

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. 55

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
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Frank Fowler,	4383	4390		
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1 Thursday, July 11th, 1912. 2 o'clock P.M.  
2 Defendant in court with counsel.

3  
4 I. H. RUSSELL: on the stand for further  
5 redirect examination.

6 MR ROGERS: One question I neglected to ask, if your Honor  
7 please. I think it is direct examination more properly than  
8 in redirect. I ask your Honor's permission.

9 THE COURT: All right. Ask him.

10 MR ROGERS: Mr Russell, there has been some reference  
11 in this case in one way and another to a stenographer  
12 connected with the office of the defense, who was in  
13 the employ of Burns. You were not that stenographer?

14 A I certainly am not.

15 Q Do you know who he was? A Yes sir.

16 Q Who was he? A Mr Peterson.

17 Q Referring again to the matter of those packages, I  
18 will ask you if you saw any packages there that Mr Darrow  
19 ever put in the safe or took from it or gave you to put  
20 in or take from or anything of that sort; any packages  
21 with reference to the safe of Mr Darrow that in anywise  
22 resembled money? A Never.

23 Q What were they, as a matter of fact? Describe them as  
24 fully as you can.

25 MR FORD: Objected to upon the ground it will be calling  
26 for the conclusion of the witness as to what they were.

1 He stated before --

2 THE COURT: The portion of the question, "What they were;  
3 describe them fully" is a portion of the question coun-  
4 sel is entitled to. The question being one question,  
5 will have to be sustained, however.

6 MR ROGERS: Describe them fully? A They were papers  
7 which seemed to be letters and small packages of papers  
8 rolled up like a person would take out of their pocket,  
9 carrying around.

10 MR FORD: I move to strike out the answer of the witness  
11 on the ground it is a conclusion as to what they were like.  
12 What they seemed to be; having stated this morning that  
13 he didn't know.

14 MR DARROW: He didn't say any such thing.

15 THE COURT: Motion to strike out is denied.

16 MR ROGERS: Were any of them sealed packages? A No sir.

17 Q You say Mr Darrow did not have the combination of the  
18 safe? A He did not.

19 MR ROGERS: That is all.

20

21 RE-CROSS-EXAMINATION

22 MR FORD: You said this morning, Mr Russell, that you  
23 didn't know what was in the packages; is that correct?

24 MR ROGERS: Wait a moment. Let's see what he said.

25 MR FORD: I will ask him. Did you know what was in the  
26 packages. A I said they were papers; that is all.

1 Q Did you know that they were papers? A Why, yes.

2 Q Do you know what else was in them besides papers?

3 A Nothing to my knowledge.

4 Q Nothing to your knowledge? Do you know if there was  
5 anything else in them besides papers? A If there was it  
6 was very carefully concealed, and I didn't notice.

7 Q You didn't notice? A No.

8 Q Might have been concealed and you not notice it?

9 A Well, possibly.

10 Q Possibly there were four or five thousand-dollar bills  
11 and five-hundred dollar bills in the letters and papers  
12 inside there and you not know it; is that correct?

13 MR APPEL: Wait a moment. That question is simply asking  
14 for guess-work and a possibility, and all that. That is  
15 not a proper question and we object to it as immaterial.

16 THE COURT: Objection sustained.

17 MR FORD: Do you know whether or not there was any money  
18 in any of the packages? A I don't think there was.

19 MR FORD: I move the answer be stricken out as not respon-  
20 sive to the question.

21 THE COURT: Strike it out.

22 MR FORD: Do you know whether or not there was any? A No,  
23 I don't, except I don't think there was.

24 MR FORD: I move the answer -- you have been practicing  
25 law a year, for nearly a year and a half, haven't you?

26 I move the answer be stricken out -- the last part, as not

1 responsive to the question.

2 THE COURT: I didn't hear it.

3 MR FORD: "I don't think there was", he added that again  
4 after your Honor had stricken it out.

5 MR ROGERS: A man asks a question, if your Honor please,  
6 that he was --

7 MR FORD: Read the answer, if you please.

8 THE COURT: Read the answer. (Last answer read by the  
9 reporter.)

10 MR FORD: The part, "except I don't think there was", I  
11 ask be stricken out, a volunteer statement of the witness  
12 made right after your Honor struck out an answer exactly  
13 the same immediately to the preceding question.

14 MR ROGERS: If your Honor please, the circumstances permit  
15 him to give his best description. They asked him, "Do you  
16 know whether there was money there"? A man can say,  
17 well, of course I can't know that any better than I can  
18 know that Spring street is down here now, but it was when  
19 I came up, and I therefore think it is there; that is the  
20 same thing exactly. All a man can say, "Of course, I don't  
21 know, but I don't think so; I think not." That is part  
22 of his answer. He has a right to make it in explanation.

23 THE COURT: Motion to strike out is granted.

24 MR ROGERS: Exception.

25 MR FORD: Mr Russell, can you tell by looking at an envel-  
26 ope what is inside of it?

1 MR APPEL: Wait a moment. That is objected to upon the  
2 ground it is immaterial.

3 THE COURT: Objection sustained.  
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1 Q Mr. Russell, you didn't go down to the vault at the  
2 German-American Savings Bank with Mr. Harriman on the 28th  
3 day of November, did you? A On the 28th, no, sir.

4 Q On the 29th did you? A Yes, sir.

5 Q You know that he was at the vault on the 29th? A On the  
6 29th I was with him.

7 Q Of your own knowledge you don't know whether he went  
8 there or not on the 28th? A I don't know, of my own know-  
9 ledge.

10 MR. FORD. That is all.

11 MR. ROGERS. Q On the 29th he got \$100 out of the vault  
12 and gave it to you, is that right? A Yes, sir.

13 MR. ROGERS. That is all.

14

15 FRANK FOWLER,

16 a witness called on behalf of the defendant, having been  
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 MR. ROGERS. Q What is your name, please? A Frank Fowler.

20 Q Where do you live Mr. Fowler? A I live at East San  
21 Gabriel, right opposite the country club at San Gabriel.

22 Q How long have you lived in this county? A A little  
23 over 21 years.

24 Q What is your business or profession at present? A I am  
25 an attorney at law.

26 Q How long have you been practicing here? A How long

1 have I been practicing here?

2 Q Yes. A Oh, it has not been a great while, a year and a  
3 half or two years time I have been in active practice, but  
4 I have been admitted to practice 20 years ago.

5 Q Do you know Mr. Darrow the defendant? A I know him,  
6 yes.

7 Q When did you first meet him, where, and under what  
8 circumstances? A Just as to the exact date I cannot  
9 tell, but I can call the circumstance. It was on the corner  
10 of Second and Spring street, it was at a time when some  
11 motion had come up, I remember, to quash some indictment  
12 that was coming up before the McNamara cases came on for  
13 trial, and at Second and Spring street, Joe Scott, Davis  
14 and Mr. Harriman and Mr. Darrow had come down from the court  
15 house and I met them on the corner of Second and Spring  
16 street and I think, if I remember, I was introduced to  
17 him by Mr. Harriman. That is before the case was on for  
18 trial, before the McNamara case was on for trial.

19 Q You were introduced to him by one of the number? A I am  
20 pretty sure it was Mr. Job Harriman.

21 Q Did you go anywhere with him or talk with him on that  
22 occasion? A Not at all; no, sir.

23 Q Did you ever speak to him or get any word from him or  
24 have any communication with him of any kind whatsoever  
25 from that time on until the end of the McNamara case?

26 A No, sir, not a word, never met him and never spoke to



1 him from that time on until the McNamaras had been senten-  
2 ced, plead guilty and had been sentenced, and then I think  
3 I met him on Spring street between Second and Third and  
4 I just bid him the time of day as I passed him as I would  
5 any other person whom I recognized by name.

6 Q Did you have any communication or talk with him at the  
7 time of your introduction to him? A Not at all, not a  
8 thing, only I was introduced to him as Mr. Darrow.

9 Q And from that time on you say you had no communication  
10 of any kind? A No communication whatever until after  
11 the case had been, after the McNamaras had plead guilty ,  
12 after they had been sentenced, and I think I met Mr.  
13 Darrow the next time between Second and Third on Spring  
14 street and I just bid him the time of day .

15 Q Now, do you know a man named Krueger, living down at  
16 the Palms? A I do.

17 Q How long have you known him? A Oh, just offhand I  
18 think probably three or four, probably five or six years--  
19 for some little time .

20 Q He has said here, the court has furnished you with a  
21 copy of a hearsay statement of his testimony which, by  
22 order of the court made in open court, you have received?

23 A Yes, sir I received a copy of it.

24 Q Now, you are familiar with the matter to which I now  
25 direct your attention? A I am, yes, sir .

26 Q Did you ever at any time during the pendency of the

1 MCNamara case or before it or at any time whatsoever go  
2 to Mr. Krueger and talk with him of and concerning the  
3 McNamara case or his serving as a juror therein or his  
4 qualifying there or any matter connected with it whatever?

5 A Never in my life; never said a word to him; never men-  
6 tioned the McNamara case in my life to Mr. Krueger, never.

7 Q Did you point to or lay down or arrange or see four  
8 matches in or about his place and refer to them in any con-  
9 nection whatever as concerning any amount of money or what  
10 he was to receive or compensation for? A Emphatically  
11 no, and anybody says I did was an infamous liar. I never  
12 offered anybody anything in my life in connection with the  
13 McNamara case.

14 MR. FORD. I call your Honor's attention to the language  
15 used by the witness on the stand, an attorney.

16 MR. ROGERS. A little strong, if your Honor please, but  
17 I think the witness will withdraw it.

18 THE COURT. Yes, I think--

19 THE WITNESS. I will, your Honor, yes, I think--

20 THE COURT. I think it is a little stronger than the provo-  
21 cation calls for.

1 MR ROGERS: I will do some calling later, if you will per-  
2 mit me, I will do it. A Yes sir.

3 Q Mr Fowler, have you ever been at Kreuger's place?

4 A Yes sir, I have been there a number of times, how many  
5 I am unable to say; I couldn't say.

6 Q What kind of a place has he got down there? A He has  
7 got --

8 MR FORD: Just a moment. I object to that as incompetent,  
9 irrelevant and immaterial, attempting to impeach Kreuger  
10 on an immaterial matter. I think your Honor can easily see  
11 it is an attempt to show MR Kreuger was running a blind-  
12 pig down there, MR Kreuger having testified he was not.

13 MR ROGERS: Kreuger says he had a bottle of beer, and I am  
14 asking for a description of the place.

15 THE COURT: Counsel is entitled to a description of the  
16 place; it was gone into in Kreuger's testimony. A Shall I  
17 answer?

18 THE COURT: yes. A Mr Kreuger, ever since I have known  
19 him down there, he has been running a place which I will  
20 describe, if I may.

21 MR ROGERS: yes, describe it. A He has a house with his  
22 living apartments upstairs and a basement or cellar under-  
23 neath in which he has got a large ice-box there, and I  
24 have always been able to secure beer or something to drink  
25 every time I went down there. It was the only place between  
26 here and Venice where you could get it.

1 MR FORD: Now, if the court please, I move to strike out  
2 that portion of the testimony relating that which the wit-  
3 ness could secure on the ground it is not part of the des-  
4 cription or responsive to the question. I don't think the  
5 witness or his ability to secure beer when he was thirsty,  
6 or that is the only place between here and Venice, I don't  
7 think that is part of the description.

8 THE COURT: Strike it out.

9 MR ROGERS: Exception.

10 THE COURT: Mr Fowler, counsel called your attention to  
11 the fact that he was calling for a description of the place.

12 A I will describe it. It was a little frame building,  
13 with the living apartments upstairs and the basement down-  
14 stairs, with an ice-box in the corner, and a table and a  
15 pack of cards or two lying on the table and sufficient  
16 lights in case it was necessary.

17 Q Did you ever, for a further description of the ice-box --  
18 just a moment, pausing at the ice-box-- did you ever see  
19 the interior of the ice-box? A I saw him when he opened  
20 it several times, yes sir.

21 Q Did you ever see what was inside the ice-box, just as  
22 a description of the place? A Pretty well loaded every  
23 time I noticed it.

24 MR FORD: Which was loaded? A The ice-box, we are talking  
25 about that; I think you understand it.

26 THE COURT: Yes, I think your interruption is improper.

1 Proceed.

2 MR ROGERS:" With respect to whether or not as a descrip-  
3 tion of the place, is there a free passageway used; that is  
4 bearing the appearance of use from out the refrigerator to-  
5 ward the table? A Oh, yes; yes sir.

6 Q. Where a bottle of beer could conveniently pass under  
7 circumstances? A It is all one room. That is I presume  
8 it was. I was never in the upper interior part of the  
9 house.

10 Q Were you down there any time during the pendency of  
11 the McNamara case? A I think so, sometime the fore part  
12 of November, I think I was there.

13 Q What did you go there for? A Went there,-- got  
14 off at the Palms and went there for the purpose of look-  
15 ing after a witness. I stopped off there when I was on the  
16 way back from Venice to Los Angeles. I had been trying a  
17 case in Judge Reddy's court with a jury, and I dropped  
18 off there to make some inquiry about a witness which had  
19 been in connection with that case, that is one of the times.

20 Q Did you ever have any connection whatever with the Mc-  
21 Namara case or any feature of the McNamara case? A Never  
22 did in my life; emphatically, no.

23 Q Or did you ever at the time you went to Kreuger's  
24 place, state whether or not you had a conversation with  
25 him? A Why, yes, I had a conversation with him; went  
26 down in the basement with him. He invited me down.

1 Q And what happened down there? A Well, we had a bot-  
2 tle of beer, drank it, I and he.

3 Q He has claimed the honor of having furnished the bot-  
4 tle of beer; what is the fact about it? A I paid him  
5 for it; I don't know what he did with the money; how he  
6 construed it to be furnished by him. I paid him for the  
7 beer.

8 MR ROGERS: That is all.

9

10

CROSS-EXAMINATION

11

MR FORD: What was the name of the case that you were try-  
12 ing in Judge Reddy's court? A I think it was Schusen-  
13 hauser. We had two cases there; I can tell you how you  
14 can find out.

15

Q What was the other case? A I don't remember the name  
16 of the other case, but there was a case we were trying  
17 there on the 7th day of November.

18

Q At what place? A At Judge Reddy's Court, Justice of  
19 the Peace.

20

Q Where is that? A Down at Venice.

21

Q Down at Venice? A Yes sir. My wife was down there  
22 with me and so was Palmstone.

23

Q Did they go into Kreuger's place with you? A No sir,  
24 my wife -- I asked her to get off the car with me, and  
25 come up on the next car. She said, no, she was tired and  
26 said she would not come up, said, "I will go on home and

1 I will not stop off here with you".

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4s 1 Q Who was the other man? A M. L. Palmstone. He is  
2 with the claim department of the Pacific Electric Railway  
3 Company, if you want his name and address.

4 Q Did he go to Krueger's with you? A No, he came on home  
5 because he had some other business to attend to.

6 Q What day of the week was it that you were down to  
7 Krueger's place? A I don't remember the day of the week.  
8 If I remember right that date it was the 7th day of Novem-  
9 ber. The attorneys on the other side was Shaw and Stewart  
10 in the Stimson Building.

11 Q What was the name of the witness you were looking for?

12 A His name was Harris.

13 Q Where does he live? A He used to live in Santa Monica.

14 Q Where does he live now? A I don't know, that is what  
15 I was trying to find out.

16 Q What place in the Palms did you look for him? A I got  
17 off the car there and I asked several people that was there,  
18 one man, I don't know his name, was out in the yard. Asked  
19 him if he knew such a man. He said he thought he rem-  
20 embered him and he didn't know. Then I went around to the  
21 billiard hall on the corner and asked him about it and then  
22 I took it upon myself to go down to Mr. Krueger's place,  
23 thinking he had been there a number of years, and I asked  
24 him about it.

25 Q Didn't find him at Kruegers? A He told me thought he  
26 might have been living there but he moved away. We got a



1 statement from him at the time but Mr. Palmstone was unable  
2 to find him and then if you allow me to explain my reason  
3 for it I will tell you why.

4 Q Was Mr. Palmstone, was he in the claim department of the  
5 railroad, you say? A Not claims. He is an investigator.

6 Q Investigator? A Yes, sir.

7 Q Was this case in which the railroad was interested?

8 A Absolutely, yes, sir.

9 Q Were you employed in the case as attorney or as investi-  
10 gator? A Employed by the company as assistant in the law  
11 department to take care of the cases?

12 Q As investigator? A Not as investigator; no, sir.

13 Q Did you ever appear in court for them in any case?

14 A I have, yes, sir.

15 Q How long ago? A Oh, it has been--I couldn't just state  
16 offhand; within the last three months.

17 Q You have been connected with the railroad a good many  
18 years as investigator, have you not? A No, sir, never as  
19 investigator in my life. I was claim adjuster for the  
20 railroad company for something like six years and after  
21 that I was connected solely with the law department and  
22 had nothing to do with the investigation whatever.

