

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 45

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
✓ William J. Burns,			3570	
✓ William J. Porter,	3575	3577		
F. A. Manatt,	3577			
E. R. Parmelee,	3614			
✓ Guy W. Yonkin,	3616	3621	3627	3629

1 July 2nd, 1912. 2 o'clock P.M.

2 Defendant in court with counsel.

3
4 WILLIAM J. BURNS on the stand.

5 MR ROGERS: You may examine in redirect.

6 MR FREDERICKS: Just one matter to make sure we have an
7 understanding in regard to Mr Biddinger. Now, he has asked
8 me if he might be temporarily absent and said that counsel
9 for the defense have acquiesced in the permission that he
10 may be temporarily absent. I told him as far as we were
11 concerned, that was all right. I want to make sure it is
12 all right with the defense.

13 MR ROGERS: I said he might be absent over the 4th of
14 July.

15 MR FREDERICKS: Something like that.

16 THE COURT: All right.

17
18 REDIRECT EXAMINATION

19 MR FREDERICKS: Mr Burns, on cross-examination you were
20 asked in regard to a custom of operatives in your employ
21 filing written reports with the agency, and having them
22 stamped and filed away, and all that sort of thing. State
23 whether or not you have not also a custom where matters
24 require very great secrecy, of handling a matter of that
25 kind by verbal reports in order that there may be no leaks
26 in your office?

1 MR ROGERS: That is objected to as leading and suggestive,
2 putting the words in the witness' mouth and not redirect;
3 incompetent, irrelevant and immaterial.

4 THE COURT: Overruled.

5 MR ROGERS: Exception.

6 A I do very often, to the extent of making investiga-
7 tions entirely outside of my office for fear I will find
8 a leak.

9 MR FREDERICKS: I suppose -- that answers the question
10 but I am not just sure.

11 THE COURT: Read the question and see if the witness can
12 answer it any further.

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

14 A Even to the extent.

15 MR FREDERICKS: The question is if you have such a cus-
16 tom.

17 MR ROGERS: That is objected to as incompetent, irrelevant
18 and immaterial, leading and suggestive, in view of the last
19 preceding question, no foundation laid, not redirect, incom-
20 petent, irrelevant and immaterial..

21 THE COURT: It is answered in the former question.

22 MR FREDERICKS: I suppose that does answer it, "I do".

23 THE COURT: Do you want a ruling on that objection?

24 MR FREDERICKS: I think the court has ruled, possibly, to
25 another objection, that it was already asked and answered,
26 although objection was not put in, if that is the court's

1 ruling.

2 THE COURT: I think that is a fact, but I will hear you
3 about it if you think it is otherwise.

4 MR FREDERICKS: No.

5 THE COURT: All right.

6 MR FREDERICKS: There was a matter asked while I was
7 temporarily out of the court room in regard to the wit-
8 ness' relations with Mr Ford. State whether or not, Mr
9 Burns, you had any relations or communications of any kind
10 with Mr Ford in regard to this case prior to the time --
11 prior to January 29th, of this year, when the indictment
12 was filed? A No, I did not.

13 Q State whether or not Mr Ford was your attorney in the
14 matter of the county reward, which you saw was paid.

15 MR ROGERS: Just a moment. That is objected to as lead-
16 ing and suggestive. He has said that he was his attorney
17 in all matters.

18 MR FORD: At the present time only.

19 MR ROGERS: All matters, therefore, that excludes this, and
20 so far as the present time is concerned, it is incompe-
21 tent, irrelevant and immaterial, and not redirect.

22 MR FORD: If the court please, --

23 THE COURT: Objection overruled.

24 MR ROGERS: Exception.

25 A Mr Ford was not my attorney and on the other hand,
26 stated positively that he could not accept employment that

1 had anything whatever to do with the county reward or
2 while it was pending.

3 MR FREDERICKS: With referance to the time when the
4 county reward was paid to you, state whether or not Mr
5 Ford became your attorney before that time or after that
6 time? A After that time.

7 MR FREDERICKS: That is all.

8 MR ROGERS: Have you been subpoenaed, Mr Burns? A yes.

9 MR ROGERS: That is all.

10 THE WITNESS: May I go now, your Honor?

11 THE COURT: Any objection.

12 MR ROGERS: He has been subpoenaed.

13 THE WITNESS: I can return if they want me.

14 MR ROGERS: I don't want to interfere with Mr Burns' tem-
15 porary absences or his desire to go from here to there,
16 but I want him under subpoena, and I have subpoenaed him,
17 if your Honor please, and I will not waive that subpoena.

18 MR FREDERICKS: I presume, however, if he can be gotten
19 in a reasonable length of time at any time, counsel will
20 be satisfied.

21 MR ROGERS: I don't know about this reasonable length of
22 time matter. I don't intend to wait three or four days.
23 I have subpoenaed Mr Burns for the defense, and if he
24 wishes to go for a few days, I have no objection to that,
25 go here and there, but I would like to have him on subpoena.

26 THE COURT: Mr Burns informs me he would like to go as far

1 as New York. How long will it take you, Mr Burns?

2 THE WITNESS: Well, I can settle up the business I have
3 there in two or three days and come right back.

4 MR ROGERS: That is 12 days.

5 THE COURT: Be back here in 12 days or two weeks?

6 THE WITNESS: Yes sir.

7 MR ROGERS: That will not be satisfactory.

8 MR FREDERICKS: We can talk that over and see if we can
9 make any better arrangements. Mr Burns can with counsel.
10 Of course, if a witness is subpoenaed, if he is relieved
11 by counsel on both sides --

12 THE COURT: However desirous the court may be to accommo-
13 date you, and I am sure counsel would be desirous of ac-
14 commodating you, his business must be considered first,
15 Mr Burns.

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1 W I L L I A M J. P O R T E R,

2 a witness called on behalf of the People, being first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 MR. FREDERICKS. Q What is your name? A William J.
6 Porter. ✓

7 Q Where do you live? A 2287 West 23rd.

8 Q What is your business? A Newspaper man.

9 Q Where were you living on the 16th of last August?

10 A on Hobart Boulevard.

11 Q State whether or not you were acquainted with Clarence
12 Darrow, the defendant in this case at that time?

13 A Casually.

14 Q You knew him when you saw him, I mean? A Oh, yes.

15 Q State whether or not you were acquainted with Mr. Biddinger
16 at that time? A yes.

17 Q State whether or not you saw Mr. Darrow and Biddinger to-
18 gether at that time in Los Angeles and if so where?

19 A I met both of them one morning in the week of August
20 13th, beginning the 13th, Monday--between that and Friday--
21 I don't know whether it was the 15th or 16th--it was one
22 of those days--I met them in the Alexandria. I met Mr.
23 Darrow as I came out of the little passageway that leads
24 from the bar to the office. We spoke--

25 MR. APPEL. Your Honor, he has answered the question.

26 THE COURT. Yes, I think he has answered the question.

Don't tell what was said.

1 A Pardon me.

2 MR. FREDERICKS. Q Now, what time in the morning was
3 that, Mr. Porter? A Oh, it was probably early, sometime
4 before 10 o'clock, half past nine or ten.

5 Q Did you ever meet Mr. Darrow and Mr. Biddinger together
6 at any other time except that time? A No.

7 Q Now, state what was said and done between you and Mr.
8 Darrow and Mr. Biddinger at that time.

9 MR. APPEL. We object to that on the ground it is incompetent
10 irrelevant and immaterial for any purposes whatsoever;
11 that it does not tend to prove or disprove any element of
12 the offense charged in the indictment herein; upon the
13 further ground it is collateral to any issue; no founda-
14 tion laid.

15 THE COURT. Objection overruled.

16 MR. APPEL. We except.

17 MR. FREDERICKS. Answer the question, Mr. Porter.

18 A I met Mr. Darrow and we spoke; I hadn't seen him for a
19 considerable time. We asked me what I was doing here and
20 I remarked that I was on the Times and he smiled and he
21 says, "Well, we are both--everybody cannot be on the same
22 side," and about that time Mr. Biddinger walked up and we
23 all three stopped and spoke for a moment. There was
24 nothing said of any moment.

25 Q I wish you would state just what was said. A Very well.

26 Q In order to identify the time. A I made the remark it

1 was a rather curious coincidence that counsel for the
2 McNamaras, the representative of Mr. Burns and the repre-
3 sentative of the Times should bump into each other at one
4 time in a public place of that character.

5 Q And just whereabouts in the Alexandria was this con-
6 versation? A Right in the middle of the rotunda.

7 MR. FREDERICKS. Cross-examine.

8 MR. APPEL. We move to strike out the evidence of the
9 witness as immaterial. What he said, your Honor, his
10 own opinions, his own exclamations there, it is collateral
11 and does not show anything.

