

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. 51

I N D E X.

|                       | Direct. | Cross. | Re-D. | Re-C. |
|-----------------------|---------|--------|-------|-------|
| Jenkin Lloyd Jones    | 4038    |        |       |       |
| Paul Brown            | 4043    |        |       |       |
| James McShane,        | 4055    |        |       |       |
| John J. Herrick,      | 4058    |        |       |       |
| Arthur H. Chetlain,   | 4062    |        |       |       |
| Jesse A. Baldwin,     | 4066    |        |       |       |
| Chas S. Cutting,      | 4071    |        |       |       |
| Wm. E. Dever,         | 4076    |        |       |       |
| Geo. A. Dupuy,        | 4080    |        |       |       |
| Wm. McSurely,         | 4085    |        |       |       |
| Chas A. McDonald,     | 4091    |        |       |       |
| Arba Nelson Waterman, | 4096    |        |       |       |
| Geo. Kersten          | 4093    |        |       |       |
| Theo. Brentano        | 4101    |        |       |       |
| Albert C. Barnes      | 4106    |        |       |       |
| JOB HARRIMAN          | 4110    |        |       |       |

1 July 9th, 1912. 2 o'clock P.M.

2 Defendant in court with counsel.

3 THE COURT: You may proceed, gentlemen.

4 MR ROGERS: With your Honor's permission, I will ask  
5 leave to sit.

6 THE COURT: By all means, Mr Rogers.

7 MR ROGERS: The deposition of Rev. Jenkin Lloyd Jones.  
8 (Reading:)

9 "JENKIN LLOYD JONES, produced as a wit-  
10 ness on behalf of the defendant, being first duly sworn,  
11 was examined in chief by Mr Masters, and testified as  
12 follows:

13 Q Mr Jones, will you please state your full name? A  
14 Jenkin Lloyd Jones.

15 Q Where do you live? A Chicago?

16 Q How long have you lived in Chicago? A Nearly 32  
17 years; 32 years within a few months.

18 Q Where did you live before you lived here? A Janes-  
19 ville, Wisconsin.

20 Q How long did you live there? A About ten years.

21 Q Where were you born? A In Wales.

22 Q Where were you educated? A I grew up in Wisconsin;  
23 went into Wisconsin when I was a baby.

24 Q Your calling is that of the ministry? A Yes sir.

25 Q What church are you identified with in this city?

26 A I am pastor of All Soul's Church.

Q That is located where? A Oakwood Boulevard and

1 Langley avenue.

2 Q Chicago. How long have you been with that Church?

3 A 30 years. I organized it and have been its only  
4 pastor.

5 Q Were you a minister in some other place than Chicago?

6 A I served nearly ten years over a church in Janesville,  
7 and my other settlement was one year at a suburban church  
8 in Winnetka, here. I came from the school to Winnetka,  
9 then went to Janesville, and back to this church.

10 Q You used the term "All Soul's Church"? A That is  
11 the name.

12 Q Does it bear any other name? A I am also the head  
13 resident of the Abraham Lincoln Center, of which the  
14 All Soul's Church is an element.

15 Q The two organizations have their place in the same  
16 building? A In the same building. It is essentially  
17 the same institution. The Abraham Lincoln Center repre-  
18 sents the institutional work of it, the institutional  
19 side, the settlement side, if you please.

20 Q What is the particular line of activity of the Lincoln  
21 Center, is it sociological and philanthropical? A Sociol-  
22 ogical and ethical.

23 Q Do you know the defendant, Clarence S. Darrow? A Yes  
24 sir.

25 Q How long have you known him, Mr Jones? A Oh, clearly  
26 for 25 years. I made his acquaintance soon after my ar-

1 rival in Chicago.

2 Q And where have you known him? A In Chicago.

3 Q All the time in Chicago? A Always , yes.

4 Q During the time that you have known him, was he a man  
5 much or little in public notice in Chicago, Illinois?

6 A Why, he grew to be much in public notice. When I  
7 first knew him he had the obscurity of a beginner.

8 Q In what way was he in public notice, - I mean, as to  
9 whether it was political or legally speaking, profession-  
10 al or in some other way, or all of them? A Why, I would  
11 not speak of his legal status, for I am not acquainted with  
12 that. He was in the public notice as a student of sociol-  
13 ogy, and philanthropic and economic problems. Much inter-  
14 ested in those questions, and on the literary side; I knew  
15 him on those lines.

16 Q Now, what has been the nature and intimacy of your ac-  
17 quaintance with him? A Why, such as would come with a  
18 good many sympathies in common, -- common work. I frequent-  
19 ly had him on my platform, and frequently have spoken on  
20 the platform with him.

21 Q Did you meet him socially? A Often; on the line of  
22 ideas. I am not a society man; never met him in a mere,  
23 perfunctory social way.

24 Q Do you know the general reputation which Mr Darrow  
25 bore in the community in which he resides, -- I mean, by  
26 that Chicago, Illinois, - previous to the finding of these

1 indictments against him, which was in February, 1912,  
2 for truth, honesty and integrity? A I know the impres-  
3 sion I have of his standing in the community.

4 Q Well, Mr Jones, you can answer that question yes or no,  
5 whether you did know that general reputation? A Yes, I  
6 can answer that question.

7 Q How do you answer it? A I say it was good.

8 Q No, but do you, first, know it, yes or no, do you  
9 know it? A I must ask you to explain your question.

10 Q The question is: Do you know the general reputation  
11 which Mr Darrow bore in the community in which he resides  
12 previous to the finding of these indictments, <sup>for</sup> truth, hon-  
13 esty and integrity? A My impression of his impression,  
14 I will say, yes. My impression in the community is very  
15 clear."

16 MR KEETCH: Objected to as incompetent, irrelevant and  
17 immaterial. It is cured later on.

18 THE COURT: Objection overruled.

19 MR ROGERS:(Reading:) "Q You say you have an impression  
20 What do you say? Can you say yes or no as to whether you  
21 do know his general repute and reputation in this city,  
22 for the traits that I have mentioned? A Why, I certain-  
23 ly do know my esteem of the repute which he had."

24 MR KEETCH: Objected to on the same grounds.

25 THE COURT: Wait a moment. I suppose you are entitled  
26 to have that answer stricken out if you want. Strike it

1 out.

2 MR ROGERS: (Reading:) "Q Now, I will ask you the question  
3 What was that reputation, good or bad? A Good, for the  
4 personal integrity.

5 Q For those traits that I put in the question. A Yes,  
6 good for those traits.

7 MR MASTERS: That is all."

8 MR KEETCH: (Reading:)

9 "CROSS-EXAMINATION

10 BY MR KEETCH: Q That is your impression of it, Mr Jones?

11 A That is my impression of the general impression, of  
12 the community impression, that I shared with the community.

13 Q Well, you say you shared it with the community. Have  
14 you ever had occasion to speak of it with anyone? A Why,  
15 necessarily, with regard to Mr Darrow, before this came up  
16 Mr Darrow's standing and reputation was a matter of public  
17 cognizance, and often public discussion, public recogni-  
18 tion.

19 Q As to his truth, honesty and integrity? A Yes sir.

20 Q Would that be involved in what he was doing at the time

21 A Why, it is involved in what the public knew he was do-  
22 ing at the time.

23 Q Have you ever discussed it with anyone, that particu-  
24 lar phase of his character? A Why, if you ask me for  
25 specific instances, of course, I can't specify, in 25  
26 years' acquaintance.

1 MR KEETCH: That is all.

2 MR MASTERS: That is all, Mr Jones; thank you.

3 (Signed.) Jenkin Lloyd Jones."

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5 MR ROGERS: (Reading:)

6 "PAUL BROWN,,produced as a witness on be-  
7 half of the defendant, having been first duly sworn, was  
8 examined in chief by Mr Masters, and testified as follows:

9 Q What is your name? A Paul Brown.

10 Q Where do you live, Mr Brown? A Glencoe, Cook County.  
11 Glencoe is a suburb of Chicago.

12 Q How long have you lived in Cook County and the State  
13 of Illinois? A About thirty years.

14 Q What is your profession, Mr Brown? A Since 1886.

15 Q All of the time in Chicago? A All of the time in  
16 Chicago.

17 Q How long have you known Clarence S. Darrow? A Why, I  
18 first became acquainted with Mr Darrow when he was cor-  
19 poration counsel, or assistant corporation counsel of the  
20 City of Chicago. I think it was something like twenty  
21 years ago, and perhaps more than that.

22 Q Have you ever held any official position, Mr Brown?

23 A Nothing except I was Master in Chancery of the Circuit  
24 Court of Cook County for a number of years.

25 Q What has been the nature and intimacy of your acquaintanc  
26 with him? A Well, as I say, I first became acquainted

1 with him when he was  
2 assistant corporation counsel, or the corporation  
3 counsel of the City of Chicago, -- my brother-in-law was  
4 then in the City Attorney's office or in the Corporation  
5 Counsel's office, I have forgotten which, and I used to see  
6 my brother-in-law very frequently, Mr Clarence A. Knight.  
7 I first became acquainted with Mr Darrow then. Our acquaint-  
8 tance was merely meeting at that time down town socially  
9 and in a business way. Then afterwards Mr Darrow became  
10 the attorney for the Chicago & Northwestern Railroad Com-  
11 pany. My recollection is I met him on one or two lawsuits  
12 while he was attorney for that company. Then, I met him as  
13 much as I would any other lawyer, such as I meet you,  
14 Mr Masters, here in the city of Chicago. Then, later on,  
15 my firm of Horton, Brown & Miller were asso-  
16 ciated with Mr Darrow in <sup>the</sup> a case of Thomas vs. Brigham,  
17 that was a long complicated chancery case, extending over  
18 several years. Of course, I met him very frequently in  
19 that case, in consultation and in court. Then, Mr Darrow's  
20 son had a gas plant at Greeley, Colorado --"

21 MR KEETCH: I do not desire to be technical or to inter-  
22 rupt the witness, but it seems to me that this is taking  
23 a rather wide range, and is more or less incompetent,  
24 irrelevant and immaterial. I make that objection, and  
25 also that no foundation is laid. I make that objection  
26 now.

1 THE COURT: Objection overruled.

2 MR ROGERS: (Reading:) "A I am trying to answer the  
3 question to the best of my ability.

4 Q I see, that is all right. A And that company --  
5 Well, as I say, or as I was about to say, Mr Darrow's  
6 son was running a gas plant at Greeley, Colorado; the legal  
7 affairs, I would say, of that plant, or of that company  
8 were in somewhat of a mixed shape, and Mr Darrow asked me  
9 to straighten that out, and so I formed a new company, got  
10 up a new company; and in that matter I, of course, met  
11 Mr Darrow, frequently.

12 Q Frequently? A Yes sir.

13 Q Have you met him at bar associations and so forth,  
14 or at places of that kind? A Oh, yes, of course, during  
15 all this time I have met him at bar associations, dinners  
16 and things of that kind. And he had pretty decided views  
17 on politics and religion with which I did not, <sup>entirely</sup> agree, and  
18 we used to discuss those.

19 Q Was he much or little discussed here, or mentioned  
20 here in Chicago, during the period of time that you knew  
21 him? I mean as to public discussions, and in the news-  
22 papers or otherwise? A Oh, <sup>certainly</sup> he was much discussed,  
23 of course, Mr Darrow was <sup>frequently</sup> <sup>publicly</sup> expressing <sup>his</sup> views on  
24 various matters, politics and otherwise, and naturally  
25 he would be a man that would be discussed as a public  
26 man.

1 Q A public character? A A public character, yes sir.

2 Q Do you know the general reputation which Mr Darrow bore  
3 in the community in which he resides -- A Yes sir.

4 Q -- previous to the finding of these indictments  
5 against him, for truth, honesty and integrity? A yes sir.

6 Q What was that reputation? A Good.

7 Q What is that reputation? A Well, I should still say t  
8 that it is good. I don't know what the effect is, what  
9 effect these indictments have had, but I should say that his  
10 reputation was good, today, Mr Masters.

11 MR MASTERS: That is all, Mr Brown. "

12 MR KEETCH: (Reading:)

13 "CROSS-EXAMINATION

14 BY MR KEETCH: Q What is the name of your firm, Mr Brown?

15 A I am practicing alone at present.

16 Q Oh, yes. A The last firm I was with was Horton,  
17 Brown & Miller consisting of Judge Oliver H. Horton, myself  
18 and John H. Miller.

19 Q Have you lived in the same neighborhood of Mr Darrow,  
20 that is, the same residence neighborhood? A No.  
21 I have lived in Chicago most of the time, <sup>that</sup> I have been  
22 practicing law here but not in the  
23 immediate vicinity of Mr Darrow's residence. I moved to  
24 Glencoe some years ago.

24 Q When you say the community, you refer to the City of  
25 Chicago? A Yes sir.

26 Q Generally? A Yes sir.

1 Q Your knowledge of him is based on professional inter-  
2 course with him? A Largely as I have stated here.

3 Q You have tried some cases with him, have you? A Sir?

4 Q You have tried some cases against him? A I have tried  
5 some cases against him, I think I tried cases against him.  
6 If I remember rightly I tried two cases against him when he  
7 was attorney for the Chicago & NorthWestern Railway Company.

8 Q Those were mostly damage cases? A They were both  
9 damage cases.

10 Q You were appearing for the injured party? A I was  
11 appearing for the injured party, yes sir.

12 Q What was the result, do you remember, of the cases?

13 A No, I don't. That was rather --

14 Q Well, I withdraw that question. That is probably go-  
15 ing too far. A In those cases, I perhaps ought to  
16 say that I know I was connected with some cases while he was  
17 attorney for the NorthWestern, but that was a good while  
18 ago, but it is an impression in my mind.

19 Q You have tried no cases in which Mr Darrow was on  
20 the other side, and a man by the name of Erbstein was in  
21 the case with him? A No, no sir.

22 Q Have you talked with anybody about his reputation with  
23 reference to truth, honesty and integrity? A Do you mean  
24 at any time?

25 Q Yes. A Why, let me think. You know this question of  
26 reputation, Mr Keetch, when a man's reputation is good,

1 you don't often discuss it, you know. It is the fellow's  
 2 reputation that is not good that is talked about, you know,  
 3 ~~But I can name a few cases, a few instances.~~  
 4 I remember of talking -- well, not that the object of  
 5 the talk was, <sup>to discuss</sup> Mr Darrow's reputation for fruth, honesty  
 6 and integrity, but --

7 Q That is what I have reference to. A Not that  
 8 particularly, -- that is to say, the instance that I am  
 9 about to mention now, ~~in the instance of an about do case~~  
 10 ~~that~~ we did not sit down, <sup>for the purpose of his reputation,</sup> discussing Mr Darrows, you  
 11 understand, but I remember of being in Washington at one  
 12 time, and meeting the Honorable Lloyd <sup>W.</sup> Bowers who had pre-  
 13 viously been the General Counsel for the Chicago & North-  
 14 Western Railroad Company, I think, while Mr Darrow was  
 15 in the office as attorney for the company, or at least Mr  
 16 Bowers came into that office soon after Mr Darrow left.  
 17 By reason of another matter, entirely, Mr Darrow's  
 18 name was mentioned and Mr Bowers expressed his opinion of  
 19 Mr Darrow and of his character and so forth, and he ex-  
 20 pressed the highest regard for his general character,  
 21 although I would not say that he used the words truth,  
 22 honesty and veracity.

23 Q No, certainly not. Then, in that particular instance,  
 24 Mr Bowers was also connected with the Chicago & North-  
 25 western Railroad? A Yes, Mr Bowers had been the  
 26 General Counsel for the Chicago & Northwestern Railroad

1 Company before he was appointed General Solicitor of  
2 the United States by President Taft.

3 Q It would not be expected that he would hold a contrary  
4 opinion with reference to another member of his staff,  
5 one connected with the same company, would it? A I  
6 cannot say that. Mr Bowers was a man of very strong  
7 convictions, and a strong character, and I should re-  
8 gard his opinion very highly on anything or on any man.

9 Q Surely. Then, do you base your statement as to his  
10 reputation upon that one thing? A Oh, no. Judge Horton --  
11 I have heard Judge Horton express the highest opinion  
12 of Mr Darrow as to his character as a man.

13 Q As to legal ability? A As to legal ability, also  
14 his character as a man -- at the same time criticising  
15 Mr Darrow's opinions on certain questions of politics and  
16 other things.

17 Q I see. His reputation for truth, honesty and integ-  
18 rity, outside of the instances that you have mentioned,  
19 you say has not been called to your attention? A Well,  
20 I have heard my partner, my former partner, and also my  
21 brother-in-law, Mr Clarence A. Knight, express the ut-  
22 most confidence in Mr Darrow's honesty and sincerity.

23 Q When these conversations took place, of course, you  
24 don't know, do you? Do you remember when they took  
25 the conversation with Mr Bowers  
26 place? A Why, it seems to me, my impression is that  
was early in the spring, in the early spring of 1910.

1 Judge Horton, I have heard him express that opinion a good  
2 many times; the last time was shortly after these indict-  
3 ments were found.

4 Q Did these conversations go more particularly with ref-  
5 erence to his ability as an attorney, or did they go ~~to~~  
6 into his honesty, truth and integrity? Was that the sub-  
7 ject of those conversations? A Why, no, these conver-  
8 sations I refer to referred to his character as a man,  
9 his honesty, truth, sincerity and so forth.

10 Q They did refer to those particular virtues, did they?

11 A Yes, and I will tell you, if you will let me ex-  
12 plain. Mr Darrow entertained some notions in reference  
13 to governmental ~~and~~, and social questions, ~~and~~  
14 with which I think ~~that~~ I am conservative in saying a  
15 majority of the Chicago Bar didn't agree.

