were men upon your pay-roll and working under your direc-
24 tion, who, as a matter of fact, were pretending to work
25 for the defense? A I learned of one man after I came to
26 Los Angeles, after the arrest of the McNamaras.

1 Q Who was that? A I don't know his name, never saw him.

2 Q Then, as a matter of fact, you do not know all the men
3 that were working for you and ostensibly working for the
4 defense? A Yes, I know that that was the only man.

5 Q You learned that only a few days ago, you say?

6 A No, I don't say that. I say I learned that just after
7 I came to San Francisco after the arrest of the McNamaras.

8 Q How many men were there working for the defense os-
9 tensibly, who, as a matter of fact, were working for you?
10 By that I do not mean drawing pay from you, but reporting
11 to you? A Yes. Biddinger and this man that was working
12 as a stenographer for the defense.

13 Q What is his name? A I do not know.

14 Q How long was he working for the defense? A I do not
15 know.

16 Q Whom did he report to while working for the defense?

17 A Mills, the man who was the manager at Los Angeles.

18 Q He was in the office of the defense, wasn't he? A So
19 I understood.

20 Q You learned that some time after it happened, though,
21 you say? A I learned it after the 3rd of August, 1911.

22 Q Was he on your pay-roll? A I don't know just what
23 arrangements were made to pay him. I imagine he was.

24 Q So far as San Francisco was concerned, did Mr Mandell
25 ever carry any men there on your pay-roll who, as a mat-
26 ter of fact, were working for the defense, ostensibly?

1 A If he did I didn't know it or do not recollect it.

2 Q You do not recollect it? A No.

3 Q You would not say that was not true? A I wouldn't
4 say that was not true.

5 Q How about your Chicago office? Were there men there
6 on your Chicago office pay-roll, who were pretending to
7 work for the defense who, as a matter of fact, were really
8 reporting to you or to your office? A Only Biddinger.

9 Q Are you very sure of that? I would like to have you
10 think it over and be very sure about it. A Yes, I
11 am very sure of it. I haven't the slightest recollection
12 of any other man in Chicago.

13 Q Let me refresh your recollection, if I may. Were
14 there men connected with the Structural Iron Workers,
15 who, as a matter of fact, were pretending to be connected
16 with the Structural Iron Workers, and as a matter of
17 fact, were reporting to you?

18 MR FORD: Just a moment. Let's hear that question.

19 A Read the question. (Last question read by the reporter)

20 A No.

21 MR ROGERS: At Indianapolis? A No.

22 Q Or at any other place? A No.

23 Q At any time? A No.

24 Q Will you say, Mr Burns, that there never was but one
25 man who pretended to be connected with the defense of the
26 McNamara cases or of the Indianapolis cases, by that I mean

1 all of them, as you understand, who, as a matter of fact,
2 were in your employ and reporting to you? A I have given
3 you my recollection.

4 Q I think, Mr Burns, I am entitled to a little closer
5 answer than that. A I will answer as fully as I possibly
6 can.

7 MR ROGERS: Read the question and see if Mr Burns can
8 answer it.

9 MR FREDERICKS: Objected to upon the ground it has been
10 already answered several times.

11 THE COURT: Read the question.

12 (Last question read by the reporter.)

13 A I repeat the answer I made that there was not, except
14 those that I have mentioned.

15 MR ROGERS: Your business here -- A I would make this
16 explanation, however, that we did get information from
17 various sources, from people who were not employed by me
18 or by my agency.

19 Q Now, that matter of getting information, possibly
20 you and I make a difference there in the wording. When I
21 say "employ", I don't necessarily mean directly hired by
22 you or directly paid by you. I mean those who were report-
23 ing to you from time to time and occasionally giving you
24 information, knowing that they were so doing? A We were
25 getting information that way, yes.

26 Q And paying for it? A I don't remember of it ever being
paid for.

1 Q Would you know if it had been so done? A Well, my
2 son might have paid for it without me knowing it, rather
3 without talking to me about it.

4 Q And it might be paid for right here in Los Angeles
5 without your knowing it, your not being here except once
6 in some months? A Well, I rather think the manager would
7 talk with me about it.

8 Q Well, aside from the reasoning that you have that he
9 would talk to you about it, you would not know anything
10 about it? A Yes, I would.

11 Q Have you looked over the dates of the accounts of E. R.
12 Mills? A No, my auditor has.

13 Q Is Mills still with your agency? A No.

14 Q He has left it, or rather whether he has left it or been
15 put out is not of occasion now, but he is gone? A He is
16 gone.

17 Q Do you know whom Mills employed? A No.

18 Q When was Mills manager of your agency here? A Up
19 until three, four or five months ago.

20 Q Could you approximate the date more closely than that?

21 A No, I couldn't; I don't recollect.

22 Q He was manager of your agency at least until last
23 December, until after the first of this year, was he not?

24 A Yes, I think he was.

25 Q And you don't know whom he paid or whom he employed
26 during that time except in a general way? A yes, I had
a closer account of it than that.

1 Q But to say absolutely that you knew or do now know who
2 he employed or whom he paid, you would not be able to do
3 that? A The names would be on our pay rolls

4 Q Do you now know the names that are on the pay rolls? ✓

5 A I do not.

6 Q Or the names of the men to whom he paid money for in-
7 formation and work? A No, I do not. ↑

8 Q Is it your idea, Mr. Burns, that there are people on the
9 pay roll of the defense, that is, working for the defense
10 who gave you information for nothing? A No.

11 Q They got money for it? A No, I didn't get any informa-
12 tion from any person that was working for the defense
13 except the man that we put there.

14 Q Did you, as a matter of fact, put this man there?

15 A No, I didn't.

16 Q Well, Mills did? A I imagine that Mills did, yes.

17 Q Well, pardon me if I ^{ask you not to} testify to just what you imagine,
18 Mr. Burns; I would like to have you tell just what you
19 know. A Mills did.

20 Q Mills did? A My best knowledge of the matter.

21 Q Are you able to say that you know that Mills sent
22 no other man there? A He never told me that he did, and
23 he would tell me if he did, that is only --

24 Q Are you positive of that? A yes.

25 Q Well, now, I don't wish to pry into your private con-
26 cerns, but when Mills left the office or was put out,

1 whichever the circumstances may have been, there was a
2 very considerable difference of opinion between you, was
3 there not; considerable trouble between you? I am trying
4 to reach the fact that you and Mills were not on the best
5 of terms when he left and afterwards.

6 MR. FREDERICKS. Objected to upon the ground it is immaterial-1-

7 MR. ROGERS. I think I am entitled to that in view of the
8 fact that he said Mr. Mills would have told him.

9 THE COURT. Overruled.

10 A We were on the best of terms, yes.

11 MR. ROGERS. Q Are you now? A No.

12 MR. FREDERICKS. We object to that on the ground it is
13 immaterial whether they are now or not.

14 THE COURT. He has answered. Do you want the answer out?

15 MR. FREDERICKS. Yes, your Honor.

16 THE COURT. Strike it out.

17 MR. FREDERICKS. The objection is now before the court
18 that the present relations--

19 THE COURT. I am treating your objection as a motion to
20 strike out and have ordered it stricken out.

21 MR. ROGERS. Did your Honor strike out by way of objec-
22 tion to the question on cross-examination?

23 THE COURT. I treated the objection as a motion to strike
24 out and acted accordingly. However, I will hear the
25 objection now.

26 MR. FREDERICKS. The objection is it is not cross-examination,

1 and, further, it is immaterial, the present relations
2 with Mr. Mills.

3 THE COURT. Do you want to be heard on that?

4 MR. ROGERS. I want to be heard on that to this extent:
5 The witness has said and has testified, very evidently
6 to what happened, undoubtedly, that Mr. Mills would have
7 reported to him thus and so, that Mr. Mills would have done
8 thus and so, and he knows for that reason certain things
9 are thus and so. All of his answers depend upon his
10 reasoning that Mills would have done thus and so, there-
11 fore, I am entitled to go into the relations between him-
12 self and Mills.

13 THE COURT. At this time?

14 MR. ROGERS. And show at this time for the purpose of
15 working back, what their relations were at that time, and
16 what has occasioned the break.

17 THE COURT. A thousand things might have occurred.

18 MR. ROGERS. They might have, but they have not, that is
19 what I am reaching. I can come in in cross-examination and
20 find out, when a man reasons or deduces from a situation
21 and a set of circumstances something, then I have a right
22 to go into those circumstances in full, and certainly I
23 ought not to be cut off from determining what those rela-
24 tions were when he says the manager would have told him--

25 THE COURT. The Court will permit you to go into the rela-
26 tions during the period that is under investigation, but I
think it is beyond the scope--

1 MR ROGERS: -- to show the probability or improbability of
2 his reasons.

3 THE COURT:)) I think that is beyond the scope of the in-
4 quiry, to go into matters that may have occurred between
5 5 and 6 months intervening time, the man left the employ-
6 ment of this witness.

7 MR ROGERS: Mr Mills, do you know as a matter of fact, Mr
8 Burns has offered to sell to dozens of persons, copies of
9 reports in your office, copies of your pay-foll, copies of
10 your books and general information in your hands? Do you
11 know that?

12 MR FREDERICKS: I think if counsel will have the ques-
13 tion read, he will want to reframe it; he has transposed
14 the names there.

15 THE COURT: Read the question.

16 MR ROGERS: If I have, I will reframe it.

17 (Question read.)

18 MR ROGERS: I beg your pardon, I beg your pardon doubly
19 on that account, Mr Burns.

20 MR FREDERICKS: My impression was that you used the wrong
21 names in the question.

22 MR FORD: You better reframe the question.

23 MR ROGERS: I will reframe it.

24 Q Do you know, as a matter of fact, Mr Burns, that Mr
25 Mills, your former manager, offered to sell copies of all
26 your reports, pay-rolls, books and memoranda contained in

1 your office, up until the 1st day of January?

2 MR FREDERICKS: That is objected to on the ground that
3 it is not cross-examination.

4 MR ROGERS: Yes, it is.

5 MR FREDERICKS: Indefinite as to time.

6 MR ROGERS: I do not wish to explain as to when, what
7 this may mean.

8 MR FREDERICKS: Indefinite as to time, the relations be-
9 tween the witness and Mr Mills at one time might be perti-
10 nent while at another time it would not be pertinent,
11 and the time is not fixed.

12 MR ROGERS: Leading to something that is entirely prelim-
13 inary.

14 MR FREDERICKS: Therefore, the question is immaterial, not
15 cross-examination .

16 THE COURT: Well, only upon counsel's statement that it is
17 preliminary the court will allow it. Objection overruled.

18 A The first time I ever heard that was the other day
19 when my present manager told me you told him so.

20 MR ROGERS: And he also told you that I refused, did he
21 not?

22 MR FREDERICKS: That is objected to as hearsay.

23 MR APPEL: You go into hearsay --

24 MR ROGERS: You go into hearsay, and I am entitled to the
25 rest of it. I do not care to stand on that; I do not do
26 that way.