12 THE COURT. The motion to strike out is denied.

13
14 CROSS-EXAMINATION.

15 MR. DARROW. I believe, in addition to that you asked to
16 take a drink, didn't you? A yes, I have forgotten that.
17 I will supplement that by saying that you drank mineral
18 water.

19 Q You did not, did you? A No.

20 MR. DARROW. That is all.

21 MR. FREDERICKS. That is all.

22
23 F. A. M A N A T T ,

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

26 DIRECT EXAMINATION.

1 MR. FORD. Q What is your Name? A F. A. Manatt.

2 Q How old are you? A 27.

3 Q Where do you reside? A 317 North Hill, Los Angeles.

4 THE COURT. You will have to speak up a little louder.

5 A 317 North Hill Los Angeles.

6 Q Los Angeles City, California? A yes, sir.

7 Q What is your occupation? A Bank teller.

8 Q You will have to speak so the jury can hear you. With
9 what institution are you employed? A The Equitable
10 Branch of the Security Trust & Savings Bank, formerly
11 the Equitable Savings Bank.

12 Q How long have you been in their employ? A About 8
13 years.

14 Q How long with the Security Bank? A It was since the
15 Equitable was absorbed by the Security.

16 Q When was that? A Along about the first of the year.

17 Q The first of this year, 1912? A yes, sir.

18 Q During the year 1911 with what bank were you employed?
19 A Equitable Savings Bank. That was a bank organized
20 under the State Banking Laws of California? A Yes, sir.

21 Q And their place of business was at the corner of--

22 A First and Spring streets.

23 Q First and Spring streets in the City of Los Angeles.

24 Do you know Clarence Darrow? A Yes, sir.

25 Q Pardon me; during the year 1911 were you in the same
26 capacity, paying teller? A Yes, sir.

1 Q How long have you known Clarence Darrow? A Only
2 since his account was opened there.

3 Q Do you know when his account was opened? A I don't
4 remember the date.

5 Q Did you receive deposits from Mr. Darrow during the
6 year? A Yes, sir.

7 Q You know that he had an account with your bank? A Yes,
8 sir.

9 Q Do you know LeCompte Davis? A yes, sir.

10 THE COURT: You are now showing counsel for the defense a
11 document you intend to show the witness?

12 MR. FORD. I do, your Honor, and will show it to the
13 witness.

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1 MR ROGERS: Does counsel claim the documents are now in the
2 same condition that they were when they left the posses-
3 sion of the defendant?

4 MR FORD: As far as I know there might have been -- there
5 .is a mark exhibit 44 grand jury --

6 MR ROGERS: I don't care anything about that. Does counsel
7 claim that all the writing that is on those papers was
8 on there at the time they left the possession of the de-
9 fendant?

10 MR FORD: I will find out from the witness about that.
11 just exhibiting it to counsel at this time. I now hand
12 you a bunch of documents which I have already shown the
13 defendant and counsel for the defense, and ask you to look
14 at them. Have you ever seen those documents before? A Yes
15 sir, I have.

16 Q The answer -- will you read it, Mr Reporter. (Last
17 answer read by the reporter.)

18 MR ROGERS: We wanted to stipulate to save time, but we
19 find ourselves unable to do it, because of the situation
20 as we find it in the document.

21 THE COURT: All right.

22 MR FORD: If counsel will offer their stipulation, I
23 don't think there will be any disagreement about it at
24 all.

25 MR DARROW: As to the amount, all in my handwriting except
26 the first.

1 MR ROGERS: There is another one not in your handwriting.

2 MR DARROW: As to amounts?

3 MR ROGERS: Yes. There are annotations and notations
4 and writings upon them that are not in the defendant's
5 handwriting, evidently made subsequently. That which is
6 in the defendant's handwriting, we will stipulate to very
7 readily.

8 MR FORD: Very well. I am willing to do that. You are
9 referring to the banker's marks on the deposit slips?

10 MR ROGERS: Bankers marks -- I don't know what they are.

11 MR FORD: We will ask him about the marks. As far as
12 the stipulation of the portion that were made by the de-
13 fendant, we will accept it.

14 MR ROGERS: We find ourselves unable to agree, so counsel
15 might as well prove it.

16 MR FORD: Very well. State what these documents are
17 which you have already stated you have seen before.

18 MR APPEL: Wait a moment -- A Deposits slips.

19 MR APPEL: That is all right, deposit slips he says.

20 MR FORD: Deposit slips of what? A Deposits made by
21 C. S. Darrow, at the bank.

22 MR ROGERS: That is a conclusion and I move to strike it
23 out as a conclusion or opinion.

24 MR FORD: If you know what they -- do you know what they
25 are?

26 THE COURT: Wait a moment.

1 MR FORD: I withdraw that question.

2 Q Do you know what they are?

3 THE COURT: Strike out the former answer.

4 A Yes sir.

5 MR FORD: What are they?

6 MR ROGERS: That is objected to as calling for a conclu-
7 sion or opinion, and no foundation laid; incompetent,
8 the documents must show for themselves that they are pur-
9 porting to be deposit slips, we don't controvert at all, but
10 that he can say what deposit slips they were or who made
11 them or whose handwriting it is, is quite another and
12 different matter.

13 MR FORD: He is not asked that matter. He was asked if he
14 knew what they were. He said he did; having said that he
15 knows what they are, I asked him, what are they.

16 THE COURT: Objection overruled.

17 MR ROGERS: Exception.

18 MR FORD: What are they? A Deposit slips.

19 Q Deposit slips of what?

20 MR ROGERS: Objected to for the same reasons I have just no
21 stated.

22 THE COURT: Overruled.

23 MR ROGERS: Exception.

24 A Deposits.

25 MR FORD: To whose credit and to whose bank?

26 MR ROGERS: Objected to as incompetent, irrelevant and

1 immaterial, the documents speak for themselves, if they
2 do speak.

3 MR FORD: They might be spurious.

4 MR ROGERS: And no foundation has been laid for them.

5 THE COURT: Overruled.

6 MR ROGERS: Exception.

7 MR FORD: Answer the question.

8 A What was the question.

9 Q To whose credit and with what bank?

10 MR ROGERS: That is a double question and I make the same
11 objection last made and the additional objection, it is a
12 double question and not the best evidence.

13 THE COURT: Objection overruled.

14 MR ROGERS: Exception.

15 A C. S. Darrow's credit, and Equitable Savings Bank.

16 MR FORD: Equitable Savings Bank and to the credit of
17 C. S. Darrow. Did the account stand in the name of C. S.
18 Darrow? A No sir.

19 Q What was the name of the account? A C. S. Darrow,
20 trustee.

21 MR ROGERS: The same objection as last made.

22 THE COURT: Overruled.

23 MR FORD: And the answer. (Last answer read by the reporter)

24 Q I will ask you to look at the first paper in that do-
25 cument. Do you know in whose handwriting that is?

26 MR APPEL: That is not the way to prove handwriting. We

1 object to the question as incompetent.

2 THE COURT: Objection sustained.

3 MR FORD: If the court please, I haven't asked him in
4 whose handwriting, I have asked him if he knows; if
5 he does, I shall then proceed to ask him.

6 THE COURT: Better lay the foundation.

7 MR FORD: That is the beginning of the foundation.

8 THE COURT: I don't think so.

9 MR FORD: Were you present when that account was opened?

10 A I do not know.

11 MR FORD: We offer them in evidence as people's exhibit
12 No.32.

13 MR ROGERS: Objected to as incompetent, irrelevant and
14 immaterial, and no foundation laid; their relevancy and
15 materiality or competency having not been shown.

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1 MF. ROGERS. If counsel has got any proof that Mr. Darrow
2 wrote part of those or we can agree on what he did write,
3 we are not particular about it, but we do not think that
4 a blanket offer of a dozen documents, some of which are
5 absolutely not in the defendant's handwriting and shown
6 to be within his knowledge, binding him in any way--

7 MR. FORD. Perhaps we can make a stipulation--

8 MR. DARROW. Beyond that, what has it to do--

9 THE COURT. Mr. Ford informs me he desires to confer with
10 counsel in regard to it.

11 MR. DARROW.--because money is deposited in the bank.

12 MR. FORD. If you will make your statement, which ones are
13 in his handwriting--

14 THE COURT. Do you want to make this conference outside
15 of the record or in the record?

16 MR. FORD. Just a moment, your Honor.

17 MR. ROGERS. I offer to stipulate as follows : None of
18 the first page shown us is in Mr. Darrow's handwriting
19 at all, not a scratch of the pen; the second document
20 shown us has two words in his handwriting and some figures,
21 and some figures and some words not in his handwriting.

