

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. 60

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Peter Pirotte,		4843	4844	
George W. Hood,	4855			
Frank E. Dominguez,	4864	4881		
Harry Jones	4889	4892		

1 July 16th, 1912, 10 o'clock A.M.

2 Defendant in court with counsel. Jury called; all pre-
3 sent. Case resumed.

4 THE COURT: You may proceed, gentlemen.

5
6 PETER PIROTTE on the stand for further
7 cross-examination:

8 MR FORD: How long have you been on the police force at
9 Venice this last time, Mr Pirotte? A I think I went back
10 the 1st of January, after I got through here.

11 Q You worked in the sheriff's office up until the 1st of
12 January? A I just kind of had a leave of absence. I
13 had never revoked my commission anyway; I was working
14 here.

15 Q When did you go to work for the sheriff's office? A I
16 think it was about the 9th of October.

17 Q The 9th of October? A Somewhere along there.

18 Q And you were not on the Venice police force from the
19 9th of October to the 1st of January; is that correct?

20 A Yes sir.

21 Q How long before the 9th of October was it that you
22 were on the police force at Venice? A Well, I was on
23 for about two years with the exception of being away about
24 six months.

25 Q Who was chief when you left the Venice police force
26 on October 9th? A George Nettleton was city marshal

1 there.

2 Q And who was chief before and while you were there?

3 A John Parrent.

4 Q Parrent was not chief of police when you left the de-
5 partment? A You say he was not?

6 Q I am asking you, if he was not chief of police when
7 you left the police department? A I think so, yes.

8 Q And you were restored under the next chief, Nettle-
9 ton? A Yes sir.

10 Q Now, you say you were on leave of absence. Do you
11 mean that you got a leave of absence? A Well, not ex-
12 actly, no. I spoke to the mayor, and he said if I want-
13 ed to go up town, why, he thought it would be all right
14 for a while, and I could come back.

15 Q What pay did you receive on the police department down
16 there?

17 MR APPEL: Wait a moment. We object to that as immaterial.

18 THE COURT: Objection sustained.

19 MR FORD: That is all.

20

21 REDIRECT EXAMINATION

22 MR DARROW: Mr Pirotte, you say that you were here in court
23 during the time they were getting the McNamara jury. You
24 were in the court room at that time as bailiff? A What
25 time was it?

26 Q While they were getting the McNamara jury? A I was.

1 Q Did you get acquainted with me at all? A I did not.

2 Q Were you acquainted with me at all when you had these
3 first interviews with Franklin? A I was not.

4 Q And had I or anyone else had anything to do with your
5 meeting him and having the first interview with him?

6 A You did not.

7 Q Do you remember when it was you first told me about
8 these interviews? A I think it was about the middle of --
9 must have been about the middle of March. I don't exact-
10 ly know when it was.

11 Q Now, the first time that you and Franklin together met
12 Mr Watt, where did you say that was?

13 MR FORD: Objected to upon the ground that it is not
14 redirect examination, being the same subject matter cover-
15 ed on direct examination, and of course, your Honor, on
16 cross-examination, new answers are frequently brought out,
17 and that doesn't make the matter new subject matter. On
18 cross-examination we covered the matter covered on direct
19 examination, whether the answers be the same or not, that
20 is the object of cross-examination, to bring out all the
21 facts.

22 THE COURT: Your objection is that it is not proper re-
23 direct examination?

24 MR FORD: Not redirect.

25 MR DARROW: This matter is uncertain, which I wish to clear
26 up.

1 THE COURT: Well, with that statement, you may go over
2 it again. It is irregular, but you can go into it again,
3 with that statement.

4 MR DARROW: That is all there is to it; I am not certain.

5 Q Where did you say that you were first -- the first
6 time you met Watt when you were with Franklin?

7 MR FORD: Objected to upon the ground that it is covered --
8 in addition to the former objection, it is already covered
9 in the testimony. He said he met them as they were coming
10 from the Decatur hotel -- as they came out of the Decatur
11 hotel.

12 THE COURT: Mr Darrow says there is a little matter he
13 would like to clear up in his mind, and perhaps for the
14 record. While it is irregular, it is harmless. Answer
15 the question.

16 A Met him on the ocean front near Navy street, he was
17 coming up ocean front.

18 MR DARROW: Had you any appointment or arrangement or
19 understanding with Mr Watt that you were to meet that
20 evening? A I did not.

21 MR FORD: I object to that -- and I ask your Honor to in-
22 struct the witness not to answer until we have an oppor-
23 tunity to object hereafter.

24 THE COURT: yes, it is your duty to give counsel an oppor-
25 tunity to object.

26 MR DARROW: That meeting was purely accidental.

1 MR FORD: Objected to upon the ground it is calling for a
2 conclusion of the witness.

3 MR DARROW: Was it arranged in any way?

4 MR FORD: Objected to upon the ground it is already
5 answered.

6 THE COURT: Overruled.

7 MR DARROW: Was that meeting arranged in any way? A No
8 sir.

9 Q That is the first night, was it, that you three went
10 to dinner together? A Yes sir.

11 Q Now, Mr Pirotte, inspeaking in your testimony on coss-
12 examination on yesterday, you spoke in reference to your
13 asking Franklin if I gave him any money, and his reply to
14 it. To what did that conversation refer?

15 MR FORD: We object to that as calling for a conclusion of
16 the witness. The whole of the conversation was testified
17 to by the witness, and the jury candraw their own con-
18 clusions.

19 MR DARROW: I think it is not, your Honor.

20 MR FORD: The witness cannot tell what was in Franklin's
21 mind, or what was in his mind; he gave the conversation.

22 MR APPEL: That is exactly what we contend, your Honor,
23 that when he asked the question, your Honor, what was in his
24 mind, what he referred to, what did he attract Franklin's
25 attention to.

26 MR FORD: He gave the conversation.

1 THE COURT: The only question is whether or not it has
2 been fully cleared up. You are entitled to the question if
3 you have not had it, that is the only point.

4 MR FORD: It was gone into on direct examination and fully
5 on cross-examination.

6 MR DARROW: I do not think so. I think the cross-exam-
7 ination left it somewhat doubtful, not very.

8 THE COURT: All right; I will resolve the doubt in your
9 favor.

10 A Let me have the question.

11 (Last question read.)

12 MR DARROW: What money was referred to, change the ques-
13 tion --

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2p 1 MR. FORD. We object to that as calling for a conclusion
2 of the witness, a self-serving declaration, and the con-
3 versation itself is the best evidence of its meaning.

4 MR. DARROW. The witness cannot make a self-serving decla-
5 ration, I will state that as a matter of information to
6 counsel.

7 MR. FREDERICKS. The only proposition is this, your Honor:
8 The witness giving, or attempted to give, as his recoll-
9 lection best served him, the entire conversation. Now,
10 we might want to argue that that meant one thing and the
11 defense might want to argue that it meant another thing.
12 Now, to ask this witness for an opinion in regard to the
13 matter, he might give his opinion, but he would not know
14 what Franklin's opinion was, and at any rate it would be
15 an opinion and it seems to me the facts already being
16 before the jury they should be left without the opinion
17 in order that we might argue what they mean.

18 MR. FORD. The only thing that is really important is
19 Franklin's meanings and Franklin's sayings and Franklin's
20 doings.

