

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.)

Clarence Darrow,)

")

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 56

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
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Charles O. Hawley,

4497

4547

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FRIDAY, JULY 12, 1912; 10 A.M.

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

CHARLES O. HAWLEY,
on the stand for further cross-examination.

MR. FORD. Q Mr. Hawley, with whom have you talked since leaving the stand last night about your testimony in this case? A With no one.

Q Have you read the transcript of the testimony you gave yesterday? A No.

Q And you have not discussed your testimony with anybody?

A No, sir.

Q Haven't talked with Mr. Rogers or Mr. Darrow?

MR. APPEL. Wait a moment--if there was any question asked the witness concerning the facts of the case, your Honor, which indicated that he had refreshed his memory in any way these questions would be proper. I submit they are not proper. They are given just for insinuating that there was some conference about his testimony. I object to it.

THE COURT. Objection sustained.

MR. APPEL. Let's try this case right, yes, let's try it right.

MR. FORD. Q Have you been to the Tribune office since you were on the stand? A No, sir.

Q Have you seen a copy of the Tribune since you were on

1 the stand? A No.

2 Q What time was it you went to the Tribune office to look
3 at the files there? A Between 12 and 1.

4 Q Yesterday? A Yesterday, I think, yes, sir.

5 Q And at what place did you find the files? A At the
6 Tribune office.

7 Q Where is that, Seventh and Hill or at the circulation
8 department on the alley? A It was upstairs in the Express
9 Building.

10 Q Upstairs in the Express Building, in the Express Building
11 itself? A Yes, sir.

12 Q It was not at Seventh and Hill streets? A No, sir, they
13 didn't have it there.

14 Q What was the nature of the editorial or substance of the
15 editorial that you read there?

16 MR. APPEL. Wait a moment--we object upon the ground it has
17 already been gone over and asked, your Honor, two or three
18 time. I can call your Honor's attention to the same
19 question propounded.

20 MR. FORD. If you will call my attention I will desist.
21 I don't find anything about the nature of that editorial,
22 the substance of it.

23 MR. APPEL. He was asked when he last saw that editorial.

24 THE COURT. I think the witness stated, I am not sure he
25 stated on cross-examination but he has certainly stated
26 the substance and purport.

1 MR. FORD. Not on cross-examination.

2 THE COURT. I don't know, my memory does not serve me as
3 to that, but he has stated before.

4 MR. FORD. He has stated the effect of the editorial, that
5 is, the conclusion which he drew from it, it confirmed in
6 his mind certain things.

7 MR. APPEL. He said yesterday he went down there yesterday
8 and saw it, your Honor.

9 THE COURT. The only question is whether that is on cross-
10 examination or direct.

11 MR. APPEL. On cross-examination; we asked him nothing
12 about the editorial. Here it is, your Honor, commencing
13 with page 4484, on cross-examination he speaks there of
14 having seen the political news then, "How long he looked
15 at them," and he was asked whether or not he did anything
16 else at his office, on 4485, then he asked whether or not
17 he has a copy of the Tribune in his possession; he says,
18 "No, sir." "Who showed it to you?" "I went down to
19 the Tribune and saw it. Q--Went down there and looked at
20 their files? A--Yes, sir. Q--At whose suggestion? A--No-
21 body's. Q--At your own suggestion? A--Yes, sir. Q--Did
22 you tell anybody you were going down there? A--Yes, Harri-
23 man. Q--Told Mr. Harriman when? A--At noon." Before
24 that he spoke what the editorial was.

25 MR. FORD. Where did he speak what it was, just point that
26 out.

1 MR. APPEL. All right, I will point it out to you. You
2 remember, your Honor, that he was asked as to what he read
3 there in the paper?

4 THE COURT. Yes, I recollect his testimony but I cannot--

5 MR. APPEL. He testified that he saw an article in there
6 that indicated to him that there was some combination that--

7 THE COURT. Combination with the liquor--

8 MR. APPEL. The liquor interests were interested with the
9 Good Government and --

10 THE COURT. My memory doesn't serve whether it was on cross-
11 examination.

12 MR. APPEL. That that was the context of the article.

13 MR. DARROW. I don't believe counsel has that right, I
14 rather disagree with counsel as to his statement. I think
15 the witness had better answer it.

16 MR. APPEL. Well, let him answer it, then.

17 THE COURT. All right, answer the question.

18 A What is the question?

19 (Last question read.)

20 MR. FORD. Q What was the substance of the editorial that
21 you read there? A Yesterday or the day before?

22 Q Yesterday? A I didn't read the entire editorial. I
23 glanced at the editorial, at the bottom of it to see if it
24 had contained this clause about disclaimer on the part of
25 this newspaper of any part in this bargain, if there was
26 one.

1 Q Just tell us the clause that you read. A I read the
2 last clause or the next to the last clause.

3 Q Tell us the words you read? A I cannot remember the
4 words.

5 Q Give us the substance. A It was this--

6 MR. APPEL. We object to that--the paper is the best
7 evidence, it is calling for secondary evidence, no founda-
8 tion laid.

9 THE COURT. Objection overruled.

10 MR. APPEL. Let it go.

11 A the substance of it was that this paper was supporting
12 George Alexander for Mayor notwithstanding the bargain which
13 they implied, that they were supporting him notwithstanding
14 that bargain, that is the substance of it.

15 MR. FORD. Q You mean that is the conclusion which you
16 drew as to the effect of the editorial, or do you mean those
17 are the words that were substantially used? A It is prob-
18 ably the conclusion I drew.

19 Q That is the conclusion you drew that the paper was sup-
20 porting him in spite of the fact of the bargain he had
21 made? A That is the conclusion.

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1 Q Did the paper say they had made a bargain with Alex-
2 ander? A No.

3 Q What did the paper say, give us the substance from
4 what you drew your conclusion. A That is the substance
5 which I have just told you.

6 Q We want it so that we can identify it in some way,
7 we may not draw the same conclusion. A I cannot repeat
8 it word for word.

9 Q Repeat it in substance, what the paper itself said,
10 not what your conclusion of it was, but what the paper it-
11 self said. A That is what it said in substance.

12 Q The paper said in substance.

13 Q The paper said, notwithstanding the fact that Alexan-
14 der has made a combination with the liquor interests --

15 A No.

16 Q What did it say?

17 MR APPEL: He said in substance, I think he has answered
18 that question.

19 THE COURT: He has answered that question. I think he has
20 answered and given you the substance of that editorial.

21 If there is any question, let us have the paper here.

22 MR FORD: I, if ^{the} court please, want him to tell me what he
23 read, I don't care what the editorial said.

24 THE COURT: I think he has told you plainly what he said,
25 the substance of it.

26 MR FORD: I think the witness has made a clear distinction

1 that was the conclusion which he drew from what he read.

2 A Mr Ford, I did not draw any conclusion from reading
3 from this editorial, I didn't go down there to draw the
4 conclusion yesterday; I went down to see the date of this
5 paper.

6 Q Oh, to see the date of the paper? A Yes sir, on
7 which I had previously drawn a conclusion, away back
8 in November.

9 Q I see, and you found the paper was dated November
10 28th? A Yes sir, I wanted to be sure of the date, that
11 is the only purpose of my visit.

12 Q Up until that time you were in doubt about the date
13 that you had talked to Mr Harriman or to Mr Darrow over
14 the phone? A I was not in doubt as to the time, I was in
15 doubt as to the exact date; I didn't know for certain.

16 Q You didn't know for certain? A No.

17 Q It was on the day that Franklin was arrested? A I
18 don't know anything about Franklin's arrest.

19 Q You don't know anything about that? A No.

20 Q And until you went down and looked at this paper, you
21 didn't know it was the same day Franklin was arrested, so
22 you went down there to refresh your memory?

23 MR APPEL: I submit, he didn't say anything of the kind,
24 he knew the --

25 MR FORD: If the court please, --

26 THE COURT: One at a time.

1 MR APPEL: The question assumes a state of facts not tes-
2 tified to by the witness, and he is undertaking now to
3 mislead this jury as to what this witness meant and as
4 to what he said. I say it is unfair; it is not right;
5 it is not proper. The witness has said, your Honor, if
6 your Honor will remember, that he was certain as to the
7 occasion and to the facts, but he, as a matter of precau-
8 tion, I suppose, wanted to be certain; it is a due pre-
9 caution that any witness should have, if he wanted to be
10 fair and square, and wanted to ascertain that he should
11 not be mistaken as to the date; that is what the witness
12 said, your Honor.

13 THE COURT: Read the question.

14 (Question read.)

15 MR FORD: Now, if the court please, the objection made by
16 counsel there is only ^{one} portion of the statement made by him
17 and that is it assumes facts not in evidence, and that
18 is not a legal objection on cross-examination, and the
19 whole of his remarks were designed merely to put the wit-
20 ness on guard against any possible effect that might be
21 drawn from his testimony, and we assign it as error.

22 MR APPEL: As error?

23 MR FORD: yes.

24 MR APPEL: You are welcome to all the errors I commit,
25 and if you had any idea of law, the prosecution may not
26 assign any error --

1 THE COURT: Wait, that is not the question.

2 MR APPEL: That is what you want, that is, you want to know
3 it.

4 THE COURT: Gentlemen, you must address the court.

5 MR APPEL: I say, your Honor, he ought to know it and it
6 is peevish, and these small contentions here over little
7 trifles here, your Honor, I don't care for it, only I
8 don't care to have him annoy the jury and annoy the wit-
9 ness with ridiculous, childish questions that are perfectly
10 ridiculous.

11 MR FORD: I wish that the question be read and let your
12 Honor see whether ^{it} bears any such interpretation.

13 MR APPEL: It is a great spectacle to have this great
14 county represented in any such manner as this.

15 THE COURT: Now, Mr Appel --

16 MR APPEL: I will say it here and I will say it anywhere.

17 THE COURT: We will not get along with this case --

18 MR APPEL: Your Honor, I have said it, and I am responsi-
19 ble. I will express my opinion more forcibly.

20 THE COURT: I desire only that this case should proceed
21 and that this case and this case alone, should be tried
22 at this time.

23 MR APPEL: I am not going to be gagged. I am going to
24 express my opinion.

25 MR FREDERICKS: There is no objection to counsel --

26 MR APPEL: I made a legal objection --

1 MR FREDERICKS: -- to counsel expressing his opinion of
2 the representatives of the District Attorney's office at
3 any time and place where the hands of the District At-
4 torney's office are not tied by their ideas and respect
5 for the court.

6 MR APPEL: I am not saying anything about you, Mr Freder-
7 icks.

8 MR FREDERICKS: But at this time and in this place we
9 believe that counsel should assume a virtue, if he has it
10 not ingrained in him.