22 The same is true of the third document shown us of the lot;

23 MR. FORD. That is the name "C. S. Darrow trustee" and the
24 figures "25000" is in the handwriting of the defendant
25 and the balance is not?

26 MR. ROGERS. The total is not, part of it is--

MR. FORD. The total at the bottom of the page is not.

1 MR. ROGERS. Yes, and "Wash.D.C." is not, any more than
2 the "S.F." is not, on the first document: Now, none of
3 the documents, no part of document No. 4 is in Mr. Darrow's
4 handwriting: No part of document No. 5 is in his hand-
5 writing, not a figure nor a letter; Document No. 5 has
6 the name "C. S. Darrow " and two sets of figures, "\$10,000"
7 in his handwriting; the remainder is not.

8 MR. FORD. Document 6.

9 MR. ROGERS. Document 6. Document No. 7, the name
10 "C. S. Darrow, Trustee," and the figures are in his hand-
11 writing and the remainder is not; it appears that the
12 next document, document No. 8, "C. S. Darrow, Trustee" is
13 in his handwriting, and the date is in his handwriting,
14 "October 31, 1911," is his handwriting; two sets of figures,
15 "\$10,000" are in his handwriting, and the remainder are not;
16 The next document in order, "C.S.Darrow, Trustee" is in his
17 handwriting.

18 MR. FORD. That is Number 9, is it?

19 MR. ROGERS. I think so. And the figures "775" are in
20 his handwriting, but the remainder of the document is not.
21 And that is true of the next document in order, "C.S.
22 Darrow, Trustee," but the remainder of the document is not:
23 And that is true of the next document in order, "C. S.
24 Darrow, Trustee", but there is no date attached, but the
25 "C.S.Darrow, Trustee" is in his handwriting, and the
26 figures are in his handwriting, but the remainder of the
document is not. "C.S.Darrow Trustee" on the last docu-

1 ment of the number is in his handwriting, also all figures
2 except the rubber stamp figures and date, but nothing else
3 on that is in his handwriting.

4 MR. FORD. I would like to ask the witness one question
5 privately, if the Court will permit me, and it will prob-
6 ably save time.

7 THE COURT. All right, you may.

8 (Mr. Ford confers with witness.)

9 MR. FORD. With the consent of counsel, I will separate the
10 documents, the first three of which I will ask to be marked-
11 what is the number, Mr. Clerk?

12 THE CLERK. 32.

13 MR. FORD. 32 for identification.

14 THE COURT. All right.

15 (Documents handed to clerk.)

16 MR. FORD. I now hand you the balance of the bunch of
17 documents, consisting of 8 slips of paper and ask you if
18 you know by whom in your bank these slips were received?

19 MR. ROGERS. That is objected to as incompetent, irrelevant
20 and immaterial; not within the issues; no foundation laid.

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1 MR FORD: The purpose of it, your Honor, is to show that
2 a sum equal to the figures on each one of these deposit
3 slips was received by the witness and credited to the ac-
4 count of Clarence Darrow as trustee. Our purpose being
5 to show that a certain number of checks from Washington
6 on the Riggs National Bank were deposited by the defendant
7 to the credit of himself on his account: we will produce
8 the officers from the other banks to show the other de-
9 posits in Los Angeles, showing all of them after a cer-
10 tain time to have been deposited in Los Angeles banks,
11 with the exception of one check on San Francisco.

12 MR ROGERS: There is a San Francisco draft right in that
13 elimination that you offered a while ago, one of the three.

14 MR FORD: One of the first for \$5000, yes.

15 THE COURT: Objection overruled.

16 MR ROGERS: Except.

17 MR FORD: Answer the question, Mr Manatt. A What is the
18 question?

19 (Question read.)

20 A Yes sir, I do.

21 Q And by whom were they received? A Myself.

22 Q And I attract your attention to the first one receiv-
23 ed, bearing date, marked "August 16, 1911", and reading as
24 follows: "C. S. Darrow, Trustee".

25 MR APPEL: Wait a moment. I object to his reading the
26 document at this time, which is not admitted in evidence.

1 Your Honor, he should not read any portion of it.

2 THE COURT: Wait a minute. I think that is right.

3 MR APPEL: He is trying to lay the foundation for the in-
4 troduction of documents.

5 MR FORD: Withdraw the question.

6 THE COURT: The question is withdrawn.

7 MR FORD: Attracting your attention to the first document,
8 in whose handwriting is that document?

9 MR APPEL: We object to that.

10 MR FORD: Withdraw it.

11 Q Did you see it written? A Did I?

12 Q Yes. A No sir.

13 Q By whom was it handed to you? A I don't remember
14 that.

15 Q At the time you received it, what, if anything, did
16 you receive with it?

17 MR APPEL: Wait a moment; we object to that as immaterial;
18 it must be shown --

19 MR FORD: We will show, your Honor, that at the time
20 this deposit slip was made a check bearing the endorsement
21 on the back, "C. S. Darrow" was offered with it; the de-
22 fendant has admitted in court his signatures upon the
23 backs of those checks are his.

24 MR APPEL: That may be true, your Honor.

25 THE COURT: What is the question?

26 MR ROGERS: Let us take an exception to the testimony of

1 counsel before the witness. The witness says he doesn't
2 remember who handed him that deposit slip and it is not
3 good practice, and it is prejudicial to state to him facts
4 to which he is desired to testify.

5 .THE COURT: Read the question.

6 MR ROGERS: We take an exception to the statement.

7 (Question read.)

8 MR APPEL: Your Honor will see -- suppose he received it
9 from me. The fact that I went down there and gave that
10 slip and another paper accompanying it to the witness, is
11 not a fact against this defendant; it is my own act, the
12 act of a third party, independent party, unless some con-
13 nection is shown.

14 MR FORD: To save argument, I will just offer this bunch of
15 documents for identification.

16 THE COURT: Do you withdraw the last question?

17 MR FORD: I withdraw the last question.

18 THE COURT: It is marked for identification.

19 THE CLERK: 33.

20 THE COURT: Exhibit 33 for identification.

21 MR FORD: We now call upon the defendant to produce in
22 court --

23 MR ROGERS: We take an exception --

24 MR FORD: We have not completed our request.

25 MR ROGERS: Wait a moment, now. We take an exception to the
26 conduct of counsel in demanding anything from the defendant,

1 or calling upon the defendant for any document, after having
2 ostensiatiously and in the presence of the jury, walked
3 over here and handed us certain documents, and calling upon
4 us to produce certain documents. Anybody who has read the
5 constitution of the United States --

6 THE COURT: You have assigned error, and that is enough.

7 MR ROGERS: We take an exception.

8 MR FREDERICKS: There was no document mentioned.

9 THE COURT: The record shows exactly what happened.

10 MR FORD: I now hand you a document which I have already
11 shown to counsel for the defense. Did you ever see that be-
12 fore?

13 MR APPEL: Wait a moment. We object to whether he saw that
14 paper or not, your Honor. There is no foundation laid for
15 the examination of the witness on that document. Your
16 Honor can see the only reason why I am making the objec-
17 tion at this time is in anticipation, and we might as well
18 settle that question now.

19 THE COURT: It is simply a question -- a preliminary ques-
20 tion. He can state whether he has seen it before and
21 answer yes or no. The objection is overruled.

22 A Yes sir.

23 MR FORD: Calling your attention now -- or, when, did you
24 see that document Mr Monett, when did you first see it?

25 A You mean the slip I have in my hand here?

26 Q Yes. A I saw it right after the photographs was

1 taken of the check.

2 MR APPEL: I take an exception to the introduction of
3 this evidence. It is a statement of the witness -- allow-
4 ing the witness to be interrogated in reference to this
5 document, and to his answer, and I assign the conduct of
6 the District Attorney as misconduct in trying to invade the
7 plain, ordinary rules of evidence.

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1 THE COURT. Proceed with the examination, gentlemen.

2 MR. FORD. I hand you another document at the same time.

3 Did you see this second document which I have handed you?

4 A Yes, sir.

5 Q When did you see that with reference to when you saw
6 the other one? A The same time.

7 Q Saw both of them at the same time? A Yes, sir.

8 Q Have you made any marks or did you at that time make any
9 marks upon them?

10 MR. APPEL. Wait a moment--we object to that as immaterial,
11 as being the act of some person other than the defendant, not
12 made in the presence of the defendant, not binding upon
13 him, being hearsay, being an act which is hearsay; hearsay
14 evidence consists of acts or declarations or conduct not
15 in the presence of the defendant, not binding upon him,
16 over which he had no control.

17 MR. FORD. Simply attracting the attention of the witness
18 to a date--to a mark by which he may refresh his memory
19 of the date.

