

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

Clarence Darrow,)

Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 5

I N D E X.

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|---------|--------|-------|-------|
| Direct. | Cross. | Re-D. | Re-C. |
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George N. Lockwood,

309

Bert H. Franklin,

351

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MAY 28, 1912, 2:00 P.M.

Defendant in court with counsel.

G E O R G E N. L O C K W O O D,

on the stand for further cross-examination.

MR. ROGERS. Q Did you come up from Third and Los Angeles Streets to Third and Main with anybody or accompanied by anybody? A Accompanied by Bert Franklin.

Q By any one else? A Why, Captain White was with us for a short distance but dropped behind.

Q You did come up with Bert Franklin? A Yes, sir.

Q Did you see Mr. Brown while you were walking up with Bert Franklin? A No, sir not until that point was reached.

Q Not until Third and Min street was reached? A Yes, sir

Q You knew he was there about, didn't you? A Supposed he was; hadn't seen him that day.

Q When you turned around you saw him directly behind you didn't you? A I did not see him until just as he put out his hand that way separating Mr. Darrow and Bert Franklin; at that point I saw him.

Q Well, he was right there by you when you saw him?

A I couldn't tell you where he was for I didn't see him.

Q Did he come from behind you when he went out and separated, as you have indicated? A I did not see him until just that moment, I looked back then and saw him.

Q How far behind you was he? A I am sure I don't know.

Q Well, how far away from him were you when you first saw

1 him? A Oh, I should judge possibly 20 feet.

2 Q Hear any conversation? A Not a word.

3 Q Heard no word from any person at that time? A No, sir.

4 Q How far, if you can recall, had you gone up the street
5 from Third and the intersection of Third and Main on the
6 east side of the street? A Why, I should judge nearly
7 up to the intersection of Third where it goes west.

8 Q Can you give us an estimation in feet? A No, I
9 couldn't--100 or 150 feet, such a matter. I never measured
10 it.

11 Q How soon after Mr. Franklin left Mr. Darrow was it that
12 Mr. Brown came in? A ^{It} /Was just at that instant the two
13 men had just met when I saw Brown for the first time that
14 day.

15 Q What did you see Mr. Darrow do? A I did at that time.

16 Q What did you see him do? A Why, he had walked across
17 the road, I saw him as he came across, and there two men as
18 they met, and Bert said, "Wait a moment, I want to speak
19 to this man", or words to that effect.

20 Q Franklin said that? A Yes, sir.

21 Q "Wait a moment I want to speak to this man?" A yes.

22 Q Mr. Darrow say anything or nod his head or give any --

23 A I couldn't tell you. They were in the street and possibly
24 20 feet from me. I think they possibly were going to shake
25 hands, or something of that kind, I couldn't tell you--

26 I just started there when I looked over my shoulder and saw

1 them just at that moment.

2 MR. FREDERICKS. We move what the witness says he thought
3 be stricken out as not responsive and a conclusion of the
4 witness.

5 MR. ROGERS. I take it that his answer is synonymous with
6 "appeared about to shake hands."

7 THE COURT. Is that what you understand?

8 A As I looked around Brown reached out his hand and separa
9 ted them.

10 THE COURT. Motion to strike out denied.

11 MR. ROGERS. Q Did you notice Mr. Darrow coming across
12 the street before Bert said, "Wait a moment I want to speak
13 to this man."? A yes, sir.

14 Q What was it that attracted your attention to him?

15 A Why, it is a congested corner and the men seemed to
16 be in a hurry to get through the traffic there, attracted
17 my attention, that is the only thing that I can tell you.
18 I had no idea about him or who he was.

19 Q The men appeared to be walking rapidly? A Yes, seemed
20 to be to get through the crowd.

21 Q You knew at that time Mr. Harriman's office or his cam-
22 paign headquarters were right at that corner of Third and
23 Main? A I didn't know it and never heard of it.

24 Q On the east side of the street just below Third on Main?

25 A I never heard of it until this moment.

26 Q You knew Mr. Harriman was connected with this case? A Yes,

1 sir.

2 Q You knew he was in the midst of his campaign? A Yes,
3 I knew that.

4 Q You didn't know where his headquarters were? A No, sir
5 and I didn't know the man.

6 Q Never saw him? A I presume I did. I wouldn't know him
7 if I met him now. I never have met him in the sense of
8 meeting a man.

9 Q Mr. Darrow didn't attract your attention except that he
10 was walking rapidly? A Coming across to the congested
11 corner, I don't know why I saw the man as he came across,
12 and that is all I could tell you.

13 Q He appeared like a man that was trying to get through
14 the congested corner where there are many cars and auto-
15 mobiles and much traffic? A Certainly, coming through.

16 Q Appeared to be a man going through that kind of a situa-
17 tion? A Yes, he was going somewhere.

18 Q And as I understand you, you had never seen him before?

19 A Not that I know of.
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e 1 Q Now, I want to direct your attention again, if you will
2 refresh your recollection and search your mind as to the
3 time when you went to the District Attorney's office the
4 first time.

5 A Well, it was some time in the week of the -- as near as
6 I can recollect some time in the week of the 15th or 16th
7 or 17th, just what date I don't know.

8 Q Would it be the following Tuesday morning?

9 A I am sure I couldn't tell you whether it was Tuesday
10 or Wednesday.

11 Q Didn't you testify at the preliminary examination
12 of Bert Franklin as follows, page 18, in Case No. 1124:
13 "Q What if anything did you do next in connection with this
14 case? A I went and saw the District Attorney. Q When
15 did you see him? A On the following Tuesday morning, as
16 near as I can tell. Now, I made no dates of this, no
17 memorandum of it, but I think it was the following Tuesday
18 morning."

19 A I presume that is correct.

20 Q Your memory was much fresher then than it is now?

21 A Yes sir.

22 Q And you may say that is about the situation?

23 A As near as I can tell.

24 Q Well, that was the Tuesday after the 8th of November,
25 which was Saturday, was it not? A No, I don't think it
26 was.

1 Q You saw him on the 4th first? A Who?

2 Q Franklin? A Yes.

3 Q Of November? A Yes.

4 Q And then you saw him on the 9th? A Yes sir.

5 Q And then you saw him -- then you went to the District
6 Attorney's on the following Tuesday?

7 MR FREDERICKS: No, may it please the Court, that is not the
8 testimony.

9 MR FORD: I think there is a mistake here in the transcript
10 as to dates; in one place it appears Saturday the 11th of
11 November and a couple of lines later Saturday, November 8th;
12 the fact is the Saturday was November the 11th. If counsel
13 will look a couple of lines, to Saturday November the 11th,
14 the second one is undoubtedly a mistake.

15 Q BY Mr ROGERS: Well, you saw him Tuesday following that
16 interview at his office? A I think it was that date, as
17 near as I could remember.

18 Q Had you seen him between that time and the time at his
19 office -- A Who?

20 Q Franklin? A Yes sir.

21 Q And the time you went to the District Attorney? A Yes
22 sir.

23 Q You saw him at his office on Saturday? A No sir.

24 Q On what day? A Thursday.

25 Q How soon after you had your conversation with Franklin
26 at his office was it you made up your mind to go and see the
District Attorney? A I couldn't tell you.

1 Q Why can't you tell me? A Well, I don't know just when
2 I made up my mind to do it.

3 Q How soon after the conversation A Well, that I
4 couldn't say. I made up my mind possibly just then that
5 the District Attorney ought to be informed. In my judgment
6 there was some difficulty, or would be some difficulty, in
7 reaching the District Attorney safely, possibly, with the
8 information.

9 MR ROGERS: Read that answer to me, please.

10 (Answer read)

11 Q By Mr Rogers: You made up your mind there would be some
12 difficulty in reaching the District Attorney safely with the
13 information? A Possibly.

14 Q What were you afraid of? A No fear, but I judged
15 if a man was in the business that Franklin apparently was
16 that the District Attorney's office would be very closely
17 watched and the fact of my appearing there might attract
18 the attention of one of those watchers and the good of what
19 I had to say to the District Attorney might be lost in that
20 way, that was my reasoning.

21 Q The good you might have to say would be lost?

22 A The good of what I had to say, might be lost.

23 Q The good of what you had to say would be lost?

24 A Might possibly be, I say.

25 Q How did you expect the good of what you had to say to
26 be lost if you went to the District Attorney's office?

A Well, it was my reasoning in my mind, perhaps it was

1 wrong, but I figured that people that were engaged in that
2 kind of business would be watching it very carefully, and I
3 sought to seek the District Attorney without attracting any
4 attention whatever, if I could.

5 Q How did you figure the good would be lost?

6 A Perhaps that is a strong word, it might be made more
7 difficult.

8 Q What you mean to say, if Franklin knew you went to
9 the District Attorney he wouldn't trust you any more?

10 A I think that is about it.

11 Q Then you wanted him to talk to you some more?

12 A I wanted the District Attorney to learn --

13 Q You say the good of what you had would be lost?

14 A Yes sir, lost.

15 Q If Franklin knew you went up there? A Yes sir, possi-
16 bly.

17 Q What you meant was you couldn't trust Franklin, is that
18 true? A No.

19 Q Explain just what you mean by "the good of what you
20 knew being lost if Franklin knew you went to the District
21 Attorney"?

22 A To explain the workings of my mind, I
23 thought it would be better to see the District Attorney
24 without knowledge of the other side, if that is plainer,
25 a reasoning of my own mind
26

3p 1 Q And what good did you expect would be lost if Franklin
2 knew you went to the district attorney? A Well, I didn't
3 think the result of the interview to the district attorney
4 would be so far reaching as it would if he was not aware
5 of the fact I went there.

6 Q Far reaching in what respect? A In the closing up of
7 that infamous proposition of bribing the jury.

8 Q In closing up the infamous proposition of bribing you?
9 A Yes.

10 Q That is your idea? A Yes, sir. It may be crude, but
11 that is what I figured on.

12 Q What precautions did you take when you went to see the
13 district attorney? A I went very quietly and I didn't
14 use the elevator, and so on.

15 Q And for what reason? A The very reason I gave you.

16 Q You didn't want Mr. Franklin to know you had been up to
17 see the district attorney? A No, sir, nor the managers
18 of the McNamara trial.

19 Q And you thought if they would know it they would not
20 approach you any further? A I thought if they did know it
21 it might block the wheels of justice.

22 Q Block the wheels of justice. Answer my question, please.

23 MR. FREDERICKS. We submit that he has answered it.

24 MR. FORD. I don't think the counsel has any right to use
25 that tone of voice.

26 MR. ROGERS. I withdraw the tone. Please answer the question.

1 THE COURT. Read the question.

2 (Question read.)

3 THE COURT. Is that your question?

4 MR. ROGERS. Read it.

5 (Last question and answer read.)

6 MR. FORD. Read the answer too.

7 (Last answer read by the reporter.)

8 MR. ROGERS. That is not an answer.

9 MR. FREDERICKS. We submit it is an answer.

10 THE COURT. There was another question asked there, wasn't
11 there?

12 MR. ROGERS. No, sir.

13 THE COURT. Read what follows.

14 (Statement read by the reporter.)

15 THE COURT. I think the question is answered.

16 MR. ROGERS. Q You thought then if Mr. Franklin knew you went
17 to the district attorney he would not approach you any
18 more? Isn't that true? Please answer. A I don't think
19 that I had any thoughts along that line for I supposed I
20 was through with Franklin so far as his approaching me at
21 that time.

22 Q Then why did you mean to say that the good that would
23 come of your statement would be interfered with if Frank-
24 lin knew you had been to the district attorney if you
25 didn't expect any further interview or any trips or any
26 thing of that kind? A I reasoned in this way that if the

1 people that were engaged in that proposition knew that I
2 went there they would surmise why I went there and what I
3 went there for and it would be making it just that much
4 harder to catch them.

5 Q And you wanted to catch them?

6 A I certainly did.

7 Q And you wanted Franklin to do some more, didn't you?

8 A I had no control over Franklin at all.

9 Q You wanted him to? A I wanted the practice or the
10 thing that was being done stopped.

11 Q The thing that was being done to you stopped? A And
12 to others.

13 Q How did you know otherswere doing it? A He told me
14 himself.

15 Q You wanted it stopped and you went to the district
16 attorney quietly and secretively, just as carefully as
17 you could? A Yes, sir.

18 Q Because you expected the good that would come of your
19 s tatement to be lost if Mr. Franklin didn't approach you
20 any further, isn't that true? A No, sir, not approach
21 me, because I didn't expect him to approach me any more
22 after I told him I would have nothing more to do with it.

23 Q And did you mean it, you wouldn't have anything more to
24 do with it? A I did, yes, sir.

25 Q You had known Bert Franklin a long time, hadn't you?

26 A A long time.

1 Q Been associated with him? A In a measure.

2 Q You were court bailiff for a godd many years, weren't
3 you? A No, sir.

4 Q You were not bailiff inthe Superior Court of this County?

5 A No, sir.

6 Q And never were in a court roomas bailiff? A No, sir.

7 Q What was your office in the sheriff's office? A I
8 was loated in the jail most of the time.

9 Q In any other business? A Yes, I had charge of the
10 chain gang a long time.

11 Q And at that same time Mr. Franklin was one of your co-
12 deputy sheriffs? Did you say to him, "Bert, you ought
13 not to do this to me; I have always thought you an honest
14 man", or words to that effect? A No, sir.