11 MR APPEL: How is that?

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1 MR. FREDERICKS. --and appear to use those ideas and senti-
2 ments which we commonly concede belong to a gentleman. We
3 wish to conduct our side of this case in that way and we
4 earnestly ask the court not to tie-- , not to permit counsel
5 to make statements of this kind while our hands are tied
6 by the respect that we have for the court. If he wishes
7 to make statements of that kind at times and places where
8 we are free to reply to them in the manner that we see fit,
9 all well and good, we will meet those issues when they
10 arise, but we ask the court to prevent such statements,
11 such reflections as these. It may be that we are ignorant;
12 it may be that we are childish; it may be that the great
13 county of Los Angeles in entrusting its affairs to us has
14 made grievous blunder and they should have selected men of
15 his caliber, of his ability and of his ideas of justice and
16 decency and respect, it may be that they should have, but
17 they have perhaps made the mistake of entrusting their
18 affairs of this kind to babes and sucklings, to ignoramuses,
19 but I do not see that this is the occasion or the time or
20 the place to raise those personal issues, and we earnestly
21 ask the court that they shall not be raised here and under
22 these circumstances.

23 MR. APPEL. Now, your Honor, counsel has exaggerated the
24 situation. My remarks were only with reference to incidents
25 which just occurred here. I am not responsible for the
26 county entrusting the affairs to Mr. Fredericks. Nobody has

1 found any fault with his administration or the office and
2 I am not going to be unjust here, although there is a wide
3 breach between us, occurring only at this trial, at no
4 other time, but I was only referring to the manner of his
5 position here and his examination of this witness, your
6 Honor. I made a legal objection and he undertook to tell
7 this jury and tell your Honor that I was just simply seeking
8 those legal objections in order to influence this jury.
9 I say to your Honor that my conduct in the courts all shows
10 that I have never won--never wanted to win a case except
11 on its merits, but I do require that trifling questions,
12 which appear to be the outgrowth of peevishness, I say,
13 should not be allowed here, and that is what I was referring
14 to. Now, counsel has undertaken to make a political speech.
15 I certainly, as a citizen of this state, and very closely
16 allied to the West, and no importation from other parts,
17 and a tax payer, will reserve my right, if I see fit, if I
18 ever see fit, in the future to express my opinion anywhere
19 and everywhere without fear of his hands being tied up here,
20 that has nothing to do with me, and I didn't refer to him
21 at all. I am going to be--while I feel a feeling of
22 unfriendship towards Mr. Fredericks on account of what has
23 occurred in this trial only, at the same time I am going
24 to be manly and I am going to do him justice and give him
25 whatever credit he deserves.

26 THE COURT. Gentlemen, we have consumed at least five

1 minutes of valuable time here on a matter that ought not
2 to have been injected into this trial at all. There seems
3 to be a tendency once in a while in this court for per-
4 sonalities to be exchanged on both sides. I had occasion
5 to remark to a witness yesterday what is always true,
6 that there is no court room big enough to try two law suits
7 at one time. There is only one law suit on trial in this
8 court room at this time. If the gentlemen have unfortunate
9 differences, there will be another courtroom in a proper pro-
10 ceeding, held sacred to those differences, as this court
11 room and this proceeding must be held sacred to the contro-
12 versy that is now being held here. I feel that counsel on
13 both sides have exaggerated the situation here. It is
14 true there is a tendency sometimes under stress of occasion
15 for counsel to become more vehement than the circumstances
16 it seem to me, seem to justify, but that is a matter of
17 personality more than anything else, and I call upon counsel
18 --I do not admonish counsel on either side at this time,
19 although I might perhaps do so as to both. I call upon
20 counsel as gentlemen and officers of this court to try
21 this law suit solely and absolutely and to refrain from any
22 personalities until this case is over, then if there are
23 personal differences, why there is a proper form and proper
24 court, if either gentleman has had his rights invaded, there
25 is another court room and another time with which those
26 matters may be properly dealt with.

1 That is the only way we can carry on this work, and I call
2 upon you gentlemen as officers of the court to preserve
3 that rule and preserve it inviolate; counsel on both sides
4 have stated and declared their intention of so doing,
5 and the court will expect it. Read the last question,
6 the question now before the court.

7 (Last question read by the reporter.)

8 THE COURT: What was the objection?

9 MR APPEL: I object, it assumes a state of facts not tes-
10 tified by the witness, the witness had just given an
11 answer just before that, he knew nothing about Mr Frank-
12 lin's arrest.

13 THE COURT: I think the question has already been asked
14 and answered.

15 MR FORD: The preceding question, your Honor, the wit-
16 ness did not know anything about Franklin's arrest and
17 then this inquiry naturally follows. It is not in the
18 record yet to my recollection, and even if it were, your
19 Honor, I am not bound by the witness' answer. I have a
20 right to assume an entirely different state of facts.

21 THE COURT: yes, you have a right to assume if it has not
22 been answered. Objection overruled. Answer the
23 question.

24 A I went down there to refresh my memory as to the date.

25 MR FORD: Well, wasn't there any other way you could re-
26 fresh your recollection? A I had no other way.

1 Q You had no other way whatsoever? A No sir.

2 Q There was no other event to which you could fasten that
3 date? A No.

4 MR APPEL: That is all subject to this objection, your
5 Honor. I didn't want to interrupt.

6 THE COURT: Yes sir, the same objection and the same rul-
7 ing and the same exception.

8 MR FORD: Did you look at any editorial in the Tribune
9 of the 29th of November?

10 MR APPEL: That is immaterial.

11 MR FORD: Did you look in any of the 27th of November?

12 THE COURT: Wait a moment.

13 MR FORD: I have an object --

14 THE COURT: Counsel has made an objection.

15 MR FORD: Oh, I beg your pardon.

16 THE COURT: He objected upon the ground that it is imma-
17 terial, and the court thinks it is immaterial.

18 MR FORD: If the court please, I would like to be heard
19 on that.

20 THE COURT: All right.

21 MR FORD: This witness testified that he has no other
22 method of refreshing his recollection except by looking
23 at a certain editorial, which he has not seen for nearly
24 a period of nine months.

25 THE COURT: I see your point now. The objection is over-
26 ruled.

1 MR ROGERS: Pardon me, sir; the statement of counsel is not
2 correct, he has not seen it for a period of over nine
3 months. I understood him to say he saw it yesterday.

THE COURT --
4 Well, he means until yesterday.

5 MR ROGERS: That is not the question.

6 THE COURT: What is the question. (Last question read
7 by the reporter.)

8 MR FORD: Cut it down to seven months and 14 days to be
9 exactly accurate.

10 THE COURT: That is not in the question. The question
11 is, did he look at any editorial of the 29th? What is
12 your answer. A No.

13 MR FORD: Did you look at an editorial of November 27th?

14 A No.

15 Q Do you recall at this time Mr Hawley, that there were a
16 great many editorials during that period on the political
17 situation in this city, in the Tribune? A Yes.

18 Q You were a constant reader of the Tribune at that time?

19 A Not constant, I read it.

20 Q You read it every day during the campaign? A Yes.

21 Q You read, in fact, all the editorials during the campaign
22 on the political situation? A I did.

23 Q Very strongly interested in it? A Yes.

24 Q Now, were there not some things in that paper preced-
25 ing this editorial in question which led you to believe
26 that the city administration at that time had entered into

1 some nefarious alliance with the liquor traffic?

2 A No.

3 Q Nothing at all? A Not to my recollection.

4 Q You had no reason to believe that they had entered
5 into such an alliance prior to the 28th day of November,
6 editorial?

7 MR APPEL: Object upon the ground it is not cross-examina-
8 tion. The question -- It makes no difference whether he
9 had reasons or not, what the witness has said, called his
10 attention, was the editorial of that morning, the con-
11 tents that impressed itself on his mind, that is about
12 all, whether he had any reasons at all, that is not cross-
13 examination, I submit, your Honor; it is two different
14 questions entirely, and it is not material to this issue
15 whether he had or not; it is simply a question -- here is
16 a collateral question upon which the witness bases his
17 recollection of the time. Those collateral matters are only
18 admissible for the purpose of fixing time; they are not
19 material to the issue at all. The only issue is whether
20 or not here is a man who telephoned to Mr Darrow upon
21 that morning, and whether or not an engagement was made
22 with Mr Darrow. Now, that only refers to the editorial
23 as giving occasion for this telephone, as to whether he
24 had reasons for believing that a nefarious or any other
25 kind of an intrigue or conspiracy had been formed between
26 the long-hairs and the short-hairs, to use a vulgar expres-

1 sion, cuts no figure here; whether it was right or wrong
2 cuts no figure here; whether he had reasons to believe
3 or not, cuts no figure. Simply he said he saw an edi-
4 torial that morning and that gave rise to my calling
5 the attention of Mr Harriman to that editorial confirmed
6 what I thought I believed what was the occasion, and then
7 he requested me to telephone to Mr Darrow. That is all
8 it is material for. The question whether he had other
9 reasons or from where he had obtained those reasons is
10 absolutely not a cross-examination.

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

13 MR DARROW: May I ask you the question preceding this
14 affair, whether he had seen any editorial at any other
15 time in reference to it, and then he answered no, and then
16 this question which I think is not exactly reported,
17 was, then, you had no reason to believe before that time
18 that there had been any such combination. Now, that
19 doesn't follow from the other question.
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5s 1 MR. FORD. I think you are mistaken.

2 MR. DARROW. The witness has already said that he had
3 been discussing it the night before in reference to it.

4 THE COURT. That is what I had in mind and what I supposed
5 this question was directed at.

6 MR. DARROW. I just wanted him clearly to understand whe-
7 ther this referred to the newspaper or to any other occasion
8 that he had, that is all that I care about.

9 MR. FORD. In view of the statement just made by the court
10 and by counsel I think I would like to have the last five or
11 six questions read, your Honor, and I wish to say at this
12 time that I am sure your Honor does not intend to inter-
13 fere with the cross-examination of this witness, but there
14 are certain times when there are certain discrepancies
15 that we want to make, being in the testimony of the witness,
16 and that often that the comments of counsel and especially
17 when confirmed by the court tend to interfere with the per-
18 formance of that duty, and I am sure it was not intentional
19 but I don't believe that it is fair to the cross-examiner
20 to be repeating testimony to the witness that he has
21 previously testified to.

22 THE COURT. Any question about the fact?

23 MR. FORD. Your Honor, he did testify on one occasion that
24 he talked to Mr. Harriman the night before and just now he
25 started to say, if you read back five or six questions,
26 that the first time--read--

1 THE COURT. ~~Read back five or six questions.~~

2 MR. FORD. Well, I think it is about absolutely useless
3 now.

4 MR. APPEL. Let's see what he started in again--let's find
5 out. if he quoted right; if he quoted right so much the
6 better, we will all understand it then.