20 MR. APPEL. The witness has not said he had no memory upon
21 the subject and therefore he is not--his memory is not to
22 be refreshed.

23 THE COURT. Objection overruled.

24 MR. APPEL. Exception.

25 MR. FORD. Q Answer the question.

26 (Last question read by the reporter.)

1 A Yes, sir.

2 Q Do you know at what date you saw that document?

3 A Yes, sir.

4 MR. APPEL We object to that on the ground that it is in-
5 competent and irrelevant and hearsay and no foundation
6 laid.

7 THE COURT Overruled.

8 MR. APPEL We take an exception.

9 MR. FORD At the time you saw those documents did you
10 have in your hand any other document resembling this or
11 which you compared with this document?

12 MR. APPEL Wait a moment--now, we object upon the ground
13 that no foundation is laid, that the witness must^{not} be inter-
14 rogated concerning any other document which is not shown
15 to this defendant or not placed before the witness; incom-
16 petent, irrelevant and immaterial for any purpose whatso-
17 ever. We object to the witness now being examined concerning
18 any document not being used here not produced here in court
19 and not produced before the witness.

20 THE COURT Objection overruled.

21 MR. APPEL We take an exception.

22 MR. FORD Read the question.

23 (Last question read by the reporter.)

24 A Yes.

25 Q Where are those other documents?

26 MR. APPEL We make the same objection. We object to the
witness being examined concerning any document which is not

1 presented here in court, which is not shown to the witness,
2 which is not shown to our side before the witness is inter-
3 rogated, being in violation of the plain provisions of the
4 code of this state.

5 THE COURT. Objection overruled.

6 MR. APPEL. We take an exception.

7 MR. FORD. Read the question.

8 (Last question read by the reporter.)

9 A I do not know where the other documents are.

10 Q What, if anything, did you do with them?

11 MR. APPEL. Wait a moment--we object to that upon the
12 ground it is incompetent, irrelevant and immaterial, that
13 the witness should not be required and we object to his being
14 examinèd concerning any document which is not produced here
15 in court, not shown to the defendant and in violation of the
16 provisions of the statute, upon the ground to allow an
17 examination of this kind is a violation of the constitu-
18 tional provisions of the State of California, incompetent,
19 irrelevant and immaterial.

20 THE COURT. Objection overruled.

21 MR. APPEL. We except.

22 (Last question read by the reporter.)

23 A The other documents being checks were returned to the
24 depositor when the account was balanced.

25 MR. APPEL. He says what did you do with them. He don't
26 say that he²-

1 THE COURT. I want to hear the answer. Read the answer.
2 I didn't hear it.

3 (Last answer read by the reporter.)

4 THE COURT. Now, Mr. Appel, what is it?

5 MR. APPEL. He didn't say he did it. He can't testify
6 to guess work.

7 THE COURT. You move to strike it out?

8 MR. APPEL. I object to the question and move to strike it
9 out. There is no foundation laid for his answer. He has
10 not shown possession in it, it is merely guess work.

11 THE COURT. You make your motion to strike out at any time
12 and the court will hear it. The motion to strike out is
13 denied.

14 MR. APPEL. We take an exception.

15 MR. FORD. Q And who was the depositor?

16 MR. APPEL. I would like to ask him a question so as to
17 base my motion properly.

18 THE COURT. All right.

19 MR. APPEL. Q Did you return those checks to the deposi-
20 tor yourself? A I didn't so say.

21 Q Well, did you--I am asking you. A I said they were
22 returned to the depositor.

23 Q No, wir. I insist upon an answer.

24 THE COURT. Answer the question, did you return them?

25 A No, I did not.

26 MR. APPEL. Then I move to strike out the testimony that

1 they were returned, on the ground that would only be known
2 by him as hearsay. It is not direct evidence, not evidence
3 within his knowledge.

4 THE COURT. You will have to on that showing lay the
5 foundation. The testimony will be stricken out.

6 MR. FORD. Very well, just to the last question?

7 THE COURT. Yes, sir, the last answer.

8 MR. FORD. Well, I will endeavor to. Q Do you know
9 whether or not the originals of the documents which you
10 have now in your hands are now in the possession of the
11 bank?

12 MR. APPEL. We object upon the ground that it is incom-
13 petent, irrelevant and immaterial; the witness is being
14 asked concerning documents and concerning comparisons, no
15 foundation has been laid, he has not been qualified to
16 testify with reference to any comparisons; asking him con-
17 cerning documents not before the witness, not shown to
18 the defense, not here in court, in violation of the consti-
19 tutional provisions of the state of California.

20 MR. FORD. We avow our intention at this time to show by
21 either this witness or other witnesses connected with the
22 bank, if necessary, that the original document was return-
23 ed to the defendant and is not now in our possession or
24 under our control, and, therefore, we are laying the founda-
25 tion for the introduction of these photographs as secondary
26 evidence and ask permission of the court to find out of this

1 witness all he knows on the matter, and then we will call
2 such other witnesses as may be necessary from that insti-
3 tution.

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1 MR APPEL: Even if that were done, I still insist that
2 this examination is not proper, that the law lays down
3 how and what manner the foundation must be laid for the
4 introduction of secondary evidence. Certainly we are not go-
5 ing to suggest it in our objections, and the first step
6 that must be taken for the purpose of laying a founda-
7 tion, for the purpose of being allowed to lay a foundation
8 to secondary evidence, not having been taken, this examina-
9 tion is improper, and for that reason we have ^{been} objecting.
10 The mere avowal of what he is going to do does not entitle
11 him to do that.

12 THE COURT: Read the question.

13 (Last question read by the reporter.)

14 THE COURT: Objection overruled. The question will be
15 answered yes or no.

16 MR APPEL: We except.

17 (Last question read by the reporter.)

18 A I do not know.

19 MR FORD: At the time you had the originals in your pos-
20 session and these documents which I have now shown you,
21 did you compare the two together?

22 MR APPEL: Wait a moment. We object to that upon the
23 ground it is incompetent, irrelevant and immaterial and
24 hearsay, and no foundation laid.

25 THE COURT: Objection overruled.

26 MR APPEL: We except.

1 MR FORD: Answer the question. (Last question read by
2 the reporter.)

3 A Yes sir.

4 Q State whether or not the documents which you have in
5 your hand are accurate reproductions of the originals
6 or not.

7 MR APPEL: Wait a moment. We object upon the ground that
8 no foundation has been laid for the introduction of the
9 evidence, on the further ground that it is incompetent,
10 irrelevant and immaterial, that he is asking an opinion of
11 the witness in reference to the comparison between the
12 documents that he has in his hand now and documents that
13 have not been produced in court, have not been tendered
14 or shown to the defendant; the defendant is not confront-
15 ed with those documents, and, consequently, it is in vio-
16 lation of the provisions of the constitution that the de-
17 fendant must be confronted with the witnesses, a document
18 of this kind being a document that must speak for itself
19 is considered in law, a witness, and he should not be bound
20 by the statements or opinion of a witness unless the docu-
21 ments are presented here so that the defendant may --

22 THE COURT: Objection overruled.

23 MR APPEL: We take an exception.

24 MR FORD: Read the question. (Last question read by the
25 reporter.) A They are.

26 MR FORD: We now offer the two documents in evidence as

1 exhibits -- not in evidence, but for identification, as
2 exhibit No. 34.

3 MR ROGERS: I take an exception to the offer, not being
4 able to object to it on the ground that it is incompe-
5 tent, irrelevant and immaterial, and simply offers -- if
6 the documents are genuine, and the documents exist, they
7 are in the possession of a person now living, and within
8 the process of this court, within the jurisdic-
9 tion of this court, and a subpoena will produce him together
10 with the documents, and then they haven't been shown to us,
11 and they are incompetent and no foundation laid.

12 MR FORD: We are not offering the documents in evidence.

13 THE COURT: I understand they are merely marked for iden-
14 tification.

15 MR FORD: I ask that the first document which I hold in my
16 hand which purports to be the face of certain documents,
17 be marked 34.

18 MR ROGERS: On an inspection of the documents, if your
19 Honor please, you will see that it is in -- that knowledge
20 of it is in the possession of a person now living and in
21 the jurisdiction of this court, and moreover, one who has
22 been in this court room within the last three days. You
23 cannot substitute in that fashion.

24 THE COURT: This is not offered as evidence, but for iden-
25 tification only. It isn't in evidence.

26 MR APPEL: It is paraded before the jury.

1 MR FORD: I have carefully refrained from showing it
2 to the jury.

3 MR APPEL: You have had it over there, and you have asked
4 or not
5 whether they are photographs and all that sort of bus-
6 .iness.

