

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. 53

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Job Harriman,		4205	4236	
Frank E. Wolfe	4246	4268		

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B. N. Smith,
Official Reporter

VOLUMES 53 to 55 (Inc.)

WITNESSES:

Job Harriman, Vol. 53

Frank E. Wolfe, Vol. 53

Frank E. Wolfe, Vol. 54

I. H. Russell, Vol. 54

I. H. Russell, Vol. 55

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1 July 10, 1912. 2 o'clock P.M.

2 Defendant in court with counsel.

3 THE COURT: All parties are present, gentlemen; you may
4 proceed with the cross-examination of Mr Harriman.

5
6 . JOB HARRIMAN, on the stand.

7 CROSS-EXAMINATION

8 MR FREDERICKS: Mr Harriman, I want to ask you some quest-
9 ions in regard to your relation to this case, and also to
10 the case of the People vs. Mc Namara, Schmidt and others.
11 You have said you were attorney in the case of the People
12 vs. McNamara with Darrow. You were attorney in that case
13 before Mr Darrow was, were you not? A I don't know when
14 Mr Darrow was employed.

15 Q You appeared for the McNamaras when they were first
16 brought here, did you not? A I did.

17 Q You went to see them or did they send for you?

18 A Well, I went to see them -- I had been employed in
19 the -- by the labor movement here some months before, and
20 I was requested to go and see them when they were brought
21 here from the East.

22 Q Were you not personally interested in the case against
23 the people, who were charged with dynamiting the Times,
24 yourself? A I was not.

25 Q Were you not personally interested in that case, and
26 did you not have personal knowledge of the fact that the

1 Times was going to be dynamited before it was dynamited?

2 A I had no knowledge of the fact before.

3 Q Do you know a man by the name of Edward Adam Cantrell?

4 A I do.

5 Q Mr Cantrell is a member of the Socialist party with
6 you? A He is.

7 Q And were you in the city of San Luis Obispo in this
8 state on or about the 1st of October, 1910? I refer
9 to the same morning, during the early part of which it is
10 said the Times was blown up? A I was with him and we
11 were conducting a series of meetings together at that
12 time.

13 Q Mr Cantrell is some official in the Socialist Party,
14 or was? A He belongs to the State Executive Party.

15 Q Did you see Edward Adam Cantrell at San Luis Obispo
16 on or about that time? A I say, we were conducting a
17 series of meetings at that time.

18 Q You were there and saw him there at that time? A I
19 saw him there at that time.

20 Q That was the next morning after the Times blew up?

21 A I saw him on the day after the Times blew up.

22 Q Were you rooming at a hotel in San Luis Obispo at
23 that time? A I was.

24 Q What was the name of that hotel? A I do not remember.

25 Q State whether or not on the 1st day of October, 1910,
26 the day immediately following the night or the morning,

1 it is said the Times building was blown up, you and Edward
2 Adam Cantrell were rooming at Room 1 in the St James Annex,
3 of the St Andrews Hotel in the City of San Luis Obispo
4 in this state; that on the morning -- on the morning of
5 that day, you met Mr Cantrell on the street in the city
6 of San Luis Obispo, he and you being there alone, and that
7 you said to him, "My God, Cantrell, the Times building
8 has beendynamited and something like 20 people are report-
9 ed killed", or words to that effect or that in substance,
10 or anything in substance to that effect?

11 MR ROGERS: Wait a moment. Objected to as incompetent, ir-
12 relevant and immaterial, and not cross-examination.

13 MR FREDERICKS: Going into the relations of this witness
14 to this case and to the case that was then on trial,
15 your Honor, and this is the first question and is largely
16 preliminary. If the court has any doubt I will state that
17 the purpose --

18 THE COURT: I have very grave doubt.

19 MR FREDERICKS: I will state we prepose to show --

20 MR ROGERS: To which we object, of course, it having been
21 held by the Supreme Court of this State --

22 MR FREDERICKS: May I finish?

23 MR ROGERS: No. I beg your pardon. To which we object
24 upon the ground that the Supreme Court of this state --

25 MR FREDERICKS: May I finish?

26 THE COURT: I will hear the objection.

1 MR ROGERS: -- that it is improper for the prosecutor to
2 state in the record what he expects to prove, it being, in
3 a sense, misconduct in that it presents before the jury mat-
4 ters which are not cognizable by them until after the court
5 has passed upon the questions. I cannot cite
6 your Honor to the authority, but I have it in mind and
7 could produce it very shortly upon looking over my notes.

8 MR FREDERICKS: My information was for the court in order
9 that the court might know to what I was driving.

10 THE COURT: I think I see what you are driving at, Captain
11 Fredericks. I want to get a little better grasp of that
12 question. Let the reporter read it, first.

13 MR FREDERICKS: This first question, of course, does not
14 go, really, to the meat of the matter, but it is more of
15 an identification of the circumstances.

16 THE COURT: Read the question. (Last question read by
17 the reporter.)

18 MR FREDERICKS: That question, I will state, is largely
19 for the purpose of identifying the circumstances in the
20 witness' mind, if he remembers it.

21 THE COURT: It seems to me you are encroaching closely on
22 section 2051 of the Code of Civil Procedure.

23 MR FORD: Has your Honor another one of those codes handy?
24 I just sent up for ours.

25 THE COURT: You can use this one.
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3s 1 MR. FREDERICKS. I will state that the witness has stated
2 that he was not personally interested in the dynamiting
3 case of the People vs McNamara. I stated in the beginning
4 that my purpose was to inquire of this witness at this time
5 in regard to his relation to that case. I inquired of
6 him and he said he was not personally interested in that
7 case. I am now going to ask him an impeaching question
8 tending to show that he has made statements to the contrary;
9 that he was personally interested in that case, show his
10 personal interest in the matter of the transaction of
11 bribing jurors on the 28th day of November.

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

13 THE COURT. That time, however, of blowing up the Times
14 was a distinct crime. There is another matter on trial
15 now.

16 MR. FREDERICKS. That was the crime that was on trial,
17 with which we have charged the defendant with bribing
18 jurors, and in which we believe the evidence shows, to a
19 certain extent, at any rate, this witness on the stand
20 assisted in that bribery. He has said that he did not.
21 In cross-examining it is necessary now that we should
22 show to the jury what his relation to that case was, that
23 it was not the relation of an attorney, but that it was
24 more damaging relation of a prospective or possible defendant
25 himself, in order that they may weigh the testimony that he
26 has given in the light of what we believe it to be from the

1 circumstances.

2 MR. FORD. Now, if the court please, Section 2051 provides
3 that a witness may be impeached by the party against whom
4 he was called--

5 THE COURT. I think Captain Fredericks has met the situa-
6 tion, Mr. Ford.

7 MR. FORD. If your Honor is satisfied, of course, we do not
8 care to argue it.

9 THE COURT. He has answered my question.

10 MR. FORD. I was going to argue the law.

11 THE COURT. He has, I think, presented that as an application
12 to it, and that was the matter in my mind. Let me see that
13 section again.

14 MR. FRDERICKS. Of course, this question does not bring the
15 matter up, the next question will.

16 THE COURT. I am anticipating it, assuming we will investi-
17 gate it here and get ready, it is here now in our minds.

18 MR. FORD. Calling your Honor's attention to Section 1847.

19 THE COURT. Yes, I have section 1847 in my mind too. Yes,
20 I think under the view Captain Fredericks presents, the
21 objection is overruled.

22 MR. ROGERS. Exception.

23 MR. FREDERICKS. Q Have you in mind the question? A Read
24 the question.

25 THE REPORTER. Mr. Smith has the question.

26 MR. FREDERICKS. I can repeat it verbatim, and I will
repeat it, with the idea that the objection has been made

1 and the same ruling.

2 THE COURT. The same objection and the same ruling. The
3 same exception.

4 MR. FREDERICKS. Q State whether or not on the 1st day of
5 October, 1910, the day immediately following the night
6 or, the morning it is said the Times Building was blown
7 up you and Edward Adams Cantrall were rooming at Room 1
8 in the St James Annex of the St Andrews Hotel
9 in the city of San Louis Obispo, in this state, and that
10 on the morning of that day you met Mr. Cantrell on the street
11 in the said city of San Louis Obispo, you and he being alone,
12 and you said to him, "My God, Cantrell, the Times Building
13 has been dynamited and something like twenty people have
14 been killed." or words to that effect or to that purport
15 or effect in substance or to that effect? A We were in--
16 Q Mr. Harriman, I will have to ask you answer that yes or
17 no first. A No. Now, let me explain.

18 THE COURT. Yes, you may explain.

19 A We were in San Louis Obispo, we were together that day
20 in the city in the hotel, we did converse concerning the
21 explosion. I did not make such a remark, but we did con-
22 verse concerning it, yes.

23 Q State whether or not, while still on the street in ques-
24 tion, at the time and place in question, you thereupon--
25 I will start the question over again: State whether or
26 not while still on the street in question at the time and

1 place in question you thereupon took Mr. Cantrell by the
2 arm and he and you walked up to your room in said hotel
3 and that you closed the door of said room and turned the
4 key in the lock and threw yourself into a chair and burst
5 into a fit of laughter, he and you being there alone, and
6 after you had ceased laughing and somewhat regained your
7 composure and still while in your said room in the said
8 hotel, you and Mr. Cantrell being there alone, Mr. Cantrell
9 said to you, "What does it mean?" and you answered, "It
10 means that the boys are on the job," and Mr. Cantrell says,
11 "What is that?" and that you answered, "It means that they
12 are on the job", or words to that effect or that in sub-
13 stance or language in substance to that effect?

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1 MR ROGERS: The same objection, that it is not cross-
2 examination, collateral, incompetent, irrelevant and imma-
3 terial.

4 THE COURT: Objection overruled.

5 MR ROGERS: Exception.

6 A. No such circumstance or conversation ever took place
7 between us. Now, your Honor, I wish to make an explana-
8 tion.

9 THE COURT: You may.

10 MR FREDERICKS: There will be more of this, if you wish to
11 make the explanation at the end -- A I will make it
12 now.

13 THE COURT: I think he has a right to make it now.

14 MR FREDERICKS: Certainly. A After our visit to San
15 Luis Obispo to work there, we returned to Los Angeles,
16 we conducted a series of meetings together, and were good
17 friends. Our friendship remained until February of this
18 year, at that time a difference arose between --

19 MR FORD: Pardon me just a moment. A I ask for the pri-
20 vilege of this court --

21 THE COURT: Just a moment, I will hear the objection.

22 MR FORD: The witness ^{is} entitled to explain an answer; he
23 is not entitled to make a statement except in response to
24 questions asked him. If the witness has made his answer
25 and if that answer is equivocal and he believes it will
26 be misunderstood or ambiguous in any way, he has a right

1 to explain that answer; we do not deny that, but this
2 witness is now going on to testify about somebody else,
3 he is going on to testify in regard to Mr Cantrell and
4 the motives which prompted Mr Cantrell in response to no
5 questions whatsoever. While he may desire to explain the
6 reason of Mr Cantrell's hostility, if such there be, it
7 is not an explanation of the answer at all, and it can
8 only be brought out on redirect examination, if at all,
9 by question and answer. That is a bridge we will cross
10 when we come to it, but a witness is not allowed here to
11 conduct the case for the defense, he is not allowed here
12 to attack the motives of some other witness who has not
13 yet testified, nor testify concerning that other wit-
14 ness. Our point will be this: if there is anything in
15 the conduct of Mr Cantrell and his relations to Mr Harri-
16 man which would color his testimony in any way, the time
17 to bring that out will be when Mr Cantrell takes the
18 stand and if Mr Cantrell denies that certain relations ex-
19 ist, counsel will then have a right to recall Mr Harriman
20 to testify to that matter. At the present time we believe
21 it is entirely improper, that the only privilege that the
22 witness has at the present time, is to explain his answer.

23 THE COURT: I think the witness has a broader privilege
24 than that, under any circumstances. The court cannot
25 anticipate what his explanation is to be. If his explana-
26 tion is one that ought not to be in the record, the court

1 will entertain a motion to strike out. In the meantime,
2 I will hear his explanation.

3 MR FORD: Just a moment, if your Honor please. With re-
4 gard to the last remark of the court, as far as striking
5 evidence out is concerned, the damage may be done.

6 THE COURT: I understand the effect of that. The court
7 will cover that, however, I think.

8 MR FREDERICKS: Proceed, then, Mr Harriman. A During
9 the following year or year and a half, until February of
10 this year, we worked on the State Executive Board, which
11 was mentioned formerly in this testimony.

12 Q State Executive Board of the Socialist Party? A State
13 Executive Board of the Socialist Party, in perfect harmony
14 together. I was nominated for Mayor. Since this alleged
15 conversation, this same man supported me in the conven-
16 tion, insisted upon my running. In February, we took dia-
17 metrically opposite stands in regard to an issue that
18 arose in the party, details of which I need not bother you
19 with, referring to the management of a paper, and since
20 that time he has become one of my bitterest enemies and
21 has threatened to put me behind the bars, and this testi-
22 mony, as I am informed, is the testimony given before the
23 grand jury to that effect; I say, as I was informed. I
24 may be mistaken; if I am mistaken in this respect -- I
25 don't know -- but, ^{that} we have become enemies since last
26 February, can be established beyond a question.

1 Q I presume that will be brought in at the proper time,
2 Mr Harriman. A Just a moment. And that after this
3 alleged statement he supported me in every particular,
4 both in the nomination in the convention, in the campaign
5 for the office for which I was candidate. That is all.

6 Q . Now, the opposite stands that you took, Mr Harriman,
7 were a split in the Socialist party over this fact, that
8 Mr Cantrell and his followers believed in education of
9 the people, and the attaining of their objects through
10 political activity, and you and your faction believed in
11 the attaining of those objects through violence? Isn't
12 that the split?