7 ~~THE COURT. Read it.~~

8 MR. FORD. I withdraw the question. Q How long a time--
9 how long a time had you been reading the Tribune? A All
10 the time, I think, since it was printed.

11 Q Started on the Fourth of July last year? A Yes, I
12 read it more or less indifferently.

13 MR. FORD. Read the last five or six questions.

14 (Testimony read as indicated.)

15 THE COURT. You want a ruling on that?

16 MR. FORD. Yes.

17 THE COURT. Overruled.

18 MR. APPEL. We except.

19 A What is it now you want me to answer?

20 (Last question read by the reporter.)

21 A Yes, I had a reason, that is the first time I saw it
22 confirmed by the Tribune.

23 MR. FORD. You have had your recollection and your testimony
24 refreshed at the present time by the comments of counsel,
25 is that correct?

26 MR. APPEL. Now, your Honor--let him answer--he has made

1 that statement several times, your Honor, and I certainly--
2 MR. DARROW. Your Honor, this witness made the same state-
3 ment yesterday.

4 THE COURT. Well, suppose it should be true, what of it?
5 If it is true let's have it.

6 MR. APPEL. I know--

7 MR. FORD. I withdraw that question.

8 MR. APPEL. His insinuation is against the witness and
9 against counsel. Now, your Honor, we have sat here--

10 MR. FORD. I withdraw the question.

11 MR. APPEL-- and when we do respond as temperately as we
12 can then we are scolded. Your Honor, that creates the
13 situations which naturally gives rise to these contro-
14 versies, that is all I am alluding to. I call your Honor's
15 attention to it. It doesn't arise on our side.

16 THE COURT. Any proper method of refreshing the witness's
17 memory--

18 MR. APPEL. We don't want to refresh his memory. We
19 get into these dicussions so often and naturally say words
20 here that is--

21 THE COURT. I don't think you have any such intention. If
22 unfortunately it has had that effect let us know about it.

23 MR. FREDERICKS. How often has the other side charged us
24 with tipping the witness, how often?

25 THE COURT. I didn't think until you made this statement
26 there was anything in the nature of a charge.

1 MR. FREDERICKS. How often has that objection been made
2 to our question?

3 THE COURT. All right.

4 MR. FREDERICKS. Those are faults, if they are faults, which
5 both sides are committing.

6 MR. APPEL. I couldn't tip this witness--I never talked to
7 this witness in my life until I examined him.

8 MR. FORD. We object to the comments of counsel being made
9 at this time, being not under oath and absolutely have no
10 place in the record and it is useless to strike it out.

11 MR. APPEL. I am going to ask the witness that question.

12 MR. FORD. I ask the court to ask him to prevent it in the
13 future.

14 THE COURT. What is the question?

15 (Last question read by the reporter.)

16 THE COURT. Objection overruled.

17 A No.

18 THE COURT. By that I am assuming you mean by comments
19 made here in open court?

20 MR. FORD. That is exactly the one thing I was referring
21 to, the argument made by Mr. Appel and Mr. Darrow a few
22 minutes ago.

23 THE COURT. All right, with that understanding the answer
24 may stand.

25 MR. DARROW. Has he answered?

26 MR. APPEL. I didn't hear it.

1 THE WITNESS. I answered "No."

2 MR. FORD. Q Are you sure, Mr Hawley, that there was not
3 a similar editorial in the paper before November 28th?

4 ~~MR. APPEL. Wait a moment—we object to that as immaterial,~~
5 not cross-examination; the witness only referred in his
6 testimony on direct examination to having seen the one of
7 the 28th.

8 MR. FORD. But, your Honor, he was refreshing his testimony
9 by a certain editorial, now, he may have looked at the
10 wrong editorial when he went back to refresh his recollec-
11 tion, if a similar editorial appeared on the 26th or 25th,
12 for instance, and he had read it then and these things had
13 happened, that would be different. Fixing the time at a
14 different period, and the witness may be entirely mistaken
15 by reason of the failure to look at the right editorial.

16 MR. APPEL. Then he is entitled to look at the editorial
17 referred to, or any other editorial referred to, and the
18 provisions of the code require that.

19 THE COURT. I think you are entitled to go into that branch
20 of the inquiry, Mr. Ford, but not in the peculiar form of the
21 question propounded. You asked him if he was sure no such
22 an editorial was published before and the form of the ques-
23 tion is objectionable.

24 ~~MR. FORD. I see your Honor's point.~~

25

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1 MR FORD: Are you sure you never saw a similar editorial
2 before November 28th in the Tribune? A Quite sure.

3 Q You are absolutely sure? A I didn't say so; I said
4 quite sure.

5 Q Oh. But you are sure that the first time you ever
6 saw anything in the Tribune which confirmed your impres-
7 sions that there was an alliance between the liquor traf-
8 fic and the city administration or the Good Govern-
9 ment Organiztion, rather -- read the question as far as
10 I have gone.

11 (Question read down to and including "an alliance be-
12 tween the liquor traffic".)

13 Q -- and the Good Government Organiztion was the time
14 you telephoned to Mr Darrow? A yes, quite certain.

15 Q And if there was any editorial from which you could
16 draw the same conclusion or from which you did draw the same
17 conclusion before November 28th, then the 28th is not the
18 date on which you phoned to Mr Darrow, is that correct?

19 MR APPEL: We object to that as argumentative, speculative;
20 asking for guess-work; asking for reasoning in a question
21 of the witness and all that.

22 THE COURT: I think it is argumentative. Objection sus-
23 tained.

24 MR APPEL: A pathological condition.

25 MR FORD: You have stated, Mr Hawley, that the only ob-
26 ject you had in going down to look at that editorial was

1 for the purpose of fixing the date. Am I correct in
2 that? A Yes sir, that is the only object.

3 Q And you went down there and looked and didn't look at
4 the 27th or 29th?

5 MR APPEL: Now, your Honor, all this has been asked of
6 the witness, I submit.

7 MR FORD: I want to be fair with the witness.

8 MR APPEL: I want to, I know, but we want to be fair also.

9 THE COURT: Your objection is it has been asked and answer-
10 ed?

11 MR APPEL: Yes sir.

12 THE COURT: The objection is sustained.

13 MR FORD: When you went down there to the Tribune office
14 did you look at any paper of any date other than that of
15 November 28th? A I looked at the whole file for November,
16 turned over until I found the paper of the 28th.

17 Q Until you found the paper of the 28th? A Yes sir.

18 Q But you made no examination of the papers of any other
19 date? A No sir.

20 Q Now, who directed your mind to the 28th of November?

21 A Who directed my mind?

22 Q Who told you to look at that date, you didn't know the
23 date? A I testified to the date.

24 Q But you didn't know the date until you looked at the
25 paper to make sure of it?

26 MR APPEL: Now, your Honor, I submit the witness has not

1 so t testified, your Honor.

2 MR FORD: I am asking him now. Isn't that a fact?

3 A My recollection is, Mr Ford -- was, it was about a
4 week before election, and immediately following the speech
5 of Gibbon in the Good Government campaign, and I went down
6 there to find the identical paper so as to know for cer-
7 tain the date.

8 Q When did Gibbon make his speech in the campaign?

9 A Monday.

10 Q Monday the 27th? A Yes sir.

11 Q How do you recall that at the present time? A I
12 don't know how I recall it was the 27th, except I saw it
13 in the paper.

14 Q In what paper? A That very same paper.

15 Q In the 28th? A yes sir.

16 Q And did you look them for the article on yesterday,
17 did you look for that Gibbon article yesterday and read
18 it? A No, I saw it.

19 Q You didn't read it? A I did not read it.

20 Q What page was it on? A On the first page.

21 Q You didn't look for the editorial first and then look
22 for the Gibbon article?

23 MR APPEL: I object to that, the witness has been fully
24 cross-examined as to what he looked and didn't look, what
25 part of the page, what part of the bottom and top of the
26 page it was, and what he read and what it said, and I sub-

1 mit he has been cross-examined and there are limits to
2 cross-examination.

3 THE COURT: Your objection is, the question has already
4 been asked and answered?

5 MR APPEL: yes sir.

6 THE COURT: Objection sustained.

7 MR FORD: Will your Honor direct my attention to when the
8 Gibbon matter was brought up, whether it was today,--

9 THE COURT: Read the last two or three questions and
10 answers. (Record read.) I think that covers this last
11 question.

12 MR FORD: Instead of looking, then, for the editorial
13 you looked for the Gibbon article in order to fix the
14 date; that is the point? A I will say no.

15 Q You didn't look for the Gibbon article? A No sir, I
16 saw the Gibbon article.

17 Q You saw the Gibbon article, and when you started
18 looking in the paper, you didn't have the Gibbon article
19 in mind when you looked, did you? A I was not looking for
20 it, no sir.

21 Q Were you thinking of it at all? A I had not thought
22 of it.

23 Q Hadn't thought of it at all? A No sir.

24 Q And you were simply looking for this editorial then?

25 A I was looking for the editorial to find the date.

26 Q And it is the editorial upon which you rely to fix

1 this date, rather than anything else?

2 MR APPEL: Wait a moment; that has been asked and answered
3 time and time over again. We object to it as being a
4 repetition and a sort of a loop-the-loop examination;
5 the same thing over and over and over again. There will
6 be no end to this, your Honor.

7 MR FORD: If the court please, the Gibbon article has
8 come up in the last few minutes, and I want to be sure the
9 witness has not relied upon the Gibbon article to fix the
10 date, but relied on the editorial or did rely on it.

11 THE COURT: All right. Objection overruled.

12 A Perhaps to clear the air off, I should tell you about
13 this file.

14 THE COURT: Go ahead and tell it.

15 A There are three or four papers on the 28th filed in
16 this one book, and when you open the book this way, on the
17 left-hand page is the editorial and on the right-hand page
18 of the following paper of the same date, is the Gibbon
19 article; any man with eyes is bound to see both of them.

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1 Q MR. FORD. You simply glanced at it without making any
2 special effort to look at it? A I wasn't there two
3 minutes. I looked to see this editorial that I remembered
4 and looked at the date of the paper.

5 Q Now, which did you see first, the editorial or the
6 Gibbon article?

7 MR. APPEL. We object to that as immaterial whether he saw
8 the one first and then the other or saw the other one first
9 and then the other one, or both at the same time.

10 THE COURT. Objection overruled.

11 MR. APPEL. We take an exception.

12 A I looked first for the editorial.

13 Q You looked first at the editorial? A Yes, sir.

14 Q And then after looking at the editorial your eye natur-
15 ally glanced over and you noticed the other there?

16 MR. APPEL. We object to that as immaterial, not cross-
17 examination, already asked and answered and the witness
18 already stated the situation how he happened to look at it.