1 MR FORD: I do not think it is proper; if it is hearsay
2 it ought to be kept out of the record and if counsel ob-
3 jects to this, I think the proper thing to do is to strike
4 it out, it is hearsay.

5 MR ROGERS: It is cross-examination.

6 MR FORD: The first question we have is hearsay, and the
7 answer was responsive.

8 THE COURT: Do you move to strike out the first answer?

9 MR ROGERS: I asked him if he knew, if your Honor please,
10 and he says the first time he heard it was when his present
11 manager told him so, and that I told him so. I want him
12 to tell the rest I told him.

13 MR FREDERICKS: I move to strike out the answer.

14 THE COURT: I think counsel's motion to strike out the
15 first answer, is a proper one; it obviously is hearsay
16 matter that cannot be gone into here. The answer will
17 be stricken out.

18 MR ROGERS: And an exception.

19 Q Do you still maintain that your relations or associa-
20 tions with Mills were friendly at the time that he ceased
21 to be your manager, or shortly thereafter?

22 MR FREDERICKS: That is objected to, to the "shortly
23 thereafter" part of the question, on the ground it is not
24 cross-examination; immaterial.

25 THE COURT: Objection sustained.

26 MR ROGERS: Does not your Honor care to hear a word about

1 some of these objections? Some of this cross-examination--
2 we are entitled to cross-examine this witness. Your Honor
3 says, without a word, you do not permit a man to protect
4 his questions, I cannot cross-examine that way, sir. I
5 must know the reasoning.

6 THE COURT: The matter has been gone into and heard, Mr
7 Rogers, and the court has held you cannot go into the re-
8 lations between Mr Mills and this witness subsequent to
9 the time he left the employ of the Burns Agency.

10 MR ROGERS: I am not bound to believe this trouble is sub-
11 sequent; I am not bound to take that. I may show if
12 they appeared to be on bad terms very shortly afterwards,
13 I may argue to the jury, and correctly deduce that the trouble
14 le was beforehand and there were reasons extending before
15 and existing before. I am not bound by his statement
16 that the trouble was of subsequent origin; in fact, the wit-
17 ness has not so stated. I have a right to deduce from
18 any testimony I may bring in, I certainly cannot cross-
19 examine without knowing what your Honor's views are upon
20 the subject.

1 THE COURT. The rule, as stated, must be the rule adhered
2 to; nevertheless, you were permitted to have one question
3 going beyond that, the answer showed that the question
4 called for hearsay, and it had to be stricken out.

5 MR. APPEL. I know, your Honor, but the witness has, in
6 answering questions, with all respect to the court-- in
7 answering questions which were propounded to him concerning
8 his own personal knowledge, your honor has allowed him to
9 say that judging from his relations with Mr. Mills and judg-
10 ing from the fact that he assumes that Mr. Mills did and
11 should and in fact did report to him everything concerning
12 the management of the office that, therefore, "I say that
13 if such a thing had occurred, I would have known it"--
14 your Honor has allowed him to reason that way.

15 THE COURT. Yes.

16 MR. APPEL. It was the best information the witness had
17 and upon that he reasoned his answer out in that way.
18 Now, we have a right to show your Honor that although, as
19 the witness says, although it may be so as the witness
20 says upon the parting of Mr. Mills from his office, that the
21 relations were perfectly friendly, your Honor, for the
22 reasons--

23 THE COURT. Let me make a statement there. I do not think
24 there is any great difference of opinion between defendant's
25 counsel's views and the Court's except that perhaps we do
26 not understand each other. You are undoubtedly entitled to

1 inquire of this witness as to any subsequent difference
2 of opinion or controversy that may have arisen between them
3 by reasons of the acts or conduct of Mr. Mills while in the
4 office and growing out of that. What the court will not
5 permit you to go into is other matters that may be entirely
6 outside of the employment of this witness.

7 MR. APPEL. No, your Honor but we have a right to first
8 establish on cross-examination there is a difference of
9 opinion between them, as a preliminary fact, be the reason
10 whatever it may be; then we have a right to ask him whe-
11 ther or not these bad terms between them, these unfriendly
12 relations between them or these differences of opinion,
13 friendly or unfriendly, or differences of opinion--I will
14 put it in that way, refer back to the knowledge on the
15 part of Mr. Burns. Now, at the time Mr. Mills was there he
16 did get that information from him--

17 THE COURT. That is precisely what I tried to say.

18 MR. APPEL. But your Honor puts it on the ground of hearsay;
19 his statements are hearsay; they are guess work; they are
20 merely speculation, and your Honor has placed your ruling
21 on the ground what we asked him is hearsay, your Honor, and
22 hearsay may be hearsay but hearsay is hearsay only upon one
23 side of the case as well as upon the other. We certainly
24 do not wish the strict rules including hearsay evidence
25 enforced as against us when they are not enforced as
26 against the prosecution.

1 THE COURT. They will not be, Mr. Appel.

2 MR. APPEL. I know, your Honor doesn't want to do so, but
3 I simply suggest that in order to bring your Honor's mind
4 to the ground upon which your Honor based the ruling, in
5 order to suggest to your Honor where the difference of the
6 ruling may be partial to one side and may not be partial to
7 the other; that is the only reason I mentioned it.

8 THE COURT. The objection of the prosecuting attorney is
9 sustained with the explanation that the court has made in
10 response to counsel's questions as to the purpose of sus-
11 taining it, and the scope of the inquiry.

12 MR. ROGERS. Q Was there anything connected with Mr. Mills's
13 operation or conduct previous to his leaving the office that
14 occasioned a difference of opinion between you?

15 MR. FORD. Now, if the Court please, if this question is
16 confined--

17 MR. ROGERS. Without naming it. I don't ask what it is.
18 I am asking for the substantial fact.

19 MR. FORD. We object to it unless the question is con-
20 fined absolutely to the McNamara case and confined to the
21 period prior to the date of Mr. Burns' learning the
22 conditions here in Los Angeles. The whole object of this
23 examination is to show that Mr. Burns might have had,
24 through one of his manager, a detective in the employ of the
25 defense and that Mr. Burns would not know of that fact.

26 The McNamara case ended November--on December 1st or

1 December 5th, with a plea of guilty. Now, if any trouble
2 existed between Mr. Burns and Mr. Mills it ought to be confined
3 to matters connected with the McNamara case and confined to
4 the period prior to the 5th day of December, 1911. The
5 witness has testified that what he learned he learned on
6 August 3rd or sometime after August 3rd and before the end
7 of August.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 THE COURT: MR Ford, why argue that as precisely the ex-
2 planation of the court's ruling; that has been made with-
3 in the last five minutes.

4 MR FORD: I thought perhaps I could assist the court in ex-
5 plaining to counsel the reason.

6 THE COURT: Q I thought we all understood it on precisely
7 those lines. I quite agree with you both.

8 MR FORD: Then we make our formal objection it is not
9 cross-examination, irrelevant and immaterial.

10 THE COURT: Objection overruled. The question falls for
11 an answer yes or no.

12 A Read the question.

13 (Last question read by the reporter.)

14 A Yes.

15 MR ROGERS: And that difference or opinion continued --
16 strike the word "continued" was present at the time of
17 his leaving the office, was it not?

18 A Read the question. (Last question read by the re-
19 porter.) Well, what do you mean by "difference of opin-
20 ion"?

21 Q Well, in some instances it means killing, in some in-
22 stances it means calling names, and in some instances, it
23 means turning the head the other way, as we go by and
24 not speaking, and in some instances, it means lesser even
25 than that; by difference of opinion, I mean anything, a
26 disagreement; do you understand, according to the temper-

1 ament of the individual? A. Yes.

2 Q You answer yes to the question? A There was a dis-
3 agreement, yes.

4 Q Were you cognizant of the efforts of Mr Biddinger to
5 trap Mr Darrow? A Yes.

6 Q Were you aiding Mr Biddinger in any plan to trap Mr
7 Darrow? A Yes, after Mr Biddinger reported to me that
8 they were attempting to bribe him. ↑

9 Q Seeking to bribe -- A Mr Biddinger.

10 Q When was that? A Well, I was in Europe at the time
11 and didn't learn of it until after I returned about the
12 middle of July.

13 Q And is there existing a writing or paper or report
14 concerning that first attempt, as you call it, to bribe,
15 as you call it, Mr Biddinger? A I think perhaps there is.

16 Q Well, where? A Chicago, unless the District Attorney
17 has it.

18 Q Has he it here? A I don't know; you will have to ask
19 him.

20 MR ROGERS: Have you that paper, gentlemen?

21 MR FREDERICKS: No, never saw it.

22 MR ROGERS: Have you any report about it? A There
23 might have been a verbal report or written report.

24 Q Don't your operatives report in writing; isn't that
25 a rule of the office? A Yes.

26 MR FREDERICKS: Now, may it please the court, there are

1 two questions there that were pending and the answer --

2 THE COURT: How about it, Mr Burns? You answer yes to
3 both questions? A Read the question. The answer I
4 answered was that the operatives made reports in writing:

5 MR ROGERS: That is a rule of the office, is it not? A Yes.

6 Q Do you know how that report, if one possibly, perchance
7 should exist from Mr Biddinger about Mr Darrow, might be
8 found? A Yes, it can be found in the files of the Chicago
9 office.

10 Q Would it bear a date? A Yes.

11 Q Bear the date of the time of its filing? A Yes.

12 Q Would it be in rubber stamp or in pen and ink?

13 MR FORD: Objected to upon the ground that the question
14 is speculative and idle in that there is nothing before
15 the court.

16 MR ROGERS: It is neither idle nor speculative.

17 MR FORD: Let me make my objection. I think the question
18 is speculative and idle, that there is no testimony here
19 that there is such a report or anything to show that
20 such a report exists. The witness on the stand has said
21 it is a custom of the office to make reports, and there
22 may be such a report in the Chicago office, based upon the
23 fact that they have such a custom. It is simply a conclu-
24 sion of the witness and I desire to add the further that it
25 calls for a conclusion of the witness; not cross-examina-
26 tion, incompetent, irrelevant and immaterial.

1 THE COURT: Objection overruled.

2 MR ROGERS: Read it. (Last question read by the reporter.)

3 A The file mark -- they are generally filed on the same
4 day that they are written, and that would indicate -- the
5 date of the report would indicate the filing.

6 Q Mr Burns, it would not indicate anything except that
7 the report purports to be dated on a certain day. What I
8 am speaking of, is there a file mark such as banker's use,
9 received on such and such a date, filed on such and such a
10 date, anything that will indicate outside of the purported
11 date of the document that it was filed on that day or ex-
12 isted on that day, or received on that day?