15 Q Did you think he was an honest man up to that time?

16 MR. FREDERICKS. Objectedta upon the ground that it is
17 immaterial and not cross-examination what he thought about
18 Bert Franklin.

19 MR. ROGERS. It explains the situation.
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1 THE COURT. It seems to me that the psychology of this
2 witness was pretty analyzed this morning along this parti-
3 cular line.

4 MR. ROGERS. I didn't ask that question.

5 THE COURT. Perhaps not in those precise words, Mr. Rogers.

6 MR. ROGERS. If your Honor thinks I have asked it I will
7 not repeat it.

8 THE COURT. I think you ought to have the very broadest
9 latitude in matters of this kind, but ^I think that question,
10 in substance, has been asked and answered, to my best
11 recollection. Read it again.

12 MR. ROGERS. Their friendliness, but not as to their honesty.

13 THE COURT. Let's have the question read.

14 (Last question read by the reporter.)

15 MR. FORD. If the Court please, we object to that as not
16 competent and it is irrelevant and immaterial and not cross
17 examination. It is an attempt to attack the reputation of
18 another witness in a manner not permitted by law. They
19 expect Bert Franklin will take the stand here and they
20 desire to attack his honesty and integrity in a manner
21 that the law does not permit. I don't know what this witness'
22 opinion is or that it is absolutely material what it is,
23 and they are seeking to make an argument--the question is
24 argumentative--they are seeking to create an argument with
25 this witness whether he did the proper thing under the cir-
26 cumstances; whether he did do the proper thing under the

1 circumstances or whether he did not, is a matter that
 2 counsel can argue to the jury when the time to argue to
 3 the jury comes, but this is not the time to indulge in an
 4 argument between himself and the witness, whether he did
 5 the proper thing or whether he should have cautioned a
 6 friend not to repeat an offense or whether he should have
 7 gone and advised the district attorney and to wait to see
 8 if he did attempt to repeat the offense. This witness
 9 has been examined fully in regard to that matter and has
 10 already testified that not only had he been approached
 11 by Franklin but Franklin told him there was another man
 12 on the jury, and it was certainly his duty to go and tell
 13 the district attorney, as it was that of any good citi-
 14 zen, that there was a man on that jury whom he had informa-
 15 tion concerning that had been bribed.

16 THE COURT. I was mistaken about that same question having
 17 been asked. The question asked heretofore was in regard
 18 to the friendship between this witness and Mr. Franklin.
 19 This is a question as to the witness' opinion of the honesty
 20 of Mr. Franklin. I don't think it is competent. Objection
 21 sustained.

22 MR. ROGERS. Exception. Q You said this morning that
 23 you thought you had seen it in the paper that you had been
 24 --your name had been drawn from the box as a salesman?

25 A I thought what?

26 Q Didn't you say that you thought you saw it in a paper

1 that your name had been drawn from the box as a talesman?

2 A At what time?

3 Q At any time, sir. A I might have seen it in a paper
4 afterwards, but I don't remember to have said anything
5 of the kind. I don't know that I did see it in a paper.

6 Q Wasn't that your explanation this morning for how you
7 knew that you had to show up in court on the 28th?

8 A No, sir, it was not.

9 Q It was not your explanation this morning? A Posi-
10 tively not. My explanation this morning I said I may
11 have read it the time when the court met, in the papers.

12 Q Did you read in the paper that the panel upon which you
13 were drawn was returnable on that date? A I don't remem-
14 ber that I did. The fact is that just at that time I
15 was working very hard, late and early, very hard work, and
16 I don't think I looked at the paper at all. The second,
17 third, nor fourth day of the month, morning, noon or night
18 either.

19 Q I will ask you if you didn't answer this way just this
20 forenoon: "Q Then why did you tell him--" that is
21 Franklin--"you would have to be in court when you had not
22 been served? A It was an inference I drew from the fact
23 he told me my name had been drawn and it would be returnable,
24 I think, possibly I read that in the paper that the venire
25 would be returnable on that day. Q What paper? A I
26 couldn't tell you. I think I was taking the Tribune at the

1 time. Q And you think you read it in the Tribune? A I
2 think so, yes. That is my best impression now. I didn't
3 charge my mind with it at all." Now, why was it you
4 answered me just now that you didn't read it in a paper?
5 MR. FORD. If the Court please, I desire that the witness
6 be shown the record of this morning's proceedings.
7 MR. ROGERS. Yes, sir, right here.

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Smith1 MR FREDERICKS: I think while they are looking at it, I
2 think the question is subject to another objection. I noticed
3 in the witness' answer a little while ago he said he was
4 working very hard. He said he didn't read the paper on the
5 2nd, 3rd or 4th of November. Evidently his mind has been
6 on the 2nd, 3rd and 4th of November, in counsel's previous
7 questions. That was his answer. This referred to the 24th
8 and 25th of November, and the 26th, somewhere along there.

9 MR ROGERS: I was very explicit and asked him about the
10 paper and the venire. I think he understood me.

11 MR FORD: Objected to on another ground --

12 THE COURT: I think the witness should be given a chance to
13 read this over without being disturbed. Have you read it
14 over? A Yes.

15 MR FREDERICKS: I didn't assume we were disturbing.

16 A No, it didn't disturb me.

17 MR FORD: I object to it on the ground it doesn't impeach
18 or tend to impeach any testimony given this afternoon. I
19 attract your Honor's attention to line 8. "I think possibly
20 I read that in the paper that the panel would be returnable
21 on that date. Q Did you read it in the Tribune? A I think
22 so, that is my best impression. I didn't charge my mind
23 with it at all." That is, that the venire would be return-
24 able. Counsel is asking him if he saw in the paper that he,
25 Lockwood, was drawn on the jury, which is entirely a differ-
26 ent question, which doesn't in any wise impeach or tend to

1 impeach the testimony given by him this afternoon. He said
2 that he didn't remember that he had been drawn on the jury.
3 He said possibly he read in the paper the Court would convene
4 at that time.

5 THE COURT: I think you missed a question, Mr Ford. The
6 foundation for this question, Mr Rogers asked him if he had
7 read in the paper that a venire would be drawn on that morn-
8 ing and then asked this question.

9 MR FORD: I think he did read that his name was in the venire.

10 MR FREDERICKS: However, if the Court will have the reporter
11 read back, he will see that this witness is talking about the
12 3rd and 4th of November; that is what he said. He didn't
13 think he read the paper on the 3rd and 4th of November, his
14 mind must have been along that line. So that there is an under-
15 standing; that is all I care about.

16 THE COURT: Have you the question in mind now so you can
17 answer it? A I think so. My answer to the question that
18 I didn't read the paper the 2nd, 3rd or 4th was a week prior
19 to this question of my appearance in court would be. Now,
20 I am of the opinion I did read at the time the venire was
21 drawn it would be returnable on Tuesday morning. I am still
22 of that opinion that I read that in the paper and not that
23 my name was in it at all, and that the venire would be
24 returnable at that time. I think I read it.

25 Q You are satisfied now with your answers and do not
26 desire to change them? A I do not see why- perhaps there

1 is some little technicality in there that I overlooked, but
2 I am not bright enough just now to see it.

3 Q You say that the 2nd, 3rd and 4th were a week prior?

4 A Yes sir.

5 Q You just answered that? A Yes sir.

6 Q The 2nd, 3rd and 4th were considerably longer than a
7 week prior? A Yes, but there is where I was, I testified
8 I was too tired to read the papers.

9 Q But that was a long time before the return of the
10 venire, was it not? A Yes sir, I think it was, that is
11 the reason I read it.

12 Q Three weeks? A Yes sir.

13 MR FORD: We object to that as argumentative, and a mathe -
14 matical calculation.

15 THE COURT: I think Mr Ford is right in that, it is getting
16 into a debate.

17 MR ROGERS: I beg the Court's pardon.

18 THE COURT: I think the last question was argumentative, and
19 to it and

MR FORD objected/on that ground, and I think he is right.

20 Q By Mr Rogers: Now, when you called up from El Monte
21 did you call Franklin's house or Franklin's office?

22 A The office.

23 Q What time of the day or night was that? A Along towards
24 evening.

25 Q About what time? A Oh, it must have been five o'clock,
26 in there.

Q What did you say to him? A I told him that I was un-

1 able to call him up and make the appointment there in town,
2 and therefore called him up out there.

3 Q What did he say to you? A He said he would come out.

4 Q Which was what you wanted him to do? A What he said
5 he would do.

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6p. 1 Q What you wanted him to do? A What he said he would
2 do.

3 Q What you wanted him to do?

4 MR. FORD. We object to that as irrelevant and immaterial,
5 what the witness wanted him to do.

6 MR. ROGERS. An accomplice, a cross-examination as to
7 motives and actions.

8 MR. FORD. There is nothing showing that this witness is
9 an accomplice.

10 MR. ROGERS. Feigned or otherwise, take your choice.

11 THE COURT. Objection overruled.

12 A Yes, I think I wanted him to come out.

13 Q BY MR. ROGERS. Did he tell you what time he would be
14 out? A Yes, sir.

15 Q What time did he say? A Why, I think he said 8:00
16 o'clock, as near as I can remember now, that was his answer

17 Q Didn't you testify this way while you have been on the
18 stand: "Q What was the conversation? A I told him I
19 had been unable to make the engagement in town; I had
20 gone to El Monte, was telephoning him from there, and he
21 said he would come out to the house and I told him 'All
22 right! He asked me if he should bring the Big Fellow with
23 him and I said, 'Yes', and he said he would be right up
24 there, and I suggested that 9:00 o'clock would be the
25 proper time "? A That is correct, with the exception he
26 said 8 and I said ~~Mr~~ 9.

1 Q I am asking you what you said about it. A Yes, I
 2 think that is right.

3 Q He said 8 and you said 9? A Yes, sir.

4 Q And he said "All right"? A Yes.

5 Q Was there anybody in the barn when you went out to the
 6 barn? A At what time?

7 Q That night. A Yes, sir.

8 Q Who was out there in the barn? A A man named Hicks
 9 and the other names I don't know.

10 Q Who suggested that you go to the barn? A I couldn't
 11 tell you--Oh, with Franklin?

12 Q Yes. A He says, "Come on around, let us go around."

13 Q Then he suggested that you go to the barn? A Yes.

14 Q Hicks was already in the barn? A Yes.

15 Q For the purpose of listening? A Yes.

16 Q Who suggested the time you should meet down on Third
 17 and Los Angeles? A Mr. Franklin.

18 Q Mr. Franklin suggested that to you? A Yes.

19 Q Now, isn't this what you testified to while you were on
 20 the stand, that is on page 215: "If I remember right, I
 21 suggested that at that hour we were to meet there about
 22 the time I would have to be up at the courtroom and then
 23 he made this remark about there going to be no court.?"

24 A Well, if that is in the record and as you read it--
 25 MR. FREDERICKS. May it please the Court, we would ask that
 26 the witness have an opportunity to look at the entire

1 record in regard to that matter before answering the ques-
2 tion.

3 THE COURT. He is entitled to it.

4 MR. ROGERS. Certainly. 215, commencing at line 6. I
5 didn't read all the answer, but I read that part I called
6 his attention to.

7 THE COURT. You are entitled to have all the time you want
8 to to examine the record.

9 MR. FREDERICKS. Let the witness read a little ahead and
10 follow through it to get the context.

11 MR. FORD. Line 21, on the previous page, 214--

12 MR. ROGERS. I am possibly cross-examining this witness,
13 I appreciate all suggestions and aid--

14 MR. FORD. I suggest to the witness in order to refresh
15 his recollection that he look at it, and refrain from mak-
16 ing any suggestion to counsel.

17 MR. ROGERS. That is good.

18 A I think I can understand where this question comes
19 in, I think possibly just before that you will find
20 that something else--

21 MR. ROGERS. All right, go ahead.

22 THE COURT. You are entitled to all the time you want to
23 examine the record to your entire satisfaction.

24 A (After examining record.) I am ready now to make an
25 explanation and answer that question.

26 MR. ROGERS. Go right ahead, sir.

1 MR. FORD. If the Court please, I would like to submit
2 this to the Court and suggest by way of an objection,
3 before the witness answers. We object to the question
4 on the ground that it does not in any wise impeach nor
5 intend to impeach any testimony given this afternoon. Now,
6 your Honor recalls that he is now testifying that Franklin
7 suggested Third and Los Angeles street. I call to your
8 Honor's attention the question asked by counsel, taken in
9 connection with the preceding line, beginning at the bottom
10 of page 214, line 26: "Q Now, then, let us come down to
11 the morning of the 28th. Was there any discussion between
12 you and Franklin in regard to the time when the jury was
13 called to meet in Los Angeles? A There was, if I remember
14 right, I suggested that at the hour we were to meet there,
15 about the time I would have to be up in the court room, and
16 then he made this remark about there going to be no court,
17 and I said the Judge would be calling the venire that
18 had been issued the panel and I would have to be there to
19 answer to my name. He said I would have ample time to
20 get there.

