

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California, )

Plaintiff, )

vs. )

No. 7373. )

Clarence Darrow, )

Defendant. )

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REPORTERS' TRANSCRIPT.

VOL. 48

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
✓ Mrs Dora F. Bain,	3810			
✓ Robert Bain,	3815	3838		

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FRIDAY, JULY 5, 1912; 10 A.M.

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

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M R S. D O R A F. B A I N,

on the stand.

(Discussion.)

MR. DEHM. I will state, your Honor, that both Mr. Darrow and myself have telephone communications also from Mr. Rogers in which he stated he was not able to sleep last night; was very sick and had a doctor there and he did not think he would be able to go on with the case this morning, and thought it best it be continued say until Monday, whatever Mr. Darrow's wishes were in the matter.

MR. DARROW. I will be governed by Mr. Appel in the matter, your Honor.

MR. APPEL. Well, your Honor, I suppose your Honor has some idea, it is unnecessary to state before the jury, under what circumstances I am in this case. I am here to help whenever I am called upon. I examine a witness whenever I am asked to, and I am not taking the responsibility here I would take if everything was in my charge. I don't think that responsibility should be shifted to me. I may examine a witness in my own way and it may be in such a weak and ineffective way that it might <sup>not meet</sup> with the approbation of those who have the responsibility of this case. I would

1 not feel like being blamed for doing anything that is not  
2 proper. Of course, when a man is alone and running his  
3 own case he takes his chances.

4 THE COURT. Just one question I will ask Mr. Appel: Had you  
5 intended or was it the intention of Mr. Rogers to cross-examine  
6 the witness on the stand?

7 MR. APPEL. I don't know. Your Honor sees I am here  
8 assisting in every possible way that I can or that I know,  
9 but I don't know anything about it.

10 THE COURT. I expect all parties concerned are desirous of  
11 getting through with this long drawn-out trial and getting  
12 through with it as rapidly as possible, but sickness is a  
13 matter which is not in our control. I will say at this  
14 time while you are consulting, I do not think under the  
15 circumstances, irrespective of error, I do not think it  
16 would be fair to the defendant to proceed before Monday  
17 morning unless he consents, or if there is any branch that  
18 can be taken up so as not to lose the time the court  
19 will be very glad to do it, but otherwise will not proceed  
20 at this time unless the defendant consents. (Discussion.)

21 THE COURT. Gentlemen of the jury, you have heard or seen  
22 what has transpired here in regard to the necessity of an  
23 adjournment. I doubt if you regret it any more than the  
24 court does and the attorneys, we are all desirous of  
25 finishing this matter up, but this case of sickness is one  
26 of the things that will occur in a long trial. The court

1 is about to adjourn until 10 o'clock Monday morning.

2 (Jury admonished. Recess until July 8, 1912, at 10 A.M.)

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4  
5 MONDAY, JULY 8, 1912; 10 o'clock A.M.

6 Defendant in court with counsel. Jury called; all present.

7 Case resumed.

8 THE COURT. Mrs. Bain was on the stand.

9 MR. FORD. Call Mrs. Bain.

10 THE BAILIFF. She is not here.

11 MR. FORD. If the Court please, to save time, I offer in  
12 evidence two receipts from the Equitable Savings Bank signed  
13 C. S. Darrow, Trustee, by A.H.Russell, one being for a  
14 period from September 30, 1911 to December 6, 1911, and the  
15 other from December 6, 1911 to December 21, 1911. The  
16 def endant has agreed to stipulate the checks covered on the  
17 Equitable Savings Bank of this city presented to that bank  
18 between the dates indicated were delivered to Mr. Russell--  
19 Mr. Russell receipted for them and that Mr. Russell delivered  
20 them to the defendant.

21 MR. ROGERS. Subject, of course, to our general objection  
22 as to the competency, relevancy and materiality of the  
23 entire matter.

24 THE COURT. You stipulate to the fact as stated by Mr. Ford  
25 but not as to the competency and materiality of the evidence?

26 MR. ROGERS. We have never run them over or added them

1 out, but subject to any objection.

2 THE COURT' The objection will be overruled and the exhibits  
3 marked.

4 MR. FORD. Be marked Exhibit 40. The foundation has not  
5 been laid but we offer in evidence exhibits 34 and 35  
6 which consist of photographs of the check concerning which  
7 the witness on the stand testified, on showing that the ori-  
8 ginals have been returned to the defendant.

9 MR. ROGERS. Objected to as incompetent, irrelevant and  
10 immaterial and not the best evidence and no foundation laid,  
11 having no bearing on this case or tendency to prove its  
12 issues.

13 THE COURT' Objection overruled.

14 MR. ROGERS. Exception, in each of the exhibits.

15 MR FORD:'. There is a matter I would like to take up  
16 with the defendant in regard to each of these exhibits.  
17 There are two exhibits, the top of Check 34, the testimony  
18 was given. Our offer is confined to the lower check on  
19 Exhibit 34 and with regard to Exhibit 35 the witness on the  
20 stand testified that  
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1 the one containing the figures \$10,000 on the back was a  
2 copy of the reverse of the lower check on exhibit 34.

3 Our offer is confined to those two and the other two we  
4 don't offer in evidence.

5 THE COURT: All right.

6 MR ROGERS: Objected to as incompetent, irrelevant and imma-  
7 terial and not the best evidence, and no foundation laid;  
8 no bearing on the issues.

9 THE COURT: Overruled.

10 MR ROGERS: Exception.

11 MR FORD: I ask that the jury be permitted to look at  
12 the portions offered in evidence. I will bend the other  
13 over.

14 THE COURT: Yes; they may do so.

15 MR FORD: I will read it into the record first. "Reading.)  
16 "Los Angeles, Cal., Nov. 28, 1911. Equitable Savings Bank,  
17 1st and Spring streets. Pay Le Compte Davis or order  
18 \$10,000 (Ten thousand dollars). Signed, C. S. Darrow,  
19 Trustee", and the endorsements appearing on the same check  
20 contained in exhibit 35, endorsement, "Le Compte Davis".

21 MR ROGERS: It escaped my mind just what your foundation  
22 for that was. Do you offer that separately?

23 MR FORD: Yes, the witness testified that was a photograph  
24 of the reverse of the check.

25 MR FREDERICKS: I will explain to the court why Mrs Bain  
26 was not here.

THE COURT: Have you some explanation?

1 MR FREDERICKS: There is a parade down town and stopped the  
2 street cars. Mr Bain came and <sup>said</sup> she started ahead of him  
3 but he had to walk and thought possibly he could walk  
4 faster than she had walked. All the Ninth street cars are  
5 stopped.

6 THE COURT: Gentlemen, I think you better bear in mind  
7 your usual admonition and take a recess until the witness  
8 arrives.

9 (After recess.)

10 THE COURT: Gentlemen, it appears that Mrs Bain so exerted  
11 herself in getting here that she is not physically able  
12 to proceed at this time. I understand you have agreed  
13 some other witness can be substituted.