16 ~~He was very free in giving expression to his views, and the lawyers~~  
17 Q Yes. A But I am not expressing any opinion as to  
18 whether his ideas are right or wrong. I am merely saying  
19 that he entertained certain ideas with which the majority  
20 of the Chicago Bar, perhaps, did not agree, and he was very  
21 free in giving expression to his views, and the lawyers  
22 and others would discuss those views and that would nat-  
23 urally lead up to the question of whether he was honest or  
24 not.

25 Q What trend did those views take? A Many people that  
26 talked with him thought he was a crank with reference to

1 those views, but that he was perfectly honest and sincere,  
2 not only honest in those views but an honest and straight-  
3 forward man, but mistaken in some notions that he enter-  
4 tained.

5 Q Well, as a matter of fact, all of those conversations  
6 were with reference to his honesty upon those questions?

7 A The conversations would be naturally be started in  
8 that way, and then, it would naturally lead up to his char-  
9 acter generally, but I could not separate that.

10 Q Of course, they all believed that while he might be  
11 somewhat radical in his views, at the same time he was  
12 sincere in them, is that the idea? A Certainly.

13 Q That is what you mean with reference to his honesty  
14 and truth with reference to those views? A I would not  
15 confine it to that. I would not confine it to his being  
16 honest merely with reference to those particular views.  
17 But his views led to the discussion with reference to  
18 Mr Darrow, don't you see?

19 Q Yes. A And that would then lead to a discussion  
20 of not only his sincerity in his views, but also his  
21 honesty ingeneral, and all that.

22 Q That is the way, is it? A Well, Darrow was regarded  
23 as a man -- for instance his word with reference to a  
24 stipulation, or something of that kind, was just as good as  
25 his bond, and anybody would take it at any time, I would  
26 take it myself. If he said he would do a certain thing,

1 why his general reputation was that he would do it.

2 MR KEETCH: That is all."

3 MR ROGERS: (Reading:)

4 "REDIRECT EXAMINATION

5 BY MR MASTERS: Q Do you know when Mr Dafrow was in the  
6 Corporation Counsel's office, Mr Brown, do you remember  
7 when that was? A Well, now, my recollection would be --  
8 though I may be away off on it, I may be mistaken about  
9 it, but I should say it was something more than twenty  
10 years ago, that he first went into the Corporation  
11 Counsel's office. It may be twenty-five years ago.

12 Q Well, you knew him there then? A I knew him when he  
13 was in the Corporation Counsel's office, yes sir.

14 Q The Mr Bowers that you have mentioned was at one  
15 time the general counsel for the Northwestern and Darrow  
16 was connected with the road at the time that he was general  
17 counsel, at the time that Bowers was general counsel, is  
18 that right? A I think so, although I think that Mr Dar-  
19 row left the employ of the Northwestern shortly after, or  
20 sometime not long after Mr Bowers became its general coun-  
21 sel. As to that I may be mistaken.

22 Q Now, about that, when was that, Mr Brown? A Oh, that  
23 would be practically --

24 Q Many years ago? A Yes, it would be many years ago.

25 Q And at the time you had the conversation with Mr Bow-  
26 ers in Washington, his relationship with the Northwestern

1 and also Mr Darrow's, had, in all senses, terminated?

2 A Mr Bowers' relationship had terminated and Mr Dar-  
3 row's relationship had terminated many years before that.

4 Q As to Mr Darrow you mean? A Yes.

5 Q As to Mr Darrow's retainment? A yes, it had ceased.

6 Q It had ceased many years ago? A Yes, before the con-  
7 versation with Mr Bowers.

8 Q And for the sake of the record, I will ask you to  
9 state who Judge Horton is? A Judge Horton's name is Oliver  
10 H. Horton. He has probably been practicing law in  
11 Chicago for something like fifty years, excepting  
12 eighteen years that he was Judge of the Circuit Court of  
13 Cook County, and he was a member of the old firm of  
14 Hoyne, Horton & Hoyne.

15 MR MASTERS. Yes. A Judge Horton was elected to the  
16 bench, and he served, I think, three terms, and then re-  
17 tired and became my partner, or to put it more correctly,  
18 I became his partner, and the firm name was Horton,  
19 Brown & Miller. Judge Horton is now practically retir-  
20 ed, and he doesn't do very much active work, but he is  
21 still living in Chicago.

22 Q Clarence A. Knight was identified with what interest  
23 here, or in a professional way? A Well, I presume you  
24 refer to the fact that he was president of the Chicago & Oak  
25 Park Elevated Railroad Company? A Yes. That is one of  
26 the elevated railways here? A Yes sir. Mr Knight was an

1 active practitioner here in Chicago for many years before  
2 his death, which occurred in June, 1911.

3 MR MASTERS: That is all, Mr Brown.

4 MR KEETCH: That is all, Mr Brown.

5 (Signed.) Paul Brown."  
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1 MR ROGERS: (Reading:)

2 "JAMES C. McSHANE, produced as a witness on  
3 behalf of the defendant, being first duly sworn, was ex-  
4 amined in chief by MR Masters, and testified as follows:

5 Q What is your full name, Mr McShane? A James C. Mc-  
6 Shane.

7 Q Where do you live? A In Chicago.

8 Q How long have you resided in Chicago? A A little over  
9 25 years.

10 Q Your profession is that of a lawyer? A yes.

11 Has your professional live been followed entirely in the  
12 city of Chicago? A yes.

13 Q When were you admitted to the bar? A In 1888, I  
14 think it was.

15 Q Was that in the State of Illinois? A Yes.

16 Q Are you a member of the Chicago Bar Association? A Yes.

17 Q The Illinois State Bar Association? A Yes.

18 Q American Bar Association? A I don't think so; I  
19 don't recall.

20 Q Have you held any official positions in any of those  
21 organizations? A Well, I am a member of the Board of Mana-  
22 gers of the Chicago Bar Association.

23 Q Have you held any public office of any kind? A No.

24 Q Do you know the defendant, Clarence S. Darrow? A I  
25 do.

26 Q How long have you known him? A For about 25 years.

1 Q All the time in the City of Chicago? A All the time here

2 Q Have you known him in these associations of lawyers

3 that you have mentioned? A Yes.

4 Q Have you known him politically? A Yes.

5 Q Socially? A Yes.

6 Q And professionally? A Yes sir.

7 Q During the time that you have known Mr Darrow, Mr  
8 McShane, I wish that you would state whether or not he is  
9 a man who was much or little in public notice in Chicago,  
10 Illinois? A A very prominent man in the affairs of this  
11 city.

12 Q Would you state in what particular he was conspicuous?

13 A Well, he was one of the leading lawyers in this part  
14 of the country, and he was very active in public affairs,  
15 and especially economic and labor affairs, such as advocat-  
16 ing the eight hour law, and the improved conditions for  
17 working men, and matters of that kind in particular.

18 Q Did you know of him while he was in the Legislature  
19 of Illinois?"

20 MR KEETCH: I object to that as incompetent, irrelevant  
21 and immaterial.

22 THE COURT: Overruled.

23 MR ROGERS: (Reading:) "I did.

24 Q Did you come in contact with him in any way while  
25 he was a member of the Legislature? A No.

26 Q You knew of him by repute, in that time? A Yes, very  
well.

1 well.

2 Q Do you know the general reputation which Mr Darrow  
3 bore in the community in which he resides, previous to  
4 the finding of these indictments against him, for truth,  
5 honesty and integrity? A I do.

6 Q What was that reputation? A The very best. It was  
7 good, the very best.

8 Q Putting the question in the present tense, what is  
9 that reputation now? A I think it is still good.

10 MR MASTERS: That is all, Mr McShane.

11 MR KEETCH: No cross-examination.

12 (Signed.) James C. McShane."  
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1 MR ROGERS: (Reading:)

2 "JOHN J. HERRICK, produced as a witness on  
3 behalf of the defendant, being first duly sworn, was ex-  
4 amined in chief by Mr Masters, and testified as follows:

5 Q Mr Herrick, will you please state your full name?

6 A John J. Herrick.

7 Q Where do you reside? A Chicago, Illinois.

8 Q How long have you lived in the City of Chicago? A 45  
9 years.

10 Q Your profession is that of a lawyer? A It is.

11 Q How long have you practised your profession in the  
12 city of Chicago? A Over forty years.

13 Q Have you ever held any official position, Mr Herrick?

14 A I have not.

15 Q Are you a member of the American Bar Association?

16 A I am.

17 Q Have you held any position in that Association?

18 A I have not.

19 Q Are you a member of the Bar Association of Chicago  
20 and the Illinois Bar Association? A I am a member of  
21 both. I was at one time president of the Chicago Bar  
22 Association.

23 Q When was that? A I don't recall; several years ago.

24 Q Have you ever had any official relation to the Law  
25 Institute of Chicago? A I think I was on the Board at  
26 one time.

1 Q Board of Directors? A Board of Directors, that is  
2 my recollection.

3 Q The Lat Institute of Chicago is the organization of  
4 lawyers that have the law libraby? A Have the law li-  
5 braby.

6 Q For use of its members? A Yes.

7 Q What is the name of your firm? A Herrick, Allen &  
8 Martin, my present firm.

9 Q Just in a general way, what has been the line of your  
10 professional activity, general practice? A I have been  
11 actively engaged in general practice.

12 Q Do you know Clarence S. Darrow? A I do.

13 Q How long have you known him? A I should say over 20  
14 years.

15 Q Where have you known him? A In Chicago.

16 Q What has been the nature and intimacy of your acquaint-  
17 ance with him? A I have been engaged in different cases  
18 in which MR Darrow was engaged, - in which I was engaged  
19 as an attorney and in which he was also engaged as an at-  
20 torney.

21 Q on the same side or different sides? A my recollection  
22 is that I was on opposite sides in every instance.

23 Q Have you known him at the Bar here amongst lawyers in  
24 the City of Chicago? A I have.

25 Q Have you known him in social life? A Not except as I met  
26 him at meetings of the different bar associations or on

1 public occasions and at banquets, otherwise, I think I have  
2 not.

3 Q Have you known him in political life in Chicago? A I  
4 have known of him in political life. I, myself, have not  
5 been at all active in politics, and I therefore have had  
6 no occasion to meet him directly in political matters.

7 Q Do you know the general reputation which Mr Darrow bore  
8 in the community in which he resides previous to the find-  
9 ing of these indictments against him, for truth, honesty  
10 and integrity? A I do, I believe.

11 Q ~~What was~~ that reputation? A It was good.

12 Q And now putting it in the present tense, what is  
13 that reputation? A I should say it is good.

14 MR MASTERS: That is all."

15 MR KEETCH: (Reading:)

16 "CROSS-EXAMINATION

17 By Mr Keetch:

18 Q Your connection with Mr Darrow has been of an intimate  
19 character, Mr Herrick? A I should not say so, no. It  
20 has been rather in relations that came about through being  
21 engaged in the same cases. I recall one or two which were  
22 very important cases and which brought me in contact  
23 with him at many different times, in court and out of  
24 court.

25 Q And you met him in a professional way, only. A I  
26 should say so, as I recall now. Except as I stated, I

1 have no doubt I have met him and I have some recollection  
2 of meeting him in connection with public functions, like  
3 banquets, or meetings of the bar associations here.

4 Q And his reputation in the community in which he lives,  
5 I presume, refers to the City of Chicago entirely? A En-  
6 tirely, as to my knowledge of his reputation.

7 Q The question goes as to his reputation for truth, hon-  
8 esty and integrity, in the community in which he resides.  
9 Have you had occasion to discuss that, Mr Herrick, as to  
10 those particular traits? A I have, in meeting different  
11 lawyers heard his character talked of, and have spoken  
12 of it myself at different times, as I recall.

13 MR KETCH: That is all.

14 MR MASTERS: That is all.

15 (Signed.) John J. Herrick."  
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1 MR ROGERS: (Reading:)

2 "ARTHUR H. CHETLAIN, produced as a wit-  
3 ness on behalf of the defendant, being first duly sworn,  
4 was examined in chief by Mr Masters and testified as follows:

5 Q Judge, will you please state your full name? A Ar-  
6 thur H. Chetlain.

7 Q Where do you reside? A 7414 Sheridan Road, Chicago,  
8 Illinois.

9 Q How long have you lived in the city of Chicago?

10 A 35 years.

11 Q You are by profession a lawyer? A I am.

12 Q How long have you practised the profession of law?

13 A Since 1873.

14 Q In what state were you admitted? A State of Illi-  
15 nois.

16 Q You came from down State, somewhere? A I studied  
17 law at Rockford, yes.

18 Q And did you practice in Rockford a while? A No, I  
19 came direct to Chicago.

20 Q You have been practising all the time in the city of  
21 Chicago? A Ever since, except when I was on the bench.

22 Q Have you ever held any official positions in this  
23 County? A I have held two.

24 Q What are they, Judge? A I was first assistant  
25 Corporation Counsel during the Washburne administration  
26 in 1891, - 1891 to 1893.

1 Q Who was Corporation Counsel then, Judge? A John S.  
2 Miller; I was his first assistant.

3 Q I suppose you remember that Darrow was at one time in  
4 the Corporation Counsel's office? A He was; I met him  
5 there frequently.

6 Q Was that before or after the time he was there, when  
7 you were there? A When I was there was after the time  
8 he was there, although he had matters that were still pend-  
9 ing and often came to the office.

10 Q How long have you known Clarence S. Darrow? A 25  
11 years.

12 Q All the time in the City of Chicago? A Yes.

13 Q What has been the nature and intimacy of your acquaint-  
14 tance with him? A I have known him quite intimately,  
15 saw him frequently when I was first assistant Corpora-  
16 tion Counsel and had an intimate personal acquaintance  
17 with him at that time, socially and professionally, and  
18 that acquaintance has continued more or less up to the  
19 present time, even after I went on the bench.

20 Q When did you go on the bench, Judge? A 1893.

21 Q And that was the Superior Court of Cook County?

22 A That was the Superior Court of Cook County.

23 Q How many terms were you Judge of the Superior Court?

24 A Three terms.

25 Q That is 18 years? A I held a short term, a five  
26 year term. I filled the vacancy left by the death of Judge

1 Kettel.

2 Q And then you held two terms of six years; that would  
3 be 12 years you were on the bench? A 117 years.

4 Q Did you know Darrow in political life here? A Only  
5 in a general way.

6 Q I suppose you knew of him in political life here?

7 A Yes.

8 Q Did you know of him in social life, where you social  
9 friends? A Yes.

10 Q And you knew him at the Bar, of course? A As a prac-  
11 titioner at the Bar.

12 Q As a practitioner ~~at the Bar?~~ before you and  
13 while you were at the Bar yourself? A Yes.

14 Q Did you know him at the Bar Association, -- the City  
15 Bar Association and Illinois Bar Association -- are  
16 you a member of those associations? A I am not a mem-  
17 ber of the Illinois Bar, no.

18 Q Are you of the City Bar Association? A Yes.

19 Q Did you know him there? A In a general way.

20 Q During the time, Judge, that you knew Darrow, I wish  
21 you would state whether he was a man who was much or lit-  
22 tle in public notice here in Chicago? A I may say that  
23 during that entire time he was more or less in public  
24 notice.

25 Q By that you mean in the newspapers? A Politically  
26 and socially, yes, and in every other way.

1 Q And by that you mean in the newspapers and amongst  
2 the people here? A Yes.

3 Q Do you know the general reputation which Mr Darrow  
4 bore in the community in which he resides previous to the  
5 finding of those indictments against him, for truth,  
6 honesty and integrity? A I do.

7 Q What was that reputation? A Excellent."

8 MR KEETCH: Object to the form of the answer.

9 THE COURT: objection overruled.

10 MR ROGERS: (Reading:) "Putting it in the present tense,  
11 what is that reputation? A If the question had been so  
12 asked, I would have said good.

13 (Signed.) Arthur H. Chetlain."

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1 MR ROGERS: (Reading:)

2 "JESSE A. BALDWIN, produced as a witness  
3 on behalf of the defendant, being first duly sworn, was  
4 examined in chief by MR Masters, and testified as follows:

5 Q Judge, will you please state your full name? A Jesse  
6 A. Baldwin.

7 Q Where do you reside? A At Oak Park.

8 Q That is in Cook County? A Yes, eight miles out.

9 Q Is Oak Park a part of the city of Chicago? A No; it  
10 lies immediately contiguous to it, but it has a separate  
11 village government.

12 Q You are a member of the bench here? A yes sir; I  
13 have been on the bench for three or four years.

14 Q And prior to that time in the practice of your profes-  
15 sion? A Practised law here in Chicago 32 years prior  
16 to that time.

17 Q Were you admitted to practice in the State of Illi-  
18 noise; I mean, initially? A Yes sir.

19 Q And elected to the Circuit Bench of Cook County, Illi-  
20 nois, three years ago? A Yes sir.

21 Q At present you are a member of the Appellate Court of  
22 the First District? A yes sir; I was assigned by the  
23 Supreme Court to the Appellate Court work a year ago last  
24 December.

25 Q How long did you practice law in the city of Chicago?

26 A About 32 years before I went upon the bench.

1 Q Do you know the defendant, Clarence S. Darrow? A I  
2 do.

3 Q How long have you known him? A Well, for at least 15  
4 years, and probably 20 years.

5 Q I have to recur a moment. I meant to ask you if you  
6 have ever held any other official position that that of  
7 Judge of the Circuit Court? A Not in the city here. I  
8 have been town attorney in various divisions of our munici-  
9 pality, from time to time, - not in the city; and I occu-  
10 py various positions of trust. I am one of the trustees  
11 of the University of Chicago; I am one of the trustees  
12 of Rush Medical College of Chicago, and I am one of the  
13 trustees of the Manual Training School. Quite a number of  
14 interests of that kind, but no public position -- Oh, I  
15 beg your pardon. I was seven years Assistant United  
16 States Attorney.