21 Q What did you do the next morning?"
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Pete 1 Did your Honor see that answer in connection with the
 2 question means, I suggest, "that hour we were to meet
 3 there." It doesn't mean that they were talking about the
 4 time, the witness didn't suggest the place of meeting or
 5 suggest the time of meeting at that place, and I am sure it
 6 doesn't even in the remotest degree impeach the testimony
 7 that the witness now gave that Franklin suggested the place
 8 of the meeting. The witness' answer here taken in con-
 9 junction with that question preceding it means that the
 10 witness suggested the time.

11 MR ROGERS: I ask the question here, and I intended to:
 12 "Did you suggest the time of the meeting?" I didn't suggest
 13 the place of the meeting.

14 THE COURT: I think the witness better answer the question.

15 A Will you read the question. (Question read.)

16 MR FORD: Read the question preceding that on which he
 17 sought to impeach.

18 MR ROGERS: It may not be on that question, it may be
 19 something else.

20 MR FORD: We are entitled to that, if you will read the pre-
 21 ceding question so that the Court will see. Read the pre-
 22 vious question.

23 (Last three questions and answers read).

24 MR FORD: It does not in any wise impeach either time or
 25 place.

26 THE COURT: Now, Mr Lockwood, you have seen the transcript

1 and read from it such portions of it as you want? A Yes sir.

2 Q Answer the question. A Read the question again.

3 (Question read) A I would answer that, if I did use that
4 language it was poor English. What the question seems to me
5 to be was, I told him the hour he had suggested would inter-
6 fere with my being in court.

7 Q By Mr Rogers: Then you did tell him that, did you?

8 A I think so, yes.

9 Q Who suggested the place of meeting? A Franklin.

10 Q Did you suggest any place of meeting? A Yes sir.

11 Q You suggested the Federal Building, didn't you? A I did.

12 Q That is the post office? A Yes sir.

13 Q And Franklin suggested Third and Los Angeles?

14 A Franklin objected to the post office and suggested
15 Third and Los Angeles.

16 Q What did he say that evening about Third and Los
17 Angeles, if anything? A He said that everybody knew him
18 there and that it would not be an appropriate place to meet.

19 MR FREDERICKS: We would ask --

20 MR FORD: Read that question.

21 MR FREDERICKS : The answer is that "everyone knew him there";
22 unless he shows what he means by "there", the answer is am-
23 biguous.

24 MR ROGERS: It might be well enough on redirect examination
25 to clear that up.

26 MR FORD: So that we would understand it, I would like to

1 have the question and answer read.

2 THE COURT: Read the question and answer.

3 (Last question and answer read).

4 A I protest that wasnot my answer to that question.

5 MR FORD: I think it was.

6 THE COURT: What is your answer?

7 A I said I suggested the Federal Building and that Bert
8 said that it would not do, because everybody there knew him,
9 Franklin, and that it would not be an appropriate place to
10 meet.

11 A By Mr Rogers: What did he say about meeting at Third
12 and Los Angeles, if anything; that night? A He just sug-
13 gested thatplace, said we would meet there.

14 Q Did he say anything else? A He said Captain White
15 would be there with him.

16 Q Did he say on the corner, or in the building, or in a
17 room, or any place? A No sir, "corner Third and Los Ange-
18 les".

19 Q On the street? A Yes sir.

20 Q And you both understood you were to meet on the Street?

21 A Sure.

22 MR FREDERICKS: That is objected to, may it please the Court--

23 MR ROGERS: Did you?

24 MR FREDERICKS: The use of the term " both " calls for an
25 understanding from some second or third party, this witness
26 cannot ~~understand~~ know what someone else understood and can only

1 answer for himself.

2 THE COURT: He has already answered the question.

3 MR FREDERICKS: If he has, then I withdraw the objection,
4 taking a chance on what somebody else thought.

5 Q By Mr Rogers: Did you say anything else about Captain
6 White being at Third and Los Angeles? A In the discussion
7 before that I had objected to Captain White, but he strongly
8 favored him.

9 Q When you got in sight of the corner the first man you
10 saw was White that you knew? A Yes sir.

11 Q He was standing on a prominent corner? A Yes sir.

12 Q How far away could you see him? A I really didn't
13 measure the distance to notice.

14 Q I understand. What I mean to say, some distance?

15 A When I got so I could see the corner I could see Captain
16 White, how far that is I don't know.

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8p 1 Q A great many passing and repassing? A There were
2 some people passing and repassing.

3 Q On both sides of the street? A I think so

4 Q And in each direction, up and down Los Angeles, and up
5 and down Third? A I think so, at times.

6 Q Street cars running there every few moments? A Every
7 once in a while.

8 Q Teams and automobiles? A I presume so.

9 Q And one thing and another of that sort? A I really
10 didn't notice them very much.

11 Q I understand, but you know it is a busy corner? A Yes,
12 there is a corner there and there is traffic on the street.

13 Q There is a saloon there on the corner, on the northeast
14 corner? A Yes, sir.

15 Q Did you go in the saloon? A I did not.

16 Q On the opposite corner there is some kind of a place of
17 business, isn't there, a wholesale house? A Yes, sir.

18 Q Did you go in there? A No, sir.

19 Q Did you go into any building at all? A No, sir.

20 Q Did all the business out on the sidewalk? A All out
21 on the sidewalk.

22 Q At a quarter past nine in the morning? A Yes, sir, that
23 is about the time I got there.

24 Q In the presence of so many people? A I don't know--

25 Q Well, possibly 50 people within sight, is that your
26 recollection? A I presume -- I didn't count them, I don't

1 know.

2 MR. FREDERICKS. Then, may it please the Court, we ask
3 that that part of the witness' answer, "I presume so," be
4 stricken out as inconsistent with another part, "I don't
5 know."

6 MR. ROGERS. That is his best recollection.

7 MR. FREDERICKS. I don't know whether it is or not. It
8 may be simply a wish to answer a question and get rid of
9 it.

10 THE COURT. Want to make any explanation of that? A I don't
11 know whether there was one man or twenty or thirty saw it
12 or heard it. I have no idea who did see it.

13 MR. ROGERS. Q Then if you were not noticing other people
14 and didn't know whether there were fifty there or one
15 there and paid no attention, how did you happen to notice
16 the man that came up on the motorcycle? A I just knew
17 he came up and stopped.

18 Q You knew him? A I think he was one of the party that
19 was out there the night before but a perfect stranger to
20 me.

21 Q You knew he was one of the parties who was out to the
22 house? A I think he was. Those I didn't know I only
23 saw in the night.

24 Q And at that particular moment you dropped the bill so
25 the man on the motorcycle could see it? A I expected there
26 was someone there that could see it.

1 Q Please read my question so I may have an answer to it.

2 (Last question read by the reporter.)

3 A I expect that he saw it.

4 Q You dropped it so he could see it? A Yes, sir.

5 Q And that was your intention in dropping it? A Yes, sir.

6 Q Why didn't you answer that way first?

7 MR. FORD. Objected to as irrelevant and immaterial.

8 THE COURT. Objection sustained.

9 MR. ROGERS. Q Now, when Franklin said to you, "Don't look
10 round; don't turn round; stand perfectly still.", where
11 was that? A Oh, that was up perhaps forty or fifty feet
12 from the corner of Third and Los Angeles on Third going
13 towards Main on the north side of the street.

14 Q Franklin said that? A Yes, sir.

15 Q Did you look around? A No, sir.

16 Q You knew what he meant, didn't you? You understood it?

17 A Why, I had an idea that there was someone there that he
18 didn't want to see.

19 Q What else did he say about that? A Well, he made that
20 one remark, "Sons-of-bitches."

21 Q Anything else? A "Let's get out of here, come on."

22 Q Well, you knew who he referred to by that eupheneous
23 title? A Well, I perhaps inferred.

24 Q You recognized the description, anyway? A Well, judg-
25 ing from the condition of things there possibly I knew who
26 he meant. I had an idea. I didn't look to see, though.

1 Q Why not? A Well, I thought they could tentto their
2 business without my interferring with them in any way, shape
3 or manner.

4 Q And you thought you could attend to yours? A I try
5 to.

6 Q By the way, did you observe any women inthe automobile
7 at any of Franklin's visits out to the ranch? A I heard
8 them, wasn't able to see them more than to hear them. I
9 knew there was one or more women there.

10 Q On what occasion was that that you heard or observed
11 that there were some women in the automobile? A My
12 impression is that it was Saturday evening.

13 Q Was anybody with Franklin except the chauffeur or
14 driver, apparently, of the car, at any of his visits,
15 except onthis visit when some women's voices were heard
16 by you? A Well, that I couldn't say?

17 Q Well, what is your observation of it? A Well, I
18 couldn't observe. The last time that he was out there
19 in the night, the night that he came out there the night
20 of the 26th, I didn't see his automobile or hear it nor
21 didn't know that he had one there excepting that he ^{said he} stopped
22 up the road about a quarter of a mile, and heard it when it
23 went by, or supposed it was it wen it went by without any
24 lights, a little while after he left there.

25 Q Now, if you will be kind enough to read the question
26 to him again I would like to have an answer to it.

1 (Last question read by the reporter.)

2 A I couldn't observe it at all. It was dark and I
3 didn't see it that night.

4 Q Now, that is the 26th? A Yes.

5 Q How many times altogether did he come out there in a machine?

6 A Well, he was out there the 4th, and he was out there
7 the 11th, and he was out there the 25th in the daytime
8 or the 26th, I should say.

9 Q The 26th in the daytime? A Yes.

10 Q And the 25th at night? A No, he was out there on Sunday
11 I think that was the 26th, in the daytime.

12 Q Now, was he there three or four times? A He was there
13 twice--he was there altogether four times.

14 Q Did you observe anybody with him on any of those occa-
15 ssions, these four times, except the driver of the car?

16 A And one other time I heard women in the car, one or
17 more.

18 Q Which time was that? A My impression is that it was
19 on Saturday night when I told him I wouldn't have anything
20 more to do with the proposition; that is my recollection
21 of it.

22 Q And aside from that time you observed nobody in the
23 machine with him except the driver? A That is all.

24 Q Could you say whether there was or was not anybody there
25 or not, or wouldn't you be able to say? A If there was
26 in the daylight on Sunday I didn't see them, and I looked

1 right at the machine, and the other times I didn't see or
2 hear any one only the once, any one but the driver.

3 MR. ROGERS. That is all.

4
5 REDIRECT EXAMINATION.

6 BY MR. FREDERICKS.

7 Q Between the time, Mr. Lockwood, when you first reported
8 this matter to the district attorney's office, and the
9 time on the 26th, when Franklin came to you again, did you
10 attempt in any way to get into communication with Franklin
11 or induce him to renew his offer? A I did not.

12 Q Now, calling your attention to the testimony this morning
13 at page 211 in regard to the one who mentioned the place
14 on the corner, I will ask you if you did not testify as
15 follows, being at line 11, in the middle of the answer: "He
16 said--my impression is he said he could not get it that
17 night but he said he had arranged to have me meet him and
18 Captain White on the corner of Third and Los Angeles at
19 10 o'clock the next morning." Did you so testify? A Yes,
20 sir.

21 Q At the time on Sunday, the 26th of November, when Frank-
22 lin came out to you did you know that he was coming?

23 A I did not.

24 Q Now, at the time when he came there on the night of the
25 27th when the officers were there, what was said about which
26 way--when you met--about which way you should go or where

1 you should walk to do your talking, what was said? A Between
2 who?

3 Q Between you and Franklin? A Why, as near as I can
4 remember he wanted to go back of the house, or whether he
5 said, "Come along out here" or whether I said, I couldn't
6 state positively, but my impression is that he wanted to
7 go back.

8 Q And where did you meet him with reference to the house?

9 A Why, I went out of the front door and at first didn't
10 just see him and after he spoke he was over close to this
11 little palm.

12 Q Is that the side or the front or the back? A The left
13 hand side of the front.

14 Q The front of the house? A Yes, and as soon as I came
15 out and spoke to him, why, then we went around to the back
16 of the place.

17 Q And the other time when he came out there and talked
18 to you about it where did you go? A Well, the first
19 night--

20 Q Talked at the door? A Right there at the door.

21 Q Yes, but the other time? A The next time we talked
22 right at the corner of the house, the southwest corner
23 of the house.

24 Q Where did you go on Sunday? A Back to the barn.

25 Q Back to the barn? A Yes.

26 Q Were there any officers there then? A No, sir.

1 Q Now, after you had talked to him back in the back
2 end of the house property did he remain there or did you
3 walk away? A Which time?

4 Q The last time, the night of the 27th when you were
5 talking there? A We walked north perhaps 50 feet to the
6 carriage driveway and stood there perhaps for two or
7 three minutes talking and then went west or in a westerly
8 direction out towards the front.

0-Smith Q Well now, about how long were you talking to him alto-
2 gether that night? A Oh, I don't think it exceeded -- not
3 to exceed ten minutes.

4 Q Now, what portion of that talk did you have, in time,
5 what portion of that talk did you have out north of the barn
6 property and away from the barn and the wind mill?