19 THE COURT. Objection sustained.

20 MR. FORD. So that I will be clear on this matter--I do
21 not want to be flying in the face of the rulings of the
22 court, but, is it clear, Mr. Hawley, that you saw the
23 editorial first before seeing the Gibbon article, is that
24 the situation?

25 MR. APPEL. We object to that because the witness has
26 already testified in reference to it and it is a matter of
record.

1 MR. FORD. Which did he see first?

2 MR. APPEL. I am not on the witness stand.

3 THE COURT. Objection overruled.

4 MR. APPEL. Take an exception.

5 A I looked for the editorial and I naturally saw both
6 pages.

7 Q Which did you see first? A I saw the editorial, the
8 only thing I was looking for.

9 Q First? A Yes, sir.

10 Q And then you noticed the Gibbon article, without reading
11 it? A I noticed the other side of the page and saw the
12 Gibbon article.

13 Q So when you turned through those files you were not
14 looking for the Gibbon--I think that probably has been
15 answered--as soon as you found that you looked up at the
16 top and saw it was the 28th?

17 MR. APPEL. We object to that on the ground it has been
18 asked and answered time and time over again.

19 THE COURT. I think it has, Mr. Ford.

20 MR. FORD. The objection is sustained?

21 THE COURT. The objection is sustained on the ground it is
22 already asked and answered.

23 MR. FORD. Q You said you talked with Mr. Harriman and
24 Mr. Darrow about this incident yesterday before going down
25 to look at the paper, is that correct?

26 MR. APPEL. He didn't say Mr. Darrow, he said Mr. Harriman.

1 Your Honor, I submit the question makes an assumption which
2 is not borne out and justified by the evidence.

3 MR. FORD. Supposing I did, your Honor, I have a perfect
4 right to it and counsel knows it.

5 MR. APPEL. No, I don't know anything of the kind. I
6 know that fair dealing requires a man not to misstate the
7 evidence, to the best of his ability.

8 MR. FORD. If the court please, here is a witness, if he
9 talked yesterday with Mr. Darrow and Mr. Harriman the facts
10 are probably fresh in his recollection and if I am misstat-
11 ing it, he is an intelligent witness.

12 THE COURT. Read the form of that question.

13 (Last question read.)

14 THE COURT. Is that a statement or question?

15 MR. FORD. I made a statement and then asked him if that
16 is correct, and if I am incorrect the witness will imme-
17 diately inform me.

18 THE COURT. Did you ask him, "Is that correct?"

19 MR. FORD. I did, read it again.

20 (Question read again.)

21 A That is not correct, Mr. Ford.

22 MR. FORD. Q Am I correctly stating it? A No.

23 MR. DARROW. Wait a minute--I want to say a word about it.

24 MR. FORD. The witness has said that I am not correct.

25 MR. DARROW. It is a preposterous statement that counsel
26 may ask for something that is not true, he cannot do it.

1 and it is objectionable. If he knew my name was not used
2 he has not the slightest right to say so--

3 THE COURT. Mr. Darrow, do you want the answer stricken
4 out?

5 MR. DARROW. No, I want to reply to that statement.

6 THE COURT. The court did not rule on the objection and the
7 witness answered it, do you want it stricken out?

8 MR. DARROW. I do not care now because he has answered it.

9 THE COURT. ~~The court might state at this time, of course,~~
10 it will assume that counsel will under no circumstances
11 intentionally misstate the evidence, unintentionally
12 that may occur from time to time with anybody, but I
13 assume and take it for granted there is no intentional
14 misstatement.

15 MR. DARROW. Counsel said he did it intentionally and had
16 a right to do it, he said the cross-examiner had a right
17 to misstate it and that is not the law and is not justice.

18 MR. FORD. If the Court please, I did state on cross-
19 examination I have a right intentionally, if I desire, to
20 misstate something and ask the witness if that is correct,
21 for the purpose of seeing whether the witness had told the
22 truth on the previous occasion; if he had testified to the
23 truth on the previous occasions and recalls the circum-
24 stances which were only yesterday, he can state the truth
25 again. If I intentionally misstated it to a truthful
26 witness he will immediately correct me if such be a fact.

1 ~~I said that was a right which I had, but as a fact I~~
2 simply wanted to direct the attention of the witness to
3 yesterday's direct examination and ask him about a circum-
4 stance concerning which my own memory was somewhat faulty.
5 THE COURT. It is a moot question, except to say that the
6 court does not agree with you as to that right. However,
7 it is a moot question now which has been already disposed
8 of.

9 MR. FORD. I am asking him concerning something which
10 I didn't have a clear impression of and was asking the
11 question--

12 THE COURT. That is an entirely different matter.

13 MR. DARROW. Mr. Ford said it was his intention.

14 MR. FORD. I said I had a right, even if it was intentional,
15 but it is a moot question, it is not before the court now.

16 MR. DARROW. You have not that right.
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1 MR FORD: With whom did you talk yesterday before going
2 on the stand? A I didn't talk with anybody yesterday be-
3 fore going on the stand.

4 Q No one asked you about the testimony you were going
5 to give yesterday? A No.

6 Q You didn't talk to Mr Rogers or Mr Appel or Mr Darrow
7 or anybody connected with the case? A No.

8 Q Either before or after going to the Tribune office?

9 A No. The only recollection I have of speaking to any-
10 body, I said to Harriman in the noontime I was going down
11 to see this article.

12 Q And you never reported to him wh ether your impressions
13 had been confirmed or not? A I may have told him I saw
14 the paper.

15 Q After your return did you tell Mr Harriman? A I may
16 have; I have no recollection of it.

17 Q Was Mr Harriman in court yesterday when you returned?

18 A I think so.

19 Q When did you tell Mr Harriman; after you came in the
20 court room or before you came into court? A I don't know
21 that I told him.

22 Q You don't know that you told him? A I don't remember
23 of telling him; I may have told him.

24 Q Is your memory pretty good? A Pretty fair.

25 Q You cannot remember wh ether you had reported com ern-
26 ing your testimony when you knew you were going on the stand

1 to establish a matter of probably some importance to the
2 defendant in this case?

3 MR APPEL: Your Honor, I object to that, because the wit-
4 ness did not say he had reported his testimony; because
5 he said he may on returning have said something to Mr
6 Harriman about having seen the article, and he didn't
7 say he reported his testimony. I object on the ground
8 that it assumes a state of facts not testified to by the
9 witness.

10 THE COURT: Objection overruled.

11 MR APPEL: Except.

12 Q Answer the question. A What is it?

13 THE COURT: Do you want the question read? A Yes, I
14 cannot remember these things.

15 (Question read.)

16 A I did not report anything except that I may have seen
17 the paper; I may have reported that.

18 Q BY MR FORD: You never discussed your testimony at
19 any time with Mr Rogers, Mr Darrow or Mr Appel or any of
20 the attorneys in the court, before you went on the stand?

21 MR APPEL: Wait a moment. The witness has already answer-
22 ed that. He said he did not, your Honor.

23 MR FORD: He said not yesterday. Now, I am going into
24 any time.

25 MR APPEL: If it is any other time, go ahead.

26 THE COURT: Objection overruled.

1 A I told you in my first examination here that I talk-
2 ed with Mr Darrow and with Mr Harriman.

3 Q When and where? A Wednesday, I think it was.

4 Q Wednesday? A Yes sir.

5 Q At what place? A At Mr Harriman's office.

6 Q At that time what conversation was had between you?

7 MR APPEL: Wait a moment. I object to that, your Honor.

8 MR FORD: Withdraw the question.

9 Q What date was mentioned at that time about this con-
10 versation? A No dates were mentioned.

11 Q Were the circumstances discussed? A What circum-
12 stances?

13 Q The circumstance of your meeting Mr ~~H~~rriman and
14 telephoning Mr Darrow and so forth? A There was no
15 special discussion, no sir.

16 Q Waiting for him? A No sir.

17 Q You didn't discuss the subject? A Certainly.

18 Q What was the discussion on that subject?

19 MR APPEL: We object to that as immaterial.

20 MR FORD: Withdraw the question. Did they ask you any
21 questions about that? A No.

22 Q Did you tell them any of the facts about that?

23 A Did I tell them what I was going to testify to?

24 Q Yes? A Yes, substantially.

25 Q Did you tell them you were unable to fix the date?

26 A I told them that, yes.

1 Q And you told them that the only way you could fix the
2 date would be to go down to the Tribune office and look
3 at the editorial of November 28th? A I told them I
4 thought it was about a week before election and that I
5 thought it was about a week before election and it was
6 the day of this editorial.

7 Q Didn't Mr Harriman tell you it was the day Franklin
8 was arrested? A No.

9 Q And didn't Mr Franklin tell you that Franklin was ar-
10 rested on November 28th?

11 Q Didn't Mr who tell me?

12 Q Mr Harriman? A Nobody told me anything about
13 that.

14 Q Nobody told you the day you had the conversation with
15 Harriman and the day you telephoned to Darrow was the
16 same day Franklin was arrested and nobody told you that
17 date was the 28th? A No.

18 Q And you never had any suspicion that it was the 28th
19 until you went down to the Tribune office?

20 MR APPEL: Wait a minute. We object to that because that
21 has been gone into and has been asked and answered, oh,
22 several times; it looks to me from the number of times
23 a man might truthfully say several hundred times, that is,
24 in size, and I object to the repetition of the same
25 question over and over and over again; done purposely
26 for annoying the witness and spending time.

1 THE COURT: Objection overruled.

2 MR APPEL: We except.

3 MR FORD: Read the question. (Question read.) A Oh,
4 yes.

5 Q .You had a suspicion that it was the 28th? A yes.

6 Q Where and upon what did you found that suspicion?

7 A Well, it was not a suspicion.

8 Q Well, belief. A It was a belief.

9 Q Belief, yes. Upon what did you found it? A The mat-
10 ter had been discussed by me with Mr Harriman at some
11 length in December.

12 Q Oh, last December? A Yes, and again in May before I
13 went up north.

14 Q Again in May, two conversations? A Yes.

15 Q You recall distinctly two conversations with Mr Har-
16 riman? A Yes.

17 Q Do you recall any others? A No.

18 Q Those two with Mr Harriman, do you recall any conver-
19 sations with any other persons? A Never talked with any-
20 body else about it.

21 Q Never talked with anybody else about it? A No.

22 Q And the only time you ever talked with Mr Darrow about
23 it was yesterday? A Wednesday.

24 Q Wednesday? A Yes.

25 Q And at that time no mention was made of the date?

26 A I believe not.

1 Q Did you tell him you didn't know whether it was the
2 same day Franklin was arrested or not? A I told him I
3 was not certain of the day of the month; that it was about
4 a week before election.