17 Q Here in this city? A Yes.

18 Q United States District Attorney? A Yes, assistant.

19 Q When was that, Judge? A My term of service began  
20 early in 1877, and concluded in just the last of December,  
21 1883.

22 Q Who was District Attorney at that time? A Judge  
23 Bangs was the District Attorney at the time I was appointed.  
24 I served with him about a year and a half, and then with  
25 General Leake during his entire term of service, about four  
26 or five years.

1 Q From 1877 to 1883, that was under the Presidential ad-  
2 ministration of President Hayes? A Hayes appointed General  
3 Leake, and General Leake came in and obtained my services  
4 during the entire term of his service, though I had a resig-  
5 nation pending months before he left, action upon which was  
6 withheld at his request, because he did not want to appoint  
7 a successor.

8 Q Are you a member of the Illinois Bar Association,  
9 Judge? A Yes sir.

10 Q Have you held any official relation to the Illinois  
11 Bar Association, as president or vice-president? A No.

12 Q Or in the city bar association? A No.

13 Q You are a member of that, I take it? A I am a mem-  
14 ber of that and also of the Chicago Patent Law Association  
15 and the American Bar Association.

16 Q Have you held any positions in those associations?

17 A I am on the Executive Committee of the Chicago Patent  
18 Law Association. I have held no official connection with any  
19 of the others.

20 Q You are a member of the Law Institute, of course?

21 A Yes.

22 Q Have you held any official position in that? A No  
23 official position in that.

24 Q What has been the nature and intimacy of your acquaint-  
25 tance with Darrow? A Why, I have known Mr Darrow as a  
26 practitioner at the Bar and as one who achieved very con-

1 considerable prominence years ago; and in these later years be-  
2 ing concerned in the more important cases of litigation.  
3 Perhaps I know him as well as almost any lawyer practicing  
4 at the Bar, unless it be some one in our building, where  
5 I met him on account of the location of our offices.

6 Q Have you known him in a political life?

7 A Oh, yes.

8 Q I mean by reputation? A Oh, yes. We were not of  
9 the same political faith.

10 Q Have you known him in social life? A Not so well.  
11 I have met him, but I don't know anything about his home  
12 and community life.

13 Q Have you known him at Bar Association meetings and  
14 places of that kind? A Oh, yes.

15 Q During the period of time that you knew him and  
16 knew of him, I wish you would state whether he was a  
17 personality who was much or little in public notice?

18 A Much.

19 Q Did that notice take the form of newspaper comment or  
20 comment amongst members of the Bar in social life here  
21 in Chicago? A I should say both.

22 Q Do you know the general reputation which Mr Darrow  
23 bore in the community in which he resides previous to  
24 the finding of these indictments against him, for truth,  
25 honesty and integrity? A I do.

26 Q What was that reputation? A It was good.

1 Q And now putting it in the present tense, Judge, what  
2 is that reputation? A It is good.

3 MR MASTERS: That is all."

4 MR KEETCH: (Reading:)

5 "CROSS-EXAMINATION

6 By Mr Keetch:

7 Q Judge, your relation with him has been one of intimacy,  
8 has it? A Not intimacy. I was never associated with  
9 him in any litigation. When I knew him years ago, when he  
10 first attracted my attention, he was one of the counsel  
11 for the Northwestern railroad. I lived upon that line  
12 and knew the officers very well, and had occasion to  
13 observe his conduct in court, and on occasions, I was in  
14 their offices.

15 Q You said you knew him perhaps as well, if not better  
16 than anyone else. That is what I based the question on.

17 A What I meant to say was, his activities were such and  
18 he chanced to be in such a class of litigation that I knew  
19 as much about him as I did about almost any lawyer in  
20 Chicago. I did not mean to indicate more than that.

21 Q No; not socially? A Not socially.

22 Q And you have come over here at the request of Mr  
23 Masters, his friend, and I believe, his former partner?

24 A Yes.

25 (Signed.) Jesse A. Baldwin."

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1 MR ROGERS: (Reading:)

2 "CHARLES S. CUTTING, produced as a wit-  
3 ness on behalf of the defendant, being first duly sworn,  
4 was examined in chief by Mr Masters, and testified as fol-  
5 lows:

6 Q Will you please state your full name? A Charles S.  
7 Cutting.

8 Q Where do you reside? A Chicago, Cook County, Illi-  
9 nois.

10 Q How long have you lived in Chicago? A I have lived  
11 in Chicago seventeen years; I have lived in Cook County  
12 thirty-two years.

13 Q Were you born in this state, Judge? A No sir.

14 Q What state? A Vermont.

15 Q How long have you lived in the State of Illinois?

16 A 48 years.

17 Q Do you hold any official position in this county?

18 A I do.

19 Q What is it? A Judge of the Probate Court of Cook  
20 County.

21 Q How long have you held that position? A Eleven  
22 years last December when I first qualified.

23 Q Before you were elected to the Probate Bench, state  
24 whether you were following the profession of the practice  
25 of law? A I was.

26 Q Was that in this city? A Yes sir.

- 1 Q Did you practice law anywhere else than in Chicago?
- 2 A Never, except incidentally; my office was always here.
- 3 Q Where were you admitted to the bar? A Here in Illi-  
4 nois.
- 5 Q What year? A 1879.
- 6 Q Have you held any other official position than that  
7 of Judge of the Probate Court of Cook County? A I was a  
8 Master in Chancery of the Circuit Court of Cook County for  
9 two terms.
- 10 Q When was that? A That was in -- I think it was 1890  
11 to 1893, a term and a half, in reality; my judge died.
- 12 Q Have you held any other official position in this  
13 county? A Not unless you call educational positions  
14 official. I was President of the Cook County Board of  
15 Education for nine years.
- 16 Q Anything else? A No, only some little local offi-  
17 ces when I lived out in the country.
- 18 Q Ever States Attorney? A No sir.
- 19 Q Were you a member of the Legislature, anything of  
20 that kind? A No sir, not guilty.
- 21 Q Are you a member of the Chicago Bar Association?
- 22 A I am.
- 23 Q The Illinois State Bar Association? A Yes sir.
- 24 Q The American Bar Association? A Yes sir.
- 25 Q Have you held any official positions in any of those  
26 organizations? A No, except that I was a member of the

1 Advisory Council of the American Bar Association for a  
2 while, at one time.

3 Q How long ago was that? A Two years ago.

4 Q Are you officially connected with any of the clubs of  
5 this city? A Yes sir, -- not now.

6 Q Well, when were you? A On, within the last ten  
7 years.

8 Q What club? A I have had official connection with  
9 the Law Club; I was President of that for one term.

10 Q Did you ever have any official connection with the  
11 Union League Club of Chicago??"

12 MR KEETCH: I say, your Honor, to all these questions  
13 relative to the clubs, I might as well, for the purpose  
14 of the record, show there was an objection made to each  
15 one of those questions, and to the last question, "Did  
16 you ever have any official connection with the Union  
17 League Club of Chicago", as incompetent, irrelevant  
18 and immaterial.

19 THE COURT: Objection overruled. It will be understood  
20 that the same objection is interposed to each and every  
21 question.

22 MR KEETCH: What a witness' social relations may be to  
23 a club, cannot have anything to do with the defendant's  
24 reputation.

25 THE COURT: May show his qualifications to give an opinion  
26 as to that reputation, however.

1 MR ROGERS: (Reading:) "A I was president of the  
2 Union League Club of Chicago for one term.

3 Q When was that? A Four years ago.

4 Q Do you know Clarence Darrow, the defendant in these  
5 indictments? A I do.

6 Q How long have you known him? A Fifteen or twenty  
7 years.

8 Q Where have you known him? A Here in Chicago only.

9 Q What has been the nature and intimacy of your acquaint-  
10 tance with him? A Yes, I understand. I have known  
11 him only as a practitioner at the bar.

12 Q You did not know him in any of these organizations of  
13 lawyers? A Yes, I think he was a member of the Chicago  
14 Bar Association and the State Bar Assodation, as I recall  
15 it, and I have no doubt I met him there.

16 Q Have you known him at all socially? A No, I  
17 think not; I never have had any social acquaintance  
18 with him.

19 Q During the time that you knew him, Judge, in Chicago,  
20 Illinois, I wish you would state whether he was a man who  
21 was much or little in public notice? A He was much in  
22 public notice.

23 Q In what particular? A Oh, in the nature of the  
24 litigation which he conducted, in the speeches on political  
25 and sociological subjects which he made more particular-  
26 ly than in any other way.

1 Q Do you know the general reputation which Mr Darrow  
2 bore in the community in which he resides, previous to  
3 the finding of these indictments against him for truth,  
4 honesty and integrity? A I do.

5 Q What was that reputation? A It was good.

6 Q Putting the question in the present tense, what is  
7 that reputation? A Exclusive of these things which  
8 you have previously mentioned, good.

9 Q You mean these indictments? A That is what I  
10 refer to.

11 MR MASTERS: That is all.

12 MR KEETCH: No questions.

13 (Signed.) Charles S. Cutting."  
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1 MR ROGERS: (Reading:)

2 "WILLIAM E. DEVER, produced as a witness on  
3 behalf of the defendant, being first duly sworn, was  
4 examined in chief by Mr Masters, and testified as follows:

5 Q Judge, will you please state your full name? A Wil-  
6 liam E. Dever.

7 Q Where do you reside? A 708 Buena Avenue, Chicago,  
8 Illinois.

9 Q How long have you lived in Chicago? A 28 years.

10 Q Do you hold any official position in the County of  
11 Cook, and state of Illinois? A Yes.

12 Q What is it? A Judge of the Superior Court, Cook  
13 County.

14 Q Have you held any other position in this county or  
15 in this city? A Yes.

16 Q Will you please state what it is? A I was a member  
17 of the Board of Aldermen for nine years.

18 Q Prior to the time that you were elected to the bench,  
19 how long were you practising law in the City of Chicago?

20 A Twenty years.

21 Q Do you know the defendant in this case, Clarence S.  
22 Darrow? A I do.

23 Q How long have you known him, Judge? A About 15  
24 years; oh, I know him personally for about 15 years.

25 Q What has been the nature and intimacy of your acquaint-  
26 ance with him? A Well, I have met him in public life when

1 an alderman at committee meetings -- oh, in various ways; it  
2 is difficult now to recall them all.

3 Q You knew him, then, of course, at the time he was  
4 in the Corporation Counsel's office during the adminis-  
5 tration of Judge Dunne from 1905 to 1907? A I did.

6 Q And during the period of time that you knew him was it  
7 your habit to meet him frequently? A It was.

8 Q I wish you would state whether or not he was a per-  
9 sonality who was much or little discussed during the per-  
10 iod of time that you knew him? A He was.

11 Q You mean by that -- A He was much discussed, yes.

12 Q In the press as well as by word of mouth? A Yes.

13 Q Do you know the general reputation which MR Darrow  
14 bore in the community in which he resides and previous  
15 to the finding of these indictments against him for truth,  
16 honesty and integrity? A I do.

17 Q What was that reputation? A Good.

18 Q Now, I will ask you in the present tense. What is that  
19 reputation now? A Good.

20 MR MASTERS: That is all."

21 MR KEETCH: (Reading:)

22 "CROSS-EXAMINATION

23 BY MR KEETCH: Q The reputation, Judge, I presume, is  
24 with reference to what people have said about his honesty,  
25 truth and integrity? A Yes.

26 Q And you have heard people discuss that particular

1 phase of his character, have you? A Yes, I have.

2 Q Frequently? A Yes, I think I have frequently, yes.

3 Q Can you tell the time and occasion when such a necessity  
4 arose? A I can tell the occasion and about the time, yes.

5 Q As to his truth, honesty and integrity? A I think so,  
6 yes.

7 Q Not with reference to his political standing here.

8 A Well, the discussion I heard involved that also.

9 Q How long have you known him, Judge? A Approximately  
10 15 years, but probably nearer to 20.

11 Q I see. And you have met him frequently? A Yes, very  
12 frequently.

13 Q And your acquaintance with him is of a friendly nature,  
14 of course? A Yes.

15 Q An intimate nature? A Rather intimate; not as inti-  
16 mate, perhaps, as my acquaintanceship with a few others, but  
17 I can say I knew him intimately, yes.

18 Q And naturally under the circumstances in which he is  
19 now placed, you feel that you would answer these questions,  
20 of course, with due respect to the truth, of course, but  
21 I mean as bearing that fact in mind, - that he is the  
22 defendant in the case out there now, that is you would  
23 voluntarily or very gladly accede to this request to testify  
24 in his behalf? A Yes, I would be glad to.

25 Q By Mr Masters: You have come here at my request,  
26 Judge? A Yes.

1 Q Without any subpoena of any kind? A Yes.

2 MR MASTERS: That is all. Thank you very much.

3 MR KEETCH: Thank you, very much.

4 (Signed.) William E. Dever."

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1 MR ROGERS: (Reading:)

2 "GEORGE A. DUPUY, produced as a witness on  
3 behalf of the defendant, being first duly sworn, was exam-  
4 ined in chief by Mr Masters, and testified as follows:

5 Q Will you state your name, please? A George A. Dupuy.

6 Q Where do you reside? A 4526 North Paulina street,  
7 Chicago, Illinois.

8 Q How long have you lived in Chicago? A Over 30 years.

9 Q And your profession is that of a lawyer? A yes sir.

10 Q Have you ever held any official position in this  
11 county? A I was a member of the Superior Court six  
12 years.

13 Q From what time to what time? A 1904 to 1910.

14 Q Did you ever hold any other official position? A I  
15 was assistant Corporation Counsel of the city of Chicago  
16 a number of years.

17 Q How many years, Judge? A I think about four and a  
18 half or five years, altogether.

19 Q What administration was it? A First under Mayor  
20 Hemstead Washburne in 1892 and 1893, continuing for a time  
21 under the administration of Carter Harrison, Senior,  
22 and then later a period of two years under the administra-  
23 tion of George B. Swift, Mayor.

24 Q You started in then under Jonas Hutchinson, wasn't it?

25 A No, I never was in the office with Jonas Hutchinson.

26 Q Did you know the defendant Clarence Darrow, at the time

1 that you were in the Corporation Counsel's office? A I did.

2 Q How long have you known Darrow, Judge? A 20 years,  
3 I think.

4 Q Was that all the time in Chicago? A Yes sir.

5 Q You didn't know him anywhere else except here?

6 A Never anywhere else except here.

7 Q What has been the nature and intimacy of your acquaint-  
8 tance with him? A I have known Mr Darrow during the  
9 last 20 years as a member of the Bar, having met him fre-  
10 quently the same as I would any other member of the Bar,  
11 and during a part of the year 1893 -- I think it was --  
12 Mr Darrow was assistant Corporation Counsel of the city  
13 at the same time I was. I knew him somewhat familiarly  
14 in the office at that time, as we both were in the office  
15 at the same time for a period of some months. Since then  
16 he has conducted cases in the court over which I presided.  
17 Q Did you know him socially, Judge? A Somewhat, I met  
18 him frequently; on several occasions at lawyers' banquets  
19 and things of that kind.

20 Q Did you know him in political life? A Well, not  
21 very much because, generally speaking, Mr Darrow and I  
22 were not on the said side of the political fence.

23 Q Belonged to different parties? A Yes.

24 Q During the time you knew Mr Darrow, I wish you  
25 would state whether or not he was a personality or char-  
26 acter who was much or little discussed in Chicago, Cook

1 County, Illinois? By "being discussed" I mean by word of  
2 mouth and in the public press and otherwise? A He  
3 was a man who was a good deal discussed in all those ways.

4 Q Do you know the general reputation which Mr Darrow  
5 bore in the community in which he resides previous to  
6 the findings of these indictments against him, for truth,  
7 honesty and integrity? A Assuming that the vicinity in  
8 which he resides was Chicago, I answer that yes.

9 Q What was that reputation? A It was good.

10 Q What is that reputation? A Good.

11 MR MASTERS: That is all."

12 MR KEETCH: (Reading:)

13 "CROSS-EXAMINATION

14 BY MR KEETCH: Q The reputation in the community in which  
15 he lives as you understand it, is Chicago, Judge? A Yes  
16 sir.

17 Q And you say you occupied the same office with him for  
18 some time as Corporation Counsel? A In the same office  
19 but different offices in the same suite of offices; we were  
20 both assistants to the Corporation Counsel of the city at  
21 the same time.

22 Q I see. Yes, that is what I mean. And naturally, you  
23 were thrown into more or less intimate contact with him?

24 A Yes sir.

25 Q And that intimacy, I presume, has been kept up from  
26 that time or to the present, until he went to California?

1 A No, that wouldn't be a correct answer, to say that it  
2 has. I have met him very much less frequently during the  
3 years since then, and seen less of him.

4 Q I mean the same friendly relations have been maintain-  
5 ed? A Yes.

6 Q And you spoke of his reputation as to truth, honesty  
7 and integrity. Is that based upon what has been discussed  
8 about his truth, honesty and integrity, or what has not  
9 been discussed about it? In other words, how do you base  
10 your answer that that is his reputation? A I don't  
11 think I ever heard it discussed.

12 Q Is this your personal opinion, Judge, that you are  
13 giving now, or it is reputation -- A Well, I should  
14 say I am testifying to a matter of fact, acquired through  
15 knowledge of the man and of his associations and his life  
16 and professional conduct in the community.

17 Q In a personal way? A Well, I don't know exactly what  
18 you mean by that.

19 Q Your own personal observation? A Yes sir.

20 Q Over which department did you preside, Judge, when you  
21 were Superior Judge? A Well, all three branches of the  
22 work, the common law, chancery work, and presiding in the  
23 Criminal Court, ex-officio. At different portions of my  
24 term of service, I was one year in the Criminal Court and  
25 two years in Chancery work, and the rest of the time in  
26 Common Law work.