7 A Probably two or three minutes of it.

8 Q And what portion did you have down by the wind mill?

9 A I should judge seven or eight.

10 Q Now then in regard to the telephone conversation
11 about asking if he should bring the big one, or the big
12 fellow, whatever that was, - the big one is possibly the
13 expression you used. When was the first time that you
14 got any information that led you to think that Darrow was
15 coming out there that night, Monday night the 27th?

16 MR ROGERS: I object to that as already gone into on direct
17 examination.

18 MR FREDERICKS: Yes, but it was considerably confused by
19 cross-examination, I think.

20 MR APPEL: Mr Fredericks, see if it was not what he said.
21 He said that when Mr Franklin told him that he might bring
22 the big one, or words to that effect, that he then thought
23 he meant Mr Darrow --

24 MR FREDERICKS: I want to know if that was the first time
25 you had any idea that DARROW was coming out there that night?

26 A Yes sir.

1 Q And what time in the evening was that, Monday evening?

2 A Must have been 5 o'clock or after. It was so late that
3 when we went out from the booth in a few minutes we lit the
4 light on the auto.

5 Q How long was it from then until you arrived at your
6 house and saw the officers there? A I should judge not more
7 than an hour.

8 Q Had you any communication with any of these officers
9 between that time and the time you heard over the telephone
10 that "the big one" was coming out? A No sir.

11 Q Were you with me all the time? A Yes sir.

12 MR ROGERS: Might not lead him too much; I don't like to
13 object, but it is well not to be putting words in his mouth.

14 MR FREDERICKS: State whether or not the arrangements with
15 the officers to be out there that night were made before you
16 heard anything about the "big one" coming out? A Yes sir.

17 MR FREDERICKS: That is all.

18

19 RE CROSS-EXAMINATION

20 BY MR ROGERS:

21 Q Mr Lockwood, Captain Fredericks called your attention
22 to page 211, I suppose for the purpose of showing how accu-
23 rate you are about time. You said that you testified this:
24 He said, my impression is he said he could not come out that
25 night, but he said he had arranged to have me meet him and
26 Captain White on the corner of Third and Los Angeles at

1 10 o'clock the next morning". You have just said that is --

2 MR FREDERICKS: No, he said that is what he testified to.

3 MR ROGERS: He said further down the page after seeing the
4 article in his paper, "Just state what he said. A He said
5 Captain White was all right and that he had made arrangements
6 for him to meet us in the morning at 10 o'clock at Third and
7 Los Angeles". You so testified just now. Now I want to ask
8 you if you didn't testify this way at the preliminary examina-
9 tion of Franklin's case No. 1124 --

10 THE COURT: Mr Rogers, you have not had an answer to your
11 last question.

12 MR APPEL: We are simply repeating to the witness what he has
13 just testified.

14 MR FORD: Just making a speech.

15 MR APPEL: No, we are not making a speech.

16 THE COURT: Lines 22, 23, are you asking a question in
17 regard to lines 22 and 23? I am asking Mr Rogers if he is
18 basing his question on the contents of lines 22 and 23 and
19 24.

20 MR ROGERS: I have read it to the witness because Captain
21 Fredericks --

22 THE COURT: I understood you to state a question on those
23 lines, and are you basing the question on it, or are you not?

24 MR ROGERS: No sir, I am not. Now my question is, didn't you
25 testify as follows at the preliminary examination of Franklin
26 in that respect, page 28: "Q Was anything said about his

1 having any other person with him at Third and Los Angeles?

2 A Why, he said he had made arrangements with Captain White
3 to meet him at ~~the~~ a quarter to nine at Third and Main.

4 I told him again that I didn't like the mixing up of White in
5 the business, but finally we agreed that it was to be Third
6 and Los Angeles. Q That was all of the conversation that
7 you had that night? A That is all. Q Did you meet Captain
8 White the next morning? A About a quarter past nine."

9 Did you so testify?

10 MR FREDERICKS: Just a moment. I don't understand. Does
11 the question "did you so testify at the preliminary examina-
12 tion", which is read?

13 MR ROGERS: Yes sir.

14 MR FREDERICKS: The first question" Did you so testify in
15 the examination this morning", as was read " ?

16 MR ROGERS: The situation is this: Mr Fredericks on redirect
17 examination --

18 MR FREDERICKS: I am asking what the question is?

19 MR ROGERS: I will reply in my own way with his Honor's
20 permission. Captain Fredericks brought up the page 211
21 wherein the witness made this statement, that Franklin said
22 he had arranged to have White at Third and Los Angeles at
23 10 o'clock. I didn't care anything about it and hardly
24 cross-examined the witness about it, although I have this
25 right before me, but he sought to show how accurate your
26 memory was and to show he testified this morning it was ten

1 o'clock he had arranged to meet at that time. I want to
2 show what he testified at the preliminary examination he
3 didn't say any such thing; he said a different thing.

4 MR FORD: Objected to upon the ground it is not recross-
5 examination.

6 MR FREDERICKS: It doesn't seem to me my objection calls for
7 any such an explanation. I simply wanted to know what this
8 question included. Now, counsel could have said it included
9 both this or only one so the witness may know what he is
10 asking about.

11 THE COURT: I interrogated Mr Rogers before he founded his
12 question, whether he included that part and he said "No",
13 and he then proceeded to frame the question upon the matters
14 that he read from in the preliminary examination. I under-
15 stand that that is the question now propounded to the witness;
16 is that correct, Mr Rogers?

17 MR APPEL: Whether he so testified at the preliminary
18 examination.

19 THE COURT: You may answer the question.

20 A I did. I would like to explain. The first thing when
21 I came on the stand I testified that I was mistaken in re-
22 gard to that date, and corrected it this morning on the
23 stand that way.

24 MR ROGERS: Corrected what you said here yesterday?

25 A Yes sir, in regard to that hour as giving my reason for
26 it, remembering that I came in the car with Mr Van Fleet

1 early in the morning.

2 Q You didn't correct what you said at the preliminary
3 examination?

4 MR FREDERICKS: He doesn't need to correct that.

5 A This is correct.

6 MR ROGERS: That is correct, the preliminary? A Yes sir.

7 Q And what you said yesterday was not? A I corrected
8 it this morning.

9 Q That is what I am getting at. So yesterday you repeated
10 twice, did you, that what Franklin said to you was at ten
11 o'clock? A I was mistaken.

12 MR FORD: Objected to upon the ground it is not recross-
13 examination. Now, the counsel on the redirect has not gone
14 into this matter.

15 THE COURT: It has been asked and answered.

16 MR FORD: The Court will be here forever see-sawing back
17 and forth, unless we presume the recross-examination will be
18 confined to the redirect examination.

19 MR APPEL: We want to know ^{on} which side the preponderance lays
20 here-- we want to know whether he said yesterday.

21 THE COURT: All right, gentlemen.

22 MR ROGERS: ^{Unless} He changed his testimony again; I don't care to
23 ask him any more questions.

24 MR FREDERICKS: That is all.

25 THE COURT: Gentlemen of the jury, bearing in mind your
26 former admonition, we will take a recess for ten minutes.

12p

1 (After recess. Jury returned to the court room.)

2
3 B E R T H. F R A N K L I N,

4 a witness called on behalf of the People, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FORD.

8 Q What is your name? A Bert H. Franklin.

9 Q How old are you? A 45 years.

10 Q Where do you reside? A 812 West 17th Street, Los Angeles
11 City.

12 Q California? A California, yes, sir.

13 Q And what is your occupation? A Private detective agency.

14 MR. ROGERS. What is the answer? Please speak a little
15 louder.

16 A Private detective agency.

17 Q BY MR. FORD. Where is your place of business? 531
18 Chamber of Commerce Building, this city.

19 Q And what are your telephone numbers there? A A4899
20 on the Home 'Phone, Main 5862 on the Sunset--Main 3862.

21 Q Main 3862? A Yes, sir.

22 Q I hand you a document which has been introduced in evidence
23 and which is marked People's Exhibit 6. I attract your
24 attention to the pencil writing, "Main 3862 and A 4899".

25 Are those your telephone numbers? A Yes, sir.

26 Q And in whose handwriting is that, if you know? A Mine.

1 Q You wrote it? A Yes, sir.

2 Q How long have you been in business in the Chamber of
3 Commerce Building in the private detective business,

4 A About the 15th of May, I think, of this year--1911.

5 Q Since what date? A About the middle of May, 1911.

6 Q Previous to that time, Mr. Franklin, in what business
7 were you engaged? A I was in the office of the United
8 States Marshall immediately preceding that time.

9 Q And how long had you occupied that position? A A little
10 over five years. I left the United States Marshall's
11 office the middle of June, I went into the Chamber of
12 Commerce Building the middle of June.

13 Q And in what capacity were you connected with the United
14 States Marshall's office? A A deputy in that office.

15 Q You were five years, you say, approximately? A Yes,
16 sir.

17 Q Previous to that what was your business? A I had
18 charge of the criminal investigations in the sheriff's
19 office in this county.

20 Q Under what administration? A W. A. White.

21 Q And how long did you occupy that position? A Three
22 years and six months and 15 days, I think.

23 Q Previous to that, your being in the sheriff's office,
24 what was your occupation? A Contractor and builder.

25 Q Here in Los Angeles? A Yes, sir.

26 Q And how many years were you engaged in that business in

1 Los Angeles? A About three years.

2 Q Previous to that what business were you engaged in?

3 A I was in the office of the Street Superintendent for
4 about four years.

5 Q Under whose administration? A John H. Drain.

6 Q That is the Superintendent of City Streets in Los
7 Angeles, California? A Yes, sir.

8 Q And previous to that what business were you in? A Car-
9 penter work.

10 Q For yourself or for others? A Both.

11 Q Here in Los Angeles? A Yes, sir, most of the time.

12 Q And during how long a period were you engaged in that
13 business in Los Angeles previous to your coming into the
14 City Superintendent of Streets office? A I came here in
15 April, 1886; I went into the street department about 15 or
16 16 years ago.

17 Q Do you know Clarence Darrow, the defendant in this case?

18 A I do.

19 Q When did you first meet him? A I don't know the date,
20 I think it was during the first of June, 1911.

21 Q Was it before you opened the private detective agency?

22 A It was.

23 Q About how long before you opened your agency? A Perhaps
24 two weeks.

25 Q How long after you quit the Marshall's office? A I
26 think it was before, just before.

1 Q On what date did you quit the Marshall's office? A My
2 resignation was accepted, I think, on June 14th. I am
3 not sure. If you will allow me to refer to data I have
4 here I can tell you.

5 Q A memorandum made by yourself? A No, sir.

6 Q made under your direction at the time? A No, sir, it
7 is the acceptance of my resignation.

8 Q Where did you meet Mr. Darrow? A In the office of the
9 jailer of the county jail in this county.

10 Q Who introduced you? A Job Harriman.

11 Q How long have you been acquainted with Job Harriman?

12 A About four years.

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- 13p 1 Q At the time of this meeting between you and Mr. Harriman
2 and Mr. Darrow was that simply a friendly accidental meeting?
3 A Merely an introduction.
- 4 Q You had no business relations with him at that time?
5 A No, sir.
- 6 Q When did you next meet Mr. Darrow? A Where or when?
7 Q When? A I think it was the 29th day of June, 1911.
- 8 Q Did you enter into any business relations with him at
9 that time? A I did.
- 10 Q Where did you meet Mr. Darrow then? A In the office
11 of Job Harriman in the Higgins Building.
- 12 Q Who else was present besides yourself and Mr. Darrow?
13 A Mr. LeCompte Davis, Attorney-at-law, Mr. Harriman and Mr.
14 Darrow.
- 15 Q What was the business entered into between you and Mr.
16 Darrow at that time? A Mr. Darrow engaged me at that
17 time to investigate the grand jury that was then in session
18 in this county, some members of it. X X
- 19 Q What was said and done in reference to that matter between
20 you and Mr. Darrow? A He told me who he wished me to
21 investigate and I immediately left and started to work.
- 22 Q Did you make any arrangements with him at that time
23 for compensation? A I did not.
- 24 Q How long were you engaged in that work? A Possibly ten
25 days. X X
- 26 Q By whom were you paid for that work? A That is diffi-

1 cult to answer, Mr. Ford.

2 Q Were you employed by Mr. Darrow personally?

3 MR. ROGERS. I suggest that is a conclusion and opinion.

4 THE COURT. It is.

5 Q BY MR. FORD. By whom were you employed? A By Mr. Darrow.

6 Q Personally? A Yes, sir.

7 Q After you had concluded that work did you have any
8 further business relations with Mr. Darrow? A I did.

9 Q When and where? A At his office in the Higgins Build-
10 ing, about the 9th day of August, 1911.

11 Q Were you employed at that time by Mr. Darrow? A Yes, sir.

12 Q Personally? A Yes, sir.

13 Q State fully what you were employed for.

14 MR. ROGERS. I think that ought to be by way of a state-
15 ment which was made, or conversation. I do not think
16 the witness should give us his conclusions. I object to
17 it as a conclusion or opinion.