23 Q You went out and interviewed witnesses? A No, sir, I  
24 never went out and interviewed/witnesses. <sup>but very few</sup> Once in a  
25 while when Mr. Palmstone could not get a witness or some  
26 investigator could not get them to talk or could not get

1 them to make a proper statement or they wouldn't be inter-  
2 viewed, then I would tell him, say, "Well, I will go out  
3 and see what I can do with him myself."

4 Q When Mr. Palmstone could not make the witness make a pro-  
5 per statement you went out to make a proper statement?

6 A I mean this is--

7 Q Is that correct?

8 MR. ROGERS. Let him answer.

9 MR. FORD. I am entitled to an answer yes or no.

10 MR. ROGERS. There is no law in this country which compels  
11 any witness to answer an insulting question.

12 THE COURT. You are both asking for an answer, now, let  
13 him answer.

14 A I mean that he would often go out, he would, or some  
15 other investigator, and try to get some witness that  
16 was claiming to be a witness in an action, that he would  
17 be kind of sullen, he would say, "Well, I will not make  
18 a statement now, I wont tell you how it happened or any-  
19 thing of that kind," and they would pass it up to me and  
20 I would say, "Well, I will go and see what I can do, if he  
21 will tell me what the state of facts were." Those witnesses  
22 sometimes, but not very often, but in those cases I would  
23 go out and interview, but not otherwise.

24 Q Was that the case with this man you were looking for?

25 A No, sir, I will explain that if you want.

26 Q I don't care for it. A No, sir, that was not the case in  
this particular. I would like to explain that.

1 Q Were you looking for Mr. Krueger to get a proper statement  
2 from him in regard to anything? A I didn't say so; no,  
3 sir.

4 Q What other law work did you do? A Well, I done quite  
5 a little work. I take all the depositions that were taken,  
6 invariably all the depositions in the cases and assist  
7 the attorneys in trying the cases, and if you might call it  
8 that, I would look up the status of the jurors, that is to  
9 say, what their names was and their addresses and their  
10 occupations, their nativity and what line of business they  
11 had been into, so I might intelligently select their  
12 jurors for the railroad, and I did that.

13 Q In fact, that was your principal business for the  
14 railroad for a good many years? A No, sir.

15 Q Weren't you in attendance with Mr. Norman Sterry with  
16 the railroad, for a good many years and helped in the  
17 selection of juries? A Yes, sir, I think he was, and I  
18 think he was a good member of the bar and a gentleman.

19 Q I wasn't asking you anything about Mr. Sterry, I was  
20 asking you if you was assisting him in that work? A I was  
21 working as any other man on the railroad on that line at  
22 the time, and doing it honorably and legitimately to the  
23 best of my ability.

24

25

26

1 Q You met Mr Kreuger while he was a juror in Judge Moss'  
2 court? A How is that?

3 Q You met Mr Kreuger while he was a juror in Judge Moss'  
4 court three or four years ago? A I believe I met Mr  
5 Kreuger when he was a juror in Judge Moss' court, but I  
6 knew him long before that.

7 Q He was in a good many cases in which your company was  
8 interested? A Not a great many; he was on several.

9 Q You considered him a proper juror, didn't you?

10 MR ROGERS: I object to that as not cross-examination. I  
11 take exceptions to its being asked.

12 THE COURT: Objection sustained.

13 MR FORD: If the court please, the witness has already  
14 said that Kreuger --

15 THE COURT: Asking for an opinion in regard to a witness  
16 who has been here on the stand.

17 MR FORD: Yes, he has already given an opinion on direct  
18 examination.

19 THE COURT: Which was stricken out.

20 MR APPEL: The only opinion I heard was he could get beer.

21 THE COURT: The opinion, so far as the opinion was concern-  
22 ed, was stricken out, on motion of the District Attorney.

23 MR FORD: Well, you assisted Mr Sterry in ~~some trial~~ select-  
24 ing juries in these cases in which Mr Kreuger sat as a  
25 juror, weren't you? A selected them myself nearly all of  
26 them.

1 Q And you selected Mr Kreuger? A I did. I had no ob-  
2 jections to him at that time, no.

3 Q Anything happen since that time that you limit it to  
4 that time? A I don't think so, no. Oftentimes, Mr Ford,  
5 you know, as an attorney, that a man is called as a juror  
6 in a civil case, why it only takes nine to create a ver-  
7 dict or substantiate a verdict, and you may let two or  
8 three on, two or three other men on. I had no objection  
9 when Mr Kreuger was called for that reason. He wouldn't  
10 count very much.

11 Q As one of the nine or as one of the three?

12 MR APPEL: I submit it is trifling, and we object to it as  
13 merely trifling, and immaterial and not cross-examination,  
14 asking for opinions concerning a different case.

15 MR FORD: In view of the witness' explanation which he is  
16 allowed to make --

17 THE COURT: Objection sustained on the ground it is imma-  
18 terial.

19 MR FORD: Mr Fowler, what connection have you had with  
20 this case, the case that is now on trial in this court  
21 room? A I have had some connection with it only through  
22 the friendship that I have for Mr Rogers. I was with Mr  
23 Rogers four years, and Mr Rogers asked me to take up some  
24 of the matters with him, and for the purpose of finding  
25 out what occupation and what business that certain jurors  
26 were in, in connection with this case, but as for receiving

1 any compensation, I never received any compensation and  
2 don't expect it. I only done it through friendship I had  
3 for Mr Rogers.

4 Q You assisted him in selecting this jury that we have  
5 now? A I did not assist him in selecting this jury.  
6 I only gave my opinion and data as to -- after examining  
7 the great register, of the business and the occupation of  
8 the different jurors, and that is all.

9 Q You were present here every day while the jury was  
10 being impaneled, were you not? A Emphatically not. I  
11 was here some days, but not every day.

12 Q You were here every time that it came time to inter-  
13 pose challenges? A No sir, I was not.

14 Q You made reports to Mr Rogers on all of the jurors ?

15 A I did not make a report to Mr Rogers on all of the jur-  
16 ors. I did on some.

17 Q On all of those whom you investigated? A I might --  
18 probably I did. I investigated -- I mean, by investigating  
19 through the great register only. I haven't spoken to a  
20 jurymen that is impaneled or that has been.

21 Q Now, Mr Fowler, do you mean to say that you never did  
22 any work of investigating jurors in the McNamara case?

23 A Absolutely no sir.

24 Q Never talked with any person? A No sir.

25 Q Whatsoever in regard to a particular juror who was  
26 serving in the McNamara case? A I never did any work

1 in the McNamara case, no sir.

2 Q Never did any other work of any kind for the defendant  
3 in this case? A No sir.

4 Q And you just happened accidentally to be at Mr Kreuger's  
5 house while you were looking for a witness -- by the way,  
6 what did you say the name of the witness was?

7 MR ROGERS: Wait a moment. Don't skip that over. Let's  
8 have that stricken from the record, if your Honor please,  
9 the comment, and not a question. I move it be stricken  
10 out.

11 MR FORD: I will make a question of that and let your  
12 Honor rule on it. Read the last one and I will ask that  
13 question and see what is the matter with it.

14 (Last question read.)

15 Q So that you just happened to be by accident at Mr Kreu-  
16 ger's? A I went down there for the purpose to find out  
17 what I could and see if I could find out anything about  
18 it.

19 Q What did you say the name of that witness was? A . R.  
20 Hearst or Harris, I think it was.

21 Q Did you find him there? A I never did.

22 Q Who told you he was a witness in that case? A I  
23 will explain it to you.

24 Q Just answer if you can; I don't care anything about  
25 it. A I will explain it thoroughly to your satisfaction  
26 and to mine, too.

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Q You don't know the name of the man or woman or child who told you that Mr Harris was a witness in that case? A I cannot, but I would like to make an explanation if your Honor please, how I happened to do it.

THE COURT: You undoubtedly will have a chance on redirect examination.

MR ROGERS: He has a chance right now, sir.



6p 1 A That case was brought on for trial, a motorcycle case;  
2 a jury was demanded by Mr. Stewart of Stewart & Shaw, and  
3 when the case came up, after the case, after the jury had  
4 been impaneled, I was trying it myself for the railroad  
5 and the boy went onto the stand, a young man, and he was  
6 not 21 years of age and I asked him his age and he told  
7 me he was not; then I moved that the action be dismissed  
8 as being improperly brought, because under the statute he  
9 had to have a guardian ad litem appointed, and the court  
10 sustained me and dismissed the case and afterwards they  
11 said they were going to bring it over again, but I was out  
*stone* 12 on the street there in Venice and Mr. Poundstone had made  
13 inquiry about him and I couldn't find him and I was on the  
14 street in Venice and I was talking over the persons--I  
15 cannot remember their names, and he told me he thought he  
16 moved from Santa Monica to the Palms. That is my reason  
17 for stopping off at the Palms, was to see and locate, if  
18 I could, this witness, as I understood it. I asked my  
19 wife to get off with me and she said No, she would go on  
20 home.

21 Q Is that man the only man who told you Mr. Harris was at  
22 the Palms? A The only man I can remember of.

23 Q And you cannot remember a single living soul who told  
24 you Mr. Harris was at the Palms? A Not by name, no, sir.

25 Q You know this man, do you? A The man who told me?

26 Q Yes. A I don't know him. I would know him if I would

1 see him, I don't know his name; I would know him if I saw  
2 him.

3 Q Describe him. A I don't know as I could do that.

4 Q How many times have you called at Krueger's house al-  
5 together? A I couldn't tell you to save my life.

6 Q During how long a period? A Oh, I have probably <sup>been</sup> down  
7 there four or five years, a matter of ten times in the last  
8 year and a half.

9 Q Did you ever go there prior to a year and a half ago?

10 A Yes, I think so. I wouldn't be positive. I think it  
11 was a year and a half or two years ago.

12 Q You have known Mr. Krueger 7 or 8 years? A I have known  
13 him 5 or 6 years, I think.

14 Q All that time you have been buying beer from him?

15 A Whenever I went to Palms and felt as though I wanted a  
16 glass of beer I bought it and that is the only place I could  
17 get it.

18 Q When did you first discover he had a place of that char-  
19 acter down there? A I don't know as to that. About the  
20 main time--well, of course, it has been several years ago,  
21 I couldn't say, three years ago, probably, and I know it  
22 more emphatically for the reason of the fact he told me on  
23 the street after he had been arrested and taken to  
24 Pasadena and fined \$300, and every time I met him he stopped  
25 and kicked about the usage he had, about the District At-  
26 torney's office.

1 Q He didn't like the District Attorney's office? A No,  
2 he didn't like that kind of a deal.

3 Q When did he last tell you that? A I think he told me  
4 that along--I wouldn't be certain, although I think it  
5 was sometime in September, or October, I met him in town  
6 and I and he went down and had a glass of beer at that  
7 time.

8 Q Didn't he tell you at that time, on November 5th?

9 A Nothing, only he said he had to be careful; he knew I  
10 wouldn't cause him any trouble, he said he had to be  
11 careful because the District Attorney was watching him  
12 pretty close.

13 Q How did he know that you would not cause him any  
14 trouble? A That is his conclusion; you will have to go  
15 to him.

16 Q Didn't he know you were on the other side of the McNamara  
17 case? A No. Why do you ask me that?

18 Q Didn't you tell him you were for the defense in the  
19 McNamara case? A I never told him anything about the  
20 McNamara case at all.

21 Q Didn't you ask him to serve as a juror? A I never did,  
22 him or any other man in God's green earth.

23 Q Isn't that the reason he told you the District Attorney  
24 was unfriendly to him? A He didn't tell me the District  
25 Attorney was unfriendly to him at that time, except he had  
26 to be careful about selling that beer, that is all that was

1 named about the Bistrict Attorney's office.

2 Q You are sure of that? A Absolutely, if I was not I  
3 would not swear to it under oath.

4 Q You say you were connected with Mr. Rogers three or  
5 four years? A Yes, sir, I think about that.

6 Q He has been your attorney in cases? A Oh, he has  
7 appeared for me in some cases, yes.

8 Q What is that? A He has, yes.

9 Q Been your attorney? A Yes, in one case, I think.

10 Q How long ago? A I couldn't tell you that; ten years  
11 ago--no, worse than that, 12 or 13 years ago.

12 Q Never has been your attorney since that time? A I do  
13 not think so. If you will mention the case I will tell  
14 you.

15 Q He was your attorney at the time you were let out of  
16 the police department?

17 MR. ROGERS. Now, just wait.

18 MR. FORD. He asked me to mention the case.

19 MR. ROGERS. I take an exception to that kind of cross-  
20 examination, That is nothing but an attempt to slur and  
21 throw mud. If they want to go into that matter and all  
22 about it we will try it right now along with about a  
23 dozen other cases we have here to try.

24

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26

1 THE COURT: No, we are going to try the one lawsuit; no  
2 court room is big enough to try more than one lawsuit at  
3 a time. A As far as I am concerned, you have a perfect  
4 right to go into it.

5 THE COURT: No, Mr Fowler, you will have to take some other  
6 place. As I stated, there is no court room big enough to  
7 try more than one lawsuit at one time. The objection is  
8 sustained.

9 MR FORD: You were formerly a member of the police depart-  
10 ment, were you not? A Yes sir, I served four years.

11 Q How long? A Four years, I think about that.

12 Q When did you sever your connection with the police de-  
13 partment? A As to the dates of that, I couldn't tell, not  
14 without looking them up. A great many years ago.

15 Q May 5, 1900, wasn't it? A I think probably that is  
16 it, yes, about 12 or 13 years ago.

17 Q You were formerly a deputy sheriff in Lincoln County,  
18 Nebraska, also, were you not? A Yes sir.

19 Q And you were also on the police force in Nebraska?

20 A Yes sir. Captain, not on the police force; I was cap-  
21 tain of the police department there before I went into the  
22 sheriff's office.

23 Q Then, you were connected with a railroad there for a  
24 while, were you not? A Yes sir.

25 Q What is the name of it? A The B & M: Railroad Com-  
26 pany at Marquette, DuWeiss & Hall.

1 Q You were a detective for them? A I done some work  
2 in the office for them, not detective work, really.

3 Q What was the nature of the case in which Mr Rogers  
4 was your attorney?

5 MR ROGERS: I object to that as irrelevant, incompetent  
6 and immaterial, not cross-examination.

7 THE COURT: Objection sustained.

8 A If the court would give me permission I would like to  
9 explain it.

10 THE COURT: No, no.

11 MR ROGERS: If we start that case we will have to try it.

12 A They can go into that case just as deep as they want to.

13 MR ROGERS: No.

14 THE COURT: No.

15 MR FORD: That was at the time you quit the police de-  
16 partment, wasn't it?

17 MR ROGERS: That is objected to, and I take an exception  
18 to the question being asked and I assign it as misconduct.

19 THE COURT: Objection sustained.

20 MR FORD: That was at the time you severed your connec-  
21 tion with the police department?

22 MR ROGERS: I make the same objection and I take an excep-  
23 tion and assign it as misconduct.

24 THE COURT: Objection sustained.

25 MR FORD: That is all.

26

1                   LEONARD SCHOEBER, a witness called on be-  
2 half of the defense, being first duly sworn, testified as  
3 follows:

4                   DIRECT EXAMINATION

5 MR APPEL: Will you state your full name? A Leonard  
6 Schoeber.

7 Q What is your business or occupation? A Moulder.

8 Q Where do you reside? A 629 San Julian street.

9 THE COURT: Mr Schoeber, I will have to ask you to speak  
10 up so those gentlemen can all hear you. A I will try to,  
11 yes sir.

12 MR APPEL: How old are you, Mr Schoeber? A 55.

13 Q How long have you resided in this city? A About  
14 four years this last time.

15 Q What were you engaged in, say, during the months of  
16 October and November of last year? A I was a watchman.

17 Q At what place? A Higgins Building, Mr Harriman's  
18 office.

19 Q Who employed you? A Mr Harriman.

20 Q And during the latter part of November of last year,  
21 during what hours of the day were you acting there as  
22 watchman? A Why, different hours. We had a watchman  
23 on there one week I would be on from about 5 o'clock in  
24 the afternoon until about 2 in the morning and the next  
25 week I would be on from 2 in the morning until about  
26 8 or 9 o'clock the next following morning.

1 Q During the last days or last week or say the week --  
2 yes, the last week of November, what time of the morning  
3 or night were you there? A I was there from 2 o'clock  
4 until 9 o'clock in the morning.

5 Q Do you remember having heard of the arrest of Mr Frank-  
6 lin? A I read it in the paper, yes sir.

7 Q Were you acquainted with Mr Franklin? A I was.

8 Q How often did you see him there at the office of Mr  
9 Harriman and in the immediate neighborhood? A Why, I couldn't  
10 say as to how often. Very often, though. He used to  
11 come up there quite frequently, yes sir.

12 Q Did you know Mr Harrington? A I did, yes sir.

13 Q Now, did you ever see Mr Harrington or Mr Franklin  
14 together? A Yes sir.

15 Q During the latter part of November of last year, how  
16 often did you see them together? A I couldn't state posi-  
17 tively, it was quite often, though.