13 MR FREDERICKS: That is objected to as immaterial --

14 MR ROGERS: The witness has here --

15 MR FREDERICKS: I would like to state in that regard we
16 are now apparently asking for a file mark on a document,
17 the existence of which is not admitted, by the testimony
18 or by the witness or anyone else. He has testified that
19 it was the custom, but he has also said that the report
20 was either made in writing or verbally, and we are now
21 going along on the assumption that it was a written report,
22 and that it would have a file mark, whereas, it is pos-
23 sible there was never a written report made, and therefore
24 no file mark; would be simply speculative and not material.

25 MR ROGERS: Your Honor please, the statement of the report I
26 made simply is about this --

THE COURT: I think you are entitled to the question;
objection overruled.

1 A I don,t know whether there is any file mark on it
2 or not.

3 MR ROGERS: What is the custom of your office?
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 A The custom is that the operative makes out his report,
2 that report is then turned into the assistant superinten-
3 dent of the office or the superintendent, and he in turn
4 passes it to the stenographer, who makes stenographic
5 copy of it, and the copy of the stenographic report to-
6 gether with the original are together filed in the office.

7 Q And when there is a patron who is entitled to the report
8 a copy is sent to him? A Yes.

9 Q But now there is nothing, then, upon the surface or upon
10 that report at all that would show anything of its exis-
11 tence on a certain day except the day which it will bear
12 itself? A Yes, I think the assistant superintendent when
13 he gets them puts his--

14 Q Precisely, that is just what I am arriving at, there is
15 something exterior to the mere marking of the report
16 itself which will indicate its date.

17 MR. FREDERICKS. You understand, I presume, your Honor, we
18 are talking about a custom, not about any stamp that may be
19 on any particular document?

20 THE COURT. Yes, I think counsel is entitled to it. Objec-
21 tion overruled.

22 MR. ROGERS. Q Now, did you ever see this report of Bid-
23 dinger's yourself? A No.

24 Q Do you know of its existence? A No.

25 Q Whether or not it, as a matter of fact, ever was made in
26 writing you don't know? A No.

1 Q Do you know anybody that does know of the existence of
2 this report in writing?

3 MR. FORD. Objected to as purely speculative and idle and
4 not cross-examination. If the court please if this
5 witness had looked at the document and testifies to it it
6 would be entirely a different matter from the case at bar.
7 He has never looked at the document, he is not testifying
8 concerning anything he may have seen in such document, and
9 therefore, it is not cross-examination.

10 THE COURT. Overruled.

11 A Read the question.

12 (Last question read by the reporter.)

13 A A telegram to the Chicago office would bring a response
14 as to whether it existed, and if it is there they will send
15 it on here to you, to the District Attorney, if he requests
16 it.

17 MR. ROGERS. I would like to have you send that telegram
18 at once, if I may ask you to produce the document, gentle-
19 men, it being in the statement of the witness, within your
20 power.

21 MR. FORD. If the Court please, we simply state this; We
22 don't believe that the examination along these lines is cross
23 examination and we don't propose to string out the examina-
24 tion unnecessarily by allowing a cross-examination, if we
25 can prevent it, along lines we consider immaterial, and
26 believing this is entirely immaterial I don't feel called

1 upon to make any response whatever to the counsel's request.

2 MR. ROGERS. Of course--

3 MR. FREDERICKS' Of course, your Honor, we cannot testify
4 to what we know, although I do know what the facts are.

5 They were reported to me. I cannot testify to them and I
6 know that counsel's request would simply be of no--

7 MR. ROGERS. Will you say there was no such report?

8 MR. FREDERICKS' I cannot testify.

9 MR. ROGERS. I will take your word for it as you stand
10 there.

11 MR. FREDERICKS. I will say this matter was reported
12 to me verbally after Mr. Biddinger came to me--

13 MR. DARROW. I object to Mr. Fredericks's statement.

14 THE COURT. Your chief counsel asked for it, however, if
15 you object to it--

16 MR. ROGERS. I asked for the written report, if Captain
17 says there was or there was not a written report--

18 MR. FREDERICKS' I just stated the circumstances, and I
19 thought it would be possible--

20 THE COURT. There has been a call for the production of
21 this report. Does the District Attorney object to pro-
22 ducing it?

23 MR. APPEL. Just so as to aid/in ^{us} carrying on the investi-
24 gation any further, we want to know if they knew anything
25 about the facts, whether or not they would state here in
26 open court whether or not there was not or there was, acc-
ording to their knowledge, there was a written report.

1 When they make that admission, one way or the other we
2 will know about it. Your Honor will see we are trying
3 to get that statement of the District Attorney for the pur-
4 pose of avoiding this inquiry into a matter of which we
5 are not supposed to know anything about.

6 MR. FREDERICKS. I didn't catch just exactly what Mr. Appel
7 wanted.

8 THE COURT. Read the statement of Mr. Appel.

9 (Last statement of Mr. Appel read by the reporter.)

10 MR. APPEL. That is all, your Honor.

11 THE COURT. Just a moment.

12 MR. FREDERICKS. I have got to, if I answer this, I have
13 got to state something that counsel is going to object to.

14 MR. APPEL. Whether there is or is not--

15 MR. FREDERICKS. I have got to put in something here, I know
16 what the situation is as it was reported to me at the time.

17 MR. ROGERS. It doesn't take any hearsay to say there is
18 a written report or there is not a written report. That
19 is all there is to it, it is a white chicken or a black
20 chicken, is there or is there not?

21 MR. FREDERICKS. I am not going to say anything you will
22 object to until you know what is coming, but I want to say
23 this to the Court, that I cannot--that I know the entire
24 facts of the situation or believe I do, and all about whe-
25 ther there was or was not a report and the wherefore of it.
26 Now, I am not going to say anything you don't want, and if

1 counsel wants me to state what those facts are, I will
2 state them, but I will state the whole facts now and I don't
3 think counsel will want me to state that.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR APPEL: I think I can relieve the situation. I
2 will ask you a question. Will you say now here, that
3 there is not in your possession and has not been in your
4 possession of anyone of yourselves or your deputies, es-
5 pecially, yourself, Mr Ford and Mr Keetch, a report made
6 by Mr Biddinger in writing during the examination or since
7 this trial commenced here in this court, was there or was
8 there not here in court in your possession? Now, that is
9 all we need to know.

10 MR FREDERICKS: That is entirely a different question.
11 That is not what we were talking about a while ago.

12 MR APPEL: That will relieve the whole proposition.

13 MR FREDERICKS: I never had any report from Mr Biddinger
14 here in court in regard to the Chicago matter. That is
15 what we are talking about. Now, we are rambling around
16 and talking about two or three different things.

17 THE COURT: Now, that is an answer to the question.

18 MR ROGERS: About the Chicago matter --

19 MR FREDERICKS: I am not going to go through a cross-exam-
20 ination here.

21 MR ROGERS: I just want to understand the word about the
22 Chicago matter, was in there; is it in there?

23 MR FREDERICKS: Yes. Well, I will put it in there if it
24 ish't in there.

25 MR ROGERS: Now, have you a written report from Mr Bid-
26 dinger about matters of the 16th of August at the Alexandria?

1 MR. FREDERICKS: Just a moment. I want to be perfectly
2 sure that I have stated just what I had in mind. Will
3 you read to me what I stated there? (Statement of Mr
4 Fredericks as indicated, read by the reporter.)

5 MR. ROGERS: Are you satisfied? A Yes.

6 Q What time did you return from Europe, as you have indi-
7 cated? A About July the 16th.

8 Q What time did you come to Los Angeles thereafter, first

9 A I reached here on August the 3rd.

10 Q How long did you stay? A Until, I think -- I have
11 a memorandum book in my pocket that will refresh my re-
12 collection.

13 Q You may refer to it; I will not look at anything else,
14 or ask to look at that even, if you will refresh your
15 recollection from it. A (The witness refers to mem-
16 orandum book.) I have not the one with me that will
17 give me that, but I was in Los Angeles until after the
18 17th of August.

19 Q Well, from about the 2nd until after the 17th?

20 A Yes.

21 Q Would you say it was a number of days after the 17th,
22 or approximately the 17th? A Well, the only way I can
23 fix it, is I remember I was in San Francisco on August
24 26th, and I just refreshed my recollection on that date
25 the other day.

26 Q By what means did you refresh your recollection as to

1 the date of the 26th? By some document? A I think by
2 consulting my memorandum book.

3 Q The one you just now consulted? A No, another one,
4 or else, talking with the District Attorney or Mr Biddinger.

5 Q Now, when you reached Los Angeles on the 3rd, you re-
6 mained here until the time you went to San Francisco
7 along between the 17th and the 26th sometime? A Yes.

8 Q Did you return to Los Angeles again? A Did I return
9 to Los Angeles again?

10 Q Yes, yes sir. A (Referring to memorandum book.)
11 Well, I don,t know whether I returned immediately to Los
12 Angeles.

13 Q What, according to your best recollection refreshed
14 by any memorandum book of your whereabouts you may have
15 with you, was your next visit to Los Angeles? A I was not
16 sure whether I went back East, but I think I did; I think
17 I went from San Francisco to Portland and Seattle, and then
18 back East that way, and did not come back to Los Angeles
19 again. However, I don,t recollect whether I made another
20 trip here since or not. I think I did.

21 Q Can you give us anything like the date of that second
22 trip, that trip that you are a bit uncertain about? A No.
23 I could by consulting a memorandum book which I have not
24 with me, but which I will.

25 Q Have you any idea whether or not it was approximately
26 the latter part of November, 1911? A I couldn't say

1 just now.

2 Q You don't know, then, whether or not, after August
3 26th, you came back to Los Angeles, approximately the
4 latter part of November? A I do not recollect.

5 Q Is there nothing except the memorandum book to which
6 you have referred, would refresh your recollection? A Some
7 events might.

8 Q Do you recall seeing Marshall Stimson about that time?

9 A Which time?

10 Q Between August 17th and the latter part, the 26th of
11 the month of November? A I do not think I saw Marshall
12 Stimson then.

13 Q Do you recall whether you saw Mayor Alexander about
14 that time? I am seeking for something to refresh your
15 recollection, that, as you suggest, and events might.

16 MR FREDERICKS: I think, may it please the court, counsel
17 is inadvertently using the wrong date there.

18 MR FORD: Do you mean the date of November 28th, Franklin's
19 arrest?

20 MR ROGERS: The latter part of November, I said.
21
22
23
24
25
26

1 MR. FREDERICKS. At the beginning of the time he is citing
2 the date when the witness left rather than the date when he
3 came here.

4 MR. ROGERS. I do not see anything wrong about that. I
5 said between approximately the 17th, that is the date he
6 says he came.