14 MR ROGERS: Yes sir.

15 MR FORD: Call Mr Bain.

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17 ROBERT BAIN, a witness called on behalf  
18 of the prosecution, being first duly sworn, testified as  
19 follows:

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DIRECT EXAMINATION

21 MR FORD: What is your name? A Robert Bain.

22 Q Your name in full? A Robert Bain. That F was put in  
23 there sometime ago but it doesn't figure.

24 Q Where do you reside? A Sixty-eighth -- west of Moneta;  
25 west of Moneta on Sixty-eighth.

26 Q 345? A 345, yes. It is between Moneta and Figueroa.

1 Q How old are you, Mr Bain? A Going on 71.

2 Q You are a member of the Grand Army of the Republic?

3 A Yes sir.

4 MR ROGERS: That is objected to as incompetent, irrelevant  
5 and immaterial, and not within the issues.

6 THE COURT: Objection sustained.

7 MR FORD: How old are you? A I will be 71 my next birth-  
8 day.

9 MR ROGERS: The answer should be stricken out.

10 THE COURT: Strike out the answer, if he answered it.

11 MR FORD: How long have you lived in Los Angeles? A 29  
12 years the 15th of August.

13 Q Where did you reside prior to that time? A I boarded  
14 at the Natick House for about 5 years.

15 Q Where did you reside prior to coming to Los Angeles?

16 A Oh! Iowa.

17 Q How long did you live there? A Since I came out of  
18 the army, '65.

19 Q What army was that?

20 MR APPEL: We object to that as immaterial, nothing to do  
21 with this case.

22 THE COURT: Objection sustained.

23 A I was a Grand Army man --

24 MR APPEL: We ask it be stricken out.

25 THE COURT: The answer is stricken out.  
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1 MR FORD: Are you -- were you sworn in and accepted as a  
2 juror in the case -- are you the Robert Bain who was sworn  
3 in and accepted as a juror in the case of the People versus  
4 J. B. McNamara, No.6939 in Judge Boardwell's court in this  
5 county during the month of October, 1911? A I am.

6 Q If you will permit counsel -- just hold your answer  
7 until they object.

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

10 MR APPEL: We object upon the ground that it is incompe-  
11 tent, irrelevant and immaterial; calling for a conclusion  
12 of the witness, calling for hearsay evidence, calling for  
13 secondary evidence, not calling for the best evidence,  
14 and it is collateral to any issue in this case, and that  
15 the testimony sought by the question does not in any manner  
16 tend to prove that the defendant at any time or place ever  
17 bribed the juror Lockwood.

18 MR FORD: If the court please, it is already in evidence  
19 that Robert F. Bain was sworn. I asked him if he was  
20 the person.

21 THE COURT: Overruled.

22 MR APPEL: We take an exception.

23 MR FORD: Answer the question. A Yes sir.

24 Q And how long did you serve on that jury, Mr Bain?

25 MR APPEL: Wait a moment. We object to the question upon  
26 the ground that that is immaterial for any purpose whatso-

1 ever, in addition to the grounds of objection made to  
2 the last question heretofore propounded to the witness.

3 THE COURT: Overruled.

4 MR APPEL: We except.

5 A I was one of the first jurors and stayed with it until  
6 it ended.

7 MR FORD: Were you in court on the 11th day of October,  
8 1911, the day the trial opened? A yes sir.

9 Q And in response to the summons of the court to appear  
10 there? A Yes sir.

11 MR APPEL: This objection of ours runs right along, your  
12 Honor?

13 THE COURT: yes sir; it may be so understood, the same ob-  
14 jection, the same ruling and the same exception introduced  
15 and held to each and every question.

16 MR APPEL: And any objection to his leading the witness,  
17 may, your Honor permit that, or must he be allowed to lead  
18 the witness, so as not to interrupt?

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1 THE COURT. The court will, with the assistance of  
2 counsel for the defense, at all times try to prevent lead-  
3 ing questions.

4 MR APPEL. He is doing it now, and we object upon the  
5 ground that it is immaterial. Of course, we don't  
6 wish to be objecting it is leading. I am only suggesting.

7 THE COURT. There ought to be no leading questions asked  
8 of this witness at all.

9 MR. APPEL. He has been doing it right now.

10 MR. FORD. Q How long during the month of October did you  
11 serve after you appeared in Court? A Why, I was here all  
12 that month.

13 Q Were you there any part of the month of November?

14 A Yes, sir.

15 MR. APPEL. It is not the best evidence of a record and  
16 proceedings in court, who were present, who are jurors is  
17 made by a record in a court of record. This is a court  
18 of record; the record is the best evidence in establishing  
19 the fact.

20 THE COURT. Objection overruled.

21 MR. APPEL. We except.

22 MR. FORD. Q Were you there the whole of the month of  
23 November? A I was there until the trial quit. I don't  
24 remember now what date it was.

25 Q Until the ending of the trial? A Yes, sir.

26 Q When were you summoned as a juror to report in Depart-  
ment 9? A I think it was on the--it was about the 5th of

1 October.

2 Q Did you at any time after that--that was the 5th of  
3 October, 1911? A Yes, sir.

4 Q Did you at any time after that meet Mr. Bert H. Franklin?

5 A I met Bert H. Franklin on the --he was at my house on  
6 Friday night, I think it was the 6th or 7th.

7 Q After you were summoned as a juror? A Yes, sir.

8 Q On Friday night, the 6th of October, 1911? A I think  
9 it was the 6th; I ain't sure about the date; it was on  
10 Friday night, I know.

11 Q Well, a reference to the calendar shows the 6th of  
12 October, 1911, was Friday? A Well, that was the date.

13 Q Now, prior to your meeting Bert Franklin on Friday night  
14 at your House, did you have any talk with your wife, Mrs. Dor  
15 Bain, in reference to Mr. Franklin or the McNamara case?

16 MR. APPEL. We object to that on the ground it is incom-  
17 petent, irrelevant and immaterial; hearsay; no foundation  
18 laid; that it calls for the declarations of the wife to the  
19 alleged husband in reference to a criminal transaction and  
20 that no foundation has been laid for the introduction of  
21 that evidence; and it is collateral to any issue in this  
22 case, and the defendant is not bound by the declarations  
23 of either the husband or wife as against each other and  
24 neither the declarations of husband or wife as against  
25 each other, or in pursuance of any criminal transaction as  
26 evidence against either the principal or the accessory of

1 the husband or wife, as the case may be.

2 MR. FORD. With reference to the foundation, your Honor--

3 THE COURT. Objection overruled.

4 MR. ROGERS. Exception. The use of the word "alleged" in  
5 the question, of course, means that the question says so,  
6 that is what the word "alleged" in the question means, it  
7 might be misconstrued and we do not want it misconstrued.

8 THE COURT. I think so.

9 MR. FORD. Read the question to the witness, please.

10 (Question read.)

11 A I did.

12 Q What did she say to you on that occasion?

13 MR. ROGERS. The same objection.

14 MR. APPEL. We object to that upon the same grounds stated  
15 in our last objection made to the witness's testimony.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.

18 MR. FORD. Q I wish to add, "What did she say to you about  
19 Mr. Bert Franklin". A there was considerable said; I don't  
20 remember all of it--

21 MR. ROGERS. The same objection--

22 A --It was after I came home from work, after supper, I  
23 just finished my supper--I knew he had been there, she told  
24 me he was there and was working for the defense.

25 MR. APPEL. We move to strike out the answer; that is a  
26 conclusion, your Honor, it is not responsive to the ques-  
tion.