1 Q Was Mr Darrow a frequent trial lawyer before you?

2 A Yes.

3 Q Mostly jury cases, were they? A No. He tried a num-  
4 ber of fasses, I remember, and I should think three or  
5 four Chancery suits, that I remember better than I remem-  
6 ber any jury cases he tried; though, I think he did try  
7 some jury cases during the time. I don't remember Mr Dar-  
8 row ever appearing in any case in the Criminal Court, but  
9 he may have done so.

10 Q Do you know a man by the name of Erbstein? A Yes.

11 Q Did he appear in any case with Mr Darrow before you  
12 in the Criminal Court? A I don't think so. I don't  
13 remember of Mr Darrow ever appearing in any criminal cases,  
14 and I don't remember of Mr Erbstein ever appearing in any  
15 but criminal cases, possibly a few divorce cases.

16 Q I thought you said he appeared before the Criminal  
17 Court and he appeared before you there? A No.

18 A I said that I held the Criminal Court part of the  
19 time.

20 MR KEETCH: Thank you. That is all.

21 MR MASTERS: just one question.

22 Q Judge, since retiring from the bench, what has been your  
23 work or practice? A I am attorney for the I<sup>l</sup>linois  
24 Central Railroad.

25 MR MASTERS: That is all.

26 (Signed.) George A. Dupuy."

1 MR. ROGERS. (Reading) "WILLIAM McSURELY, produced as  
2 a witness on behalf of the defendant, being first duly sworn  
3 was examined in chief by Mr. Masters and testified as fol-  
4 lows:

5 Q Judge, will you please state your full name? A William  
6 H. McSurely.

7 Q Where do you reside? A 5037 Washington avenue, Chicago.

8 Q How long have you lived in the city of Chicago? A Twenty  
9 five years, lacking a few months.

10 Q And how long have you practiced law before you were a  
11 judge in this city? A Well, I can perhaps better answer  
12 that by telling when I was admitted, and then you can do  
13 the subtracting.

14 Q All right. A I was admitted to the bar in 1889.

15 Q Did you ever hold any official position, Judge?

16 A I have.

17 Q I wish you would state what they are or were. A Both.

18 Q yes. A I was at one time a member of the General As-  
19 ssembly of this state, representing the Fifth Senatorial  
20 District; that was in the years, 1905 and 1906. And  
21 in the spring of 1907 I was elected to succeed Judge Joseph  
22 N. Gary, of the Superior bench, and I have been on the  
23 bench of the Superior Court continuously since that time,  
24 and re-elected last November for the full term. In Febru-  
25 ary of this year I was appointed by the Supreme Court  
26 to sit in the Appellate Court of the First District of the

1 state of Illinois, and I am sitting there now.

2 Q Do you know Clarence S. Darrow, Judge? A I do.

3 Q How long have you known him? A Well, I have known Mr.  
4 Darrow, I should say, from the time I first came to Chicago,  
5 almost.

6 Q I don't believe I asked you when that was.

7 A Well, I came here in the summer of 1887 and I knew Mr.  
8 Darrow shortly after that.

9 Q That was about the year that he came to Chicago, wasn't  
10 it? A He came here from Cleveland, if I recollect correctly  
11 about that same year.

12 Q You came from the state of Ohio too, did you not? A I  
13 came from the state of Ohio, the southern part.

14 Q Did you know Darrow in Ohio before coming here?

15 A No, I did not.

16 Q Then you have known him since 1887? A I knew <sup>a</sup>Mr.  
17 Langworthy--was that the name of an attorney who, I think,  
18 was with Mr. Darrow ehn Darrow first came to Chicago? That  
19 was in 1887.

20 Q I can't remember, Judge. I wasn't here myself then.

21 A And through Langworthy, who had an office right next  
22 to the office I was in, I then first knew of Mr. Darrow and  
23 met Mr. Darrow.

24 Q Your acquaintance with him has been then, in the city of  
25 Chicago, and nowhere else? A Nowhere else.

26 Q Was he in the legislature at the time you were, or was

1 it before? A He was there the session before I was  
2 there .

3 Q. What has been the nature and the intimacy of your  
4 acquaintance with him, Judge? A I have known him as  
5 one of the well known men of Chicago. He has been more or  
6 less in the public eye for a great many years. I have  
7 never had what you might call an intimate personal rela-  
8 tionship with Mr. Darrow. I had a speaking and chatting ac-  
9 quaintance with him, beginning over twenty years ago, and  
10 at times since then, whenever we would meet, we would talk  
11 and discuss as lawyers would at the bar. I cannot say,  
12 perhaps, it was any closer than that .

13 Q Has he appeared before you when you were holding court?

14 A He has .

15 Q In cases? A He has .

16 Q How frequently did that take place? A Very few times.  
17 Mr. Darrow has been before me, I should say, probably not  
18 to exceed ten times. I might say, that my earliest  
19 association, or knowledge of Mr. Darrow, was in connection  
20 with the old Sunset Club here in Chicago, many years ago,  
21 of which he was/<sup>quite</sup>an active, prominent member, and I was  
22 a very inactive and humble member. I heard Mr. Darrow  
23 talk at almost every meeting, and we would discuss matters  
24 informally perhaps, afterwards.

25 Q That was a club of literary and professional men?

26 A Yes .

Pacific

1 Q Who used to meet generally at the Grand Hotel, didn't  
2 they, for dinner? A Yes, that is the place.

3 Q And talked on some topic like Single Tax, or some-  
4 thing of that kind? A There was no subject too sacred for  
5 them to discuss freely. They discussed everything.

6 Q The attendance was about how much, as an average thing,  
7 Judge, howmany were there? A I should say probably two  
8 or three, or four hundred sometimes.

9 Q During the time you knew Darrow in the city of Chicago,  
10 was he a character here who was much or little in the pub-  
11 lic notice? A He was considerably in the public notice.

12 Q In what way, in what form? A Politically, but perhaps  
13 more especially his views on social questions.

14 Q Economic questions, too? A And economic questions,  
15 especially in connection with questions arising from dis-  
16 cussions of labor problems.

17 Q Was that notice and discussion in the public press, or  
18 by word of mouth, or just what form did it take? A Both,  
19 I should say.

20 Q Do you know the general reputation which Mr. Darrow bore  
21 in the community in which he resides, previous to the  
22 finding of these indictments against him, for truth, honesty  
23 and integrity? A Did I know?

24 Q Do you know the general reputation which Mr. Darrow  
25 bore in the community in which he resides, previous to the  
26 finding of these indictments against him, for truth, honesty,

1 and integrity? A I do.

2 Q What was that reputation? A Good.

3 Q What is that reputation now? A Good.

4 MR. MASTERS. That is all."

5 MR. KEETCH. (Reading) Cross-Examination, by Mr. Keetch.

6 Q The community you referred to, of course, refers to the  
7 city of Chicago? A Yes.

8 Q As a whole? A Yes.

9 Q You don't limit it to any neighborly sense, or anything  
10 of that kind? Just to the whole city You don't live

11 near Darrow, did you? A Yes, the last five years he

12 lived, I understood, at the Chicago Beach Hotel, and I

13 would see him on the train; I lived near there and would

14 take the same train. I used to see him frequently, and

15 when it was convenient, we would sit down together and

16 talk.

17 Q But your relations were not those of intimate friends?

18 A Not at all.

19 Q The nature of the cases which he tried before you,

20 were they in the nature of appeals or-- A It was per-

21 haps in the criminal branch where he appeared more times

22 than any other place.

23 Q Jury trials? A Well, not always a jury trial, but we

24 had quite a session that Mr. Masters knows about, in the

25 matter of the argument to quash indictments. That occu-

26 pied several days,, did it not.

1 MR. MASTERS. Several days.

2 A And then there were other occasions that he appeared  
3 before me.

4 MR. MASTERS. Q you refer, Judge, to the case where Mr.  
5 Frank J. Loesch was special states attorney? A Yes.

6 Q In the primary election matters? A Yes, that is it.

7 MR. MASTERS. Mr. Darrow and I were in those cases.

8 MR. KEETCH. Q Has a man by the name of Erbstein ever  
9 had any cases with him before you? A I think now. Mr.  
10 Erbstein has been before me a great many times, but I don't  
11 recall any case where he was associated with Mr. Darrow.

12 Q And this reputation that you speak of, Judge--of course  
13 it is unnecessary for me to ask you what reputation is, but  
14 that reputation, what is it based on, your discussions with  
15 people? A On what people said about him with reference to  
16 those points.

17 Q These traits? A These traits and others. He was  
18 a muchly discussed man.

19 MR. KEETCH. That is all.

20 (Signed) William H. McSurely."

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1 MR. ROGERS. (Reading.) "CHARLES A McDONALD,  
2 produced as a witness on behalf of the defendant, having  
3 been first duly sworn, was examined in chief by Mr. Masters,  
4 and testified as follows:

5 Q Please state your name? A Charles A. McDonald.

6 Q Where do you reside? A 6121 Kenmore avenue, Chicago.

7 Q How long have you lived in the City of Chicago? A 16  
8 years last past.

9 Q How long have you lived in the State of Illinois?

10 A Practically all my life.

11 Q That is about how long, Judge? A 47 years.

12 Q Do you hold any official position in the County of Cook  
13 and State of Illinois at the present time? A I do.

14 Q What is it? A Judge of the Superior Court of Cook  
15 County.

16 Q Have you held any other official position in this County  
17 or in this state? A I have not.

18 Q When were you elected to the Superior Court bench?

19 A In November of 1910.

20 Q Before that time you were in the practice of the pro-  
21 fession of law in the city, were you? A I was.

22 Q Are you a member of the Illinois State Bar Association?

23 A I am.

24 Q And the Chicago Bar Association? A I am.

25 Q Are you a member of the American Bar Association? A No  
26 I am not.

1 Q Do you know the defendant, Clarence S. Darrow?

2 A I do, quite well.

3 Q How long have you known him? A 15 years.

4 Q Where have you known him? A In Chicago.

5 Q Any other place? A No.

6 Q What has been the nature and intimacy of your acquaint-  
7 ance with him? A Why, I have met him in the practice of  
8 my profession, and also in political life.

9 Q During the time that you have known him in Chicago,  
10 Illinois, I wish you would state whether he was a man who  
11 was much or little in the public notice? A He was very  
12 much in public life.

13 Q Do you know the general reputation which Mr. Darrow bore  
14 in the community in which he resides, previous to the find-  
15 ing of these indictments against him, for truth, honesty and  
16 integrity? A I do.

17 Q What was that reputation A Very good.

18 Q Putting it in the present tense, what is that reputa-  
19 tion? A Good.

20 MR. MASTERS. That is all.

21 MR. KEETCH. That is all. No questions.

22 (Signed) Charles A. McDonald."

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1 MR. ROGERS. (Reading) "GEORGE KERSTEN,  
2 produced as a witness on behalf of the defendant, having  
3 been first duly sworn, was examined in chief by Mr. Masters  
4 and testified as follows:

5 Q What is your name? A George Kersten.

6 Q Where do you reside? A 2328 Cleveland avenue, Chicago.

7 Q How long have you lived in the City of Chicago? A Since  
8 1853.

9 Q Did you at any time practice law in this city? A Yes,  
10 sir.

11 Q From what time to what time? A I practiced Law off and  
12 on from 1883 to 1903. I want to explain that. I was  
13 appointed Justice of the Peace and Police Magistrate in  
14 1883, and during the time I presided as Police Magistrate  
15 and Justice of the Peace I was in general practice, that is,  
16 I had not much general practice, but I practiced a little  
17 off and on.

18 Q Were you born in this state? A I was born in this  
19 state, in Chicago.

20 Q And your admission to the bar then was in this state?  
21 A In this state, in 1886.

22 Q Outside of being Justice of the Peace, and Police  
23 Magistrate, have you held any other official position in  
24 this County? A Yes, sir, Clerk of the Police Court on  
25 the North Division of Chicago from 1880 to 1883.

26 Q And anything else? A No, that was all.

1 Q At the present time you are one of the Judges of the  
2 Circuit Court of Cook County? A Yes, sir.

3 Q When were you elected as Judge, first? A In 1903.

4 Q And re-elected again when? A In 1909.

5 Q And you are serving your second term? A I am serving  
6 my second term now.

7 Q Do you know the defendant, Clarence S. Darrow?

8 A Yes, sir.

9 Q How long have you known him, Judge? A Twenty or  
10 twenty-five years.

11 Q Where did you know him? A I knew him, I think,  
12 in 1887 when he held some position under former Mayor  
13 Harrison, that is Carter H. Harrison, Sr. Then, I  
14 knew him, and was intimately acquainted with him when he  
15 was attorney for the Chicago & North Western Railroad  
16 Company. Now, I am guessing at the time, I can't tell  
17 how many years, but I should judge it is twenty or  
18 twenty-five years ago.

19 Q Your acquaintance with him, then, was in the city  
20 of Chicago. A Yes, sir.

21 Q And nowhere else? A And nowhere else.

22 Q Will you state in a general way, Judge, what has been  
23 the nature and intimacy of your acquaintance with him?

24 A He has tried a great many cases before me when I was  
25 Justice of the Peace and Police Magistrate; and while  
26 presiding in the Criminal Court of Cook County he has



1 MR. ROGERS. (Reading) "ARBA NELSON WATERMAN,  
2 produced as a witness on behalf of the defendant, having  
3 been first duly sworn, was examined in chief by Mr. Masters,  
4 and testified as follows:

5 Q Judge, will you state your full name? A My full name  
6 is Arba Nelson Waterman, "A-r-b-a.

7 Q Where do you reside, Judge? A Right here in Chicago.  
8 Do you want the street number?

9 Q No. Your profession is that of a lawyer? A It is.

10 Q How long have you been practicing law? A Why, I have  
11 been practicing law in Chicago since 1865.

12 Q Have you occupied any official position in this County?

13 A yes. I was once Alderman from the 11th Ward; that was  
14 about twenty-five years ago, I should say. I was once  
15 Judge of the Circuit Court.

16 Q How many terms were you Judge of the Circuit Court?

17 A Well, seventeen years.

18 Q That is, Judge of the Circuit Court of Cook County,  
19 Illinois? A The Circuit Court of Cook County, Illinois;  
20 and during the greater part of that time I served, by ap-  
21 pointment of the Supreme Court, either in the Appellate  
22 Court of this district, or in the Appellate Court sitting  
23 in Ottawa.

24 Q Second District? A Second district, yes, sir.

25 Q Under our law here, the Supreme Court appoints the  
26 judges of the Appellate Court? A Yes, sir.

1 Q From the Circuit and the Superior bench here? A yes  
2 sir.

3 Q And the Appellate Court, that is a court of review over  
4 the Circuit and Superior Courts? A Yes, sir.

5 Q Do you know Clarence S. parrow, Judge? A I do.

6 Q How long have you known him? A Well, my impression is,  
7 about twenty-five years. I would not be sure. I don't  
8 remember exactly when I first became acquainted with  
9 him, but I should say I have known him twenty-five years.

10 Q That is, you have known him that length of time in  
11 this city? A In this city. I never knew him anywhere  
12 else.

13 Q Nowhere else? A No, sir.

14 Q What are your politics, Judge? A Well, I used to be,  
15 before and during the Civil War, during the agitation pre-  
16 ceding the Civil War, I was a very earnest and determined  
17 Republican. Naturally, under the necessities which the  
18 Government was run in carrying on the War, I hadn't very  
19 much thought of anything except that I was a Protective  
20 Tariff man, or rather it was believed we had to have a  
21 high tariff; but now, I am a Republican in most matters.  
22 I do not believe in the principle of increasing the cost  
23 to one man of what he should consume, for the purpose of  
24 increasing the wages of another man. So that now, to  
25 that extent, I am not a Republican, that is, not in harmony  
26 with or in sympathy with tenets of the party.

1 Q What has been the nature and intimacy of your ac-  
2 quaintance with Mr. Darrow? A Well, I have known him.  
3 He has tried cases before me, not many, but some. I have  
4 known him also socially, although, of course, I knew him  
5 well enough to speak to him whenever I met him. The  
6 Appellate Court of this District, when I sat therein, had  
7 its rooms in the Ashland Block. Mr. Darrow's office was also  
8 in the Ashland Block, and I used to frequently meet him.

9 Also, at one time, there was a little organization  
10 here, I forget its name, but we met once or twice perhaps  
11 a month, in some room, and had a rather plain dinner, and  
12 after dinner we had some questions up for discussion which  
13 has been selected before. Now, I remember of meeting Mr.  
14 Darrow there, I cannot remember how many times, but I  
15 remember at least of one time. I feel quite confident that  
16 I selected the subject for discussion and led the discus-  
17 sion, and that Mr. Darrow spoke, and he did not agree with  
18 me at all.

19 I knew Governor Altgeld quite well, who after  
20 ceasing to become Governor became associated in the practice  
21 of law with Mr. Darrow. I have not been very intimate with  
22 him, but intimate I was, and more intimate than I was  
23 with the average lawyer. We have probably some three thou-  
24 sand members, I think, and, of course, we don't know them  
25 all. But I knew him quite well. He was a man whose name  
26 was frequently in the papers. He held certain views, and

1 also he was quite an orator; he held certain views that  
2 attracted attention.

3 I don't remember upon any purely social gather-  
4 ing that I met him, that I think of meeting him other  
5 than at this little organization.

6 Q How about the Bar Associations, the State Bar Associa-  
7 tion, for instance; do you remember meeting him on occa-  
8 sions of that kind? A No, I don't remember exactly about  
9 that. I have been a member of the State Bar Association  
10 for some time, and a member of the Chicago Bar Association,  
11 and a member of the Library Association of the Law Insti-  
12 tute, but I do not recall meeting him at any of those  
13 places.

14 Q Do you know the general reputation which Mr. Darrow bore  
15 in the community in which he resides, previous to the  
16 finding of these indictments against him, for truth, honesty  
17 and integrity? A I think I do.