7 MR. FREDERICKS. No, that is the date he left.

8 MR. ROGERS. The 17th of August?

9 MR. FREDERICKS. The 17th of August, yes, that is the date
10 he left Los Angeles.

11 A I left Los Angeles and went to--I was here on the 15th and
12 16th, from the 3rd until the 17th of August.

13 MR. ROGERS. Q Very well, then, if I am mistaken--between
14 the 17th and the last end of November.

15 MR. FORD. You mean after he left Los Angeles?

16 Q Yes, I asked him if he didn't come back here, seeking
17 for the event. A Well, I may, but I could not at this
18 moment tell you.

19 Q Did you not come back and have a consultation with
20 Mayor Alexander and others concerning the reward matter,
21 to refresh your recollection? A I think I talked with
22 them about it at the time I was here in August, perhaps
23 I did come back. I remember having a conference with the
24 Mayor about the reward, rather, not about the reward but
25 about the money that was due me.

26 Q As a matter of fact you do lay claim to a reward in the

1 matter of the McNamaras, do you not?

2 MR. FREDERICKS' That is objected to on the ground it is
3 immaterial.

4 THE COURT. Objection overruled.

5 A ,ndeed, I do, and nobody else is entitled to it.

6 Q Were you aware that the District Attorney had stipulated
7 here in open court that Browne, Samuel L. Browne was the
8 one who discovered, pursued and gathered the evidence against
9 the McNamaras? ↑

10 MR. FREDERICKS' That is objected to on the ground it is
11 immaterial, and I think counsel is probably inadvertantly
12 stating what is not correct. The court will remember that
13 Mr. Rogers made a long and very eloquent eulogy of Mr. Browne
14 stating the many things he had done and I said, "I will
15 stipulate he has done all of them." I don't remember that
16 I said Mr. Browne was entitled to the reward and I did not
17 intend to so stipulate.

18 THE COURT. What is the purpose of that? What is the
19 materiality of it in this case?

20 MR. ROGERS. The witness has said, "I do claim the reward"
21 and adds to that, "No one else is entitled to it." And I
22 said to the witness--

23 THE COURT. Why is that material?

24 MR. ROGERS. I said to the witness, "Are you aware", when
25 he made that answer, that no one else was entitled to it,
26 that the District Attorney had stipulated that the evidence

1 against the McNamaras, that their identity and their
 2 discovery was due to Samuel L. Browne, which is in the
 3 record and which I will presently send for in order that
 4 there may be no difficulty about it.

5 THE COURT. Assuming that to be true, what is the mater-
 6 iality of it?

7 MR. ROGERS. The materiality of it is with respect to the
 8 voluntary statement of the witness that "I and no one else
 9 is entitled to the reward."

10 MR. FREDERICKS. We cannot try that case out here.

11 MR. ROGERS. I do not intend to try that case here, but
 12 the situation has been brought about by the voluntary
 13 answer of the witness. If you want that answer strikken
 14 out, "no one else is entitled to it," that might relieve
 15 the situation, I certainly would not strike it out.

16 MR. FORD. We made an objection to the question and we
 17 still think we are right.

18 THE COURT. I think that is probably the thing to do. The
 19 court will strike it out on its own motion.

20 MR. ROGERS. Q So you claim the reward in the McNamara case
 21 how much is that all together?

22 MR. FORD. We object to that as incompetent, irrelevant.

23 MR. ROGERS. Your Honor has let everything pertaining to
 24 the McNamara case in and I think that has as much to do
 25 with it--

26 THE COURT. No--

1 MR. FORD. Everything that is material.

2 THE COURT. --so far as it is material and aff~~e~~cts the
3 interest of the witness.

4 MR. FORD. What has the reward of the McNamaras got to
5 do with this defendant?

6 THE COURT. Objection overruled. Proceed.

7 A How much is the reward, is that the question?

8 THE COURT. Read the question.

9 (Question read.)

10 MR. ROGERS. Q The question, reframed is: How much do
11 you claim all together is the reward? A All the reward
12 that is offered, and I am trying to investigate and deter-
13 mine just how much there is coming just now. Nobody seems
14 to know, it is melting like snow before a summer sun
15 since the arrest of the McNamaras and their conviction.

16 Q Well, how much did you originally claim?

17 MR. FORD. We object to that as irrelevant and immaterial.

18 THE COURT. Objection overruled.

19 A Whatever there was; I don't know.
20
21
22
23
24
25
26

1 MR ROGERS: The whole shooting-match, I have no doubt?

2 A The whole shooting-match.

3 Q But, does your recollection serve you as to so small a
4 matter of how much there was? A I can enumerate it for
5 you by the number that was offered.

6 MR FORD: We wish to object to that.

7 MR ROGERS: Take your pencil and set it down; you need not
8 read it out. A I need not take a pencil.

9 MR FORD: I am making an objection, and I would like to be
10 permitted to make it.

11 THE COURT: You have that right. What is the objection?

12 MR FORD: We object to it as absolutely incompetent, irre-
13 levant and immaterial how many people offered rewards
14 and what rewards the witness thought he could collect.

15 What possible relation can it have, either to the guilt or
16 innocence of this defendant, or as to the credibility of
17 this witness? Now, those are the only two theories upon
18 which it can be pursued. Clearly, it has no relation
19 whatever as to the guilt or innocence of the defendant,
20 and what possible effect could it have upon the testimony
21 of this witness, the amount of reward he is going to get
22 in any other case; entirely disconnected with this case;
23 the reward is in nowise depending upon the result of this
24 case, in nowise tending to show the guilt or innocence
25 of the defendant, and I think it is absolutely immaterial
26 and not cross-examination.

1 THE COURT: I think it is pretty remote, but I will per-
2 mit you to go into it.

3 MR ROGERS: In view of your Honor's remarks and Mr
4 Ford's statement, I desire to state into the record and
5 to take an exception, in view of the fact that Mr Ford
6 himself is counsel and attorney for the witness in the
7 recovery of those rewards, and that is what we can show and
8 that is what we are after, showing the amount, and I will
9 get to that in a moment, and that he has hired a Deputy
10 District Attorney of this county.

11 THE COURT: The court has overruled the objection.

12 MR FORD: He did not hire a Deputy District Attorney; he
13 hired me personally.

14 MR ROGERS: I will get at that in a moment, and just
15 reaching it.

16 MR FORD: And it has absolutely no connection with this
17 case in any way, shape or form, the collection of those
18 rewards cannot in anywise affect the prosecution of
19 this case.

20 THE COURT: We are getting very far from the issues of
21 this case. The interest of this witness is a matter counsel
22 has a right to go into. Proceed.

23 A What is the question, please?

24 MR ROGERS: I expect I had better reframe it and I will
25 put it in such form as to not require any great amount of
26 study.

1 THE COURT: Mr Rogers, just at this time we will take a
2 recess. Gentlemen of the jury, bear in mind the court's
3 former admonition. We will take a recess for five min-
4 utes.

5 (After recess.)

6 (Last remark of MR Rogers read.)

7 MR ROGERS: How much, in the aggregate, were the rewards
8 which you claimed at the conclusion of the McNamara case?

9 MR FORD: We object to that question on the ground it is
10 incompetent, irrelevant and immaterial.
11 at this time, and on the further ground that the aggregate
12 of the rewards would be immaterial in this: counsel has
13 stated that the important point before the court is the re-
14 lations of the witness with me, because of the official
15 position which I occupy; therefore, it should be confined
16 simply to those rewards upon which I happen to be employed
17 personally.

18 THE COURT: Objection overruled.

19 A I don't know just what the aggregate may be. I could
20 mention the rewards that I know of or have heard of. That
21 would be the only way I could answer it.

22 MR ROGERS: Well, let us have, then, what is in your mind;
23 what you recall. A There was \$10,000 from the state; \$5000
24 from the county. I got the \$5000 from the county. There
25 was \$7500 offered by Tveitmoe of the Labor Council in

26 San Francisco; and I think the state of Louisiana --
Q State of California? A State of California, \$10,000.

1 The state of Louisiana offered 5000. I think they withdrew
2 it before we could get to it.

3 Q Any offer from any private associations, to refresh
4 your memory? A Yes, I understood the Merchants & Man-
5 ufacturers Association here had offered something, but I
6 think that got away, too, before I got here.

7 MR FREDERICKS: We move to strike that out as hearsay,
8 your Honor.

9 THE COURT: Strike it out.

10 MR APPEL: No, your Honor, that is what is in his mind.
11 It is very important, your Honor, for the defense.

12

13 Mr Fredericks, in his statement, your Honor --

14 THE COURT: All right, restore it; leave it in.

15 MR FREDERICKS: The only vice of it, counsel, when it
16 comes to the argument, probably will argue it was a fact
17 that there was such a reward offered, whereas, the facts
18 might be entirely different.

19

20

21

22

23

24

25

26

12s 1 THE COURT. I assume that counsel will argue the testimony.
2 Proceed, Mr. Rogers. The answer has been restored.

3 MR. ROGERS. I didn't figure that up. The only reward
4 which has been paid, as I understand you, is the reward of
5 the County of Los Angeles? A \$5,000.

6 Q The state reward of California has not been paid?

7 A No.

8 Q Or the Merchants & Manufacturers reward has not been paid?

9 A I don't look to them for any reward.

10 Q And have you employed Mr. Ford, counsel for plaintiff
11 in this case, as your attorney, with reference to the
12 rewards? A Mr. Ford is my attorney in every case, not only
13 in rewards but in everything else.

14 Q Were you aware when you made that statement that the
15 following stipulation is in the record in this case:

16 "We will show that Mr. Browne, Mr. Samuel L. Browne, as a
17 matter of fact, to the knowledge of the defendant Darrow, as
18 he well knew, was the man who ran down the perpetrators
19 of the Times horror. He was the man who discovered J. B.
20 Brice; he was the man who discovered Schmidt; he was the
21 man who discovered Caplan; he was the man who produced
22 the evidence and procured the evidence which went before
23 the grand jury on which Brice, afterwards known as Mc-
24 Namara, was indicted, and which led to the fact that Mr.
25 Darrow, as attorney for the McNamaras, advised them to
26 plead guilty, that such evidence was insurmountable, and

1 we further purpose to show that the defendant Darrow knew
2 all the time when he made his statement to Mr. Browne and
3 when he did all the talking that he did to Mr. Browne, that
4 he was talking to the very man, the very chief of them all;
5 the man who was most interested in the conviction of the
6 McNamaras; the man who most knew about it and the man
7 whose efforts did, as a matter of fact, land J. B. McNamara
8 and J. J. McNamara in the penitentiary upon a plea of
9 guilty." To which Mr. Fredericks--

10 THE COURT. That statement was made by yourself?

11 MR. ROGERS. That statement was made by myself, to which
12 Captain Fredericks replied, "We will stipulate all the
13 things which Mr. Rogers has recited as facts are facts."