5 THE COURT: Gentlemen of the jury, bear in mind your for-
6 mer admonition. We will take a recess for five minutes.

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1 (After recess)

2 MR. FORD. We will be ready in just a moment, your Honor.
3 We sent up for a document.

4 THE COURT. All right.

5 MR. FORD. Q Mr. Hawley, when you looked at that editorial
6 yesterday you are absolutely sure it was the same editorial
7 upon which--upon the reading of which you went over and
8 saw Mr. Harriman?

9 MR. APPEL. That has been asked and answered quite a
10 number of times, your Honor. We object upon the ground it
11 being a repetition.

12 THE COURT. Overruled.

13 A Yes.

14 MR. FORD. Q Do you desire to look at this before I show
15 it to the witness?

16 MR. APPEL. No.

17 MR. FORD. Q I exhibit to you a bundle of files of the
18 Express--or the Tribune--

19 MR. APPEL. I submit, your Honor, no one has testified to
20 a bundle of files of the Tribune here.

21 MR. FORD. Of what purports to be the files of the Tribune.
22 I will put it that way, which I have offered to let
23 counsel look at. Just a moment--at what office--was
24 it the editorial offices in the Express Building or the
25 Tribune that you saw the files yesterday?

26 MR. APPEL. Wait a moment--he has already answered that.

1 I object on the same ground.

2 THE COURT. Overruled.

3 MR. APPEL- Exception.

4 A It was on the second floor of the Express Building.

5 MR. FORD. On the second floor of the Express Building,
6 what is known as the editorial offices there? A Yes, sir.
7 I went ^{up see} to the city editor.

8 Q Now, will you look at this file and tell us whether
9 this is the same one you looked at yesterday or whether it
10 appears to be the same one? A It appears to be the same
11 one.

12 Q Will you look at the files of November 28th and point
13 out the article to which your attention was called.

14 A Here is the article.

15 MR. FREDERICKS. The witness points to an article.

16 A I don't know it is this particular one I read; here is
17 the article.

18 MR. FORD. On the last page of what purports to be the
19 issue of November 28th? A Yes, sir.

20 Q Now, will you indicate--

21 MR. APPEL. The editorial page? A Editorial page.

22 MR. FORD. Will you read to the jury that portion which
23 you read yesterday in the editorial? A Yes.

24 Q Read it to the jury. A (Reading) "In the belief
25 that all men should be equal before the law, that all
26 men should have equal opportunities for a livelihood, that

1 government should be a democracy instead of a plutocracy,
2 the Tribune supports the candidacy of George Alexander
3 and urges his election. And this it does without allying
4 itself in any way or making any terms of any kind with
5 any agency of any sort or sacrificing one of its principles
6 or one of its convictions."

7 MR. FORD. Q Is that all you read yesterday?

8 A That is all I looked at yesterday.

9 Q And is that all that convinces you that the city admin-
10 istration or the Good Government forces were allied with
11 the liquor traffic? A No, that is not all.

12 Q But that is all which you saw on that occasion in the
13 Tribune?

14 MR. APPEL. No, that is all he saw yesterday.

15 THE COURT. I think the record so states.

16 MR. FORD. Q Is that all you saw on November 28th in the
17 Tribune which added to which you already knew convinced
18 you that there was an alliance between the Good Government
19 people and the liquor forces?? A That is the only
20 admission that I ever saw the Tribune--or partial admission
21 by the Tribune.

22 Q And the moment you saw this startling announcement in
23 the press you immediately flew over to the headquarters of
24 the Socialist headquarters and there conferred with Mr.
25 Harriman about this startling admission?

26 MR. APPEL. Wait a moment--we object to that because that

1 has been all gone over and it has been asked and answered.

2 MR. FORD. Not in connection with the document.

3 THE COURT. Objection sustained.

4 MR. APPEL. Is this document in evidence, your Honor?

5 THE COURT. It has not been offered.

6 MR. APPEL. Well, it was allowed to be read to the jury.

7 I simply wanted to know if it is in evidence.

8 MR. FORD. Q At the time you read this admission--

9 THE COURT. Wait a moment--

10 MR. APPEL. Let's get this straight. We want to know

11 whether this document is in evidence.

12 MR. FREDERICKS. We haven't offered it.

13 THE COURT. They haven't offered it.

14 MR. FREDERICKS. We are traveling along, when we offer it

15 then counsel will notice it.

16 MR. FORD. Q At the time you read this admission in that

17 editorial did you read the whole of that editorial?

18 A I don't remember.

19 Q Don't you remember that you did? A I glanced it down,

20 I read it.

21 Q Read the whole of it? A I think so.

22 Q That admission was not modified or strengthened either

23 way by anything else in the article that you read?

24 MR. APPEL. That is calling for a matter of opinion, it is

25 incompetent, irrelevant and immaterial, calling for his

26 conclusion upon matters which are not in evidence, the

1 article not being in evidence, the editorial not being
2 in evidence. Now, he is asking concerning other matters
3 therein and asking him for his opinion as to whether that
4 statement was modified or not modified by other matters,
5 which is not before the court and it is not cross-examina-
6 tion.

7 MR. FORD. If the court please, it is true that what he
8 then thought about the article, whether it modified or strang-
9 thened it would be a conclusion. It was a conclusion on
10 November 28th. Now, whether or not he had such a conclu-
11 sion as a fact concerning which the witness cannot tes-
12 tify, he cannot give his personal conclusions but he may
13 testify to the fact, that he had formed certain conclusions
14 on a certain day.

15 MR. APPEL. Add to my objection that no foundation has been
16 laid.

17 THE COURT. Overruled.

18 MR. APPEL. We except.

19 MR. FORD. Q Answer the question. A Well, I don't know
20 that I understand the question. The question is involved,
21 that what I knew of my own knowledge or what I thought I
22 knew, and this article here or what.

23 MR. FORD. Read the question itself, Mr. Smith.

24 (Last question read by the reporter.)

25 MR. FORD. Q As far as you now recall. A I think not.

26 Q Do you recall at this time that the article read as
follows:

1 MR APPEL: Wait a minute. We object to the asking what
2 the article read; the article is the best evidence, no
3 foundation has been laid; the article not being in evidence.
4 We object to the District Attorney reading a paper that
5 has not been admitted in evidence; no foundation laid for
6 its introduction.

7 MR FORD: I am testing his memory at the present time,
8 and asking him if the article --

9 MR APPEL: He cannot read anything before the jury unless
10 it is in evidence.

11 MR FORD: Then I offer the editorial from which the wit-
12 ness read an extract, and I offer the whole of the edi-
13 torial in evidence, as People's exhibit No.41.

14 MR APPEL: We object upon the ground it is incompetent,
15 irrelevant and immaterial for any purpose whatsoever; it
16 is hearsay; that the question before the court here is
17 not what the article says, but what he gathered from it,
18 what induced him to go there, what gave occasion to it,
19 and the witness has pointed out what gave occasion
20 to his going to see Mr Harriman about it, and what impres-
21 sion he gathered, and what conclusions he came to from
22 the matter he has referred to, whatever the article is it-
23 self, is immaterial, cuts no figure, no foundation has
24 been laid and it is hearsay, and it is not cross-examina-
25 tion.

26 THE COURT: Objection overruled.

1 MR APPEL: Exception.

2 MR FORD: Did you now -- I have offered it in evidence,
3 and it is admitted in evidence. I will now read it to
4 the jury: (Reading:) "As it was in the beginning."
5 That is the heading. (Reading.) "The position of the
6 Tribune with relation to the great issues of the day is
7 not only unchanged but unchangable. It stands on the
8 principles it declared the day it was founded and its pur-
9 pose is now, as it was in the beginning.

10 In its first issue the Tribune asserted this belief:
11 the Tribune believes it (Government) should be a democracy
12 instead of a plutocracy. It will be the mission of the
13 Tribune to fight the people's battles.

14 This newspaper never has had and has not now the slight-
15 est sympathy with the plutocratic system, whether as
16 applied to business or government. It has fought with
17 all its might for the establishment in government of
18 reforms that will place the power of government securely
19 in the hands of the plain people. It never has stood
20 and does not now stand for so-called big business or any
21 of its methods or any of its allies. It resents every
22 attempt to subject government, whether in city, county,
23 state or nation, to the control of the interests. It
24 hates plutocracy and all its works, and never will be
25 found rendering service to that unwholesome and most
26 dangerous power.

1 This paper was founded to serve men, not money -- to
2 aid in the establishment of the supremacy of human rights
3 over property rights. As was declared in the first issue:
4 We have no political ambitions to gratify. Our only aim is
5 to serve humanity. Human rights too long have been ne-
6 glected in this land. The Golden Calf has been exalted
7 and property rights have been made more sacred than human
8 rights.

9 The exaltation of the Golden Calf has been achieved
10 at the cost of the happiness of millions of men and women
11 who have been made to toil in the past, under bitterly
12 unjust conditions, while their blood and tears were coin-
13 ed and capitalized into property by privileged plutocracy.
14 Property has been deified while humanity has been dis-
15 regarded. Holding such convictions, the Tribune asserted
16 on the day of its birth: All men should be equal before
17 the law; all men should have equal opportunities for a
18 livelihood. Unfortunately, as conditions now are, the
19 poor man does not always receive justice; neither does he
20 receive equal opportunity for livelihood. The Tribune
21 will strive to correct these evils. We expect to be
22 abused; we expect to be misunderstood, but we will ever
23 continue our fight for righteousness and justice.

24 The abuse that was prophesied has not been withheld
25 and the misunderstandings that were foreseen have dis-
26 closed themselves, but, serene and unchanged in its con-

1 victions, resolute in its devotion to the plain people
2 and its hostility to plutocracy, the Tribune pursues un-
3 flinchingly the course chartered for its guidance when it
4 sprang into being.

5 In belief that all men should be equal before the law,
6 that all men should have equal opportunities for a liveli-
7 hood, and that government should be a democracy instead
8 of a plutocracy, the Tribune supports the candidacy of
9 George Alexander, and urges his election. And this it
10 does without allying itself in any way or making terms of
11 any kind with any agency of any sort or sacrificing one
12 of its principles or one of its convictions. Free,
13 independent and devoted to humanity it was born and devoted
14 ed to humanity, independent and free it will remain."

15 Q And you thought that that article indicated that
16 there was an alliance between the Good Government forces
17 and the liquor interests? A You are after my thoughts
18 now?

19 Q yes. A It confirmed my thoughts.

20 Q Will you read that answer? (Last answer read by the
21 reporter.) And the moment you read that article you went
22 over to see Mr Harriman?

23 MR APPEL: We object to that because that has been asked
24 and answered several times.

25 THE COURT: Objection sustained.
26

1 MR FORD: You considered it of such great importance that
2 you waited 10 minutes for him until he could come out of
3 a meeting, at the door of the Temple, or of the headquart-
4 ers?