6 THE COURT: Mr Appel, you will have to confine yourself to
7 assigning error if you wish one.

8 MR APPEL: I am answering him: Must he talk and I have
9 no right to answer?

10 THE COURT: Counsel has made a statement. Mr Appel, your
11 remarks are entirely out of order.

12 MR APPEL: I think they are in order, and as long as I am
13 in this case I am going to stand here and protect the rights
14 of this defendant. I object to your Honor saying they are
15 not in order. I am answering his statement to me, but
16 addressed to this defendant. I have a right to answer, and
17 I will answer every time he addresses anything that I
18 think is improper, and I would like to know what improper
19 thing I have said.

20 THE COURT: Mr Appel, your conduct here is disorderly.

21 MR APPEL: I object to that and I assign that as error,
22 as I deem it that my remarks were not disorderly. I am
23 not going to be minimized and degraded before this jury
24 by remarks from the court or anybody else, without taking
25 exceptions. I am going to defend this man if you send me
26 to jail, or I will withdraw from the case.

1 THE COURT: The court deems your remarks as being entirely
2 out of order and disorderly, as to the remarks themselves,
3 as to the manner and tone of their presentment here in
4 court, and as being the culmination of a long series of
5 similar disorderly conduct on your part tending to seriously
6 interfere with the due course of this trial, and constitut-
7 ing contempt of court, for which contempt the court orders
8 you to pay a fine of \$25.

9 MR ROGERS: I take an exception, if your Honor please, to
10 the statement that it is the culmination of conduct on the
11 part of the defendant tending to prejudice the substantial
12 administration of justice, as prejudicial to the defendant,
13 and one to which the defendant ought not to be subjected
14 in the presence of the jury, and one which is held by the
15 courts to be prejudicial to the rights of the defendant,
16 and on behalf of the defendant and his counsel, I take an
17 exception.

1 MR. Appel. And I will say to your Honor that so far
2 as the payment of that \$25 that I will not pay them, and
3 I ask your Honor's permission to have the record made up
4 so that I can go before another court and in another
5 department of this court and purge myself of contempt.
6 Let another court decide whether I am guilty of contempt or
7 not.

8 THE COURT. Mr. Appel, this court is final on such a matter
9 and the matter is settled.

10 MR. APPEL. I have a right--

11 THE COURT. Mr. Clerk, unless the fine is paid by 10 o'clock
12 tomorrow morning issue an execution. Proceed with the
13 examination.

14 MR. FORD. I offer the other document concerning which
15 the witness has testified, for identification as No. 35.

16 MR. ROGERS. I take an exception to its being offered
17 before the jury and held so the jury may see it, it being
18 a document the existence of which, if it does exist, may
19 be proven by a person now living, who is now living and
20 under subpoena of this court and under subpoena of the
21 prosecution, and I assign the whole matter as a contempt
22 of this court and as an attempt to get evidence outside
23 the rules of evidence and against the constitution of the
24 United States and of this state.

25 THE COURT. The document is not offered as evidence at this
26 time, I understand.

1 MR. FORD. No, your Honor.

2 THE COURT. But for identification purposes only. It will
3 be so marked. Objection overruled.

4 MR. ROGERS. Exception.

5 MR. FORD. I wish to ask the question, one more question
6 concerning Exhibits 34 and 35. Q Attracting your atten-
7 tion to Exhibit 35 consisting of a picture of two original
8 documents, I will ask you--

9 MR. ROGERS. To that statement of counsel, consisting of
10 "a picture of two original documents," I take an exception
11 and we assign it as misconduct, the allowance of the Dis-
12 trict Attorney to stand before the jury and characterize
13 certain documents which are not in evidence, and to be
14 paraded before the jury when the documents themselves, if
15 they do exist, are in the possession or within the knowledge
16 of a person now living, and I take an exception to the
17 whole matter and I will say, if your Honor will permit me,
18 I desire to be--with all due deference, and to have every
19 respect for your Honor's court, but in all my practice I
20 have never seen anything like it and I doubt if any lawyer
21 ever has. I take an exception to it; unless your Honor
22 orders that kind of practice to proceed, why, we will
23 simply have to do something.

24 THE COURT. I am assuming that counsel for the prosecu-
25 tion is laying the foundation for certain purposes, as stated
26 in his avowal, permitting this proceeding upon that theory

1 and no other. If he is able to lay the foundation, very
2 well. If not--

3 MR. FORD. I desire to modify my statement slightly.

4 Q Attracting your attention to Exhibit 34 which is a
5 picture--

6 THE COURT. Exhibit 34 for identification.

7 MR. FORD. Which purports to be a picture of two docu-
8 ments, attracting your attention to the document on top
9 the first--what purports to be a document on the top of
10 that exhibit, I will ask you to state which of the pictures
11 in exhibit 34 purport to be the reverse side of that docu-
12 ment.

13 MR. ROGERS. Objected to as incompetent, irrelevant and
14 immaterial, and calling for a conclusion or opinion; no
15 foundation has been laid and the document is not here, not
16 in evidence, and if the document exists it is in the poss-
17 ession of a person now living and within the jurisdiction
18 of this court, who has been in this court room within two
19 or three days and it is an attempt to evade the rules of
20 law and take advantage of the law. Why don't they put the
21 man on the stand, if your Honor please, who knows about
22 those documents? They don't dare to, so they bring here and
23 parade documents and ask him if it doesn't purport to be a
24 picture of the opposite side of a certain document. Let's
25 be fair about this thing, if your Honor please. This man
26 whose name is mentioned on that document lives himself within

1 three blocks of this court room. He has been in this court
2 room; he is now under their subpoena. Why don't they call
3 him. It is incompetent and it is misconduct to allow any
4 such thing.

5 •MR. FORD. Did you state that the original documents are
6 in the possession of that man?

7 MR. ROGERS. I say they are within his knowledge. If they
8 are not within his knowledge he can tell where they went to,
9 then you can show these documents. Any lawyer that knows
10 the first principles--you can put this man on the stand
11 and call for these documents and if they don't exist he
12 can tell where they went.

13 MR. FORD. We will show they were not in the possession of
14 that man when they were last heard of.

15 MR. ROGERS. I characterize the whole matter as misconduct.

16 THE COURT. Objection overruled.

17 MR. FORD. I want to simplify the same question: Attract-
18 ing your attention to Exhibit 35, the one purporting to
19 contain the figure 5,000 on it, I will ask you whether or
20 not that is a true representation of the back of the
21 original document purporting to be shown at the top of
22 exhibit 34?

1 MR ROGERS: To the statement "which purports to have the
2 figures , "5000" on it," I object to it, and characterize
3 it as misconduct and take an exception, because it is at-
4 tempting to get before the jury the contents of a document
5 they know they cannot get before it. I object to it as
6 incompetent, irrelevant and immaterial and not the best
7 evidence. Why do not they bring in the man that is with-
8 in the jurisdiction of this court and who can come here
9 and tell all about these documents truthfully? I make
10 the statement and the avowal he is within the process of
11 this court and under their subpoena right now.

12 THE COURT: I think under that statement and avowal it
13 is your duty to lay a foundation before going any further
14 with this.

15 MR FORD: If the court please, if you will excuse the jury
16 I can make some statements of facts, but perhaps it won't
17 be necessary.

18 THE COURT: Just a moment. I am about to excuse the jury
19 for the afternoon recess, and if there is any legal argu-
20 ment to take place, you can present it, but I doubt it.
21 The court has ruled. The court accepts the avowal as hav-
22 ing its full face value.

23 Gentlemen of the jury, bear in mind the admonition
24 heretofore given you. We will take a recess at this time
25 for 10 minutes.

26 (After recess.)

1 THE COURT: You may proceed, gentlemen.

2 MR FORD: I believe those have been marked for identifi-
3 cation, your Honor.

4 Q I believe you said you were acquainted with Mr Le Compte
5 .Davis. A Yes sir.

6 Q Did you see him on the 28th day of November, 1911?

7 A Yes sir.

8 Q At what place? A At the bank, the Equitable Bank,
9 First and Spring.

10 Q At what time of day did you see him? A Nearly 3
11 o'clock.

12 MR ROGERS: What time did he say?

13 (Last answer read.)

14 MR FORD: What business, if any, did you have with him
15 on that occasion?

16 MR ROGERS: We object to that as hearsay; incompetent, ir-
17 relevant and immaterial and no foundation laid; not the
18 best evidence.

19 THE COURT: Objection overruled.

20 MR ROGERS: Exception.

21 A I cashed a check for him.

22 MR FORD: For what amount?

23 MR ROGERS: That is objected to as incompetent, irrelevant
24 and immaterial; no foundation laid; hearsay; not the best
25 evidence.