1 MR. FORD. That is a conversation he is detailing.

2 MR. APPEL. No, he says, "I knew he had been there working  
3 for the defense."

4 MR. KEETCH. She told him.

5 A That is what she told me, that is all.

6 MR. APPEL. That is a conversation--

7 THE COURT. I think with the witness's correction now--

8 MR. APPEL. I say, I didn't hear that.

9 THE COURT. All right. Do you withdraw the motion to strike  
10 out?

11 MR. Appel: My objection is there and the motion.

12 MR. FORD. Q Your wife communicated to you the fact that  
13 he had called? A Yes, sir.

14 Q Now, that evening when he called, did you have a con-  
15 versation with Mr. Franklin? A I did, short.

16 Q Who else was present at that conversation? A No one.

17 Q Just tell what was said and done on that occasion  
18 between you and Mr. Franklin? A Why, he came there in a  
19 hurry--

20 MR. APPEL. Wait a moment--

21 THE COURT. Wait.

22 MR. APPEL. We object to that on the ground it is incompet-  
23 ent, irrelevant and immaterial; no foundation laid; and  
24 it is hearsay, collateral to any issue; that the question  
25 calls for acts and declarations of third parties not in the  
26 presence of the defendant; that the defendant is not bound

1 by those declarations; and upon the further ground it is  
2 collateral to any issue in this case and we ask now the  
3 court read to the witness the section of the code in  
4 reference to accomplices, Section 1324 of the Penal Code.  
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1 MR FORD: The court has overruled the objection?

2 THE COURT: The court has not acted; there is no objec-  
3 tion. Is there any objection?

4 MR FREDERICKS: In view of the fact that the witness has  
5 already testified to the same things at the preliminary  
6 examination, it seems that the reading of the statute at  
7 this time would be of no efficiency.

8 MR FORD: Just a moment. I will withdraw the question and  
9 ask the witness another question.

10 Q Mr Bain, did you, on or about the 11th day of Decem-  
11 ber, 1911, testify in Judge Young's court, Department 4 of  
12 the Justice's Court of this township, in the case of  
13 People of the State of California, Plaintiff, versus Bert  
14 H. Franklin, defendant, on the preliminary examination of  
15 said Franklin? Did you at that time and place testify to  
16 the facts of the visit of Mr Franklin to you and what was  
17 said and done?

18 MR APPEL: Wait a moment; we object to that as hearsay;  
19 it is incompetent, irrelevant and immaterial for any pur-  
20 pose; the conditions under which he testified there have  
21 nothing to do with this case and nothing to do with the  
22 matter at issue now.

23 MR FORD: If the court please, if they desire to know the  
24 attitude and relation of the witness to this case, we de-  
25 sire to show that he has on a former occasion testified  
26 in regard to the same facts.



1 THE COURT: Well, if the defendant wants his status present-  
2 ed here in having the statute read --

3 MR FORD: Because it is absolutely unnecessary; it is only  
4 done for the purpose of distracting the attention of the  
5 jury from matters that are properly before the jury; noth-  
6 ing has any place in this court except what is relevant to  
7 the case and to inject the reading of the statute that has  
8 no application whatever to the status of the witness fills  
9 the record with things that have no business in the record.  
10 That is our contention.

11 MR APPEL: I deny the accusation of counsel, and I say  
12 when he says I made the objection and request it was sim-  
13 ply for the purpose of distracting the attention of the  
14 jury or the witness from the matter at issue, that that  
15 statement is not true and I assign the making of such a  
16 statement as prejudicial error to defendant's rights here,  
17 and because it intends to accuse counsel for the defendant  
18 of a trick and to humiliate him in the presence of the  
19 jury, and I do not characterize the statement in more for-  
20 cible language for fear I should be disorderly.

21 THE COURT: Section 1324 is the one you refer to, Mr Appel,  
22 is it not?

23 MR APPEL: Section 1324, I believe is the section.

24 MR ROGERS: Yes, that is the section.

25 MR APPEL: I have not been granting immunity to anyone,  
26 so I have not been familiar with the section.

1 THE COURT: I think I will resolve the doubt by reading  
2 the section. Mr Bain, you will give your attention to the  
3 court while the section is read. (Reading.) "Section  
4 1324 of the Penal Code. "A person hereafter offending  
5 against any of the provisions of this code or against any  
6 law of this state, is a competent witness against any  
7 other person so offending, and may be compelled to attend  
8 and testify and produce any books, papers, contracts, agree-  
9 ments or documents upon any trial, hearing, proceeding or  
10 lawful investigation or judicial proceeding, in the same  
11 manner as any other person. If such person demands that  
12 he be excused from testifying or from producing such  
13 books, papers, contracts, agreements or documents, on the  
14 ground that his testimony or that the production of such  
15 books, papers, contracts, agreements or documents may  
16 incriminate himself, he will not be excused, but in that  
17 case the testimony so given, and the books, papers, con-  
18 tracts, agreements and documents so produced shall not be  
19 used in any criminal prosecution or proceeding against  
20 the person so testifying, except for perjury in giving such  
21 testimony, and he shall not be liable thereafter to prose-  
22 cution by indictment, information or presentment, or to  
23 prosecution nor punishment for the offense with reference  
24 to which his testimony was given, or for or on account of  
25 any transaction, matter or thing concerning which he may  
26 have testified or produced evidence, documentary or  
otherwise.

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1 Now, such person shall be exempt from indictment,  
2 presentment by information, prosecution or punishment for  
3 the offense with reference to which he may have testified  
4 as aforesaid, or for or on account of any transaction, matter  
5 or thing concerning which he may have testified as afore-  
6 said, or produced evidence, documentary or otherwise, where  
7 such person so testifying or so producing evidence, docu-  
8 mentary or otherwise, does so voluntarily, or when such  
9 person so testifying or so producing evidence, fails to  
10 ask to be excused from testifying or so producing evi-  
11 dence, on the ground that his testimony or such evidence,  
12 documentary or otherwise, may incriminate himself, but  
13 in all such cases the testimony or evidence, documentary or  
14 otherwise, so given, may be used in any criminal prosecu-  
15 tion or criminal proceeding against the person so testify-  
16 ing, or producing such evidence, documentary or otherwise.

17 Any person shall be deemed to have asked to be excused  
18 from testifying or producing evidence, documentary or other-  
19 wise, under this section, unless before any testimony is  
20 given or evidence, documentary or otherwise, is produced  
21 by such a witness, the judge, foreman or other person  
22 presiding at such trial, hearing, proceeding or investiga-  
23 tion, shall distinctly read this section of this code to  
24 such a witness, and the form of the objection by the witness  
25 shall be immaterial, if he in substance makes objection  
26 that his testimony or the production of such evidence,

1 documentary or otherwise, may incriminate himself, and he  
2 shall not be obliged to object to each question, but one  
3 objection shall be sufficient to protect such witness from  
4 prosecution for any offense concerning which he may testify  
5 or for or on account of any transaction, matter or thing  
6 'concerning which he may testify or produce evidence docu-  
7 mentary or otherwise, upon such trial, hearing, proceeding  
8 or investigation. The section has been read, Gentlemen.

9 MR. FORD. Q What time did Mr. Franklin arrive at your  
10 house, Mr. Bain? A Well, about half past 7.

11 Q In the evening? A In the evening.

12 Q How long did he remain there? A He was only there about  
13 20 minutes, I guess.

14 Q What was said and done between you on that occasion?

15 MR. APPEL. Your Honor, this is all subject to the same  
16 objection.

17 THE COURT. Subject to the same objection, the same ruling  
18 and the same exception as fully as if interposed to each and  
19 every question.