5 MR APPEL: We object to that upon the ground it is incom-
6 petent, irrelevant and immaterial, has been asked and
7 answered as to what he did.

8 THE COURT: It has been asked and answered.

9 MR FORD:" Not as to whether he considered it of great
10 importance; that is the point.

11 THE COURT: Oh, yes. All right. In that view of the
12 question, you can have it. Overruled.

13 MR APPEL: Exception.

14 A I considered it of importance.

15 MR FORD: And you considered it of such great importance
16 that you discussed it for 15 or 20 minutes with Mr Harri-
17 man at the Socialist headquarters?

18 MR APPEL: The same objection as last.

19 MR DARROW: I object on the further ground he didn't state
20 the exact time, that he either waited for him or discussed,
21 either one.

22 MR FORD: Let him state it now.

23 MR DARROW: That is proper.

24 THE COURT: Overruled.

25 MR APPEL: We except.

26 A I was not there 15 minutes.

1 MR FORD: How long were you there? A I was there a few
2 minutes; long enough for him to read it.

3 Q You considered this admission so startling that you
4 would not telephone from the headquarters but went back
5 to your own office in order to preserve the secrecy of
6 your communication to Mr Darrow.

7 MR APPEL: We object upon the ground it is incompetent,
8 irrelevant and immaterial, and not cross-examination; has
9 been asked and answered.

10 THE COURT: Overruled.

11 A That was not the reason I went to my own office.

12 MR FORD: It was not the reason? A No sir.

13 Q You went to your office to telephone to Mr Darrow,
14 didn't you? A I did.

15 Q You considered that all of these things indicated
16 that the liquor interests were allied with George Alex-
17 ander? A Oh, I knew that before.

18 Q But this confirmed it? A This confirmed that
19 these fellows had made the bargain.

20 Q What fellows had made the bargain? A Mr Earl and
21 his followers.

22 Q Had made a bargain? A Yes sir; acquiesced in the
23 bargain.

24 MR FORD: That is all.
25
26

REDIRECT EXAMINATION

1

2 MR APPEL: Mr Hawley, you spoke here that in view of what
3 you had -- a discussion you had had the night before,
4 that on the morning of the 28th, you read this article
5 with reference to the Tribune's attitude here with ref-
6 erence to its associating itself with interests and so on,
7 referred to here in this article, that your belief was
8 then confirmed that there had been such an alliance.

9 MR FORD: Just a moment. We object upon the ground it is
10 not redirect examination.

11 MR APPEL: That is only preliminary.

12 MR FORD: If the court please, the witness has al-
13 ready testified --

14 MR APPEL: I withdraw that question.

15 THE COURT: The question is withdrawn.

16 MR APPEL: Now, you say you had discussed this same mat-
17 ter to which you referred as being confirmed by your read-
18 ing this article on the morning of the 28th, you had a
19 discussion the night before?

20 MR FORD: Objected to upon the ground this is not new
21 matter brought out on cross-examination at all, and there-
22 fore, cannot properly be subject of redirect examina-
23 tion. This cross-examination of ours was all predicat-
24 ed, as far as these papers were concerned, on the origi-
25 nal declaration of the witness that he had been to the
26 Tribune office and had looked at the article, and that

1 that article had confirmed an impression previously form-
2 ed. Now, our cross-examination is not new subject matter.
3 It may be new facts brought out concerning it. Cross-
4 examination does do that, but it is the same subject mat-
5 ter, and if counsel wanted to go into it fuller than he
6 did, he should have done so on direct examination. He
7 cannot do it on redirect. He cannot examine on the same
8 matter. There must be new matter, not new facts concern-
9 ing the matter, but new matter and a new subject. Object-
10 ed to upon the ground it is not redirect examination.

11 MR APPEL: They brought out this matter, we couldn't ask
12 him what the article said or anything at all about it.
13 We simply asked him for the subject, what gave cause to
14 this meeting, to show the reason for the meeting. They
15 brought out all the articles; what conversation they had
16 and discussions and so on, and the witness has answered
17 here that he knew before that. Now, when they brought
18 that out on cross-examination, we have a right to show
19 that he new about it.

20 THE COURT: Read the question.

21 (Last question read by the reporter.)

22 MR APPEL: You had a discussion the night before.

23 MR FORD: Objected to upon the ground it is not redirect
24 examination.

25 THE COURT: Overruled.

26 A I have not testified to any discussion the night be-

1 fore at any time.

2 MR APPEL: You had some information concerning this alli-
3 ance between the liquor interests and the Good Govern-
4 ment. A I had information.

5 Q Where did you get it? A May it please the court,
6 I would rather not tell.

7 MR APPEL: Well, it is important to us.

8 MR FREDERICKS: We are not interested, your Honor. I
9 don't think it is material.

10 MR APPEL: I will ask this question: isn't it a fact that
11 over at Levy's restaurant that they had formed an alli-
12 ance between those for the election of Mr Alexander, in
13 charge, and the liquor interests before you read this
14 article, and that as soon as you read this article saying,
15 "The Tribune supports the candidacy of George Alexander
16 and urges his election", and this it does without allying
17 itself in any way or making any terms of any kind with any
18 agency of any sort or sacrificing one of its principles
19 or one of his convictions." Isn't it a fact that then
20 when you read this it confirmed the information that had
21 been given you, in your mind?

22 MR FORD: ~~just a moment, now. To that we object upon the~~
23 ground that it falls for hearsay, with some vague and
24 shadowy person the night before at some cafe, the loca-
25 tion of which is not even in evidence before this court.
26 I don't know that it could be any more vicious hearsay,

1 because it is shadowy and indefinite; it is compound and
2 complex.

3 MR APPEL: They have asked him his condition of mind. Now,
4 we have a right to bring out everything, every informa-
5 tion, every fact that he knew for the purpose of showing
6 to this jury that he had a reasonable ground for forming
7 an opinion that led him to this conference with Mr Harriman,
8 your Honor.

9 MR FREDERICKS: It is further immaterial, your Honor, on
10 the ground --

11 MR APPEL: Now, they brought this out, and we have a right
12 to explain it.

13 MR FREDERICKS: It is further immaterial on the ground
14 that this witness has previously stated that he knew the
15 Tribune was supporting George Alexander, and that is all
16 that articlesays.

17 MR FORD: And further, your Honor, it calls for a con-
18 versation concerning which no foundation has been given.
19 I tried to put all this objection in at once, but I was
20 interrupted, your Honor; no foundation laid as to the
21 conversations, as to the time, place and persons present.
22 We want to know, if it is admissible at all, who the per-
23 son was with whom he had such a conversation, who else
24 was present and all about it.

25 MR ROGERS: Now, if counsel will just be patient, if your
26 Honor please, he will find out that this person is neither

1 vague nor yet is he shadowy. According to my recollec-
2 tion he weighs close to 175 pounds, and is in most elegant
3 condition. There is nothing shadowy or vague about him.
4 If you will wait a little while he will find it out, and
5 then, all this vagueness and shadowiness that is in his mind
6 now will disappear.

7 MR FREDERICKS: I think the question is so complex, your
8 Honor, it will be impossible to be answered.

9 MR APPEL: I don't know anything about complex questions.
10 Anybody who can read can understand the question.

11 THE COURT: The vagueness, if any, consists in the witness'
12 own statement, that he prefers not to answer the question,
13 which the court deemed to be a proper question. Now, the
14 court is not going to require him to do that unless the
15 counsel propounding it desires to have it.

16 MR APPEL: Yes, your Honor, we want it.

17 THE COURT: If that position is to be adhered to, it is
18 obvious there will be some vagueness in this matter, if
19 that is the situation.

20 MR APPEL: The weight of the evidence is for the jury.
21 They have asked him, your Honor, whether it is upon these
22 simple words that he formed that opinion. What did they
23 ask him that for? What did your Honor allow them to ask
24 that for? For the purpose of indicating to the jury that
25 this thing here is vague and indefinite, that it conveyed
26 no information to him, but your Honor, language must be

1 construed and must be interpreted in the light of the
2 situation and the surrounding circumstances and conditions
3 in which the language is used, especially by a newspaper.
4 Now, we propose to show that this language, standing by
5 itself, to a person not informed of the facts, not inform-
6 ed as to what agency that is referred to in this article,
7 that it might have no meaning, but to a witness who had,
8 as my question indicates, and as I think he will testify
9 to, your Honor, that he had been informed by persons con-
10 nected with the liquor interests, that such alliance had
11 been formed, and that when he read this article in which
12 the Tribune undertakes to say, while he supports Alexander,
13 he does not wish it understood that it allies itself or
14 makes any terms of any kind with any agency of any sort,
15 that he then knew, and was confirmed in the opinion that
16 the information given to him was correct. Now, that is
17 proper.

18 THE COURT: Well, now, let's get the record clear. You ask-
19 ed a question --

20 MR APPEL: I will ask a straight question --

21 THE COURT: One moment. I want to get the record straight-
22 ed out. There is one question which the witness asked to
23 be relieved from answering, and counsel objected. There
24 has been no ruling and no disposition of that. Is that
25 question withdrawn?

26 MR APPEL: I will withdraw it now.

1 THE COURT: Now, we start in on a new proposition. Let's
2 have that question read.

3 MR FORD: I thought he had withdrawn the question.

4 THE COURT: The former question, but there is another
5 question before the court.

6 MR FORD: The present question is withdrawn.

7 THE COURT: The present question is not withdrawn.

8 MR APPEL: I will withdraw it. I have stated the object
9 of my question, and I will ask him a question --

10 MR FORD: Before counsel asks another question, I move the
11 testimony of Mr Rogers with regard to the weight and condi-
12 tion of some person be stricken out, as being unsworn and
13 not responsive to any question.

14 THE COURT: I do not regard it as testimony, but as to
15 what counsel expects to show.

16 MR FORD: I thought he was testifying.

17 THE COURT: That was the purpose of the testimony, was it
18 not, Mr Rogers?

19 MR ROGERS: yes sir, and to clear my friend's mind up,
20 and to put him right.

21 THE COURT: All right. Mr Appel, reframe your question.

22 MR APPEL: Now, Mr Witness, had you discussed with anyone,
23 or had any information from any person prior to the 28th
24 day of November, 1911, concerning any alliance, if at all,
25 between the liquor interests and the interests of Mr
26 Alexander, insofar as the election then ensuing was

1 concerned?