18 Q And whereabouts did you see them? A Why, up in the  
19 office.

20 Q Did you ever see them there at night? A Why, in the  
21 evenings, yes sir.

22 Q How often did you see them there? A That I couldn't  
23 say.

24 Q What did you see them do, as far as you could see?

25 A Why, holding conversations.

26 Q When they were holding conversations there, do you



1 remember whether or not anyone else was present? A As a  
2 rule, there was, yes, in the different offices.

3 Q In the different offices? A yes sir.

4 Q Now, did you ever see them alone? A Yes.

5 Q In the daytime or night time? A Both at day and at  
6 night.

7 Q Now, when Mr Franklin and Mr Harrington were together,  
8 and you say, other persons were in the other offices --

9 A yes sir.

10 Q -- did you see any other persons together with Mr Frank-  
11 lin and Mr Harrington, or were they alone? A Well, at  
12 times, Cooney would be in there and Mr Fitzpatrick would  
13 be in the office on one or two occasions.

14 Q When Franklin and Harrington were there? A Yes sir.

15 Q And other times, you say, you saw them alone? A They  
16 were together by themselves, yes sir.

17 Q Now, were you there on the morning of the day when  
18 Franklin was arrested? A I was.

19 Q What hour of the day did you leave there, as far as you  
20 now remember, on that day? A Sometime between 8 and 9  
21 o'clock.

22 Q Before you left there, do you remember whether or not  
23 you saw Mr Franklin? A Yes sir.

24 Q What time of the day did you see him? A Why, it was a  
25 little before 7 o'clock, probably 10 or 15 minutes.

26

8p 1 Q A little before 7 o'clock? A Yes, sir.

2 Q In the morning of that day when Franklin was arrested?

3 A Yes, sir.

4 Q Who, if any one, was with Franklin at that time?

5 A There was some gentleman with him, who he was I did not  
6 know.

7 Q Had you seen that gentleman before? A Not to my  
8 knowledge, no, sir, I don't think I ever did.

9 Q Did you ever see him afterwards? A No, sir.

10 Q Will you describe him, as near as you can? A Why, he  
11 was a man about, weighed I should <sup>say</sup> between 120 or '30  
12 pounds, a light built man, sallow complexion.

13 Q About how old a man? A I should judge he was about  
14 between 30 and 35.

15 Q Now, what did Franklin do on that morning, if anything?

16 A He came up to me. I stopped him at the office door.

17 He says, "You know who I am?" Says I, "Yes, sir, I do."

18 Why, he says, "I would like to have an office to speak to  
19 this friend of mine." I told him to step into Mr.

20 Harriman's office.

21 Q Who opened the office, if any one? A Why, the office  
22 door was open, I opened the door for him and let him step  
23 in and I think he closed it himself.

24 Q Now, how long was he and this man in that office at  
25 that time? A About ten minutes.

26 Q And what became of Mr. Franklin and the other man?

1 A They got up and come out again and went away .

2 Q Now, you remained there until about 9 o'clock, you say?

3 A I couldn't exactly tell. It was until Mr. Russell came,  
4 about between 8 and 9 o'clock, yes.

5 Q How? A Between 8 and 9 o'clock, yes .

6 Q Between the time Mr. Franklin and this stranger went  
7 away and the time you left did you have an opportunity  
8 to see and know who if anyone came there to the office?

9 A There was no one but the janitor came there, to dust it  
10 up.

11 Q Did you see Franklin again until the time you went away?

12 A No, sir, I did not.

13 Q Did you see him when you went away? A I did not.

14 Q Was he there when you went away? A No, sir; he was  
15 not.

16 Q Now, you were called as a witness before the grand jury,  
17 were you not? A Yes, sir.

18 Q Did you then testify about the matters and things that  
19 you have testified to here? A I think--

20 MR. FORD. I object to that as incompetent, irrelevant and  
21 immaterial, calling for self-serving declarations by way of  
22 corroboration. I do not imagine for a moment they want to  
23 impeach their own witness .

24 MR. APPEL. No, no, your Honor, this is in view of this fact  
25 your Honor, that when Mr. Franklin was upon the stand--it is  
26 not so much for the jury but is to make a record, and that

1 when Mr. Franklin was upon the stand I asked Mr. Franklin on  
2 recross-examination whether or not upon the morning that  
3 he went, he was up there at Mr. Harriman's office, whether  
4 or not he was there with any one or saw any <sup>one</sup> else there  
5 besides the persons that he had already testified to.  
6 There were strenuous objections made then, your Honor, upon  
7 the ground that it was not cross-examination and it was not  
8 material. We have a right to argue to the jury, your  
9 Honor, that in view of the testimony of this witness which  
10 had been given before the grand jury in the presence of one  
11 of the prosecuting attorneys assisting in this case that  
12 they had notice of that fact and that Mr. Franklin, claiming  
13 to be an accomplice and claiming to be a witness for the  
14 prosecution, that we were entitled under the rules of law  
15 to that fact and to everything that he knew in connec-  
16 tion with the case and we just wish to make a record of it.  
17 For that reason I ask the question, I will be frank with  
18 your Honor.

19 MR. FORD. Let him call the reporter, if it is material.

20 MR. APPEL. So as to show that the ruling of the court  
21 in sustaining the objection then made to my question de-  
22 prived us of the right of extracting that knowledge directly  
23 from Mr. Franklin then for the purpose of laying the founda-  
24 tion to impeach.

25 MR. FREDERICKS. We submit that the record before the grand  
26 jury does not bear out this witness's testimony, does not

1 bear out counsel's statement.

2 MR. APPEL. Let us see now, your Honor. He has made that  
3 statement, your Honor, and it would indicate that I have  
4 been here purposely misleading the court or the jury by  
5 my question. Now, I offer to read your Honor, the testimony  
6 of the witness.

7 MR. FORD. We object to any offer to read.

8 MR. APPEL. Before the grand jury, to show whether that  
9 statement is true or is not true, whether it is made pro-  
10 perly or not. Now, I do this in good faith.

11 THE COURT. Mr. Appel has a right to be heard at this time,  
12 but I think I can dispose of this matter. I see your  
13 point.

14 MR. APPEL. I am fair with your Honor.

15 THE COURT. I do not think Mr. Appel's position that the  
16 statement made reflected upon his intention to misstate it,  
17 I don't think counsel would do that.

18 MR. FREDERICKS. That is right, your Honor. We see things  
19 differently.

20 THE COURT. But I think, under the circumstances, the point  
21 he has presented, counsel for defense is entitled to the  
22 question and the District Attorney's objection is over-  
23 ruled.

24 MR. FORD. We would like to be heard on this matter, if the  
25 Court please.

26 THE COURT. All right. I will set aside the ruling and hear

1 you .

2 MR . FORD. We would ask you to, your Honor.

3 THE COURT. All right.

4 MR . FORD. If counsel desires to show that the District  
5 Attorney had knowledge of the situation and objected upon  
6 Franklin's taking the stand to his testifying to certain  
7 things--I do not recall anything of that sort--but assuming  
8 it is in the record, what in the world has that got to do  
9 with this witness?

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1 At this time he can only have this witness testify to what  
2 this witness knows. Now, if the other independent fact  
3 is admissible let them put the reporter on the stand to  
4 testify from his notes just what occurred before the grand  
5 jury and show that I was present and then show that I took  
6 some action with regard to Mr Franklin while he was testi-  
7 fying on the stand, if that is important. I do not think  
8 it is; I do not think my action has got anything to do  
9 with the testimony in the case, unless there is evidence  
10 that I have suborned perjury.

11 MR APPEL: No, no charge of that, your Honor. I explained  
12 my position; it is purely a question of law; I wish to  
13 amplify the record that the sustaining of their objection  
14 was error.

15 THE COURT: I am sustaining your right on that ground.

16 MR FORD: Our point, your Honor, is, there is no objection  
17 to his admitting he testified before the grand jury, but  
18 we do not want this transcript read to the witness at this  
19 time before we have an opportunity to cross-examine him,  
20 it prevents our cross-examination --

21 THE COURT: The question before the court does not call  
22 for it, for any reading of the transcript at all. Read  
23 the question.

24 MR FORD: All right, your Honor.

25 (Question read.)

26 THE COURT: Objection overruled.

1 MR APPEL: Before the grand jury, did you? A Did I tes-  
2 tify?

3 Q Yes. A I think so, yes.

4 Q Now, you have been under subpoena in this case, have  
5 you not? A Yes sir.

6 Q By the state or the defense? A The state had me sub-  
7 poenaed on the 15th day of May, yes sir.

8 Q Will you be kind enough to state more accurately, if  
9 you can, the description of this man in respect to his  
10 clothing, in respect to his appearance? A Why, I think he  
11 had a dark suit of clothes on, if I ain't mistaken he had  
12 a derby hat. He had his hat off, I think, while he sat  
13 down in the office there, sat down there about a minute, I  
14 guess, in the stenographers' office, before he went into  
15 Mr Harriman's office while I was speaking to Mr Franklin.

16 Q Now, was it anyone that you had seen there in the of-  
17 fice, or thereabouts before, that you know of? A No sir.

18 Q Had you seen him to your knowledge? A Not to my knowl-  
19 edge, no sir.

20 Q Now, in respect, did he appear -- I want to draw from  
21 you a distinction whether he appeared as a working man,  
22 how did he appear to you? A Why, he didn't look to me to  
23 be a working man, no sir. Seemed to be a man that worked  
24 around offices somewhere.

25 Q Did you notice anything with reference to the appear-  
26 ance of Mr Franklin and this man? A Why, Mr Franklin



1 seemed to be excited.

2 MR FORD: Just a moment.

3 THE COURT: Strike out the answer for the purpose of the  
4 objection.

5 MR FORD: I move to strike it out on the ground it is  
6 calling for a conclusion of the witness, incompetent,  
7 irrelevant and immaterial.

8 THE COURT: As to how he appeared. Motion to strike is  
9 denied.

10 MR APPEL: What I want to get at more particularly, is  
11 this: did Mr Franklin and this man that you spoke of,  
12 appear to be in a hurry or appear to be in a mode of  
13 leisure, and so on?

14 MR FORD: Objected to as calling for a conclusion of the  
15 witness, and is leading and suggestive.

16 THE COURT: It is leading and suggestive, but harmless. Let  
17 him tell.

18 A Why, the man with Mr Franklin didn't appear to be  
19 very excited, but Mr Franklin did.

20 MR APPEL: How did they go away from there, Mr Schoeber?  
21 Did they walk away slowly or in a hurry? A Not particularly,  
22 in an ordinary walk.

23 Q Did they take the elevator? A That I couldn't say.  
24 I didn't follow them out to the elevator.

25 MR APPEL: Take the witness.  
26

## CROSS-EXAMINATION

1  
2 MR FORD: What did you say your occupation was? A Moulder.

3 Q What union do you belong to? A Moulders' Union --  
4 International Moulders' Union.

5 Q Are you working at your trade now? A No sir.

6 Q What are you doing now, at the present time? A Do-  
7 ing nothing whatever, at the present time.

8 Q What was the last employment you had? A I was  
9 watchman down at the Labor Temple.

10 Q And before that? A Watchman at the Higgins Build-  
11 ing.

12 Q For the defense in this case? A Yes sir.

13 Q Or in the McNamara case? A In the McNamara case.

14 Q How long were you in their employ? A About eight  
15 months, I think; seven or eight months.

16 Q During what hours were you on watch while you were in  
17 their employ? A Why, different hours. There were two  
18 watchmen there. We changed off every week.

19 Q When you -- I suppose them a morning watch and the  
20 evening watch? A Yes.

21 Q What were the hours for the evening watch? A I would  
22 go on about 5 o'clock and come off about 2. The next  
23 week I would go on at 2 and stay until between 8 and 9.

24 Q Aren't you mistaken on that, Mr Schoeber, as to the  
25 watches from 5 to 12, and from 12 to 8? A No sir.

26 Q Is your memory on that better now? A We started in

1 that way, and we changed it. It was that way for a  
2 while. This was at the commencement of the time we first  
3 commenced to work; we changed it -- and then we changed it  
4 to 2 o'clock in the morning in place of 12.

5 Q Do you remember whether you were on the morning watch  
6 or -- you call it the early watch and the late watch,  
7 don't you? A Yes sir.

8 Q Which was the early watch? A The one from 2 o'clock  
9 in the morning until 9.

10 Q What did you call the late watch? A The one from 5  
11 o'clock in the evening until 2 in the morning.

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1 Q Which watch were you on<sup>on</sup>/the 28th day of November, 1911?

2 A I was from 2 o'clock until 9 in the morning.

3 Q You are sure of that? A Yes, sir.

4 Q Positive? A Yes, sir.

5 Q Is your memory on that now better than it was on the  
6 11th of January, 1912? A Well, I have thought over it  
7 since, yes, I believe it has refreshed my memory on it  
8 since I have been subpoenaed.

9 Q Since you have been subpoenaed by who? A By the grand  
10 jury.

11 Q Did you not testify before the grand jury as follows?

12 MR. DARROW. Give us the page.

13 MR. FORD. Mine is the daily transcript of the grand jury.

14 THE COURT. Show it to counsel.

15 MR. FORD. On the third page of Schoeber's testimony. I  
16 will begin at the bottom of the second page of Schoeber's  
17 testimony. I will attract your attention to the following  
18 questions and answers: "Q--Do you remember the occasion  
19 of Bert Franklin being arrested and charged with bribery on  
20 November 28th, 1911? A--I do not; I was not working when  
21 he was arrested--yes, I was too.

22 Q --You remember that? A--I just remember of hearing of  
23 him being arrested and what I read in the paper. Q--What  
24 hours were you on duty that day? A--I don't remember  
25 whether I was on the early watch or the late watch. When  
26 I would go on at 5 o'clock in the evening I would stay  
there until 12 and from 12 until 8 in the morning." Did

1 you so testify? A I believe I did; yes, sir.

2 Q You say now that since you have been thinking it over  
3 and the testimony given by you on that occasion was not cor-  
4 rect? A Well, not correct to the hours, for we started in  
5 --changed at 12 o'clock when I went to work, then we changed  
6 it until 2 o'clock.

7 Q Is it correct as to the time of your being on the late  
8 watch or the early watch? You testified that you didn't  
9 remember whether you were on the late watch or the early  
10 watch? A I remember it because I was there at the time Mr.  
11 Franklin came in the office.

12 Q When you answered, "I don't remember whether I was on the  
13 early watch or the late watch," that was your testimony given  
14 at that time?

15 MR. APPEL. Your Honor, wait a moment--I object to taking  
16 part of his then answer, a word or two; that it is fragamen-  
17 tary part of the answer, your Honor will see.

18 MR. FORD. I will give the full answer. I didn't  
19 think so, I want to be fair to the witness. I will read  
20 the full answer: "A--I don't remember whether I was on the  
21 early watch or the late watch. When I would go on at 5  
22 o'clock in the evening I would stay there until 12 and from  
23 12 until 8 in the morning", that is the full answer. Now,  
24 attracting your attention to the first part of that  
25 answer, "I don't remember whether I was on the late watch  
26 or the early watch," you so testified at that time before

1 the grand jury? A I think I did.

2 Q Now, how do you remember-- you remember now, though, at  
3 the present time, don't you? A Yes, sir.

4 Q And your memory came back since this trial began?

5 A Why, yes, I didn't think that ever I would be implicated  
6 in this trial in any way, shape or form; never gave it  
7 a thought.

8 Q Now, you say you saw Mr. Franklin come to that building  
9 in the morning about 7 o'clock with some man whom you don't  
10 know? A Yes, sir.

11 Q What day of the week was that? A I couldn't say to  
12 that.

13 Q What day of the month was it? A I couldn't say as  
14 to that.

15 Q Was it the day Franklin was arrested? A Yes, sir.

16 Q You are positive about that? A Yes, sir..

17 Q You are sure it was the same day he was arrested?

18 A It was the morning--I think I went home and went to  
19 bed and in the afternoon I read it in the evening paper  
20 that he had been arrested.

21 Q Now, wasn't it on Monday morning that he came there with  
22 a man at 7 o'clock in the morning? A I couldn't say  
23 whether it was Monday or not.

24 Q Wasn't it the day before he was arrested? A I think it  
25 was the same day.

26 Q You are not sure on that, are you? A Well, I am almost

1 positive, yes .

2 Q · Are you sure that it was not Monday the 27<sup>th</sup> of  
3 November ?

4 MR. APPEL. He has been asked that question and he has  
5 answered it .

6 THE COURT. Objection sustained.

7 MR. FORD. Is your memory on that point better than it  
8 was when you were brought before the grand jury? A Well,  
9 somewhat, yes, I gave it considerable thought since then.