20 A Why, the first thing he said was, "You know what I am  
21 here for?" I said, "Yes." Well, he said that he was  
22 working and he wanted I should accept this bribe for to--  
23 if I went onto the jury--

24 THE COURT. Mr. Bain, it is very desirable that you recite  
25 as nearly as you can what he said and what you said in  
26 words or the substance of those words, tell what you said

1 and then what he said as nearly as you can recall that  
2 conversation. If You cannot give the exact words, give the  
3 substance.

4 A Well, the substance of it was he wanted me to accept a  
5 bribe, and under considerable hesitation I finally accepted  
6 it, and when he went to pay me he was going to pay me \$500,  
7 and when he went to pay me he only had 400. He said,  
8 "Of course, I am not good for that, you know me, you have  
9 known me a long time, I am not responsible for that, But",  
10 he says, "Darrow furnished me with \$20,000 to use."

11 MR. FORD. Q Now, what was the first thing Mr. Franklin  
12 said to you when he came in? A Oh, he spoke about old  
13 times--

14 MR. ROGERS. If your Honor please, if counsel is not  
15 satisfied with the relation under the question, that is  
16 one thing, then it ought to be stricken out and then he  
17 ought to ask him the question so as to bring out the con-  
18 versation.

19 MR. FORD. I am going to bring out some more, that is all.  
20 I am not asking that anything be stricken out. There is  
21 no rule, if the court please, that requires to strike it out.

22 MR. ROGERS. It was merely a suggestion.

23 THE COURT. Proceed.

24 A The first of the conversation was about our--he knew  
25 I had been in hard luck over some deals I had--

26 MR. APPEL. He ought to state what was said.

1 THE COURT. Yes, strike that out and let me admonish the  
2 witness again. Mr. Bain, the District Attorney, Mr. Ford,  
3 has asked you a very simple question: What was the first  
4 thing that Mr. Franklin said to you? That is all you have  
5 to answer at this time, is just that one simple thing; What  
6 was the first thing that Mr. Franklin said to you? When you  
7 have answered that wait for another question.

8 A Well, the first question he asked, he said when he came  
9 in was, just merely looked around, spoke about the little  
10 home, said a nice place. I said it was all right when it  
11 was paid for.

12 MR. FORD. Q What did he say then? A Then he says, "You  
13 know what I am here for?" I says, "yes." and then the  
14 next was that he talked about the hard luck I had had.

15 Q What did he say about that? A He said, "Now, Bob," he  
16 says, "I have known you for a long time, you have been out  
17 of luck in your dealings with people here and in buying  
18 real estate and stuff, you have been out of luck; you have  
19 been beat every time," he says "Now, is your chance to get  
20 even, get a little money and pay up for your property and  
21 you will have a little money left."

22 Q Did he at that time or place say anything about what the  
23 prosecution was doing?

24 MR. ROGERS. I don't think he ought to be led.

25 THE COURT. Don't lead the witness.

26 MR. FORD. That is not leading and I will submit it to the

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court.

THE COURT: I think it is.

MR. FORD. If the Court please, the section provides--

THE COURT. Mr. Ford, I think it is a leading question.

1 MR FORD: I may be very dull in comprehension; I cannot see  
2 in what manner that suggests to him what he shall say in  
3 answer to that question. Simply directing his mind to cer-  
4 tain matters and then I shall ask him what was said.

5 I certainly am not suggesting or leading the witness to  
6 say anything or what was said about the conversation.

7 THE COURT: I am sorry to disagree with you, but I think  
8 it is a leading question.

9 MR FORD: What else was said? A He talked about the  
10 trial.

11 Q What did he say about the trial? A And he said that  
12 both sides was doing dirty work, buying witnesses and  
13 getting rid of witnesses.

14 Q Was anything said about the payment of money other  
15 than the money that was to be paid to you? A When he paid  
16 me \$400 he says, "You are not the only man", he says;  
17 "there will be others in the same boat." Just made that  
18 remark.

19 Q What further was said in that conversation about the  
20 payment of money, if anything? A He said that he would  
21 make good the balance when the trial was over.

22 Q How much was the balance? A 3600.

23 Q Did he say that the balance was \$3600? A Yes sir.

24 MR APPEL: Your Honor, must -- Of course, we don't like  
25 to be objecting, your Honor. Your Honor will see --

26 THE COURT: Yes, the question is over leading.



1 MR FORD: In view of the witness' preceding answer, I think  
2 it was simply calling for an explanation. He said there  
3 was to be 3600 balance. I asked him if Franklin so stated  
4 it. I withdraw the question. What did Franklin say about  
5 the balance?

6 THE COURT: Strike out the answer, then; question with-  
7 drawn.

8 A When he paid me 400 he said he would make good the  
9 balance, 3600, as soon as the trial was over.

10 Q What were you to do for that money, if anything?

11 MR ROGERS: Objected to as calling --

12 MR FORD: I withdraw the question.

13 Q What did he say you were to do for this money, if any-  
14 thing.

15 MR ROGERS: That is leading and suggestive. If this con-  
16 versation occurred, your Honor please, just as well to  
17 ask this witness to relate it. Relate it fully -- relate  
18 all that was said -- relate all that happened there be-  
19 tween him and Mr Franklin and let it go at that. They  
20 haven't a right, your Honor, to put subjects into his  
21 mind; that is building up his story. A man who is expert  
22 at it may build up a story by merely suggesting subjects  
23 in his question; withdrawing it, and taking it back, and  
24 asking him another question. The fair way is to ask the  
25 witness all he said. If he forgets it, then ask him if  
26 there was anything following that; did he say anything

1 further on that; what did he say, and so forth. That is  
2 the only way to examine a witness.

3 MR FORD: If the court please, I object to being instruct-  
4 ed by counsel. I don't need any instruction as to how to  
5 conduct the examination. I don't believe he ought to be  
6 allowed to comment on how the examination should be con-  
7 ducted. Let him make his objection. He hasn't made an  
8 objection, but interposes an argument without making ob-  
9 jection. If there is an objection, I suggest that he put  
10 in his objection, rather than arguing it.

11 MR ROGERS: The objection is an exception, your Honor  
12 please, to the leading manner of conducting the examina-  
13 tion. I would like to have this story go right in in a  
14 fair way, then be cross-examined in a fair way, and get  
15 rid of it. I think it ought not to come in this way, and  
16 I object to the manner of it coming, and I object to fur-  
17 ther leading questions and to this question as leading and  
18 suggestive.

19 MR FORD: I would like to have the question read.

20 MR ROGERS: I presume the question will not show exactly  
21 its leading character, but we object to the whole manner  
22 of conducting the examination.

23 MR FORD:" Just read the question. (Last question read  
24 by the reporter.)

25 THE COURT: Now, there is an objection to that question  
26 as being leading. I don't think that that particular

1 question, the form itself presented, is objectionable upon  
2 that ground. In response to the District Attorney's ob-  
3 jection to counsel's statement, I do not understand that  
4 counsel is addressing the District Attorney at all, but  
5 is addressing the court as to the reason and purpose of  
6 his objection and illustrating it. I see no occasion for  
7 any admonition. You may answer the question, Mr Bain.

8 A I was to hold out for acquittal.

9 MR FORB: Do you recall any other things that were said at  
10 that visit between you and Mr Franklin? A There wasn't  
11 but very little said: he was in a hurry. He said he had  
12 to go to San Berdoo that night. If anything turned up,  
13 why he could show that he was registered in San Bernardino.