2 MR FREDERICKS: That is objected to -- well, that is yes
3 or no, I suppose.

4 THE COURT: Yes, the question calls for an answer yes or
5 no.

6 A Yes.

7 THE COURT: Did you hear the answer? A Yes.

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Alp

1 Q From whom and where did you obtain that information?
 2 MR. FREDERICKS. That is objected to as immaterial, the
 3 question being, the pertinency of this matter, being that
 4 the witness says he remembers this date because of the
 5 fact that this article here showed an alliance between the
 6 liquor interests and the Good Government forces. Now,
 7 going back to a day or two before where he learned in some
 8 other way that there was an alliance between such forces,
 9 if he did so learn, would not have anything to do with this
 10 case; this hangs right on this editorial, and if this
 11 editorial has absolutely nothing of that kind in it--

12 THE COURT. I think that the--

13 MR. DARROW. May I suggest--

14 THE COURT. I am about to rule your way.

15 MR. DARROW. I might spoil it.

16 THE COURT. The objection is overruled.

17 MR. APPEL. Just answer the question, please.

18 A Do you ask for the name of the person? Read the
 19 question.

20 MR. APPEL. Read the question.

21 (Question read.)

22 A It was a matter of quite common discussion and especially
 23 confirmed in my mind by a conversation with a man in the
 24 liquor business.

25 Q Answer the question where and who was that man? A I do
 26 not want to answer the question.

1 Q you have to, I insist up on it, your Honor .

2 THE COURT. Mr. Hawley, we cannot spare matters of that
3 kind; your ground for declining to answer is not a legal
4 ground. A Well, it was with Al Levy, if you must know.

5 Q Mr. Levy was then engaged in business? A Yes .

6 Q What business? A He was in the restaurant business .

7 Q Where liquor was sold and dispensed? A Yes .

8 Q Now, when you read this article of the 28th and you
9 saw here--did you have any discussion with other people
10 about it? A With no one else in the liquor business, no,
11 sir .

12 Q Outside of the liquor business? A Oh, yes, with various
13 parties .

14 Q Now, when you read this article, "And this it does without
15 allying itself in any way or making terms of any kind with
16 any agency of any sort or sacrificing one of its princi-
17 ples or one of its convictions, " did you then have in your
18 mind, when you read that, the information that you had
19 obtained before you saw this article? A Yes, sir .

20 Q And what did you understand by the words "without
21 allying itself in any way or making any terms of any kind
22 with any agency of any sort," what did you understand by
23 the word "agency?" .

24 MR. FORD. We object to that as incompetent, irrelevant and
25 immaterial what his understanding was; the only material
26 thing before the court being the fact that he did read

1 such an article as fixing the date, that is all.

2 THE COURT. The objection is overruled.

3 A Well, I interpreted that to be an admission on the
4 part of Mr. Earle of the Good Government organization that
5 it had caved down the bank.

6 Q Well, in what particulars? A That they were parties
7 or cognizant, at least, of this bargain of which we had
8 been hearing of a week or more before.

9 Q And that the Tribune was undertaking to say, to keep
10 clear of it? A To clear its skirts.

11 Q Now, Mr. Hawley, did you ever talk to Mr. Rogers about
12 what your testimony would be in this case? A No, sir.

13 Q Did you ever know me to speak to me at any time, up to
14 the time that I commenced to examine you in this court?

15 A never spoke to you in my life that I know of.

16 Q Now, you referred also in your examination to an
17 article of Mr. Gibbons as appearing in the same issue of
18 the 28th day of November, 1911, of the Tribune, is that
19 right? A yes.

20 Q I attract your attention to this article here.

21 MR. FORD. That was yesterday when you went down--

22 MR. APPEL. Let us wait until--

23 THE COURT. Any objection?

24 MR. FORD. I asked for information. He is referring to,
25 now, yesterday he went there, went down, and in his question,
26 I may have an objection to make.

1 MR. APPEL. In answer to questions by Mr. Ford here in the
2 court room, here in the presence of this jury and in the
3 presence of every one who heard it you were asked in
4 reference to an article which you called the Gibbon
5 article. Take the issue shown to you of this paper of
6 the Tribune, of the 28th day of November, 1911 and point,
7 in your own way, what you call the Gibbon article.

8 MR. FORD. We will stipulate it is there and he saw it
9 yesterday.

10 MR. APPEL. I do not want his stipulations.

11 MR. FORD. And in view of the stipulation and in view of the
12 fact it is absolutely immaterial what he did yesterday,
13 as far as the Gibbon article is concerned.

14 MR. APPEL. I am asking--

15 MR. FORD. To save time, we will stipulate, I do not think
16 it is of any importance.

17 THE COURT. There is no objection.

18 MR. FORD. We object to it on the ground it is not re-
19 direct examination, immaterial.

20 THE COURT. Objection overruled.

21 MR. FORD. Now, we will stipulate the fact, to save time.

22 A I said I saw this article, the Gibbon article.

23 MR. APPEL. Q Is the article there? A It is.

24 Q Is it in that issue? A It is on the first page, on the
25 first column.

26 Q That is the article you referred to in testifying to

1 here in cross-examination by Mr. Ford? A That I saw
2 yesterday.

3 MR. APPEL. Now, your Honor, we offer this.

4 MR. FORD. We ask leave to cross-examine the witness before
5 it is offered.

6 MR. APPEL. We decline to allow him to cross-examine the
7 witness.

8 MR. FORD. We ask leave of the court; we object to its
9 introduction.

10 MR. APPEL. I offer this in evidence for the purpose of--

11 THE COURT. Do you desire to examine him on voir dire?

12 MR. FORD. On the Gibbon article, yes, your Honor.

13 THE COURT. You cannot insist on cross-examining in that
14 way, except on voir dire.

15 MR. FORD. This document was not exhibited to us, no
16 foundation has been laid.

17 THE COURT. If that is it why didn't you say so, that is
18 what I inquired and you said no.

19 MR. FORD. I misunderstood you. We object to the question
20 on the ground no foundation has been laid, the article has
21 not been submitted to us for examination and we have a
22 right to cross-examine him upon it.

23 THE COURT. Oh, yes, you have a right to examine the
24 article.

25 MR. APPEL. Oh, your Honor, they brought this book in
26 here themselves, they produced it here.

1 MR. FORD. We did not look at the article.

2 MR. APPEL. All that is important, I want to offer it, I
3 offer it for--I am not going to try the case this way.

4 THE COURT. Counsel has a right to insist on his objec-
5 tion.

6 MR. APPEL. We have withdrawn it.

7 THE COURT. That settles it.

8 MR. APPEL. I simply want to show that the article, here,
9 as the witness explained it, when he read the article
10 here referred to, the editorial of the 28th, upon open-
11 ing the book he saw this article there appearing on the other
12 page, that is all there is to it.

13 THE COURT. The offer is now withdrawn.

14 MR. FORD. No, according to this, counsel has already
15 examined the witness concerning that article and now I
16 think we have a right to look at it.

17 THE COURT. You will have a chance to cross-examine in a
18 few minutes, but not now.

19 MR. FORD. We will stipulate it may be introduced in
20 evidence, your Honor.

21 MR. APPEL. I submit, your Honor, this way of trying a
22 case is not proper.

23 THE COURT. The stipulation has been offered and declined
24 and I see no necessity of referring to the stipulation.

25 MR Appel, proceed, you have a right to proceed with your
26 redirect examination. At the present time this newspaper

1 article is in evidence, it is exhibit 41, if my memory
2 serves me, but it has not been marked and cannot very
3 readily be marked. It is, I take it, a file of the Tribune
4 office.

5 MR. FORD. Your Honor stated that the newspaper had been
6 offered. I think that is a little incorrect, the editorial.

7 THE COURT. Did I say, "The newspaper"? I meant to say
8 this newspaper editorial and if I spoke otherwise I mis-
9 sated it. This newspaper editorial is offered as an
10 exhibit but has not been marked.

11 MR. FREDERICKS. We would be very willing, as a matter of
12 courtesy to the people who own the book here, that a copy
13 may be made of such parts as are wished in evidence and
14 that the book should be returned to the files, we are
15 perfectly willing that should be done, but that would
16 require a willingness on the other side, which I presume
17 they are willing also.

18 MR. APPEL. Here is the idea, of course, this book should
19 be returned to the files.

20 MR. FREDERICKS. Possibly, after the trial.

21 MR. APPEL. We will stipulate: We will offer this issue
22 of the 28th of November, 1911, that is the only one that
23 is here, and we may read such portions of it before the
24 jury as you gentlemen wish to comment on and as we want to
25 call attention to, and then the book may be returned.

26 MR. FREDERICKS. No, I think we would not want to go so

1 far as that, the only thing that has been introduced in
2 evidence so far is this editorial.

3 MR. APPEL. No, your Honor, the witness has testified in
4 reference to the Gibbon article.

5 MR. FREDERICKS. I think also in reference to the Gibbon
6 article, but I don't think that has been offered in
7 evidence, but I am not sure on that point.

8 THE COURT. He testified to the physical facts of its
9 existence.

10 MR. FREDERICKS. What counsel wants to show is that the
11 Gibbon article is on the opposite side of that editorial.

12 MR. APPEL. On the first page of the Tribune.

13 MR. FREDERICKS. On the first page of the Tribune.

14 MR. FORD. We will stipulate that.

15 MR. DARROW. That is not what we want, if you will please
16 wait until we get it and then we will stipulate, it is
17 all right.

18 THE COURT. It is almost 12 o'clock.

19 MR. DARROW. We can do this very quickly, if your Honor
20 wants to wait.

21 THE COURT. All right.

22 MR. APPEL. Q Mr. Hawley, you testified that you spoke
23 to Mr. Harriman with reference to the challenge, I think
24 you spoke of a challenge of Mr. Gibbon issued to Mr. Harriman
25 or some discussion, political discussion--am I correct
26 about that?

1 MR. FREDERICKS. That is objected to on the ground it is
2 not redirect and immaterial, for this reason: the only
3 thing that this witness has placed his faith on or pinned
4 his memory to is the editorial, that is what he has pinned
5 it to, as he nods his head now. He has not pinned it to
6 any Gibbon article or anything else. Now, we wish to be
7 at liberty as the facts stand, to talk about that Gibbon
8 article to the jury and to show there is nothing in it,
9 from our view point, that would so refresh the recollec-
10 tion, and the Gibbon article was not gone into by this
11 witness as to what he has fixed the date with.

12 MR. APPEL. But he said on cross-examination he read two
13 columns. Am I correct about that?

14 MR. FORD. That was yesterday.

15 MR. APPEL. Suppose it was day before yesterday? He said
16 so, it was on cross-examination. Now, we want to show
17 what two columns he read and we want him to identify them.

18 MR. FREDERICKS. If that is the question, then my objection.

19 MR. Appel. That is all.

20 MR. FREDERICKS. That is what happened yesterday--then
21 I withdraw my objection.

22 THE COURT. All right.

23 MR. APPEL. Why, certainly, I don't care when he read it,
24 he said he read two columns and I want to identify them.

25 Q Now, you said, if I am right, if not you can correct me--
26 that you read two columns in the Tribune of the 28th day

1 of November, 1911, am I correct?