21 MR. DARROW. Let me withdraw the question and I will put
22 it in another way. Q When you asked Franklin where he
23 got that money, what money had you been talking about?

24 MR. FORD. We object to that on the ground that the con-
25 versation itself is the best evidence of what they had
26 been talking about.

1 MR. DARROW. That is what I am getting at, what money
2 were you talking about at that time?

3 MR. FORD. We object to that on the ground it has been
4 fully covered on cross-examination and on direct examina-
5 tion and it is not a new subject nor the subject of redirect
6 examination, and, further, that the witness has already
7 testified that the only thing said about money was--I asked
8 the witness in one place and he says, and in another place
9 he says Mr. Watt asked the witness if he got any money from
10 Darrow, and that was all the conversation they had about
11 money. Now, it is evident that they are not talking
12 about any other money except the money referred to in the
13 conversation.

14 MR. APPEL. We want to show, your Honor, that at the time
15 of this conversation with Mr. Franklin, that there had been
16 no money transaction discussed with Mr. Franklin, with the
17 witness or with Mr. Watt in the presence of each other,
18 except the moneys that were used in the bribery of the
19 juror Lockwood; we want to show that this witness had
20 never had any conversation with him in regard to money
21 transactions in any way, shape or manner, except in con-
22 nection with the bribery of juror Lockwood; now, when we
23 show that the jury can determine whether or not when the
24 question was asked, whether Mr. Darrow gave him any money
25 or not, it was with reference to that money and none other;
26 furthermore, your Honor, your Honor can see the futility

1 of the argument upon the other side, what were these
2 people talking about over there? They were talking of
3 nothing else except in regard to Mr. Franklin's connections
4 with his troubles in reference to this very case, in ref-
5 erence to the bribery, there was no other subject of con-
6 versation; would it be likely that this witness had
7 in his mind that he was asking whether or not he had given
8 him the money to buy railroad stocks? Would it be likely
9 he was asking him who gave him the money to buy a house and
10 lot when the conversation was in reference to this bribery?
11 Now, we want to clear that and make it absolutely certain
12 and that is the object of it, and any question, no matter
13 what it is that will bring out the answer of this witness,
14 bring out his mind, will bring out the subject of his con-
15 versation, will bring out the situation, what are the
16 surrounding circumstances in connection with the mind of
17 this witness, and the answer given him by Mr. Franklin in the
18 light of those circumstances, then the jury have a right
19 to say they were talking simply and only concerning this
20 bribery, concerning the money Franklin is alleged to have
21 used, concerning this case and concerning his connection
22 with it, and in the light of those circumstances, Your Honor
23 has a right to say, the jury have a right to say, and I
24 have a right to say they were talking concerning that money
25 alone. That is the object of this conversation.

26 MR. FREDERICKS. That is true, your Honor--

1 THE COURT. Mr. Appel, there is no doubt about your right to
2 go into this matter; the question is and the objection is
3 made that you have gone fully into it.

4 MR. FREDERICKS. May I not say a word about their right
5 to go into the matter? We made the objection.

6 THE COURT. I will hear you when the defense is closed.

7 MR. FREDERICKS. I assumed they had.

8 MR. DARROW. We had, Mr. Fredericks. Go ahead.

9 You want to close and I would like to add a word, that is
10 what you asked?

11 MR. FREDERICKS. Yes.

12 MR. DARROW. Your Honor, there was undoubtedly a question
13 asked about this in direct and there were a number of
14 questions asked about it in cross, and counsel seeks to
15 draw the inference from it in cross-examination that there
16 was reference to any other money or any particular money,
17 just a plain, simple statement of this witness that he
18 never got any money. Now, this witness did say at one
19 time, used the word any and at another time the word
20 there. Did you get that money. There is two or three
21 conversations of it in there.

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1 These little words which might not mean anything to
2 the witness, might mean something to the case, if the
3 People were technical, which I take it the case should not
4 be in a case of this sort. The matter, perhaps, is not
5 fully cleared up. Now, I would not have much doubt about
6 12 men or any 100 men who were not interested in the case
7 as to their understanding of what was talked about, but
8 I don't want to leave it in any doubt, and the question is
9 plain and simple and fair for this witness to say what
10 money was being discussed when Franklin said he never got
11 the money from me or any money from me or whichever ex-
12 pression he used or whichever money was being discussed
13 at that time. It certainly is fair. It is redirect. It
14 might help clear up something that is uncertain. Counsel
15 may argue any way they see fit after the answer is given,
16 but certainly for the jury to get as much light on the sub-
17 ject as they can, and it is fair to me. We should have
18 as much light on the subject as we can.

19 MR FREDERICKS: That is true, and I do not desire to be
20 overly technical, still we believe it is our duty to call
21 for the technicalities of procedure to a certain extent,
22 and this objection of ours is only one of principle, large-
23 ly. It is true this witness has said that on one occasion
24 he has said or used the word "that money" in his answer.
25 Did Darrow give you that money on any occasion. He said
26 did he give you any money, and Franklin replied, and he

1 has given those replies, and he has stated that that ques-
2 tion and that reply were the only time that that subject
3 was mentioned. Now, having given the entire conversation
4 on the subject, those are the facts, and if we permit a
5 witness to say what these facts mean, we take away from the
6 jury the obligation and the duty of saying what those
7 facts mean. He has given his facts, it is not for him now,
8 to give an opinion. He has given all the facts, and if the
9 matter is in any doubt at all, why, then, it is a duty
10 that is brought about by those facts, and this witness
11 has not the right to attempt to put a construction on
12 those facts, when the facts are plain and simple, and all
13 in. Now, that is our view of the matter. He has given
14 those entire facts. I am willing to admit that the mat-
15 ter does not amount to a great deal, except as a matter of
16 principle. We are all of us, probably, more or less aware
17 that witnesses on both sides of a case, of any case, and
18 all cases, become, perhaps a trifle partisan, that is the
19 nature of things, and it is with no special criticism of
20 this witness any more than it is of humanity in general, and
21 for that reason, witnesses are not permitted to give opin-
22 ions; that is one of the reasons they are not permitted
23 to give opinions as to what was meant. Now, he has stat-
24 ed the facts; that should end it.

25 MR DARROW: Mr Fredericks, you misunderstood the ques-
26 tion. I withdrew the one asking for an opinion. I simply

1 asked him now for the fact, what the conversation was
2 about.

3 MR FREDERICKS: But he has given all the conversation. It
4 was only an opinion on his part, and the answer showed
5 there should have been no --

6 MR DARROW: We can find out by asking.

7 MR FREDERICKS: It is principle, that is all.

8 MR DARROW: It is a matter of principle with me, a lit-
9 tle more.

10 THE COURT: Objection overruled.

11 MR DARROW: Will you read that question?

12 (Last question read by the reporter.)

13 A I suppose the money that Darrow was supposed to have
14 given him for to bribe the jury.

15 MR DARROW: Any special -- that is all.

16 MR FREDERICKS: That is all.

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18 GEORGE W. HOOD, a witness called on behalf
19 of the defense, being first duly sworn, testified as fol-
20 lows:

21 DIRECT EXAMINATION

22 MR APPEL: You may state your name, please. A George W.
23 Hood.

24 Q Mr Hood, what is your business or occupation?

25 A Dairyman.

26 Q Whereabouts do you reside? A On Washington street,

1 in the Palms.