14 Q Was anything said on that occasion about the evidence  
15 in the case, and if so, what was said?

16 MR APPEL: That is objected to upon the ground it is in-  
17 competent, irrelevant and immaterial for any purpose what-  
18 soever; hearsay, leading and suggestive, and upon the fur-  
19 ther ground it is collateral to the issues, not being de-  
20 clarations admissible under the rule of declarations by  
21 an accomplice.

22 THE COURT: Objection overruled.

23 MR APPEL: We except.  
24  
25  
26

7p 1 MR. FORD. Answer the question. Read the question.

2 (Last question read.)

3 A Oh, there was something said, but I don't remember  
4 exactly.

5 Q What did you do with the \$400 you received from Mr.

6 Franklin? A I laid it on the bureau in the bedroom when  
7 I went to bed and when my wife came home I gave it to her.

8 Q Have you seen it since? A No, sir, I have never seen it.

9 Q What kind of money was it? A It was all in twenty  
10 dollar bills.

11 Q Currency? A Yes, sir.

12 Q Did you at that time make any appointment with Mr.  
13 Franklin to meet him again? A We said, when he left he  
14 would probably be back Saturday night but he didn't come  
15 back until Sunday night. He was there again on Sunday  
16 night.

17 Q Did he say on that occasion why he would come back?

18 A Well, I understood he was coming to bring the other  
19 hundred at first, but he said as long as he didn't bring it  
20 he would let it go.

21 Q No, let us not get into that Sunday night, just tell what  
22 was said. A He said he probably wouldn't be back unless  
23 he got back from San Berdoo, that he was in a hurry, unless  
24 he got back from San Berdoo he would be back Saturday night,  
25 but he come Sunday night.

26 Q Did he say he would give you the \$100? A That is what

1 he remarked at the time he paid me, he would bring the  
2 other hundred Saturday night and before he left he said he  
3 might not be back Saturday night.

4 Q When did you next see him? A On Sunday night.

5 Q And at what place? A At my house.

6 Q Who was present on that occasion? A My wife was there.

7 Q What was said at that time between you and Mr. Franklin?

8 A Well, he was cautioning me to be very careful.

9 MR. APPEL. He ought to state--

10 MR. FORD. That may be stricken out.

11 MR. APPEL. He ought to state what was said.

12 MR. FORD. Q You have to state what he said to you and  
13 what you said to him, as near as you can. A The first  
14 thing he said, "Now," he says, "Bain, if you get on that  
15 jury you want to be very careful" and he says, "In the  
16 first place, you don't want to touch a dollar of that money,  
17 if you get hard up," he says, "you draw your pay that is  
18 coming to you as a juror and use that," "but", he says,  
19 "if necessary, let your bills run a little behind." I  
20 told him, "That is something I never have done with my  
21 work and pension I generally paid my bills," he says, "Let  
22 it be understood you are hard up", and he cautioned me, he  
23 says, "Now, then," he says, "you be careful," and he talked  
24 a little while and left.

25 Q Was anything said about your appearance in court as a  
26 juror, and if so what? A He said when I was--if I was called

1 as a juror that I would be examined by Darrow, he said  
2 that would be understood; he said he might cross-ques-  
3 tion me pretty strong, but he said, "pay no attention."

4 Q Did he tell you why to pay no attention? A Well, I  
5 understood from him that the understanding was--

6 •MR. ROGERS. Well, now, wait a moment--let us hear what  
7 was said.

8 THE COURT. Just tell what was said.

9 MR. FORD. Q Just state what he said about that, as near  
10 as you can remember it. A He said it was understood  
11 that there would be nothing to it.

12 Q When next did you see Mr. Franklin, if at all? A Why, I  
13 never seen him after that until one day here in Judge  
14 Bordwell's court he was coming out and I came in the doorway.

15 Q That was at the time of the preliminary examination--

16 A Yes--

17 Q --or before that-- A Yes--no, it was just before the  
18 preliminary examination.

19 Q Who did examine you when you got into court? A Mr.  
20 Darrow.

21 Q Were Mr. Davis and Mr. Scott and Mr. McNutt present at  
22 that time? A Yes, sir.

23 MR. FORD. Cross-examine.

24  
25 CROSS-EXAMINATION.

26 MR. APPEL. Q Mr. Bain, you are a carpenter, are you not?

1 A yes, sir .

2 Q And you met Mr. Franklin when he was doing a little car-  
3 penter work? A I worked with him 26 or '7 years ago at  
4 Long Beach .

5 Q Well, in years gone back, going back 25 years, you used  
6 to live around Long Beach? A Yes, I was in Long Beach quite  
7 a while. I was in Long Beach there one or two summers  
8 working .

9 Q And you worked there as a carpenter? A yes, sir .

10 Q And you knew Franklin then? A Oh, yes .

11 Q And you have been connected with him off and on on  
12 different jobs? A I would see him often until here lately  
13 when he was with Leo Youngworth , I don't believe I seen  
14 him for four or five years .

15 Q After he left his trade? A Yes, after he quit his  
16 trade .

17 Q Of course, you had not seen him? A No .

18 Q But your intimacy, and friendship-- A Oh, I knew him--

19 Q Continued just the same? A Yes, sir .

20 Q Now, you didn't see him at any time until Friday night, the  
21 6th day of October? A No .

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1 Q That is, you dkdn't see him to talk to him about the  
2 case? A No sir.

3 Q Now, you came home late in the afternoon of that day,  
4 and you expected him that evening? A I didn't know any-  
5 thing about it until I got home.

6 Q I understand that, but after you got home, you knew,  
7 you expected him that evening? A Yes sir.

8 Q And you knew in a general way what he was coming for?

9 A Yes sir.

10 Q And you waited for him? A I didn't wait for him; I  
11 was at home.

12 Q Well, I understand, but when he came there, did you  
13 open the door for him? A Sure.

14 Q And invited him in? A Yes sir.

15 Q Shook hands with him? A What is that?

16 Q And you shook hands with him? A Yes sir.

17 Q Treated him nicely, as you always did? A Yes sir.

18 Q In a friendly way. Now, you had been told he was com-  
19 ing down there to bribe you, hadn't you? A Yes sir.

20 Q Yes. And when you saw him you treated him with the  
21 usual courtesies as though he had come on another mission?

22 A Yes sir.

23 Q Well, now, at that time you had about made up your mind  
24 to take the money from him, hadn't you? A Not entirely.

25 Q Not entirely. Well, he came in and he said to you,  
26 "How do you do, Bob"? A Yes sir.



1 Q And told you that he had come over there to the house  
2 several times before, did he? A I think he spoke about  
3 his being there during the day.

4 Q During that day? A Yes sir.

5 Q In fact, he told you he had not been -- he had not seen  
6 you and he had not made up his mind to see you until that  
7 day, isn't that true? Do you remember that? A I don't  
8 think he said anything about that.

9 Q Anyhow, he said he came there for the first time that  
10 day in the afternoon of that day? A Well, I couldn't say  
11 whether he said he was there in the afternoon or what time  
12 of day he was there; I knew --

13 Q He didn't tell you he had been there to see you before  
14 that day? A Oh, no.

15 Q That is what I want to know. So your understanding  
16 was it was only that day that was the first time he had  
17 come there to see you? A Yes sir.

18 Q From what he said, I mean? A Yes sir.

19 Q Now, when he came in he said to you -- How did he  
20 come there, do you know? A He come in an automobile.

21 Q And the automobile stopped right in front? A Right  
22 in front.

23 Q And somebody in the automobile with him? A Yes sir.

24 Q How many people in the automobile, do you know? A I  
25 think there was just the two of them.

26 Q He and some other gentleman? A The man that was running

1 the machine.