10 Q Who has been assisting you in thinking about it?

11 A No one in particular. I do my own thinking as a rule.

12 Q You talked with Mr. Darrow about this case? A I have  
13 a few words, yes, sir .

14 Q When, where? A Why, up in Mr. Rogers office.

15 Q When? A A few days ago.

16 Q Was that the first time you ever talked to either Mr.  
17 Rogers or Mr. Darrow? A Yes, sir .

18 Q Have you talked with anybody else? A Oh, yes .

19 Q With whom? A Why this man named Frank Belcher .

20 Q He is a detective employed by the defense here in this  
21 case, is he?

22 MR. APPEL. Wait a moment--we object upon the ground that  
23 it is calling for an opinion or conclusion of the witness.  
24 It is calling for hearsay information. He can ask him  
25 who he is. He can tell him. But we do object to putting  
26 that in .

1 THE COURT. Objection sustained.

2 MR. FORD. Would you stand up, Mr. Belcher, please?

3 Q You know that Mr. Belcher was employed by the defense  
4 while you were there? A I do not.

5 Q At the Higgins Building? A Yes, sir.

6 Q One of the investigators at that time? A I don't know  
7 what his business was.

8 Q But he has been down to see you about this case?

9 A Oh, I see him quite frequently. He is a member of our  
10 Union. I meet him quite often.

11 Q He came down to your union and talked to you about it?

12 A I spoke to him on the street and in the union meetings.

13 Q And every time you spoke to him you discussed this mat-  
14 ter about your having seen a man with Franklin at 7 o'clock  
15 in the morning? A No, sir.

16 Q When did you talk to him about that? A That I  
17 couldn't say as to when it was.

18 Q Do you know where it was that you talked to him about  
19 that, whether it was on the street or in the union?

20 A Probably it was up in his office. I been up in his  
21 office.

22

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26



1 Q Where is his office? A Up in the American Bank Build-  
2 ing, I think it is called.

3 Q What floor of the American Bank Building? A Fifth  
4 floor, I believe.

5 Q The same building Mr Rogers' office is in? A No sir.

6 Q Where is this building? A It is on Second and Spring  
7 I believe.

8 Q When did you go up into that building and talk to Mr  
9 Belcher about this incident? A I was there a couple of  
10 weeks ago.

11 Q How did you happen to go up there? A He left word at  
12 the house that he would like to see me.

13 Q And then you went up? A Yes sir.

14 Q The matter he wanted to see you about was this mat-  
15 ter, was it? A Why, yes; and different things.

16 Q And what other persons have you talked with besides  
17 Mr Belcher, Mr Darrow and Mr Rogers; anyone else? A I  
18 probably have; I don't remember them.

19 Q Well, after talking with these various people you are  
20 now positive that the time you saw Mr Franklin and this  
21 mysterious stranger was the same day he was arrested; is  
22 that correct? A Yes sir.

23 Q And your memory on that now is better than it was be-  
24 fore you went before the grand jury? A I have given it  
25 thought since, yes sir.

26 Q I will ask you if you did not testify as follows:

1 "Q -- You had never seen that man before? A -- No sir,  
2 and I haven't seen him since that I know of. Q -- That  
3 was at 7 A.M. on the day of his arrest? A -- I am not  
4 positive whether he was under arrest then or not. I don't  
5 think he was. I think it was the day previous to his ar-  
6 rest. I am not quite positive." Did you so testify?

7 A I think I did, yes sir.

8 Q And you are not positive, yet, are you? A Well,  
9 after I gave it further thought, I believe I am positive  
10 yes sir, that it was on the day of his arrest.

11 Q Mr Rogers attracted your attention to anything that  
12 made you positive? A Oh, no.

13 Q Mr Darrow attract your attention to anything that made  
14 you positive? A I do my own thinking.

15 Q Did Mr Darrow attract your attention to anything?

16 A Why, they spoke to me, yes.

17 Q They told you some things that had occurred, is that  
18 correct? A No sir.

19 Q What did they speak to you about? A They couldn't  
20 tell me nothing on that because they knew nothing about  
21 it; at least, I didn't think they did.

22 Q How did they happen to send for you if they didn't  
23 know about it? A I suppose they heard I was subpoenaed.

24 Q Did they ask you if you had been subpoenaed? A I  
25 don't think they did.

26 Q Did he ask you what you were going to testify to?

1 A He did not.

2 Q Well, they didn't learn from you what you had testi-  
3 fied to before the grand jury? A They probably heard it  
4 from someone else. They didn't hear it from me.

5 Q And they learned you had been subpoenaed by the prose-  
6 cution? A Yes sir.

7 Q And <sup>a</sup> subpoenaed was served on you and you were told you  
8 would be sent for if you were needed, is that correct?

9 A Yes sir, after coming up here for about a month.

10 Q What did Mr Belcher say to you when you came up to his  
11 office? A Nothing further than speaking about ordinary  
12 affairs.

13 Q Well, now, give us the conversation. I suppose you  
14 said, "How do you do --"

15 MR APPEL: Just wait a moment. A I don't remember.

16 MR APPEL: We object to any conversation between Mr Bel-  
17 cher unless it was concerning this case.

18 A I have had thousands of conversations with him.

19 THE COURT: Objection sustained.

20 A Probably, in the last two years.

21 MR FORD: Now, at the time you were at the Higgins build-  
22 ing on the morning of the 28th, which you are positive  
23 about, who else was there on watch with you? A George  
24 Bracken.

25 Q He assisted you? A Why, he had one watch, and I  
26 the other, yes sir.

1 Q But he was not there during the time that you were on?

2 A No sir.

3 Q You were the only one there? A Yes sir.

4 Q Any persons employed about the place? A Why, there  
5 was a colored janitor there came in the morning, yes;  
6 several janitors, in fact, came through the building.

7 Q Colored janitor? A One of them, yes.

8 Q Was anybody there who belonged to the defense? A No  
9 sir.

10 Q Who was the first man that came belonging to the de-  
11 fense? A I think it was Mr Russell.

12 Q He usually got there about 8 o'clock in the morning.

13 A Between 8 and 9.

14 Q Are you positive?

15 MR APPEL: I am not like you.

16 THE COURT: What is the trouble here?

17 MR FORD: Every time I ask the witness a question Mr Appel  
18 answers, "No, no".

19 MR APPEL: I didn't say anything of the kind. I just  
20 purred, your Honor. I just m'rr'd this way. I didn't want  
21 to object. I expressed my disapproval. Now he says I  
22 say "no". It is an infamous falsehood, your Honor.

23 THE COURT: I don't think there is any reason for such  
24 inte4rptions as this. I don't know what occurred. I  
25 suppose when I hear any suppressed remarks from the side  
26 of the defense or the prosecution, that they are conferring

1 among themselves. They have a right to object to any  
2 other remarks here, except conferring among themselves or  
3 making objections, and I take it for granted such is the  
4 case. Now, what is the use of these interruptions?

5 MR FORD: I misunderstood him, your Honor. I thought he  
6 said "no". If he is purring, I will take his word.

7 MR APPEL: It is one of those disapproval purrs. Didn't  
8 mean any harm, either.

9 MR FORD: Well, what did Mr Belcher say to you that re-  
10 freshed your recollection or refreshed your memory?

11 A Nothing.

12 Q What did he say? A That I remember? Oh, he spoke  
13 on a thousand different subjects.

14 Q Did he talk to you about your testimony? A I don't  
15 think he did.

16 Q Did you tell him what your testimony would be? A I  
17 did not; not to my knowledge.

18 Q What is that? A Not to my knowledge, I did not.

19 Q Did Mr Belcher tell you anything about what had happen-  
20 ed that mornin? A He couldn't. He wasn't there; he  
21 didn't know anything about it.

22

23

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26

1 Q Who was there that morning? A I was.

2 Q And you were the only one that was there? A Yes, sir.

3 Q When Mr. Franklin and this mysterious stranger came  
4 there? A I don't know as there was very much mystery  
5 about it, the same as any other man.

6 Q Didn't they act mysterious? A They did not.

7 Q Didn't they hurry away? A No.

8 Q You say Mr. Franklin appeared excited? A Yes, he did.

9 Q Now, just what way? A His face was flushed, he looked  
10 nervous, excitable.

11 Q Did he talk excitedly? A Why, nothing, no; he came  
12 up and asked me, he says, "You know who I am?" I told  
13 him I certainly did. He asked for the use of an office  
14 for a few minutes that he would like to talk to his  
15 friend.

16 Q Could you understand him when he talked? A I wasn't  
17 there to listen; no, sir; I didn't hear a word that  
18 was spoken.

19 Q You could understand when he spoke to you? A Certainly.

20 Q Was he excited then? A He was; he looked excited to  
21 me.

22 Q Did he talk excitedly? A That is all the words he  
23 spoke to me.

24 Q Did he say it in about the same tone of voice you are  
25 now saying it in? A Yes, sir.

26 Q No louder? A No, I don't think he did.

1 Q And no faster? A No, not any faster.

2 Q Now, the time you answered, "I think it was the day  
3 previous to his arrest, I am not quite positive," that  
4 was on the 11th of January, 1912, in the court house on  
5 the fourth floor of the court house, wasn't it, Mr. Schoeber?  
6 A I think it was, yes, sir; I wouldn't be positive as to  
7 the date.

8 MR. FORD That is all.

9 THE COURT. Any redirect?

10 MR. APPEL. Yes, sir.

11

12 REDIRECT EXAMINATION.

13 MR. APPEL. Q Mr. Schoeber, your attention has been called  
14 to a part of your testimony alleged to have been given by  
15 you before the grand jury. Did you not in connection  
16 with the matter that was called to your attention as a part  
17 of your testimony, also testify as follows, and I will  
18 show you your testimony: "Q What is your name?

19 A Leonard Schoeber. Q--How old are you? A--54.

20 Q--Where do you reside? " A When was that?

21 MR. APPEL. Before the grand jury, I don't know when.

22 A I was 54 then.

23 MR. APPEL. (Reading) "Q--Where do you reside? A--646  
24 San Julian street." A 640, it was.

25 MR. APPEL. (Reading) "Q--City of Los Angeles, Cali-  
26 fornia? A--Yes sir. Q--And your occupation? A--Watch-

1 man. Q- Where are you employed? A--Labor temple. 4432  
2 Q- How long have you been employed there? A--About three  
3 weeks. Q--Prior to that time what was your profession or  
4 occupation? A--Watchman. Q--Well, where were you watch-  
5 man? A--Mr. warriman's office? Q-- At the Higgins  
6 Building in this city? A Yes, sir - Q--How long were  
7 you employed there? A--About eight months. Q--By whom  
8 were you employed? A--Job Harriman. Q--And by whom  
9 were you paid during that time? A--Job Harriman's secretary  
10 Q--Secretary I. H. Russell? A--Yes, sir. Q--You were not  
11 paid by both at the same time? A No, sir. Q--During what  
12 portion of the time were you paid by Mr. Harriman? A- None  
13 whatever. He never paid me, it was Mr. Russell that always  
14 paid me. Q--Mr. Russell always paid you? A--Yes, sir.  
15 Q--What were your duties there? A--Watchman? Q--Night  
16 or day? A--Night, part night, part daytime. Q--You worked  
17 with the witness who preceded you, Mr. Bracken? A--Yes,  
18 sir. Q--And you were on duty when he was not on duty?  
19 A--Yes, sir. Q--Vice versa? A Yes, sir. Q--Do you  
20 remember the occasion of Bert H. Franklin being arrested  
21 and charged with bribery on November 28, 1911? A--I do not,  
22 I was not working when he was arrested--yes I was, too.  
23 Q--You remember that? A--I just remember of hearing of  
24 him being arrested and what I read in the paper. Q--What  
25 hours were you on duty that day? A--I don't remember whe-  
26 ther I was onthe early watch or the late watch. When I



1 would go on at 5 o'clock in the evening I would stay there  
2 until 12 and from 12 until 8 in the morning. Q--Do you  
3 know Bert H. Franklin? A--I know him, yes, sir. Q--Did  
4 you see him on that day? A--Yes, sir. Q--At what time?  
5 A--About 7 o'clock, in Mr. Harriman's office. Q--In the  
6 evening or daytime? A--In the morning. Q--That was  
7 before his arrest? A--Yes, sir, it was. Q--Who else  
8 was present on that occasion? A--There was no one there  
9 that morning only himself. Q--What was Mr. Franklin doing  
10 at that time? A--He came with another gentleman and  
11 asked permission to go into an office and have a conversa-  
12 tion with the man that came with him. Q--Do you know what  
13 that other gentleman's name was? A--I do not. I never saw  
14 him before. I never saw him but once in my life. Never  
15 had seen him before and don't know him yet. Q--Describe  
16 that man to the jury. A--He is a man about your build,  
17 your size and your age. Q--Looks like me, I suppose?  
18 A--No, not exactly your face, no. Q--Was he dark or light?  
19 A--A dark complected gentleman. Q--How was he dressed?  
20 A--I think he had a dark suit of clothes on. Q--Notice  
21 his hat? A--No, I think when I saw him he had his hat  
22 off. Q--A beard or mustache? A--No beard. Q--Smooth  
23 shaven? A Smooth-shaven, yes, sir. Q--Have you ever  
24 seen him since? A--No, sir. Q--Do you know Mr. Fitzpatrick  
25 the gentleman who preceded you? A--Yes, sir. Q--He was  
26 not the one? A--No, sir. Q--Do you know Mr. Tveitmoe?

1 A--Yes, sir. Q--Was it Mr. Tveitmoe, that man? A--No, the  
2 man was not half the size of him. Q- Do you know Mr.  
3 Johannsen? A--Yes, sir. Q--It was not Mr. Johannsen?  
4 A--No, sir. Q--That description does not fit Mr. Nockles?  
5 A-.No, sir, I know Mr. Nockles. Q--Or Mr. parrow? A--No,  
6 sir, it was nobody connected with the office. Q--You had  
7 never seen that man before? A--No, sir, and I haven't  
8 seen him since that I know of."

1 Q -- That was 7 A.M. on the day of his arrest? A -- I am  
2 not positive whether he was under arrest then or not.

3 I don't think he was. I think it was the day previous to  
4 his arrest. I am not quite positive. Q -- Do you rememb-  
5 er of seeing him there in the morning with any other per-

6 son? A -- No, sir; he used to come in and out of the of-  
7 fice, and I paid no attention to him. My instructions

8 was to let any man come in that was connected with the of-

9 fice. Q -- Do you remember of any peculiar occurrence or  
10 circumstance about this man that would enable you to iden-

11 tify him particularly? A -- No sir; I never paid close

12 attention to him. Q -- You would recognize him if you saw

13 him? A -- Yes sir. Q -- Have you a telephone where you

14 can be reached? A -- Yes sir. Q -- What is the telephone

15 number? A -- Main 3235. Q -- That is at the Labor Tem-

16 ple? A -- No sir, that is my residence phone. Mr Ford --

17 Any questions the jury would like to ask this witness?

18 That is all. At this time the jury adjourned until Mon-

19 day, January 15th, 1912, at 10 o'clock A.M." Did you not

20 so testify before the grand jury, in the presence of Mr

21 Ford? A Yes sir.

22 THE COURT: gentlemen of the jury, you will bear in mind

23 your former admonition, and we will take a recess for 10

24 minutes.

25 (After recess.)

26 THE COURT: Proceed with your redirect examination.

1 MR APPEL: I forgot to ask him one or two questions.

2 Q MR Schoeber, before you testified before the grand jury  
3 did you at any time, or at any place, talk with anyone  
4 concerning what your testimony would be before the grand  
5 jury? A No sir.

6 Q Did you know what you were going to be asked there?

7 A I did not.

8 Q Now, you said you were subpoenaed by the prosecution.  
9 About when was it that you were told that if you were  
10 wanted you would be sent for? A About three weeks ago.

11 Q How? A About three weeks ago.

12 Q Did the prosecution or any person claiming to be connect-  
13 ed with it ever call for you? A No sir.

14 Q Now, in giving one of your answers before the grand  
15 jury when describing the appearance of this man that came  
16 there with Mr Franklin on the day referred to in your tes-  
17 timony, Mr Schoeber, you made this answer, if I can quote  
18 it correctly without looking at the testimony, "About your  
19 build." Whom were you referring to them? A Mr Ford.

20 THE COURT: Is that all?

21 MR APPEL: That is all.

22

23

#### RE-CROSS-EXAMINATION

24 MR FORD: I am not the man you saw there, though, am I?

25 A No sir, you are not.

26 Q Are you sure of that? A Yes sir, I am sure of it,

1 yes sir, positively.