2 Q How long have you resided in this county, Mr Hood?

3 A I came out here in '87.

4 Q And you were formerly connected with the city govern-
5 ment here? A Yes sir.

6 Q For how many years? A 13.

7 Q Do you know Bert H. Franklin? A Yes sir.

8 Q You have known him for a good many years? A Yes sir.

9 Q You and he were quite intimate, on very friendly terms?

10 A Yes sir.

11 Q You used to be neighbors, were you not, at one time?

12 A Not close, no sir.

13 Q Well, you and he attended the same lodge for a number
14 of years? A Yes sir.

15 Q Do you remember of having met Mr Franklin somewhere
16 in the early part of January of this year, over near or at
17 about where the Walker Theatre is, in this city? A Yes sir.

18 Q During one of those -- now, I believe it was during
19 one of those lodge meetings, was it? A Yes sir, during
20 several of them.

21 Q And with reference to the time when there was some wed-
22 ding in Mr Franklin's family, do you remember when
23 that conversation occurred? A I can't fix the date,
24 for any of the conversations. We had several of them, so
25 many I cannot fix the date of any of them.

26 Q I am speaking of the first conversation. A Oh, the

1 first conversation was before the wedding in the Franklin
2 family.

3 Q And do you know when that occurred, about? A I
4 don't remember the date.

5 Q I will ask you whether or not at that conversation
6 that in speaking concerning his case, Mr Franklin's
7 case -- it was after his arrest, wasn't it? A I talked
8 with him both before and after his arrest.

9 Q I mean after his arrest. A Yes, I talked with him.

10 Q I will ask you whether or not --

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1 THE COURT. On what page is the foundation laid, Mr. Appel?

2 MR. APPEL. Page 1021 is what I am now asking him first,
3 your Honor. I will ask you whether or not at that time you
4 did or did not say to him, Bert or Franklin, however
5 familiarly you addressed him, "You are a damned fool,
6 why didn't you take that money and put it down in your
7 jeans and just simply tell it was all fixed and not take
8 chances of getting behind the bars?" A I did.

9 Q I will ask you whether or not--you asked him that, did
10 you? A I did.

11 Q I will ask you whether or not in answer to that--

12 MR. FREDERICKS. Don't answer, Witness, please, until we
13 have an opportunity to object.

14 MR. APPEL. He did or did not respond as follows or in
15 substance as follows or to this effect, "By God, George,
16 I couldn't, for they were watching me too close.

17 MR. FREDERICKS. Just a moment. We haven't our volume
18 here. We will object to it on the ground no foundation is
19 laid and the court can rule.

20 THE COURT. I have the volume here. The foundation is
21 laid. Objection is overruled.

22 MR. APPEL. Just read that question.

23 (Last question read by the reporter.)

24 A That was in substance his reply.

25 Q Then following that did he or did he not, following
26 that, say to you, "The man I got the money from or who

1 fixed up the proposition," or words to that effect, "was
2 a stranger to me. I never saw him before. He was stand-
3 ing within thirty feet of me when the money was passed.
4 He disappeared when the crack came on and I have never seen
5 him since?"

6 MR. FORD. We object upon the ground that no foundation has
7 been laid in that the witness's answer--a part of that con-
8 versation is true and a part is not true, and then in answer
9 to this question: "Q--Which part is not true and which
10 part is true? A I told Mr. Hood at that time that the man,
11 if there was one man, that if I could find him, that
12 I could clear myself, I thought; that the man that was
13 instrumental in getting me in that trouble was near me
14 when I was arrested, and, by the way, I didn't at that
15 time mean Mr. Darrow. I will be frank with you about it.
16 It was in pursuance to a conversation we had an agreement
17 the day before as to what I was to say. That was on the
18 14th day of January." Now, if your Honor please--

1 MR. APPEL. Just a moment--

2 Mr. Ford. The proper foundation has not been laid. We
3 object to it on that ground.

4 MR. APPEL. Your Honor will see and any one can see, it
5 does not require a legal mind to see why counsel is so
6 anxious to take this book right out of my hand and read Mr.
7 Franklin's answer. Your Honor can see--if I were not
8 to be in contempt of court I would like to call this con-
9 duct by its right name. There is only one name that it
10 merits. Now your Honor will see that he tried to get
11 in the hedging of Franklin. Now, we are entitled to the
12 testimony of this witness as we claim his expressions were
13 to this witness. What difference does it make whether
14 he gave that answer or not? His answer not being in
15 accordance with the question it is a denial on his part
16 that he said that very thing which we asked him, your
17 Honor.

18 THE COURT. The question as propounded by Mr. Appel is
19 substantially the question for which foundation was laid
20 on 1022. He says, "No," and then explains. That justi-
21 fies you in asking the question. The objection is over-
22 ruled. The foundation is laid.

23 MR. APPEL. Read the question.

24 (Last question read.)

25 MR. APPEL. Or words to that effect or in substance?

26 A That is not exactly the conversation, but it was--

1 that is the substance of it.

2 Q The words used--you mean to say by that the words you
3 heard from him meant the same thing? A Yes, sir.

4 Q Did you or did you not then say to him, "Bert, couldn't
5 you locate him," and didn't he say to you, "I don't
6 know whether I can or not, I have been waiting, hoping
7 to hear from him," or words to that effect?

8 MR. FORD. We object to that on the ground that Franklin
9 answered that in the affirmative? "I think I did say
10 that, yes, sir." No foundation laid for it.

11 MR. APPEL. Very well, your Honor. The admission coming
12 from the District Attorney that he said so, then it is
13 all I want.

14 THE COURT. Objection sustained.

15 MR. FORD. We object to the comment of counsel.

16 MR. APPEL. He can object all he wants to, your Honor, for
17 that matter, I simply am saying I agree with the court
18 because of this statement of counsel; he can object all
19 he wants to.

20 THE COURT. I think you are within your rights, Mr. Appel.
21 Let us have the next question.

22 MR. APPEL. This man is only harrassing the orderly
23 examination of this witness, your Honor, that is all his
24 purpose is, it is a trick, that is all it is; it is con-
25 temptible, your Honor, to do that. Now, there was noth-
26 ing in my statement that I agreed with him and I agree with

1 your Honor's ruling in view of his statement, which was
2 perfectly orderly and proper.

3 THE COURT. It was perfectly orderly and proper.

4 MR. FREDERICKS. I do not see any cause for such vehement
5 conduct on the part of counsel.

6 MR. FORD. I would like to be protected from the use of the
7 word "contemptible" as to my actions in court, I leave it
8 to your Honor and submit the matter.

9 THE COURT. I think the conduct of the District Attorney
10 was entirely within his legal rights; I think the posi-
11 tion of Mr. Appel was entirely within his legal rights,
12 but I do think it is remarkable, gentlemen, that we should
13 not confine our work more closely to the examination,
14 after a matter is passed upon and the matter is ruled
15 upon, let us go to the next question; the weather is
16 very hot and it is trying. Let us get on with the
17 examination.

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1 MR APPEL: " I am going to characterize his conduct every
2 time, in spite of everything.