18 MR. FORD. I will withdraw it and put it in this form.

19 Q Did you receive any directions from Mr. Darrow as to
20 what your duties were? A Yes, sir.

21 Q Tell the jury what he told you at that time? A Mr.
22 Darrow said he wished to employ me to investigate all
23 members of the county term trial jury that were in the
24 box.

25 Q Is that all that was said upon that subject? A No.
26 He told me just what he wanted to find out about the

1 members of the jury.

2 Q Just state everything to the jury that he wanted to
3 find out. A He said he wanted to find out the apparent
4 age, the religion, the nationality, who their attorney
5 was, what the feelings of the jury were toward union labor;
6 what the feelings of the jury and the opinion of the jury
7 were in regard to the explosion at the Times Building;
8 the opinions of the members of the jury as to whether the
9 McNamaras were guilty of / ^{the} crime with which they were
10 charged.

11 Q Did you receive any directions from Mr. Darrow to investi-
12 gate the financial standing? A Yes, sir.

13 Q The wealth of prospective jurors? A Yes, sir, their
14 financial condition, their property, and the bank at which
15 they did business, if possible. ~~XXXXXXXX~~

16 Q Anything else in reference to the jurors that you can
17 recall? A Not at that time; no, sir; not that I remember
18 of.

19 Q Those directions you received in August? A Yes, sir,
20 I think it was in August, about the 9th or 10 th of
21 August.

22 Q When did you start to work upon that proposition?
23 A Immediately.

24 Q Mr. Darrow give you any directions as to the manner in
25 which you should approach the people? A No, sir, he didn't
26 give me any directions, we discussed that proposition,

1 though.

2 Q When did you discuss that? At the time of your
3 employment? A No, sir, at a subsequent date.

4 Q When and where? A In his office in the Higgins Build-
5 ing.

6 Q Who else was present? A Mr. Harriman and Mr. Darrow, Mr.
7 McNutt might have been but I am not positive about that.

8 Q Just state what the discussion was at that time, what
9 was said by each of you as near as you can remember?

10 A In regard to what?

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1 In regard to anything connected with the jury?

2 A Well, in regard to what I was to do?

3 Q Yes. A He asked me at that time how many men it would
4 take, how long it would take; about what the cost would be,
5 whom were the best to employ and to the best methods of pro-
6 ceeding. Mr Darrow said, that in his opinion it would be
7 better first to interview the neighbors of the prospective
8 jurors. I disagreed with that, and told him that I thought
9 the best method to proceed would be to have the operators
10 interview the jurors personally, as far as possible, and
11 if not, to interview the wife or children.

12 Q What was agreed upon?

13 MR ROGERS: I suggest that is a conclusion or opinion.
14 I think that should be avoided with this witness.

15 THE COURT: Withdraw it. What was said -- what was finally
16 said by Mr Darrow in reference to the method of procedure
17 with regard to investigation of the jury? A Mr Darrow told
18 me to follow my own method.

19 Q Now, what was said with reference to compensation?

20 A Not anything.

21 Q No final arrangements made at that time? A Never was.

22 Q You employed men? A I did.

23 Q And proceeded to make your investigations? A I did.

24 Q To whom did these men report? A To me, personally.

25 Q What did you do with the reports? A I had them type-
26 written.

Q And after they were typewritten what did you do with them?

1 A Placed in a book and given to Mr Darrow, one copy to
2 Mr Darrow, one copy to Mr Scott, one copy to Mr Davis,
3 one copy to Mr Harriman up until about 50% of the jury were
4 obtained, and then Mr Darrow told me it was not necessary
5 to make any more than three copies.

6 Q Where did you get the names of these jurors? A Well,
7 I don't think I can answer that question, Mr Ford. I can
8 tell you what happened.

9 Q Tell us what happened. A I went to the office of the
10 County Clerk and asked one of the deputies if it was possi-
11 ble to procure a copy of the names of the jurors that were
12 in the box. He told me yes. I told him that I wished to make
13 a copy of them, and told him that I would send somebody there
14 after them at a later date. I employed a stenographer,
15 sent her to the office of the County Clerk and she later
16 gave me a copy of the jury.

17 Q And what was her name? A Marie Tyson.

18 Q By whom were you paid for this work, Mr Franklin?

19 A Mr Darrow. I received I think, one time, perhaps twice,
20 a check from Harriman when Mr Darrow was not present.

21 Q And the balance of the times you were paid by Mr Darrow?

22 A Yes sir.

23 Q In what manner were you paid? A By check.

24 Q Did you ever receive any money from him, other than by
25 check? A Yes sir.

26 Q When and where did you first receive money from him,
other than by check?

1 A I received \$500 in cash from Mr Darrow, but I couldn't
2 tell you the date.

3 Q What month? A I think during the month of October,
4 about the middle of the month.

5 Q Had you ever received any money in cash previous to
6 that day? A No sir.

7 Q How much had you been paid up to that time?

8 A Up until that time -- be impossible for me to tell,
9 Mr Ford, from memory.

10 Q Well, when did you first draw money from Mr Darrow for
11 your services on this jury matter? A I couldn't tell you
12 without consulting my bank book and you have that, I believe.

13 Q Who paid the men who were employed by you, Mr Franklin?

14 A I did, that is it came out of my account. I didn't al-
15 ways pay them personally. Mrs Franklin paid them part of
16 the time, ~~very~~ seldom.

17 Q From what place did your men work, from the offices in
18 the Higgins building or from your office? A From my office.

19 Q And whenever you wanted money to pay them you went
20 over to the Higgins Building and got it?

21 MR ROGERS: That is rather leading. X X

22 MR FORD: Probably it is, I withdraw it. How did you get
23 the money to pay them? A I went to Mr Darrow and asked
24 him for it, and he gave it to me.

25 Q Ask you any questions as to the number of men employed?

26 A I don't think he ever questioned me in regard to the men

1 at all, in that way.

2 Q Did you ever receive any money from him for any other
3 purpose than that of paying yourmen? A Yes sir.

4 Q When was the first sum you received from him, and where?

5 A For other purposes than that?

6 Q Yes. A On the 6th day of October, 1911.

7 Q How much did you receive from him on that day.

8 A I received a check for a thousand dollars. X

9 Q Where was he when he gave you the checks? A In his
10 office, his own office in the Higgins building.

11 Q And at what time of the day? A Impossible for me to
12 state, but I think in the forenoon.

13 Q Did you at that time have any discussion with him as to
14 the purpose for which that thousand dollar check was to be
15 used? A Yes sir.

16 Q Was that the first time you had discussed the purpose,
17 in reference to the matter for which you had received it?

18 A I don't quite understand that question.

19 Q I withdraw it. Did you ever discuss the question of
20 bribing jurors with Mr Darrow? A Yes sir. X

21 Q Was that the first information, on the 6th of October?

22 MR ROGERS: That is very leading. This witness ought
23 not to be led.

24 THE COURT: Objection sustained.

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5-Smith

MR FORD: When was the first occasion you discussed the question of bribing jurors? A The first time Mr Darrow and I had any conversation -- direct conversation in regard to bribing jurors, was on the 5th day of October, 1911.

Q Who was present? A Nobody but himself and myself.

Q And where was that? A On Spring Street between First and Second.

Q On the street? A Yes sir.

Q On which side of the Street? A West side of the Street.

Q Just tell the jury what was said at that time with reference to that matter? A I met Mr Darrow, Mr Davis, I think Judge McNutt and Joseph Scott, but I am not sure, coming out of the Bryson Block on the corner of Second and Spring. I spoke to them all, and Mr Darrow and I walked away by ourselves north on Spring Street; the rest of them following leisurely behind. Mr Darrow made the remark it was time for us now to get busy with the jury and that he wanted to see me and talk over the matter in regard to Mr Bain. That is all the conversation that we had at that time.

Q How long did you ^{personally} know Bain? A For twenty years, I think.

Q Had you ever worked with him? A Yes sir.

Q Do you know what his business was? A Yes sir.

Q What was it? A Carpenter.

Q Did you work with him as a carpenter? A Yes sir.

Q Had you ever made a report on Bain to Mr Darrow?

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1 A Yes sir.

2 Q When and where? A I couldn't tell you when.

3 Q Well, approximately how long before this conversation
4 on October 5? A Sometime during the month of August, I
5 think.

6 Q 1911? A Yes sir.

7 Q Do you recall the place where the conversation occurred?

8 A Where which conversation occurred? Q In August 1911,
9 concerning Mr Bain? A Where I made my report?

10 Q Yes. A Oh, I didn't make a report to him personally.
11 I made it by copy.

12 Q Did you have a talk with Mr Darrow about Bain? A Yes
13 sir.

14 Q Prior to the 5th of October? A Yes sir.

15 Q When and where? A Oh, on divers occasions.

16 Q Well, when was the first one you recall? A I can't
17 remember; all those conversations were in his office.

18 Q All of them were in his office? A Yes sir.

19 Q About how long before the 5th of October was the first
20 ~~an~~ discussion, was it after or before you had made a report,
21 or delivered a written report? A I couldn't tell you, Mr
22 Ford, because I didn't read all of those reports, you
23 understand; there was something over sixteen hundred of them.

24 Q What was said on this first occasion in the Higgins
25 Building between you and Mr Darrow about Robert M. Bain?

26 MR APPEL: I object to that as incompetent, irrelevant and

1 immaterial, hearsay, has nothing to do with this case; upon
2 the further ground, no foundation has been laid for the
3 introduction of this evidence; that the declarations of the
4 defendant and the declarations of the witness in regard to
5 Juror Bain are immaterial at this time.

6 MR FORD: It is true, your Honor, no foundation has been
7 laid as yet, showing the connection of the defendant Darrow
8 with the bribery of Lockwood, which is the case on trial,
9 but we avow our intention of connecting the testimony with
10 that and have only adopted the order and time for convenience.
11 It is a matter discretionary with the Court, the same as
12 all of our testimony has been.

13 THE COURT: Objection overruled.

14 MR APPEL: I ask an exception.

15 A The first conversation I had with Mr Darrow in regard
16 to paying Mr Bain bribe money was on the morning that he
17 gave me the check.

18 Q But the first conversation with Mr Bain at all, is what
19 I want to get at? A It is impossible for me to state, Mr
20 Ford; I couldn't tell you.

21 A Did you ever inform the defendant that you were per-
22 sonally acquainted with Robert Bain? A Yes sir.

23 Q Did you ever discuss Bain's qualifications with --

24 MR APPEL: We object to any leading questions at this time,
25 if your Honor please, and we do not wish to repeat the same
26 objection I made a while ago, and I suppose all matters and

1 things concerning conversations between the witness and Mr
2 Darrow, or alleged conversations, or any acts of the wit-
3 ness or of the defendant Darrow, in respect to Bain, will
4 be deemed to be objected to upon each and all of the
5 grounds stated in the objection I made to the first question
6 propounded.

7 THE COURT: It will be received subject to the same ob-
8 jection and the same ruling, and the same exception,
9 unless the District Attorney protests against that order,
10 and it will be so understood.

16p 1 Q What was said between you and Mr. Darrow with reference
2 to Bain prior to the 5th day of October, 1911?

3 A I told Mr. Darrow that I knew Mr. Bain, knew him very
4 well, that I thought Mr. Bain would be a poor jurymen for
5 the McNamaras, that I knew him so well that I thought he
6 was prejudiced against union labor and would not make
7 an acceptable juror for the defense.

8 Q What did he say in answer to that? A I don't think
9 he made any answer to that, I don't remember now.

10 Q Did you have any further discussion up to the 5th
11 of October, ^{other than} /the one you have just told us about? A If
12 my memory serves me rightly, we discussed that several
13 times on numerous occasions.

14 Q What did you tell him about your personal acquaintance
15 with Bain? A I told him I knew him very well.

16 Q Did you tell him anything about Bain? A He asked me
17 if I could talk to him and I told him I could, I told him
18 that on numerous occasions.

19 Q Did he tell you what you should talk about?

20 MR. APPEL. We certainly object to that as leading the
21 witness, your Honor.

22 MR. FORD. I withdraw the question.

23 Q Did you, previous to the 5th day of October, 1911, say
24 anything to the defendant, Clarence Darrow, about the
25 financial condition of Robert Bain?

26 MR. APPEL. We object to that as leading, in addition to

1 the other objections.

2 MR. FORD. Directing his attention, it does not lead
3 him one way or the other .

4 THE COURT. Objection sustained.

5 Q BY MR. FORD. What conversation, if any, did you have
6 with reference to the financial condition of Clarence
7 Darrow--or with Clarence Darrow in reference to the finan-
8 cial condition of Robert Bain?

9 MR. APPEL. The same objection.

10 A Before the 6th of October?

11 Q Yes .

12 MR. APPEL. The same objection.

13 THE COURT. It is leading?

14 MR. APPEL. Yes, your Honor.

15 MR. ROGERS. I think this witness ought not to be led.

16 THE COURT. Objection overruled.

17 A Not any conversation in regard to his financial condi-
18 tion before the 5th day, or the 6th day of October, 1911,
19 that I remember .

20 Q Tell us what was said between you and Clarence Darrow
21 on the 6th day of October in reference to this matter?

22 A I came there, I came to his office, I am certain it
23 was before 12:00 o'clock. Mr. Darrow said, that , "We have
24 been talking the matter over and have decided that \$5,000
25 would be a proper amount to pay to the jury, for jurymen."