2 Q Mr Franklin used to come in and out of the office and  
3 quite frequently, didn't he? A Yes sir.

4 Q And you paid no particular attention to him? A No  
5 sir.

6 MR FORD: That is all.

7  
8 REDI RECT EXAMINATION

9 MR APPEL: Did you ever see him before that time at  
10 that hour in the morning? A Never.

11 MR APPEL: That is all.

12 THE COURT: That is all.

13  
14 CHARLES O. HAWLEY, a witness called on be-  
15 half of the defendant, being first duly sworn, testified  
16 as follows:

17 DI RECT EXAMINATION

18 MR APPEL: State your full name? A Charles O. Hawley.

19 Q Where do you reside, Mr Hawley? A I am living at  
20 present in San Francisco.

21 Q Did you ever reside in the city of Los Angeles?

22 A Yes.

23 Q For how many years did you reside here? A Oh, 20  
24 years or more.

25 Q And what has been your business or occupation, gen-  
26 erally? A Insurance adjuster.

1 A JUROR: A little louder.

2 THE COURT: Speak a little louder, Mr Hawley.

3 MR APPEL: Insurance adjuster? A Yes sir.

4 Q Mr Hawley, were you residing here in the city of  
5 Los Angeles on the 28th day of November of last year?

6 A Yes.

7 Q Did you ever hold any official position here in the  
8 city? A Yes.

9 Q What was it, please? A I was fire commissioner for  
10 a little while.

11 A JUROR: A little louder, please. A Fire commissioner,  
12 for a little while.

13 MR APPEL: Did you know Mr Darrow on the 28th day of Novem-  
14 ber of last year? A Yes sir.

15 Q Had you known him prior thereto? A Yes sir.

16 Q For what time, please? A Perhaps a month or so.

17 Q Relative to any knowledge in any matter pertaining to  
18 the campaign or election going on at that time? A Yes.

19 Q What connection did you have with it? A Why, I was  
20 running about town seeing some of my friends in the inter-  
21 est of Harriman.

22 Q In the interest of Harriman? A Yes sir.

23 Q Had you prior to that time spoken to Mr Darrow in  
24 reference to the campaign? A I do not think so.

25 Q Sir? A I do not think so.

26 Q Was there any matter that you had under consideration

1 with reference to the campaign at that time upon which  
2 you wanted to see Mr Darrow? A No sir.

3 Q On that day? A On that day, there was, yes.

4 Q Now, did you have a desire on that day to see Mr Dar-  
5 row? A Yes sir.

6 Q Now, in order to see Mr Darrow, you may state what you  
7 did.

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1 MR. FORD. We object to that on the ground it is incompetent,  
2 and irrelevant and immaterial, what this witness did. If  
3 he saw or talked with Mr. Darrow at any time or place that  
4 is a different proposition; but this question, he might  
5 have sat down and written a letter to him on that day and  
6 it would be wholly immaterial.

7 MR. APPEL. We would have a right to show that he wrote  
8 the letter.

9 THE COURT. Objection overruled.

10 MR. APPEL. Q Go ahead. A I telephoned him in the morn-  
11 ing to meet me and Mr. Harriman at Socialist headquarters.

12 Q Now, what time in the morning did you 'phone to him?

13 A About 9 o'clock.

14 Q Did you talk to Mr. Darrow through the 'phone? A I did.

15 Q Now, what office did you call up? A I called up  
16 Harriman's office.

17 Q Mr. Harriman's office? A Yes, sir.

18 Q And where were you when you called up? A I was in my  
19 office.

20 Q And where was your office, Mr. Hawley? A In the Herman W.  
21 Hellman Building, Room 630.

22 THE COURT. Mr. Williams, can you hear the witness?

23 JUROR WILLIAMS. Yes, sir.

24 THE COURT. All right, go ahead.

25 MR. APPEL. Q Did you then make any engagement with Mr.  
26



- 1 Darrow? A Yes.
- 2 Q To see him where? A To meet us at the Socialist  
3 headquarters.
- 4 Q At what hour? A As soon as he could.
- 5 Q But what hour was it when you 'phoned to him? A About  
6 9 o'clock.
- 7 Q About 9 o'clock? A Yes, sir.
- 8 Q When you say "Harriman's office," you mean in the Higgins  
9 Building? A Yes, sir.
- 10 Q Where you telephoned? A Yes, sir.
- 11 Q Immediately upon telephoning do you remember as to whe-  
12 ther or not you did anything to keep the appointment?
- 13 A I went over to Socialist headquarters.
- 14 Q And who, if any one, did you find there that you remember?  
15 A That I remember?
- 16 Q Yes. A Mr. Harriman was there and Mr. Hillyer was there,  
17 as I remember it.
- 18 Q Did you see Mr. Darrow after 'phoning? A I did not see  
19 him at all.
- 20 Q He did not come there? A No, sir; not while I was  
21 there.
- 22 Q Now, I wish you would be kind enough to explain the occa-  
23 sion or, rather, the reason and what occasioned your tele-  
24 phoning to Mr. Darrow? A Why, Harriman asked me to.
- 25 Q Well, in reference to what subject? A He wanted him  
26 to meet us over there to talk over a matter about the cam-

1 paign .

2 Q what was that matter, generally? A Well, the matter  
3 was a supposed alliance between the Good Government Organiza-  
4 tion and the liquor interests.

5 Q Do you remember what information you had with reference  
6 to that matter and when did you get it? ✓

✓ 7 MR. FORD. ~~Just a moment, this is about the 7th degree~~  
8 ~~hearsay.~~

9 THE COURT. What is the objection.

10 MR. FORD. I object to that on the ground it is hearsay,  
11 incompetent, irrelevant and immaterial.

12 MR. APPEL. In order to be plain with the court, we offer  
13 to show by the witness--

14 MR. FORD. Ask your questions.

15 MR. APPEL --that through the papers that he learned of  
16 certain information that was given through the papers,  
17 however correct it was or not is unimportant to us, that  
18 there was a supposed alliance between the liquor interests  
19 and the Good Government forces inreference to the election  
20 and that then it became necessary for them, having the cam-  
21 paign of Mr. Harriman in their hands, to have a meeting  
22 to discuss the best way to offset that movement, and I want  
23 to show that there existed reasons why he should have a  
24 meeting there with Mr. Harriman and Mr. Hawley and others  
25 interested in the campaign.

26 THE COURT. ~~I think you have a right to show there existed~~

1 reasons. That is the purpose of your inquiry?

2 MR. APPEL. Yes, sir.

3 THE COURT. You can show it.

4 MR. APPEL. I wish you would be kind enough to answer the  
5 question. A What is the question, please?

6 (Question read.)

7 A Well, I had read that morning an editorial in the Tribune  
8 which seemed to confirm the street report that I got the  
9 night before, the first I saw of it was in this Tribune  
10 in the morning, this morning.

11 Q And did you speak with any one about it? A I went  
12 directly over to Socialist headquarters and saw Harriman  
13 and he asked me to call Darrow up and to ask him to come  
14 over, which I did.

15 MR. APPEL. Take the witness.

16

17 CROSS-EXAMINATION.

18 MR. FORD. Q Where did you live at that time, Mr. Hawley?

19 A At 823 South Union avenue.

20 Q What business were you engaged in at that time? A The  
21 same business, insurance.

22 Q Where was your office? A 630 in the H W Hellman Building

23 Q Corner of Fourth and Springstreets? A Yes, sir.

24 Q What time did you come down to your office that morning?

25 A About 8:30, I should think.

26 Q Is that your usual hour? A Yes, sir.

1 Q Do you fix it in any way by any other event? A The  
2 exact time?

3 Q yes. A I fix it only by the fact I saw Harriman  
4 that morning.

5 Q Did you meet any people at your office that morning?  
6 A Not at that time, no.

7 Q Before you went over to Mr. Harriman's office? A No.

8 Q The only way you fix it is by the fact you met Mr.  
9 Harriman? A And this editorial.

10 Q And the editorial in the Tribune of that day? A Yes, sir.

11 Q An editorial in the Tribune of the 28th? A Yes.

12 Q And that was an editorial about the liquor interests  
13 had combined with the Good Government forces, was it?

14 A No, not exactly that.

15 Q What was the title of the editorial? A It was an  
16 explanation of why the Tribune was still supporting  
17 Alexander.

18 Q You had formerly been Alexander's Fire Commissioner?

19 A Yes, sir, for sometime.

20 Q And you had a disagreement with him? A Yes, sir.

21 Q And at the same time you had a fight with the Los Angeles  
22 Times did you not?

23 MR. APPEL. Now, your Honor, we object to that as immaterial,  
24 not cross-examination.

25

26

1 MR FORD: Going to the motives, preliminary.

2 MR APPEL: It makes no difference what his relations were  
3 with Mayor Alexander or anyone else.

4 MR FORD: If the court please, it is merely preliminary.  
5 We wish to show just what connection this witness had with  
6 the case.

7 THE COURT: Preliminary. It is immaterial. If it is  
8 preliminary you may have the question. Objection over-  
9 ruled.

10 A I don't know I did.

11 Q You were around trying to persuade relatives of those  
12 who had been killed in the explosion of the Times, to bring  
13 damage suits against the Times, were you not?

14 MR APPEL: We object to that as immaterial, not cross-  
15 examination, and has no reference to this case.

16 THE COURT: I cannot see any application at all.

17 MR FORD: I will show in just a moment, your Honor, if  
18 I think the witness answers as I expect he will.

19 THE COURT: This is still preliminary?

20 MR FORD: Yes, your Honor.

21 THE COURT: All right. You may have the question.

22 MR APPEL: Except.

23 A No.

24 MR APPEL: How is that? A I say, no.

25 MR FORD: You were not interested in that matter at all?

26 A Not at that time.

1 Q Previous to that time? A Yes.

2 Q And previous to that time you were maintaining that  
3 the explosion at the Times Building was due to gas and  
4 to faulty construction on the part of the Times people,  
5 and to lack of fire escapes, etc?

6 MR APPEL: ~~We object to that as immaterial and not cross-~~  
7 ~~examination; his views upon the subject.~~

8 MR FORD: I wish to show how he came into contact with  
9 the defense in this case.

10 MR APPEL: The defense has nothing to do with the facts  
11 of that day; it does not tend in any way, either to modify  
12 or impeach his testimony.

13 MR FORD: Solely with regard to the relations of the wit-  
14 ness to the case; I am not making any claim it is cross-  
15 examination of his testimony; I am claiming it is to show  
16 the relation to the case.

17 MR APPEL: His relation to what he considered other  
18 litigation and other matters, how does that relation go  
19 to his relation to this case?

20 THE COURT: It seems to me it is very remote, at least,  
21 Mr Ford.

22 MR FORD: If the court please, here was a prosecution of  
23 certain people who were charged with murdering 20 men who  
24 were employed by the Times; here is a witness engaged in  
25 stimulating lawsuits against the Times for that purpose.

26 ~~We wish to show that he ran along side by side with the~~

1 defense in this case, both of whom set up the same claim  
2 as to the cause of the explosion, and how they came to-  
3 gether and what the relations were, in other words, to  
4 show the relations of this witness to this defendant. That  
5 is the point I am driving at, and I have a right to show  
6 the relation to the case and to the parties involved.

7 MR ROGERS: If your Honor please, if the dynamiting of  
8 the Los Angeles Times and the killing of the people who  
9 were killed in that tragedy of the century had anything  
10 to do with the guilt or innocence of Mr Darrow, I would  
11 not be here, sir; I would not be here for a moment, and  
12 what is more, if I had not had started when I did and as I  
13 did, you would never have had any McNamara trial. I do  
14 not believe, sir, that there is any sort of a connection  
15 between the two incidents, and I do not believe it has any  
16 relationship whatever, so far as the witness is concerned,  
17 and therefore, it is an impeachment, if at all, upon a col-  
18 lateral and immaterial matter, and counsel has, it seems  
19 to me, overstepped his rights, when he has stated that  
20 here is a witness engaged in such matters. If it were  
21 true, as was contended by some people and contended very  
22 strongly and with some evidence, if it were true that the  
23 explosion of the Times was due to gas, and that the death  
24 of those people was occasioned by an imperfect gas system,  
25 then, of course, a damage suit would lie against the Times,  
26 but, however that may be, that has got nothing to do with

1 this matter, nothing to do with this case. I think it is  
2 an impeachment of this witness upon a matter which certain-  
3 ly cannot affect him in his relations to this individual  
4 defendant.

5 MR APPEL: One more suggestion, your Honor. The asking  
6 of these questions of the witness would open the door to  
7 this kind of an investigation as to what was really the is-  
8 sue in this case; as to what was claimed as to whether or  
9 not it was claimed that notwithstanding the Times office  
10 was dynamited, as to whether or not the death of any person  
11 there was due to the negligence in the construction of  
12 the building, to the fire escapes, and the imperfect gas  
13 connection, and then it would involve the question as to  
14 whether or not the witness here or anyone connected with  
15 that litigation was justified under the law, under the ad-  
16 vice of counsel, to go on and litigate that question, and  
17 all those things would have to be considered here, it would  
18 go into the motives of the witness, and to what basis he  
19 had for those motives, whether they were justified, whether  
20 they were malicious or not. I submit, your Honor, that  
21 would not in any way impeach or modify the evidence of  
22 the witness here.

23 MR FORD: The object of this examination was to show that  
24 this witness was animated by the same malice that actuat-  
25 ed the perpetrators of this crime, that that same malice  
26 brought him into contact with them that actuated by the  
same malice he caused these suits to be instituted for the  
purpose of harassing the Times and incidently for the purpose  
of gathering information for the use of the defense in this



16p

1 and by reason of his activity he came in contact with the  
2 attorney, Mr. Darrow, and that at this time he has that  
3 same friendly feeling for Mr. Darrow that he acquired at  
4 that time by the association.

5 THE COURT. You have a right to show friendly feeling,  
6 and all that, but I am satisfied that an answer to this  
7 question would open up the broad field that Mr. Appel sug-  
8 gests, it is not competent, relevant or material to the  
9 issue of this case.

10 MR. FREDERICKS. Will your Honor let me say one word along  
11 that line?

12 THE COURT. Yes.

13 MR. FREDERICKS. Supposing a man is building a house and  
14 another man is building a house, cannot we show that another  
15 man who has come as a witness in regard to the man, he is  
16 building the house, is building another house alongside  
17 and that they were working together?

18 THE COURT. Yes.

19 MR. FREDERICKS. That is all this is.

20 THE COURT. In ruling upon the objection the court stated  
21 you had a right to show <sup>that</sup> /friendliness or unfriendliness  
22 interest or motives of the witness, but the question as now  
23 propounded opens up a line of inquiry that cannot be opened  
24 up in this case. The objection is sustained.

25 MR. FORD. Q Did you ever consult with Mr. Darrow or any  
26 member of the McNamara defense in regard to the merits of

1 their case or the cause of the Times explosion?

2 MR. APPEL. We object to that as immaterial for any pur-  
3 pose, your Honor. Here is the rule, and see if it is  
4 not a reasonable rule. I produce a witness, your Honor,  
5 against the other side; they have a right to ask him  
6 whether or not he entertains any feeling of friendship for  
7 my side, that is true, and they have a right to show to  
8 what extent that friendly feeling may be. If he answers  
9 in the affirmative they have a right to show whether or  
10 not he is prejudiced against their side of the case and  
11 they have the right to show how great that prejudice is,  
12 that is true, but if the witness denies his friendship for  
13 Mr. Darrow they may ask him anything he has done or said  
14 that would show that he had that friendly feeling, but  
15 first you must ask him whether or not he entertains  
16 a feeling for one side or the other or prejudice for one  
17 side or the other, then upon denial you have a right to  
18 call for specific acts showing the contrary to what he has  
19 testified to.

20 MR. FORD We submit the question.

21 THE COURT. Read the question.

22 (Question read.)

23 MR. DARROW. I object to that further--

24 THE COURT. I think the objection already made is good and  
25 it is sustained.

26 MR. FORD. Q What were your relations with Mr. Darrow prior

1 to November 28th? A I had none .

2 Q Never spoke to him in your life? A Yes, I have spoken  
3 to him.

4 Q when did you first meet him? A I met him in Harriman's  
5 office, I presume--well, it might have been two or three  
6 months before election.

7 Q What was the occasion of your being in Harriman's office  
8 when you met Mr. Darrow? A I was frequently in Harriman's  
9 office on business.

10 Q What is that? A I was frequently in Harriman's office  
11 on business.

12 Q On business connected with the bringing of law suits  
13 against the Times? A That and others.

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

16 THE COURT. Objection sustained.

17 MR. FORD. And the answer stricken out?

18 THE COURT. yes, sir, if there was an answer it is stricken  
19 out.

20 MR. FORD. Q Were you on the day that you met Mr. Darrow  
21 at Mr. Harriman's office, were you there to discuss any-  
22 thing connected with the explosion of October 1, 1910 of  
23 the Times Building?

24 MR. APPEL. The same objection, your Honor, and we ask the  
25 same ruling.

26 MR. DARROW. Another suggestion I want to make as to which

1 office. He has referred to one and you may be referring  
2 to another. He is referring to headquarters.

3 MR. FORD. He said, "Harriman's office."

4 THE COURT. Read that question. Let us have the question  
5 read and see if it covers it.

6 MR. DARROW. Which office?

7 MR. FORD. I didn't know they had but the one office.

8 MR. DARROW. He had two. He didn't refer to his law office  
9 he referred to his headquarters.

10 THE COURT. Read the question.

11 (Question read.)

12 THE COURT. Q When you speak of going to Mr. Harriman's  
13 office what office did you refer to? A I didn't go  
14 to his office at all, sir, I went to the Socialist head-  
15 quarters.