18 Q What was that reputation? A It was good.

19 MR. MASTERS. That is all."

20 MR. KEETCH. (Reading) "Cross-examination, by Mr. Keetch,

21 Q Judge, have you lived near Mr. Darrow as a neighbor?

22 A Well, I have not known where he has lived, so I can't  
23 say whether I have or not.

24 Q Well, there has not been neighborly intercourse between  
25 you, particularly? A Not in the way of visiting back and  
26 forth, no, sir.

1 Q Well, your knowledge of him in a personal way has  
2 been confined to your meeting him at the bar, and when he  
3 came before you trying cases, and that debating society,  
4 and so forth, on that association where questions were  
5 debated? A Let me say that I have heard him frequently  
6 spoken of by lawyers and other people. As I have said  
7 before, he was some thing of an orator, and he attracted  
8 attention, I think he had more attention, and there was  
9 more speech about him, than is true of the ordinary lawyer.

10 Q But with reference to this question of his truth,  
11 honesty and integrity, have you heard that discussed in the  
12 community? A If I have, it is since the indictment,  
13 either since the indictment, or since it was talked of  
14 in the papers that he was likely to be indicted, but I  
15 don't remember about that exactly.

16 Q Nothing before that, however? A I don't remember  
17 before that of any discussion of his honesty, integrity  
18 or truthfulness.

19 Q Well, will you say that his reputation is good for  
20 those virtues, or as a matter of fact it is <sup>of</sup> ~~that~~ negative  
21 character, that you have never heard anything to the con-  
22 trary. A I will say a little more. I will say that  
23 I heard him very frequently spoken of, and I have never  
24 heard his honesty, integrity, and truthfulness called  
25 into question.

26 MR. KEETCH. That will be all, Judge.

1 MR. MASTERS. That is all.

2 (Signed) Arba Nelson Waterman."

3 MR ROGERS: (Reading:) ---

4 "THEODORE BRENTANO, produced as a witness  
5 on behalf of the defendant, being first duly sworn, was  
6 examined in chief by Mr Masters and testified as follows:

7 Q Will you please state your name, Judge? A Theodore  
8 Brentano.

9 Q Where do you reside? A 701 Gordon Terrace,  
10 City of Chicago.

11 Q How long have you lived in the City of Chicago?

12 A 52 years.

13 Q Do you hold any official position in this county now?

14 A Yes.

15 Q What is it?

16 A Judge of the Superior Court of Cook county? A

17 Q How long have you been a judge of the Superior  
18 court? A Twentyone years and a half.

19 Q Before that time were you in the practice of the  
20 profession of law in this city? A Yes sir.

21 Q ~~From~~ For how many years? A Ten years.

22 Q Did you hold any other official position before you  
23 were elected to the bench? A Yes.

24 Q What was it? A Assistant corporation counsel of the  
25 city of Chicago, and the assistant city attorney of the  
26 city of Chicago.

1 Q Under whose administration were you assistant cor-  
2 poration counsel? A Mayor John A. Roach.

3 Q Who was the corporation counsel? A O. H. Horton,  
4 ex-judge Horton.

5 Q And afterwards judge of the Circuit Court? A Yes,  
6 afterwards.

7 Q And who was city attorney at the time you were assist-  
8 ant city attorney? A Hempsted Washburn.

9 Q Who was afterwards mayor of the city? A After-  
10 wards mayor of the city, and before that my business  
11 associate under the firm of Washburn & Brentano.

12 Q In the practice of law? A In the practice of law.

13 Q Do you know the defendant, Clarence S. Darrow? A I do

14 Q How long have you known him? A Over twenty years,  
15 twenty-two years.

16 Q All the time in the city of Chicago, state of Illinois  
17 A Yes.

18 Q And what has been the nature and intimacy of your inti-  
19 macy and acquaintance with him? A Will you read the  
20 question? (Question read) Socially and professionally.

21 Q You have known of him in political life? A Known  
22 of him in political life, yes.

23 Q What are your politics? A I am a republican.

24 Q You and he belonged to the same -- A Well, I don't  
25 know what political party Mr Darrow belongs to but I am  
26 a Republican.

1 Q During the time that you have known of Mr Darrow  
2 in this city meaning by that the city of Chicago, state of  
3 Illinois, I wish you would state whether or not he has  
4 been in or was much or little in public notice here?

5 A I should say he was, he was considerably in the notice  
6 of the public always.

7 Q Will you state in what particular, whether political  
8 professional, or with reference to sociological matters,  
9 or all of them? A I don't know particularly as to what--

10 Q That is whether he was in public notice here with  
11 reference to those matters or all of them or some of them  
12 only. A Well, I believe as to all of them.

13 Q Are you a member of the City Bar Association, Judge?

14 A I am a member of the Bar Association of Cook County,  
15 I think --

16 Q Chicago Bar Association? A The Chicago Bar Associa-  
17 tion.

18 Q And a member of the Illinois Bar Association? A I am.

19 Q And the American Bar Association? A No.

20 Q Have you known Mr Darrow in these organizations? A I  
21 have not.

22 Q Have you known him socially in this city? A Yes, he  
23 was a neighbor of mine for some time.

24 Q When was that, Judge? A Oh, three or four years  
25 ago when he lived on Sheridan Road and I lived right off  
26 of Sheridan.

1 Q For how long a period of time was it? A Well, I  
2 think that was a short period, probably only a year.

3 Q Do you know the general reputation which Mr Darrow  
4 bore in the community in which he resides previous to  
5 the finding of these indictments against him, for truth  
6 honesty and integrity? A I can answer that in this way,  
7 that I never heard it questioned.

8 Q Well, the first question, Judge, is just yes or no.  
9 First, do you know the general reputation which Mr Darrow  
10 bore in the community in which he resides previous to the  
11 finding of these indictments against him, for truth,  
12 honesty and integrity? A As a lawyer and strictly  
13 answering I should say no, because I have had no occasion  
14 to discuss it, never having had any occasion to discuss  
15 it.

16 Q Well, what would you say was that reputation, good  
17 or bad? A I always thought it was very good.

18 MR MASTERS: That is all.

19 MR KEETCH: Well, Judge --

20 A Mr Darrow I may say, appeared before me in numerous  
21 cases, litigated before me and during all of that time his  
22 conduct as a lawyer was equal to the requirements of the  
23 ethics of the profession."

24 MR KEETCH: I object to that as not responsive to the ques-  
25 tion. I think the question should be and the answer should  
26 be, I do know what his reputation is or I do not in

1 the community in which he lives, for truth, honesty  
2 and integrity, and it is good or bad. That is the objec-  
3 tion that I now make, and ask that the answer be stricken  
4 out.

5 MR ROGERS: If your Honor please, we all know that the  
6 code prescribes an exact method that we have to follow in  
7 these matters. We know the code lays down certain ques-  
8 tions we have to ask, and we always find great difficul-  
9 ty --

10 THE COURT: I think it is informally, but harmless.

11 MR ROGERS:" Even with a judge as celebrated as Judge  
12 Brentano, it is hard to get them to answer questions.

13 MR KEETCH: I am offering this for the purpose of the re-  
14 cord only.

15 THE COURT: It is an irregularity, you are quite right  
16 about that, Mr Keetch. The objection will be overruled.

17 MR ROGERS: (Reading:) "Q DO you offer that suggestion  
18 by way of amplification and explanation of your answer?

19 A I do.

20 MR MASTERS: That is all. Cross-examine.

21 MR KEETCH: Q By the community, do you mean the commu-  
22 nity in which you lived and which Mr Darrow lived at that  
23 time in Sheridan road? A No, I mean the city of Chicago.

24 MR KEETCH: That is all.

25 MR MASTERS: That is all, Judge. Thank you.

26 (Signed.) Theodore Brentano."

1 MR. ROGERS. (Reading) "ALBERT C BARNES,  
2 produced as a witness on behalf of the defendant, being first  
3 duly sworn, was examined in chief by Mr. Masters, and  
4 testified as follows:

5 Q Will you please state your full name? A Albert C.  
6 Barnes.

7 Q Where do you reside? A Chicago.

8 Q How long have you lived in the City of Chicago? A Since  
9 1885.

10 Q What is your age? A I am between 50 and 100.

11 MR. KEETCH. That is sufficiently definite for me, Judge.

12 MR. MASTERS. Q Do you hold any official position in this  
13 County, Judge. A I am one of the Judges of the Superior  
14 Court of Cook County.

15 Q How long have you been a judge of the Superior Court?

16 A Off and on, going on seven years.

17 Q You were elected first when? A In 1904, and the  
18 term expired in 1910, and I was recalled in 1911.

19 Q And reelected in-- A 1911; recalled to the bench.

20 MR. KEETCH. It was not a Roosevelt recall, apparently?

21 A No, no.

22 MR. MASTERS. Q Have you held any other official posi-  
23 tion in this county? A Well, I was assistant State's At-  
24 torney.

25 Q For how long? A For eight years.

26 Q From what time to what time? A 1898 until I was elected

1 judge in 1904.

2 Q That was in the administration of whom? A Now Governor  
3 Deneen.

4 Q Charles S. Deneen? A Then State's Attorney Deneen.

5 Q Well, have you held any other public office than those  
6 two, Assistant States Attorney, and Judge of the Superior  
7 Court? A Not here.

8 Q Any other place? A I had a short residence in Dakota,  
9 and was elected District Attorney there.

10 Q Where were you first-- A And held a Government posi-  
11 tion in early youth, early manhood rather, in Washington.

12 Q What was that? A In the Interior Department.

13 Q You mean in the City of Washington? A Yes.

14 Q What was that position? A Examiner of cases,  
15 contested land cases.

16 Q Where were you admitted to the bar? A New York state.

17 Q In what year? A 1877.

18 Q Where did you begin to practice your profession?

19 A Well, I was in a law office, but not practicing in my  
20 own name, in New York state for a short time, and I did  
21 not enter upon the practice in my own name until after I  
22 left Washington and left for Dakota; I was there about  
23 a year and a half, and came to Chicago about 1885, and have  
24 been here practicing law until I was on the bench.

25 Q Are you a member of the Chicago Bar Association?

26 A I am.

1 Q And the Illinois State Bar Association? A I am .

2 Q Are you a member of the American Bar Association?

3 A I am .

4 Q Have you held any official position in any of those?

5 A No.

6 Q What political party do you affiliate with, Judge?

7 A Republican.

8 Q Do you know Clarence Darrow, the defendant in these  
9 indictments? A I do.

10 Q How long have you known him? A Well, personally  
11 sometime, as near as I can remember, between fifteen and  
12 twenty-one and twenty-two years.

13 Q Where have you known him? A Here in Chicago.

14 Q What has been the nature and intimacy of your acquaint-  
15 ance with him? A I have known him frequently in the  
16 courts, and as you would meet attorneys outside of the  
17 courts, casually, on the street, or in places of common  
18 meeting, like banquets, and bar association meetings and  
19 similar ways .

20 Q During the time that you have known him, was he a  
21 man who was much or little in the public notice in Chicago,  
22 Illinois? A Well, much in the public notice, I should  
23 say .

24 Q Do you know the general reputation which Mr. Darrow bore  
25 in the community in which he resides, previous to the  
26 finding of these indictments against him, for truth,

1 honesty and integrity? A I do.

2 Q What is that reputation? A Good.

3 Q Putting the question in the present tense, what is  
4 that reputation? A You mean excepting what is published  
5 in connection with the indictment?

6 Q yes, that included or excluded, as you see fit to answer  
7 it? A Good either way.

8 MR. MASTERS. That is all, Judge.

9 MR. KEETCH. No questions.

10 (Signed) Albert C. Barnes."

11

12 THE COURT: I think this is a good time to take a re-  
13 cess.

14 (Jury admonished. Recess for 10 minutes.)

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(After recess.)

1 THE COURT. You may proceed, Gentlemen.

2  
3 MR. ROGERS. About the depositions, your Honor please, there  
4 will come times, of course, in the production of our evi-  
5 dence, when there may not be a witness present and we may  
6 have a few minutes, or one thing and another, and I have  
7 reserved some depositions with which we may take up that  
8 time. I do not waive the reading of the depositions. I  
9 think the jury is probably tired of one way of the pre-  
10 sentation of evidence at this time, and I will produce  
11 other depositions from time to time to take up the time,  
12 besides that, I am about tired out reading them.

13  
14 J O B H A R R I M A N,

15 called as a witness on behalf of the defense, being first  
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 MR. ROGERS. Q What is your name, please? A Job Harri-  
19 man.

20 Q And your profession? A Lawyer.

21 Q How old are you, Mr. Harriman? A 51.

22 Q Where do you live? A Los Angeles.

23 Q How long have you lived in Los Angeles? A I came to  
24 Los Angeles in '86. From time to time I have been out of  
25 the city but the majority of the time since then.

26 Q And your residence in the county, how long has that been

1 A The last time since '85.

2 Q Have you followed your profession here in the city since  
3 that time? A Since '85 constantly; sometime before but  
4 not regularly.

5 Q Calling your attention to the month of November of last  
6 year, 1911, during that month were you engaged in any mat-  
7 ter other than the practice of your profession as a lawyer?

8 MR. FORD. Just a moment, if the Court please--before the  
9 witness testifies further we would ask that Section 1324  
10 of the Penal Code be read to the witness.

11 A I will waive all right under the section.

12 MR. FORD. We will read it first, it must be read.

13 A I am familiar with it and waive it all.

14 MR. FORD. The witness cannot waive it.

15 MR. ROGERS. The witness can state his waiver if he knows  
16 it.

17 MR. FORD. We are handling this side of it.

18 THE COURT. Just a moment, Gentlemen.

19 MR. DARROW. Just a moment, your Honor. I will object to  
20 it.

21 THE COURT. All right.

22 MR. DARROW. ~~There is no obligation on the part of the~~  
23 ~~court, no duty resting on the District Attorney to call for~~  
24 ~~any such thing. /<sup>If</sup>This witness had been produced by the~~  
25 ~~state it might, perhaps, under certain circumstances have~~  
26 ~~been incumbent upon the court to read it, but he comes here~~

1 voluntarily, not produced by the state, not compelled to  
2 testify, but called by the defense, and there is no occasion  
3 to read it. He comes here himself for the defense, not  
4 called by the state, not compelled to testify at all.

5 MR. FREDERICKS. He may be compelled to testify for the  
6 defense if he is subpoenaed.

7 MR. ROGERS. I will ask him. Q Were you compelled to  
8 testify or were you subpoenaed? A I have never been  
9 subpoenaed by the defense.

10 MR. FORD. ~~Just a moment, Mr. Harriman. We object to the~~  
11 ~~question as not competent or relevant to any issue before~~  
12 ~~the court, and is absolutely immaterial, and we insist~~  
13 ~~on Section 1324 being read.~~

14 THE COURT. There is no objection to counsel asking a  
15 question in order to lay the foundation for his objection.

16 MR. DARROW. Your Honor, if I may say a word further about  
17 this question: The history of that section is very plain;  
18 there can't be any question about it; under the Federal  
19 Constitution and the state constitution of many states a  
20 man could not be called into court under inquisition and  
21 compelled to testify; he had the right not to incriminate  
22 himself in any proceeding, and the state could not put  
23 him on the stand and compel him to testify either before  
24 the grand jury or any one else, then in order to get at  
25 some cases, whether wisely or unwisely, legislatures have  
26 provided that a man may receive immunity from the thing

1 he may be suspected of, by going on the stand for them.  
2 And that when he receives immunity from the state there  
3 can be no objection to his testifying; but, that is made  
4 entirely so the state may compel testimony in certain cases  
5 and they may give immunity in certain cases, and then the  
6 witness is compelled to testify if immunity is granted to  
7 him; and it is made purely for the benefit of the state  
8 in the prosecution of cases, otherwise they could not use  
9 John Smith against Tom Jones, but he would sit silent and  
10 refuse to testify on the ground that the constitution pro-  
11 tected his rights, and he could not incriminate himself; and  
12 if John Smith is on trial and Tom Jones wishes to testify  
13 for him, is there any question but what he has a right to?  
14 Your Honor, that is absurd and any lawyer who understands  
15 the A, B, C of the constitution of this provision knows it.  
16 Does your Honor mean to tell me there ever was a time in the  
17 history of the world when a defendant in court could not  
18 call any witness he saw fit? He may testify, even though  
19 it incriminate himself, and he is not to be insulted by the  
20 District Attorney when he testifies. That is his business  
21 and that is our business and it always was under any consti-  
22 tutional provision and under any law.

23 This statute has been passed purely for the bene-  
24 fit of the State's Attorney and for the prosecution, that  
25 a man who may be suspected of something may still be put  
26 upon the stand against somebody else if he is granted im-

1 munity ~~against the matter on which he testified~~; if the  
2 immunity is granted, then, of course, he is not in danger of  
3 prosecution and he cannot testify against himself, because  
4 there is no chance to indict him. Now, let us look a  
5 little further: This is too plain or too absurd to talk  
6 about an argument. Suppose this witness comes here and  
7 testifies for the defense without the reading of the statute  
8 Does he get immunity, can he claim immunity? Not for a  
9 moment. He can only claim immunity if he is called here by  
10 the state and compelled by the state to testify. The con-  
11 stitution, and reaching away back from the time English-  
12 speaking nations first had those provisions provided that  
13 no man should be compelled to give evidence against himself  
14 or to incriminate himself, and that was made purely for the  
15 purpose of saving an individual from inquisition by the  
16 state and its officers, and nothing else; so that you  
17 could not go into a man's home or his office and bring him  
18 into a grand jury or bring him into a court and compel  
19 him to testify against himself; but it was never meant for  
20 anything else, not from the earliest times until today,  
21 and so it has been written in the constitution of every  
22 country where the common law prevails and in every state of  
23 our Union, that he cannot be compelled to give evidence  
24 ~~in any way against himself.~~

25 THE COURT. Let me interrupt you a moment. I am afraid  
26 you are acting on the theory that the court was about to

1 read the section.