2 MR. FREDERICKS. That is objected to on the ground it is
3 indefinite; this witness read this paper twice, once
4 on the 28th and once yesterday, and now which time? One
5 might be objectionable and the other might not.

6 MR. APPEL. All right. Q Did you or did you not testify
7 on cross-examination, as follows?

8 MR. FREDERICKS. The only point we make, which time the
9 question referred to.

10 MR. APPEL. (Continuing) --"BY MR. FORD--" Let me put
11 the question, --"BY MR. FORD. Q When you went up to
12 your office and saw the editorial in the Tribune, was that
13 the first thing you turned to look for? A--Oh, no. Q--You
14 remember anything else you read in the paper? A--I read
15 the first page of it. Q--The telegraph news? A--No,
16 I read the political news. Q--On the first page of the
17 Tribune? A--Yes, sir. Q--Do you know how long you were
18 there reading the first page?" "MR. APPEL. That has been
19 answered. Overruled. Exception. A--I have given it to
20 the best of my recollection. I might have been there 5 or
21 10 minutes in my office. Mr. Ford. Q Do you remember any
22 other page you read besides the first page? A I did not
23 read the first page, I read those things that interested
24 me on the first page. Q--The political news? A--Yes, sir.
25 Q--Several columns of political news at that time? A--I do
26 not think there was but two. Q--Two columns? A--Yes, sir

1 Q--National politics and so on? A- No, it was about a
2 Republican meeting the night before. Q Debate between
3 Mr. Gibbon and Mr. Harriman? A No, a speech of Gibbon, it
4 related to the campaign." Do you remember having so
5 testified on cross-examination? A Yes, sir; I do.

6 MR. FORD. Just a moment--

7 MR. APPEL. Q I attract your attention to the first page--

8 MR. FORD --Just a moment--let me get in my objection.

9 THE COURT. Let us have the objection.

10 MR. FORD. We object to it as an attempt to impeach their
11 own witness, not the best evidence, merely a question has
12 been answered, but that is not the proper way for them to
13 read to their own witness what he has testified to during
14 the same examination and questioning him concerning its
15 correctness, the reporter will testify to that.

16 MR. APPEL. I read it because they said they had not been
17 questioning him about it

18 MR. FORD. We did not say anything of the sort. Captain
19 Fredericks objected to the question preceding that on the
20 ground that the question did not show whether it was
21 referring to what he read yesterday or what he read on the
22 28th day of November, it was vague and indefinite, un-
23 certain and no foundation laid for its asking, that is the
24 objection.

25 THE COURT. Suppose you are right about that, the question
26 amounts to an interrogation as to what columns of news he

1 referred to in his cross-examination.

2 MR. APPEL. That is all.

3 THE COURT. Now, if there is something more in the ques-
4 tion it is mere surplusage and I see no harm in it.

5 MR. FORD. I object to his reading page after page
6 of the transcript in the form of a question to his own
7 witness, consuming time.

8 THE COURT. I regard it as surplusage and the time has
9 already been consumed.

10 MR. FORD. It is a precedent, your Honor, which if the
11 court does not sustain now will be followed out further,
12 that is all.

13 THE COURT. I think not. I regard it as surplusage and
14 an unnecessary part of the question, but it is harmless.
15 Now, let us go on and have the answer.

16 MR. APPEL. Q Now, Mr. Witness, I attract your attention to
17 the first page of the Tribune produced here by the prose-
18 cution of date of November 28th, 1911 and will ask you to
19 point out to the court and jury what article you referred
20 to as having read on the first page of that paper of the
21 day in question, just look at it, just examine it. (Witness
22 does so.) A Well, this is the article. (Indicating.)

23 Q This one which says, "Gibbon Challenges Harriman to
24 meet him on statement on aqueduct and harbor issues?"

25 A Yes, sir.

26 MR. APPEL. Now, your Honor, we offer it for the purpose

1 of identifying the article referred to by the witness, we
2 offer this article in evidence.

3 MR. FREDERICKS. It does not appear to be a speech, your
4 Honor.

5 MR. APPEL. It makes no difference whether it is a
6 speech or not.

7 THE COURT. Do you object?

8 MR. FREDERICKS. Yes, we object.

9 MR. DARROW. Just a minute.

10 THE COURT. I want to hear the objection.

11 MR. FREDERICKS. I object on the ground it is immaterial.

12 MR. FORD. This witness has testified, your Honor, that
13 he did not look at that yesterday to refresh his recollec-
14 tion.

15 MR. APPEL. That is not the question, your Honor.

16 MR. FORD. Let me argue the point.

17 THE COURT. Just a moment, gentlemen, I want to look at
18 it.

19 MR. FORD. I ask counsel to not interrupt me.

20 MR. APPEL. I am going to read this again, your Honor, as
21 being asked, what he read on the 28th day of November,
22 1911, and he said he read two columns, one on the first
23 page and one on the editorial page.

24 THE COURT. Q. Do I understand you, Mr. Hawley, to say that
25 the two columns pointed out by you just now are the two
26 columns referred to in your testimony? A. Yes, sir.

1 THE COURT. The objection to the introduction is overruled.

2 MR. APPEL. We ask that it be marked defendant's Exhibit,
3 that is, on the record here.

4 THE COURT. Yes, sir, it will be so identified.

5 MR. APPEL. Cannot we get a copy of this?

6 MR. DEHM. There are two copies there.

7 MR. FREDERICKS. But I think they are different editions.

8 If counsel can find one we will be glad to supply it.

9 MR. APPEL. You have more means of supplying it than I
10 have.

11 MR. FREDERICKS. No, I do not think so. We will be glad
12 to assist.

13 THE COURT. I think it is probable that copies of that date
14 can be produced.

15 MR. FORD. I went down there this morning and there are no
16 copies available and they told me the other side had been
17 ahead of us and could not find any, so I do not suppose
18 there are any that are available.

19 MR. FREDERICKS. Well, we will try to get one.

20 MR. APPEL. Then, for the present this will be what, defend-
21 ant's exhibit?

22 THE COURT. Defendant's exhibit what?

23 MR. APPEL. The clerk is out and will you, Mr. Reporter,
24 get the number of the exhibit and make a copy afterwards?

25 THE REPORTER. Yes.

26 THE CLERK. Defendant's Exhibit K.

1 THE COURT. Defendant's Exhibit K.

2 MR. APPEL. Now, may we, with permission of counsel, waive
3 reading of it?

4 THE CLERK. Exhibit J.

5 THE COURT. Exhibit J.

6 MR. DEHM. Was the reporter the change in the correction
7 of that exhibit number?

8 THE REPORTER. Yes.

9 MR. APPEL. If we cannot get a copy we will have it type-
10 written.

11 MR. FREDERICKS. Let the reporter make a copy of it in his
12 notes.

13 THE COURT. That will do. It will be extended into the
14 record at this point.

15 MR. APPEL. Yes.

16 MR. FREDERICKS. Yes.

17 (The article last referred to and marked Exhibit J
18 to be extended into the record by the reporter, is as
19 follows:) "Gibbon challenges Harriman to meet him on
20 a statement on aqueduct and harbor issues. Citizens rise
21 and cheer when defy is hurled at Socialist standard bearer.
22 Good Government rally greatest of campaign. Opposition
23 charges refuted and defamers of honest men are denounced.
24 Every important campaign argument bearing on the aqueduct
25 and the harbor administration advanced by the Harriman
26 forces was branded as false at the Temple Auditorium last

1 night, and the socialist standard bearer was challenged
2 to controvert the refutations made during the speech of
3 Thomas E. Gibbon. It was the most sensational episode of
4 the campaign, as well as the greatest rally in the cause of
5 good government since the beginning of the struggle for con-
6 trol of municipal affairs. Enthusiasm runs high. Crowded
7 to the doors and hundreds denied admission long
8 before the speaking began, the monster auditorium was the
9 scene of the most enthusiastic meeting yet held in the
10 city. As at the first rally in the auditorium, there
11 were a number of Harriman supporters present who made
12 manifest their presence by incipient demonstrations when
13 their party candidates were mentioned. There was no repeti-
14 tion of the former meeting. Rapid-fire batteries of
15 patriotic oratory silenced them early in the evening and
16 later the opposition adherents sat in silence while cold,
17 hard facts regarding their candidates, their cause and
18 their pet campaign arguments were hurled at them with the
19 merciless rapidity of a machine gun. Harriman Challen-
20 ged. When Gibbon riddled the chief arguments of the
21 Socialist speakers and writers there were bursts of applause
22 but when he challenged the Socialist candidate for Mayor
23 to meet him on the platform and endeavor to refute his
24 statements regarding those same arguments, the entire
25 house arose in enthusiastic demonstration. No less
26 vigorous than Judge Gibbon's speech was that of Mrs. Lou

1 V. Chapin of the Women's Progressive League, who spoke
2 first, 'No real progress,' said Mrs. Chapin, 'is based
3 on anything except justice, honor and experience. The men
4 on the Good Government ticket are asking your
5 on these grounds', on the other side there is defamation of
6 honest men and decrying of the work which these men have
7 so successfully carried on. Where men have done what the
8 Good-Gov (Continued on page 3, Col. 2.) Pointed truths
9 that won cheers at great rally . "Friends, I am
10 going to be reelected Mayor a week from tomorrow, and, as
11 in the past, I am going to be the mayor of all the people
12 and I will treat you people (to the Socialists) just the
13 same as if you had voted for me," --Mayor Alexander. "When
14 the red flag floats over Los Angeles it will float there
15 for the same reason that it floats over a business house
16 that has failed."--Mrs. Lou V. Chapin said, 'the city
17 cannot write a contract that will take from its people the
18 waters of the Owens River. Every statement made by the
19 opposition charging graft in the harbor administration is
20 a lie. I am personally responsible for everything I say,
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1 everything I say and if challenged to prove my statements
2 I will meet Mr Harriman on the platform any night this
3 week and furnish the proof." -- Thomas E. Gibbon. "I
4 would not say that if you scratched a socialist you would
5 find an anarchist. I will say, however, in this campaign,
6 that if you scratch an anarchist you will find a socialist."
7 Tracey C. Becker. "We meet in the interests of a city,
8 not a party, nor any class that raises class hatred for
9 partisan purposes." Rev. Matt S. Hughes. "An earth-
10 quake would be insignificant compared with the injury to
11 Los Angeles by a Socialist victory." R. D. Richards. ")

12 THE COURT: Gentlemen of the jury (jury admonished) we
13 will now adjourn until 2 o'clock. Is there something
14 else?

15 MR APPEL: This paper will be here?

16 THE COURT: Yes, it will be here until it is voluntarily
17 disposed of, until both parties consent to its leaving.
18 I suppose that will be this afternoon. The court will
19 adjourn until 2 o'clock.

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