3 MR FREDERICKS: We have no objection, if that is done in
4 the ordinary language.

5 THE COURT: You have that right.

6 MR APPEL: I will use any language I please, and you or
7 anyone else cannot prevent me from doing that.

8 THE COURT: What is the next question, gentlemen?

9 MR APPEL: Did he or did he not say then to you, if I
10 remember right, that he thought this man who had given him
11 the money was a San Francisco man?

12 MR FORD: We object to that on the ground that it does
13 not in anywise tend to impeach the testimony of Franklin
14 given on Franklin's examination, which was as follows:

15 "Q -- Did you further say it was your impression he was a
16 San Francisco man or possibly an Eastern man? A -- I think
17 I did, yes sir."

18 MR APPEL: That disposes of that question.

19 THE COURT: Objection sustained.

20 MR APPEL: yes, that disposes of that question; yes sir.

21 Q Now, my examination of you has referred to a conver-
22 sation that is alleged to have occurred somewhere along
23 after the middle of January of this year; one of the first
24 conversations you had with him, and being at the place
25 that I have referred to. Am I correct in fixing the time,
26 Mr Witness? A Somewhere in that neighborhood.

1 Q And -- Yes sir. And this occurred in that, all that I
2 have asked you, refers to one conversation, you understand?

3 A Yes sir.

4 MR APPEL: That is all.

5 MR FREDERICKS: That is all, Mr Hood.

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7 FRANK EDWARD DOMINGUEZ, a witness called
8 on behalf of the defense, being first duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 MR APPEL: You may state your name, please? A Frank Ed-
12 ward Dominguez.

13 Q How old are you, Mr Dominguez? A 36 years of age.

14 Q Where were you born? A Los Angeles City.

15 Q How long have you made your residence here in Los
16 Angeles city? A All my life.

17 Q What is your business or profession, Mr Dominguez?

18 A Attorney at law.

19 Q Do you know Bert H. Franklin? A yes sir.

20 Q How long have you known him? A Oh, I should say 18
21 or 20 years, maybe less.

22 Q Where is your office, Mr Dominguez? A 403 Califor-
23 nia Building, Los Angeles City.

24 Q One of the rooms connected with Mr Rogers' office?

25 A yes sir.

26 Q Do you know John Drain? A yes sir, I know Mr Drain.

1 Q And one F. M. Nichol? A Frank Nichol?

2 Q Yes sir. A Yes sir.

3 Q Do you remember having been present at a time when
4 Nichol and Mr Drain and Mr Franklin were with you, either
5 at the Hoffman bar or at the Hollenbeck bar in this city
6 on Spring street? A No sir, not the Hoffman or Hollen-
7 beck; at the Lyceum bar, right next to the Lyceum theatre,
8 and what was formerly the Orpheum theatre.

9 Q That is called the Majestic, is it? A I think it was
10 called the Majestic at that time; I am not sure of the
11 name.

12 Q I am not familiar with it. A I appreciate that.

13 Q That is, I never look at the names. About when was
14 that meeting there, if any? A Oh, I do not recall the
15 exact date, it was sometime after the arrest of Mr Frank-
16 lin.

17 Q And after he had given bail, I suppose? A Sir?

18 Q After he had given bail, I suppose? A I don't rem-
19 ember that, Mr Appel; I don't know just when it was with
20 reference to his bail or anything else.

21 Q Well, he was out there? A Well, he was there in
22 front of this place when I come down the street.

23 Q Now, did you and the persons I have already named go
24 into the saloon? A We did.

25 Q And did you people have any refreshments there, with-
26 out specifying the particular kind of refreshments?

1 MR FREDERICKS: That is objected to as immaterial; the
2 fact that they met and talked, is the point.

3 THE COURT: Objection sustained.

4 MR APPEL: We except.

5 Q Who, if anyone, gave you an invitation, if at all,
6 to partake of refreshments?

7 MR FREDERICKS: That is objected to as immaterial.

8 THE COURT: Objection sustained.

9 MR APPEL: I offer to show by the witness the circum-
10 stance and the reason of their being in the saloon, and
11 the occasion and the reasons for the meeting; I offer to
12 show that Mr Franklin gave an invitation to one or more of
13 the persons present, and that in view of that invitation,
14 that there was a meeting and a conversation between them
15 then at that time; I offer to show the circumstances surround-
16 ing the conversation.

17 MR FREDERICKS: Even so, that, we maintain, would be imma-
18 terial.

19 MR APPEL: The reason I offer to show it is this: I will
20 give my reasons, being that Mr Dominguez has offices connect-
21 ed with Mr Rogers' office, and it would be argued here --

22 THE COURT: yes, I see your point. That does change the
23 situation a little.

24 MR APPEL: It has been argued already --

25 MR FREDERICKS: On that view of it, we withdraw the ob-
26 jection.

1 THE COURT: You can have the last question read. Read the
2 last question.

3 (Last question read.)

4 A Bert H. Franklin.

5 MR APPEL: Did you or Mr Drain or Mr Nichol in any way,
6 shape or manner, at that time, offer any suggestion to Mr
7 Franklin to cause him to come into that bar room and there
8 engage in any conversation?

9 MR FORD: That is objected to on the ground it is not the
10 proper form to put an impeaching question in, that the mat-
11 ter concerning which the witness is being examined is
12 irrelevant and immaterial, and, further, it calls for a
13 conclusion of the witness as to whether any of the things
14 done or said amounted to an inducement. The proper thing
15 is to let him state what was said and done on that oc-
16 casion, let them put that in evidence, and let the jury
17 judge whether it was an inducement or not.

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6p 1 THE COURT. The objection is overruled. What is your
2 answer, Mr. Dominguez?

3 A Please give me the question, Mr. Petermichel.

4 (Last question read.)

5 A No, sir, it was at his special request that we went
6 in there.

7 MR. APPEL. Q Were you at that time in any way engaged by
8 Mr. Darrow or at any other time, to assist in his defense
9 in any way, shape or manner? A Never.

10 Q I will ask you whether or not in that conversation and at
11 that time and place you did, and in the presence of the
12 persons named already by me, you did or did not hear
13 Mr. Franklin say in effect or in substance or in words the
14 following: "I never received a dishonest dollar from
15 Darrow. He never knew anything connected with this matter--

16 MR. FORD. The page, please.

17 MR. APPEL. --836--meaning "by this matter" the subject
18 of the bribery of Lockwood and Bain--"he, Darrow, is too
19 good a man to do anything of that kind, he was most kind
20 hearted, generous and the best man I ever knew in my life
21 and he would not stand for any corruption or dirty work
22 and he never gave me a dollar for any corrupt purposes
23 in the world." Did he or did he not say the whole of that
24 as I have indicated to you in the question?

25 MR. FORD. We object to that as no proper foundation laid
26 showing the time this occurred--the persons present--

1 THE COURT. Objection overruled.

2 MR. FORD. Will your Honor state the time that they have
3 fixed this? It is fixed in the impeaching question but
4 not at the present time.

5 THE COURT. I think it is fixed here in the questions. Mr. Ap-
6 pel has propounded to Mr. Dominguez.

7 MR. FREDERICKS. I listened carefully and I was waiting
8 for the time, because I noticed it had not been fixed here-
9 to fore.