2 Q You don't know whether he was running the machine or  
3 not, do you? A I ain't sure, no.

4 Q You saw a man with him in the machine? A There was a  
5 man out at the machine.

6 Q And the machine stood right in front of your house?

7 A Yes sir.

8 Q Where anybody could see it? A Yes sir.

9 Q What time of the evening was that, or afternoon?

10 A It was in the evening.

11 Q About 6 o'clock? A No, it was about half past 7.

12 Q About half past 7? A Yes sir.

13 Q How close is the next house to yours? A There is one  
14 house to the east of me, about 12 or 15 feet, on the next  
15 lot.

16 Q Any on the west side of you? A There is a little  
17 shack back on the alley.

18 Q There were people living there at that time? A Yes.

19 Q And some people living across the street from you? A No.

20 Q Well, it is a well-inhabited portion of the city,  
21 is that right? A It is partly settled up; there are a  
22 good many vacant lots.

23 Q It is close to Moneta avenue? A What is that?

24 Q It is close to Moneta avenue? A It is about one-third  
25 of the way between Moneta and Figueroa.

26 Q That is all a well-settled part of the city, isn't that

1 right? A Yes.

2 Q Lights were burning around there? A There was only  
3 one light on Moneta, street car line.

4 Q Well, the lights were bumming in the machine, do you  
5 remember? A I don't remember whether theywere, or whether  
6 there was a light in the machine or not.

7 Q He didn't speak in a whisper when he came to the door  
8 there, but came in the usual ordinary way, didn't he?

9 A Yes sir.

10 Q Had he ever visited you before? A No sir.

11 Q At home? A No sir.

12 Q You just met him dāwn town? A Yes sir.

13 Q Now, he said to you that the prosecution were using  
14 money to bribe witnesses and jurors, didn't he? A Why,  
15 both sides.

16 Q Didn't he say the prosecution were using money to bribe  
17 witnesses and jurors? A Well, I don't know as he spoke  
18 about the prosecution particularly. He said that both  
19 sides were using money.

20 Q Then he ssaid that both sides were paying out money?

21 A Yes sir.

22 Q For witnesses and bribing jurors, didn't he? A Yes  
23 sir.

24 Q And that there was a little show for you to get a lit-  
25 tle money? A Yes sir.

26 Q And he said he would pay you \$500, eh? A He did.

1 Q And when he took out the money and commenced to count  
2 it, it was currency? A Yes sir.

3 Q And \$20 bills? A Yes sir, it was all in twenties.

4 Q All of them? A Yes sir, all of them.

5 Q How? A Yes sir, it was all in twenties.

6 Q All in twenties, and when he counted it out he only  
7 had 400? A That is all.

8 Q And didn't he say to you, "I am a little short"?

9 A He said he was a little short, he had used some.

10 Q How is that? A He said he was a little short; he had  
11 used some.

12 Q That he had used some and was a little short, sir?

13 A \$400 was all he had with him.

14 Q He told you that is all the money he had, 400? A Yes,  
15 that is all he had with him.

16 Q And he had used the balance of it? A He didn't say how  
17 much, or anything; he just said he had used some.

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1 Q Well, now, how much did he offer you in the beginning  
2 of your conversation? A Well, the first he offered me  
3 3,000.

4 Q He said to you, "I will give you 3000?" A yes.

5 Q And you rejected that proposition, didn't you? A I  
6 did.

7 Q You didn't want the 3,000? A No, sir.

8 Q Then, how much did he offer you then? A 4,000.

9 Q Then he offered you 4,000 and what did you say to him  
10 then? A Well, I finally gave in and accepted it.

11 Q Well, "gave in", what did you say? A I said I would take  
12 it.

13 Q You said, "I will take it." Then what did he say about  
14 giving you so much down? A What is that?

15 Q What did he say about giving you so much down? A He  
16 was to give me \$500 down.

17 Q He said, "I will give you \$500 down?" A That is what he  
18 said.

19 Q He says, "I will give you now \$500," did he? A That  
20 is what he said, he would give me 500.

21 Q And then he took out the money and he only counted 400?

22 A 400 was all he had.

23 Q And then he explained to you he was a little short, is  
24 that right? A Why, he was a little short, he only had  
25 400.

26 Q I know, but didn't he says "I am a little short?"

1 A I don't know as he put it in just that words.

2 Q Didn't he say that while your wife was in the room?

3 A No, my wife had gone to lodge.

4 Q Had gone to lodge? A Yes, sir.

5 Q Well, he said that he had used some? A Yes, he <sup>said he</sup> used  
6 some, when he took out the pocketbook--he had one of those  
7 old fashioned long pocketbooks and he counted it out but he  
8 just had 400 and he said he would make the rest good when  
9 we had the settlement.

10 Q He said he had used the balance of the \$20,000? A He  
11 didn't say anything about using, how much, or indicate  
12 what kind, he just said, "I have been using a little of  
13 this money and that is all I got."

14 Q But he told you Mr. Darrow had given him \$20,000? A Yes,  
15 sir.

16 Q And that he had been using some of it and that is all  
17 he had? A That is all he had with him.

18 Q I say, that is what he said to you. He didn't say,  
19 "That is all he had with him?" A Yes, he said that is  
20 all he had with him, when he paid me the 400.

21 Q And he said he was a little short? A Yes.

22 Q Did he tell you where he kept that \$20,000? A No, sir.

23 Q Well, now, after talking with him that night you were to  
24 get the other hundred? He said to you he would give you  
25 the \$3600 after the case was over? A Yes, sir.

26 Q That was agreed upon that night, was it not? A Yes, sir.

1 Q And you agreed then to go, to qualify as a juror, is  
2 that right? A I supposed I would, I knew I was going to be  
3 called, whether I would be qualified, I didn't know whether  
4 I would or not, I didn't think I would.

5 Q You didn't think you would? A No.

6 Q You thought you had some opinions against the McNamaras?

7 A I didn't think I would serve on the jury on account of  
8 my--a little hard hearing.

9 Q You took the \$400 just the same? A Yes, sir.

10 Q And expected \$100 more the next night, is that right,  
11 isn't that right? A I didn't know whether it would come  
12 or not.

13 Q But you said you made arrangements that Franklin should  
14 come the next night, Saturday night and give you the other  
15 hundred? A We said if he didn't pay it he would pay it  
16 when we had the final settlement.

17 Q That night? A He was to come Saturday night.

18 Q For what purpose? A And he said he would bring the  
19 other hundred.

20 Q Exactly, and you expected it? A Why, sure.

21 Q And you wanted it, didn't you, the other hundred, you  
22 wanted to get it, didn't you? A Why, he offered me, he  
23 was going to pay me the 500.

24 Q I know he was going to pay it to you, and you wanted to  
25 get it, didn't you? A Why, certainly.

26 Q And at that time didn't you tell Franklin that you

1 thought you couldn't qualify as a juror, that if the  
2 evidence was so and so and so, you went on telling him if  
3 the evidence was so and so you would have to convict?

4 A I simply told him this one thing, I says, "Franklin, if  
5 the evidence is sufficient I sure will vote for convic-  
6 tion."

7 Q And you didn't agree-- A But he says, "You take that  
8 money and hold onto it and try to hold out for acquittal."

9 Q "Try to hold out for acquittal?" A Yes, sir.

10 Q Did you say to him then you would hold out for acquit-  
11 tal, notwithstanding that the evidence was as you thought  
12 it might be-- A I did not.