2 MR. DARROW. I was.

3 THE COURT. The Court was about to examine the section with  
4 reference to the situation that has arisen; it is a fair  
5 thing to make that statement.

6 MR. DARROW. I was acting on the assumption.

7 THE COURT. I thought you were acting on that assumption.

8 MR. DARROW. Yes, and objecting to this, and arguing this  
9 and trying to show the origin, that any man called by a  
10 defendant could receive immunity if he voluntarily testi-  
11 fies is not to be thought of, it is absurd. He might  
12 refuse, that is for him, but when he comes here voluntarily  
13 to testify for somebody else, not compelled by the state,  
14 there is not any constitutional provision or any statute  
15 connected with it, and it is nothing but an insult to the  
16 witness.

17 THE COURT. Just a moment--I want to glance at the statute  
18 in relation to this situation. All right, Mr. Ford, I have  
19 heard what I wanted to.

20 MR. APPEL. We have not finished our argument.

21 THE COURT. I will hear you further.

22 MR. FORD. If the Court please, the situation in regard  
23 to this witness is exactly that of the witness Johannsen,  
24 over which no strenuous objections were made by the defense  
25 in this case. The witness on the stand has not claimed  
26 that it is a violation of any privilege which he has as a

1 witness and I do not see any reason for the defense to be  
2 excited or exercised over this matter.

3 MR. ROGERS. I take an exception to that there just stated,  
4 the last three sentences or four sentences.

5 MR. FORD. I will stipulate everything I say may be ex-  
6 cepted to.

7 MR. ROGERS. I will take your stipulation, everything you  
8 say is excepted to as misconduct.

9 MR. FORD. It is hard for us at this time to criticise  
10 Mr. parrow in his attitude as a lawyer before the court, and  
11 regardless of the fact that he is the defendant in this  
12 case, he has made remarks before this court which are not  
13 pertinent to the issue in any way, shape or form, char-  
14 acterizing the conduct on the part of the District Attorney  
15 as absurd and characterising the position which they take  
16 in regard to the legal point as absurd.

17 THE COURT. Mr. Ford, I think perhaps the court somewhat  
18 misled counsel in presenting the argument and put itself  
19 right in the statement in the midst of the argument.

20 Mr. Darrow began to talk and I had reached for the book and  
21 perhaps he was justified in assuming I was  
22 about to read the statute. I was not. I was about to  
23 examine it with reference to the situation. That is the  
24 position that was taken. I think we had better come down  
25 to the merits of it and see whether or not it is the  
26 legal duty of the court to read the statute at this time.

1 that is the only question.

2 MR. FORD. I wish to say, your Honor, we shall confine  
3 our remarks to the issue before the court rather than cast-  
4 ing any aspersions or lack of intellect upon our antagonist,  
5 no matter what I may think upon that subject.

6 MR. ROGERS. I take an exception there, because the most  
7 learned man may take a mistaken position.

8 MR. FORD. I take it that way, I have a high respect for  
9 your learning. Now, the point is whether or not this  
10 witness should have the section read to him.

11 THE COURT. That is the point.

12 MR. FORD. The language of this section is very ambiguous,  
13 we are free to admit that. We are not making any charges  
14 at this time with reference to this witness, but there are  
15 certain portions of that section which are so ambiguous,  
16 that in the interest of safety, we desire that they be  
17 read. I call your Honor's attention to the latter part--

18 THE COURT. There is no question but what it is ambiguous,  
19 Mr. Ford. I have read it a number of times, and I agree about  
20 that.

21 MR. FORD. The latter part of the section contains language,  
22 your Honor, which might be interpreted to mean that any wit-  
23 ness who has been compelled to appear in court to testify  
24 will thereafter be exempt from prosecution as to those  
25 ~~matters concerning which he gave testimony.~~

26 THE COURT. But, the witness on the stand has not been com-

1 pelled to appear, he is here voluntarily, he is not even  
2 under process.

3 MR. FORD. Well, if the Court please, I don't know anything  
4 about that, but when a witness is on the stand--

5 THE COURT. He has so stated under oath.

6 MR. FORD. But when he is on the stand, your Honor, and  
7 testifying for the defendant, he could not object to any  
8 question, he could not refuse to testify to any question  
9 merely on the ground he had voluntarily appeared and was  
10 not under subpoena. Your Honor, when a witness takes the  
11 stand he is immediately under the jurisdiction of the court  
12 the same as though he had been subpoenaed, and when a witness  
13 takes the stand and is answering questions he is compelled  
14 to answer those questions, he cannot hide behind the lack  
15 of a subpoena.

16 MR. DARROW. May I ask you a question, Mr. Ford?

17 MR. FORD. I prefer you address yourself to the court.  
18 The point here in this particular instance is absolutely of  
19 no detriment in any way, shape or form to the defendant  
20 in this case, it is not intended as an insult to the wit-  
21 ness, it is merely intended to protect our rights in the  
22 event that anything should develop concerning which we want-  
23 ed to take some action, and I can see absolutely no merit  
24 to the defendant's contention that it should not be read  
25 at this time to this witness.

26 Now, during the direct trial of this case, your

1 ~~Honor, we were opposed to the reading of the section to the~~  
2 ~~witness merely because the lack of reading, the failure to~~  
3 ~~read it entitled the witness to immunity and that was the~~  
4 ~~position that we took. Your Honor permitted one witness~~  
5 ~~here to testify; if the section had not been read to him~~  
6 ~~he would have automatically become immune if anything should~~  
7 ~~have developed in his testimony for which he should be prose-~~  
8 ~~cuted afterwards. Upon the objection of the defense in~~  
9 ~~this case your Honor read the section to the witness and he~~  
10 ~~did claim his immunity and the result being simply the same~~  
11 ~~as though it had not been read to him in the first instance~~  
12 ~~the way the prosecution started out.~~

13           In this case we merely want to be protected in  
14 whatever rights we have. It will not delay the case to read  
15 the section, three minutes; it is something to which the  
16 witness is not objecting and the witness himself says he  
17 does not claim any immunity and if the section is read and  
18 he remains silent on that matter he appears before the jury  
19 as though he might have stipulated any immunity that might  
20 attach by reason of his failure to claim immunity. I feel  
21 on behalf of the prosecution it is absolutely essential  
22 that we protect our rights with this witness.

23 MR. FREDERICKS. I would like to say a word, as the other  
24 side will close, probably.

25 THE COURT. All right, Captain.

26 MR. FREDERICKS. Counsel may rest assured we have no desire

1 ~~to insult the witness. Life is too short and we have~~  
2 poenty of troubles we cannot avoid and we will not  
3 attempt to insult this witness or any other. We would not  
4 ask for the reading of this section unless we thought it  
5 was a proper thing to do from a cold calculation of the  
6 situation. I think Mr. Darrow is correct in his idea of  
7 the reason for this law, that it was primarily agitated and  
8 passed for the reason that he states. I think that is  
9 correct, but, from the study that we have given the law  
10 since it became a law, we came to the conclusion that it  
11 would also protect a witness for the defense; we came to  
12 that conclusion from careful study; we came to the con-  
13 clusion that that section would permit a man to go on the  
14 stand and make himself immune by his own acts and so strongly  
15 did we think so that we tried to get the Legislature to change  
16 it, to make it what we thought it was intended to be.

17 Now, we believe that is a fact. It is possible,  
18 I will not say it is probable, but in the range of pos-  
19 sibility, for instance, that the testimony on direct or  
20 cross-examination might show this witness to be in a light  
21 covered by that section, and it is quite possible if that  
22 should develop why, then,--we will not always be prose-  
23 cutors, some other prosecutor's hands might be tied or  
24 ours might be tied; it is a very small matter to read the  
25 section, it does not one any harm and we assure the court and  
26 the defense and the witness that we would not for one moment

1 think of doing this for any other purpose than the one that  
2 we asked for, and we would not think for one moment of in-  
3 sulting Mr. Harriman or of doing anything more than our duty  
4 required us in that line.

5 MR. FORD. If the court will bear with me one moment longer,  
6 I want to call your Honor's attention to a similar situation.  
7 Section 334 of the Penal Code provides concerning gaming and  
8 gambling. The section of the code devoted to the prohibition  
9 of different gambling games, contains this section, Section  
10 334, "No person otherwise competent as a witness, is dis-  
11 qualified from testifying as such concerning the offense  
12 of gaming on the ground that such testimony may criminate  
13 himself, but no prosecution can afterwards be had against  
14 him for any offense concerning which he testified." Now,  
15 as counsel for the defense said, in his remark to the court,  
16 the object of that law, of Section 1324, as well as the  
17 objection of section 334 was to enable the prosecution to  
18 take some of the co-defendants, put them on the stand and  
19 compel them to testify against the one that the prosecution  
20 had selected for trial. That was undoubtedly the intent  
21 of Section 1324; that is undoubtedly the intent of Sec-  
22 tion 334. Section 334, which is a similar case, was never  
23 intended to enable defendants to be called for a co-  
24 defendant and by testifying prevent themselves from being  
25 prosecuted, yet that is exactly what has been frequently  
26 done under section 334. A man is on trial for conducting

1 a gambling game, some of those who participated in the  
2 game, some against whom complaints are pending, have been  
3 called by the defendant to testify in his behalf and have  
4 then, when it came their turn to be tried, claimed the pri-  
5 vileges of Section 334, when they were called by their co-  
6 defendants to testify, that they were compelled under the  
7 law to testify and the object of that law was to enable the  
8 prosecution to prosecute their co-defendant, nevertheless,  
9 the co-defendant called them, they admitted they were  
10 gambling, they admitted the truth of the entire transac-  
11 tion, and then when the court came to their case to pro-  
12 secute them they said that they testified under the pro-  
13 visions of section 334 and even though they did incriminate  
14 themselves upon that occasion, section 334 compelled them  
15 to do so and under the last section no prosecution could  
16 afterwards be had against them for the offense. That  
17 that section protects them, and the courts have held it  
18 does.

19 Now, the last portion of Section 1324, after  
20 imposing the duty upon the court or the foreman of the  
21 grand jury, or whoever is presiding over the proceedings,  
22 after imposing the duty on him to read the section to the  
23 witness, the section goes on and says, "No person shall  
24 be deemed to have asked to be excused from testifying or  
25 producing evidence, etc.," "unless before any testimony  
26 is given or evidence documentary or otherwise is produced.

1 by such witness, the judge, foreman or other person presid-  
2 ing at said trial, hearing, proceeding or investigation,  
3 shall distinctly read this section of this code to such  
4 witness."

5 Now, even though the witness may intend at this  
6 time to waive all immunity concerning any matters to which  
7 he is going to give testimony, even though he intends to do  
8 so in good faith, he cannot waive a statutory privilege,  
9 and if any reason should hereafter develop that he should  
10 desire to claim immunity for the matters concerning which  
11 he testified, the courts would say this section was not  
12 read to the witness as the law provides, therefore, under  
13 the law he is automatically immune, he is deemed to have  
14 demanded immunity. That is the situation.

15 Now, merely in the interest of safety, we  
16 demand that it be read. It is not an absurd position on  
17 our part in any way, shape or form, it is merely a matter  
18 for protection in possible contingencies, that is all;  
19 it is not intended to insult the witness, the witness has  
20 not claimed any privilege and has not made any objection.  
21 It has been made by those who will not in any wise be  
22 hurt by the reading of it to the witness. The witness  
23 says if it is read to him he will not make any claim under  
24 it and if he does he will testify fully and particularly.  
25 THE COURT. But, Mr. Ford, you have not addressed yourself  
26 to the provision of the statute that says that no witness  
shall be compelled to testify except under the provisions

1 of this statute. Now, this witness is not compelled to  
2 testify, he happens to be here in court without process, he  
3 has not claimed any protection, he has not declined to  
4 testify, but, on the contrary, has opened a way for the  
5 testimony. I would like to hear you on that first.

6 MR. FORD. However, all of our witnesses were not subpoenaed,  
7 we called them, they took the stand and the moment they  
8 took that stand they were compelled to testify, even  
9 though they voluntarily came up here, even though this wit-  
10 ness is voluntarily up here now, he is compelled to testify.

11 THE COURT. Yes. Supposed the witness claimed the protec-  
12 tion, it might incriminate him, wouldn't it be time enough  
13 then to read the statute? What is there in the record, here  
14 is the point: What is there in the record at this time  
15 to justify this court in reading that statute?

16 MR. FORD. Your Honor will recall, in the testimony of  
17 Franklin that Mr. Darrow--

18 THE COURT. I recall that feature of it very clearly.

19 MR. FORD. --Mr. Darrow made remarks to Mr. Franklin in  
20 which he said he had not seen <sup>Mr</sup> Harriman, that they had to  
21 get the money from the safety fault, that they waited for  
22 him--

23 THE COURT. I remember that very clearly--

24 MR. FORD. --on another occasion he said Mr. Darrow said  
25 to Mr. Franklin, after the 28th day of November, told him  
26 not to worry about Mr. Harriman, that Mr. Harriman, although

1 he had gone to the safety deposit vaults and although  
2 they could ascertain that to be the fact, Mr. Warriman had  
3 taken the precaution of drawing some money to pay a note,  
4 and your Honor will recall that testimony.

5 THE COURT. I remember it.

6 MR. FORD. Although Mr. Warriman could clear himself by show-  
7 ing he paid a note on that occasion, and there may be other  
8 things and there are certain matters, your Honor, concerning  
9 which we will probably have an opportunity of interrogating  
10 this witness--what the answers may be I don't know--

11 MR. APPEL. We take an exception to that statement and  
12 assign the statement as misconduct, as error--

13 MR. FORD. It is already stipulated everything I said might  
14 be excepted to.

15 THE COURT. I also have in mind the opening statement of the  
16 District Attorney in reference to this very matter, and  
17 while I cannot recall the exact words of that opening  
18 statement, it left an impression upon my mind that would  
19 perhaps prevent the reading of this section at this time,  
20 if for no other reason.

21 MR. FORD. Your Honor will recall in the opening statement  
22 of the District Attorney he said we were trying this defend-  
23 ant alone and no one else and that there would be true--  
24 it was not an opening statement, your Honor--

25 THE COURT. It was a statement.

26 MR. FORD. It was during proceedings, while we were impanel-

1 ing the jury--that there might be testimony of some wit-  
2 nesses which might tend to involve Mr. Harriman but that we  
3 were not trying him or contending that that was the fact at  
4 the present time and were not raising that point at that  
5 time in our examination of jurors, but whatever might be  
6 our attitude with regard to this case we did not want to be  
7 foreclosed from doing our duty if occasion should arise to  
8 do it in regard to any other person.

12p 9 THE COURT. I particularly had in mind the District Attorney's  
10 explanation of that which he made in justice to Mr. Harriman,  
11 it has left an impression on my mind that would prevent me  
12 from reading the section at this time. I have not the  
13 exact words in mind.

14 MR. APPEL. This section does not apply to every witness.

15 THE COURT. Just a moment, I want to get an answer to that  
16 question and I will hear you.

17 MR. APPEL. We would like to have a ruling on that.

18 MR. FORD. If your Honor pleases, I hardly think it is the  
19 province of the court to make any statements concerning the  
20 credibility or attitude or relation to the case or of  
21 any witness to the case, but that your Honor can be bound  
22 by any opinions that you may have of the witnesses with  
23 regard to the relation to the case. In other words, your  
24 Honor might consider every witness here to be telling the  
25 truth, and yet if the jury disbelieve them, that would be  
26 their province; your Honor might consider certain witnesses

1 ~~to be lying and yet the jury would have a right to believe~~  
2 that witness. The only point your Honor can decide upon is  
3 not upon any opinion that may exist in your mind whether it  
4 be a mere opinion or not, he can be guided by the evidence  
5 which has been introduced in the case, not for the purpose  
6 of determining the weight of the evidence, but merely for  
7 the purpose of having its tendency and considering its  
8 admissibility to subsequent testimony for the relation and  
9 admissibility, so that all your Honor has before you in  
10 determining whether or not this section shall be read to the  
11 witness is the demand of the District Attorney, coupled  
12 with the fact that the witness has testified to certain facts  
13 incriminating the defendant, --not necessarily, unless the  
14 jury believe that the person who repeated the remark to the  
15 witness was not telling the truth at that time. The jury  
16 may have believed that Mr. Darrow said this remark to the  
17 witness and yet not believe that Mr. Darrow was telling the  
18 truth to Mr. Franklin at the time.