10 MR. APPEL. I went over the time, it was after Franklin's
11 arrest.

12 MR. FREDERICKS. It slipped my memory.

13 THE COURT. I thought it was gone into fully to fix the
14 date and time after his arrest and when he was out on
15 bail is his description of it.

16 MR. FORD. At page 835 of the transcript Mr. Franklin fixes
17 it, the question was propounded fixing it within a period
18 of ten days, line 8, page 835--

19 THE COURT. I think it is fixed.

20 MR. APPEL. The rule is this and we might as well settle it
21 forever: That where the witness interrogated sought
22 to be impeached admits the occasion of the conversation
23 and the conversation but only denies the words, that every-
24 thing else is admitted except the words used, therefore,
25 the only interrogation that counsel upon the other side
26 may make is simply upon that point, upon the conversation

1 and denial and upon which there is a conflict, the occasion
2 being admitted, the time and the persons present being
3 admitted but the language being denied, the only thing
4 left is was this used or was ^{it} not. I submit it, that is
5 the only logical way of interrogating the witness.

6 MR. FREDERICKS. I do not want to take up any time that is
7 not necessary, but this time has not been fixed, and I am
8 sure of it. This witness does not know what time, this
9 jury does not know what time and to say that it was a time
10 after Franklin's arrest and while he was out on bail would
11 mean any time from the 28th of November to the present
12 day. Now, there were times along during that when condi-
13 tions changed and statements that would be made at one
14 time would be looked at in the light of the circumstances
15 that existed at that time and ^{all} we ask is that the time be
16 fixed. If it means the time that Franklin is talking
17 about, ten days after his arrest, ten days along about the
18 10th of December that would be, or something of that kind,
19 then let us understand. That is all we ask so that it is
20 understood.

21 THE COURT. I think, upon reflection, I think the District
22 Attorney is right upon that. I think the time will have
23 to be fixed.

24 MR. APPEL. Well, I will offer now for the purpose of
25 laying the foundation and as a part of the question pro-
26 pounded to the witness, I offer the testimony of Mr. Franklin

1 fixing the time himself as follows:

2 MR. FORD. Well, we admit that Mr. Franklin--

3 MR. APPEL. I don't care for this man's admission.

4 MR. FREDERICKS. This is part of the question--

5 THE COURT. Mr. Appel is propounding his question and he
6 has the floor. Go ahead.

7 MR. APPEL. I offer to read the following: "Q--You remember
8 talking to him there about the case? A--When? Q--This
9 is after your arrest and before your plea of guilty? A--

10 Yes, I remember it. Q--You remember it? A--Yes, sir.

11 Q--Do you remember of F. M. Nichol being there? A--Yes,
12 sir. Mr. Ford--That is kind of very indefinite. It is
13 a period of three or four months. Mr. Rogers--It was short-
14 ly after the arrest. I cannot give you the date. He

15 knows the incident. A--Yes, sir, I think it was within
16 10 days. Q--Within 10 days? A--I think so, yes, sir.

17 Q--Now, did this conversation occur in the presence of Mr.
18 John Drain, Mr. F. M. Nichol and Mr. Frank Dominguez, you
19 invited them all into the saloon to have a drink? A--Is
20 that part of the conversation? Q--The part about inviting
21 them to enter and have a drink is a part of the conversa-
22 tion."

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1 MR FREDERICKS: With that date fixed, we withdraw the ob-
2 jection.

3 MR APPEL: (Reading:) "All right. It so happened did it?

4 A -- I don't know. Q -- You are not ashamed to take a
5 drink with me, are you? A -- Wait until I answer that

6 part of the question. Q -- All right. A -- I remember we
7 went in. I don't remember I invited them or not. Q -- And

8 you said to John Drain, 'You are not ashamed to drink with
9 me, are you?' whereupon Mr Drain said, 'You know I don't

10 drink anything but buttermilk,' and that Franklin replied,
11 'That is good enough drink; take that if you want', and

12 you went in? Do you remember that? A -- I remember we
13 went in to drink. I question the buttermilk story very

14 much. Q -- About John Drain? A -- Yes sir. Q -- You
15 know that John Drain hasn't drunk anything but buttermilk

16 for some years?" Then Mr Ford objects, and Mr Rogers --

17 MR FREDERICKS: There is nothing before the court.

18 THE COURT: Counsel is asking a question.

19 MR FREDERICKS: I have withdrawn the objection to the
20 other one.

21 MR APPEL: Now, having read the testimony of Mr Franklin
22 in the record here, and he having fixed the time, being the

23 time within a short time, or within about ten days after

24 his arrest, and he having pointed out the exact times and
25 the persons then being present, you may state whether or

26 not you heard Franklin say the matters and things which

1 I have indicated to you in my previous questions, to-
2 wit: "I never received a dishonest dollar from Darrow.
3 He never knew anything connected with this matter", mean-
4 ing the bribery of the juror Lockwood and the Juror Bain;
5 "He is too good a man to do anything of that kind; he was
6 most kind-hearted and generous and the best man I ever
7 knew in my life; he wouldn't stand for any corruption or
8 dirty work and he never gave me a dollar for any corrupt
9 purposes, in the world." Did he or did he not make that
10 statement, the whole of it, and every word of it in your
11 presence, and in the presence of the prsons named by me
12 upon the occasion named by him in his testimony?

13 A He did, and more. Not in the presence of Mr Nichol,
14 however. Mr Nichol was not there.

15 MR APPEL: Wait a moment.

16 THE COURT: Gentlemen of the jury, bearing in mind your for-
17 mer admonition, we will take a recess for 5 minutes.

18 (After recess.)

19 THE COURT: Gentlemen, in regard to a copy of the Tribune
20 that was wanted the other day, the bailiff informs me
21 that he has found an extra copy and has it in possession;
22 he will have it here tomorrow morning. ^{MR FREDERICKS:} Whenever it is
23 found, as far as we are concerned, it may be substituted
24 for the record.

25 MR APPEL: Mr Dominguez, when the question just referred
26 to by me and to which you have already testified to, and as a

1 part and portion of the same conversation, did you or did
2 you not, state to Mr Franklin that you were sorry to see
3 that he, Franklin, had gotten into trouble, but that no-
4 body could accuse him, Franklin, of ever having \$4000,
5 and did you in that connection say to him, "I don't know
6 whether you are guilty of what you are charged, but if you
7 got that money, you got it from Darrow?" Did you so
8 state? A The last part of that statement is not true.
9 The first part of it is true.

10 Q Did you thereafter, at any time or place or in the pre-
11 sence of any other persons, attempt to or try to make
12 Franklin say the same thing that you have testified to.

13 MR FORD: Objected to upon the ground that it is an at-
14 tempt to ~~cross~~ examine their own witness, and no proper
15 foundation has been laid for the asking of the present
16 question, and if the witness did have the conversation
17 with Mr Franklin at any other time and place, a proper
18 foundation should be laid by asking the time, place and
19 persons present, and putting the conversation to the wit-
20 ness.

21 MR APPEL: No, your Honor. We are asking now for affir-
22 mative testimony in contradiction of the evidence given
23 by Mr Franklin upon the stand. I refer your Honor to his
24 statement, page 848, "He had tried", meaning Mr Dominguez,
25 to make me say since that time that I did it, but I deny
26 it."