13 Q Then you didn't agree then with Mr. Franklin to hold  
14 out for acquittal, notwithstanding that you accepted the  
15 money, did you? A No--

16 MR. FORD. Just a moment--before the witness answers that  
17 question; we object to it as calling for a conclusion of  
18 the witness, in that he says, "Didn't you agree", let him  
19 state what was said.

20 MR. APPEL. No, your Honor, we have a right to get his  
21 mind.

22 THE COURT. Let us have the objection.

23 MR. FORD. We object to it on the ground it calls for a  
24 conclusion of the witness.

25 THE COURT. Objection overruled.  
26



1 MR APPEL: Now, read the question.

2 (Question read.)

3 A I don't know whether I did or not; there was a very  
4 little said; he was in a hurry, and he had to go to San  
5 Bernardino, I don't remember just what I did say.

6 Q I am talking about your condition of mind at that time.  
7 You thought the McNamaras were guilty, didn't you?

8 A I didn't think much about it; I had never read but  
9 little in the papers about it. I supposed it was blown  
10 up by gas.

11 Q Did you tell Franklin? A I did not. There was noth-  
12 ing said about that.

13 Q Did you ever tell anyone that? A No sir, because I  
14 didn't know anything about it.

15 Q You always had that opinion? A I didn't know any-  
16 thing about how it was blown up.

17 Q But you had an opinion that the building had been blown  
18 up by gas? A Well, I don't know as it was an opinion;  
19 it was just my idea that it was blown up by gas.

20 Q I know, your idea. That is an opinion, isn't it?

21 A You might call it an opinion.

22 Q And you had that opinion at that time on that evening  
23 of October 6th, didn't you? A I always thought it was  
24 blown up by gas.

25 Q You had that opinion then, didn't you? A I suppose  
26 so.

1 Q And you had it all the time until you were examined as  
2 a juror, didn't you? A I didn't think much about it.

3 Q You didn't think much about it, but you did think  
4 once -- A I had never been in the building.

5 Q It makes no difference to me how you got that opinion.  
6 \*You had that opinion and you had it when you were called  
7 to be examined as a juror in open court, didn't you?

8 A It was not a very strong opinion; I didn't think any-  
9 thing about it.

10 Q But you had the opinion? A I suppose I had.

11 Q Now, didn't you go into court and under oath say you  
12 didn't have no opinion about it at all?

13 MR FREDERICKS: That is objected to on the ground that  
14 the testimony of the juror was taken down in court and the  
15 notes are the best evidence as to what he said at that  
16 time.

17 MR APPEL: It is not the best evidence. He knows what he  
18 said then.

19 A Well, you might call it an opinion --

20 THE COURT: Objection sustained.

21 MR APPEL: We take an exception. We offer to show now  
22 by the witness that at the time that he talked with Mr  
23 Franklin, that he had an opinion that the explosion which  
24 resulted in the destruction of the Times building, which  
25 was one of the subjects of inquiry in the case of the  
26 People against McNamara was caused by gas; that he had such

1 opinion right along after he talked with Franklin; that  
2 he had that opinion when he was called upon in court under  
3 oath to be examined as to his qualifications to serve as  
4 a juror; that notwithstanding he had then that opinion  
5 and had it prior to that time and continued to have it,  
6 that he then stated under oath that he didn't have any  
7 opinion upon the subject. I explain my question, your  
8 Honor, by my offer.

9 THE COURT: yes.

10 MR FREDERICKS: And the record of what this witness tes-  
11 tified to, may it please the court, is available to coun-  
12 sel and it shows just exactly what he said in that regard.

13 MR FORD: In addition to that, your Honor, this witness has  
14 already testified he had an opinion at the time Franklin  
15 saw him; counsel claims he wants to show, and as to what  
16 occurred after that, is absolutely irrelevant and imma-  
17 terial and has no bearing upon the question for any pur-  
18 pose whatsoever.

19 THE COURT: The court has sustained your objection, Mr Ford,  
20 as to the form of the question.

21 MR APPEL: Then, my offer is rejected, I understand, so  
22 as to get the record straight?

23 THE COURT: The objection made by Captain Fredericks, is  
24 sustained solely upon the ground that the testimony  
25 has been taken down and the transcript is available, and  
26 that should be produced.

1 MR APPEL: Well, --

2 THE COURT: That is the sole ground on which the objec-  
3 tion is sustained.

4 MR APPEL: I wish to state here in open court that there  
5 is -- the testimony alluded to in the objection of counsel  
6 and alluded to in the ruling of the court is not here in  
7 court; is not in my presence; that there is no evidence  
8 here that I have it -- that we have it, and that there is  
9 no evidence that it is available. I don't wish the state-  
10 ment of the court to be in the record, your Honor, as we  
11 consenting to your Honor's statement as a finding.

12 THE COURT: Now, you raise a new question, Mr Appel.

13 MR APPEL: You said it was available. I don't know of any  
14 evidence that it is available.

15 MR FREDERICKS: We will state here in open court that a  
16 copy of this transcript was furnished to the prosecution  
17 and it was also furnished to the defense, which was in  
18 charge of Mr Darrow at the time. We presume that Mr Dar-  
19 row has a copy. If he will say he has not a copy, we will  
20 furnish him with ours.

21 MR APPEL: Now, we take an exception to the conduct of the  
22 District Attorney in addressing this defendant at all here  
23 in court, and putting him in a position of having to answer  
24 any such question as that. We assign it as absolute mis-  
25 conduct, as undertaking to make evidence here before the  
26 jury in open court, to say to the defendant, "Now, if you

1 say so and so, I will do so and so". The days of the  
2 inquisition have passed.

3 MR FREDERICKS: Mr Darrow is also an attorney in the case.

4 MR APPEL: He is an attorney, your Honor -- he is an at-  
5 torney, your Honor, you will see is one thing; he is the  
6 'defendant, is another.

7 MR FREDERICKS: There is nothing before the court.

8 THE COURT: I see no occasion to change the ruling. The  
9 ruling will stand.

10 MR APPEL: Well, all I want, your Honor, is to say to try  
11 to agree with me that so far as evidence here before the  
12 court is here, that there is no evidence that we got it.

13 THE COURT: There is ~~no~~ copy of the transcript in the  
14 court room at this time, so far as I know. Captain Fred-  
15 ericks has offered to produce it if you want it.

16 MR APPEL: If he will produce it, I will take it. I  
17 know I am almost willing to take anything that is produced.

18 THE COURT: Then it is incumbent on you, Captain Fred-  
19 ericks, to furnish the transcript.

20 MR FREDERICKS: I suppose the matter can be passed over  
21 till noon. Of course, my statement was if the defense has  
22 no copy I will be glad, as a matter of courtesy, to furnish  
23 them ours. If they have no copy I ask them to say they  
24 have no copy.

25 THE COURT: I don't know that that is necessary. They  
26 have asked for a copy.

1 MR FREDERICKS: Oh, well, I will let them have ours after  
2 lunch, if they want it.

3 MR APPEL: Now, we take our exception.

4 Q Now, Mr Witness -- now, when he came up Sunday night,  
5 you didn't see him Saturday night, did you? A Yes sir.

6 Q You saw him Saturday night? A Yes sir.

7 Q He was there at your house Saturday night? A He was.

8 Q Was your wife there? A Yes sir -- no, not Saturday  
9 night- Sunday night.

10 Q That is what I am saying. He was to come Saturday  
11 night, but he did not come? A Didn't come.

12 Q That is my understanding, but you saw him Sunday  
13 night? A Sunday night.

14 Q And when he came over, what did he say to you?

15 A Why, as I told you before, he talked to us to be care-  
16 ful that we didn't --

17 Q What did he say about the money, the \$100? A He  
18 said he didn't have it. He had no chance to go to the bank,  
19 he had been busy, but he would make it good at the end.