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4p 1 MR. APPEL. Now, we object--

2 MR. ROGERS. Let him have his answer, he wants an answer.

3 A Mr. Fredericks, to your knowledge I have been engaged in
4 the propaganda in the socialistic movement for now 23 years.
5 I have never changed my position one iota, so far as that
6 particular is concerned, I took the stand in our national
7 convention only five or six weeks ago on the resolution
8 offered--on the trade union resolution offered, which I
9 was made chairman to make the report, and this was the
10 issue in the resolution. I led the opposition against
11 sabotage

12 Q Against what? A Sabotage.

13 Q I guess you will have to explain that. A A phrase
14 that is used in the syndicalistic movement in France
15 which means--

16 Q That means breaking up machinery? A I thought you
17 knew it.

18 Q I knew it. I didn't know whether the jury did or not.

19 A All very well acquainted with it. I took the position
20 against that and for political action and we won by prob-
21 ably two-thirds or probably three-fourths in the convention.
22 I have always opposed it and am known to have stood against
23 it since I have been in the movement, in every way.

24 Q Then you oppose that branch of your party that believes
25 in violence? A Absolutely.

26 Q There is a branch that does believe in violence? A There

1 is, if I may explain, now you have brought it up.

2 MR. ROGERS. He has asked for the question.

3 A He has asked for the question.

4 MR. FREDERICKS. I asked the question.

5 THE COURT. Mr. Sheriff, you are entirely right. Whenever
6 there is any such conduct such as you have just dealt with.
7 Any one who cannot repress his tendency to laugh here will
8 have to leave the room and I will state what I have stated
9 several times in this particular. The court absolutely
10 upholds the sheriff in this, what he has done. He has put
11 one man out of the room here because he laughed. This is
12 a very serious occasion, a very solemn one and is to be so
13 treated here in this court room. Any one who cannot so
14 treat it better not come, because you will be subjected to
15 that condition and the court will uphold the sheriff if
16 it was done as it was done properly.

17 MR. FREDERICKS. Mr. Reporter, will you read the last ques-
18 tion and answer?

19 (Record read.)

20 MR. FREDERICKS. And the question was answered, "There is."

21 A No, just a moment. I did not. I said let me explain.

22 THE COURT. What is the answer?

23 MR. FREDERICKS. You said, "There is, let me explain."

24 I don't know that we want to go too fully into socialism

25 but go ahead. A You have asked me for an explanation.

26 Q No, I asked you if there was such a branch. I didn't

1 ask you for an explanation. I don't want the explanation.
2 If you want to make it, go ahead.

3 A No, sir. Shall I make it?

4 THE COURT. You may make it.

5 MR. FREDERICKS. I am perfectly willing he should, but not
6 in response to my question.

7 THE COURT. If it is necessary to make it clear he can
8 explain.

9 MR. FREDERICKS. There is such a branch. Now, explain.

10 A The position I have taken for the last seven years, and
11 over which there has been some controversy--

12 MR. FREDERICKS. But, may it please the court, the witness
13 is not talking to my question. A I am answering your
14 question precisely.

15 MR. FREDERICKS. No, sir. The witness is answering what
16 his beliefs are, which he has gone over. My question was,
17 then there is such a branch and he said "There is."

18 THE COURT. He said, "There is," but that that answer
19 required some ramification and explanation.

20 MR. FREDERICKS. He is going on to give his explanation.

21 THE COURT. I suppose it is typical of the socialistic
22 party, is that correct?

23 A It is, and he asked me if I did not take a certain
24 position in favor of that branch of the party and I answer-
25 ed your question, and I have not yet answered--

26 THE COURT. I think he is within his rights. Proceed.

1 A The position that I took in the national Convention and
2 have for seven years is this--

3 MR. FREDERICKS. That is the same matter you testified to
4 a while ago.

5 MR. ROGERS. I think the witness ought to be permitted to
6 go on.

7 THE COURT. Yes, Captain Fredericks.

8 MR. FREDERICKS. Go ahead.

9 A It wont bother me a bit, if it does it might interrupt
10 the jury.

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1 MR FREDERICKS: They are used to it.

2 A I have taken the position that the economic organiza-
3 tion and the political organization of the working classes
4 should be so closely allied that then each organization be-
5 comes an avenue through which that power might be ex-
6 ented. Hitherto, they have been separated, the Socialist
7 party and the Trade-Union movement. I have taken the
8 position that their separation begets a weakness on the
9 part of both of them out of which a hopelessness arises,
10 and out of the hopelessness men will abandon their organ-
11 ization, because they have lost their hopes. This
12 separation of these two movements has resulted in a number
13 of men abandoning the political action and drifting into
14 an organization out of our movement that advocates direct
15 action.

16 MR FREDERICKS: What do you mean by direct action?

17 A Well, sabotage.

18 Q Violence? A Some do. The Syndicalist movement arose
19 in France, the same way in England, out of the Trade-Union
20 movement, likewise men who lost hope. Just a moment.
21 You have asked for this explanation --

22 MR FORD: Just a moment.

23 THE COURT: I think he is within his rights. Proceed, Mr
24 Harriman. A Out of the labor movement.

25 MR ROGERS: Now, if your Honor please, I object when a man
26 asks a question and the witness is endeavoring to answer

1 it, I object to this continual fire of talk which the
2 jury can hear, intending to and calculated to, and made
3 for the purpose of derogating from the witness' answer.

4 MR FREDERICKS: My talk was made for the jury here and
5 for the court to hear, and for everybody that can hear,
6 to hear, and went in the record:

7 THE COURT: The only thing I heard Captain Fredericks say
8 was, he had no objection except for the time it took.

9 MR ROGERS: The witness ought to be permitted to go on.

10 MR FREDERICKS: But I think the court should limit this
11 somewhere.

12 THE COURT: It is difficult.

13 MR FREDERICKS: It isn't responsive to my question at all.

14 THE COURT: I think it is. Proceed.

15 MR FREDERICKS: If the court thinks so, go ahead.

16 A From the labor movement, when men, where they want to
17 use the strike and boycott and do not use their political
18 power as an organization, this same hopelessness arises
19 and you have the result, men drifting into the direct
20 action. I said, and it has been my position, that in order
21 to overcome this tendency in American, we must bring
22 these movements close together which will result in the
23 entire power of the class being exerted politically and
24 economically, and out of that power would spring a hope
25 and out of hope a constructive policy and a sane policy.
26 We have made that fight in our last national convention.

1 I led the resolution committee and secured the adoption of
2 the resolution in opposition to those who followed the
3 other policy, and I have taken this stand for the last
4 seven years -- just a moment, one more sentence. And
5 since that convention, MR Edward Adams Cantrell made a
6 speech in this city --

7 THE COURT: Proceed, Mr parriman. A Made a speech in
8 this city in which he made the statement that he was in
9 favor of direct action or any action that would accom-
10 plish his end, and I shall produce his speech. It was
11 taken down in typewriting.

12 MR FREDERICKS: Is that all? A That is all.

13 Q Now, let's get back to the case.

14 MR ROGERS: I take an exception to that remark. He asked
15 for that statement; he asked for it, and he got his
16 answer.

17 MR FREDERICKS: I asked for nothing of the kind.

18 MR ROGERS: I except on the ground it is misconduct, and
19 I desire my exception entered in the record. "Now, let's
20 get back to the case." The court allowed that, if your
21 Honor please, that the answer of the witness was within
22 his rights as testimony, and I take an exception to the
23 remark.

24 MR FREDERICKS: But not responsive to my question, and I
25 will submit it, if the reporter is here, and will read
26 the question, but I am making no objection to the talk of

1 the witness.

2 THE COURT: This was an explanation, merely, of his
3 answer.

4 MR FREDERICKS: Mr Harriman, let us come back to the sit-
5 uation we were talking about, back to San Luis Obispo
6 on the morning after the Times was blown up and back to
7 the room in the hotel where I asked you about your
8 conversation with Mr Cantrell, in which I asked you if
9 you said, "It seems the boys are on the job", and so forth.
10 Now, I will ask you another question: state whether or
11 not at the time -- at the same time and in the same room
12 in said St James Annex to the St Andrews Hotel in the said
13 city of San Luis Obispo,
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6s 1 you and Mr. Cantrell being there in said room alone, you
2 further said to Mr. Cantrell, "I have known for sometime
3 that preparations were being made to pull off that job,"
4 referring to the blowing up of the Times Building, or
5 words to that effect or that in substance or language
6 in substance to that effect? A I never made such a
7 statement or any statement that conveyed any such an idea.
8 Q State whether or not while you and Mr. Cantrell were
9 still in the same room, in the same hotel and at the same
10 time, he and you being there alone, you further said to
11 Mr. Cantrell in substance that you had been in consultation
12 with them, referring to the parties who were making pre-
13 parations to blow up the Times Building, as attorney for the
14 unions, and were very close in their confidences, and that
15 you had asked or begged them, referring to the parties who
16 were making preparations to blow up the Times building,
17 or were planning to blow up the Times Building to postpone
18 or put off that matter until after the state convention or
19 meeting here in the city of Los Angeles during the first
20 part of October, 1910 of the Central Labor councils or
21 State Federation of the Building Trades councils or the
22 convention or meeting of the various labor unions of this
23 state, by whatever name they might have been called, or
24 in any language to that effect? A No--
25 MR. ROGERS. Wait a moment--just for legal reasons alone--
26 MR. APPEL. We object upon the ground that it is not

1 cross-examination, upon the further ground that the ques-
2 tion if denied cannot be made the basis of impeachment or
3 the subject thereof, it being collateral to any issue in
4 this case, any contradiction or impeachment of the witness
5 cannot be permitted, therefore, it is incompetent, irrele-
6 vant and immaterial for any purpose.

7 THE COURT. Objection overruled.

8 MR. APPEL. We take an exception.

9 MR. ROGERS. May that objection follow this line without
10 repetition?

11 THE COURT. Yes, sir, it will be understood that the
12 same question, the same ruling and the same objection
13 will be deemed to be interposed to each and every question
14 on this line.

15 MR. ROGERS. That is all we want.

16 A No such conversation or any language that could convey
17 any such idea was ever used between us at any time.

18 MR. FREDERICKS. Q And not at that time? A And not at
19 that time.

20 Q Do you know a man by the name of Frank B. Merriam?

21 A I do.

22 Q Frank B. Merriam is also in the councils of the Socialist
23 party? A He is State Secretary Treasurer.

24 Q He is at present? A At present, and the person with
25 whom this controversy arose concerning Cantrell.

26 Q All right. How long have you known Mr. Frank B. Merriam?

1 A About a year and a half or two years.

2 Q You knew him as state treasurer of the councils of the
3 Socialist party? A He was elected when the office was in
4 Oakland and the office was moved down here and I met
5 him about two years ago, after his election.

6 Q State whether or not a few days or within a week after
7 the blowing up of the Times Building you were at Mr. Frank B.
8 Merriam's office, room 424 in the Heney Building here in the
9 city of Los Angeles, he and you being there alone, and that
10 he and you there discussed or talked about the explosion or
11 blowing up of the Times Building, and that you expressed
12 the belief or opinion that it was a dynamite explosion and
13 that Mr. Merriam disputed it and said, "The Union boys
14 never did it, they would not be so foolish as that", or
15 words to that effect or that in substance, to which you
16 replied, "Yes, they did; yes, they did," repeating it
17 twice, or words to that effect or that in substance, and
18 that Mr. Merriam then said, "I cannot believe it," or words
19 to that effect or that in substance, and that you further
20 replied, "Well, if you could hear them talk you would know
21 or would understand," or words to that effect or that in
22 substance. Please answer the question.

23 MR. APPEL. We make the same objection on the same grounds
24 stated and it is not cross-examination. It is collateral
25 to issue and cannot be the basis of impeachment of the
26 witness on any matter he has testified to, that if the wit-

1 ness answered in the affirmative it could not contradict
2 him or if he denied it and were contradicted that it would
3 not contradict him in any matter testified to in reference
4 to this case.

5 THE COURT overruled.

6 MR. APPEL. We except. And not cross-examination.

7 A No such conversation ever took place between us. We
8 have talked over the disaster, of course. Were there
9 together because I was a member of the State Executive
10 Party, but no such conversation that could convey any such
11 an idea ever took place between us.

12 MR. FREDERICKS. All right. Just a moment--Now, Mr. Harriman,
13 coming back to the morning of the 28th of November, 1911
14 at the time when you visited your vault in the German-
15 American Savings Bank and then afterwards went up to the
16 office in the Higgins Building what all did you have in
17 that vault? A A few papers and money.

18 Q Whose money? A Mine.

19 Q Personal money? A Mine; yes, sir.

20 Q Your personal money? A Yes, sir.

21 Q You had accounts with two banks, did you not, Mr. Harri-
22 man? A I have an account with the First National Bank,
23 I believe the items of the deposits and the checks were
24 turned over to Mr. Ford at the time of the investigation.

1 Q Was that a personal account? A That was a personal
2 account, and also I kept for a little while, some of the
3 money there that was turned over to me for current expenses,
4 and shortly after I separated the account and placed the
5 trust account in the State and County Bank, across the cor-
6 ner of the street.

7 Q That was the money -- the McNamara defense trust ac-
8 count, you mean? A Yes, from time to time small sums were
9 given me to pay the current expenses of the office. I
10 think also I turned the -- or had turned the statement of
11 the deposit and the checks over to Mr Ford in that res-
12 pect.

13 Q When did you take this account over to the bank across
14 the street? A I don't remember the date, but the
15 statement that he has will show.

16 Q Is that the bank that you drew this check on, this
17 \$500 check? A Oh, no sir; that was the Southern
18 California Bank. I moved my account from the First
19 National Bank to the Southern California Savings Bank on
20 the corner of Fifth and Broadway. It has been there ever
21 since.

22 Q Well, you had a checking account then, and money in
23 deposit in one or two banks at this time? A I had a
24 checking account on the Southern California Savings Bank
25 at the corner of Fifth and Broadway. I had the trust
26 account, but was not handling that. Mr Russell was handl-

1 ing the amounts at that time.

2 Q Well, you had --

3 MR ROGERS: Wait a moment. I don't know that the witness
4 has finished.

5 THE COURT: Have you finished? A Yes.

6 MR. FREDERICKS: You had an account of your own, a checking
7 account? A Yes sir.

8 Q In the bank -- A At the Southern California Savings
9 Bank.

10 Q -- at the same time that you had this money in the
11 vault? A I did.

12 MR ROGERS: The witness was not permitted to finish his
13 answer. What was it? A At the Southern California
14 Savings Bank on the corner of Fifth and Broadway.