1 THE COURT: Objection overruled.

2 MR APPEL: Now, answer the question. A No sir.

3 Q In that conversation referred to by you and by me in
4 my questions, did or did not, Mr Drain say to Mr Frank-
5 lin, "I would not think you had so much money, and if
6 there is anything of that kind, there must be somebody be-
7 hind you besides yourself"? Do you remember that?

8 A Just please read that to me again.

9 MR FORD: What lines, Mr Appel?

10 MR APPEL: page 849. (Last question read by the repor-
11 ter. A I did not.

12 MR APPEL: Did or did not, Mr Franklin, in the conversation
13 alluded to already, say that he was innocent of the charge
14 against him, or maintained in any way, shape or manner, his
15 alleged innocence? A He did not.

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p 1 MR. FORD. May that last question be read? I want to
2 know whether this was Franklin's words or whether it is the
3 witness's conclusion.

4 THE REPORTER. Mr. Smith has the other question.

5 MR. FORD. I move to strike it out on the ground it is
6 calling for a conclusion of the witness.

7 THE COURT. The witness says he does not remember.

8 MR. FORD. No, he says he didn't. Mr. Appel's question
9 was was he maintaining his innocence.

10 THE COURT. Mr. Appel's question was "Do you remember that?"
11 and he says, "No, I don't remember."

12 MR. FREDERICKS No, that was the question before.

13 MR. FORD. I move to strike that out as a conclusion of the
14 witness.

15 THE COURT. In that event we better call in the report er.

16 MR. APPEL. I think I asked Mr. Dominguez whether or not
17 in that same conversation alluded to by me in my question
18 and by him in answers, whether or not Mr. Franklin said
19 that he was innocent of the charge.

20 THE COURT. Yes.

21 MR. APPEL. And then I further said to him, "Did he in any
22 way, shape or manner maintain his innocence?" and the witness
23 said, "No."

24 MR. FORD. We move that that last part be stricken out .
25 The first part is all right, but the last part we move to
26 have it stricken out as a conclusion of the witness; whe-

1 there or not he said it, it would be a fact and the witness
2 says he does not remember that, the last part, whether he
3 did anything to maintain his innocence or was maintaining
4 his innocence would be calling for a conclusion of the
5 witness.

6 THE COURT. The motion to strike out is denied.

7 MR. APPEL. I asked it in view of his language.

8 THE COURT. I have it before me, line 25, page 849.

9 MR. APPEL. Yes, sir. Q You may state whether or not,
10 upon the same occasion and at the same time and place, and
11 in the presence of the persons named by you, whether or
12 not Mr. Franklin said, in view of some statement in which
13 Captain Fredericks's name was mentioned, as follows, in
14 the words I am going to quote, or in substance, or to the
15 same effect or meaning the same thing, the following:

16 "Now, boys, don't attack Captain Fredericks in this thing,
17 he is my friend and he is your friend, I see him every
18 time I please and he is my friend." Did he or did he
19 not? A He did.

20 Q Again alluding to the same time and place and the
21 same conversation, and as a part of the same conversation
22 referred to by you and by me in my question, you may
23 state whether or not Mr. Franklin then said, you first
24 having said to him, "Well, Bert, I am sorry to see you in
25 this trouble," and didn't he say following that remark by
26 you, "Oh, don't worry about me, I will get out of this

1 all right," or words to that effect or in substance, or
2 meaning the same thing? A He did.

3 Q Did you meet Mr. Franklin afterwards, by the Hollenbeck
4 bar or the Hoffman bar on February 3, 1912? A The date
5 I don't remember, but I did meet him there subsequent
6 to that other conversation anyway.

7 Q I am alluding to a conversation which Mr. Franklin
8 says--

9 THE COURT. What page, Mr. Appel?

10 MR. APPEL. I will give it to your Honor in a moment.

11 MR. FREDERICKS. If there was only one conversation at
12 that place with this witness we will make no contro-
13 versy but what it is the same conversation.

14 MR. APPEL.-- being the conversation alluded to by Mr.
15 Franklin as having taken place on February 3rd, being
16 given by him in answer to a question propounded to him by
17 Mr. Ford and appearing in this record at page 1352, either
18 at the Hollenbeck bar or at Polaski's Hoffman Cafe or
19 bar, whatever you may call it, you may state whether or
20 not at that time in your presence Mr. Franklin, then speak-
21 ing concerning the matter at issue, said to you that he
22 did not propose--other persons being present whose names
23 we were unable to attract the attention of Mr. Franklin to--

24 MR. FORD. What page?

25 MR. APPEL. 1351--say in your presence or to you or address-
26 ing those who were surrounding you and he, that he did not

1 propose to tolerate or allow any one to drag in the name
2 of Mr. Darrow in connection with his case, or words to that
3 effect?

4 MR. FORD. We object ^{to} that on the ground it does not in any
5 wise intend to impeach the testimony which Franklin gave
6 on that occasion, the answer of Franklin being, to the same
7 question, as follows, "I think I did state that."

8 THE COURT. Objection sustained.

9 MR. APPEL. We take an exception.

10 Q Mr. Dominguez, were there any more conversations between
11 you and Mr. Franklin than the two which I have indicated,
12 the first of which is alleged to have occurred about or
13 in the neighborhood of 10 days after Mr. Franklin's arrest,
14 and the other one on February 3rd, 1912?

15 MR. FORD. We object to that as incompetent, irrelevant and
16 immaterial and attempting to call for hearsay testimony
17 otherwise than in a manner tending to impeach the testi-
18 mony of former--

19 MR. APPEL. I am not asking for the conversation, I am
20 asking--

21 MR. FORD. Please let me make an objection--

22 THE COURT. Let us have the objection.

23 MR. FORD. --and no foundation laid for the asking of
24 another conversation between him and Franklin.

1 THE COURT: This is for a different purpose?

2 MR APPEL: Yes, your Honor, very appaent.

3 THE COURT: The objection is overruled.

4 A With reference to this specific matter to which I have
5 been testifying?

6 MR APPEL: yes. A None other than the two I have men-
7 tioned.

8 Q At that second conversation or with reference to that
9 second conversation, were you at that time endeavoring to
10 or attempting to or exerting your best efforts in the inter-
11 ests of preparing or anticipating the preparation of any
12 defense on behalf of this defendant, or in aiding or assist-
13 ing or in any manner or for any protection to him, either
14 for the purpose of being a witness or of getting information
15 to convey to Mr Rogers or to the defendant or to anyone con-
16 nected with the defense?

17 MR FORD: objected to upon the ground it is calling for a
18 conclusion of the witness, and a statement, perhaps; that
19 it is absolutely, incompetent, irrelevant and immaterial
20 and not the best evidence. The best evidence of what the
21 defense intended was his actions, acts speaks louder than
22 words.

23 MR FREDERICKS: Nothing has been admitted in reference
24 to this second conversation; that is the point. Franklin
25 admitted a conversation and the impeaching question was
26 asked of this witness. We object on the ground no founda-

1 tion no foundation has been laid, so this witness has not
2 testified a word upon it concerning that conversation, not
3 a word.

4 MR APPEL: Mr Franklin at one part of his testimony on
5 cross-examination, your Honor, stated that Mr Dominguez --
6 that he realized that, and that Mr Dominguez was at that
7 time being connected with the offices of Mr Rogers en-
8 deavoring to prepare a defense; he said that as a fact.