16 Q Where was that? A In the Canadian Building on South  
17 Main street.

18 MR. FORD. Q didn't you a moment ago state you went directly  
19 to his law office for the purpose of the Times suits and  
20 other cases?

21 MR. ROGERS. Just a moment--that was stricken out. He  
22 didn't make any such answer, at any rate.

23 MR. FORD. He did, he said, "That and others," and that  
24 was stricken out.

25 THE COURT. Do you want the record read?

26 MR. ROGERS. I assign it as misconduct. Yes.

1 THE COURT The objection is sustained.

2 MR. FORD Q Did you ever meet Mr. Harrow at Mr. Harriman's  
3 law office in the Higgins Building? A Yes.

4 Q Was that the first place you met him? A Yes.

5 Q Now, when was that? A Three or four months before  
6 election.

7 Q Three or four months before the election, and the elec-  
8 tion was in December? A I think so, the 5th of December.

9 Q Now, what was the occasion of your being at Mr. Harriman's  
10 law office when you met Mr. Darrow?

11 MR. APPEL. We object to that as incompetent, irrelevant and  
12 immaterial for any purpose, and on the further ground the  
13 witness is not compelled to answer concerning his communica-  
14 tions with any attorney, even if Mr. Harriman was his attor-  
15 ney.

16 MR. FORD He can in the presence of a third party.

17 MR. APPEL. Private business.  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 MR FORD: It is for the purpose of showing the intimacy  
2 or relation in the case out of which this very charge has  
3 grown.

4 MR DARROW: Your Honor has already ruled on this question.

5 THE COURT: Not quite. Read it again. (Question read.)

6 ~~I think you will have to confine your question to whether~~  
7 or not he was there concerning matters upon which he tes-  
8 tified in his examination in chief or with reference to the  
9 McNamara case.

10 MR FORD: That would be impossible, your Honor. Will  
11 you read the court's statement. (Last statement of court  
12 read.) Couldn't I show he was married to somebody, that  
13 he was related in someway, couldn't I go into a dozen mat-  
14 ters to show his relation to the case, what his business  
15 relations were?

16 THE COURT: The matter in mind is this: that a man has a  
17 right to go to his attorney's office on matters entirely  
18 outside of the issues in this lawsuit or any other, and  
19 he is not compelled upon examination or cross-examination,  
20 unless it becomes pertinent, to disclose the purpose of  
21 that visit, or the things that ~~transpired there; the fre-~~  
22 ~~quency of those visits; all those matters can be shown.~~

23 MR FORD: Was ~~MR~~ Darrow your attorney at that time? A No.

24 Q He was not? A No.

25 Q Then whatever communications you had there were not  
26 with him as an attorney? A Not as my attorney.

1 Q Now, will you state what the conversation was?

2 MR ROGERS: He said "Was Mr Darrow your attorney?", and he  
3 says, no. Now, will you state --

4 MR FORD: But the rule is, your Honor, that a communica-  
5 tion made even to your attorney in the presence of a third  
6 party is not a privileged communication, and I can sub-  
7 mit hundreds of authorities on that.

8 THE COURT: What conversation is it you are calling for now?

9 MR FORD: That first time he met Mr Darrow.

10 THE COURT: Oh, --

11 MR DARROW: The conversation with me, you mean?

12 MR FORD: Yes.

13 THE COURT: The conversation with Mr Darrow or in his pre-  
14 sence?

15 MR FORD: yes, the conversation with Mr Darrow or in his  
16 presence.

17 THE COURT: All right. You can have that question.

18 MR ROGERS: Is that the question?

19 THE COURT: That is the question as the court now under-  
20 stands it as now presented, "What was the conversation with  
21 Mr Darrow or in his presence with any other person at  
22 the time of the first visit?" Is that the question?

23 MR FORD: That is the question, your Honor.

24 MR APPEL: But, if I should come into your Honor's office  
25 and consult with you concerning a case as my attorney,  
26 and another person happened to be there, I cannot be com-

1 pelled to disclose what I had said to you, absolutely  
2 not, quite apart from that; here are communications, your  
3 Honor, three months before this thing occurred.

4 THE COURT: If there is a privileged communication there,  
5 the witness ought to claim the privilege.

6 MR. APPEL: Supposing it is not privileged, they cannot ask  
7 him all he said there, they can ask him on cross-examination  
8 whether or not, as I said before, he was interested in  
9 any matter that would show his interest in this case,  
10 his prejudice in this case.

11 THE COURT: Well, I intend to confine it practically to  
12 that issue, but I think that this question is not out-  
13 side of that issue.

14 MR. DARROW: Your Honor, this calls for a conversation, re-  
15 gardless of what the conversation was. Now, it is utter-  
16 ly absurd,-- we might have been talking about philosophy,  
17 religion, or socialism or Mr Ford's favorite study, psy-  
18 chology, or anything else.

19 THE COURT: Yes, it is quite possible it was.

20 MR. DARROW: And to say that the witness is to relate on  
21 cross-examination a conversation that took place three  
22 months before without any relation to this case, if so,  
23 you can never get through with this case in a thousand  
24 years, because you can ask forever and ever whoever said  
25 anything, or what was said, and that is not the law.

26 THE COURT: In view of his direct examination as to the



1 purpose of his visit down to the headquarters.

2 MR DARROW: That is another matter. Now, he was stating  
3 what conversation took place three months before. To re-  
4 peat the conversation that took place three months before  
5 without regard to the question of whether it had any  
6 relation to this subject or not; that is the subject.

7 He might tell any kind of a conversation or any sort of a  
8 discussion, it couldn't have any relation to this case.

9 MR FORD: The court has ruled already on this question.

10 THE COURT: That is true, but Mr Darrow has presented a  
11 very important feature there, three months before is a  
12 long time.

13 MR FORD: They have testified that this witness met Mr  
14 Darrow on a certain occasion or wanted to see him on a cer-  
15 tain occasion and talk over a certain proposition. We have  
16 a right to go into their relations to show whether any  
17 such thing ever occurred. We have a right to show what  
18 was the subject of their previous communications, what  
19 their previous relations have been in order that this  
20 jury might intelligently determine from the previous oc-  
21 currences

18s 1 from their previous intimacy, from their previous relations,  
2 everything said, everything that took place, every tele-  
3 phone between this witness and Mr. Darrow, that is the only  
4 thing I asked him. We have a right to go into the rela-  
5 tion. As far as being privileged communication is con-  
6 cerned, I can submit dozens of authorities.

7 THE COURT. I think the privilege is out of the question.

8 MR. FORD. They skip from one base to another.

9 THE COURT. I think that is eliminated, I don't think it  
10 is privileged.

11 MR. DARROW. If I may speak further, we have the closing.

12 It is not a question, what was the subject of your  
13 conversation or were you talking about a matter upon which  
14 you telephoned, but relate the conversation, which is  
15 utterly absurd. It might be anything in the world that  
16 had no relevancy or had any relevancy to it any more than  
17 the changing of the moon.

18 THE COURT. I think Mr. Darrow is right about the relation  
19 of that conversation. If you want the topic or the subject  
20 of the conversation in a general way--

21 MR. FORD. It is just the point I want to bring out, we  
22 want to prove that they never talked about politics, they  
23 were interested in other matters and there was not anything  
24 like that that they would be talking about politics.

25 THE COURT. Ask for the topic of the conversation, not the  
26 entire conversation. Your present question, as Mr. Darrow

1 points out, ~~calls for a recitation of that entire conversa-~~  
2 tion.

3 MR. FORD. I have a right on cross-examination in order  
4 that we may judge, in order that this jury may judge what  
5 the topic was, I am not confined to topics on cross-  
6 examination. If they ask for the topic of the conversation  
7 then I would have a right to call for the actual conversation  
8 on cross-examination. I would not have any right on direct.

9 MR. DARROW. If that were true, they could ask for every  
10 conversation that occurred between us and repeat it in  
11 detail.

12 MR. FORD. That is the point we take; every conversation  
13 that ever occurred between them and show it was not likely  
14 from the course of their previous conversations and conduct  
15 that they ever held such a conversation as this on this  
16 occasion, or that it ever took place on this day.

17 MR. DARROW. Now, this is out objection, when counsel gets  
18 through, that is all. I submit it now. I want to get the  
19 closing, that is all.

20 THE COURT I think that the question was calling for a  
21 recitation of the entire conversation occurring three months  
22 prior to the incident related on direct examination is too  
23 remote. If the District Attorney desires to have the topic  
24 the subject of conversation stated in a general way that  
25 is another matter, but on the ground stated the objection  
26 is sustained.

1 MR. FORD. ~~if the court please, it would be absolutely futile~~  
2 for us to try to impeach a witness or to show that his  
3 testimony is untrue, that he is either lacking in an oppor-  
4 tunity to remember it correctly or that he is wilfully  
5 false, if we were confined to such a method of cross-  
6 examination, in order for us to get at what transpired  
7 on every occasion we have the right to go into previous  
8 relations between the witness and the party in this case.

9 THE COURT. They have opened the door, you can go into  
10 this relation. There is no intention at all, as you have  
11 declared your intention, to call for every conversation  
12 covering a period of several months.

13 MR. FORD. ~~What was the subject of the conversation on this~~  
14 first occasion that you met Mr. parrow--withdraw that--  
15 How long did you talk to him?

16 MR. DARROW. Mr. Darrow, do you mean?

17 MR. FORD. yes, Mr. Darrow.

18 Q This time three months before?

19 MR. FORD. Q The first time you met Mr. parrow in Mr.  
20 Harriman's office, how long did you talk with him? A Per-  
21 haps three or four minutes.

22 Q How long did you continue talking in his presence?

23 A That was the end of it.

24 Q What was the subject of your conversation? A Bert  
25 Franklin.

26 Q Bert Franklin was the subject of your conversation?

1 A He was.

2 Q On the first occasion? A Yes, sir.

3 Q Just tell what was said.

4 MR. APPEL. Wait a moment--we object--well, go ahead.

5 MR. FORD. Yes, tell what was said.

6 A .As near as I can remember I asked him if he knew this  
7 man .

8 Q You asked Mr. Darrow if he knew this man? A yes, this  
9 man Franklin. I saw Franklin running around there in his  
10 shirt sleeves and with his coat off and his hat off, and  
11 I asked Mr. Darrow if he knew Mr. Franklin and he said that  
12 he did, and I told him that I was quite certain that I did  
13 and that he was a good man to fight shy of, something to  
14 that effect.

15 Q That was the whole of the conversation? A No, that  
16 was not the whole of it. He handed me some then. You want  
17 what he said?

18 Q Yes, I want what he said. A As near as I remember  
19 he said that Mr. Franklin was well recommended to him; that  
20 he had been highly recommended by Joe Scott and some others  
21 and that they had confidence in him, and I told him that  
22 I didn't have any.

23 Q That was all of the conversation? A Continuing that  
24 conversation he said that he was engaged to do a certain  
25 line of investigation for them on jury men, and it was not  
26 a confidential relationship, or something to that effect.

1 Q He told you that Bert Franklin was just the man he  
2 wanted for that work?

3 MR. APPEL. Now, the witness didn't say that.

4 MR FORD. I am asking him if he didn't.

5 THE COURT. Counsel is asking if he did.

6 A. He didn't say that to me.

7 MR. FORD. Q what did he say about that? A He said  
8 he was highly recommended by Joe Scott and others.

9 Q And that he was satisfied with him for the kind of work  
10 he was doing? A He was going to have him look up these  
11 jury men.

12 Q Did he tell you anything else he was going to have him  
13 do? A No.

14 Q You were not in his confidence?

15 MR. APPEL. Wait a moment.

16 MR. FORD. You were not in his confidence any further  
17 than that? A In parrow's confidence?

18 Q Yes. A No.

19 MR. ROGERS. ~~I am going to take an exception to that and~~  
20 ~~characterize it as misconduct. It is not the kind of~~  
21 ~~question that should be asked.~~

22 MR. APPEL. Your Honor, see now by innuendo, by these  
23 little remarks he wants to convey to the jury that the  
24 situation here the witness is not testifying to and that  
25 his testimony doesn't admit of any such interpretation.

26 THE COURT. ~~The question is asked and answered and the~~  
~~conduct as misconduct has been assigned. Now, go on. Let's~~

1 get the next question .

2 MR. FORD. Q You observed Mr. Darrow kept Franklin after  
3 your warning, did you not?

4 MR. APPEL. Wait a moment--we object to that as not cross-  
5 examination .

6 THE COURT. Objection sustained .

7 MR. FORD. Q Mr. Hawley, it has been charged here in this  
8 court that someone on the morning of Franklin's arrest  
9 telephoned Mr. Darrow in order to procure his presence near  
10 the scene where Bert Franklin was engaged in committing  
11 a felony. Did you do that?

12 MR. APPEL. Wait a moment--we object to that.

13 MR. FORD. I withdraw the question in that form.

14 MR. APPEL. We object to that, your Honor, because it is  
15 an improper question to recite to the witness what somebody  
16 else testified to here and because, your Honor, the counsel  
17 wants to get the jury the insinuation and by that sort of  
18 a method, matters which are not pertinent and not proper,  
19 and we assign his asking the question as error for the pur-  
20 pose of withdrawing immediately thereafter.

21 THE COURT. All right.

22 MR. FORD. The court has ruled that it is permissible  
23 on the part of the defense in this case before, and I am  
24 trying to keep within that rule.

25 THE COURT. Wait a moment, I didn't understand that state-  
26 ment .

1 MR. FORD. Read my statement.

2 (Last statement of Mr. Ford read by the reporter.)

3 THE COURT. The court is not aware that the court ever made  
4 any such ruling.

5 MR. FREDERICKS. It has been made a dozen times. Mr. Rogers  
6 has recited the testimony of previous witnesses time and  
7 time again. He did it, may it please the court, in regard  
8 to a witness we had on the stand and I objected to it and it  
9 was ruled. Now, Mr. Ford has only stated--we are not  
10 criticising it, but I am simply stating my memory agrees  
11 with Mr. Ford's in the matter, the court has ruled that way.

12 MR. FORD. And charging me guilty of misconduct and I  
13 was stating I am keeping inside of the rules as laid down  
14 by this court.

15 MR. APPEL. The court will see that question was fully  
16 eliminated and another one put, the record so states.

17 MR. FORD. There is a ruling of the court on this question  
18 and the question has not been answered.

19 MR. DARROW. Can that question be read?

20 THE COURT. Yes, read the question.

21 (Last question read by the reporter.)

22 MR. ROGERS. I don't understand that there has been charged  
23 in this court room, is that the question, the court please?  
24 I would like to have it pointed out.

25 MR. FORD. I will put it in this form: Q Did you not  
26 on November 28th, before 9 o'clock in the morning telephone



1 Mr. Barrow to come down to Third and Main street in order  
2 that he might be near Franklin when he was arrested?

3 A I certainly did not.

4 Q When you telephoned him as you state, you did, did you  
5 do it for that purpose? A No.

6 Q. You are sure of that? A Quite certain.

7 Q you were not affiliated with the people who were fighting  
8 Mr. Barrow in any way? A Who were they?

9 Q With the prosecution or the National Erectors' Associa-  
10 tion or the Merchants & Manufacturers Association or the  
11 Burns Detective agency? A I was not affiliated with any  
12 of those people that I know.

13 Q You are not a Burns detective? A Not that I know of.

14 Q when was the next time you met Mr. Barrow after this  
15 first occasion? A I don't remember, sir.

16 Q About how long after and at what place? A I saw  
17 him frequently.

18 Q how frequently did you see him? A As often as once a  
19 week.

20 Q And at what place? A The same place, 921 Higgins  
21 Building.

22 Q You would see him at least once a week until the close  
23 of the trial? A I don't know about any trial. When was  
24 the trial?

25 Q Well, the end of the trial was the 1st of December,  
26 1911. A I was not interested in the trial.

1 Q But you were interested in the subject matter of the  
2 trial, were you not? A No.

3 Q You were interested in the Times explosion? A No.

4 Q You were not interested in the Times explosion in any way,  
5 shape or form? A Not that I know of.

6 Q. You were not interested in the persons who were bringing  
7 suit against the times as a result of the Times explosion?

8 MR. APPEL. Object to that as not material and not cross-  
9 examination.

10 THE COURT. Objection sustained.

20s 11 MR. FORD. Q You were interested in the law suits which  
12 grew out of the Times?

13 MR. APPEL. We find this continual violation of your  
14 Honor's ruling here, not only now but a little while before,  
15 it is a persistent violation and contempt of this court  
16 for counsel after the court has ruled against him to con-  
17 tinually violate the ruling of the court, your Honor, and  
18 while we don't ask your Honor to mete out any punishment  
19 to counsel, we simply ask your Honor to admonish counsel  
20 not to ask this question.

21 THE COURT. It frequently happens on both sides that a  
22 question that may be asked will perhaps lay a further  
23 foundation and change the situation. In that event there  
24 is no impropriety in counsel repeating the question, in  
25 substance, the same form or a little different form,  
26 however, the error has been assigned and counsel may

1 proceed now with the next question. The objection is sus-  
2 tained, however.