15 MR FREDERICKS: When was the indebtedness incurred that
16 you paid this note? A The date of the note will show.

17 Q Do you remember the date of that? A In 1909, I think,
18 two years before, I believe.

19 Q Was it a two-year note? I could find out by going and
20 looking at it. Do you remember? A The note itself will
21 show. I think it was. I think it was due about this
22 time.

23 Q About what time -- will the clerk let me see that?

24 A The record will show -- I don't remember the date, but
25 I think that is about right.

26 Q This appears to be dated October 20, 1909, and it

1 therefore became due October 20, 1911 ? A yes, and
2 this was the first time they had presented it to me.

3 Q Was this a personal matter that you had with them?

4 A We bought a ranch --

5 Q I don't care to go into your private affairs. A This
6 was a personal matter.

7 Q It was a personal matter, was it? A A personal mat-
8 ter.

9 Q You been to that vault anytime shortly before this
10 morning of the 28th? A The dates that I visited the
11 vault before and after, I think have been turned over
12 to the officers.

13 Q Have you any independent recollection in regard to
14 that? A I don't remember the exact date, but most of
15 them will correspond with the dates of deposits in the
16 bank. Whenever I had to place any in the bank, I trans-
17 ferred the money over.

18 Q Did you have any money in the safe deposit box that
19 you got from Mr Darrow aside from fees? A No sir, that
20 is what I was going to ask.

21 Q Well, you also got your fees in checks, you never
22 got any cash? A Never got any cash.

23 Q You hadn't any in there you got from Mr Darrow?

24 A Never. I got a check -- I had the check cashed, and I
25 put the cash in this drawer.

26 Q Took the cash and put it in the drawer instead of

1 leaving it in the bank? A I did.

2 Q In regard to this \$500 check, as a matter of fact,
3 don't your best memory serve you that that check was brought
4 up before the grand jury on a subpoena of Mr Blair, the
5 cashier of the bank, and that you did not bring it to the
6 grand jury? A I did not say that I did.

7 Q What is your best recollection of it? A I said
8 this morning that the circumstances out of which it was
9 brought to your office, was as I stated here, that I sent --

10 Q But you don't remember whether you brought it up?

11 MR ROGERS: Wait a moment. I submit the witness is entitled
12 to answer.

13 THE COURT: Have you finished? A No sir.

14 THE COURT: Go ahead. A That Mr Russell went back and
15 made a statement, and out of the facts the check was
16 brought to your office, whether from our office or whether
17 from the First National Bank, I did not know.

18 MR FREDERICKS: Well, that is only a conclusion of yours,
19 that out of those facts, as a matter of fact -- A I
20 thought so.

21 Q -- the bank was subpoenaed to bring the check up there,
22 and that is the way the check was gotten? A Maybe.

23 Q yes. Mr Russell told you what he had testified to
24 before the grand jury, did he? A He told me that he
25 had been asked if I were at my office that morning, and
26 that he had answered in the negative. Whether he said

1 the grand jury asked him or Mr Ford asked him, possibly,
2 I don't know, and I told him to return and correct his
3 statement, and he did.

4 Q How do you know he corrected his statement? A I
5 have seen a transcript of the testimony before the grand
6 jury since, and he did it.

7 Q At any rate, he told you what he had testified to be-
8 fore the grand jury, notwithstanding the fact that he was
9 under oath, an oath which provided that he should not
10 reveal what his testimony was before the grand jury?

11 A He made --

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1 MR. ROGERS. Wait a moment, if your Honor please--that is
2 objected to as assuming a fact which is not true in law,
3 and which calls for a conclusion or opinion of the witness
4 and is not cross-examination and no foundation laid.

5 MR. FREDERICKS. I withdraw the question.

6 THE COURT. The question is withdrawn.

7 MR. FREDERICKS. Q Now, you say when you got back to the
8 bank that morning, the morning of the 28th of November, and
9 you went into your vault, that you came out and took your
10 machine? A Yes, sir.

11 Q But you walked down there? A Yes, our--my machine
12 was kept in a garage on South Main street and I walked
13 to the bank and told my boy to bring the machine to the
14 bank, which he did.

15 Q You mean telephoned to him? A No, he left home about
16 the same time I did, but I stopped for breakfast and he
17 went on and got the machine and took his breakfast after
18 we got to headquarters.

19 Q But you do remember of being at the vault on the morning
20 of the 28th, you are sure of that? A Positive.

21 Q Absolutely sure of it? A Absolutely.

22 Q Absolutely sure of getting some money out? A Certainly.

23 Q Absolutely sure of afterwards going up in the Higgins
24 Building? A Certainly.

25 Q And you got there about 9 o'clock? A Well, I got there
26 a little earlier than I testified I did when I was before

1 the grand jury. Before the grand jury I said about 9 or
2 a little before, I do not remember. I think you will find
3 those are about the words.

4 Q I want your memory now. A Just a moment. Now, I
5 went a little earlier than that. I would not have remem-
6 bered had it not been called to my attention since Mr.
7 Franklin testified. The circumstances are these--

8 Q I only asked you the time, Mr. Harriman, I am not cross-
9 examining you on that point.

10 THE COURT. He is fixing the time.

11 MR. FREDERICKS. I only asked him-- A By the circum-
12 stances.

13 Q If you fix the time and then I ask you the circumstances
14 that will be different. A It was earlier than that.

15 Q About when was it? A Shortly after 8--

16 Q Shortly after 8? A Shortly after half past eight.

17 Q Shortly after half past eight? A Yes.

18 Q What time did you leave home that morning? A Before
19 eight, quite a little; enough to get my breakfast and come
20 down to the vault.

21 Q About half an hour's walk from your house to the vault?

22 A About 15 or 20 minutes. I got my breakfast in the mean-
23 time.

24 Q 15 or 20 minutes and how long for your breakfast? A I
25 don't know.

26 Q 15 or 20 minutes? A Not over.

1 Q That would be half an hour. How long in the vault?

2 A Oh, not a minute. I went in there and unlocked the box,
3 took it out and away I went.

4 Q Do you remember when the last time was that you were
5 up in the Higgins Building before the 28th? A No, I do
6 not; I didn't go often to the office during that month,
7 but occasionally.

8 Q Was the defense in the McNamara case funds supplying
9 you with any money to use in your campaign? A No.

10 Q Your campaign any part of the defense of the McNamara
11 case? A No part.

12 Q Did Mr. Darrow get some money from Lincoln Steffins for
13 defense funds and turn it over to you?

14 MR. APPEL. We object to that as immaterial and not cross-
15 examination.

16 A Let him ask it.

17 THE COURT. Objection sustained.

18 MR. FREDERICKS. That is all.

19 THE COURT. Any redirect?
20

21 REDIRECT EXAMINATION.

22 MR. ROGERS. Q Who is Edward Adams Cantrell? A He was
23 a minister until about 6 or 7 years ago and after that
24 became interested in the Socialist movement and has been
25 a lecturer on the platform ever since.

26 Q Now, after this alleged conversation at San Louis Obispo

1 you say that he supported you for Mayor and made speeches
2 in your behalf? A He did up to the very end of the cam-
3 paign, and Merriman also.

4 Q And Merriman also? A Yes, sir.

5 MR. FORD. I move the last part be stricken out as not
6 responsive to any question.

7 MR. ROGERS. Q And Merriman also? A And Merriman also.

8 MR. FORD. Can I get a ruling.

9 THE COURT. If you want to have it stricken out, the for-
10 mality of having it stricken out.

11 MR. FORD. I made that motion and the counsel immediately
12 shoots another question before the court rules. I think
13 both of them are absolutely incompetent, irrelevant and
14 immaterial but we didn't make any objection to the first
15 one.

16 THE COURT. Strike it out, the latter portion of the answer.

17 MR. FORD. I move to strike out the last question and
18 answer.

19 THE COURT. Motion denied.

20 A Not only is that true--

21 MR. FORD. There is no question before the court.

22 THE COURT. No.

23 A I am finishing my answer.

24 THE COURT. Now, let's see. Read that last question and
25 answer.

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

and answer
(Last question read by the reporter.)

1 THE COURT: Strike out "Marriam, also". Now, there is
2 another question.
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4 MR ROGERS: And Marriam, also?

5 MR FORD:" To that we object on the ground it is incompe-
6 tent, irrelevant and immaterial, seeking to ascertain the
7 position of a man who has not yet even been called as a
8 witness, is not any cross-examination at this time.

9 MR ROGERS: It is not cross-examination, but it is re-
10 direct.

11 THE COURT: Objection overruled.

12 A And Marriam also, and they were both the principal per-
13 sons to press me to accept the nomination for mayor, and
14 supported me in the convention and in the campaign.

15 MR ROGERS: Now, Mr Harriman, you say that Cantrell made
16 a speech the other night. As a matter of fact, there was
17 a meeting the other night at which Mr Cantrell, among
18 other persons, bitterly attacked you and tried to read
19 you out of the Socialist party, or something like that,
20 wasn't there?

21 MR FORD: To that we object on the ground it is not in any
22 sense redirect examination. The only purpose of it is,
23 is to testify concerning a man who has not yet appeared
24 in this court. It certainly is not redirect examination,
25 and an attempt on the part of counsel at this time to
26 enable the witness to present an argument to the jury con-

1 cerning a man who has not yet been called as a witness.
2 Supposing Mr Cantrell was called as a witness here, and
3 counsel wanted, then, to ask those questions, it would be
4 proper to ask it, perhaps, and perhaps Mr Cantrell would
5 admit those things, and if he did admit them, then they
6 could not recall this witness to prove the contrary,
7 and if he didn't admit them, then they could recall this
8 witness or any other witness to testify to what he did and
9 what he said; on the further ground, no foundation has
10 been laid at this time to show Mr Harriman was present at
11 any such meetings, and that it is anything but hearsay
12 at the present time.

13 THE COURT: It seems to me, Mr Rogers, Mr Ford is right
14 about the order of proof. I will hear you if you wish
15 to be heard.

16 MR ROGERS: Insofar as the order of proof is concerned,
17 your Honor will recall on cross-examination they bring
18 in the name of a person and bring in the alleged conver-
19 sation. That opens up all the relations between that
20 person and the witness upon their asking the question and
21 we do not have to wait for him to come upon the stand; per-
22 chance he never comes, and therefore, there remains nothing
23 but the insinuation which we are at liberty in view of
24 the mention of the name and the circumstances and place
25 and persons present, and the inuendo of the conversation,
26 we are entitled, therefore, to go into the whole

1 situation and the circumstances, and especially is that
2 true where it is claimed that the conversation was be-
3 tween the witness and the person named behind a locked
4 door, and no one able to hear it. We have a right to
5 show the absolute improbability of the whole matter, the
6 improbability of it, the unlikelihood of it, that if Mr
7 Edward Adams Cantrell perchance be a man of any sort of
8 citizenship, if Mr Harriman told him any such thing as
9 that, that he should affirmatively support him and hold
10 meetings and one thing and another to make him the chief
11 magistrate of this city, it is a most remarkable condi-
12 tion of things, and when we develop that situation, we have
13 a right to develop what he did immediately after he ceased
14 to be Mr Harriman's friend. That is the law of this mat-
15 ter and always has been.

16 MR FORD: If the court please, that is not the law of the
17 matter. The testimony at the present time does not show
18 that any conversation occurred between Mr Harriman and
19 Mr Cantrell along the lines indicated by the questions pro-
20 pounded by Captain Fredericks to the witness; the only
21 testimony before this court is the testimony of this
22 witness that such a conversation did not occur. There is
23 no evidence before the court yet, that such a conversa-
24 tion did occur, and therefore any inquiry into who that
25 man was or what his relation to the case was, is absolute-
26 ly immaterial until some evidence appears before this

1 court that such a conversation did occur, and then when
2 the witness takes the stand the sole inquiry in regard
3 to his relations with the present witness on the stand,
4 will be directed towards the motive of the witness who
5 is then on the stand, and, as your Honor has already
6 indicated, it is purely a question of proof, or order of
7 proof at the present time. That is what we are arguing.
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1 When Mr. Cantrell takes the stand, perhaps some of the
2 things that counsel desires to inquire into will then be
3 relevant, but at the present time there is no evidence
4 before this court that such a conversation did occur.
5 Now, if there is anything upon that subject on cross-
6 examination it was not in response to a question. We made
7 objections--one of the questions asked of this witness was,
8 "Is there a portion of your party, the socialist party
9 which believes in direct action?" Over objection the
10 witness was allowed to make an explanation which did not
11 in any wise modify the statement that there was a party of
12 direct action. He went into an argument as to his opinions
13 and his conclusions as to the reasons for the existence of
14 such a party. He said, "There is such an element, there is
15 such a portion of the party as believes in direct action,"
16 and then said nothing which modified that in any way; he
17 gave an argument as to his reasons, his beliefs, his opin-
18 ions and to the causes of such a condition which did not
19 modify the answer in any way, shape or form.

20 MR. APPEL. We object to his going into that.

21 MR. FORD. I would like to go on without interruption.

22 THE COURT. The court will listen to counsel until he has
23 finished.

24 MR. APPEL. We have a right to reply.

25 MR. FORD. Whether or not my position is logical, I believe
26 in it sincerely and I would like to have the court listen

1 to it. I may be wrong and that is for your Honor to
2 decide. The point is, whatever statements the witness may
3 have made on the stand are improperly in the record.
4 Perhaps we might have moved to strike them out. We didn't
5 do so, it does not make any difference, it is absolutely
6 immaterial what this witness believes, or his opinions are
7 as to the history of the existence of such things and that
8 would be the only possible excuse they can bring it out
9 on; at the present time it is absolutely incompetent, irre-
10 levant and immaterial, not a subject for redirect examina-
11 tion at the present time and wholly violative of the order
12 of proof as laid down in the codes and decisions and the law
13 in this state and every other state.