26 MR. APPEL. I move to strike that out as a mere conclusion

1 of the witness and not responsive to the question. He
2 was asked what was said at that time.

3 MR. FREDERICKS. That is what he was narrating.

4 THE COURT_ Are you stating what was said?

5 A To the best of my ability, yes, sir.

6 MR. APPEL. If your Honor reads the question, he says,
7 "We have decided".

8 THE COURT. He says now he is stating what was said.

9 MR. APPEL. He is mistaken about it.

10 MR. FORD. Will you read the answer?

11 MR. DEHM. He said, "They had decided."

12 MR. APPEL. Well, I didn't hear that portion.

13 MR. FORD. Read the answer.

14 (Answer read.)

15 A \$4,000 to go to the juror and \$1,000 to myself.

16 Q BY MR. FORD. Well, give the rest of the conversation.

17 A I asked him if he wanted me--he then asked me what I
18 thought about Mr. Bain. I asked him if he wished me to see
19 Mr. Bain along that line and he said yes, and asked me if I
20 thought I could get him. I told him I thought I could,
21 that Mr. Bain was the kind of a man if he didn't want to go
22 in that way he would come out and tell me so and that would
23 be all there would be to it. He said, "All right", I will
24 give you a check for \$1,000;" he turned to his desk and
25 wrote the check and handed it to me and I left the office.

26 Q Do you remember on what bank that check was drawn?

1 A I don't know, no. I know where I deposited it.

2 Q What did you do with the check? A I took it to the
3 First National Bank and deposited it there to my credit.

4 Q Did you make out a deposit slip? A I have no inde-
5 pendent recollection of it, but I presume I did.

6 Q I will ask you to look at this slip and state whether
7 or not you ever saw it before.

8 MR. APPEL. We object to that as incompetent, irrelevant
9 and immaterial for any purpose.

10 THE COURT. It is until counsel has seen it.

11 ~~MR. APPEL. No, your Honor, but suppose he identifies it?~~

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17-Smith

MR APPEL: Your Honor, ~~suppose~~ he identifies it.

MR FORD: I will identify it before I introduce it.

MR APPEL: Whatever he did himself is not connected with any matter. This is his own affair. Suppose he testified that ^{that} he gave ~~me~~ money to me, that wouldn't be any evidence against the defendant. It is an independent act not connected with the defendant. Your Honor laid down a rule here and under that rule only that which is attributable to the defendant and not the mere idea of his co-conspirator is admissible in evidence. Any matters of conspiracy -- a matter of agency in civil matters is just about the same. Now your Honor couldn't be bound by the acts of your agent, not in the line of his agency or the authority conferred upon him. It is only those acts in pursuance of the object of the agency that will bind, your Honor. You give a man a thousand dollars to go and buy a lot here and he goes and deposits it in the First National Bank, the fact that he made a slip to deposit there is not a matter that binds this defendant in the least. It is not within the agency.

MR FREDERICKS: But the witness has said, your Honor, that this defendant gave him a thousand dollars to be used in the furtherance of this conspiracy. Now, this is the thousand dollars we are asking the witness about, and certainly we have a right to trace that thousand dollars. It is one of the steps.

MR ROGERS: Of course we understand how a man ~~was~~ undoubtedly

1 ly was going to use bribe money would take it over and
2 deposit it in the bank.

3 MR FORD: We object to anything like that.

4 MR ROGERS: And we think the deposit slip is immaterial,
5 and self serving.

6 MR FORD: If the Court please, I think the proposition is
7 so simple I am surprised counsel is raising the point even.
8 This witness has testified to an arrangement made with the
9 defendant which he started to carry out, in ~~connection~~ ^{accordance} with
10 the defendant's direction. Every act which the agent of
11 this defendant -- every act which the ^{is} man who conspires
12 with him is considered the act of this defendant, and this
13 witness is as competent to testify to that act as any other
14 person. He took the check of Clarence Darrow, this defend-
15 ant. Is that connected with the defendant? He took it to
16 use in accordance with the defendant's direction. Isn't
17 that connected with the defendant? The proposition is so
18 simple that it is absurd.

19 MR APPEL: Your Honor, it is so simple, the other side of
20 the proposition is so simple that any man who has ever known
21 the first principles of evidence ought to know different than
22 counsel. I undertake to show to your Honor that ^{entries} things on
23 the books ~~of~~ ⁱⁿ a bank, the entries made by this defendant, are
24 not competent in a case of this kind. The fact, what he has
25 testified to has been directly attacked, of the defendant
26 may be given in evidence, but I say every decision in the

Handwritten notes in the left margin, including the word "books" written vertically.

1 United States has held and I am willing to state them
 2 one after the other until this man will learn some law,
 3 that you cannot convict a defendant upon the evidence of
 4 anyone made in his bank and as abstracted by him in the
 5 course of business for bad methods or legitimate
 6 methods; that he must be confronted with these witnesses,
 7 and your Honor, I have the leading cases in No. Carolina,
 8 and one is in the United States Supreme Court that has
 9 held this, that where a man was charged with having em-
 10 bezzled goods shipped from one point to another that the
 11 books of the railroad company which show the shipment
 12 was not evidence against him and the case was reversed
 13 on that.

14 MR FORD: I will withdraw the question for the time being.

15 THE COURT: Question withdrawn.

16 MR FORD: You did deposit the one thousand dollars, you
 17 did testify, in the First National Bank? A Yes sir.

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18s1 Q What did you do next? A I drew a check against it for
2 \$500.

3 Q Do you remember who the teller was at the window, Mr.
4 Franklin? A I do not.

5 Q What kind of money did you receive for this check
6 of \$500 which was presented to the First National Bank?

7 MR. APPEL. We object upon the ground that it is incom-
8 petent, irrelevant and immaterial for any purpose whatso-
9 ever; it is hearsay, so far as the defendant is concerned
10 and no foundation laid .

11 THE COURT. Objection overruled .

12 A Currency.

13 MR. FORD. Q And what denominations, if you remember? A I
14 don't remember.

15 Q What did you do next in reference to this matter?

16 MR. FOGERS. The same objection, your Honor, as just
17 stated to this whole line of testimony.

18 THE COURT. Overruled.

19 MR. ROGERS. I say, may we have the same objection?

20 THE COURT. Yes, the same objection, the same ruling and
21 the same exception unless the district attorney at this
22 time protests against that kind of procedure. So ordered.

23 A Of what matter do you refer?

24 MR. FORD- Q After you received the \$500 what did you do?

25 A I went to the office, telephoned Mr. McKelvey, the
26 automobile stand at Third and Spring street, requesting

1 him to come to the office with his machine-- he came--he
2 was there when I came downstairs. I got in the machine
3 and drove to the residence of Mr. Bain.

4 MR. ROGERS. We drove?

5 A Mr. McKelvey drove, I rode with him.

6 MR. FORD. Q Where was their residence, Mr. Franklin,

7 A If I remember correctly it is on 68th street.

8 Q You remember the number? A I think it is 300 and some
9 thing.

10 Q That is the residence of Robert Bain who was afterwards
11 sworn as a juror in the McNamara case, is it?

12 A Yes, sir.

13 Q Had you ever talked to Mr. Bane or Mrs. Bain about the
14 case previous to that time? A No, sir.

15 MR. APPEL. We object to that on the ground that it is
16 incompetent, irrelevant, immaterial and no foundation laid;
17 that it is hearsay so far as the defendant is concerned.
18 You haven't proven--

19 THE COURT. Overruled. Answer the question.

20 MR. FORD. He has answered the question, No, sir.

21 THE COURT. Read the question.

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

23 Q MR. Ford. When you arrived at the house of Mr. Bain
24 state what occurred? A I went to the door, either knocked
25 or rang the bell, I don't know which. There was no response.
26 I knocked three or four times and not receiving response I

1 went to the first house east and inquired of the lady if
 2 they knew where they were. She said she didn't know but
 3 she thought Mrs. Bain was over on the first street north,
 4 naming the residence that I have forgotten at this time.
 5 That was all that was said at that time and I got back
 6 in the machine and came down town.

7 Q Did you return to the residence again that day? A I did.

8 Q When? A Sometime in the afternoon.

9 Q What occurred at that time when you returned? A I
 10 got out of the machine, went to the door and knocked.
 11 I didn't get any response and I went around to the back
 12 door and knocked and still did not receive any response.
 13 I came to the front and Mrs. Bain was at the window and
 14 asked me what I wanted, and I told her that I wished to
 15 speak to her; stepped up to the window and told her who
 16 I was.

17 Q Just state what you said.

18 MR. APPEL. Objected to upon the ground that it is in-
 19 competent, irrelevant and immaterial for any purpose
 20 whatsoever; hearsay and no foundation laid.

21 MR. FORD. It is a declaration of the witness made in
 22 furtherance of the conspiracy entered into at that time
 23 between him and the defendant, which has been testified
 24 to by this witness, and which will be corroborated by
 25 other evidence.

26 THE COURT. Objection overruled.

1 A I think--

2 MR. APPEL. Will you excuse me for suggesting something,
3 something that has not probably suggested itself to your
4 Honor. Does your Honor understand that the declarations of
5 this man here in trying to prove that he committed a crime
6 himself are not evidence of the fact that a crime was com-
7 mitted? That in this state or any state in the Union
8 that the evidence of the person himself when he goes upon
9 the stand and he testifies that I committed a crime, that
10 that doesn't prove the body of the information-- doesn't
11 prove the corpus delicti? Now, our Supreme Court has
12 said this in about 50 or 60 cases --these gentlemen
13 know that very well, that--they ought to know--if I go
14 upon the stand and state I went down here and killed a man,
15 I murdered a man, ^{if} there is no other evidence of that fact
16 that the jury cannot convict; cannot say that that man
17 was murdered. Now, can it be possible that this man may
18 be allowed to testify here that he committed a crime him-
19 self for the purpose of laying the foundation thereafter
20 to introduce evidence as against Mr. Darrow? Now, your
21 Honor, these questions are questions which will arise all
22 through this trial and it would seem to me that the logical
23 way to try this case would be to start first to prove
24 that this defendant did commit the principal crime men-
25 tioned here in the information, in the complaint, have him
26 prove that, then it is competent, if your Honor insists

1 that your ruling you made the other day is correct, then
2 these collateral circumstances, if your Honor is right
3 upon the law, your Honor may admit them, but first there
4 must be an absolute connection between this defendant and
5 the commission of the principal crime,
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Smith¹ and show that connection, it will be impossible -- it will be
2 absolutely impossible to prove upon the uncorroborated testi-
3 money of an accomplice, and here we are traveling over
4 dangerous grounds without there being any assurance that
5 there will ever be any evidence here of the connection of
6 this defendant by legitimate evidence that ~~a~~ ^{the} crime set forth
7 in the indictment was committed. Now, in People vs Bird,
8 your Honor, the Supreme Court of this State absolutely
9 reversed that case. There were a number of checks intro-
10 duced showing forgeries of Mr Bird, but the forgery of the
11 check upon which he was being tried was never proven, so
12 as to enable the evidence of the other checks being intro-
13 duced in evidence, and the Supreme Court reversed that case,
14 and it is right and just that these discussions be had here
15 and I suggest to your Honor's mind that we might receive
16 here properly; that no possible injustice may be done either
17 one way or the other. When we have this case tried it
18 will be tried according to the rules laid down in the de-
19 cisions, that it be tried in consonance with the best
20 spirit to ^{do} justice towards this defendant, that his rights
21 may be respected, that he may have a fair trial, and we
22 have to sit here and object to these things because there
23 is no foundation laid. Now, in a case of this kind, any
24 checks that he may have drawn, are not competent evidence
25 against this defendant. If your Honor pleases, it is true
26 that the witness may refresh his memory from a memorandum

1 made at the time in order to refresh his memory, but in
 2 People against Lanterman, your Honor well remembers that in
 3 that case the conductor testified as to there being a pass
 4 given to him by Mr Lanterman, an official of this county,
 5 and that he made a memorandum of it on a piece of paper and
 6 the piece of paper was introduced in evidence and the
 7 Supreme Court of this State said that that piece of evidence
 8 was not admissible, that it might have been used as a memo-
 9 randum to refresh the memory of the witness, but it was not
 10 admissible. Why? Because made by third party away from
 11 where the defendant was, that it was hearsay, it was just
 12 as much as if he had said to a third party "I did this and
 13 that".

14 MR FREDERICKS: That is not the point now before us.

15 That is counsel's very interesting lecture on the law, but
 16 the point he is talking about now in the Lanterman case,
 17 there;
 18 the check was ^{your} offer to introduce this deposit slip,
 19 we withdraw that.

20 MR APPEL: I understand that, but your Honor can see the
 21 application, any man can see that if Mr Franklin here had
 22 said on a piece of paper "Mrs Bain, I want to see Mr Bain
 23 because I have some money in my pocket, I want to bribe him"
 24 that it was his statement to Mrs Bain, that it was an act of
 25 his, that it was his own ~~direct~~ declaration, that it was
 26 not a declaration which was authorized by the defendant,
 that it was not within his authority to go and tell Mrs Bain.