3 MR. FORD. If the court please, on that point I wish to  
4 state that the situation has changed in this case.

5 THE COURT. I think it has so much changed that so far as  
6 this court is concerned you are not being criticised for  
7 asking the question as you did, but the objection is sus-  
8 tained.

9 MR. FORD. The witness has testified, however, he was not  
10 interested in the Times in any way, shape or form.

11 THE COURT. I have heard the testimony.

12 MR. FORD. And are we to allow that to stand without our  
13 being able to show he was?

14 MR. APPEL. If he was that wouldn't tend to contradict the  
15 witness or modify his testimony, that is the reason for the  
16 objection.

17 THE COURT. He is testifying to an immaterial matter.

18 MR. FORD. Q. What were the subjects of conversation between  
19 you and Mr. Darrow when you went up to see him once a week?

20 MR. APPEL. We object to that, your Honor, because it is  
21 not cross-examination. Your Honor will see that if I put  
22 a witness on the stand and ask him concerning certain conversaa-  
23 tions at a <sup>certain</sup> time with the witness, and with some person  
24 or with my client that does not entitle the other side to  
25 ask him what conversation was had with my client at some  
26 other times. He can ask him whether or not he discussed,

1 of course, some matters that were discussed at this  
2 conversation with him or what fact in a general way, but  
3 he cannot ask him, your Honor, what conversation there was,  
4 what the topic of the conversations were. He can ask:  
5 Did you discuss with him these matters brought out on direct  
6 examination, this conversation? Yes, I did at that time.  
7 Well, did you do it before or did you do it afterwards, or  
8 was that the only time, anything that is proper for the pur-  
9 pose of showing whether the matter was under consideration  
10 or not, but to ask him what were the topics talked about--  
11 he has not said that he came up there to see Mr. parrow once  
12 a week or any other time. Your Honor can see if that were  
13 cross-examination they continually ask now--

14 THE COURT. Of course, it is not cross-examination as to any  
15 matter brought out in chief, but it was more, I assume, for  
16 the purpose of showing the relation existing between the  
17 defendant and the witness in so far as that can be done  
18 by this line of examination, it is proper. The question is  
19 whether this particular question is within that rule.

20 Read it.

21 (Last question read by the reporter.)

22 THE COURT. Objection overruled.

23 A I didn't go up to see him.

24 MR. FORD. Q what were the subjects of conversation when  
25 you did see him, whether you went up to see him or not?

26 A I didn't have any conversation with him at any time that

1 I remember of, I saw him in his office.

2 Q Once a week? A As often as once a week.

3 Q At least once a week. A And I never spoke to him again

4 I probably bowed to him in the morning. I had no business  
5 relations with him and nothing to do with him.

6 Q You were going up to see Mr. Harriman? A I was, and Mr.  
7 Rickman.

8 Q How long have you known Mr. Harriman? A 20 years.

9 Q How long have you known Mr. Rickman? A 3 or 4 years.

10 Q How long had Mr. Harriman been your attorney? A 8 or 9  
11 years.

12 Q He was your attorney in other matters before the explo-  
13 sion of the Times.

14 MR. ROGERS. ~~Now, we object to that, and that question, of~~  
15 ~~course, in view of counsel's statement is nothing but~~  
16 ~~attempting to evade the court's ruling.~~

17 MR. FORD I don't see how. I am not trying to evade the  
18 court's ruling. I am trying to keep within the court's  
19 ruling, that is not evading them.

20 THE COURT. You are attempting apparently, now, to show  
21 the relation between this witness and Mr. Harriman.

22 MR. FORD. He testified on direct examination to tele-  
23 phoning to Mr. Darrow at Mr. Harriman's request and to meet  
24 the three of them there and Mr. Harriman was the attorney  
25 in this case, in the McNamara case at that time, associated  
26 with Mr. Darrow, out of which this very bribery matter grew.

1 THE COURT. Well, suppose this witness had employed Mr.  
2 Harriman as attorney 10, 15 or 5 years, what of it?  
3 MR. FORD. He said he was attorney for 7 or 8 or 9 years.  
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1 THE COURT: Suppose he had. It s eems to me we are wonder-  
2 ing so far away from the point I cannot see the mater--  
3 iality of this line of investigation at all. Objection  
4 sustained.

5 MR FORD: Did you ever assist Mr Harriman , Mr Darrow, or  
6 any person connected with the defense in securing any evi-  
7 dence concerning the cause of the explosinn of the Times  
8 Building or what you thought was evidence? A Yes.

9 Q How long had you been engaged in doing that? A I had  
10 not been engaged in doing it at all.

11 Q In what way did you assist them? A I took them over  
12 some papers that I had.

13 Q What were those papers?

14 MR ROGERS: Obj ected to as incompetent, irrelevant and  
15 immaterial, and not c ross-examination, and no foundation  
16 laid.

17 THE COURT: Overruled.

18 A What were the papers?

19 MR APPEL: Now, that is calling for secondary evidence;  
20 the papers would be the best evidence, no foundation laid.

21 THE COURT: That is another objection.

22 MR APPEL: We haven't questioned him about any papers,  
23 not being present. In other words, the whole question --  
24 I don't use it in an offensive term, simply some New  
25 York authorities call it "fishing", and I agree with  
26 the New York authorities. Fishing.

1 THE COURT: Objection overruled.

2 MR APPEL: We except.

3 A The papers I gave to him were -- I gave to Harriman  
4 were printed copies of the proofs of loss made by the  
5 Times-Mirror Company in support of its claim against the  
6 various insurance companies, and they were accompanied  
7 by printed copies of affidavits furnished by the Times  
8 in support of those claims -- these claims.

9 Q Where did you get those papers?

10 MR APPEL: Now, that is immaterial, your Honor. They  
11 want to ask him his private business; where he got them.  
12 This is not before the grand jury, your Honor. This is  
13 not a star chamber proceeding. This is a matter --

14 THE COURT: What is the ground of the objection?

15 MR APPEL: We object to that as not a cross-examination,  
16 and as fishing and immaterial.

17 THE COURT: Objection sustained.

18 MR FORD: What other papers besides those did you deliver?

19 A None whatever.

20 Q Did you have any other papers there in the office be-  
21 fore that occasion --

22 MR ROGERS: That is objected to as absolutely immaterial.

23 MR FORD: -- connected with either the Times case or the Mc  
24 Namara case, or this case?

25 MR ROGERS: Objected to as incompetent, irrelevant and  
26 immaterial, and no foundation laid, and not cross-



1 examination.

2 THE COURT: Objection or erruled.

3 MR ROGERS: Exception. A I don't know that I understand  
4 the question. Did I have papers there of my own?

5 MR FORD: Read the question. (Last question read by  
6 the reporter.) A None that I know of.

7 Q You never did have any other papers there connected  
8 with those matters?

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

10 MR FORD: He said, <sup>not</sup> that he knows of. I asked him if he ever  
11 saw it. I am not bound by any one answer.

12 MR APPEL: ~~Suppose~~ he saw it.

13 THE COURT: I think it is covered by his former answer.  
14 He knows what he hears and sees.

15 MR FORD: What did you mean by saying "of my own"? You  
16 mean you had papers belonging to other people over there  
17 connected with those cases?

18 MR APPEL: Objected to as incompetent, irrelevant and  
19 immaterial and not cross-examination and no foundation laid.

20 THE COURT: Objection sustained.

21 MR FORD: Well, before you came down to your office on that  
22 morning, Mr Hawley, did you meet Mr Harriman in the morn-  
23 ing before you telephoned Mr Darrow? A Yes, twice.

24 Q Where did you -- twice you met him. You met him  
25 twice before you telephoned Mr Darrow? A Yes.

26 Q Where was the first place you met him? A Right at the

1 corner of Fourth and Spring.

2 Q on the street? A Yes sir.

3 Q Who else was present? A No one that I know of.

4 Q Did you know what Mr harriman was doing at that time?

5 Q What he was doing?

6 Q You met him right on the corner? A He was coming  
7 down the street there by the German-American Savings Bank.

8 Q Where was he when you first saw him? A He was com-  
9 ing out of the bank.

10 Q Out of the bank? A Yes sir.

11 Q And at what time of the day was that? A It was  
12 about 8:30.

13 Q How long did you remain there talking to Mr harriman?

14 A Perhaps a minute or so.

15 Q Where did you go then? A I went to my office.

16 Q How long did you remain in your office before you saw  
17 Mr harriman again? A I couldn't say exactly; 10 or 15  
18 minutes maybe.

19 Q 10 or 15 minutes? A Yes sir.

20 Q Then where did you go? A I went over to the socialist  
21 headquarters.

22 Q To the socialist headquarters? A yes sir.

23 Q And there whom did you meet? A There was a great many  
24 people there.

25 Q Well, tell us who the people were that you met? Did  
26 you meet everybody that was there? A Well, I saw them

1 all.

2 Q And you talked with Mr Harriman? A Yes.

3 Q Did you talk with anybody else but Mr Harriman?

4 A I talked with Mr Hilliard, I think is his name,  
5 the doorkeeper.

6 Q How long did you remain talking with Mr Hilliard? A I  
7 asked him to call Mr Harriman out of another room.

8 Q How long did it take you to walk from your office to  
9 the socialist headquarters? A Well, I don't know; it  
10 is about a block and a half.

11 Q About 5 minutes? A 5 minutes, I should say; yes.

12 Q What floor of the Hellman Building are you on? A Six-  
13 th floor at that time.

14 Q Came down the elevator, waited for the elevator and  
15 walked over there and went to Winston and Main streets  
16 from Fourth and Spring streets, took at least 5 minutes?

17 A Yes, probably longer.

18 Q How long did you remain there talking with Mr Hilliard  
19 before you saw Mr Darrow -- I mean, see Mr Harriman, I beg  
20 your pardon? A Why, Hilliard went in and called him  
21 out of the meeting. I waited his convenience; perhaps  
22 it was 5 minutes, might have been 10 minutes before he  
23 came out anyway.

24 Q What did the doorkeeper tell you when he returned and  
25 told you to wait for Mr Harriman? A He told me they were  
26 in a conference and meeting in there.

1 Q And asked you to wait? A I waited.

2 Q And you sat down and waited, I p resume, 5 or 10 min-  
3 utes. A I stayed around there until he came out.

4 Q How long did you wait altogether? A I stayed per-  
5 haps 5, perhaps 10 minutes.

6 Q Then you met Mr Harriman? A I talked with Harriman,  
7 yes.

8 Q How long did you talk with Harriman? A Long enough  
9 to show him this editorial and ask him what he knew about  
10 it.

11 Q After you had shown him the editorial and asked him  
12 what he knew about it, what did he say? A He said that  
13 if there was any truth in it that Darrow would likely  
14 know it or could find out.

15 Q And then suggested calling Mr Darrow? A yes sir, he  
16 ~~asked~~ me to.

17 Q How long an editorial was this editorial in the Tri-  
18 bune? A Well, you are asking for my present memory or  
19 present knowledge?

20 Q Yes. A About half a column.

21 Q Anyone else participate in the discussion between you  
22 and Mr Harriman about that editorial? A Not then.

23 Q Just the two of you discussed it? A Yes sir.

24 Q How long did it take Mr Harriman to read that editorial?

25 A There was only a small part of it that was of any inter-  
26 est to us.

1 Q How long did you remain discussing it before you  
2 called Mr Darrow? A I couldn't say; might have been 2  
3 minutes, 3 minutes, 4 minutes -- a short time.

4 Q Then you personally went to the telephone, did you?

5 A I went back to my office.

6 Q You went back to your office from there? A Yes  
7 sir.

8 Q How long did it take you to go back from there?

9 A About the same time, 5 or 10 minutes, it is an estimate  
10 all the way through.

11 Q Then when you got to your office you telephoned to Mr  
12 Darrow? A yes sir.

13 Q What did you tell Mr Darrow over the phone? A I  
14 told Mr Darrow that Harriman wanted to see him down at the  
15 Socialist headquarters, and meet me.

16 Q Then you went back? A yes sir.

17 Q Went back to the headquarters? A yes sir.

18 Q Why didn't you telephone from the headquarters?

19 A Well, the room was full of people; it was a public room,  
20 the outside room.

21 Q So you walked all the way back? A yes sir.

22 Q On your way over did you meet anybody? A Oh, I  
23 probably met a lot of people.

24 Q Did you stop and talk to anybody? A No sir.

25 Q On your way back did you stop and talk to anybody?

26 A I went directly over and directly back, without hurry-

1 ing.

2 Q When you saw Mr Harriman at the corner of Fourth and  
3 Spring streets after he had come out of the bank, did you  
4 notice in which direction he went? A He was going north.

5 Q He was going north? A I got off the car at that cor-  
6 ner.

7 Q Was he on foot or how was he traveling? A He was on  
8 foot.

9 Q Did he walk with you as far as the Hellman Building?

10 A No.

11 Q Where did he leave you? A Right at that corner.

12 Q Did he leave you on the corner where the bank is?

13 A Yes sir.

14 Q That is on the opposite corner from the Hellman Build-  
15 ing? A Yes.

16 Q The Hellman building is across the street? A Yes.

17 Q He walked north across Fourth street? A No, he  
18 was crossing Fourth street. He walked north to Fourth  
19 street.

20 Q And you went where? A I went across Fourth street and  
21 into the Hellman Building.

22 Q Where did he go? A He turned east on Fourth street.

23 Q Walking? A Yes.

24 Q And walked towards the socialist headquarters? A He  
25 walked around that way.

26 Q That was east? Main street was east of Spring

1 street and he walked over towards the Socialist head-  
2 quarte rs where you met him later? A yes sir.

3 Q Now, you are abolsutely sure that that, as you have  
4 related the incident, that that is exactly the way that  
5 they occurred? A Yes sir.

6 Q If I understand you correctly now, you first met Mr  
7 Harriman coming out of the German-American Savings Bank?

8 A No, he came out of the bank just as I got off of  
9 the car.

10 Q He came out of the bank as you got off of the car?

11 A And I trailed along after him and overtook him right  
12 there at the corner of the bank.

13 Q How long were you walking after him? A It isn't  
14 over 40 feet.

15 Q Then you stopped and talked to him about a minute or  
16 so? A Yes.

17 Q Did you discuss the editorial at that time? A No,  
18 I hadn't seen it.

19 Q You hadn't seen it? A No sir.

20 Q What did you talk to him at that point about? ✓

21 MR ROGERS: I object to that as being gone into.

22 MR FORD: The subject matter . A Politics.

23 THE COURT: overruled.

24 Q How long did you remain talking politics? A A  
25 minute or two. I asked him what he was going to do about  
26 Gibbons challenge; that is about the sum and substance

1 of it.

2 Q Then you went across Fourth street to your office?

3 A Yes sir.

4 Q And Mr Harriman went east on Fourth street, talking  
5 towards Main street? A I presume so; I didn't watch  
6 him.

7 Q How far did you see him go? A I didn't watch him.  
8 I went this way and he went east.

9 Q How do you know he went east? A He turned east  
10 there.

11 Q Did he go around the corner? A Certainly; we were  
12 right at the corner.

13 Q How far away from the corner did he get before you  
14 lost track of him? A I don't remember. I didn't notice.

15 Q He had gone far enough for you to be sure he was walk-  
16 ing east? A I thought he was going to the socialist  
17 headquarters, of course.

18 Q He had gotten past the Broadway sidewalk line --

19 A You mean Spring street.

20 Q Or Spring street sidewalk line? A We were right  
21 on the line.

22 Q On the building line? A Right at the corner of the  
23 building.

24 Q And he turned east and you went north, and you are  
25 sure of that? A Why, yes.

26



1 Q Are you sure you only talked a minute or so? A I  
2 wouldn't say it was a minute or two minutes.

3 Q It might have been 5 minutes? A Might have been 5  
4 minutes.

5 Q Then you went up to your office? A yes.

6 Q And remained there about half an hour before you went  
7 over to the socialist headquarters? A I never said so.

8 Q How long did you remain there?

9 MR APPEL: Object to that on the ground it has all been gone  
10 over.

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1 THE COURT. It seems to me that objection is well taken,  
2 it has been all gone over.

3 MR. FORD. I want to be sure. He went over to the Socialist  
4 headquarters where you saw him going?

5 MR. APPEL. He didn't say that.

6 MR. FREDERICKS. Just what he did say.

7 MR. APPEL. He said he walked in the direction of the  
8 Socialist club and the witness said he thought he was  
9 going in that direction. That shows that he didn't say  
10 he walked over, that he thought so, he says he turned the  
11 corner and walked in that direction, and this statement  
12 made here, your Honor, is not correct.

13 MR. FORD. You found him in the place that you thought he  
14 was walking towards? A Yes, I found him in the Socialist  
15 headquarters.

16 Q You had rang him up at the Socialist headquarters?

17 A No.

18 Q He rang you up? A I don't remember.

19 Q In the morning did you agree to meet him over at the  
20 Socialist headquarters? A No, I saw him pretty near  
21 every day.