14 MR. APPEL. It is important in this, your Honor: A witness
15 is asked the question whether or not he made such and such
16 statements to this party Cantrell. The witness has given
17 an answer that no such thing occurred and in addition to
18 that he, being our witness, we have a right to call his at-
19 tention to the fact not only that he did not do so but
20 that in the very nature of things it could not have been so.
21 In other words, if we get from this man a letter, from Mr.
22 cantrell, recommending Mr. Harriman here for the high office,
23 speaking of him as a good citizen, as a man fitted for the
24 office, eulogizing him, we would have a right to show not
25 only that he did not say that to Mr. cantrell, but how could
26 he have said it to Mr. cantrell when here is a letter sub-

1 sequent to the time of the conversation in which he has the
2 highest opinion of him. Now, having gone that far, we have
3 a right to show that before this witness goes upon the
4 stand that this man has become an enemy and that he has
5 switched around and then he may possibly have spoken illy of
6 the witness, wrongly concerning him and that the two posi-
7 tions standing before the jury, they can easily glean
8 from the two positions that in the first instance at the
9 time of this alleged conversation that it could not have
10 happened and that then the innovation of them was for
11 reasons he became his enemy and that they are of recent
12 fabrication and of recent origin. Now, the jury is entitled
13 to those circumstances for the purpose of determining whe-
14 ther the denial of Mr. Harriman is reasonable and probable and
15 proper.

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1 MR FORD: We have a right to close on our objection, and
2 we would like to close on this, and I will ask your Honor,
3 is there one scintilla of evidence before this court at
4 the present time that Mr Cantrell has said one word against
5 the defendant? Has he taken the stand and said these
6 things are true? There is not a scintilla of evidence
7 before this court as yet that Mr Cantrell has said any
8 of these things concerning the witness on the stand.

9 THE COURT: Read the question.

10 (Question read.)

11 THE COURT: Objection sustained.

12 MR ROGERS: Exception.

13 Q The boy you referred to when you said "My boy and I
14 walked down from home together" and that he got break-
15 fast and he went and got the car and brought it around to
16 the safety deposit box, when you say "my boy", whom do you
17 mean? A My son.

18 Q Your son? A Yes.

19 Q Well, then, you and your son left home together. Did
20 you breakfast together? A No.

21 Q He went and got the car and came back to the bank and
22 picked you up and then he got his breakfast after you went
23 around to headquarters? A He did.

24 MR ROGERS: That is all.

25 MR FREDERICKS: That is all.

26

1 FRANK E. WOLFE, a witness called on behalf
2 of the defendant, being first duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION

5 MR DARROW: Q What is your name, please? A Frank E.
6 Wolfe.

7 Q Where do you live? A 6166 Santa Monica Boulevard.

8 Q How long have you lived in this city? A About ten
9 years.

10 Q What is your business? A I am a newspaper man.

11 Q Are you -- Where have you worked in the newspaper
12 business? A In a number of cities, Los Angeles, Boston,
13 New York, Louisville and a number of cities.

14 Q Where did you begin your newspaper career, if you call
15 that a career? A If you may call it a career, I think
16 on the Louisville Courier-Journal.

17 Q How long did you work on the Louisville Courier-
18 Journal?

19 MR FORD: The other day when I was examining Mr Bain
20 the objection was made going to a man's whole history,
21 and what is sauce for the goose is sauce for the gander.
22 I do not think it is necessary to go back into a man's
23 whole career to qualify him as a witness.

24 THE COURT: I presume this will be very brief.

25 MR DARROW: I would not waste much time on it.

26 MR FORD: It was not, perhaps, any lengthier than ours

1 when I asked Mr Bain, when I asked about his army career.

2 MR DARROW: That was a different purpose entirely.

3 THE COURT: Objection overruled.

4 MR DARROW: And where else did you work in the East?

5 A principally in Boston.

6 Q . On what paper? A The Boston Herald and the Boston
7 Globe.

8 Q In what capacity? A I think as special writer and
9 part of the time as telegrapher.

10 Q How long were you working on those papers? A I think
11 about ten years.

12 Q And did you come from there to Los Angeles? A yes.

13 Q And you have been in practically the same business
14 since? A Yes sir.

15 Q How long have you been in the newspaper business, all
16 together? A Intermittently, I think a period covering
17 about 20 years.

18 Q What papers did you work on in this city? A The
19 Los Angeles Herald.

20 Q What position had you on the Los Angeles Herald?

21 A Several positions, from that of telegraph editor to
22 that of managing editor.

23 Q How long were you managing editor? A I think about
24 six years, five or six years. It may not be so long.

25 Q Are you in the newspaper business now? A Yes.

26 Q What paper? A Los Angeles Municipal News.

1 Q That is the paper established by the city? here?

2 A Yes.

3 Q During the McNamara case, what was your business?

4 A I was correspondent for a number of eastern newspapers,
5 and magazines.

6 Q . And where were your offices? A Room 925 Higgins
7 Building.

8 Q That was close by the offices of the defense in the
9 McNamara case, wasn't it? A Yes.

10 Q And in that place you got acquainted with me? A Yes.

11 Q Mr Darrow? A Yes.

12 Q You had known Job Harriman some time before, I take
13 it? A Yes sir.

14 Q Were you a candidate for office last year? A I was,
15 during the municipal campaign.

16 Q What was it? A What office?

17 Q Yes. A I harbored the delusion I was running for
18 council.

19 Q On the Socialist ticket, was it? A Yes sir.

20 Q Where was your office in the Higgins Building in re-
21 lation to Job Harriman's office? A Next door, the next
22 office.

23 Q Where was mine in reference to your office? A Your
24 office was across the hall to the south of mine, I think
25 two doors, or three.

26

- 12p 1 Q Two doors beyond, across the hall? A Three.
- 2 Q Or three. A You were in the corner room, I believe
- 3 that was the third door north.
- 4 Q Did you know a man named John Harrington, called by the
- 5 state in this case? A Yes.
- 6 Q .Where was his office in reference to yours? A Directly
- 7 across the hall.
- 8 Q How was your door, generally open or closed? A Open
- 9 all the time I was in there, virtually.
- 10 Q A good many people come and go to your office during the
- 11 day time? A Yes, quite a large number.
- 12 Q You also edited the Socialist paper at this place, did
- 13 you not? A It was edited there, yes.
- 14 Q It was edited there? A Yes, sir.
- 15 Q Did you know Bert Franklin, know who he was? A Yes, sir.
- 16 Q Had you seen him up there in the offices? A Yes, sir.
- 17 Q Had you ever seen him, that is, Franklin and Harrington
- 18 together? A Yes, sir.
- 19 Q Whereabouts?
- 20 MR. FREDERICKS That is objected to on the ground it is
- 21 immaterial.
- 22 THE COURT. I presume it is preliminary.
- 23 MR. DARROW. No, your Honor. Mr. Harrington swore that he
- 24 never saw Franklin over three times.
- 25 THE COURT. Oh, yes.
- 26 MR. FREDERICKS. You want to prove more than three times?

1 MR. DARROW Three times, besides once at his house--yes
2 I want to prove more and will prove more too.

3 MR. FREDERICKS We withdraw the objection.

4 THE COURT The objection is withdrawn.

5 MR. FREDERICKS. We withdraw the objection on that state-
6 ment.

7 A What is the question?

8 (Question read.)

9 A In the corridor of the building and in Mr. Harrington's
10 room, possibly in one of the other rooms, the reception
11 room.

12 Q About how often had you seen them together? A I suppose
13 a couple dozen times.

14 Q Do you know whether you have seen them in other rooms
15 excepting in Harrington's room and the corridor? A No.

16 Q Have you seen them conversing together? A Yes.

17 THE COURT I didn't get the answer. Did you answer?

18 A Yes.

19 MR. DARROW. Q During what period did this cover that you
20 found them together? A It would be difficult for me to
21 say, but during the progress of the McNamara case.

22 Q And up to towards the last, or-- A Yes, towards the
23 last.

24 Q Were you well acquainted with Harrington? A No, not
25 well acquainted.

26 Q State if you went to San Francisco at one time with him?

1 A I didn't exactly go with him; we went on the same train.

2 Q Did you have any conversation with him while you were
3 away? A Yes, we talked together some on the train on our
4 way up.

5 Q Do you remember when that was? A I don't remember the
6 date.

7 Q Do you remember about the time, or couldn't you fix that?
8 A I should say it was somewhere about the first part of
9 October.

10 Q Did you talk with him in reference to the McNamara case
11 and the people connected with it? A We had--

12 MR. FORD' Just a moment--we object to that question on the
13 ground that it is incompetent, irrelevant and immaterial and
14 that it is not in the proper form provided for for the ask-
15 ing of an impeaching question. I assume, and maybe I am
16 wrong and if so I should refrain and withdraw my objection--
17 but I assume that this witness is called to testify to
18 an impeaching question put to Mr. Harrington or to Mr. Frank-
19 lin. Am I correct?

20 MR. DARROW. You are a good guesser.

21 MR. FORD. That being the case, I think the proper form is
22 to ask him whether or not at such and such a time and such
23 and such a place the following conversation was had,
24 repeating to him the same question that was put to the
25 witness.

26 MR. DARROW. This is preliminary.

1 THE COURT. It is preliminary.

2 MR. FORD. The witness has started to repeat the conversa-
3 tion.

4 THE COURT. The witness is admonished not to do that but to
5 answer the question.

6 MR. FORD. Yes, that is all I ask that he be admonished not
7 to repeat the conversation.

8 THE COURT. Objection is withdrawn?

9 MR. FORD. The objection is withdrawn.

10 THE COURT. All right.

11 MR. DARROW. Q Answer the question yes or no, whether you
12 did have a conversation with him? A I did.

13 Q At that time, Mr. Wolfe, did he say to you that Darrow
14 was very particular that everything should be done on the
15 square with reference to the case, or words to that effect
16 or substance?

17 MR. FREDERICKS. That is objected to on the ground no founda-
18 tion has been laid.

19 MR. FORD. As to time.

20 MR. FREDERICKS. Not only as to time but as to the question
21 itself. I am frank to admit to the court I am making this
22 objection at random, I have sent for my notes on the matter.

23 MR. DARROW. I will show you mine, General.

24 MR. FREDERICKS. You are promoting me a little here.

25 THE COURT. What page are you referring to?

26 MR. FREDERICKS. Referring to page 2812. All right.

1 MR. DARROW. Withdraw the objection, do you?

2 MR. FREDERICKS. Yes, I withdraw the objection.

3 MR. DARROW. Q Now, if you will answer the question.

4 THE COURT. Read the question.

5 (Question read.)

6 A Words to that effect.

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1 Q Did you have any other conversation with him after
2 the arrest of Franklin? A Yes.

3 Q In reference to this matter? A Yes.

4 Q A few days after the arrest of Mr Franklin, did Har-
5 rington say to you in the office in the Higgins Building,
6 or in the hall or thereabouts, "It was all nonsense,
7 the talk of Darrow's being connected in any way with
8 the bribery of Lockwood, that he had known Darrow too
9 long and had been too intimately connected with him and
10 that he had never seen the slightest sign of crooked
11 practice or any bribery around the office, and that he
12 knew Darrow could not have known anything about it", or
13 words to that effect or in substance? A Yes, he made
14 a statement in substance such as is read there.

15 Q Mr Wolfe, during the few months that the McNamara
16 case was in progress did you meet me frequently? A I
17 saw you every day.

18 Q And whereabouts, generally speaking? A Quite fre-
19 quently when you passed by my door and now and then in
20 your office.

21 Q Did you know where I lived? A Yes sir.

22 Q Do you now recall the name of the street? A I think
23 it was Bonnie Brae.

24 Q North or south? A I don't know just where First
25 street intersects Bonnie Brae, but I am under the impres-
26 sion it is north.

1 Q Over in the vicinity of Sunset Boulevard? A Yes.

2 Q Have you ever been at my house? A Yes sir.

3 Q. At the office, how frequently did you say you had seen
4 me, about? A I think I saw you every day during the
5 time the trial was in progress.

6 Q. And how about visits and conversations as to whether
7 we had them frequently? A Almost every day; every day or
8 so.

9 Q Where did you live? A Where I do now.

10 Q Well, now, you have given us the street number, but what
11 portion of the city? A In Colegrove.

12 Q That is out Hollywood way, isn't it? A South of
13 Hollywood.

14 Q And you lived there at that time? A Yes.

15 Q When you came to my house, or went from it, what car
16 did you take? A I took the Los Angeles Pacific, the Cole-
17 grove car.

18 Q On what street? A It runs north on Hill street,
19 Sunset Boulevard and Santa Monica Boulevard.

20 Q Where did that car land down town? A At the Hill
21 street station between Fourth and Fifth.

22 Q Stop at the other streets? A It stops at all inter-
23 section streets.

24 Q What did you know as to whether I went out over that
25 same line, or car at different times when I came in?

26 A I saw you riding on those cars on some occasions.

1 Q Do you recall the morning, or do you recall the day of
2 Bert Franklin's arrest? A Yes.

3 Q Do you know the day of the month or don't you recall
4 the day of the month or the month? A I have seen the
5 date mentioned frequently; I should not have recalled it
6 otherwise.

7 Q Is there anything in your mind to recall the date, or
8 do you remember just there was such a day? A I recall
9 the day.

10 Q Do you remember when you first heard of the arrest of
11 Bert Franklin on that day? A Yes.

12 Q About what time of day did you hear of it? A I
13 think between 10 and 11 o'clock, possibly 11.

14 Q Do you recall how the information first came to you?
15 A I think it came through one of the clerks or stenogra-
16 phers coming into the room and making the announcement.

17 Q How long before that time had you seen me, as near as
18 you can get at it? A About two hours.

19 Q And whereabouts? A At the office.

20 Q Where did you see me first that morning, if you recall?

21 A On the Colgrove car coming in to the city.

22 Q Do you recall where I took that car? A I think you
23 got on at Bonnie Brae, or at the stop by the viaduct
24 there, as you usually did.

25 Q How far is that viaduct, or don't you recall, from
26 Bonnie Brae? A I think it is about 100 yards.

1 Q You don't know which place it was? A No, I saw
2 you shortly after we passed there.

3 Q And where were you? A On the rear of the car.

4 Q Sitting down or standing up? A Sitting.

5 Q Do you remember how the car was as to whether people
6 were standing at that point? A Yes, they were standing
7 then, and quite a crowd got on at Elysian Park avenue
8 at the transfer point. ✓

9 Q What park? A I think it is Elysian Park avenue,
10 or at the point where the Elysian Park cars at that time
11 came down.