1 How can a man go upon the housetops and proclaim to the
2 world "I am going to bribe every juror in the McNamara case"
3 and give it against this defendant? Have you no reasoning?
4 Cannot you connect your reasoning power with the matter at
5 issue, or do you wish to make the old argument there was
6 no case, in which the barrel of apples had been replevined,
7 therefore you couldn't do that --

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20p 1 THE COURT. (Interrupting) You will have to address your
2 argument to the Court. The Court will listen to you very
3 patiently.

4 MR. APPEL. I am not trying to study in a law class here.

5 THE COURT. You cannot talk that way here. The Court will
6 listen to you very patiently, but you cannot talk that way
7 here.

8 MR. APPEL. I wont repeat what I said twice, I say, this
9 evidence is inadmissible. In People vs Whitman, if your
10 Honor pleases, the Supreme Court says; (Reading) now,
11 your Honor has allowed evidence here by this witness of
12 declarations made by this witness to Mrs. Bain concerning
13 the Bain transaction, without there being any evidence at
14 all here that Lockwood was bribed by this witness, and that
15 this defendant authorized him to go and do that bribing.
16 Now, there must be evidence which will satisfy the Court and
17 will satisfy the jury that this defendant was guilty of
18 the offense charged in the information, before these other
19 matters can be introduced in evidence. Now, all the deci-
20 sions are that way, if your Honor pleases, and this is a
21 proper and legitimate way of introducing that evidence, or
22 else we may have a confusion of evidence here that we will
23 not know which is material and which is not; which was
24 properly introduced and which was not properly introduced.
25 I submit, your Honor, that his declarations to Mrs. Bain
26 here are hearsay, no foundation laid.

1 MR. FREDERICKS. It is only a question of the order of
2 proof, your Honor.

3 THE COURT. It is a question of the order of proof.

4 MR. ROGERS. May I make a suggestion before your Honor
5 rules on that?

6 THE COURT. Yes.

7 MR. ROGERS. It is a question of the order of proof, and
8 the order of proof sometimes becomes a substantial considera-
9 tion, and while the order of proof is of necessity a matter
10 to some extent within the Court's discretion, that discre-
11 tion must be exercised legally and with due consideration
12 to the rights of all parties. It is not, as Judge Wellborn
13 says in one of his cases, a mere whim, it is a substantial
14 thing. And now, before any evidence of other acts can be
15 introduced there must be proof of the corpus delicti, and
16 the mere assurance that the corpus delicti of a crime charged
17 will be proven does not appeal to the discretion of the
18 Court. Especially is that true when the order of proof
19 may throw upon the defendant a trouble, and a considerable
20 difficulty in keeping track of his record. It would seem
21 to me that no harm could come in requiring the prosecution
22 to prove, if so they may, the corpus delicti of the offense
23 set forth in the indictment before they attempt to prove
24 other matters upon the assurance that they will prove the
25 corpus delicti. We get so tangled up, if I may use the
26 slang phrase, we do not know what to move to strike out, and

1 if we do not move to strike out, of course, we do not
2 have the benefit of our record, and it seems to me your
3 Honor might exercise your own discretion in the interest
4 of time and saving the points that they should prove their
5 corpus delicti of the offense charged before they are per-
6 mitted to prove anything else, and in the event that they
7 do not come within the Coffey case, within the Coffey deci-
8 sion, then they have not proved their corpus delicti, they
9 have not proven the Lockwood offense. If they do not
10 answer to the requirements of the Coffey case, your Honor,
11 they have not proved their corpus delicti, they have not
12 proved their offense, they have not proven any sufficient
13 foundation to let other matters in at all, and I suggest
14 to your Honor that it is not a mere question of order of
15 proof in that Coffey case, but it is something more sub-
16 stantial than that; it may go to the actual merits of
17 the action itself and it is not sufficient to prove a
18 corpus delicti of the offense by an accomplice, it must
19 be proven by substantial evidence and that which will take
20 it outside of the doctrine of the Coffey case, and before
21 that is done they cannot introduce these other matters.
22 It so appeals to me, at any rate. I do not think your
23 Honor should exercise your discretion to allow them to
24 encumber us with a record here which would take us hours
25 to go through and move to strike out in order to preserve
26 our rights, and we must make the motions to strike out.

1 I do not want anything excluded from the jury that they
2 ought to have, but I think your Honor might exercise his
3 discretion in order of proof to require them to prove
4 their original case inside of that Coffey decision before
5 they go on, because they cannot introduce evidence of
6 extraneous or exterior matters in behalf of the corpus
7 delicti.

8 MR. FREDERICKS. We maintain we have proved the corpus delicti,
9 ti, we have proved that Mr. Lockwood, the juror, was bribed,
10 that is the corpus delicti, and that can be strengthened
11 and corroborated. We maintain that is the corpus delicti,
12 was Mr. Lockwood bribed, and we have introduced substantial
13 testimony of that fact. Subject to that, however, it is
14 still a mere matter of order of proof.

15 MR. FORD. There are a long line of cases, I am not going
16 to read them, because I am sure your Honor is familiar with
17 them, you have already ruled upon this point and in support
18 of the proposition that the order of proof is discretionary
19 with the judge of the trial court, I submit the case of
20 People vs. Donnell, 143 Cal. 398; People vs. Farenbeck,
21 102 Cal. 394; People vs. Donnell, 105 California, Cal. 262;
22 People vs- Van Horn, 119 Cal 330. People vs. Compton,
23 123 Cal. 408, and I have a number of other decisions exactly
24 on the same point, but I do not seem to have them with me,
25 I can send them to your Honor in fifteen minutes after I
26 get back to the office.

1 With reference to the Coffey decision, that is really
2 only a moot point before the Court at the present time,
3 you are not ruling upon the sufficiency of the evidence;
4 the main point made in the Coffey decision was that the
5 accomplice's testimony as to whether Coffey had actually
6 been guilty of the crime alleged had not been corroborated
7 as required by law at that time; the law at that time
8 required the evidence, independent of the accomplice's
9 testimony to be sufficient in itself to tend to connect the
10 defendant with the crime. That rule has been changed some
11 what by an amendment that has been passed, to Section 1111
12 of the Penal Code since the Coffey case was decided. I
13 have the excerpts in regard to that but I do not believe
14 it is necessary for us to go into that at this time. The
15 whole matter now is addressed to the discretion of the
16 Court, which has been exercised so far in favor of permitting
17 the defense to prove its case for convenience in order of
18 time. We expect to show that the bribery of Lockwood
19 was merely one part, one incident in a system and scheme
20 of criminal actions on the part of the defendant, seeking
21 to defeat and obstruct justice in the case of People vs.
22 McNamara; we seek to show that that was merely one incident
23 in the conspiracy entered into by the defendant and those
24 whom he had associated with him for the same purposes,
25 to defeat and obstruct justice. Now, we are following out
26 in the narrative form, in order that the jury may get at

1 the facts as they occurred, and decide for themselves
2 whether or not they were true. Finally, when the evidence
3 is in, the question as to the sufficiency of the evidence
4 will be before your Honor; if the people have not submitted
5 evidence to show that the crime was committed with reference
6 to Lockwood, then your Honor will instruct the jury that
7 they cannot consider evidence of other crimes, but if they
8 have shown that the crime was committed with reference to
9 Lockwood, then they have a right to consider all the
10 evidence in the case to see whether it was the defendant
11 that committed the crime.

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22-Pete 1 THE COURT: Mr Ford, if you will give all the credit that
2 is claimed to the testimony of Mr Lockwood --

3 MR FORD: I beg your pardon?

4 THE COURT: I say, concede all the credit that is claimed
5 to the testimony of Mr Lockwood, you are not claiming but
6 what he did^{aid} and abet the commission of this crime?

7 MR FORD: Claiming who aided and abetted it?

8 THE COURT: Mr Lockwood.

9 MR FORD: No, we do not. His evidence shows that Mr Lock-
10 wood in no wise abetted or aided, it shows he had been
11 solicited by Mr Franklin to accept a bribe on two different
12 occasions and had turned it down, that he then reported the
13 matter to the District Attorney's office and that he never
14 solicited Mr Franklin to come to him at all, but arrange-
15 ments were made in case Mr Franklin did return that they
16 would have detectives ready to catch them in the attempt to
17 renew his solicitations.

18 MR ROGERS: He didn't telephone him or anything, did he? No.

19 MR APPEL: He didn't take the money?

20 MR FORD: And the decisions in regard to feigned accomplices
21 is fully set forth in People vs Bunkers, the first California
22 Appellate and a feigned accomplice is not an accomplice
23 under any circumstances, but in this case Mr Lockwood never
24 even solicited the witnesses to come out, but they simply
25 waited in case he did return, and suppose he had gone over ^{there} _A
26 and in order to trap the defendant, as counsel for defendant
is delighted to use that word, suppose for the purpose of

1 trapping the defendant he attempted to aid the defendant
2 and his associates, Mr Franklin, in carrying out their
3 scheme, even then, under the Bunkers' case and numerous
4 other cases, it would not be necessary to consider him an
5 accomplice and he would not be an accomplice. However,
6 that is not the point before the Court at the present time,
7 and I do not think we are to travel outside of the record.
8 The only question before the Court is whether we shall be
9 allowed to proceed with our proof in the order in which we
10 have been doing in this case since we started to take evi-
11 dence. Your Honor has decided in your discretion you had a
12 right to --

13 THE COURT: This has somewhat different bearings than
14 any that has occurred before.

15 MR FORD: We would have been in the Lockwood case by this
16 time if we had been allowed to proceed.

17 MR ROGERS: I certainly do take exception to the intimation
18 that when we contend for substantial rights as we believe we
19 should do, that we should be subjected to this statement,
20 if you had let us alone we would have done this and the
21 other.

22 MR FORD: I apologize to the Court and the counsel for the
23 defense and I ask that the jury be instructed not to pay
24 any attention to the remarks, and I am sorry I did it. I
25 realize I should not have done it.

26 MR ROGERS: All right. Let it go. I have made several I

1 ought not to make.

2 I suggest that this also might be considered. Counsel
3 suggests that they purpose to prove a conspiracy. Might
4 I inquire why the indictment is not for that purpose, and
5 why we have not been informed we were to be tried here for
6 it, and the dozen different things, why we were brought here
7 to answer to the Lockwood matter and then for us to be met
8 with the contention and statement they are going to try a
9 conspiracy to obstruct and defeat justice? Why was not
10 that indictment brought, why wasn't it? Why didn't they ac-
11 cuse us of it instead of getting us to come up here to
12 answer to ^{an} alleged bribery of Lockwood's, a case which we
13 came here on, is not to be tried, and a conspiracy to
14 obstruct and defeat justice is to be tried? I take his
15 own word for it. We have to be entitled to some kind of
16 notice of what we are going to meet. The indictment itself
17 ought not to be a mere fiction, ought not to be merely ~~that~~
18 a ruse to get a man in here and try him on a dozen and one
19 different things, at least not until they have proven,
20 within the doctrine of the Coffey case, their main case,
21 then they can go on. For instance, if a man is being tried
22 for issuing fictitious checks, or forgery of handwriting --
23 I have never known the discretion to be exercised to allow
24 them to prove a series of transactions until they have
25 proven the corpus delicti charged.

26 MR FORD: We have submitted a list of decisions to the Court

1 which you can get at a moment's notice, in which the matter
2 of order of proof is in the discretion of the Court, allows
3 it to be done before the main incident or proof is allowed
4 to be made. I will read them to the Court if the Court
5 desires it.

6 MR APPEL: Here is the proposition, your Honor: Counsel do
7 not seem to appreciate the importance of this case,

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1 in so far as the question that arose affecting the proof
2 in respect to the main charge here in this indictment.
3 Your Honor can see the theory upon which counsel here is
4 so easily prove a case against the defendant. He says
5 that they have proven that the crime has been committed.
6 Now, his Honor will understand that the proof of Mr. Lockwood
7 is that Mr. Franklin came to him on the 4th day of November.
8 Now, he was not a juror at that time, he could not be
9 subject to bribery. Now, Mr. Lockwood said that Mr. Franklin
10 came to him again on the 9th day of November at that time
11 whatever Mr. Franklin said to him, that was not a crime,
12 because he was not a juror. He had not been drawn. Then
13 your Honor please, goes on the proposition that he came
14 for him on the 11th again and he rejected all offers. Then
15 we jump up to the 14th and then he said here absolutely,
16 your Honor, that man said that he then acted under the in-
17 structions of the district attorney, and I say to your
18 Honor right now that he could not have been a juror with
19 the matters and things to be submitted to that man that he
20 had disqualified himself just so much as if your Honor
21 were on the bench here and had a case in which your Honor
22 was interested pending your own department, which was
23 ordered to be tried by another person, and if I should
24 come, or one of the litigants, and offer you a bribe to
25 decide in his favor, you being disqualified to act in
26 your own case, you could not have been bribed, and I say

1 to your Honor that whenever a juror is on a jury and he
2 acts independent of his duty as a juror, he no longer acts
3 as a juror, when he has disqualified himself, that it
4 would be really impossible for him to be kept on the jury
5 when he says if he knows any facts concerning the case or
6 that he has learned, he is bound, under his oath, to tell
7 it in open court, so that man could not have been bribed,
8 after that as a juror because he could not have acted as a
9 juror after he went into the employ of the district attorney
10 because he assumed the position to the case which was an-
11 tagonistic to his duties as a juror. I say, therefore,
12 any proposition that was made to him was just like making
13 it to an outsider that could not have been on the jury.
14 I say, furthermore, your Honor, that this man was never
15 drawn, if you please, if he was drawn at all, until the
16 psychological moment came when he had agreed to go in there
17 and trap Mr. Franklin, and you talk about making a case
18 against Mr. Darrow--why, they didn't even make a case against
19 Mr. Franklin in that respect. I say that when we cite
20 decisions here in this Court your Honor will see that these
21 gentlemen were attempting to get evidence there against
22 Franklin it is true, but they proceeded in a manner that
23 it made it impossible for that offense to be committed.
24 They didn't understand that. That is why they didn't go
25 ahead. This man I say became the employe of the prosecution
26 while he waived his rights to be a juror, the mere makeshift
of being in that box, selecting the name of George N.