14 MR. FORD. If they are material.

15 MR. ROGERS. Q Were you aware of that?

16 MR. FORD. Just read the rest of it.

17 MR. FREDERICKS. Let's see the question, if there is a
18 question pending.

19 THE COURT. That is a question.

20 MR. FREDERICKS. I didn't know it was finished--to which
21 we object upon the ground it is incompetent, irrelevant and
22 immaterial.

23 A I was aware of the fact--

24 THE COURT. Just a moment.

25 MR. FREDERICKS. There is no occasion for any controversy
26 of that kind. It isn't material to this issue, the stipula-

1 tion, if it is a stipulation, to which counsel refers, is
2 one made here after this case started, and nothing to do
3 with any feelings or incentives which Mr. Burns may
4 have had at any time prior thereto.

5 MR. ROGERS. It has this to do with it. If this stipula-
6 tion by the District Attorney--Mr. Ford, as the record
7 shows, being in court and sitting next to him, that among
8 other things, that "the man who most knew about it and the
9 man who efforts did, as a matter of fact, land J. B.
10 McNamara and J. J. McNamara in the penitentiary upon a
11 plea of guilty," when Mr. Fredericks^{said} "we will stipulate
12 all the things which Mr. Rogers has recited as facts are
13 facts," he spoke for himself and he spoke for Mr. Burns's
14 attorney. While, of course, not in that capacity, but
15 nevertheless, it has to do with the present state of mind
16 of the witness as much as his claim of reward as exactly-
17 it having been stipulated before this jury that his claim
18 of reward was unfounded and that Mr. Fredericks had
19 stipulated that Samuel L. Browne was the man who, as a mat-
20 ter of fact, did land J. J. McNamara and J. B. McNamara
21 in the penitentiary, that he gathered the evidence upon
22 which they were indicted and upon which they pleaded guilty,
23 all of which, of course, is material to the issue of the
24 state of mind of the witness.

25 MR. FREDERICKS. Now, may it please the Court, that is abso-
26 lutely absurd, in my judgment, as an argument. My stipula-

1 tion, if it may be called such, meant absolutely nothing
2 in any controversy of that kind. It was made for the pur-
3 pose because the things that Mr. Rogers was saying were
4 absolutely immaterial, absolutely immaterial to this
5 issue, and for the purpose of this issue we were perfectly
6 willing to stipulate them. Now, that is what a stipula-
7 tion of that kind means. There is no possibility of dragging
8 such a controversy in here. Mr. Rogers's conclusions as to
9 who were entitled to rewards, as to who was entitled--as
10 to who was the chief of them all, were nothing that I
11 stipulated. We were willing to stipulate what he said
12 as facts were facts.

13 THE COURT. Well, counsel wants to find out whether or not
14 that matter, whatever it was, stipulation or whatnot, if
15 at all it affected the mind of this witness.

16 MR. FOPD. There is one matter, your Honor, that is personal
17 to me and I want to say whatever Captain Fredericks said
18 on that occasion he said as District Attorney and not as
19 representing me in any way, shape or form.

20 THE COURT. The objection is overruled. Read the question.
21 (Last question read by the reporter.)

22 A Well, all I know about it is I was in the court room for
23 a little while during the day Mr. Rogers was cross-examining
24 Mr. Browne and I heard him ask that lot of rot, none of
25 which was true.
26

1 MR ROGERS: Then, if it were not true, do you know how it
2 came about that Mr Fredericks stipulated that such things
3 as I stated as a matter of fact, like this, "that the man
4 who knew most about it, and the man whose efforts did, as
5 a matter of fact, I and J. B. McNamara and J. J. McNamara
6 in the penitentiary upon a plea of guilty" do you know how
7 Captain Fredericks stipulated that all of the things which
8 Mr Rogers has recited as facts are facts? A I heard --

9 Q With you in the room?

10 MR FREDERICKS: Just a moment. That is objected to upon
11 the ground it is incompetent, irrelevant and immaterial,
12 and calls for an opinion of this witness as to what was
13 in my mind, as I have already stated to the court, I
14 stipulated to this because it had nothing to do with this
15 case, and for the purposes of this case, it might be consid-
16 ered as stipulated to, and not for the purpose of any
17 other case. Mr Burns cannot know what was in my mind.

18 THE COURT: Read the question.

19 MR APPEL: He can only know what was in his mind by his
20 statement; that is the only way we know a person's mind,
21 by what he says.

22 MR FORD: I think counsel is right.

23 THE COURT: Mr Reporter, do not take down statements of
24 counsel when the court directs you to read a question,
25 but proceed with the reading of the question. (Last
26 question read by the reporter.)

1 A Yes --

2 THE COURT: Strike out the answer. Objection sustained.

3 MR ROGERS: You said it was all a lot of rot, and untrue.
4 How do you know Captain Fredericks happened to stipulate
5 that all the things recited were, as a matter of fact,
6 facts in the presence of this jury?

7 MR FREDERICKS: The same objection on the same grounds?

8 MR ROGERS: The witness said it was all a lot of rot.

9 THE COURT: Calls for the state of mind of Captain Fred-
10 ericks; that is not under investigation, what this wit-
11 ness knows, --

12 MR APPEL: Your Honor, here is the proposition: I may
13 be wrong, the only reason why this inquiry is pertinent,
14 is this: here is Mr Burns associated intimately, and
15 he has made the statement that he and Mr Biddinger acted
16 upon a certain phase of this case towards Mr Darrow. Now,
17 before they went upon the stand this statement, this sti-
18 pulation having been solemnly made here in court by Mr
19 Fredericks in the presence of the jury as a fact, and in
20 the presence of the counsel for Mr Burns, and no dissent
21 being made here by Mr Ford concerning that statement, but
22 sat silently there and assented to it by his silence, we
23 want to know whether or not this statement made by Mr
24 Fredericks may or may not have an influence upon the
25 mind of Mr Biddinger as well as Mr Burns, as affecting,
26 your Honor, their desire to establish here before the jury,

1 the best case they can that would entitle them to this
2 reward. In view of the fact that your Honor has admitted
3 statements here on the part of Mr Biddinger as to what
4 J. J. McNamara, he pretended to state to him concerning
5 Mr Darrow, and without the presence of Mr Darrow, after
6 this statement was made, are we not entitled to show under
7 what ci rcumstances both of them are testifying here in
8 view of the fact that your Honor has allowed the witness
9 upon the stand to say what reports were made, substantially
10 so, although not in express words, what reports were made
11 by Mr Biddinger to him during the time, your Honor, be-
12 fore the McNamaras pleaded guilty; during the time when
13 they were investigating matters pertaining to the Mc-
14 Namara cases, may we not inquire of the witness what pos-
15 sible effect this statement made by the District Attorney
16 here, or what stipulation he made here, may possibly affect
17 them in giving their testimony, what influences are they
18 not testifying under or influences that there may be some
19 controversy as to his reward, entitling him to that reward
20 or not. Mr Biddinger, himself, has said on the stand that
21 he expected a portion of the reward, that he and Mr Burns
22 are entitled to it, and whether it affects them or not.

23 THE COURT: You are entitled to all that.

24 MR APPEL: We don't know whether it does or not, but I
25 am simply showing what materiality that has.
26

1 THE COURT: The court recognizes that materiality, but
2 this particular questions calls for an opinion of this
3 witness as to what was in Captain Fredericks' mind at
4 the particular time. That particular question cannot be
5 allowed.

6 MR APPEL: I do not say that Mr Burns in his legal rights,
7 is affected by such statement.

8 MR FREDERICKS: Unless by my silence I should be deemed to
9 assent to the things that Mr Appel stated, that I solemnly
10 made a stipulation, I maintain I did not solemnly make the
11 stipulation.

12 MR APPEL: I can cite authorities after authorities that
13 this statement is a solemn admission and no court and no
14 jury would allow him to withdraw it, if it is material to
15 the case.

16 MR FREDERICKS: If it is material to the case.

17 THE COURT: Let's go back to this testimony. That is not
18 before the court. That is objected to by the District
19 Attorney, and sustained for the reasons stated. Proceed
20 with the examination.

21 MR ROGERS: Exception.

22 Q Well, Mr Burns, you were in the court room when Captain
23 Fredericks made that stipulation.
24
25
26

1 A And I heard him and I understand perfectly what the
2 Captain said and what he meant, and I have heard his expla-
3 nation here and it hasn't disturbed me in the least, or
4 never did.

5 Q He has--you have heard his explanation outside of the
6 court too, haven't you? A No.

7 Q Has he explained to you anything about what he meant by
8 stipulating that Samuel L. Browne was the who as a matter
9 of fact landed the McNamaras in the penitentiary? A No,
10 I didn't think it worth while to ask him or discuss it with
11 him.

12 Q You didn't think that Captain Fredericks's statements
13 that those were facts amounted to anything? A I felt that
14 the Captain looked upon it the same as I did, that you were
15 getting off a lot of bunk there with this fellow Browne,
16 and the Captain knew that there was nothing in it, nothing
17 to it.

18 Q By this fellow Browne do you mean the chief of detec-
19 tives of the District Attorney's office? A I mean the
20 chief of detectives of the District Attorney's office.

21 Q And why did you call him "this fellow Browne?" Have
22 you any ill feeling against "this fellow Browne?"

23 MR. FREDERICKS. Just a moment now--we wish to object
24 to this entire line of cross-examination. Your Honor, it
25 seems to me it is absolutely immaterial. We are putting
26 in days and days and days of this and this immaterial
matter should be cut out and I certainly object to it on that

1 ground, it is immaterial what this witness thinks about
2 Mr. Browne.

3 MR. APPEL. Why, it is very important, your Honor, it
4 affects--here is a claimant of this reward. Mr. Browne,
5 it is in evidence--here is Mr. Burns and Mr. Biddinger
6 claiming this reward. Now, here these matters come before
7 this jury, they have been allowed before the jury. This
8 defendant is interested in knowing what there is in their
9 mind.

10 THE COURT. The only question is how far the inquiry goes.

11 MR. APPEL. Of course, it would be very nice, your Honor,
12 in view of the stipulation made here by Mr. Fredericks that
13 the matter might be forgotten, that it might be eliminated,
14 but the wishes of Mr. Fredericks as personal wishes should
15 have nothing to do with the legal questions involved., I
16 submit to your Honor. Of course, I can really see how a
17 man is likely to forget anything he said.

18 MR. ROGERS. Read the question.

19 (Last question read by the reporter.)

20 A None at all.

21 THE COURT. Objection overruled.

22 MR. ROGERS. Q Why did you call him "this fellow Browne?"

23 MR. FREDERICKS' That is objected to, it is not cross-
24 examination; incompetent, irrelevant and immaterial.

25 THE COURT. Overruled.

26 A Because he made himself so ridiculous in replying to

1 your questions as he did, and in wanting part of the reward
2 that he was not entitled to.