12 Q Where is that point? A That is about 4 or 5 blocks
13 east of Bonnie Brae.

14 Q Do you remember whether we had any conversation on
15 the car, or do you remember where I was on the car on that
16 morning? A You stood on the rear of the car. We did not
17 have any conversation.

18 Q Where did you get off? A Second and Hill.

19 Q And do you know where I got off? A You got off at
20 the same place.

21 Q Do you recall about what time in the morning that was? ✓

22 A About the time we got off the car?

23 Q Yes. A 8:30.

24 Q And came down? A About 8:30.

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14p 1 Q Have you any special way of fixing that time or was it
2 your usual time, or what? A Yes, it was my usual time to
3 go to the office.

4 Q And how long did it take you to get down from Hollywood,
5 Colgrove? A About 30 minutes.

6 Q And what did we do after that time, after getting off
7 the car? A We walked, coming down to the office. ✓ X

8 Q Do you remember whether we were discussing anything
9 coming down, especially? A You asked me--

10 MR. FORD. Just a moment, that calls for a yes or no
11 answer.

12 THE COURT. Yes, answer the question yes or no.

13 A Yes.

14 MR. DARROW. Q Without saying what was said, do you rem-
15 ember any of the topics of discussion?

16 MR. FORD. We object to that as incompetent, irrelevant and
17 immaterial, calling for evidence, self-serving declarations
18 even remotely touching upon the topics, and hearsay and
19 a conclusion.

20 THE COURT. You can answer that yes or no. The witness
21 is admonished to answer the question yes or no.

22 A Yes.

23 MR. DARROW. Q What were any of the topics we were dis-
24 cussing?

25 MR. FORD. We object to that as calling for hearsay, calling
26 for a conclusion of the witness as to the subject matter, and

1 for--if the declarations are anything that would be self-
2 serving--I do not presume they are admissions--

3 MR. DARROW. They might be.

4 MR. FORD. You would not put them on, I know that. We
5 object to that as calling for self-serving declarations.

6 MR. DARROW. Your Honor, that is not in the line of self-
7 serving declarations in the least and no conversation will
8 be called for of that nature. I know the rule perfectly
9 well. The question is simply how long we were together and
10 what we were doing, and that is all.

11 MR. FORD. The witness has testified they did have a con-
12 versation and remembers of the subjects of the conversation
13 and I think that is far enough. If we open it by going
14 into those subjects that would be an entirely different
15 matter.

16 THE COURT. Counsel has stated they were in noway self-
17 serving and they were brought out for showing the approximate
18 time and the manner of their putting in their time there
19 and the court accepts that statement at its full face
20 value.

21 MR. FORD. He can ask for the length of time without the
22 necessity of going into it.

23 THE COURT. Possibly so but he wants to go into it and
24 with that statement--

25 MR. DARROW. We guarantee there will be no such statement
26 made. We are simply going to the reasonableness of the

1 remembrance, and all that.

2 THE COURT. You may do so.

3 MR. DARROW. Q You might state, as far as you recall, any
4 of the topics of the conversation? A We spoke of the
5 campaign that was then in progress.

6 Q. And you say we got off at Second and Hill and that was
7 how far from the office? A Three blocks.

8 Q And when we got to the Higgins Building, what was done?
9 A We went up in the elevator.

10 Q And where did we go? A Went to my office.

11 Q Had your office been opened? A No.

12 Q What was done there at your office? A I unlocked the
13 door, went in and opened the windows and took off my hat and
14 coat and hung them in the wardrobe.

15 Q Did you leave the door open or closed? A I left it
16 open.

17 Q Where was I in the meanwhile? A You stood in the door
18 talking to me.

19 Q What particular topic, in reference to the campaign,
20 was under discussion, if you recall? A You had a plan
21 whereby we might--

22 MR. FORD. Just a moment--the witness is starting to say
23 something about "you had a plan whereby" and the question
24 called only for the subject of the conversation.

25 MR. DARROW. That is right.

26 MR. FORD. I have no objection to the question/^{and}asked that

1 the witness be confined merely to the particular subject
2 without stating the detail of it.

3 THE COURT. Yes.

4 MR. DARROW. Q First I will ask you, as I did the parti-
5 cular topic, the part of the campaign which we were dis-
6 cussing, if you recall it, if you do not-- A Yes, we
7 were discussing the method of getting votes.

8 Q And any particular issues that were being involved at
9 that time in reference to getting votes? A Yes.

10 Q What ones, as you recall any?

11 MR. FORD. We object to that as incompetent, irrelevant and
12 immaterial, calling for the substance of a conversation
13 which would be hearsay and not pertinent to any issues
14 before the court and an attempt to cross-examine their own
15 witness.

16 THE COURT. Mr. Darrow your statement still applies that
17 it is not any self-serving declaration?

18 MR. DARROW. Yes, your Honor.

19 THE COURT. Merely for the purpose of fixing the time and
20 identifying it?

21 MR. DARROW. Not entirely that, but by giving the circum-
22 stance and detail which always adds to the credit or dis-
23 credit of the story.

24 MR. FORD. Upon that point, your Honor--

25 MR. DARROW. Not any self-serving declarations of any sort,
26 just to show the reason of it.

1 MR. FORD. Pardon me.

2 MR. DARROW. All right.

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1 MR FORD: And upon that point, solely to say this, that
2 on examination, in the absence of any showing to the con-
3 trary, that a witness is presumed to speak the truth,
4 and by the cross-examination of the adverse parties, is
5 to show either that the witness is mistaken or in some
6 cases that he wilfully falsifies. Now, that is something
7 to be brought out on cross-examination. This witness is
8 supposed to be telling the truth, he is presumed to be
9 telling the truth, and counsel have no right at the pre-
10 sent time to add all the various circumstances to add to
11 that presumption, they cannot even introduce witnesses to
12 the good character or good reputation of this witness
13 unless the reputation of the witness has first been at-
14 tacked by the People; they cannot go into all the various
15 details unless on cross-examination the adverse party has
16 sought to show by his questions that the testimony of the
17 witness is unreasonable, that the witness is either faulty
18 in his memory, or that his motives are such and his con-
19 duct is such that he is wilfully false, one or the other;
20 then they may go into the details of it, but this is sim-
21 ply an attempt -- I do not make any charge it is wilful or
22 anything of that sort, but it is simply an attempt to fore-
23 stall the cross-examination and to bring out all the details
24 in advance of the time provided for that purpose, and
25 upon the ground it is incompetent, irrelevant and imma-
26 terial, especially is it immaterial at this time; a

1 witness is presumed to tell the truth. If he says, "We
2 stood there for an hour or a half an hour", he is presumed
3 to speak the truth until the contrary appears.

4 THE COURT: objection overruled. Answer the question. I
5 am overruling the objection on Mr Darrow's statement
6 there is nothing in it that is self-serving.

7 MR DARROW: It is not, but it is for the purpose, as per-
8 haps Mr Ford suggests, of elaborating. While the witness
9 is presumed to speak the truth, still there is no reason
10 why you cannot show his story reasonable and all that.

11 THE COURT: I think you have a right to go into those
12 details here. Objection overruled.

13 MR APPEL: We want to show what Mr Darrow was engaged in
14 that morning.

15 THE COURT: The court has opened the door for you. I
16 see your point. Go ahead. Read the question.

17 (Question read.)

18 A What issues?

19 Q Were there any special issues that were getting into
20 the campaign that were spoken of at that time? A Yes.

21 Q What ones? A The liquor question.

22 Q Was anything said --

23 THE COURT: Mr Darrow, I think we'd better take the usual
24 recess at this time. Gentlemen of the jury, bear in
25 mind your former admonition. We will take a recess for
26 10 minutes.

1 (After recess.)

2 THE COURT: All parties are present. You may proceed,
3 gentlemen.

4 MR DARROW: What was the last said there?

5 (Last two questions and answers read by the reporter.)

6 Q Mr Wolfe, about how long, as near as you can remember,
7 did we stop at your office that morning? A About a min-
8 ute.

9 Q And then where did you go? A I went to your office.

10 Q And state where I was? A You went to your office and
11 unlocked the door and went in.

12 Q And for what purpose did we go to the office?

13 A You told me if I was going to your office, you would
14 discuss that affair with me.

15 Q And were we together at that time? A Yes.

16 Q That is between -- from yours and mine? A Yes.

17 Q I believe your said mine was about three doors from
18 yours on the opposite side of the hall? A Yes.

19 Q And did you go into the office -- my office with me?

20 A Yes.

21 Q And state whether we continued that discussion, that
22 or other topics? A Yes, we continued the conversation
23 along that line.

24 Q Do you know about how long? A How long we took?

25 Q Yes, about how long, or about what time it was when
26 either of us left, as near as you can get at it.

1 A I think we talked about 20 to 25 minutes.

2 Q And what happened to take either of us away, if you
3 recall? A You said you --

4 MR FORD: just a moment. I object to that upon the
5 ground --

6 MR DARROW: First, what was done, what did you see me do?

7 A Saw you receive a telephone call.

8 Q And what was said?

9 MR FORD: just a moment -- no objection.

10 MR DARROW: What was said? A You stated you had to go
11 away.

12 Q Was anything said as to where? A Yes.

13 Q Whereabouts? A You said you were going to head-
14 quarters.

15 Q What headquarters? A Socialist headquarters.

16 Q And state whether I went away soon after or about that
17 time? A Yes, you went at that time.

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16s 1 Q And what did you do? A I went down the corridor with
2 you as far as my door and you went on down the corridor.

3 Q Did you see Bert Franklin there that morning? A NO.

4 Q Did he come to that office that morning while you were
5 there and I was there? A He didn't enter that office
6 while I was there.

7 Q Did Job Harriman come there? A No.

8 Q State whe ther or not we were together from the time I
9 got on the car until after the telephone call and I left
10 you at your office? A We were together.

11 Q Did you see Franklin or Harriman at any time that morn-
12 ing up to that time? A No.

13 Q You remember whether you saw them again that day?

14 A I saw Harriman that night.

15 Q And you say you learned of the arrest of Franklin about
16 how long after you saw me leave you? A About two hours.

17 Q Were you in the office from the time you got in there
18 up to the time you heard of Franklin's arrest? A From
19 the time I left you until I heard of the arrest, yes.

20 Q And did you see me again up to that time? A No.

21 MR. DARROW. That is all.

22 MR. FREDERICKS. Up to what time, I don't understand?

23 MR. DARROW. up to the time he heard of Franklin's
24 arrest. Just a moment-- Mr. Wolfe, I think I want to ask
25 one further question: Q What was about the time that
26 I left you at the door when I said I was going to the

1 Socialist headquarters? A Very nearly at 9 o'clock.

2 Q As near as you remember that is the time? A Yes.

3 ME. DARROW. That is all.

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5 CROSS-EXAMINATION.

6 MR. FREDERICKS. Q You saw Mr. Darrow almost every day
7 during the progress of the McNamara trial, didn't you?

8 A Yes.

9 Q Did you have some interest in the McNamara trial?

10 A Interest in what way?

11 Q Any way. A Yes.

12 Q What? A I was interested as a member of the working
13 class, interested in a trial of that nature.

14 Q You were interested in the defense? A Not directly.

15 Q Were you employed by the defense in any capacity? A Yes.

16 Q In what capacity? A Conducting the clipping bureau.

17 Q Who employed you? A Mr. Harriman.

18 Q Mr. Harriman? A Mr. Harriman.

19 Q And when? A I cannot fix the date.

20 Q Approximately? A Early in the progress of the trial or
21 at least early in the progress of the case.

22 THE COURT. I will have to ask the reporter to read that,
23 I didn't understand whether Harrington or Harriman.

24 THE REPORTER. [^]Harriman.

25 MR. FREDERICKS. Q Early in the summer? A Yes.

26 Q Were you employed by the job or by the time? A By the

1 time.

2 Q So much a month or a week, is that the idea? A Yes.

3 Q Who paid you? A Mr. Russell, I believe.

4 Q Always? A Possibly not, towards the last, I don't
5 recall who paid at the first.

6 Q. Do you mean Mr. Russell paid you towards the last or
7 you don't recall towards the last? A I recall that Mr.
8 Russell paid me towards the latter part of the trial,
9 earlier than that I don't recall.

10 Q Mr. Darrow ever pay you any of the time? A No.

11 Q Mr. Darrow ever pay you any? A No.

12 Q Not under any circumstances? A No.

13 Q What was the nature--you were simply clipping articles
14 from the newspapers in regard to this trial, is that the
15 idea? A Yes, I was overseeing the clipping.

16 Q Yes. Well, you were doing some writing for the papers
17 also, weren't you, in regard to the trial? A Yes.

18 Q You were writing up the defense end of it for different
19 papers you subscribed for, weren't you? A No.

20 Q You were not? A No. I was writing news stories.

21 Q You were writing it from the defense's side? You were
22 in the pay of the defense, weren't you? A Not in the
23 pay of the defense for the purpose of writing any articles.

24 Q You were not? A No.

25 Q Well, then, your writing of articles had nothing to do
26 with your labors in the cause of the defense? A No.

1 Q That didn't influence you, the fact you were employed
2 by the defense didn't influence you in the articles you
3 wrote?

4 MR. APPEL: Wait a moment--that is objected to as not cross-
5 examination.

6 MR. FREDERICKS: The witness said he was not writing
7 articles in the case of the defense, that is the point I--

8 MR. APPEL: It is not cross-examination, it is immaterial.

9 THE COURT. Overruled.

10 MR. APPEL: We except.

11 (Last question read by the reporter.)

12 A No.

A No, sir.

13 MR. FREDERICKS: Q You write for the Appeal to Reason. /A

14 Q What papers did you write for? A About 300 papers and
15 magazines.

16 Q All Socialist papers? A No.

17 Q Any Socialist papers? A Yes.

18 Q Largely socialist papers, were they? A Yes.

19 Q And labor union papers? A Yes.

20 Q You were very partisan on that side, weren't you, Mr.
21 Wolfe? A I tried to write my stories according to my inter-
22 pretation of the struggle, and I certainly wrote them from
23 the viewpoint of the working class.