26 THE COURT: Objection sustained.

1 Q BY MR FORD: Did you pay him any money on that occasion?

2 MR ROGERS: I make the same objection as last stated, with-
3 out repetition. If necessary, I will repeat it.

4 MR FORD: If he paid him any money, that is a fact --
5 .that is primary evidence of the fact.

6 THE COURT: yes.

7 MR ROGERS: If your Honor please, and if he paid Le Compte
8 Davis any money which they avow an intention -- in a crimi-
9 nal case an avowal is nothing -- but if they avow that
10 they paid Le Compte Davis the money that Franklin got,
11 that is another matter; if not, then it is absolutely ir-
12 relevant.

13 MR FORD: If the court please, we expect this witness to
14 testify that he paid \$10,000 in currency to Le Compte
15 Davis; we expect to show by another witness that Mr Le
16 Compte Davis applied that \$10,000 on the bail of Bert
17 Franklin after he was charged with bribery and that he
18 got that \$10,000 from the bank upon a check of Clarence
19 Darrow, the defendant in this case. The District Attorney
20 made an opening statement in which he said he would show
21 that the defendant, after Franklin was arrested, put up
22 \$10,000 in cash for his bail.

23 MR ROGERS: Subject to the objection that it is entirely
24 collateral and immaterial to this issue, that it is in-
25 competent and has nothing to do with the issues in this
26 case, we admit that that is a fact.

1 MR FORD: The admission is here, but we prefer it in tes-
2 timony as well.

3 MR ROGERS: All right, then go on and prove it, and I
4 withdraw the admission.

5 MR FORD: There is a question pending before the court.

6 THE COURT: Read the question.

7 (Question read.)

8 MR ROGERS: The same objection that has been made.

9 THE COURT: The objection that the foundation is not laid
10 is ~~s~~ustained.

11 MR FORD: If the court please, there can be no foundation
12 for a witness' testimony as to a particular fact which in
13 itself is not a document.

14 THE COURT: Objection sustained.

15 MR FORD: State whether or not any check, ^{signed} by the defendant
16 Clarence Darrow, or purporting to be signed by the defend-
17 ant Clarence Darrow, was presented to you on that occasion?

18 MR ROGERS: That is objected to as incompetent, irrelevant
19 and immaterial; hearsay; no foundation laid; not within
20 the issues and collateral; not the best evidence.

21 MR FORD: As to the contents of the document, the document
22 itself would be the ^{best} evidence of its contents, but as to
23 whether or not a check was presented, whether that act oc-
24 curred or not --

25 THE COURT: This question calls for a yes or no answer?

26 MR FORD: Yes, your Honor.

1 THE COURT: And you can have it as such. The objection
2 is overruled and the witness is asked to answer yes or
3 no. A Yes sir.

4 MR FORD: Will you read the last question and answer now, so
5 that I can get the connection?

6 (Last question and answer read.)

7 MR FORD: And by whom was it presented?
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10p 1 MR. ROGERS. The same objection as last made; hearsay;
2 incompetent and irrelevant; no foundation laid, in addi-
3 tion.

4 THE COURT. Objection overruled.

5 MR. ROGERS. Exception.

6 A It was presented by Mr. Davis.

7 MR. FORD. Q By Mr. LeCompte Davis? A Yes, sir.

8 Q When he presented it did you give him anything in
9 exchange for it? A Yes, sir.

10 MR. ROGERS. We make the objection--will you be kind
11 enough to wait--

12 THE COURT. Strike out the answer for the purpose of the
13 objection.

14 MR. ROGERS. We object to it as incompetent and irrelevant
15 and immaterial; not the best evidence; calling for a
16 conclusion or opinion; No foundation laid.

17 MR. FORD. The foundation has been laid now showing a check
18 was presented to him purporting to be signed by Clarence
19 Darrow, check was presented by Mr. Davis, there is the
20 foundation and now if the witness gave him anything in
21 return for it that would be a physical fact of which there
22 can be no documentary evidence.

23 MR. ROGERS. Purporting to be signed by anybody does not
24 make it so.

25 THE COURT. Objection overruled.

26 MR. ROGERS. Exception.

1 MR. FORD. Read the question.

2 (Question read.)

3 MR. FORD. Q Answer the question. A Yes.

4 Q What did you give him?

5 MR. ROGERS. The same objection as last made, without
6 reciting it.

7 THE COURT. Objection overruled.

8 MR. ROGERS. Exception.

9 A I gave him currency.

10 Q How much currency?

11 MR. ROGERS. The same objection, not the best evidence.

12 THE COURT. Objection overruled.

13 MR. ROGERS. Exception.

14 A \$10,000.

15 MR. FORD. Cross-examine.

16 MR. ROGERS. No questions.

17 THE COURT. That is all. You are excused, stand aside.

18

19 E. R. P A R M E L E E,

20 a witness called on behalf of the People, being duly
21 sworn, testified as follows:

22

23 MR. ROGERS. What does counsel desire to prove by this

24 witness, that \$10,000 was deposited as bail for Bert
25 Franklin by Mr. LeCompte Davis on the evening/^{of}November 28th?

26 MR. FREDERICKS. That is the purpose.

1 MR. ROGERS. It is admitted.

2 MR. FREDERICKS. We think the best way to do is to prove
3 it.

4
5 DIRECT EXAMINATION.

6 MR. FORD. Q What is your name? A E. R. Parmelee.

7 Q How old are you, Mr. Parmelee? A 37.

8 Q Where do you reside? A This city.

9 Q What street and number, please? A 1637 Fourth avenue.

10 Q And what is your occupation? A Clerk of the Justice
11 Court, Los Angeles Township.

12 Q In whose department? A I am the chief clerk at the
13 present.

14 Q Did you occupy that position on the 28th day of November,
15 1911? A No. I was department clerk in Judge Young's
16 court at that time.

17 Q Were you present in Judge Young's court as such clerk
18 on the 28th day of November, 1911? A I was.

19 Q Did you see Bert Franklin there at that time? A Yes,
20 sir.

21 Q Did you see LeCompte Davis there at that time? A Yes.

22 Q What, if anything, was done on that occasion by LeCompte
23 Davis in that court room?

24 MR. ROGERS. We object to that as incompetent, irrelevant
25 and immaterial; no foundation laid; hearsay.

26 THE COURT. Objection overruled.

1 MR. ROGERS. Exception.

2 A Why, the arraignment of Bert Franklin--

3 Q I have asked you what was done by Mr. Davis? A Mr.
4 Davis furnished the --

5 MR. ROGERS. Just a moment--that is a conclusion, that is
6 not an answer and I object to it.

7 THE COURT. State what he did.

8 A He gave me \$10,000.

9 MR. FORD. In what kind of money? A In currency.

10 Q And for what purpose? A As bail for Bert Franklin.

11 Q Bert Franklin? A Yes.

12 MR. FORD. Cross-examine.

13 MR. ROGERS. No questions.

14 THE COURT. That is all.

15

16 G U Y W. Y O N K I N,

17 a witness called on behalf of the People, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FREDERICKS. Q What is your name? A Guy W. Yonkin

21 Q where do you live? A 626 East 25th.

22 Q What is your business? A Cigars, cigar business.

23 Q Do you know Bert Franklin? A I do.

24 Q How long have you known him? A 8 years.

25 Q Going back to the time last year when the case of the
26 People versus McNamara and others was pending, state

1 whether or not you were summoned as one of the jurymen in
2 that case? A I was.

3 Q Prior to the time when you were summoned state whether
4 or not you had a conversation with Bert Franklin with
5 regard to your becoming a juror in that case?

6 MR. APPEL. Wait a moment. We object to that upon the
7 ground it is incompetent, irrelevant and immaterial for any
8 purpose; collateral to any issue in this case; no
9 foundation laid; there has been no evidence tending to
10 show in any way, shape or manner, that the conduct of Mr.
11 Franklin or whatever declarations were made by Mr. Franklin
12 or the conduct of the witness in question is in any way con-
13 nected with the defendant or with his knowledge or consent;
14 hearsay; no foundation laid.

15 THE COURT. Objection overruled.

16 MR. APPEL. We except.

17 MR. FOPD. Read the question.

18 MR. ROGERS. I would like to have the same objection go
19 to all of the questions.

20 THE COURT. It will be so understood, the same objection,
21 the same ruling and the same exception.

22 (Last question read.)