3 MR. FREDERICKS. Now, your Honor, don't you see we are
4 getting into a controversy here that has got nothing to do
5 with this case, the relation of this witness and Mr. Browne?

6 THE COURT. Gentlemen, I quite understand the situation.

7 MR. ROGERS. Q So you say you called him "this fellow
8 Browne" because he made himself so ridiculous in claiming
9 a part of the reward to which he was not entitled and to
10 which Captain Fredericks stipulated he was entirely entitled
11 to, do you think that is ridiculous?

12 MR. FORD. Objected to upon the ground it is assuming
13 something that is not a fact, that is not a fact; Captain
14 Fredericks made no stipulation with regard to rewards in
15 this case at all. The reward was not mentioned in that
16 statement, and the question is immaterial in that it has
17 no relation to the guilt or innocence of the defendant nor
18 to the relevancy of the feeling of this witness against
19 the defendant, that is the only material thing. Mr. Browne
20 is not being charged here with anything, and we are not
21 trying the reward case, and consequently the feelings of
22 the witness towards Mr. Browne are absolutely immaterial.
23 The question is what is the relation of this witness
24 towards this case? What does he feel towards the defend-
25 ant? Has he animosity towards the defendant that would
26 cause him to deviate from the truth? That is entirely a

1 different question, his feeling towards Mr. Browne can
2 certainly not influence his testimony against Mr. Darrow.
3 THE COURT. Objection overruled.

4 A Please read the question.

5 (Last question read by the reporter.)

6 A I understand perfectly why Captain Fredericks
7 stipulated that or agreed to that stipulation. I think
8 it was to simply dispose of the matter, that is the way I
9 looked at it.

10 MR. ROGERS. Dispose of the matter to stipulate to a
11 fact before this jury who are to determine the facts,
12 do you regard that as legitimate from your view?

13 MR. FREDERICKS. May it please the Court, we object to that
14 on the ground it is incompetent, irrelevant and immaterial
15 and assuming that that is a fact which this jury has to
16 determine. This jury will not determine one single
17 solitary thing in regard to that stipulation, and that
18 stipulation is as absolutely immaterial in this case as
19 though I had stipulated that the moon was made of green
20 cheese or stipulated any other thing which anybody would
21 be willing to stipulate. It is not an issue in this
22 case, not before this jury.

23 THE COURT. Assuming that you are entirely ^{right} about that,
24 Captain Fredericks, counsel for the defense has a right
25 to know the influence, if any, upon this witness's mind
26 as a result of the statements that he has read from the

1 record, if it had no effect-

2 MR. FORD. But this question calls for an expression of
3 opinion, what he thinks of Captain Fredericks's conduct.

4 THE COURT. I think as to this particular question, I
5 think that that objection is well taken, Mr. Rogers.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 MR APPEL: It is not responsive as to the witness treating
2 it as trivial matter. Now, we are not bound by his demeanor;
3 we are not bound by his statements. We have a right to
4 show it is not so trivial or that, in fact, he does not
5 consider it so trivial.

6 THE COURT: You can show that, but the particular form of
7 the question is objectionable, and the objection will be
8 sustained on that ground.

9 MR APPEL: We take an exception.

10 MR ROGERS: Did you think it was a trivial matter for Cap-
11 tain Fredericks to stipulate to facts as being facts and
12 truth before the jury respecting the state of mind of a wit-
13 ness who was on the stand? A Yes. Those facts, that is
14 exactly as it struck me; I didn't pay any attention to it,
15 nor it has not had any effect on me whatever.

16 Q If Captain Fredericks should stand up here and stipu-
17 late you were not entitled to a dollar of the reward, such
18 being as you claim against the truth and the facts, wouldn't
19 you regard it as deceiving this jury?

20 MR KEETCH: We object to that on the ground it is purely
21 argumentative.

22 MR FORD: We object to it on the ground it is absolutely
23 immaterial; assuming that Captain Fredericks should have
24 done something which the witness did not like.

25 THE COURT: If you object on any other ground besides that
26 stated by Mr Keetch, let us have it.

1 MR FORD: I object to it on the ground it is immaterial,
2 in that it bears -- by way of illustration to its mater-
3 iality, I want to state this illustration to your Honor --
4 assuming that the witness had a feeling against Captain
5 Fredericks by reason of his remark, if he had any feel-
6 ing at all it would be one of resentment for making a
7 stipulation of a matter that the witness disagreed with
8 him on, and the feeling of resentment would be against
9 Captain Fredericks and it would be favorable towards the
10 defendant, and the only thing we want to get at is the
11 relation of the witness to the case and his feeling to the
12 Defendant, and we object to it on the ground it is imma-
13 terial, not cross-examination.

14 MR APPEL: I know, your Honor. And a man's ideas as to
15 what is proper and improper, especially concerning state-
16 ments made in court, statements of fact. We have a right
17 to show by the witness' testimony himself here, with what
18 indifference he treats the statements of facts, how he
19 interprets those things, what little respect he has
20 for opinions and statements made in court concerning
21 facts, what little reverence the witness may have for
22 solemn statements made in open court, how little he is im-
23 pressed with the seriousness of the occasion, with the
24 statements of the District Attorney concerning facts.
25 We have a right to test his own appreciation of situations
26 for the purpose of having this jury determine how much

1 credit and weight they will give to the testimony of the
2 witness, not only of the witness, but of the testimony of
3 Mr Browne and to the testimony of Mr Biddinger and whether
4 or not this jury will say, "Why, this man treats these
5 statements made solemnly before us by the District Attorney
6 in the most trivial manner, as matters that have no im-
7 portance here, and yet, those statements are made to us."
8 This jury have a right to say, your Honor, "What are we
9 trying here? Upon whom shall we rely? Shall we rely
10 upon stipulations made by attorneys which take the place
11 of evidence in the case?" And it is the most solemn
12 evidence, because, as said by the Supreme Court, when a
13 stipulation is made in court by counsel on both sides,
14 it is so binding that upon a subsequent trial, you may
15 give it in evidence again, and when once a position is as-
16 sumed by an attorney concerning the theory of the case, he
17 is not allowed to change that theory or to change his
18 position, so that we have a right to test the witness' ap-
19 preciation of those things, what respect he shows for the
20 word of men; we have a right to argue to this jury, if the
21 witness upon the stand has no respect for the word of the
22 District Attorney given solemnly in open court concerning
23 facts, what respect can he possibly have for the word of
24 any other man?

25

26

1 We contend that due respect is due to the District Attorney
2 here in this case, that he, knowing the situation of the
3 parties, knowing the evidence as it came to him in that
4 McNamara case that he is in a position to know more abso-
5 lutely than any one who was the instrument by which the
6 McNamaras went to the penitentiary, and he, having announced
7 that here, his word is entitled to credit, and if that word
8 is entitled to credit, it certainly would affect the mind
9 of the witness and would affect the mind of the witness
10 Biddinger, both of whom are claimants for this reward.
11 Cannot we say, "These men are striving to show to this
12 jury that they are entitled to it and therefore they are
13 more anxious to show some facts against this def endant,
14 who was the chief counsel for the McNamaras?" Isn't this
15 case so connected together that they are parts of one and
16 the same transaction? Why allow, then, a circumstance
17 concerning the McNamara case here in court so as to affect
18 the anxiety of the defendant? Why allow the prosecution
19 to show by a witness here who said upon the stand, Mr.
20 Franklin, "Mr. Darrow says we must win this case, I am
21 anxious to win it," in order to show his interest in the
22 case in connection with this particular charge? So we have
23 a right to show that same interest and that same feeling
24 upon the other side, to show that they are anxious to con-
25 vict this defendant.

26 THE COURT. The objection made by Mr. Keetch that the ques-

1 tion is speculative and argumentative is sustained.

2 MR. APPEL. We except.

3 MR. POGERS. Q You know, don't you, Mr. Burns, as well as
4 Captain Fredericks, having stipulated that Samuel L.
5 Browne is the man who landed the McNamaras in the peni-
6 tentiary and who discovered them and produced the evidence
7 against them, as you know as a matter of fact as well
8 that he claims the reward, do you not?

9 MR. KEETCH. We object to that on the ground it is incom-
10 petent, irrelevant and immaterial.

11 THE COURT. Objection overruled.

12 A I did not know that Browne claims that he got the
13 McNamaras. I thought those were your words that you are
14 putting into his mouth and that he simply assented to it.
15 I do know that he is claiming part of the reward.

16 Q And don't you know that he has secured attorneys and
17 that your attorney and his attorney are in a controversy
18 over the reward?

19 MR. FREDERICKS. We object to that on the ground the
20 matter has been fully covered.

21 MR. ROGERS. No, it states his mind--

22 THE COURT. Objection overruled.

23 A His attorney waited on me the other day and I think
24 when he got back with my word there was not any question
25 about^{what}/the situation was going to be.

26 Q Well, his attorney waited on you, anyhow? A Yes.

1 Q And it was a situation of controversy?

2 MR. FREDERICKS: We object to that as immaterial, incom-
3 petent, irrelevant and not cross-examination.

4 THE COURT: Objection overruled?

5 A Yes.

6 Q Now, during all the time since the McNamara case ceased
7 one of your own men, that is, a man who has been with you
8 for years, Mr. McLaren, has been with the District Attorney's
9 office, hasn't he?

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

12 MR. ROGERS. As to his state of mind, certainly his interest
13 in this prosecution.

14 THE COURT. I think it is too remote.

15 MR. ROGERS. Why, if your Honor please, if he has had a
16 man in the District Attorney's office of his own all this
17 time while this case was being prepared and being tried,
18 cannot I show that?

19 THE COURT: If that were the offer.

20 MR. ROGERS. That is exactly the question, "Wasn't one of
21 your men, ever since the conclusion of the McNamara case,
22 hasn't one of your men been right in the District Attorney's
23 office and connected with it?" Why, he sits right here
24 now and has sat here all the time, sir, and does your
25 Honor mean to rule I cannot ask this witness if he has not
26 had one of his own men right in the District Attorney's

1 office all the time? I could ask the various def endants,
2 thesmallest defendant in a justice court case--

3 THE COURT. Let us see if that is the question.

4 MR. FREDERICKS. That is not the question.

5 THE COURT. I want the question first.

6 (Question read.)

7 MR. ROGERS. That is perfectly my question.

8 THE COURT. Objection sustained.

9 MR. FREDERICKS. Our objection is it is immaterial.

10 MR. ROGERS. Q Mr. McLaren worked for you for years, didn't
11 he, and does now, as a matter of fact?

12 MR. FREDERICKS. We object to that as innaterial.

13 THE COURT. Objection overruled.

14 A Yes, sir.

15 MR. ROGERS. Q He has been in the District Attorney's
16 office aiding and assisting in this prosecution, hasn't he,
17 from the start--the prosecution against Darrow?