24 Q And you wrote your stories and your entire attitude
25 was one of sympathy with the McNamaras, with the defense
26 in that case, wasn't it? A One of sympathy with labor.

1 Q Well, it was also one of sympathy with the McNamaras
2 in that case, wasn't it? A Not specifically with the in-
3 dividuals, with the cause of labor.

4 Q Well, you recognized them as representing the cause
5 of labor, to a certain extent in that matter, did you not?

6 MR APPEL: Wait a moment. We object to that upon the
7 ground it is not cross-examination; it is incompetent,
8 irrelevant and immaterial.

9 THE COURT: Objection overruled.

10 MR APPEL: We except.

11 (Last question read by the reporter.)

12 A I didn't recognize them as representing labor.

13 MR FREDERICKS: Well, you were writing articles and paid
14 by the defense for labor in the defense, were you?

15 MR ROGERS: Just a moment; that question is misleading, if
16 your Honor please, and I think he has answered in this way:
17 he has said that he was paid for running a clipping bureau,
18 but he was not paid by the defense for writing any arti-
19 cles. Now, this question assumes that he has said --
20 well, you were writing articles in the pay of the defense,
21 or something of that kind, and to that extent the ques-
22 tion is misleading, the witness has not so said.

23 THE COURT: It didn't strike me that way. Read the ques-
24 tion. (Last question read by the reporter.) Yes, I
25 think it is susceptible of that construction. The objec-
26 tion is well taken. Objection sustained.

1 MR FREDERICKS: Who paid your office rent, Mr Wolfe?

2 A I don't know.

3 Q You didn't pay it? A No.

4 Q Paid by the defense, wasn't it? A Yes.

5 Q That is where you wrote your stories, wasn't it?

6 A Yes.

7 Q Up there in the office of the defense? The material
8 you used, stationery and all that, was the defense's
9 material, wasn't it? A No.

10 Q In short, you were the publicity man for the defense,
11 weren't you? A No.

12 Q Did they have any such man? A Not that I ever heard
13 of.

14 Q You had 300 papers and magazines you were writing for?

15 A Yes.

16 Q And you were occupying the offices for the defense
17 writing impartial news, is that the idea? A Writing it
18 as I said, from the viewpoint of labor.

19 Q And paid by the defense, that is the only income you
20 had, wasn't it? A No.

21 MR APPEL: Your Honor, he has not said he was paid by the
22 defense for that purpose. We object because it assumes
23 contrary to what the witness has stated, and not cross-
24 examination.

25 MR FORD: We have a right to assume the contrary of what
26 the witness has said.

1 THE COURT: Let me have the question first. (Last question
2 read by the reporter.)

3 MR ROGERS: The preceding question shows the vice of
4 this.

5 THE COURT: If there was any vice in the question, the
6 answer has cured it. Objection overruled.

7 MR APPEL: We except.

8 MR FREDERICKS: Read it, Mr Reporter. (Last question and
9 answer read by the reporter.) You had further income?

10 A Yes.

11 Q From writing these stories? A Yes.

12 Q From the newspapers, income from the newspapers and
13 magazines; is that the idea? A In some instances, yes.

14 Q But generally, the material that you sent, you sent
15 free, did you not? A No, I sent it free to the papers,
16 yes.

17 Q Well, you were, if I may use an expression, boosting
18 the defense's side of the proposition in that trial, and
19 that is what you were hired for, weren't you?

20 MR APPEL: We object to that upon the ground it assumes a
21 state of facts not testified to by the witness, on the second
22 ground, it is not cross-examination, and upon the further
23 ground that the witness has already answered the question
24 two or three times and has stated the contrary of that
25 statement, and assuming contradiction of the witness' tes-
26 timony to which the witness has not testified.

1 THE COURT: I think the question has already been asked
2 and answered in substance.

3 MR FREDERICKS: I presume the court is going to sustain
4 it.

5 THE COURT: Objection sustained on that ground.

6 MR FREDERICKS: Were you in the court room during that
7 trial very much? A I think I was in the court room once.

8 Q Only once? A possibly twice.

9 Q And you were writing news of the trial, and you were in
10 the court room just once? A Yes.

11 Q Where did you get your news? A I got it from various
12 sources. I didn't write detailed stories of the trial,
13 as it was not necessary for me to be here each hour.

14 Q You got most of your material from Mr Darrow himself,
15 did you not? A No sir.

16 Q No. Where did you get it? A I got a large portion
17 of it from the daily papers, from the daily newspaper men
18 and some from representatives who came here.

19 Q Allow me to ask you what portion of your income was
20 derived from the defense? A I should say --

21 Q During that time? A Possibly a third or one quarter.

22 Q Is that all? A That is about all.

23 Q The rest you got from the magazines and papers that
24 you sent articles to? A I got a portion from them.

25 Q I didn't intend to go into another employment than
26 those two employments. You were also employed by the

1 Socialist party, were you not? A No.

2 Q Political party? A Yes.

3 Q Well, what is the difference between the Socialist
4 party and the Socialist political party? A The National
5 Socialist Party.

6 Q The National Socialist party and that was a part of
7 your income? A Yes.

8 Q A part of it was from the defense in the McNamara case
9 and a part of it from writing articles? A yes.

10 Q What portion of it was from writing articles?

11 A I am not able to say. I paid very little attention to
12 such details.

13 Q Very small portion, was it not? A No, I should say
14 one third.

15 Q Well, Mr Wolfe, you are a great admirer of Mr Darrow,
16 are you not? A I am.

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1 Q And were you at that time? A Yes.

2 Q Now, this time when you say you were in the--this morning
3 of the 28th--by the way, when did you first learn that Mr.
4 Darrow was suspected of complicity in this crime?

5 MR. APPEL. Wait a moment--we object to that, the witness
6 has not in any manner ever testified on direct examination
7 that he ever suspected him or he ever knew it, not cross-
8 examination.

9 MR. FREDERICKS. Withdraw the question. Did you ever
10 learn that he was suspected of complicity in this offense?

11 MR. DARROW. Read that question.

12 (Last question read by the reporter.)

13 MR. FREDERICKS. Referring to Mr. Darrow. A Yes.

14 Q When did you first learn it, the very first time?

15 A Several days after the arrest of Franklin.

16 Q And who did you learn it from? A I am not able to say.

17 Q How many days after Franklin's arrest was it? A I
18 couldn't say positively, a week.

19 Q Possibly a week; two weeks, was it as much as two weeks?

20 A I won't say.

21 Q How many times did you come down on the car with Mr.
22 Darrow? A Oh, possibly half a dozen times.

23 Q Half a dozen times he walked with you up to the office?

24 A Not always.

25 Q How many times did he walk with you up to the office?

26 A Probably four or five times.

1 Q Later on you related something that occurred at some
2 other time when he came up to the office? A You are
3 asking me something about walking with him at other times
4 and I am answering questions along that line.

5 Q Weren't you on direct examination relating something
6 that occurred at another time aside from the morning of the
7 28th? A No.

8 Q You are sure of that? A Positive.

9 Q When was it first called to your attention that this
10 thing occurred on the 28th, what you have related?

11 A That this thing occurred on the 28th?

12 Q What you have related, that you were up with Mr. Darrow
13 that morning, when was that first called to your attention
14 after the 28th? A I think about a week later.

15 Q And who called it to your attention? A I think it
16 occurred to myself.

17 Q Why, how? A I think I had a conversation with Mr.
18 Darrow concerning it.

19 Q What was the conversation? A I couldn't state speci-
20 fically.

21 Q Generally? A I think Mr. Darrow asked me if I recalled
22 the events.

23 Q If you recalled that he was up there that morning?

24 A Not that he was there.

25 Q What was the conversation as near as you remember it?

26 A I don't recall the conversation. I probably spoke to

1 him about the Franklin matter.

2 Q You mean the arrest of Franklin? A Yes, sir.

3 Q What was there that brought up the conversation between
4 you and Mr. Darrow as to he and you being in the office to-
5 gether that morning? A I heard whisperings of Mr. Darrow
6 being suspected of complicity. I went direct to him to
7 get a direct statement from him.

8 Q He made this statement, is that it? A He didn't make
9 any statement. He made the statement to me concerning
10 Franklin's case.

11 Q What did he say?

12 MR. APPEL. Wait a moment--we object to that, your Honor,
13 as not cross-examination; it is incompetent, irrelevant and
14 immaterial. He can only say that he talked because it
15 refreshes his memory as to the time in question. He
16 cannot call the declarations of the defendant to him
17 because it is not cross-examination and for the reason
18 they, themselves, your Honor, objected to any self-serving
19 declarations on the part of Mr. Darrow.

20 MR. FREDERICKS. Let me withdraw the question for a moment.
21 I will withdraw it. Q Now, when was it that you first
22 talked over with Mr. Darrow this occasion which you have
23 testified to about being in the office that morning with
24 him, that is what I want to know? A I think that was
25 several weeks later.

26 Q Several weeks later? A Yes.

1 Q How many weeks later? A I am not able to say.

2 Q It was on the first occasion? A No, we didn't speak of
3 that particular feature that first occasion.

4 Q What feature did you speak of on the first occasion?

5 A I went to him--

6 MR. APPEL. Wait a moment--we object to that on the ground
7 it is not cross-examination. It calls for conversations
8 which would be self-serving declarations.

9 MR. FORD. We submit it.

10 THE COURT. Objection overruled.

11 MR. APPEL. We except.

12 (Last question read by the reporter.)

13 A He spoke of talking concerning his complicity.

14 MR. FREDERICKS. Q Did he say on that first occasion--
15 did he call your attention to the fact on that first occa-
16 sion, that he and you were up there in the office to-
17 gether, when did he first? A It was sometime later.

18 Q Well, now, how much later as near as you can fix it?

19 A Probably several weeks, several weeks later.

20 Q Well, this was on the 28th of November, was it before
21 Christmas? A I am not able to fix it.

22 Q When was the first time that you ever heard that Frank-
23 lin said he was up there that morning and got that money
24 from Darrow? A I never heard he said it.

25 Q You never heard that he said it? A No.

26 Q Well, then, how did it come that you and Darrow were

1 talking about where Darrow was that morning before he went - X
2 down on Main street? X

3 MR. APPEL. Wait a moment--we object upon the ground, your
4 Honor, that the witness has not stated that they were talk-
5 ing about Darrow and he being there, and it is not cross-
6 examination at all. Asking for a conclusion or opinion of
7 the witness.

8 MR. FORD. The court will recall--

9 MR. APPEL. Now, if the witness should answer, your Honor,
10 anything that Mr. Darrow said to him as to any statement
11 being made or having heard anywhere, giving him information
12 that Mr. Darrow was there on Third or Main street, I don't
13 wish to argue-- he will have to come and state all the con-
14 versation, being a self-serving statement and they have kept
15 us from saying that.

16 Now, here they have the same set of facts not
17 testified to by the witness and the witness would naturally,
18 would have to state, your Honor, what the real conversation
19 is. We will be entitled to show that, and under the ruling
20 announced by your Honor, that we could not show the self-
21 serving statement, that rule must work both ways. It must
22 shut out those statements. He can ask him in a general way--

23 MR. FORD. If the Court please--

24 THE COURT. Let me have the question again.

25 (Last question read by the reporter.)

26 THE COURT. Objection overruled.

1 MR. APPEL. We except.

2 MR. FREDERICKS. You understand the question?

3 A Yes.

4 Q Please answer it. A I think Mr. Darrow spoke of this
5 after the beginning of the trial.

6 MR. FREDERICKS. Q Oh, after the beginning of this trial?

7 A After Franklin had taken the stand, after Franklin had
8 testified.

9 Q Well, then, the first time that it was ever called to
10 your attention that you and Darrow were up there that
11 morning, on the morning of the 28th of November, was after
12 Franklin took the stand here in this case, is that right?

13 A I never lost track of the fact that we were together
14 that morning.

15 Q Why did you have that in your memory? A Because every
16 incident of that day is very vivid, very fixed in my
17 memory.

18 Q Why should it be? A Because that is one of the two
19 great blows that fell during the trial.

20 Q Yes, but you had no idea up until you had of Franklin's
21 testimony here on the stand, Mr. Wolfe, you had no idea
22 that Franklin was going to say that he got that money from
23 Darrow that morning, did you? A No.

24 Q Then why should you remember all that happened that
25 morning? A I remember what happened that morning very
26 distinctly because of the fact that it was a momentous

1 occasion.

2 Q Well, it didn't occur to you that it was a momentous
3 occasion that Mr. Darrow had anything to do with Mr. Franklin
4 or that Mr. Darrow--that anybody was going to charge Mr.
5 Darrow with giving Franklin any money that morning? A No.

6 Q Not until you heard Franklin's testimony in court, that
7 is the first time you thought of that? A I didn't hear
8 his testimony.

9 Q Until you heard of it? A Until I heard of it.

10 Q Did Mr. Darrow ever talk to you in regard to where he
11 was that morning, the morning before the arrest?

12 MR. DARROW. Just a moment--you mean any particular part
13 of it, at the office or anywhere else? I object to that.

14 MR. FREDERICKS. On that morning. I withdraw the question
15 in order that it may not be confusing. Q Did Mr. Darrow
16 ever talk to you, now, about where you and he were on the
17 morning just before Franklin's arrest? A He asked me.

18 Q He asked you that three weeks, you said, after the occurrence
19 is that not correct? A No. ~~_____~~ X

20 Q Didn't you say that? A No. ~~_____~~ X

21 Q What did you say that he asked you three weeks before the
22 arrest--after the arrest?

23 MR. APPEL. Wait a moment--we object to that, if he said
24 anything the record is the best evidence.

25 MR. FREDERICKS. Let's have the evidence.

26 MR. APPEL. He said they talked.

1 THE COURT. All right. Let's have the record.

2 MR. FREDERICKS. Let's have the record and see if he didn't
3 talk about this occurrence three weeks after.

4 MR. APPEL. You said talked, that is not the question.

5 THE COURT. Let's have the record read.

6 (Record read as indicated.)