20 Q He said then that he had no chance to go to the bank  
21 and get this \$100? A He had been busy.

22 Q I understand that, but you see my question. He did  
23 say to you that he had had no chance to go to the bank  
24 to get the \$100? A Yes sir.

25 Q And he then said to you -- didn't he say to you, "Bob,  
26 you know I am good for this"? Did he? "You have known  
me a long time"? A He said, "You know I will make good."

1 Q What did you say? A Oh, I says, "I guess you are  
2 all right, Bert".

3 Q And he said he would give you \$3600 at the end of the  
4 trial? A Yes sir.

5 Q Didn't you say to him, "Give me a check for the 100?"

6 A No sir.

7 Q What did you say about it? A I said it was all right.

8 Q You said it was all right? A Yes sir.

9 Q You said, "I am willing <sup>to</sup> trust you"? A When he said  
10 he didn't have it, that settled it. There was nothing  
11 more said about it.

12 Q Now, at that time didn't you tell Mr Franklin that --  
13 now, you delivered this \$400 to your wife? A Yes sir.

14 Q When did you deliver the \$400 to your wife? A That  
15 night when she came home from lodge.

16 Q What time of the night? A About 11 o'clock.

17 Q Did you tell her what to do with it? A No, I did not.

18 Q When did you again see that money? A I never saw  
19 it since.

20 Q Do you know where it is? A I do not.

21 Q Have no idea where it is? A Well, I have an idea,  
22 but I don't know exactly. I couldn't swear to it.

23 Q Well, did she ever tell you what she did with it?

24 MR FORD: Objected to as irrelevant --

25 THE COURT: Objection overruled.

26 A She told me that she paid most of it back to the Dis-  
trict Attorney.

1 MR APPEL: That she paid it back to the District Attorney  
2 or she gave it back. A Gave it back to the District  
3 Attorney.

4 Q Gave it back to the District Attorney; that right?

5 Now, at that time did Franklin say to you that that par-  
6 ticular money, this \$400 that he gave you that evening, did  
7 he say to you that that particular money came from Mr Dar-  
8 row? A He did not.

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12s 1 Q But he did say that both sides were paying money for  
2 jurors, that right? A He said that both sides was paying  
3 out money.

4 Q Didn't he say for bribing jurors? A Well, I don't  
5 remember whether bribing jurors or for to hire witness--  
6 he spoke something about witnesses going away, that they--

7 Q You don't know whether he said for bribing jurors, do  
8 you? A He might have brought that in at that time.

9 Q Didn't you say that a while ago? A I believe I did.

10 Q Well, is that true? A I think he said for bribing  
11 jurors.

12 Q You know he said that, don't you? But you did tell Mr.  
13 Franklin at that time that if the evidence was con-  
14 vincing and if it was as you thought the evidence was, that  
15 you would convict the McNamaras, notwithstanding that you  
16 had received/<sup>the</sup>money? A Yes, sir.

17 Q Notwithstanding you did receive money you would convict  
18 them if you were satisfied of their guilt? A I told him  
19 when he gave me the money, I said, "Franklin, if the  
20 evidence is strong enough I sure will vote for a convic-  
21 tion."

22 Q And if it had not been strong enough you would not have  
23 convicted whether you got the money or not? A The money  
24 didn't count one way or the other.

25 Q The money didn't count with you. You would have done  
26 what you thought was right? A I would, sure.

Q

1 Q Isn't that what you told Franklin that night? A I  
2 just told you what I told Franklin.

3 Q You told him that before he gave you the money? A He  
4 had counted the money; it was laying on the table.

5 Q But you had not taken it yet? A No.

6 Q Now, Mr. Bain, you have been asked how long you served  
7 on the jury. Now, you served, as you have said, during  
8 the month of October after you were accepted and probably  
9 during the month of November, is that right? A I don't  
10 remember just exactly when I was with it.

11 Q You said that you were one of the first jurors? A Yes,  
12 I was one of the first and was with it until the last.

13 Q Now, you were there present during the examination of the  
14 jurors? A Yes, sir.

15 Q Now, Mr. Scott did not examine but one or two jurors that  
16 you remember of, is that right?

17 MR. FORD. Objected to upon the ground the record itself  
18 is the best evidence.

19 THE COURT. Overruled.

20 A I don't remember; he didn't examine very many, I know.

21 MR. APPEL. Q And Judge McNutt did not examine any of the  
22 jurors? A No, I think not.

23 Q And Mr. Davisonly examined a few during that time?

24 A I think Mr. Davis examined about as many as Mr. Darrow.

25 Q Then they changed off, one would examine one juror and  
26 then the other would examine another, is that right?

1 A I don't know as they changed off exactly; sometimes  
2 would go through two or three and then the next one would  
3 come.

4 Q In other words, they took their part as the jury happened  
5 to come on in the jury? A I suppose you would call it  
6 that.

7 Q Now, do you remember the questions that were asked you?

8 A I do not.

9 Q Do you remember whether or not you were asked any ques-  
10 tions any different than the general run of questions that  
11 were asked the other jurors? A I don't remember.

12 MR. FORD. Object upon the ground the record is the best  
13 evidence.

14 THE COURT. Overruled. Answer the question.

15 MR. APPEL. Q Now, isn't it a fact that all the questions  
16 asked of the jury were in a general way concerning the same  
17 subject that were asked of one, they were asked all the  
18 other jurors?

19 MR. FORD. Just a moment--we object to that question as  
20 calling for a conclusion of the witness as to whether they  
21 were or not, as being incompetent, irrelevant and immaterial,

22 THE COURT. Overruled.

23 A I would not think so; some of the questions that were  
24 asked, some of them was pretty pertinent.

25 MR. APPEL. Q That is concerning their situation to the case,  
26 but I mean concerning their knowledge of the case, you under-

1 stand, concerning their opinion? A Concerning their  
2 knowledge of the case and their opinion of the explosion,  
3 something--they was all something similar, but in a little  
4 different questions.

5 Q You were asked whether or not you had any opinion upon  
6 the subject, weren't you? A Well, when it came to that  
7 I had no opinion because I didn't know, I never seen it.

8 Q I am asking you whether or not they asked you.

9 MR. FORD. Objected to as incompetent, irrelevant and  
10 immaterial and not cross-examination, not the best evidence.

11 THE COURT. Overruled.

12 MR. APPEL. I will put it in this way: Q Did they ask  
13 you any question that was different than any questions  
14 which they put to the others on the same subject? A I  
15 think not.

16 Q Were you asked whether or not you belonged to a union?

17 A I did; I used to belong to a union.

18 Q What did you say? A I told him that I did belong to a  
19 union a long time ago. I helped organize the first union in  
20 Los Angeles.

21 Q And were you not asked whether or not you ever had any  
22 trouble with any union? A Yes.

23 Q What did you say to that? A I told them I had not.

24 Q Didn't Mr. Darrow ask you those questions? A I think he  
25 did.

26 THE COURT. We will adjourn at this time, gentlemen.

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