18 MR. FREDERICKS. We object to that on the ground that it is
19 incompetent, irrelevant and immaterial--just a moment, let
20 me hear that question.

21 (Question read.)

22 MR. FREDERICKS' I have no objection to that question.
23 Our objection was to another question.

24 THE COURT. All right, go ahead.

25 A I don't know exactly what he has been doing. I suppose
26 he has, that is, he is doing whatever the District Attorney

1 directs him to do, I don't know.

2 Q You have permitted him to be there? A Oh, yes.

3 Q He was there by your direction? A Yes.

4 Q And by your direction engaged in the prosecution of Mr.
5 Darrow, so far as his ability lay? A No.

6 MR. FREDEIRKCS. That is just the point, your Honor. That
7 is objected to; it has been already answered, the witness
8 has stated he was not there in that capacity at all.

9 THE COURT. He has answered it again just now. He says,
10 "No."

11 MR. FREDERICKS. All right.

12 MR. ROGERS. Q Don't you know he has been in the court room,
13 sitting there behind the District Attorney and at the other
14 court room sitting behind the District Attorney and going
15 out and in and getting witnesses and seeing witnesses from
16 time to time in this very prosecution, since this case
17 started against Mr. Darrow, one of your own men?

18 MR. FREDERICKS' That is objected to, the latter part of
19 it, "Since this case started", as being indefinite. Now,
20 if counsel means since the trial actually began--

21 MR. ROGERS. Yes, since the trial began.

22 MR. FREDEPICKS' That is one question.

23 THE COURT. Counsel says he means since the trial actually
24 began.

25 MR. FREDERICKS. Well, if the witness knows.

26 THE COURT. Do you want the question read?

A Yes.

1 THE COURT' Read the question.

2 (Question read.)

3 A No, I do not know that.

4 MR. ROGERS. Q You do not know that? A No.

5 Q If it is a fact it has escaped your recollection and
6 observation? A Yes.

7 Q No reports of that kind have been made to your office?

8 A No, not that I know of.

9 Q How many days have you been attending at the court room--
10 I do not mean inside, of course, but in its environs and
11 suburbs, as it were?

12 MR. FREDERICKS' We object to that as immaterial.

13 THE COURT. Objection overruled?

14 A I have been out here a couple of weeks, I think.

15 MR. ROGERS. Q Have you seen McLaren every day? A No.

16 Q Have you seen him approximately ever day? A No.

17 Q Have you seen him often? A Yes.

18 Q You know what he is doing, don't you? A I know he is
19 assisting the District Attorney in anything the District
20 Attorney directs him, I suppose in this case as well as
21 everything else.

22 Q Do you know R. J. Foster? A R. J. Foster?

23 Q I think his name is Robert J. Foster? A Of the
24 Erectors' Association?

25 Q You have guessed it, of the Erectors' Association.

26 A Yes.

1 Q How long have you known him?

2 MR. FREDERICKS. We object to that on the ground it is
3 immaterial--withdraw the objection, let it go, it is pre-
4 liminary.

5 A The first time I met him was after--sometime after the
6 arrest of the McNamaras at Indianapolis.

7 MR. ROGERS. Q The approximate date you could not give us?

8 A No, no.

9 Q Before I leave the subject, what other of your men
10 besides McLaren, so far as you know, have been attendant
11 upon this trial?

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

14 THE COURT. Overruled.

15 A I don't know of any other man except Mr. Biddinger and Mr.
16 McLaren. Mr. Russell has been in here once or twice, I think
17 he was in here yesterday.

18 Q You don't know of any other yourself, have you looked to
19 see? A Well, I have not looked to see, but it seems to me
20 if they were around here I would know them.

21 Q Possibly. Would you mind looking at your records to see
22 if other people who know them have observed them as well,
23 that is to say, would you mind looking at your records and
24 determine whether or not other men besides Mr. McLaren have
25 been here or hereabouts, since this case commenced?

26 MR. FREDERICKS. That is objected to on the ground it is

1 immaterial.

2 THE COURT: Objection sustained.

3 MR. KEETCH: hearsay.

4 MR. ROGERS: Q Now, I return to Robert J. Foster of the
5 Erectors' Association. You met him first in Indianapolis.

6 Can you approximate the date, even? You can say the
7 incident and I would like to have you give us the date, if
8 you can.

9 A I am not able to do that. I know it was after the--
10 the Erectors' Association had nothing to do with the case
11 until after the arrest of the McNamaras and I only fix it
12 by that event.

13 Q Well, now, can you give us what time that event occurred,
14 approximately? I do not ask a busy man like you for days
15 or even weeks, but months, if possible. A Well, I
16 think I met him shortly after the arrest of the McNamaras.

17 Q Well, was that while there was some controversy in
18 Indianapolis over the method by which the McNamaras went
19 out of the state--we went go into that? A No, it was long
20 after that.

21 Q It was long after that? A Long after that.

22 Q Have you met him since? A Yes.

23 Q How many times? A Well, I saw him for a period of a
24 couple of months that I went back and forth to Indiana-
25 polis, probably four or five times; and then I saw him
26 twice here in the District Attorney's office, merely to
pass the time of day.

1 Q When was that you saw him twice here in the District
2 Attorney's office? A Last week.

3 Q During your August visit here did you see him at all?

4 A No.

5 Q Are you very positive of that now, put your recollection
6 on it certain so as to be sure. A Positively not.

7 Q Positively you did not see him? A Positively not.

8 Q You spoke of him of the Erectors' Association. What did
9 you mean by that remark, by "Robert J. Foster, of the
10 Erectors' Association?" A Well, I wanted to make sure
11 that was the same Foster you had reference to.

12 Q Well, now, the same Foster I had reference to. What do
13 you mean by the statement, "The Erectors' Association"?

14 A I did not mean anything by it.

15 Q What is that, anyhow? A What is what?

16 Q The Erectors' Association of which Mr. Foster is the
17 Mr. Foster? A Why, it is a number of structural iron
18 manufacturers throughout the country who have formed an
19 organization and they call it "The National Erectors'
20 Association."

21 Q Have you ever been employed by them?

22 MR. FREDERICKS We object to that on the ground it is
23 immaterial, not cross-examination.

24 MR. ROGERS It is preliminary, of course.

25 THE COURT Well, with that statement you can have it.

26 A We were employed by them on several occasions.

1 MR. ROGERS. Q Since when, since the arrest of the
2 McNamaras? A Since the arrest of the McNamaras.

3 Q Was the employment more or less continuous or was it
4 infrequent? You said you had on several occasions been
5 employed by them? A Well, the best way I can answer that
6 is to explain exactly what the situation was. While we
7 were making our investigation for the District Attorney's
8 office here, the Erectors' Association were interested in a
9 number of explosions in the east and from time to time they
10 employed our eastern offices to look after certain features
11 of that, and just how often that was I wouldn't be able to
12 say.

13 Q Has your employment with the Erectors' Association ceased?

14 A I think it has.

15 Q Are you sure of that? A Yes.

16 Q And then you will say that it has ceased? A Yes.

17 Q You met Mr. Foster here in the District Attorney's office
18 since you came here this time? A I saw him here.

19 Q On how many different occasions? A Two.

20 Q Do you happen to know of your own knowledge his connec-
21 tion with the Erectors' Association? A Only from hear-
22 say.

23 Q Well, I wanted to know why you called him, when I asked
24 you if you knew Robert J. Foster, why you said, "Of the
25 Erectors' Association? What do you know about that which
26 caused you to say, "of the Erectors' Association?" A Mere-

1 ly to make sure that is the same Foster you mean, and I
2 have answered that now three or four different times.

3 Q I don't think you have clearly told me just the point.
4 You do know, as a matter of fact, that he is the chief
5 investigator or detective for the Erectors' Association,
6 don't you? A I don't know anything about his being
7 chief investigator. I know that he acts in the capacity
8 of a detective for the National Erectors' Association or
9 directed that work in some way.

10 Q Do you know anything of yourself where he was, of your
11 own knowledge, where he was along about the latter part
12 of November of last year? A I have not any distinct
13 recollection at this time.

14 Q Do you know a man named Berlin? A Berlin?

15 Q Yes. A No, I don't know Berlin, myself.

16 Q Do you know he once worked for you? A No, he never
17 worked for us.

18 Q Are you very sure Berlin never was employed in any of
19 your offices? A Yes.

20 Q Did he work for you here in Los Angeles? A No.

21 Q Do you know who he is at all? A Only from what my
22 former manager told me?

23 Q Mills? A Mills.

24 Q Well, do you know whether, as a matter of fact, he
25 ever worked for Mills? I mean, not inside the office but
26 outside? A According to Mills's statement he did not.

1 Q Do you know whether that statement is true or not?

2 MR. FREDERICKS. We object to that on the ground it is
3 hearsay, immaterial.

4 THE COURT. Objection sustained.

5 MR. ROGERS. Q Have you made any other investigation con-
6 cerning it?

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR FREDERICKS: We object to that as immaterial, hearsay.

2 THE COURT: Objection overruled.

3 A Yes.

4 MR ROGERS: It is fair to say, Mr Burns --

5 MR FREDERICKS: We object to counsel testifying.

6 MR ROGERS: I am not going to testify.

7 Q In the interrogation here it was observed that Berlin
8 worked once for the defense. Now, do you know, as a mat-
9 ter of fact, of your own knowledge, whether or not he was
10 not at the same time in the employ of Mills, your former
11 manager?

12 MR FORD: We object to that on the ground it is assum-
13 ing something not in evidence, that Berlin ever worked for
14 the defense.

15 MR ROGERS: Mr Harrington said so.

16 MR FREDERICKS: We further object to it on the ground it
17 is argumentative.

18 MR FORD: I think perhaps Harrington did so testify.

19 Withdraw the objection.

20 MR FREDERICKS: That he worked for the defense, not for
21 the Burns Detective Agency.

22 THE COURT: All right. Objection overruled. Let us have
23 the answer.

24 A No, he never worked for us and I have only the word of
25 Mr Mills, but I made a subsequent investigation to determine
26 and the best evidence I could get was that he attempted to

1 work our office, as I understood it, for the defense, but
2 he stubbed his toe.

3 MR ROGERS: Then you did hear of such a thing? A Yes.

4 Q And you did not trust Mr Mills' statement about it;
5 you made an investigation of your own? A Well, Mr
6 Mills was gone.

7 Q Mr Mills has been right here in the city all the time,
8 hasn't he? A No. At least, I have not seen him.

9 Q Since his leaving your office, did you not know Mr
10 Mills has been here in the city with possibly an occasional
11 trip out of a day or so, ever since?

12 MRFREDERICKS: We object to that on the ground it is al-
13 ready answered.

14 THE COURT: Answer it again.

15 A No. No, I don,t know that.

16 MR ROGERS:Q Do you know whether MR McLaren also claims
17 some of the reward in this case? A I know that he does
18 not.