9 THE COURT: I see your object. Objection overruled.

10 MR FORD: Just one thing, if your Honor will permit me.
11 Mr Franklin's statement that he thought -- that he knew
12 Mr Dominguez was connected with Rogers' office was merely
13 said as far as illustrating his own knowledge, the wit-
14 ness' knowledge, and the reason for his caution in making
15 statements to this witness. It was not admitted for the
16 purpose of showing Mr Dominguez' connection with Mr Rogers,
17 because at that time Mr Dominguez -- the fact that Mr
18 Dominguez was connected with Mr Rogers in the law offices,
19 was not a matter in issue before the court at all, and
20 for that reason I think it is wholly immaterial at this
21 time.

22 THE COURT: Answer the question.

23 A No sir, I did not.

24 MR APPEL: And you were not -- My question was whether you
25 were preparing a defense? A No sir, I was not.

26 MR APPEL: Take the witness.

CROSS-EXAMINATION

1
2 MR FREDERICKS: At this first time, Mr Dominguez, ten
3 days, approximately ten days after Franklin was arrested,
4 you said he was not maintaining his innocence. He was
5 not admitting his guilt, either, was he? A No sir.

6 MR FREDERICKS: That is all.

7
8 MR APPEL: I forgot to ask the question --

9 THE COURT: Do you want to ask another question on direct?

10 MR APPEL: Yes, a matter has been called to my attention.
11 I beg your Honor's pardon for having to question the wit-
12 ness. As I understood you, Mr D^ominguez, when you answer-
13 ed the first question that I propounded to you, that you
14 said yes, that he said that and a good deal more. A Yes
15 sir.

16 Q I wish you would be kind enough to state to the jury
17 what, if anything, more he said in reference to the sub-
18 ject, which was the subject of my question.

19 MR FREDERICKS: That is objected to upon the ground
20 that it is hearsay, immaterial and no foundation laid.
21 We didn't take the invitation..

22 THE COURT: Objection sustained.

23 MR APPEL: We except. That is all.

24
25 MR APPEL: Your Honor, in reference to Mr Drain, we under-
26 stand Mr Drain is abed at Marietta Hot Springs, and that

1 he is unable to be here. We understand counsel here, or
2 someone here connected with the defense, has some informa-
3 tion directly from his attending physician. It will be
4 necessary to take his deposition there at that place.

5 MR FORD: If the court please, there is a proper method
6 of taking that up outside the presence of the jury, and
7 not in the presence of the jury.

8 MR FREDERICKS: I assure counsel we will facilitate the
9 matter.

10 MR APPEL: I am asking if we can't make some arrangements.

11 MR FREDERICKS: We will stipulate with counsel, to facilitate
12 the matter in any way, that seems proper.

13 MR APPEL: Now, your Honor, we offer to read to the jury
14 part of the newspaper article published in the Tribune
15 at Los Angeles on Tuesday morning, December 12, 1911.

16 MR FORD: If the court please, the document has not been
17 exhibited to us.

18 MR APPEL: just a moment.

19 THE COURT: Let's see what the offer is.

20 MR FORD: If the court please, counsel cannot get up here
21 and make an offer to put in evidence without offering the
22 document to counsel, in order that they may be -- get
23 certain matters before this jury and read the whole of this
24 newspaper, that would not be permitted.

25 THE COURT: I haven't any idea that counsel is now going
26 to read the whole paper.

1 MR APPEL: I am not going to read it at all.

2 MR FORD: Shouldn't he offer it to us before making the
3 offer, and let us see what he is going to offer to the jury,
4 if he had a witness on the stand, he would have to do that.

5 THE COURT: If he had a witness on the stand, he would have
6 to do that, the exact language of the statute would require
7 it.

8 MR FORD: Your Honor, further, a newspaper is not one of the
9 documents which may be offered in evidence. Here is a com-
10 mon newspaper.

11 MR APPEL: Wait a moment. I haven't made my offer.

12 THE COURT: I will hear Mr Appel. If it is necessary to
13 stop him I will.

14 MR APPEL: I am not going to read any portion of it.
15 I am identifying the paper.

16 THE COURT: This is a paper of what date?

17 MR APPEL: I offer to read to the jury and introduce in
18 evidence a portion of the article appearing in the issue
19 of the Tribune of this city under date Tuesday morning,
20 December 12th, 1911.

21 THE COURT: All right. Let me see the article.

22 MR APPEL: In connection with the testimony and cross-
23 examination of the reporter of the Tribune referred to by
24 counsel on the other side, as not having been published,
25 and I now offer counsel to inspect the document and then
26 the court may look at it and we will look it all over, and
if it is proper we will introduce it and if not we will keep
it out.

10s 1 THE COURT. Well, we will all look at it. This is offered
2 in connection with the testimony of Mr. Harry Jones?

3 MR. APPEL. Yes, your Honor.

4 THE COURT. Mr. Jones is in the court room. I presume counsel
5 makes no point of the fact that he is not on the witness
6 stand.

7 MR. FREDERICKS. No, the part that counsel wants to read--

8 MR. APPEL. That is referred to by the--

9 MR. FREDERICKS. That is bracketed around by lead pencil?

10 MR. APPEL. Yes, and the heading of it.

11 MR. FORD. We would like the privilege of reading the
12 whole article.

13 THE COURT. I am saying to the District Attorney to read
14 the article, take time.

15 MR. FORD. I might suggest they go on with some other
16 testimony. It is quite long.

17 MR. APPEL. Just that portion.

18 THE COURT. The Court just told the District Attorney
19 to take all the time they needed.

20 MR. APPEL. Your Honor, I have not read it yet. I passed
21 it over to counsel. I offer to read those portions which
22 are material to the cross-examination of the witness and
23 none other. I limit my offer to that.

24 THE COURT. All right. It will take but a moment to
25 glance over the article, and then he can determine any
26 objections, if any he has.

1 MR. APPEL. I will simply state to counsel which portions.

2 MR. FORD. We have no objection to the article being
3 introduced by counsel and he may read such portions of it
4 as he desires if we may have the whole of it, the whole of
5 it read.

6 MR. APPEL. I am not stipulating they may read it all.
7 It is only that portion offered by the witness in respect
8 to what Mr. Franklin is alleged to have said to him and
9 in which they questioned him as to whether or not he made--
10 and they kept telling him in the questions that the portion
11 that appeared was not published.

12 THE COURT. You offer to introduce a portion of that
13 article, now you are entitled to that. We will cross that
14 bridge when we come to it.

15 MR. FREDERICKS. Our stipulation covers the whole article.

16 MR. FORD. If they offer a part we are entitled to all of
17 it.

18 THE COURT. That is the bridge I am referring to. We
19 will cross that when we come to it. Counsel may offer
20 that portion he desires and if you--

21 MR. FORD. The whole article--you can't pickout two or
22 three lines and offer only that portion of it. We admit
23 the whole of the article and make no fight against it.