1 Lockwood, who was the paid hireling of the district
2 attorney's office--I withdraw the word paid, but he was
3 in the service of the district attorney, would not make a
4 juror. The law looks to the substance and not to the
5 form. It is all nonsense for a man to say he was drawn
6 as a juror. I say under the evidence so far in this case
7 it is impossible for them to make the principal case here.

8 Suppose, your Honor, that I go here in one of the
9 Canada cases and the strongest case is cited almost in
10 every case in the United States, that a man undertakes to
11 bribe him thinking it was the duty of the man to act in
12 his official capacity concerning an act which would have
13 to be passed upon by another official in his official
14 capacity, and although he goes and offers a bribe in the
15 earnest belief that he could influence his oath,

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Lockwood, who was the paid hireling of the district attorney's office--I withdraw the word paid, but he was in the service of the district attorney, would not make a juror. The law looks to the substance and not to the form. It is all nonsense for a man to say he was drawn as a juror. I say under the evidence so far in this case it is impossible for them to make the principal case here.

Suppose, your Honor, that I go here in one of the Canada cases and the strongest case is cited almost in every case in the United States, that a man undertakes to bribe him thinking it was the duty of the man to act in his official capacity concerning an act which would have to be passed upon by another official in his official capacity, and although he goes and offers a bribe in the earnest belief that he could influence his oath,

25-Smith that man had no vote upon the question and the Court
2 held he could not be bribed and there was no crime
3 committed. Now I say if any juror sitting here should
4 so far go into the case of the prosecution before he is
5 called here and becomes an agent and an arm of the law,
6 if he could be of service to the District Attorney and
7 not give a fair and impartial trial upon the evidence to
8 be submitted to him, but to undertake to entrap a man
9 whom they pretend was committing crimes, I say that he
10 so far removed himself from the possibility of ever
11 having been able to bring the matters and things to be
12 decided in the McNamara case before him that he could not
13 be bribed under any circumstances, and I say all conver-
14 sations which were had prior to his being drawn as a
15 juror were immaterial ^{to the case,} and all promises to pay him and
16 bribe after he had drawn his name and after he had become
17 an agent of the prosecution are immaterial here, and I
18 will cite lots of decisions to that effect if it is neces-
19 sary. You will grow wiser as you grow older, my friend.
20 Now, your Honor, they talk about having made the corpus
21 delicti here. That is just exactly the evidence in this
22 case. It doesn't come from the lips of this defendant.
23 It doesn't come from the lips of any witness of the
24 defendant. It is just like a case that arose down here in
25 Pomona years ago when I was a boy. A man had a tendency
26 to commit robbery, and he was about to commit robbery
and Mr Slanker, the constable, goes down there and lays down

1 and put something in his pocket and in a position that the
2 man should come down and take his money from his pocket, and
3 the fellow comes along and he slips his hand and takes it.
4 Why he consented to it ^{being} done at that time, and the
5 Supreme Court of this State said there was no grand
6 larceny committed, because he was led into it. There were
7 the agents of the State of California here in this case, in
8 connivance with Lockwood to aid and abet him and to
9 stimulate the desire of Franklin to come and offer him
10 money. Isn't that the evidence here? You talk about
11 evidence of the commission of a crime. Here is a man,
12 your Honor, with the assistance of the all powerful
13 District Attorney's office, entrusted by law to prevent
14 the commission of crime, consenting that this man should
15 encourage Franklin in offering him that bribe for the pur-
16 pose of proving that the offense was committed. He goes
17 down there and he telephones to this man to come to his
18 house. He was in the presence of the District Attorney of
19 this County, and the District Attorney had his army of
20 deputies and detectives following him in automobiles down
21 there. What did they follow him up there for? Well, was it
22 to show him to Franklin? No, he put himself right in his
23 presence in order to see if Franklin would hand him the
24 money. Why? In order to lead Franklin to handing the
25 money and to make out apparently that a crime had been
26 committed, and then you say that an offense has been
committed? And they say they are proving the corpus delicti

1 ih this case. I say that it is an absolute impossibility
2 under the rules of law and under the rules of justice and
3 fair dealing between man to man, professional honor, that
4 a crime should be established here by such evidence as that
5 at once. It must be apparent that it strikes the conscience
6 of an honorable man that if I notified a man to come into
7 my house and commit burglary, and I give my consent that
8 he shall do so, and the district attorney orders me to
9 go and do it, I say that no crime has been committed under
10 those circumstances, and much more so here where the
11 bribery depends upon the fact whether or not the juror,
12 the person who was the subject of the bribery, could act
13 in the case in reference to which the bribe was intended
14 to apply. A man about to be elected Judge of the Superior
15 Court, not a citizen of the United States, is not quali-
16 fied to hold that office. Suppose, if your Honor please,
17 that a man is elected here next election who is not a
18 citizen of the United States, who is not entitled to hold
19 the office, and that just about that time he is going to
20 enter upon the bench or to take his oath of office, that a
21 man came around and offered him a bribe, and he said: "Well,
22 I will see about it; I am going to entrap you".
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1 suppose that he is disqualified from acting? Suppose
2 that the law says you have no jurisdiction and no right
3 to decide the matter in reference to which this bribe was
4 offered? Suppose that the man is holding office that doesn't
5 exist in law. In the Balleriano case there a bribe offered
6 to Mr. Craig, and they claim--Mr. Rogers was in that case and
7 Mr. Rogers had the case dismissed. Mr. Balleriano went and
8 offered a bribe to Craig, who was claimed to be an officer
9 of the Society for the Prevention of Cruelty to Animals.
10 The office didn't exist. He was acting neither de jure
11 or de facto. He had no duty to perform. The law cast
12 upon him no duty to perform. He couldn't assume the duties
13 of an office that didn't exist. He was tried and con-
14 victed and upon reexamination of the authorities presented
15 by Mr. Rogers, the Court decided that no bribery had been
16 committed and no matter how much the bribe giver had in-
17 tended-- no matter how much he wished to do so, it was
18 absolutely impossible. This man Lockwood was not acting
19 as a juror, if your Honor please, he was acting as a
20 detective and as an agent of the district attorney's
21 office in reference to the very matter which was being
22 tried in court. Could he act as a juror? The law says that
23 if a juror is called upon the jury and knows anything
24 pertaining or relating to in the remotest degree of the
25 matter under investigation, he must assume it,--we must
26 assume that that man would have performed his duty and he

1 would have disqualified himself the moment he was employed
2 by the distfict attorney's office, and these are matters
3 which are serious./ I may be wrong, your Honor. I don't
4 assume to be able to state absolutely and correctly that
5 I am correct. That I am right, but these considerations
6 are impressed upon my mind, and if my voice can be lifted
7 inthe interest of a defendant and of such a man as I am
8 representing here, I ask that we shall be tentatively
9 heard and that we be patiently heard, and if out of the
10 illogical and out of ^{the} foolish things that I say, your
11 Honor deems that anything that is proper to consider I
12 ask your Honor to give it that consideration and that im-
13 portance which I in my humble way may not be able to
14 appreciate.

15 MR. FORD. Now, if the Court please, there is a time to
16 address the jury on matters of that sort and to discuss
17 that question, pr perhaps on a motion to dismiss the
18 case when the prosecution is through, but I don't believe
19 that the question is pertinent to anything that is now
20 before the court. It is very interesting but it is not
21 a correct statement of the law in many respects.

22 THE COURT. Let's have the question. Can you refer to
23 that question?

24 (Last question read by the reporter.)

25 THE COURT. It was to that question that the objection was
26 presented. The objection is overruled. ✓✓

1 MR. ROGERS. Exception.

2 A I said, "Mrs. Bain, this is Mr. Franklin." Well, she
3 says, "What Mr. Franklin is it? Mr. Bert Franklin?" I
4 said, "Yes, ma'am". She said, "What can I do for you?"
5 I said, "I would like to have a few moments conversation
6 with you." "Well," she said, "I have just--I was in the
7 bath tub when you knocked at the back door and I hadn't
8 anything on but my kimono," and I said, "Well, I would
9 like to talk to her a few moments, and she lifted the
10 window and shortly came to the door and opened it and
11 asked me to come in, which I did. She then went to the
12 back door and she came back and said that she had locked
13 the door for fear somebody would come in. I asked her
14 how she was getting along. She said, "Very well." I asked
15 her how Bob was. Said, "Getting along very nicely."

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I asked her where he was working and she told me but I have forgotten now, somewhere northwest. She then told me that she was working very hard for a blind woman, living near her, getting subscriptions to the Los Angeles Examiner in a contest and asked me if I could help her out, and I told her I thought I could. I asked her what the price was, how much it cost; she told me \$9.00 a year, I think, and I told her I would give her a subscription to the Examiner for one year, which I did. I then asked her if they owned the place in which they lived. She said they did. I asked her if there was any mortgage against it. She said there was a small one, and I asked her when it was due. I don't think she knew. I then said --

Q Well, what did she say. A I don't remember what she said, Mr Ford.

Q Go ahead. A I then told her that I ~~wished~~ used to work with Bob, knew him very well and could possibly put him in a position to make a little money in his old age, and she asked me what it was. I then said: "Mrs Bain, may I talk to you in a confidential way?" She said: "You certainly can, Mr Franklin. I have known of you for a long time and you can talk to me about any subject that you wish. I then asked her if Bob had been drawn on the jury. She told me that he had; that a jury summons had been left at the house for Bob and she had given it to him. I asked her what Bob's feelings was towards union labor. She told me at one time he had been in favor of it, but that he had had

1 some trouble in the union and was opposed to union labor.
2 I asked her if she had ever heard Bob express any opinion
3 in regard to the explosion of the Times, as to who was
4 guilty. She told me "No", that "Bob was very quiet and
5 very seldom expressed an opinion". I again repeated that
6 I thought perhaps I could put her and Bob in the way to
7 make some money that would help them out in their old age,
8 and told her what it was. I told her that I would like to
9 have Bob on the McNamara jury; that I was in a position to
10 pay him five hundred dollars in cash and two thousand
11 dollars when he had voted for an acquittal of the McNamaras
12 in the McNamara case, which was then about to be tried.
13 Well she said: "Mr Franklin, you know that Bob is a very
14 honest man". I said: "Yes, Mrs Bain, I realize that. I
15 have always felt so." ~~and~~ But she said "that sounds good
16 to me, and I would like to have Bob consider it".
17 I asked her when Bob would be home and she said about six
18 o'clock. I requested her to speak to Bob in regard to the
19 matter and that I would be back in the evening and see him
20 myself personally, that it was a subject I had a great deal
21 of hesitation of approaching Bob on, knowing him as I did,
22 but I knew that anything that I said to Bob would be kept
23 inviolate, and if he didn't wish to act that he would tell
24 me so and that would end it. That is about all the con-
25 versation as I remember it at the present time, and I then
26 left and came back up town.

Q She told you that she would speak to Bob about it, I

1 believe you said? A Yes.

2 Q Was there anything else said in reference to what she
3 said she would do with Bob, or Mr Bain? A She said she
4 would try to prevail upon him to take the money, or words
5 to that effect; I don't remember the exact language.

6 Q You returned again in the evening, did you? A Yes sir.

7 THE COURT: I think we will not go into that now. It is
8 adjourning time.

9 MR FORD: Before adjourning I would like to ask your Honor
10 to instruct the jury not to pay any attention whatsoever
11 to remarks made by myself, which I had withdrawn.

28 12 THE COURT: I was about to do that. Counsel on both sides
13 this afternoon, gentlemen, have made some remarks, and have
14 very properly admit^{ted} they made some remarks they had not
15 ought to make, and the Court quite agrees with them, but it
16 is the duty of the Court to admonish you that these little
17 outbreaks that have occurred this afternoon, to which your
18 attention was called at the time, are not evidence, and
19 are not to be considered as evidence in the matter at all,
20 I hope it will not occur again during the course of the
21 trial.

22 (Jury admonished recess until 9:30 a.m. May 29, 1912.)

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