7 MR. FREDERICKS. Oh, after it was the time when Mr. Darrow
8 called your attention to the occasion of you two being up
9 there. Now, you see you said that was about three weeks
10 after the arrest.

11 MR. APPEL. No, I submit he didn't say anything of the
12 kind.

13 MR. FREDERICKS. Q What do you say it was now when it
14 was that Mr. Darrow first called your attention to it?

15 MR. APPEL. He has answered that.

16 MR. FREDERICKS. I think he has answered it two ways.

17 MR. DARROW. Now, calling your attention to him being
18 in the office, on the street or what part of it, that is
19 the question, so he won't be confused.

20 MR. FREDERICKS. I asked this question, when he first dis-
21 cussed with Mr. Darrow the question as to his and Mr. Darrow's
22 presence in the office that morning, the morning of Franklin's
23 arrest when this witness and Mr. Darrow first went over that
24 subject, and he said it was about three weeks after the 28th.
25 Now, he says that it was not until ^{after} he had heard Franklin's
26 testimony here in court. I want to know which is right.

1 MR. DARROW. I object to that because I don't think it is
 2 a correct statement. There were several parts of it
 3 that were discussed, as I gather from this witness, whether
 4 I was on the street, or when I appeared there or how long
 5 I was there or what particular part was called to his
 6 attention or who called it to his attention. He said
 7 some part of it was called to his attention within a week
 8 or so.

9 THE COURT. I think the reading of the record shows there
 10 is some confusion and you are entitled to a direct ques-
 11 tion.

20s

12 MR. FREDERICKS. The reading is very plain. Q Now, Mr.
 13 Wolfe, when was it that you first discussed with Mr. Darrow
 14 the question as to whether or not you and he were together
 15 in the office on the morning of the 28th, when did you first
 16 discuss that with Mr. Darrow? A I am not able to fix the
 17 date.

18 Q About? A Sometime after Franklin's testimony. ~~_____~~

19 Q In this case? A In this case. ~~_____~~

20 Q Here not over six weeks ago, then, or a month, at the out-
 21 side? A Yes. ~~_____~~

22 Q The case started on May 15th, it was after that? A Yes. ~~_____~~

23 Q That is the first time that you and Mr. Darrow ever dis-
 24 cussed the question as to whether or not you and Mr. Darrow
 25 were together that morning, is that correct?

26 MR. APPEL. No, your Honor, I submit--

1 MR. FREDERICKS. Well, let's see if that is correct.

2 MR. APPEL. He has not said whether or not that would
3 indicate that the witness or Mr. Darrow had a doubt at all
4 about it. The witness says they discussed the fact that
5 they were there, not as to whether or not they had been
6 there. Now, that is not fair to this witness.

7 MR. FREDERICKS. Let us ask the question and see.

8 MR. APPEL. The witness said "we discussed the fact that we
9 had been there", not as to whether or not we had been there,
10 as to whether there was any doubt at all.

11 MR. FREDERICKS. Let's have the question read.

12 THE COURT. Read the question. (Last question read by
13 the reporter.)

14 THE COURT. I think that Mr. Appel's objection is well taken.
15 Sustained.

16 MR. FREDERICKS. Q When was the first time that you and
17 Mr. Darrow first discussed the question of you and Mr. Darrow
18 being together that morning? A We didn't discuss the
19 question.

20 Q Until after Franklin had testified, you mean? A There
21 was no discussion.

22 Q When did you talk about it? A At some period after
23 Franklin's testimony.

24 Q After his testimony and not before, that is the point
25 I am getting at. A I think not.

26 Q All right. Now, what did you mean when you said that

1 you did discuss the question of your being together that
2 morning about three weeks after the arrest? A I don't
3 think the record says I used the expression three weeks.

4 Q You said approximately three weeks. A I think not.

5 Q Whatever the record will show it will show. Now--
6 you didn't mean at that time you were talking about the same
7 time that you are talking now, that it was after Franklin had
8 testified, you would not stretch that three weeks into
9 seven months, would you? Was it before Christmas?

10 MR. APPEL. That is argumentative.

11 THE COURT. Now, the other question--what is your question
12 now, Captain, was it before Christmas?

13 MR. FREDERICKS. I want to know positive--I shouldn't use
14 the word "stretch"--I want to know whether he meant by
15 three weeks the period which had elapsed from the 28th
16 of November until sometime after the 15th of May?

17 A I don't think the record shows that I said three weeks.

18 Q What do you say? A Several weeks. ~~_____~~

19 Q Well, then, do you mean by several weeks the period
20 between the 28th day of November and the time that Frank-
21 lin testified, is that what you mean by several weeks?

22 A Yes. ~~_____~~

23 Q That is what you mean by several weeks. Well, all right.

24 Q Then, as the matter stands now, the first time that you
25 ever discussed this matter with Mr. Parrow as after Franklin
26 had testified, is that the way it stands?

1 MR. DARROW. What way?

2 MR. APPEL. We object.

3 MR. FREDERICKS. I will amplify the question. The matter
4 of this witness and Mr. Darrow being up in the office to-
5 gether just before Mr. Darrow went down on Main street where
6 the arrest occurred. Now, the first time that you discussed
7 that or talked that over with Mr. Darrow was after Franklin
8 testified? I want to be sure we have got that correct, is
9 that correct? A That is my impression.

10 Q That is your impression? You are sure about it, aren't
11 you?

12 MR. DARROW. I object to that.

13 MR. APPEL. It has been asked twenty times at least.

14 MR. FREDERICKS. All right, I think we have got the situa-
15 tion now, that it is crystallized to a certain extent.

16 Q you remember back , then--let's see, December, January
17 February, March, April, May--you remember back for six
18 months about coming in on the street car that morning and
19 about where you stood and about where Mr. Darrow stood, do
20 you? A Yes.

21 Q And you remember where he got on the car that morning?

22 A Yes.

23 Q And you remember back six months what you talked about?

24 A Yes.

25 Q And that you came down together? A Yes.

26 Q And you remember back six months about the people getting

1 on the car that you have named here and the people getting
2 off? A Yes.

3 Q Well, what was there to call your attention to that
4 fact at that particular time that makes that stick in your
5 memory? A Every event of that day sticks in my memory.

6 Q Every event. A Every event concerning the case and of
7 importance.

8 Q But that didn't concern the case, did it, the coming down
9 on the street car with Mr. Darrow was only an ordinary oc-
10 casion that you had indulged in a half a dozen other times,
11 isn't that so?

12 MR. APPEL. That is argumentative, your Honor.

13 MR. FREDERICKS. That is getting at the reasons of the witness
14 for his memory.

15 THE COURT. Overruled.

16 (Last question read by the reporter.)

17 A The question seems to me involved. the assertion made
18 there I had ridden with Mr. Darrow?

19 MR. FREDERICKS. Q Several times before. A Yes.

20 Q And sometimes after? A I don't recall riding after. ~~X~~

21 Q Do you know whether you did or not? A I don't recall. ~~X~~

22 Q Well, I am not just clear I get your answer. Do you
23 mean that you don't remember whether you did? A I don't ~~X~~
24 remember of riding with him after that time. ~~X~~

25 Q Is it possible that you did? A He might have been on
26 the car, the same car.

1 Q I mean when you were in company with him and you were
2 together? A yes.

3 Q Is it possible that you did after that? A Yes.

4 Q And you don't remember it? A I don't recall speci-
5 fically.

6 Q That would be later than this, wouldn't it? A Yes.

7 Q Well, what was there in connection with your coming
8 down with Mr. Darrow that morning that had any connection
9 whatever in your mind with the happenings or the arrest of
10 Mr. Franklin up until the time when you heard Franklin's
11 testimony?

12 MR. APPEL. Wait a moment--your Honor-- we object upon the
13 ground it has been asked and answered. The witness has
14 been asked that and he has stated, your Honor, that he knew
15 a few days after Mr. Darrow--there was suspicion that he
16 was connected with the matter, the matter fixed in his mind.

17 THE COURT. I think Mr. Appel is right about that. I think
18 it has been answered.

19 MR. FREDERICKS. Gone over?

20 THE COURT. Yes.

21 MR. FREDERICKS. The point is this, your Honor: Let
22 the reporter read the question.

23 (Last question read by the reporter.)

24 MR. FREDERICKS. That is the point, your Honor, that for
25 six months there had been nothing in this witness's mind
26 that in any way would connect the actual coming down to the

1 office on a morning with Mr. Darrow that the tragedy, if
2 you want to call it that, or the incident that occurred
3 on that day. There was nothing to take that out of the
4 commonplace until he learned that Franklin had said that
5 Darrow gave him that money up in that office. It never
6 became pertinent; it never became a matter of interest
7 in this case; it never became a matter of interest
8 in his memory until he learned that six months afterwards.

9 THE COURT. Captain Fredericks, hasn't this witness already
10 stated that every incident of that ^{day} because of the fact that
11 it was one of the two blows that fell upon their cause
12 during that trial, that every incident of that day was
13 indelibly impressed upon his mind, isn't that an answer
14 to the question?

15 MR. FREDERICKS. This was not an incident in connection
16 any more than eating his breakfast was until Mr. Franklin's
17 testimony made it an incident.

18 MR. DARROW. In addition to that, your Honor, this witness
19 stated within a few days he heard it whispered around or
20 heard statements that I was in some way connected with it
21 and that fastened it on his mind, that people had come to
22 him in reference to it, in reference to my being there and
23 that fastened it on his mind. He stated that in the begin-
24 ning of Captain Fredericks's examination.

25 MR. FREDERICKS. That is not the point, your Honor. The
26 witness Franklin has never said, according to this witness's

1 knowledge, has never said that Darrow gave him that money
2 on the morning before Mr. Darrow went down on Main street.
3 He has never said that according to this witness's
4 memory and knowledge, until a few weeks ago here on the
5 stand, therefore, there was absolutely nothing in this case
6 in any way, shape or form that made that coming in on the
7 car any different from any other coming in on the car.

8 MR. DARROW. Now, your Honor--

9 THE COURT. That may be a matter of argument, it seems to
10 me.

11 MR. DARROW. I don't want that to go unchallenged. That
12 is one part of this witness's statement, he says immediate-
13 ly thereafter he heard rumors of my connection with it.
14 Now, it don't follow from that that he would know Franklin
15 said he got the money there that morning, but that I was
16 on the street that morning at the time of the arrest. He
17 said he heard rumors about it immediately and it fastened
18 itself on his mind. It doesn't follow; he might never
19 have heard until recently that Franklin claimed that.

20 THE COURT. The matter has been--

21 MR. FREDERICKS.

22 All right, I withdraw that question. I see
23 the court is going to rule against me so I withdraw it to
24 save time. Q Now, Mr. Wolfe, Mr. Darrow has put me
25 somewhat in doubt, as I understand you, you never alluded
26 to this matter of your coming in with Darrow--with Mr.
Darrow, you never alluded to that until after Franklin took

1 the stand?

2 MR. Appel. Wait a moment--we object upon the ground that
3 the witness has answered several times the same question.

4 MR. FREDERICKS. Yes, I think he has, but Mr. Darrow seems
5 to have a different view of it.

6 MR. DARROW. No, I spoke of a different phase of it.

7 THE COURT. The record shows it. The Court agrees with
8 you both; the witness has answered it.

9 MR. FORD. It is also preliminary at this time to another
10 question.

11 MR. FREDERICKS. I will change the question. Q Did you
12 ever talk to anybody else about it, about being with
13 Darrow? A No.

14 Q With no one? A No.

15 Q Have you ever talked to any one else, ever, except Mr.
16 Darrow under any circumstances or any occasion about being
17 up there with Mr. Darrow that morning at any time?

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1 A Yes.

2 Q Where and with whom? A Mr Harriman.

3 Q Mr Harriman. That was after you talked with Mr Darrow,
4 was it? A No, I think it was before.

5 Q That was after Franklin had testified, was it?

6 MR DARROW: I object. Let him say whether it was after.

7 MR FREDERICKS: I have a right to ask leading questions.

8 THE COURT: Yes. Objection overruled.

9 MR FREDERICKS: In view of the witness' previous answers
10 I have a right to ask him whether it was afterwards.

11 A It was after the information came to me that Franklin
12 made the statement.

13 MR ROGERS: Read the answer.

14 (Answer read.)

15 MR FREDERICKS: In court, I presume you mean here? A I
16 didn't mean that.

17 Q I beg your pardon. A I did not mean that.

18 Q I took it from your previous answers you did. What
19 did you mean? A I have not kept any track of the court
20 proceedings, have not read them, don't know where he just
21 did make his statements.

22 Q It was after the trial started? A It might have been
23 after the trial started, or might have been information
24 that came to me of some grand jury proceedings.

25 Q Well, was there ever to your knowledge, any testimony
26 under Heaven by Franklin or anybody else before the grand

1 jury that Mr Franklin had claimed to have been up in that
2 office that morning with MR Darrow?

3 MR APPEL: We object to that, your Honor. The witness is
4 only saying that some statement was made to him, or that
5 he heard that Franklin claimed such and such things. He
6 has not testified he knows there was any testimony or
7 where he made the statement or how the persons who gave
8 him the information, got it. Now, he is asking whether
9 or not under Heaven, there was any such evidence as that.

10 MRFREDERICKS: I will cut out "under Heaven".

11 MR APPEL: Cut the whole question out and then you will be
12 more in order. But the question, your Honor, is not ad-
13 dressed to the answer of the witness, and it is not cross-
14 examination, and it is immaterial, and it is argumentative,
15 asking him for matters on which he does not pretend to
16 have any knowledge, except that information came to him.