19 THE COURT. All right, I have your point of view.

20 MR. APPEL. Your Honor, this section from the very start  
21 shows for one purpose it was passed. Now, your Honor will  
22 see--let me read the first sentence, "A person hereafter  
23 offending against any of the provisions of this code or  
24 against any law of this state is a competent witness against  
25 any other person so offending and may be compelled to become  
26 a witness" by whom? Against another person so offending

1 may be compelled to be a witness against another person  
2 so offending, and may be compelled to attend and testify  
3 and produce any books, papers, contracts, etc., that such  
4 a person demands. That is, a person so offending, that he  
5 be excused from testifying or from producing such books,  
6 papers and contracts, etc.--and the other paragraph says,  
7 "No such person shall be exempt from indictment, present-  
8 ment, information or prosecution or punishment for the  
9 offense in relation to which he may have testified or for  
10 or on account of any transaction, etc.--" so that this  
11 section, if your Honor please, has absolutely nothing to  
12 do with this witness. They want your Honor to read this  
13 section to this witness and thereby to give the intimation  
14 or insinuation that he is a person who offended against the  
15 laws of this state. Whenever, in the course of the examina-  
16 tion of this witness he is asked a straight question,  
17 whether or not he violated any law, and he says, "I object  
18 to testifying to my connection with reference to any  
19 transaction involving the violation of that law," then,  
20 your Honor, we have a right on the part of this defense  
21 to say, "Your Honor, read that section", and after you  
22 have read that section your Honor may compel the witness  
23 to testify or the witness may refuse to answer and if your  
24 Honor compels him to testify then, if your Honor please,  
25 under those conditions, he may have whatever benefit the  
26 law affords him as against further prosecution. But, your

1 ~~Honor, this law was passed against persons offending and~~  
2 here they want your Honor, on the first witness we put  
3 upon the stand, to assume that this witness here has offend-  
4 ed against a law of this state. We object to having our  
5 witnesses placed in that position with this jury, who may  
6 think, "Why, this man comes here as a violator of the law,  
7 he comes here with the brand of a criminal from the very  
8 start, and he is put upon the stand, and in order that the  
9 People's rights may be protected the court has assumed that  
10 he is a criminal and, therefore, he reads this section to  
11 him." What is there in the attitude of the evidence of  
12 this witness upon the stand to show that he is a person that  
13 has offended against any law? Why should a witness for  
14 the defense called here to testify in favor of this defend-  
15 ant be put in that position and in that light, covered by  
16 that section? What has he said or done that gives that  
17 impression to the District Attorney? That section was  
18 not made for that purpose, it was made where persons  
19 have so connected themselves in some criminal transaction  
20 that this State may compel, may be compelled to get the  
21 evidence, get the facts for the prosecution of another  
22 person so offending, when they are called against the  
23 defendant but the defendant has a right to call upon the  
24 stand his co-defendant; he has a right to put him upon  
25 the stand and say to him, "Isn't it a fact that you, your-  
26 self, are the murderer of the person for whose death I am

13s

1 being tried here?" Isn't it a fact, and he be  
2 compelled to give the facts in favor of his co-defendant  
3 or else, your Honor, all the truth might be shut-out,  
4 that would tend to show the innocence of the man upon  
5 trial, he is compelled to testify, he is compelled to tes-  
6 tify to the facts under any and all circumstances, and when  
7 a witness says, "I refuse to testify," then the occasion  
8 will arise as to what your Honor may do, but so far this  
9 witness upon the stand, and he is asked what his name is,  
10 what his profession is. We intend to ask him questions  
11 here concerning the absolute innocence of this defendant.  
12 We propose to show by him that the testimony given here in  
13 some particulars by Mr. Franklin is an absolute falsehood,  
14 and that he is innocent, this man, this witness upon the  
15 stand is innocent of any participation of any crime what-  
16 soever and why should he be put in the attitude of having  
17 the District Attorney hereafter come before the jury and  
18 say, "Gentlemen, when Mr. Harriman went upon the stand,  
19 in view of the evidence which has been introduced here on  
20 the part of Mr. Franklin, the court must of necessity be-  
21 lieved that he had offended the laws of this state, and,  
22 therefore, he read this section to him." Furthermore, your  
23 Honor, no occasion arises here to read that section under  
24 any circumstances. Mr. Harriman says he is a lawyer; he is  
25 presumed to be familiar with those provisions of the Code.  
26 He says, "I waive the reading of those provisions." He

1 ~~said it here in court, "I waive the reading of those~~  
2 provisions. He comes here voluntarily, a witness may  
3 testify voluntarily, he may confess to a criminal trans-  
4 action voluntarily. He don't get immunity for doing so.  
5 He comes into court and says, "I want to testify." This  
6 witness is not going to confess to anything, for he is not  
7 charged with anything. He is going to put his finger upon  
8 the falsity of the testimony of Mr. Franklin. He is going  
9 to say to this jury that when Mr. Franklin said that Job  
10 Harriman, on the 28th day of November, met Mr. Darrow there  
11 in his office, and went into another room, Mr. Darrow came  
12 out and furnished money to Mr. Franklin to go and bribe juror  
13 Lockwood, that he did not tell the truth.

14 MR. FORD. We object to the statement of counsel--

15 MR. APPEL. That is what we expect to prove.

16 MR. FORD. The testimony was not-- we ask that counsel con-  
17 fine his remarks to the testimony.

18 MR. APPEL. Counsel has testified here himself, your  
19 Honor. I am only saying, your Honor, what we are going  
20 to ask him. He is not the person offending.

21 THE COURT. I think it is proper to confine the argument--

22 MR. APPEL. I know, your Honor, we have a right to say to  
23 your Honor what we expect to prove by this witness. We  
24 have as much right as counsel has to discuss here what Mr.  
25 Franklin said.

26 THE COURT. Well, I think you are right on this proposition,

1 ~~Mr. Appel.~~ I don't think we need go any further, as far  
2 as the construction of this statute is concerned. I think  
3 that the reading of the statute which I was about to do  
4 when the argument commenced is plain: (Reading) "A per-  
5 son hereafter offending against any of the provisions of  
6 this Code or against any law of this state is a competent  
7 witness against any other person so offending." This  
8 witness is not called against a person charged as offending.

9 MR. FREDERICKS. We submit the matter, for whatever respon-  
10 sibility there is passes from us.

11 THE COURT. Yes, sir. The application of the District  
12 Attorney to read section 1324 to the witness at this time  
13 ~~is denied.~~

14 MR. ROGERS. The last question please--I withdraw the last  
15 question, I remember it. Q Mr. Harriman, calling your  
16 attention to the month of November of last year, that is,  
17 1911, were you engaged during that month in any work or  
18 matter outside your professional duties? A In a campaign.

19 Q And what do you mean by "In a campaign"? A Well, I  
20 was nominee for mayor and we were conducting the campaign  
21 at that time in the city.

22 Q when did that campaign commence,--I am referring, of  
23 course, to the campaign before the primaries, as well as  
24 the campaign after the primaries? A My time was all  
25 given to that campaign for about--after about ten days prior  
26 to the primaries.

1 Q And when were they? A I believe on the 5th of November,  
2 or about that time.

3 Q Now, you say your whole time was given to the campaign  
4 from about ten days before the 5th of November? A Yes,  
5 sir.

6 Q You mean your own campaign for election as Mayor of  
7 this city? A My own campaign, yes.

8 Q Now, during that time, did you still maintain an office?  
9 A Oh, yes.

10 Q Where was that office? A 921 Higgins Building is our  
11 entrance.

14s 12 Q Where is the Higgins Building? A Corner of Second and  
13 Main streets.

14 Q Was your office there devoted to your law business or to  
15 campaign business? A Law business entirely.

16 Q Was there a campaign office? A There was.

17 Q An office from which your campaign was conducted or  
18 which was headquarters for your campaign? A There was.

19 Q Where was that, Mr. Warriman? A In the Canadian Building  
20 on the corner of Main and Winston streets.

21 Q How far is that--that is just a little below Fourth?

22 A Winston is between Fourth and Fifth, a short street.

23 Q A half block street? A A half block street between  
24 Fourth and Fifth.

25 Q Now, you remember--that is on the east side of Main, is it  
26 not? A On the east side of Main.

1 Q And the Higgins Building is on the southwest corner  
2 of Second and Main? A Of Second and Main.

3 Q Your building is --you gave your number as 900 some-  
4 thing, the entrance number; that is on the ninth floor,  
5 is it? A Yes, sir.

6 Q Were you engaged in the defense of the McNamaras, so-  
7 called, that is, J. B. and J. J. McNamara, among other per-  
8 sons who were indicted for murder in connection with the  
9 Times Building? A I was one of the attorneys.

10 Q When did you become one of the attorneys for the Mc-  
11 Namaras, as nearly as you can remember? A After their  
12 arrest; it seems to me that was in April sometime.

13 Q When did you first know Mr. Darrow in connection with  
14 that case? A I don't remember just when I communicated  
15 with him the first time.

16 Q Well, when did Mr. Darrow come here? Does your recollec-  
17 tion serve you? A I think it was in July, his first trip,  
18 June or July; I think it was July.

19 Q Had you been engaged in their defense before that time,  
20 before he came? A Yes, as soon as they came here I became  
21 connected with them but not permanently until he came, not  
22 finally.

23 Q You temporarily represented them? A Attended to mat-  
24 ters until Mr. Darrow came.

25 Q And that continued over the period from April, approxi-  
26 nately, until sometime in July? A Yes, sir.

1 Q And then did your connection continue from the time Mr.  
2 Darrow came until, for practical purposes, that is, pur-  
3 poses of work and your doing anything with it, it ceased  
4 along about ten days before November 5th? A It did; still  
5 an attorney of record at the time.

6 Q An attorney of record all the time? A All the time.

7 Q But devoted yourself, as you state, to these other mat-  
8 ters? A All of the time outside of the office from the  
9 time I stated.

10 Q I wish you would indicate the position, as you may best  
11 illustrate it here, by illustration to the jury, what posi-

12  
13 tion your offices occupied in the Higgins Building, first  
14 stating, however, whether Mr. parrow had offices there after  
15 his arrival. A Mr. parrow took the three rooms or four  
16 rooms--four rooms on the west side of the Higgins Building  
17 adjoining the alley, beginning at the southwest corner and  
18 running north. Our rooms, that is, the rooms of our firm,  
19 took--included the five rooms directly across the hall  
20 from the southwest corner running east. There is a court  
21 in the building. There is two halls on each side of the  
22 court. Our rooms run from hall to hall with a small hall  
23 just south of our rooms but doored in for our library. We  
24 also had one room which was my office north of the west  
25 room adjoining and opening into it. There was also one room  
26 taken by Mr. parrow for a newsclipping room just north of my

1 room, adjoining it and opening into it.

2 Q Which room did Mr. Darrow use himself as his own office,  
3 of the number that you have spoken of? A The southwest  
4 corner room.

5 Q That would be the room in the southwesterly corner of  
6 the building? A Yes, sir.

7 Q And was there a room next to that? A North of it,  
8 a room, still north another, still north another, all open-  
9 ing into each other.

10 Q From one to the other? A From one to the other.

11 Q Is there a vault in those premises? A No.

12 Q A safe? A No. In my own, yes.

13 Q In Darrow's part of the offices, that is in the offices  
14 or rooms Darrow had was there any safe or any vault what-  
15 ever? A No.

16 Q In your part--in your rooms across the hall there was a  
17 safe or a vault? A Yes.

18 Q State whether or not Mr. Darrow knew or had the combina-  
19 tion or key to that safe or vault? A He did not.

20 Q Who did have the key and the combination to that safe  
21 or vault, Mr. Warriman? A Mr. Harrington, Mr. Russell and  
22 myself.

23 Q Now, which Mr. Harrington do you mean, the one who was a  
24 witness here? A Well, I presume he was. I was not here  
25 that day, but it was the Harrington associated in the case.

26 Q John R. Harrington? A Yes, sir.

1 Q We had a key and the combination? A He had a key and  
2 the combination to the safe and a private box to the safe.

3 MR. FREDERICKS. We think counsel should not instruct this  
4 witness. We haven't made an objection to it.

5 MR. DARROW. I beg your pardon.

6 MR. ROGERS. Mr. Darrow was speaking to me. I am taking  
7 this position, knowing from my long standing Mr. Harriman's  
8 voice, until he gets it warmed up, it is difficult to hear.  
9 If I stand over there and he speaks to me the jury wont  
10 hear. When he gets warmed up I will go back.

11 A I will try to speak a little louder.

12 Q Not any louder. I know it takes you a little while to  
13 get the whiskers off that throat. Now, do you recall the  
14 day when--do you remember Franklin--

15 MR. FORD. If the Court please, I am not particularly  
16 nervous, but I think it would be a little better for us all  
17 if Mr. Rogers would remain in his place.

18 THE COURT. All right. Mr. Rogers, I will have to ask you  
19 to remain in your place.

20 MR. ROGERS. All right. Q You know Bert H. Franklin?

21 A I do.

22 Q How long have you known Bert H. Franklin? A I met him,  
23 I think, about three years ago in the United States Marshall's  
24 office.

25 Q Did you know him as having any connection--did you see  
26 him in connection with the defense in the McNamara cases at

1 all? A I knew he had something to do with the case.

2 Q Do you remember the occasion when he was arrested?

3 A I do.

4 Q That day, as I recall it, appears to have been the 28th  
5 day of November? A It was.

6 Q Do you know in what particular capacity Mr. Franklin was  
7 associated with the defense or connected with it in any way?

8 A He was investigating the jurors, I believe.

9 Q That is, the talesmen who were to be called into the box?

10 A As jurors, I should have said talesmen.

11 Q Now, I call your attention to the circumstances of that  
12 morning of the 28th day of November, the morning of the  
13 arrest of Franklin. I will recite to you substantially what  
14 Mr. Franklin testified to, in a general way, without attempt-  
15 ing to say that it is what he said precisely.

16 MR. FORD. Just a moment--we object to any recital on the  
17 part of counsel of what another witness has testified to.  
18 The Code provides that upon direct examination only one form  
19 of question shall be asked. Counsel has no right to recite  
20 to the witness what another witness has testified to, nor  
21 has he a right to put anything except direct questions.  
22 He has not a right to put leading questions. He has not  
23 a right to lead the witness, and the witnesses were excluded  
24 just for the very purpose of preventing them from hearing  
25 what each other had to say, and there is only one exception  
26 to that rule about putting the exact language to the witness

1 and that is in the case of putting an impeaching question  
2 to the witness who was brought on the stand to impeach, and  
3 the other--on direct examination--and the other is on cross-  
4 examination you may ask leading and suggestive questions,  
5 that is the only exception.

6 MR. ROGERS. Counsel has misunderstood the purpose of the  
7 matter. One may outline a situation for a purpose of direct-  
8 ing his attention to it, one may say what has been said in  
9 the courtroom, not for the purpose of informing the witness  
10 or anything of that kind, because here is the testimony;  
11 if he wants to read it it is free to him to read it, and  
12 all that I intend to do is to bring him precisely to the  
13 very point at issue; There is a room there and so forth and  
14 so on, and ask him if on that morning he did come as thus  
15 and so, if there is any way of reaching it more directly and  
16 more certainly to contradict the witness I know of none,  
17 after some years of practice.

18 THE COURT. Mr. Rogers, the court is not going to instruct  
19 you how to form your question. Form your question then the  
20 court will rule on it. There is no question before the  
21 court.

22 MR. FORD. The counsel stated he was going to recite the  
23 circumstances, your Honor, and I think we would be derelict  
24 in our duty--I am not pretending that Mr. Rogers is suggesting  
25 to the witness the answer. I do not make any such claim,  
26 although I have been accused of it. I do not think it is a pro-

1 per way to frame a question to the witness on direct examina-  
2 tion. If he wants to know the room, why, he may ask him,  
3 how did you come to the office that morning, that is all  
4 there is to it, there is no necessity of reciting facts.

5 MR. ROGERS. How are you going to reach a negative, your  
6 Honor, unless you put a positive to him?

7 THE COURT. I see your point, go ahead and frame your  
8 question and the court will rule on it.

9 MR. ROGERS. Q Mr. Franklin's testimony is substantially  
10 to this effect: That on the morning of the 28th of November  
11 Mr. parrow was sitting in the corner room of the Higgins  
12 building at the corner of Second and Spring--

13 MR. FORD. I object to the counsel reciting--

14 MR. ROGERS.--Mr. Franklin walked in the door and through into  
15 the next room and there you came in and that Mr. parrow went  
16 into the next room and that/you <sup>there</sup> gave him a roll of money  
17 and Mr. Darrow came back and gave it to him, and I want to  
18 know if on that morning you saw Mr. Franklin at all at that  
19 place or in any such manner or in any such way as that--

20 MR. FORD. We object--

21 THE COURT. I will ask you both to be seated.

22 MR. ROGERS. The court ordered me to go on and frame my  
23 question and I proceeded. I followed the court's instruc-  
24 tions, I framed it all right.

25 MR. FREDERICKS' May it please the court, it is well some  
26 of us keep cool at times. All of the witnesses were excluded

1 from the court room. Mr. Rogers said, "Here is the testi-  
2 mony, and this witness may read it if he wants to." This  
3 witness has no right to read that testimony. This witness  
4 is forbidden by every rule of law and ethics and order to  
5 read that testimony. The court has excluded this witness  
6 from the room. He must not know what Mr. Franklin said.  
7 The rule is for the purpose of preventing this witness from  
8 knowing what Mr. Franklin or any other witness said. Now,  
9 Mr. Rogers has violated that rule in stating to this witness  
10 what Mr. Franklin said, and that is the purpose of the ob-  
11 jection, which would come too late if it is made after the  
12 question is asked. I submit the matter without further  
13 argument.

14 MR. ROGERS. Your Honor, you directed me to form the ques-  
15 tion, now the question is this--

16 THE COURT. Wait a moment, Mr. Rogers. It is impossible,  
17 Gentlemen, to conduct a court in this way.

18 MR. ROGERS. Certainly is.

19 THE COURT. Absolutely impossible, a picture of two  
20 lawyers standing up here and talking against each other  
21 is most shocking. So far as that is concerned, the inci-  
22 dent occurred this way. Mr. Rogers made a statement of what  
23 he intended to do. Mr. Ford took exception and the court  
24 thereupon directed Mr. Rogers to frame his question, and when  
25 framed the court would rule upon it. Mr. Rogers, pursuant to  
26 that direction was framing the question. Mr. Ford arose, and

1 what I cannot term anything but a boisterous manner--  
2 now, Mr. Ford, just be seated, I am going to finish here.  
3 In a most boisterous manner interrupted that question.  
4 The question may be right or may be wrong, the court does  
5 not rule. Mr. Ford's conduct was clearly contempt of court.  
6 MR. FREDERICKS. Will the court permit a word? That the  
7 damage would have been done when Mr. Rogers's question was  
8 asked.