24 THE COURT. Counsel has not offered the whole article.

25 MR. FREDERICKS. The point is this, possibly to obviate the
26 difficulties of proving the situation, as I understand it,

1 the suggestion has been made as to whether or not we would
2 object to the introduction of a portion of this article.
3 We say that we do not object and we will stipulate that
4 the entire article may be introduced but we do not make
5 any stipulation or waiver in regard to a portion of it,
6 that is our position.

7 THE COURT. Let's have the record made. You have not made
8 an objection to a portion.

9 MR. FREDERICKS. It has not come to that yet.

10 MR. APPEL. I will make it over so as to make the record,
11 then his Honor can rule on it. I offer to read to the
12 jury that portion of the article referred to by me in my
13 previous questions here under date of Tuesday morning,
14 December 12, 1911.

15 MR. FORD. To which we object upon the ground no founda-
16 tion has been laid--

17 MR. APPEL. Wait a minute.

18 MR. FORD. pardon me. I beg counsel's pardon.

19 MR. APPEL. That portion of the article referred to by the
20 witness Jones in his cross-examination as containing the
21 reports made by him to the Tribune of and concerning what
22 Mr. Franklin is alleged to have said to him at the preli-
23 minary examination of Mr. Franklin concerning Mr. Darrow.
24 We offer it for the purpose of showing that he then
25 did make a report and did write an article concerning what
26 was said to him immediately following that conversation,

1 and that such matter referred to by the witness was in the
2 course of the business of the paper printed and published
3 on Tuesday morning, December 12, 1911, and we offer to
4 read that portion under the words, "Vindicates Darrow."
5 commencing with those words and everything following
6 thereafter to and including the word "full." at the end
7 of the quotation marks there, as being the words of Mr.
8 Franklin. Counsel have already seen this article.

9 MR. FORD. To which we object upon the ground that no
10 foundation has been laid showing that Mr. Jones read
11 that article or that the article as it now appears in the
12 paper was printed in the manner that it was written by Mr.
13 Jones. On the further grounds that Mr. Jones has not
14 got his notes which he wrote--he testified on the stand
15 that he never read the article after it was published. He
16 didn't know whether that portion to which counsel refers
17 was his article or not, and on the further ground that
18 it is incompetent, irrelevant and immaterial for any pur-
19 pose, and on the further ground that the article as printed
20 is not accordance with the story told by Mr. Jones on the
21 stand in any way, shape or form, and therefore could not
22 corroborate him.

23 MR. APPEL. This is a matter for the jury. We are very
24 happy that he is not going to pass on the truth or
25 veracity of witnesses here.

26 MR. FORD. Our objection, I think, is absolutely good as

1 to the lack of foundation. We are willing to stipu-
2 late that the whole of the article may go in to save time.
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3 MR APPEL: The foundation was laid by them.

4 MR FORD: The witness never saw this article in court.
5 Said he never read it.

6 THE COURT: The only question in my mind, Mr Appel, is
7 whether or not this article is identified as the article
8 referred to by the witness' testimony. Mr Jones is in
9 the court room.

10 MR APPEL: Mr Jones, take the stand.

11
12 HARRY JONES, recalled by the defense,
13 for further direct examination:

14 MR APPEL: Mr Jones, on cross-examination the other day
15 when you were examined here in court, do you remember
16 whether or not the subject of the conversation you testi-
17 fied to as having had with Mr Franklin at the preliminary
18 examination of Mr Franklin, with reference to the Lockwood
19 charge of bribery against him, whether or not the same was
20 the subject of publication in the Tribune, do you remember
21 that? A I know that I wrote the story and turned it in.

22 Q Now, I attract your attention -- have you read this
23 article which we have been talking about here in your pre-
24 sence in the court room recently -- just now, a few moments
25 ago? A I read it last Friday night, I think.

26 Q Now, is that portion of the article in reference to

1 the matter testified to by you upon the witness stand
2 heretofore, in this court, is it substantially correct,
3 or not?

4 MR FORD: Objected to upon the ground no foundation has
5 been laid for the witness refreshing his memory in that
6 matter, and ask leave of the court under section 2047
7 to cross-examine the witness concerning this document at
8 this time. He is seeking to refresh his memory with regard
9 to a transactions of a certain occasion by introducing
10 the document.

11 THE COURT: The witness has not yet testified to anything
12 upon which you can cross-examine.

13 MR FORD: He just identified this document -- counsel is
14 now asking him the question, is it substantially the same
15 as you wrote at that time?

16 THE COURT: Counsel is asking him a question, and he
17 has not answered it.

18 MR FORD: But he has refreshed his memory the other
19 day as to what was in this article, and we ask leave to
20 c ross- examine him concerning it.

21 THE COURT: You may be entitled to that after he has
22 answered that question, bjtut not now. Answer the ques-
23 tion. A Substantially, yes sir.

24 MR APPEL: Now, you say you have seen this article pub-
25 lished the morning of December 12th in the Tribune?

26 A I only read a portion of it, Mr Appel, the portion

1 with reference to Franklin's statement.

2 Q Under the word "Vindicates Darrow"? A I don't rem-
3 ember just now.

4 THE COURT: Sit down and look at it, Mr Jones.

5 MR APPEL: Now, can you say? A Yes sir, I read that
6 portion of it.

7 Q Is that article as printed, and as found in this issue
8 and a correct reproduction and substantially correct of
9 the article that you wrote following your conversation
10 with Mr Franklin, testified to heretofore from the wit-
11 ness stand? A Substantially correct.

12 Q Did you, in your report, and in the article that you
13 wrote, substantially state as follows: "When Justice
14 Young adjourned court, Franklin called the newspaper men
15 about him and made the following statement: 'I intended
16 to keep my mouth shut concerning this case until after the
17 Superior Court acts upon it, but it is my duty to defend
18 the good name of an innocent man. Those witnesses lied
19 when they said I had mentioned Clarence Darrow's name to
20 them. I wish to vindicate Darrow from any charge that
21 may be made against him in connection with this case. I
22 may be guilty of all I am charged with, but I am not a
23 fool.'" Did the article that you wrote in reference
24 to that subject substantially state what I have read to
25 you or words to that effect or the same meaning? A Yes
26 sir.

1 MR APPEL: Take the witness.

2
3 CROSS-EXAMINATION

4 MR FREDERICKS: Is the rest of the article also a sub-
5 stantial reproduction of that story that you turned in?

6 A I could not--

7 MR APPEL: That is not material on cross-examination.

8 THE COURT: You can answer that question yes or no. Ob-
9 jection overruled, and the witness directed to answer the
10 question yes or no.

11 MR APPEL: Exception.

12 A Pretty hard to answer.

13 MR FREDERICKS: Well, if you know. A No, I don't know.

14 Q You haven't read it, is that the idea? A Not to re-
15 fresh my memory.

16 Q Not to refresh your memory on it. How much of it
17 did you read the other day when you were looking it over?

18 A Just concerning the statements that Mr Ford cross-
19 examined.

20 Q That part, a couple of inches? A Yes sir.

21 MR FREDERICKS: Well, of course, before we lay the founda-
22 tion to the rest of it, we would have to have the witness
23 read it. It is 5 minutes of 12, and it will take that
24 time for him to do it, and we will ask him to read the
25 article at the noon recess, the entire article. We may
26 want to introduce it, and we may not. We will know when

1 2 o'clock comes. (Discussion.)

2 (Jury admonished. Recess until 2 P.M.)

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