22 Q When you left him at the corner of Fourth and Spring  
23 Street and he went in the direction of what you thought  
24 was the Socialist headquarters, did you have an appointment  
25 to meet him again? A No.

26 Q How did you happen to meet him again, just simply walk

1 over? A No, I thought the editorial was of some conse-  
2 quence to him. I took it over and showed it to him.

3 Q Did you telephone him before you went over? A I don't  
4 think so.

5 Q You are not sure of that? A I am not sure, I might  
6 have telephoned to find out whether he was there or not;  
7 I don't remember that.

8 Q How long were you in your office--you may have testified  
9 to this but I have forgotten it. How long were you in your  
10 office before you went over to see Mr. Harriman or show Mr.  
11 Harriman this editorial in the Tribune?

12 MR. APPEL. Wait a moment--we object upon the ground the  
13 question has been asked and answered and if the counsel  
14 wants to refresh his memory he can look at the record  
15 which is furnished to him every evening after court  
16 adjourns.

17 THE COURT. Objection sustained.

18 MR. FORD. Q How long was it from the time you saw him on  
19 Fourth and Spring until you saw him in the Socialist head-  
20 quarters? A The first time?

21 Q Yes. A I should say 15 or 20 minutes.

22 Q Might have been less or it might have been more?

23 MR. APPEL. Now, your Honor, the witness has already  
24 answered it might have been, that indicates it might be  
25 more or less. Now, your Honor, the question to the witness  
26 implies an answer to the next succeeding question, the

1 answer of the witness, your Honor, the witness says might  
2 have been 15 or so many minutes. Now, that implies might  
3 be more or less. Now, this question propounded to the  
4 witness, is already answered by the preceding question.

5 MR. FORD. I don't care much about it, I will withdraw it.

6 THE COURT. withdrawn.

7 MR. FORD. Q When you went up to your office and saw the  
8 editorial in the Tribune was that the first thing you turned  
9 to look for? A Oh, no.

10 Q You remember anything else you read in the paper?

11 A I read the first page of it .

12 Q The telegraph news? A No, I read the political news.

13 Q On the first page of the Tribune? A Yes, sir .

14 Q Do you know how long you were there reading that first  
15 page?

16 MR. APPEL. That has been asked and answered heretofore.

17 THE COURT. Well, this is a little different situation,  
18 I think he is entitled to it. Overruled.

19 MR. APPEL. Exception.

20 A I have given it to the best of my recollection. I  
21 might have been there 5 or 10 minutes in my office.

22 MR. FORD. Q Do you remember any other page that you read  
23 besides the first page? A I didn't read the first page.

24 A I read those things that interested me on the first  
25 page.

26 Q The political news? A Yes, sir.

1 Q Several columns of political news at that time? A I  
2 don't think there was but two.

3 Q Two columns? A Yes, sir.

4 Q National politics or local politics? A No, it was  
5 about the Republican meeting the night before.

6 Q Debate between Mr. Gibbons and Mr. Harriman? A No, a  
7 speech of Gibbons, it related to the campaign.

8 Q You remember all of that? A I think I read it all, all  
9 that was worth reading.

10 Q What else did you read in that paper? A I don't know.

11 MR. APPEL. I object to that because the witness was asked  
12 that question and he has asked numberless times that he  
13 read the first page and it was only the political news  
14 in which he was interested.

15 THE COURT. Yes, I think that has been exhausted.

16 MR. FORD. Q Did you do anything else in the office that  
17 morning besides look at the paper? Did you answer your  
18 mail or look at your mail? A It is early, we don't  
19 get it that early.

20 Q Did you have any duties at the office that you were  
21 attending to? A No.

22 Q None at all? A Not that early.

23 Q Have any employes there at that time? A No, I have no  
24 employes.

25 Q When did you last see a copy of that paper, Mr. Hawley?

26 A I saw it today.

1 Q A copy of the Tribune? A yes, sir .

2 Q Of that day? A of that day .

3 Q Have you had possession of it ever since? A No, sir .

4 Q Who showed it to you? A I went down to the Tribune  
5 and saw it .

6 Q Went down there and looked at their files? A Yes, sir .

7 Q At whose suggestion? A Nobody's .

8 Q At your own suggestion? A Yes, sir .

9 Q Did you tell anybody that you were going down there for  
10 that purpose? A I told Harriman .

11 Q Told Mr. Harriman when? A At noon .

12 Q When did you come down from San Francisco? A Yesterday .  
13

14 Q When were you subpoenaed? A I was not subpoenaed .

15 Q How did you happen to come? A I was asked to come .

16 Q By whom? A Mr. Harriman .

17 Q Mr. Harriman? A Yes, sir .

18 Q Received a letter from him? A Yes, sir .

19 Q Have you that letter with you? A No .

20 Q Where is that letter? A San Francisco .

24s21 Q How long ago was it written? A I don't know, I should  
22 say it was three weeks ago .

23 Q Do you remember what the contents of it were? A Gen-  
24 erally .

25 Q What were they so far as they relate to this case or  
26 this testimony?

1 MR. APPEL. I don,t care so much but, your Honor, we will  
2 object to that because it is incompetent, irrelevant and  
3 immaterial and calls for secondary evidence and no founda-  
4 tion laid for interrogating the witness concerning the con-  
5 tents of a document which the def ense has not seen or  
6 read and is not here before them, we only make the objec-  
7 tion because it is so palpably out of place--

8 MR. FORD. ↓ withdraw the question.

9 THE COURT. Question withdrawn.

10 MR. FORD. Q When did you last discuss your testimony with  
11 anybody? A Yesterday.

12 Q Yesterday and today? A Yesterday.

13 Q Where and with whom and what persons or person? A In  
14 the Higgins Building.

15 Q With whom? A With Mr. Darrow and Mr. warriman.

16 Q Anybody else?present? A No.

17 Q When was the last discussion prior to that time with  
18 either of them? A I never talked about it with Darrow  
19 before yesterday.

20 Q Before yesterday. A I talked about it with Harriman.

21 Q When? A At various times; once shortly after the  
22 election, about the time of the election.

23 Q After the election? A Yes.

24 Q With Mr Harriman? A Yes.

25 Q And when was the next time? A The next time was before  
26 I went away? A

1 Q when was that? A Early part of May I should say.

2 Q The early part of May? A Yes.

3 Q 1912? A Yes, this year.

4 Q You were told before you went away you would probably  
5 be needed as a witness? A Yes, sir.

6 Q By whom? A By Mr. Harriman.

7 Q Between the time of Franklin's arrest and the time you  
8 went away you never saw Mr. Darrow again? A Never saw him  
9 to speak to him.

10 Q Never had any conversation with him? A Never.

11 Q Never had any correspondence with him? A Never.

12 Q Never wrote to him? A No.

13 Q He never wrote to you? A Never.

14 Q Have you ever written to Mr. Harriman about it?

15 A About what?

16 Q About your telephoning Mr. Darrow on this morning? A No.

17 Q Did you discuss it with Mr. Harriman before you went  
18 away in May? A Yes, I discussed it with Harriman just  
19 about the time of the election.

20 Q You discussed it with Harriman just about the time of  
21 the election? A Yes, sir, early in December sometime.

22 Q At that time, Mr. Hawley, had you ever heard--that was  
23 in December before Christmas? A Yes, it was certainly  
24 early in December.

25 Q About how long after the arrest of Franklin? A Was  
26 Franklin arrested the 28th of November?



1 Q Yes. A I presume it was about a week after that.

2 I think it was after the election.

3 Q You said a moment ago that was the time, you didn't mean  
4 that was the time you had talked with Darrow? A No.

5 MR. APPEL. He has not said he talked with Darrow. Right  
6 here we object to counsel here, you know, trying to mislead  
7 this jury by using the name of the def endant when the  
8 witness has not mentioned it as being the person with whom  
9 the conversation was held. Now, this is done so--I can't  
10 say and I wouldn't like to say that I am so certain that it  
11 is done inadvertantly, it is a very unfair way of doing.

12 THE COURT. You assign it as error?

13 MR. APPEL. Yes, sir, I do. I submit he should not do it.  
14 The jury may not be able to understand whether the witness  
15 used the word Darrow or whether counsel used it. in the  
16 course of an examination, it is very hard for the jury to  
17 distinguish what counsel says and what the witness says  
18 in a long trial like this.

19 THE COURT. All right, the error has been assigned.

20 MR. FORD. Q Do you remember the occasion of Franklin having  
21 his preliminary examination in Judge Young's court about  
22 the 13th of December, 19LL? A No, I don,t remember.

23 Q You don,t remember reading about it in the paper?

24 A I did read, I suppose, g enerally.

25 Q Was it before or after you had read of that preliminary  
26 examination that you discussed with Mr. Harriman the fact  
that you had telephoned to Mr. Darrow?

1 A I presume it was before.

2 Q You presume it was before that preliminary examination?

3 A Yes sir.

4 Q You are certain it was before Christmas? A Quite  
5 certain.

6 Q Up until that time, Mr Hawley, had you ever heard  
7 it charged that Mr Franklin had received any sum of money  
8 personally from Mr Darrow on the morning of the 28th of  
9 November?

10 MR APPEL: ~~We object to that, your Honor, on the ground  
11 it is not cross-examination; it is immaterial whether he  
12 had heard it or not. Your Honor will see where when asking  
13 him what transpired or what conversation he had with Mr  
14 Darrow prior to that time, if he heard any suspicions or  
15 anything like that, it cuts no figure; it does not tend  
16 in any way, shape or manner to militate against his testi-  
17 mony; does not tend to show that this conversation took  
18 place or did not take place, through the telephone. His  
19 knowledge of that fact would not tend in any manner to  
20 show what he learned afterwards. He might have asked him  
21 what he heard before, that is not cross-examination, but  
22 it is an affirmative fact for the purpose of using it  
23 against Mr Darrow, what he heard would be hearsay and  
24 what he did not hear would be immaterial, and what his  
25 impressions were --~~

26 MR FORD: I will withdraw the question for the present.

1 There is something else I want to go into before we close  
2 this evening.

3 Q When you went back the second time to the Labor Temple--  
4 MR DARROW: Labor Temple?

5 MR FORD: Or, I mean, the Socialist headquarters, and  
6 waited for Mr Darrow, how long did you wait there? A I  
7 should say 15 or 20 minutes.

8 Q Was Harriman there then? A Yes.

9 Q You waited with Mr Harriman 15 or 20 minutes? A Yes.

10 Q Why didn't you wait longer? I mean, did you receive  
11 any word? A No, I didn't receive any information.

12 Q He didn't show up and you went away without knowing the  
13 reason why? A We waited and he didn't come.

14 Q You didn't know why it was he didn't come? A No sir.

15 Q You didn't receive any word or any sign? A I did not.

16 Q You went away. Where did you go? A I went back to  
17 my place of business.

18 Q Did you meet anyone at your place of business when you  
19 returned? A I don't remember.

20 Q What time did you get back to your place of business?

21 A I don't know. I presume it was about 9:30?

22 Q Wasn't it nearly noon time, Mr Hawley? A Oh, no.

23 Q Do you remember what else you did that morning?

24 A No, not distinctly.

25 Q Do you remember whether or not you transacted any bus-  
26 iness that morning? A I was not transacting any business

1 at that time.

2 Q Do you remember whether you did anything that morn-  
3 ing? A I don't know for certain.

4 Q What is that? A I don't know for certain what I did.

5 Q You don't remember any other transaction except that  
6 on that morning? A Oh, yes -- not in the morning.

7 Q You don't remember a thing. Do you remember when  
8 you ate luncheon that day? A No.

9 Q Do you remember what time you had lunch? A. No.

10 Q Do you remember who called on you at your office?

11 A No.

12 Q Now, coming back to Mr Darrow a moment, you say after  
13 this first time you had met him and had been introduced  
14 to him, you saw him about once a week but did not speak to  
15 him? A No, I did not say I did not speak to him, I said  
16 I did not have any conversation with him.

17 Q You did not have any conversation with him. Just said,  
18 "How do you do", and went on? A Yes sir.

19 Q You never had any conversation with him from that first  
20 occasion up until this telephone conversation; is that  
21 a fact?

22 MR APPEL: We object to that, because he has been going all  
23 over that ground, and he seems to be traveling in a circle,  
24 traveling in a sort of a maze.

25 THE COURT: The objection is it is already asked and  
26 answered?

1 MR APPEL: Yes sir.

2 THE COURT: Objection sustained.

3 MR FORD: What is that, your Honor?

4 THE COURT: Objection sustained on the ground it is al-  
5 ready asked and answered.

6 MR FORD: Does the record show he had other conversa-  
7 tions, your Honor, or that he did not?

8 MR ROGERS: Let us look at it; let us look at it during  
9 the evening and find out.

10 MR FORD: I want to know now.

11 THE COURT: Gentlemen, the question is addressed to the  
12 court, but I do not think, Mr Ford, under the circum-  
13 stances the court ought to recite the evidence. The  
14 court does know what the evidence is, and it rules that  
15 the question has already, in substance, been asked and  
16 answered.

17 MR FORD: Well, had you ever talked over the telephone to  
18 Mr Darrow before this particular morning? A No.

19 Q Did you recognize the voice as Mr Darrow's voice?

20 A No, I didn't get Mr Darrow at first:

21 Q You didn't get Mr Darrow. Whom did you get? A I  
22 got some body in Harriman's office.

23 Q And what did he say to you? A I asked him if Mr Dar-  
24 row was in, and they gave me a switch and a voice.

25 Q And you talked to somebody who then gave you a switch  
26 on the board and you talked to two people? A I talked to

1 the -- there was a central exchange operator in Harriman's  
2 office.

3 Q Yes. A I presume that is the first voice I got.

4 Q Yes. A I asked if Mr Darrow was in, and I got a  
5 second voice, and I asked if it was Darrow, and he said  
6 yes.

7 Q That is the only way you know it was Darrow? A That  
8 is the only way.

9 Q You don't know it of your own knowledge at all?

10 A No sir.

11 Q That is only the first voice that told you? A The  
12 first voice gave me the switch.

13 Q What was the conversation you had with this second  
14 voice over the phone? A I asked him if he would meet  
15 Mr Harriman and I at Socialist headquarters.

16 Q What did he say? A He said he would.

17 Q That is all the conversation you had? A That is the  
18 extent of it.

19 Q Then he hung up? A Either he or I.

20 Q Did he say when he would meet you? A It was ar-  
21 ranged right away.

22 Q And what was said about that? A I asked him if he  
23 would come over, and he said he would.

24 Q Did he say he would come? A Right away.

25 Q You said, "You come right over", did you? A I was  
26 going to meet him; it was not hardly necessary.

1 Q Now, give us the conversation just as it occurred.

2 MR APPEL: We submit, the witness has answered that  
3 question on cross-examination at least twice.

4 MR FORD: No, he has not, your Honor.

5 MR APPEL: Yes, he has, he has answered it just now and he  
6 answered it once and he heard it on direct examination,  
7 the substance of it. Now, that is three times, and  
8 now he wants it the fourth time.

9 MR FORD: I want him to tell it once.

10 MR APPEL: I know you do, but I am objecting on the ground  
11 that the question has been asked and answered already,  
12 and it is a matter of record.

13 THE COURT: I think it has, Mr Ford.

14 MR FORD: Well, all right. Now, Mr Hawley, when you first  
15 met Mr Harriman that morning in front of the German-Amer-  
16 ican Savings Bank, are you sure that Mr Harriman left  
17 you on foot?

18 MR APPEL: We object to that; that has been asked and  
19 answered.

20 MR FORD: Withdraw the question.

21 Q Didn't he get into an automobile and ride in an auto-  
22 mobile instead of walking east? A I didn't see him.

23 Q You didn't see him? A No.

24 Q You would have seen him if he had got into an auto-  
25 mobile and rode away instead of walking, would you not?

26 MR APPEL: We object to that; that is speculative, and

1 guess-work, your Honor, whether a man would see another  
2 one do a thing or not, his answer would not cut any fig-  
3 ure. The jury knows he might or might not; it all depends  
4 on the situation of the parties, and so on.

5 THE COURT: Let him answer the question.

6 MR APPEL: We take an exception on the ground it is not  
7 proper cross-examination, asking for a conclusion and  
8 opinion of the witness as to his ability to see or not to  
9 see a thing, or two things.

10 THE COURT: What is your answer? A What is the question?  
11 Did I see him get into a machine?

12 THE COURT: Read the question.

13 (Question read.)

14 A I would have, if he had taken it right at the corner,  
15 certainly.

16 MR APPEL: How is that? A I would have, if he had taken  
17 it right there at that point.

18 MR FORD: EBut you did see him go east on foot?

19 MR ROGERS: That has been asked, I think, 42 times, sir.  
20 I am quite sure I have heard it four times.

21 THE COURT: Not so many as that, but it has been asked and  
22 answered.

23 MR FORD: If the court please, I want to look into the re-  
24 cord so as not to get into any quarrel about it, and  
25 I see it is about closing time.

26 THE COURT: Yes, I see it is about closing time. (Jury  
admonished.) We will adjourn until 10 o'clock tomorrow morn  
ing.