9 MR. FORD. I would like to say a word--

10 THE COURT. The court has listened to that phase of the  
11 case. Mr. Rogers had announced his intention of asking the  
12 question substantially in that form. The court had direct-  
13 ed him to frame his question. He had a right to a clear  
14 field in which to frame that question; no other orderly  
15 way to proceed. The method adopted was most disorderly,  
16 shockingly disorderly. In view of the premises the court  
17 can do nothing but find Mr. Ford is guilty of contempt of  
18 court and fine him the sum of \$25.00.

19 MR. FORD. Now, if the Court please, I am sorry your  
20 Honor did not allow me to be heard on this contempt matter--

21 THE COURT. Mr. Ford, there can be no explanation of such a  
22 display as the court has seen here in the last five  
23 minutes, but I am not through, just be seated. There are  
24 some other things I have to say. The court had directed  
25 Mr. Rogers to form his question and he is in duty bound to  
26 furnish him a clear field in which to finish that question.

1 ~~It will be impossible for the court to say that Mr. Rogers~~  
2 ~~has not violated the decorum and proceedings of the court~~  
3 ~~in proceeding in the best manner in which he did. It is~~  
4 ~~clearly his duty to stand aside for a moment and give the~~  
5 ~~court opportunity, which it certainly would do to give him~~  
6 ~~a clear field to form his question which he had been direct-~~  
7 ~~ed to do. The incident cannot be overlooked, cannot be dis-~~  
8 ~~regarded. Certainly was a most boisterous manner of pro-~~  
9 ~~ceeding in the teeth of an interruption of that kind, which~~  
10 ~~in itself is improper. Two wrongs do not make a right and~~  
11 ~~the court must find him guilty of contempt of court and~~  
12 ~~order him to pay a fine in the sum of \$10.00. Now, gen-~~  
13 ~~telemen, we will proceed with this case. Mr. Rogers will~~  
14 ~~form his question. The question is not intelligible to the~~  
15 ~~court.~~

16 MR. FORD. If the court please, when a fine or when an attor-  
17 ney is brought to task before the court for contempt of  
18 court, it has been usually my experience that he is given  
19 an opportunity to purge himself of that contempt, and I  
20 want to explain to the court that if there was anything  
21 boisterous in the manner of making my objection it was not  
22 intended to be boisterous, but I understood the court's  
23 ruling to be that counsel would have a right to frame a  
24 question to which I had no objection. He had stated to the  
25 court that he was going to repeat certain testimony. I  
26 then made objection which your Honor overruled on the ground

1 that there was no question before the court, and directed  
2 Mr. Rogers to frame his question. Mr. Rogers then proceeded  
3 to recite the testimony which to my mind did not consti-  
4 tute the question, and in performance of my duty to make an  
5 objection, I arose to make that objection. Mr. Rogers raised  
6 his voice and in an endeavor to be heard by this court I  
7 raised my voice. Seeing the court paid no attention to me  
8 I remained silent and then I was directed to sit down.

9 In this entire proceeding there was no contempt of this court  
10 intended on my part in this action, and in view of those  
11 explanations I think your Honor should remit the fine and  
12 find me not guilty of contempt.

13 MR. ROGERS. As far as expressing our views, I don't wish  
14 to beg off, if your Honor please, or say anything that will  
15 at all remove any punishment your Honor has given me, but  
16 I didn't mean any contempt. I have sat here, your Honor  
17 please, and been so often interrupted during the course of  
18 this trial, interruption after interruption to such a  
19 point, if your Honor please, that I cannot intelligently  
20 conduct my examination. I just made up my mind I would  
21 follow your Honor's instruction, and followed it through  
22 for once. I didn't mean to be boisterous. I beg your  
23 Honor's pardon and I will pay the \$10.00.

24 THE COURT. Wait a moment--Gentlemen, it is disagreeable  
25 to this court to impose any fines, and in view of the atti-  
26 tude that both counsel have assumed in the matter--the object.

1 of ~~the punishment~~ is to correct the error or correct the  
2 evil so as to enable us to get an orderly proceeding, and  
3 that end seems to have been accomplished and the fine in  
4 both instances will, therefore, be and is remitted. Now, Mr.  
5 Rogers, you will proceed and reframe your question.

6 MR. APPEL. We will ask your Honor, though, that we be  
7 allowed to frame our questions and that then if there is  
8 any objection, that objection may be argued, of course, but  
9 we ask permission of the court now, as we have appealed  
10 to the court heretofore to direct the other side to give  
11 us an opportunity to present our question to the witness  
12 without any interruption.

13 THE COURT. Mr. Appel, in a feeble way I have given that  
14 admonition.

15 MR. APPEL. We appealed to your Honor time and time again  
16 to instruct counsel on the other side to allow us to be  
17 heard and not to quote evidence and not to argue facts and  
18 all that, and this continuous interruption and what we call  
19 misconduct on the other side, your Honor, naturally has  
20 given rise to just such scenes as this. It has so outraged  
21 us that at times, without having any malice against the  
22 gentlemen on the other side, that we are bound to resent it,  
23 and it leads to these things, and I only suggest this for  
24 the purpose of orderly conduct of the court.

25 THE COURT. The Court has already admonished counsel most  
26 emphatically, and does again, at the suggestion of Mr.

1 Appel, admonish counsel that when an attorney on either  
2 side is propounding a question he must and will have a  
3 clear field in which to propound his question. He takes  
4 his chances on it. The same applies to the witness.

5 MR. FREDERICKS. May I ask one question in order that we  
6 may understand each other--each side may understand?

7 THE COURT. yes, sir.

8 MR. FREDERICKS. Suppose that question in itself is a long  
9 recital of something that should not be recited? Now,  
10 whatever the rulings of the court are we will abide by them,  
11 then shall we let it go on--

12 THE COURT. If it should be counsel takes his own chances of  
13 misconduct and will be--

14 MR. FREDERICKS. There is no misconduct on the part of the  
15 defense. The defense cannot commit misconduct.

16 THE COURT. The Court thinks it is proper to maintain order  
17 in that way.

18 MR. FREDERICKS. As far as arguing a question of fact, we  
19 are willing to enter into a solemn, binding bargain with the  
20 other side, we will not attempt to argue questions of fact  
21 while the witness is on the stand or while we are trying  
22 to argue the rules of law, if the other side will. I have  
23 got the court's idea, we will abide with it.

24 THE COURT There is no way that this or any other law suit  
25 can be tried if constant interruptions are allowed. I have  
26 tried several thousand law suits in this court house and

1 ~~have followed that rule as rigidly as it was possible,~~ and  
2 there is no way that the reporter can take down what you  
3 gentlemen say at the same time. If he got what Mr. Ford and  
4 Mr. Rogers were saying a few minutes ago I would like to  
5 hear it. All those things positively and absolutely pre-  
6 vent any kind of intelligent action; the court cannot  
7 take any intelligent action. We are here for that purpose,  
8 and if counsel asks a question that he ought not to be  
9 will have to answer in some proper way for it, but he must  
10 not be interrupted when he is asking questions, unless the  
11 court interrupts him. If the court interrupts him, why,  
12 the court will take that responsibility on its shoulders.

18s 13 MR. ROGERS. If your Honor please, I have this to suggest  
14 in the matter under consideration and suggest something  
15 which was suggested by Mr. Fredericks. Now, he speaks  
16 of the segregation of the witnesses and of the impossibility  
17 of one witness hearing another. Your Honor can readily see  
18 if I put Mr. Harriman on the stand I must of necessity talk  
19 with him before he came here, and there could be no rule  
20 either of morals or discretion or care, in fact, there  
21 could be no possibility of conducting a case unless I did  
22 tell him what Mr. Franklin said about him that morning.

23 THE COURT. The court understands your position, Mr. Rogers,  
24 and intends to hear your question as soon as this incident  
25 is closed. Now, Gentlemen, I deem it closed. Now, Mr.  
26 Rogers, propound your question.

1 MR. ROGERS. Q On the morning of November 28, 1911, I  
2 call your attention to that morning, and ask that you  
3 place your mind upon the incidents of that morning. Bert  
4 H. Franklin, referred to in my previous question to you, has  
5 testified here substantially and to this effect: That  
6 on that morning he came into the corner office described  
7 by you as on the southwest corner of the building, Mr.  
8 Darrow's private office; that you came in there subsequent  
9 to that time and walked through a portion of the office,  
10 at least into the adjoining room on the north; that Mr.  
11 Darrow thereupon leaving him, Franklin, in the corner office,  
12 went into the adjoining office on the north with you for  
13 a brief space of time, a few moments, you thereupon  
14 returned--Mr. Darrow, I mean, returned to the office on the  
15 southwest corner of the building, which you have testified  
16 concerning, and there handed him a roll of money consisting  
17 of \$4,000 of currency. Now, I ask you, directing your  
18 mind to that testimony, to that room and to those incidents  
19 I have related, whether or not on that morning or at any  
20 other time you came into that corner room referred to in the  
21 testimony, finding Mr. Franklin and Mr. Darrow together, and  
22 thereupon went into the north room or any other place of  
23 that sort, and thereupon Mr. Darrow came in for a brief  
24 space of time and received any money from you whatsoever  
25 of any kind or character, and thereupon returned into this  
26 corner room with it?

1 MR. FORD. ~~To that question we object upon the ground~~  
2 it is leading and suggestive. That it is complex and  
3 compound; not a proper method of interrogating a witness,  
4 and further, on the ground that it assumes certain facts not  
5 in evidence. Franklin never testified that this witness  
6 gave Mr. Darrow \$4,000 or any other sum of money. Franklin  
7 simply testified to the fact that Mr. Harriman had gone  
8 into the other room and with Mr. Darrow, and then Mr. Darrow  
9 returned, and that after he returned he handed Mr. Franklin  
10 that money. Franklin did not see and did not say that  
11 he had gotten that money from Mr. Harriman. He testified  
12 that prior to Mr. Harriman coming that Mr. Darrow had told  
13 him things from which the jury might conclude that Mr.  
14 Darrow intended that Franklin should believe he was getting  
15 the money from Harriman, but there is no evidence here as  
16 yet that he actually got the money from Mr. Harriman. There  
17 could be conclusions from certain evidence, and we object  
18 to it on the further ground that it calls for a conclusion  
19 of the witness. Now, how easy, your Honor, it is, for  
20 him to ask a direct question: Where were you? What did  
21 you do? Did you give him any money that morning? Did you  
22 see him that morning? Questions of that sort instead of  
23 making a long recital. I think that is a proper mode and  
24 that the proper mode should not be departed from.

25 MR. APPEL. Let me suggest this: The defendant is not  
26 ~~required to prove seriatim each little circumstances~~

1 proved by the prosecution. If a witness should come  
2 here on the stand--say I come upstairs with him and I  
3 told him I was going to your Honor's chambers and I was  
4 going to get \$10,000 from you and I did go in there and  
5 came out and handed it to him, and he would recite that in  
6 court, and that would be the ultimate conclusion from that  
7 testimony, whether those are circumstances going to prove  
8 the ultimate fact. Now, upon the other hand, I have a  
9 right to show not only I didn't go into that room, your  
10 Honor, and not only that I did not see your Honor, but I  
11 can prove by your Honor that in fact I didn't get that  
12 money from you. I have a right to show that the ultimate  
13 fact/<sup>in</sup>tended to be proven by these circumstances, these  
14 little circumstances, these little incidents, in fact didn't  
15 occur, for the proper purpose of disproving the whole mat-  
16 ter. They understook to prove by circumstantial evi-  
17 dence what Mr. Darrow said to Mr. Franklin. Now, you wait  
18 a moment, Mr. Harriman will be here in a moment, I will get  
19 you that money; see? That is what Franklin testified  
20 to. Pretty soon Mr. Franklin says Mr. Harriman came in in a  
21 few moments, within ten minutes more, and he had his over-  
22 coat on his left arm or his right arm. He came in and  
23 said, "Good morning, Franklin" and he immediately walked  
24 into another room and that Mr. Darrow already having said  
25 to him, "Mr. Harriman will be here in a few moments and I will  
26 get the money for you", walked in there just a moment and  
came back and handed him the money. What was that intended

1 to be introduced here for? Not only to prove that Mr.  
2 Darrow here gave him \$10,000 but for the purpose of showing  
3 that Harriman had given him the \$4,000, or else what is the  
4 use of introducing that evidence? That was the purpose.  
5 They wanted to show where Mr. Darrow got it from. Now, we  
6 have a right to show that Mr. Harriman did not see Darrow,  
7 and Franklin on that morning. We have a right to show that  
8 Harriman up to that time didn't see him, he didn't see him  
9 until a long time after that; that he didn't see Franklin  
10 in there, not only that, we have a right to go further and  
11 show he did not give Darrow that \$4,000.

12 MR. FORD. We are not quarreling about his right to prove  
13 each one of those things. The jury might rightly conclude  
14 from the testimony of Mr. Franklin that Mr. Darrow did give  
15 the witness the money. The point is simply this: The form  
16 of the question. Mr. Franklin didn't testify he saw him  
17 give the money; he testified to the circumstances, - it is  
18 the form of the question we object to, not the matter.  
19 Everything covered in their question will be admissible  
20 by proper questions, but we contend that is not a proper  
21 method of questioning the witness, because of its leading  
22 and suggestive character on direct examination, of their  
23 own witness, a man who is an attorney, a man who is intelli-  
24 gent enough to testify to all that did occur and deny all  
25 that he claims did not occur. All they can do is ask  
26 simple, direct questions and not leading questions. It is

1 not the substance we are objecting to, we are not objecting  
2 to the competency of it but merely to the form of the ques-  
3 tion.

4 MR. APPEL. We can ask a leading question for the purpose  
5 of bringing contradictory testimony. We have a right to  
6 say to Mr. Harriman did you--is it a fact that you gave Mr.  
7 parrow there \$4,000 there on that morning at any time  
8 between 7 o'clock and 10 o'clock that day? Now, that is  
9 leading, but we ask for negative testimony, we ask for  
10 contradictory testimony. Is it a fact that you came in  
11 there and saw Earrow and Franklin together in that room?  
12 That you had an overcoat on your arm? That you said to Mr.  
13 Franklin, "Good morning, Mr. Franklin," or words to that  
14 effect, whatever the testimony may be. Now, that is lead-  
15 ing and suggestive and we have a right to bring out contra-  
16 dictory statements. That is one way of bringing out contra-  
17 dictory testimony. We have a right to call his attention  
18 to the fact in that question or to the evidence which we  
19 are undertaking to contradict, that is the question.

20 THE COURT. Let's have the question, then I will hear you,  
21 Mr. Fredericks.

22 (Last question read by the reporter.)

23 THE COURT. Now, Mr. Fredericks.

24 MR. FREDERICKS. My point is this: The question contained  
25 in the last part there of the narration--the matter preceding  
26 is not a question and the question does not refer to all of

1 ~~that description of Mr. Franklin's testimony, however, it~~  
2 may be so considered by the witness. Now, it is a rule  
3 of procedure of evidence that I learned so long ago that I  
4 have forgotten where I learned it, that you may not recite  
5 to a witness the testimony of another witness and then ask  
6 him whether it is true or not. Now, I know, and I have  
7 always known, and I believe your Honor has, that such  
8 proceeding is not permissible. Each witness must testify to  
9 what he knows of the facts and must narrate those facts  
10 in positive fashion and we don't--we believe there is no  
11 doubt but what the defense will have a right to prove  
12 by this witness by the proper questions and answers almost  
13 everything that they have asked there. It is not a matter  
14 of keeping that out at all, but it is keeping out of  
15 evidence all of this kind of questions, and it is for that  
16 reason we have taken the time of the court to argue the  
17 proposition in order that such questions, if the court agrees  
18 with us, may not be asked again. Mr. Harriman, without,  
19 of course, attempting to instruct counsel, whom I consider  
20 more able than I form their questions, this witness may be  
21 asked: What did you do on the morning,--should be asked,  
22 what did you do on the morning of the 28th? Where did you  
23 go? What room did you go into? Whom did you see? It  
24 would be leading even to say, Did you see Franklin, but  
25 who did you see? Where did you go? What rooms, and all  
26 ~~that sort of thing. That is the testimony of this witness.~~

1 Now, they practically said Franklin says thus and so,--is  
2 that true? Did that happen? Let the witness take his  
3 chances on his own memory in narrating, if he can, if his  
4 memory sufficiently serves him, what occurred there--that  
5 is our objection.

6 MR. ROGERS. Counsel has forgotten, if your Honor please,  
7 that we must prove a negative--

8 THE COURT. I agree with you as to that and disagree with  
9 the District Attorney as to your right in a certain limited  
10 form to ask leading questions to prove a negative, but I  
11 do think that the question in its present form is so compound  
12 and complex, if answered either yes or no might be mis-  
13 leading and it might be difficult to make it clear. I  
14 think it is the duty of the court to cut it up in some way,  
15 and on that ground more than anything else I sustain the  
16 objection. It is now 5 o'clock--

17 MR. ROGERS. I will ask two or three questions and come  
18 right to it. Q Mr. Harriman, on the morning of the 28th  
19 day of November, did you see Franklin at all?

20 MR. FREDERICKS. Just a moment, Mr. Harriman--that is objected  
21 to as leading and suggestive.

22 THE COURT. Objection overruled.

23 A I did not.

24 MR. ROGERS. Q On the morning of the 28th day of November  
25 did you see Darrow at all? A I did not.

26 Q Did you ever at any time or place or under any circum-

1 stances give Mr. Parrow \$4,000 in currency or any other sum  
2 similar in kind, in currency? A Never.

3 Q Did you give to him--ever give to him at any time any  
4 money and currency at your office or at his office?

5 A No, sir.

6 MR. ROGERS. Your Honor says it is 5 o'clock.

7 THE COURT. Yes, sir. (Jury admonished. Recess until  
8 July 10, 1912, at 10 A.M.)

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