23 A I did.
24
25
26

1 Q BY MR FREDERICKS: Where was that conversation?

2 A Well, it started at my cigar store, 219 West Third.

3 Q And where was it continued? A In the Del Monte
4 saloon, next door.

5 Q State that conversation? A Well, he came up to my
6 place of business in the afternoon, along about half past
7 3, I think it was, and he stated to me that I was drawn as
8 a McNamara juror, and I thought he was joshing, and he
9 said --

10 MR ROGERS: I --

11 MR FREDERICKS: That may be stricken out, what the wit-
12 ness thought.

13 THE COURT: Strike out what the witness thought. State
14 what was said and done there.

15 A He asked me if I would serve on the jury, and I told
16 him, "No, I could not". He wanted to know why, and I
17 told him I couldn't leave my business. So he says, "I want
18 you to serve on that jury, and come on in next door where
19 I can talk to you a minute", so I left a friend of mine
20 to run the stand for a moment. We walked into the saloon
21 and had a drink and then he asked me --

22 MR FREDERICKS: Don't say "he asked me", say what he
23 said, and what you said. Take your time to it. A He
24 wanted me --

25 Q You are falling into the same error, if the court
26 will pardon me.

1 THE COURT: yes.

2 Q State what he said? A He said he would like to have
3 me serve on the jury. I told him I could not do so my-
4 self, and he wanted to know why, and I told him I couldn't
5 leave my business. He says, "You need not worry about
6 your business", and I told him I did, and finally he said
7 he could make it worth my while if I would serve on the
8 jury, but I told him nothing doing in that respect at
9 all. ✓ That was about all that I can remember of.

10 Q Well, did he say anything about --

11 MR ROGERS: I suggest that he ought not to be led.

12 THE COURT: Don't lead the witness.

13 MR FREDERICKS: I don't wish to, but I want to get all
14 the conversation; that is all.

15 MR ROGERS: Ask him if that is all.

16 MR FREDERICKS: In going after a conversation that oc-
17 curred a long time ago --

18 THE COURT: Captain Fredericks, there is only one way you
19 can ask leading questions and that is by stating the neces-
20 sity.

21 MR FREDERICKS: Now, Mr Yonkin, I want you to relate to the
22 jury that entire conversation. A Well, sir, I can't re-
23 late it, that is, much more than I have. I was very mad
24 at the time to think he would propose such a proposition
25 as that to me.

26 Q What was the proposition he proposed to you? A To

1 get on the jury and he would make it worth my while.

2 Q Was there any other proposition made to you, any
3 further proposition along that line? Was anything said
4 about the manner in which he would make it worth your
5 while or the amount? A No, there wasn't any amount men-
6 tioned that I remember of, any more than that he would
7 make it worth my while.

8 Q Was anything said about which side? A Yes, he told
9 me he represented the McNamaras; wanted me to get on the
10 jury for them.

11 Q Was anything said about your voting on the jury, if
12 you got on it?

13 MR ROGERS: I suggest he ought not to be led that way.
14 Mr Yonkin is a man of intelligence, a man of recollec-
15 tion, and he ought not to be led, if your Honor please,
16 and I take an exception to the leading --

17 THE COURT: Overruled.

18 MR ROGERS: Exception.

19 A Why, yes, he wanted me to hang the jury.

20 MR ROGERS: I move to strike that out as a conclusion or
21 opinion.

22 THE COURT: Strike it out. State what he said.

23 MR FREDERICKS: You say he wanted -- say what he said
24 from which you concluded that he wanted you.

25 MR ROGERS: The answer has been stricken out.

26 THE COURT: Yes.

1 MR FREDERICKS: That is true.

2 A That is all I remember he said.

3 MR FREDERICKS: That is stricken out.

4 THE COURT: What was it he said? A He wanted me to pro-
5 tect the McNamaras' interests.

6 THE COURT: What did he say? A Well, he said something
7 about hanging the jury or something of that kind. ✓ I don't
8 just remember exactly now. It has been sometime ago.
9 I don't remember just exactly what he said.

10 THE COURT: What else did he say at that time that you
11 were in there together? A That was about all. I told
12 him I wouldn't consider the proposition at all. There
13 wasn't enough money in the world to cause me to do that,
14 and that was about all that was said. I got up and walk-
15 ed out.

16 MR FREDERICKS: How long was that before you appeared in
17 court? A I should judge about a week.

18 Q As a juryman? A Yes sir.

19 Q And did you serve as a juryman or not? A No sir, I
20 got excused on business reasons.

21 MR FREDERICKS: Cross-examine.

22

23 CROSS-EXAMINATION

24 MR ROGERS: Mr Yonkin, you have a cigar store directly
25 in front of the Metropolitan Barber Shop? A Yes sir.

26 Q You have been there how long? A A little over three

1 years, going on my fourth year.

2 Q Before you went in there what was your business?

3 A I was with George W. Walker, wholesale and retail
4 cigars.

5 Q In the same line of business, cigar business? A Yes
6 sir.

7 Q How long had you known Franklin? A Why, I should
8 about 6, 7, or 8 years, some place along in there.

9 Q Ever know him well? A I was very well acquainted
10 with him, yes. He was in the sheriff's office under White,
11 with my father, when he was under-sheriff. I got pretty
12 well acquainted with him.

13 Q Your father was under-sheriff? A Yes sir.

14 Q Well, ^{while} Franklin was in the sheriff's office? A yes
15 sir; that is when I first met him.

16 Q That is when you first met him? A Yes sir.

17 Q From that time on, while he was in the sheriff's office
18 and your father was in the sheriff's office -- by the way,
19 your father is Henry Yonkin? A Yes sir.

20 Q You met him from time to time? A Yes sir.

21 Q And then after he got out of the sheriff's office,
22 you ~~met~~ him from time to time? A Yes sir.

23 Q Used to come around to your place of business, I take
24 it, once in a while? A Once in a while.

25

26

12s 1 Q Had you ever given him the slightest notice or slightest
2 idea that you were that kind of a man who could be bought,
3 in other words? A I don't think I ever did that I
4 know of.

5 Q And when he did that, when he made that proposition
6 to you, what did you say to him? A Well, I didn't say
7 much of anything, any more than I told him there wasn't
8 enough money in the world to cause me to do that.

9 Q Did he mention Darrow's name there? A No, sir; I don't
10 think Darrow's name was mentioned; I don't remember that
11 it was.

12 Q Did you know Darrow? A No, sir.

13 Q Did you ever see him before? A The day I was in court
14 here to be examined as a juror is the only time I saw him
15 that I know of.

16 Q That is to say, the time you were in court in the McNamara
17 case to be examined as a juror, there you saw him? A Yes
18 sir.

19 Q Did you ever speak to him? A No, sir.

20 Q Did you know the sound of his voice even? A No, sir.

21 Q So when Franklin wanted to buy you to render a verdict
22 you mentioned a statement a while ago in your direct examina-
23 tion that you were very angry? A I was.

24 Q What did you say to him, anything or did you just get
25 up and walk out? A I told you what I said.

26 Q I didn't quite get it. A There wasn't enough money in

1 the world to cause me to do that sort of thing.

2 Q What was your manner towards him at that time? A I
3 don't know exactly what it was; I don't remember; I
4 didn't say anything to him to speak of at all. I just
5 simply told him that in a nice, quiet tone of voice; we
6 were back there in the booth.

7 Q That is a booth in the back of the saloon at the
8 Delmonte Saloon? A Yes, sir.

9 Q Have you ever seen him since? A I think I have seen
10 him twice.

11 Q Have you ever talked with him since? A Not to carry
12 on any conversation with him; No, sir.

13 Q Ever spoken to him, as a matter of fact? A Yes, he
14 has been around the store once or twice and purchased
15 cigars. I never talked to him at all about the case one
16 way or the other.

17 Q Did you mention this thing to anybody? A No, sir.

18 Q This proposition that Bert Franklin made to you? A No,
19 sir.

20 MR. FREDERICKS. I suppose counsel means ever at any time.

21 MR. ROGERS. That is what I said. Read the question.

22 (Last question read by the reporter.)

23 THE COURT. The question is asked and answered. If Captain
24 Fredericks wants it, why, read it.

25 MR. FREDERICKS. So the witness understands it.

26 THE COURT. All right, read the question.

1 A You mean did I talk to anybody about--

2 MR. ROGERS- yes. A No.

3 Q Did you mention it to the authorities at all? A No.

4 Q When you got up to court you went up to the judge and
5 made your excuse? A Yes, sir.

6 Q And your excuse was business reasons? A Yes, sir.

7 Q That is to say, you were running a business of your own
8 and you couldn't afford to leave it? A Yes, sir.

9 Q And so far as you know aside from seeing Darrow in the
10 court room once and for a very short time, and seeing him
11 now, you never saw him in your life? A I may have seen
12 him on the street; I never talked to the man in my life.