19 Q You know he does not. Then he is working for you on a
20 straight salary? A Yes.

21 Q At the same time ~~that~~ he is working for the District At-
22 torney? A Yes.

23 Q And where does he get his pay, from your office or
24 from the District Attorney's office? A From our office.

25 Q Then when he is here in the court room and seeing wit-
26 nesses and what-not, he is under your salary? A I think

1 that is the arrangement. I have not made it myself, and
2 don't know a thing about it.

3 Q Why, don't you know that Captain Fredericks said here
4 in court one day that Mr McLaren worked for him and not for
5 you?

6 MR FREDERICKS: That is a different question. The witness
7 said he was under salary from his agency, but not under
8 orders from his agency, that is a different matter.

9 THE COURT: There is no objection. Answer the question.

10 A Read the question, please.

11 (Last question read.)

12 MR FREDERICKS: We object to that as immaterial.

13 THE COURT: Objection overruled.

14 MR FREDERICKS: The question is, does he know that he
15 made that statement.

16 THE COURT: Yes.

17 A No, I do not know that Captain Fredericks made that
18 statement.

19 Q Where do you get the money back from that you pay Mc-
20 Laren; who pays you for it? A My office renders a bill
21 to the -- I don't know whether it is to the District At-
22 torney, but I think it is the District Attorney or the
23 county.

24 Q Then your office works for the District Attorney?

25 A Yes.

26 MR ROGERS: I am looking for a statement in the record,

1 it will take me a little time to look over it.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1 MR ROGERS: I will not be through with the cross-examina-
2 tion of the witness until I find it. It is buried in a
3 great amount of stuff, but I will go on with the witness
4 until 12 o'clock.

5 Q Where did Mr McLaren work for you before coming to the
6 District Attorney's office? A Chicago.

7 Q He worked out of the Chicago office? A Yes.

8 Q Has he ever worked out of the Los Angeles office?

9 A No, I think not except after he came from Chicago,
10 perhaps he did.

11 Q Have you men working on the dynamiting cases, so-called
12 in the Federal jurisdiction?

13 MR FREDERICKS: Just a moment, Mr Burns. We object to that
14 as not cross-examination and an attempt to ascertain the
15 business and doings of the witness, his own private affairs
16 and for the Federal authorities, which he would be in honor
17 bound not to state.

18 MR ROGERS: That may be so.

19 MR FREDERICKS: In view of the fact it is not cross-exam-
20 ination.

21 MR ROGERS: I don't believe -- wait a moment. I withdraw
22 that; that would involve matters that I would not want to
23 be brought^{out} if I was on the other side, and I will not ask
24 it. Now, you have delivered lectures and speeches through-
25 out the country since the arrest of Mr Darrow and since
26 his indictment, have you not? A Yes sir.

1 MR KEETCH: Objected to as incompetent, irrelevant and
2 immaterial.

3 THE COURT: The witness has answered it. It is prelim-
4 inary, I take it.

5 MR ROGERS: Yes; and those were made publicly and openly?

6 A Yes.

7 Q In those statements or addresses or lectures, or
8 whatever they may have been, have you ever made this state-
9 ment -- I can't give you your exact words, and would not
10 attempt it, but this statement in substance and purport:
11 that you purpose to get Gompers -- A No, I never made
12 that statement.

13 MR FORD: Just a moment. We move the answer be stricken out
14 and we object to the question on the ground it is incom-
15 petent, irrelevant and immaterial.

16 MR ROGERS: I haven't finished it yet.

17 THE COURT: He hasn't finished his question. Strike out
18 the answer for the purpose of allowing the counsel to
19 finish it.

20 MR FORD: As not being responsive and ask it be stricken
21 out.

22 THE COURT: Stricken out. No question to be answered.

23 MR ROGERS: Do you know Lincoln Steffins? A Yes.

24 Q Have you talked with him since coming here? A Yes.

25 Q Did you not -- you have met Mr Steffins from time to
26 time and talked with him concerning this matter? A Yes.

Darrow

1 Q Did you not say to Mr Steffins, I cannot give your
2 exact words, there being^{no} others than Mr Steffins and
3 yourself immediately present, although other persons
4 were possibly around about, but doubtless not within
5 hearing, as far as I am aware, that you would get Darrow
6 and then get Gompers, but you had to get Darrow in order
7 to get Gompers, or words to that effect?

8 MR FORD: Objected to upon the ground no foundation has
9 been laid as to time or place.

10 THE COURT: Objection sustained.

11 MR ROGERS: Here in Los Angeles, for the purpose of the
12 foundation, within the last -- well, since Mr Burns came
13 here this last time, possibly two weeks, I think about three
14 days after he came, as nearly as I can recall it, the ex-
15 act place being the Alexandria Hotel, as I recall it, the
16 part of the hotel I am not informed about, but it is around
17 the corner of Fifth and Spring. Now, the question is asked

18 MR FORD: Objected to upon the ground that no foundation
19 has been laid for the asking of the question. If the
20 court please, section 2052 of the Code of Civil Procedure
21 states as follows: "A witness may always be impeached
22 by evidence that he has made at other times, statements
23 inconsistent with his present testimony." Now, the wit-
24 ness has not, either on direct examination or on cross-
25 examination, made any statement inconsistent with this
26 impeaching question as yet; he has not been asked, if I

1 recollect right, what his feelings are towards this wit-
2 ness, consequently there has been no foundation laid for
3 the asking of any impeaching question concerning his feel-
4 ings towards this defendant.

5 THE COURT: Objection sustained.

6 MR ROGERS: May I inquire the grounds, so I may reframe it?

7 THE COURT: yes, upon the ground that whatever his answer
8 might be to this question would not tend to contradict
9 anything he has already said.

10 MR APPEL: No, your Honor. May we not show by his statement,
11 the interest which he has in convicting Mr Darrow? Can't
12 we ask a man on the witness stand, now, you stated that it
13 was necessary to convict Mr Appel in order to convit his
14 brother?

15 THE COURT: Might lay your foundation for that. That has
16 not been laid.

17 MR APPEL: That is what we are asking, whether or not he
18 told Lincoln Steffins at the Alexandria Hotel or there-
19 abouts, within two weeks last past, that he wanted to get
20 Mr Gompers, or words to that effect, but that in order to
21 get Mr Gompers that he must get Mr Darrow first. Now, in
22 that respect, while he may have no feelings against Mr
23 Darrow, we have a right to show that he is interested in
24 convicting Mr Darrow in order to get to the object of his
25 desires. Now, in that way we can show that he admits it
26 necessary for his one purpose, to convict Mr Darrow.

1 We don't have to ask the witness, have you any ill-feeling
2 against Mr Darrow, the witness might still say, no, I
3 have no ill-feeling against Mr Darrow, but he may have an
4 interest and a very strong interest in convicting Mr Dar-
5 row, although he may have the kindest feelings toward him
6 for the purpose of getting at something else. It shows
7 the interest, your Honor, it doesn't tend to impeach the
8 witness, it only tends to show his condition of mind to-
9 wards the case.

10 THE COURT: Well, you have to lay a foundation for it.
11 Objection sustained.

12 MR FREDERICKS: The witness has never said he had any
13 interest in convicting Gompers.

14 THE COURT: Objection sustained.

15 MR APPEL: We take an exception.

16 MR ROGERS: I will recall this witness after I find a cer-
17 tain thing in the record, otherwise than that, I am done.

18 THE COURT: Perhaps it might be well to dispose of the
19 question as to Mr Biddinger. Is it necessary to keep him
20 longer. He stated on the witness stand yesterday he
21 wanted to get away.

22 MR ROGERS: Yes sir. Mr Biddinger will be interrogated a
23 little further.

24 THE COURT: This afternoon?

25 MR ROGERS: Probably so.

26 MR FREDERICKS: I think if counsel wants to interrogate him--

1 MR ROGERS: We will subpoena him, that is all, if it is
2 necessary so to do, until the close of their case, and it
3 ought not to be necessary so to do.

4 THE COURT: The only point is this: It was stated by some-
5 one on your side you would be able to state definitely
6 this morning. Witnesses ought not to be detained indefinitely.
7 ly.

8 MR APPEL: We will stand here on the same position the
9 District Attorney has stood. We don't propose --

10 THE COURT: Mr Appel, I am only asking you whether you can
11 make the statement at this time. If you cannot, say so,
12 and that will end it. If you can, Mr Biddinger ought to be
13 relieved. Can you make that statement?

14 MR APPEL: We cannot, and we ask the court to let Mr Bid-
15 dinger stay here as our witness for the rest of the case.
16 He is a witness here now, and we ask the court --

17 THE COURT: Mr Biddinger has not yet been excused, and so
18 far as I know he is not desirous of leaving.

19 MR APPEL: Your Honor, one witness came here and I sub-
20 poenaed him in the court room, as your Honor will remember,
21 and he skipped; he went away, after consulting with my
22 friend down here, I won't mention the name. Of course, I
23 have no right to indulge in presumptions.

24 THE COURT: Mr Appel, the question of the cross-examination
25 is the only one that is involved at the present moment.

26 MR APPEL: Your Honor has put it on the ground that the

1 witness may not be here unreasonably delayed; that is cor-
2 rect. They should not be improperly delayed. There
3 should be no pretext of delay. We are expecting some infor-
4 mation; we cannot get information on matters we telegraph-
5 ed East for; we expect something --

6 THE COURT: Some of you signified a desire to recall him
7 this afternoon. You do not desire to do so, that is all
8 I want to know.

9 MR FREDERICKS: I presume Mr --

10 MR DARROW: I stated that to the court. I supposed it was
11 true at the time.

12 THE COURT: The court is not criticizing you at all.

13 MR APPEL: I will be frank with your Honor. Your Honor,
14 I had an engagement with a certain person in my office last
15 night, a telephone message after we left here last evening
16 to my clerk indicated to me that they could not keep the
17 engagement, and I went to the beach here, and I came here
18 this morning. Now, after consultation with these parties,
19 I find their information is not -- and we cannot use their
20 information; we do not want to keep him.

21 THE COURT: That is all I wanted to know when the cross-
22 examination will be completed.

23 MR APPEL: I will be frank, your Honor. I know that the
24 witness is not very anxious to leave here, because he has
25 so expressed it to me in a friendly interview that I had
26 with him outside here.

1 THE COURT: He said the other day on the witness stand
 2 that he desired to go to Catalina Island. You do not
 3 desire to further cross-examine the witness at this time?

4 MR ROGERS: I am looking for something in the transcript
 5 which Mr Geisler cannot immediately find.

6 THE COURT: We will take an adjournment, then, until this
 7 afternoon at 2 o'clock.

8 (Jury admonished. Recess until 2 P.M.)

9 ---

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26