17 MR FORD: Now, if the court please, we have a right --

18 THE COURT: Objection overruled.

19 MR APPEL: We except. Now, let us hear that question
20 with "Heaven" in it. (Q^uestion read.)

21 A I know nothing of the testimony. ~~_____~~ X

22 Q You never heard that until Franklin -- until this
23 case started, did you?

24 MR DARROW: I object to that, never heard what?

25 MR FREDERICKS: Heard that Franklin claimed to have been
26 up in that office.

1 MR DARROW: He has answered that.

2 MR FREDERICKS: yes, I think so. I think he has, but Mr
3 Ford thinks he has not.

4 MR FORD: He has made several statements here, your Honor,
5 he has said he first learned about this matter about
6 one time when Mr Franklin had testified in court, and then
7 he then discussed it with Mr Darrow and also testified
8 that at another time he had heard Franklin had made a
9 statement, and he had discussed it with Mr Harriman. Now,
10 the point we are trying to make is, did the witness hear
11 at that time that Franklin claimed to have met Darrow in
12 the office in the morning during the time or period cover-
13 ed by this witness' testimony, that he had been in the of-
14 fice with Mr Darrow. Now, the question is, did you ever
15 hear any statement before this trial started; did you
16 ever hear any claim made that Franklin was in the office
17 with Mr Darrow that morning.

18 THE COURT: I think he has answered that question.

19 MR FREDERICKS: I think he has, took your Honor, but Mr
20 Ford does not.

21 THE COURT: If there is any serious doubt about it, let
22 him answer it again. It can do no harm.

23 MR FREDERICKS: Read the question.

24 (Last two questions read.)

25 MR FREDERICKS: In the morning, prior to his arrest.

26 A I am unable to clearly fix the date when I heard it. I

1 kept no watch over the trial.

2 Q I understood you to say it was after the trial started,
3 and that is correct, is it?

4 MR DARROW: I object to that, he has also said --

5 MR FREDERICKS: I thought Mr Darrow said that was agreed
6 that had been testified to.

7 MR DARROW: No, I didn't say any such thing. He has also
8 said it might have been the grand jury proceedings; he
9 said he didn't know when he heard it first.

10 THE COURT: Now counsel is trying to see if he can fix
11 that.

12 MR FREDERICKS: We have a right to show that this witness
13 never heard it and could not have heard it, that there
14 was no such testimony.

15 THE COURT: Yes.

16 MR APPEL: Now, we take an exception to his assuming,
17 about his remarks -- that there was no such testimony. It
18 is an absolute error, your Honor, that this gentleman
19 should substitute his statements. The question is,
20 when did he get knowledge of it; that he could not have
21 heard it. Are they the keepers of Mr Franklin's mind,
22 in view of all the statements he made one way or the other,
23 is it any wonder that Franklin says one thing at one time
24 and one thing at another. What right have they got to
25 say he never made that statement, or do they know when
26 it was sought to fix that time when he got the money?

1 MR FORD: We don't care a thing about that; what we want
2 is the witness' knowledge --

3 MR DARROW: The witness has answered?

4 MR APPEL: Simply what knowledge has the witness got --

5 MR FORD: We are going to assume the matter, and we are go-
6 ing to assume that this witness said he never heard --

7 MR DARROW: You have no right to assume it.

8 MR FREDERICKS: Then we are mistaken and the mistake is
9 ours.

10 MR DARROW: The record does not show that.

11 MR FREDERICKS: We are going to assume that. After
12 counsel has advised the witness, and in a mild way, pro-
13 bably, suggested to him what we were driving at, we do not
14 care to pursue the matter any further.

15 MR APPEL: We take an exception to that, and we assign the
16 statement of the District Attorney as absolutely untrue.

17 MR FREDERICKS: We learned it from the defense.

18 MR APPEL: We have been having that sort of an experience
19 here for a long time. You never learned anything from the
20 defense.

21 MR FREDERICKS: That is true.

22 THE COURT: You assign the statement as error?

23 MR APPEL: Yes, your Honor.

24 THE COURT: Now, gentlemen, what is the next question?

25 MR FREDERICKS: Now, Mr Wolfe, what time do you say you
26 took your car that morning, the 28th of November?

1 A About 8 o'clock.

2 Q What time did you take the one the morning before?

3 A 8 o'clock.

4 Q Are you giving that from custom or from memory?

5 A From custom.

6 Q Only from custom? A Only --

7 Q On what -- A As a general rule, I took the 8 o'clock
8 car.

9 Q You don't remember then, when you did take it?

10 MR ROGERS: The witness has not finished his answer.

11 THE COURT: Finish your answer.

12 A I took the 8 o'clock car every morning.

13 MR FREDERICKS: And your knowledge, your testimony of
14 the fact that you took the 8 o'clock car on the morning of
15 the 28th is based on your custom and not on your memory,
16 is that the idea? A Upon my memory.

17 Q Upon your memory. Did you on the morning before that,
18 what car did you take? A The 8 o'clock.

19 Q Is that memory or custom? A That is memory.

20 Q That is memory, too? A Yes.

21 Q Then, do you remember of taking the car the morning
22 before that? A No.

23 Q You don't remember taking it? A I didn't take it the
24 morning before that.

25 Q Oh, you didn't take it the morning before that?

26 A No.

1 Q You said a while ago you did? A I beg your pardon;
2 you asked me the morning before, and you have gone back
3 one more morning, and it is Sunday morning, and I didn't
4 take the car on that morning; I didn't go to my office.

5 Q I am dealing with two mornings, the morning of the
6 28th and the morning of the 27th, so far. I am asking
7 you what time you took the car on the morning of the 27th.

8 A 8 o'clock.

9 Q You testified to that from memory, or because of your
10 custom? A Well, I suppose it is custom.

11 Q You don't remember anybody getting on that car on the
12 morning of the 27th with you, do you? A Oh, yes.

13 Q On the morning of the 27th? A Not specifically; I
14 remember a large number of persons getting on the car.

15 Q Do you remember of any particular ones that got on
16 on the morning of the 27th? A Not particular ones, no.

17 Q Now, on the morning of the 28th, do you remember anybody
18 that got on the car with you that morning? A With me?

19 Q Yes. A No one got on the car with me.

20 Q Were you the only passenger that got on the car when
21 the car stopped? A Yes.

22 Q Are you sure of that? A Yes.

23 Q And you went in and took a seat? A Sat on the rear
24 of the car.

25 Q You sat on the rear of the car outside? A Yes.

26 Q Sit with somebody or alone? A I sat on the seat, I

1 was alone, when I sat down.

2 Q Somebody came in and sat down with you? A Sat be-
3 side me, yes.

4 Q Do you know who that was? A No.

5 Q Man or woman? A No.

6 Q Don't remember whether it was a man or woman? A No.

7 Q And where did Mr Darrow get on that morning?

8 MR DARROW: Get on or off, you say?

9 Q On. A Somewhere in the vicinity of the viaduct,
10 near Bonnie Brae.

11 Q Do you know just where it was? A No.

12 Q Your memory does not serve you that far? A I first
13 saw him there.

14 Q He was already on when you saw him; is that it?

15 A He was on the car, climbing on the step; I was near
16 the step.

17 Q And did you talk with Mr Darrow on the car that morn-
18 ing? A No, just spoke to him.

19 Q Did you retain your seat all the way in? A Yes.

20 Q What did he do? A He stood on the rear of the car.

21 Q All the way in? A Yes.

22 Q Until you got off? A Yes.

23 Q And you got off at Second street? A Second and
24 Hill.

25 Q Where did you get off the morning before? A Second
26 and Hill.

1 Q Do you know that from memory or from custom? A Cus-
2 tom.

3 Q You don't remember? A No.

4 Q And you walked on down with Mr Darrow then. Did you
5 meet anybody on the way down you knew? A No.

6 Q Are you sure of that? A Oh, possibly a casual acquaint-
7 tance; I may have met --

8 Q But you don't remember --

9 MR ROGERS: Let him finish his answer.

10 THE COURT: Finish your answer.

11 MR FREDERICKS: He had finished it.

12 THE COURT: Have you finished your answer? I am asking
13 the witness if he has finished. Have you finished your
14 answer, Mr Wolfe? A No sir.

15 THE COURT: Finish the answer. A -- possibly a cas-
16 ual acquaintance, I know many people in the city.

17 MR FREDERICKS: Do you remember anybody you met? A No.

18 Q Do you know whether anybody was following you or not
19 that morning? A No.

20 Q You didn't look around? A No.

21 Q And you got down to the Higgins Building, both went
22 up in the elevator together? A Yes.

23 Q And went to your office first? A Yes.

24 Q Took off your hat? A Yes.

25 Q Which did you take off first, your hat or your coat?
26 Just asking for your memory, it may seem trivial, but I

1 am testing your memory? A I don't recall.

2 Q You don't recall? A No, sometimes I took off my hat
3 first, and sometimes my coat.

4 Q That is one thing you don't remember? A It depends
5 on circumstances, Mr Fredericks. I took off my hat
6 when I came into the court room, but did not take off my
7 coat.

8 Q You never thought of any of these things for eight
9 months, never talked to anybody for six months --

10 MR APPEL: That has been asked over and over again, and
11 your Honor sustained the objection.

12 THE COURT: Do you object?

13 MR APPEL: I object to it as being repetition, the same
14 questions.

15 THE COURT: Objection sustained.

16 MR FREDERICKS: All right. And you talked to Mr Darrow
17 about a minute, eh, in your door; he stood in the door and
18 you talked about a minute with him? A I was in my of-
19 fice about a minute.

20 Q Wasn't he standing in the door while you were in the of-
21 fice? A Yes.

22 Q And then you went into his office? A Yes.

23 Q Did you see anybody else up there? A Up where?

24 Q On that floor at that time? A A number of persons
25 passing in and out of the office.

26 Q Do you remember any of them? A No.

1 Q Did you speak to any of them that you remember of?

2 A No.

3 Q Did anybody come up in the elevator with you? A No/.

4 Q And then you went into Mr Darrow's personal office,
5 did you? A Yes sir.

6 Q And sat down there and talked for 20 minutes. Did
7 anybody come in? A No.

8 Q Then, somebody called Mr Darrow on the telephone, and
9 did he come out first, or did you come out first? A We
10 went out together.

11 Q You went out together, and you went to your room?

12 A Yes.

13 Q What was he doing there the last you saw of him?

14 A Walking down the corridor.

15 Q Towards the elevator? A yes.

16 Q And you never thought of that for six months?

17 MRDARROW: I object to that --

18 MR APPEL: He has been asking that thing over and over
19 again, and the witness has not said that.

20 MR FREDERICKS: All right.

21 MR ROGERS: Just a moment. Now, that question has been
22 asked, and in the form and in the manner and in the way of
23 his asking it, it is not intended, in view of the court's
24 previous ruling, sustaining the objection to similar
25 questions, that is not asked in good faith, and it is there-
26 fore misconduct, it is nothing but a comment upon the tes-

1 timony in the line of a question.

2 MR FREDERICKS: Assign it as misconduct.

3 THE COURT: Do you assign it as misconduct?

4 MR ROGERS: I have just done so, if your Honor please,
5 in the record.

6 THE COURT: All right.

7 MR FREDERICKS: All right. This time you saw Mr Harrington
8 going to San Francisco, was before that, wasn't it?

9 A Yes.

10 Q That was in October. And he told you Darrow never
11 would allow any crooked work in the case, did he; is that
12 right?

13 MR DARROW: That is not the statement?

14 MR FREDERICKS: Is that the general substance of it?
15 Can you answer the question? There is no objection.

16 A I don't know that he used the phrase "crooked work".

17 Q What did he use? A I don't recall his exact language.

18 Q Well, was that the substance of it? A The word "crook-
19 ed" was not the substance of it.

20 Q "Square", how is that? A More like that.

21 Q How did it come that you were talking; that the ques-
22 tion as to whether Mr Darrow was square or not, came up for
23 discussion? A Am I allowed to answer in detail?

24 Q Why, I have asked you the question. A All right.

25 MR HARRINGTON asked me why I had gone to San Francisco,
26 after I had told him it was rather against my convenience

1 to go. I told him that I was going because Mr Darrow had
2 requested me, after I had refused others. That brought
3 the conversation on Mr Darrow.

4 Q But how did the question of Mr Darrow's honesty
5 come to be discussed? A Mr Harrington seemed rather im-
6 pressed that I went at the request of Mr Darrow, and spoke
7 in high terms of him, and that rather led up to the case,
8 and he rather brought the conversation in in that manner.

9 Q Harrington was boosting Mr Darrow, wasn't he, speaking
10 favorably of him?

11 MR APPEL: That is objected to --

12 MR DARROW: He said, "Spoke in high terms".

13 MR FREDERICKS: Speaking favorably of him? A yes, speak-
14 ing favorably of him.

15 Q Then, at another time afterwards, after the arrest
16 of Bert Franklin, you had a talk with Mr Harrington in
17 which Mr Harrington said that he didn't believe Darrow had
18 anything to do with it, or words to that effect. That
19 is correct, isn't it? A It is.

20 Q Well, he was boosting Darrow then, wasn't he?

21 MR ROGERS: That is objected to as calling for a conclu-
22 sion or opinion of the witness, and not cross-examination.

23 THE COURT: Objection overruled.

24 MR ROGERS: Exception.

25 A: I don't understand the word "boost". It is in
the slang dictionary.

26 Q You are a newspaperman and they know all dictionaries,

1 If you don't understand the word, however, I will change
2 it. He was speaking highly of Mr Darrow? A Yes.

3 Q And you didn't suspect at that time that he was in
4 the employ of the Erectors Association, when he was speak-
5 ing so highly of Mr Darrow?

6 MR APPEL: We object to that.

7 MR FREDERICKS: And employed for the purpose of getting
8 Darrow?

9 MR APPEL: We object to that, your Honor, as to what this
10 man suspected; it is not cross-examination; immaterial.

11 THE COURT: Objection sustained.

12 MR FREDERICKS: You knew Mr Harrington and you knew Mr
13 Harrington and Mr Franklin were both in the employ of the
14 defense, and you saw them together often up there, is that
15 correct? A Yes.

16 Q And you knew they were both working on the same cause,
17 didn't you? A Yes.

18 Q You knew they were working in separate departments,
19 didn't you; one was on the jury and the other was on the
20 evidence?

21 MR APPEL: That is not cross-examination.

22 MR FREDERICKS: I think that is correct.

23 THE COURT: The question is withdrawn. We will now adjourn.

24 (Jury admonished.) Court will now adjourn until 10
25 o'clock tomorrow morning.)

26