13 Q Did you know LeCompte Davis? A I do.

14 Q How long have you know him? A A good many years.
15 I wouldn't say how long; probably 10 or 15 years.

16 Q Well, you have been raised here? A Yes, sir.

17 Q And LeCompte Davis has come up here from a very young
18 man? A Yes.

19 Q Did you ever know Judge McNutt? A Well, only by sight,
20 that is all.

21 Q Do you know Joe Scott? A Yes, sir.

22 Q Known him pretty well? A No, only just have a speak-
23 ing acquaintance with him, that is all.

24 Q Do you know Mr. Fredericks? A Yes, sir.

25 Q How long have you known him? A Probably 10 years.

26 Q And pretty well, too? A Fairly well.

- 1 Q You know Joe Ford? A Yes, sir .
- 2 Q How long have you known him? A Why, about that long, I
3 guess!
- 4 Q Do you know Harriman, Job Harriman? A Only by sight.
- 5 Q Never had any personal acquaintance with him? A No,
6 sir .
- 7 Q You know Mr. Keetch? A No, sir .
- 8 Q Any other members of the District Attorney's office
9 that you know? A Why, I think there is, I can't--
- 10 Q I missed your answer as to how long you had known Mr.
11 Ford. A I think about the same time that I have known
12 Captain Fredericks .
- 13 Q And known him quite well? A Why, yes .
- 14 Q How did you ever mention this proposition that Bert
15 Franklin made to you to anybody at all until after Franklin
16 came into court? A I never mentioned it then to anybody
17 until I was subpoenaed, then they began to josh me about it.
- 18 Q It came out in the paper, didn't it? A Yes, sir .
- 19 Q And pretty much everybody commenced to joke you about it?
20 A Yes, sir .
- 21 Q Laughing^{at}/you for being the kind of a fellow that Franklin
22 would dare to make such a proposition to? A Yes .
- 23 Q And that was done by a great many different people?
24 A Yes, sir .
- 25 Q Did you know how long it was before you were summoned
26 that Franklin came to you? A Why, I don't remember

1 exactly; I think it was about a week, something like
2 that. I don't just remember. I never made any note of it
3 at all.

4 Q Is there any way you can fix that date, Mr. Yonkin?

5 A It was, I think, along the last of November. I remember
6 very well that when I was summoned for the jury I paid my
7 taxes just before they became delinquent because I was
8 afraid I might be tied on the jury and couldn't get to do it
9 somewhere along the latter part of November, I think.

10 Q Couldn't you get any closer than that? A No, sir.

11 Q Not even the day of the week or the day of the month?

12 A No, sir.

13 Q It was not Sunday, anyhow, because the saloon was open.

14 A It was not Sunday.

15 Q It was not one of our election days because the saloon
16 was open? A No.

17 Q Aside from that you don't remember? A I don't remember;
18 no, sir.

19 MR. ROGERS. That is all.

20

21 REDIRECT EXAMINATION.

22 MR. FREDERICKS. When did you first discuss this matter
23 with the District Attorney? A Why, the day that you
24 subpoenaed me.

25 Q Well, how long ago was that? A That was the 28th
26 day of May.

1 Q The 28th day of May, this year? A Yes, sir.

2 Q Did you ever talk with anybody else about it prior to
3 that date except Franklin? A You mean after I was
4 subpoenaed?

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1 Q No, between the time that Franklin talked to you as
2 you have narrated and the time when you were subpoenaed and
3 brought up to my office, did you talk to anybody else
4 about it? A No sir.

5 MR FREDERICKS: That is all.

6
7 RE-CROSS-EXAMINATION

8 MR ROGERS: Aren't you mistaken about that.? Now, think
9 for a moment. Do you remember my dropping up there one
10 day and asking you -- telling you that Franklin had drag-
11 ged your name through the dirt up there and telling you
12 what it was? A I believe you are right, yes sir.

13 Q Telling you that he had -- well, to use an expression
14 I think I used at that time, that he had bawled you out
15 here in the court room.

16 MR FREDERICKS: That was -- excuse me for interrupting.

17 THE COURT: Fixing the time.

18 MR ROGERS: Do you remember that time? A That was after
19 it came out in the paper.

20 Q Wasn't that the next day after it came out in the
21 papers? A I don't recollect.

22 Q It was very close to that time? A It was before, I
23 think -- I think I had seen the Captain before that.

24 Q You think you had seen the Captain before that?

25 A I think I had been subpoenaed. I went up there -- I
26 won't be sure, but I think so.

1 Q You remember then -- aren't you quite sure that that
2 was the day Mr Franklin had testified about it that I
3 came up there and stopped and spoke to you, shook hands
4 with you and told you how sorry I was your name was dragged
5 into it, you remember that?

6 MR FREDERICKS: Objected to upon the ground it is imma-
7 terial, in view of the fact that the witness has said
8 that he did not talk to anybody about it until he talked to
9 me when he was subpoenaed, which was before that.

10 THE COURT: That date is uncertain in the record, I think,
11 at least; let's have it fixed. Objection overruled.

12 A I don't remember, Mr Rogers, exactly whether it was
13 before or after I talked with the Captain. I don't rem-
14 ember.

15 Q But it was approximately at the time it came out in
16 the papers? A Around that time, yes sir.

17 MR ROGERS: I think that is all.

18 MR FREDERICKS: I don't know whether the matter is entire-
19 ly clear yet, or whether it is of sufficient importance.
20 Your answer is still correct between the time Franklin
21 talked to you and the time you were brought up to the
22 District Attorney's office and subpoenaed, you had not
23 talked to anybody about it? A I don't remember of it.

24 Q Well, did you know what you were being brought up to
25 the District Attorney's office for? A When you sent for
26 me?

1 Q When I sent for you? A I certainly did, yes. It came
2 out in the papers.

3 Q Wasn't that before it came out in the papers that you
4 came up to the office? A I don't remember. It was
5 the 28th when I was subpoenaed. I have the subpoena here
6 in my pocket.

7 Q Now, let's see --

8 MR ROGERS: The date of its service won't show on that,
9 will it? A The 28th of May, 1912.

10 MR FREDERICKS: The 28th of May, 1912? A Yes sir.

11 Q Where were you subpoenaed? A Down at the cigar
12 store -- I was subpoenaed in your office. Mr Duni came down
13 in the morning about 9:30.

14 Q The 28th day of May; that fixes it. That is all.

15 MR ROGERS: Now, don't you remember -- just to call it
16 back to your memory -- when I stopped and spoke to you
17 about the matter, told you I was very sorry your name had
18 been dragged in the thing, all that sort of thing,
19 don't you remember I asked you then if you knew whether
20 they were going to call you as a witness, and you said you
21 didn't know anything about it?

22 MR FORD: Objected to upon the ground what counsel may
23 have said to the witness is absolutely incompetent, irre-
24 levant and immaterial.

25 MR ROGERS: Just to fix the circumstances.

26 MR FORD: Please let me make my statement to the court.

It isn't in anywise impeaching or tending to impeach the

1 testimony given by the witness, and as to the date of his
2 being subpoenaed, he has fixed that absolutely by the
3 document in his pocket.

4 THE COURT: I think the date of the conversation can be fix-
5 ed in less time than it takes to argue it.

6 MR FORD: Any conversation he had with Mr Rogers is
7 absolutely incompetent, irrelevant and immaterial.

8 THE COURT: Objection overruled.

9 (Last question read by the reporter.)

10 A I don't remember, Mr Rogers, whether I had been subpoe-
11 naed at that time or not. I don't suppose I had, if that
12 is the answer I gave you. I couldn't tell you anything
13 about it.

14 MR ROGERS: That is all.

15 MR FREDERICKS: Of course, Mr Rogers --

16 MR FORD: You don't remember the conversation that occurred?

17 A I remember the conversation, I do. I don't remember
18 whether I had been subpoenaed. He stopped to the store
19 and made that remark to me.

20 MR FORD: That is all.

21 MR FREDERICKS: May it please the court, we are going to
22 travel pretty rapidly from now on, and we have been trying
23 to accommodate our witnesses as much as possible. This is
24 a long trial, and we have provided what we thought would
25 be enough witnesses and plenty to last the afternoon, and
26 I find we have got along very rapidly, and we would like

1 to ask an adjournment until 10 o'clock tomorrow morning,
2 and we are going to proceed pretty rapidly from now on and
3 I don,t think any time will be lost by it.

4 MR ROGERS: Will it be too much to ask Mr Fredericks if
5 he indicates that he feels the interesss of his side
6 will permit, about when we had better have our witnesses
7 come?

8 MR FREDERICKS: I can get a little better idea from you
9 about the cross-examination and then I can tell you. It
10 will be at the end of this week; Thursdayis a holiday;
11 maybe tomorrow night and maybe Friday.

12 Jury admonished. Recess until 10 o'clock A.M., July
13 3rd, 1912.

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