

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. 62

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Jordan G. Watt	4986	4986	4993	5009
Fremont Older	5010			

1 Wednesday, July 17th, 1912. 10 o'clock A.M.

2 Defendant in court with counsel. Jury called; case
3 resumed.

4 THE COURT: Gentlemen, I have been handed three copies of
5 what purports to be the Tribune of November 28th. I pass
6 them down to counsel, and they may examine them, and if
7 there is no objection, one may be substituted for the
8 files. Better look them over, and if there is no objec-
9 tion, one of them will be substituted in the files.

10 MR FORD: I think the clerk can compare them and see that
11 they are the same.

12 THE COURT: You may compare them, Mr Clerk, and if you
13 find them to be the same edition, substitute them for
14 the files, and return the files to the office of the Tri-
15 bune. Is that satisfactory, Mr Appel?

16 MR APPEL: yes sir.

17 THE COURT: Mr Watt was on the stand.

18
19 JORDAN G. WATT, on the stand for further
20 cross-examination.

21 MR FREDERICKS: Mr Watt, on direct examination yester-
22 day you said that the second meeting that you had with Mr
23 Franklin was the one where you met him up in the Alexan-
24 dria and went down again to the Casino at Venice and talk-
25 ed with him there. You said that the second meeting you
26 sought that meeting yourself; is that correct?

1 A I didn't arrange the meeting.

2 Q The second meeting, I purposely sought with Mr Frank-
3 lin. A I was seeking any occasion to meet him.

4 Q What occasion were you thinking of.

5 A Any one. I was seeking an opportunity to meet him.

6 Q I thought you said "I was thinking of another occasion.

7 A No, "seeking".

8 Q Let me see if I get you. You say here the second meet-
9 ing, purposely sought with Mr Franklin. Now, what do
10 you wish us to understand by that? A Well, the oppor-
11 tunity had presented itself for the meeting by his coming
12 down from Los Angeles in the machine, and I encouraged the
13 going over to the Casino to have a lunch.

14 Q Did you purposely seek the meeting with him up in
15 Los Angeles before you went down there? A No sir.

16 Q Did you try to get him down there at all? A I did
17 not.

18 Q Talk it over with Mr Pirotte? A I did not.

19 Q Then, you do not wish to be understood as saying that
20 you sought the second meeting with Mr Franklin? A Be
21 understood in the sense I did seek the meeting; it was an
22 opportunity that came to me to meet him, and I furthered
23 the meeting in every way that I could.

24 Q I want to ask you in regard to your relation with Mr
25 Darrow. What have you been working at since you came back
26 from -- Where was it, Montana? A Yes sir.

1 Q What have you been working at? A Why, I audited the
2 city books for the city of Venice.

3 Q How long did that take you? A A month.

4 Q What was the date of your return here? A About the
5 21st or '2nd or '3rd of February. The latter part of
6 February.

7 Q Did you immediately go to work for the city of Venice?

8 A No sir.

9 Q Did you receive some communication from Mr Darrow just
10 before you came down here that time? A Did not.

11 Q Directly or indirectly? A Did not.

12 Q Did you come down here to help him out? A Did not.

13 Q Did you ever tell anyone that you came down here to help
14 him out? A Never did.

15 Q Well, you worked a month for the city of Venice:

16 When did that month begin and when did it end? A It was
17 the money of April.

18 Q The month was the month of April; is that it?

19 A Yes sir.

20 Q What other work have you done since you have been down
21 here? A Why, I audited several sets of books in the
22 city.

23 Q What city? A Venice.

24 Q For whom? A The Venice Shoe Factory, and Sibley
25 Realty Company.

26 Q Have you not been on Mr Darrow's pay-roll? A No sir.

1 Q Any time since you have been down here? A Never got
2 5 cents from him in my life.

3 Q Never got any money from him? A No sir.

4 Q Any promise of any? A No sir.

5 Q Aren't you going to take a long vacation? Haven't you
6 made arrangements and so stated that you were going to
7 take a long vacation when this case is over? A I am tak-
8 ing my vacation now.

9 Q Haven't you made arrangements to take a long vacation
10 when this case is over? A No sir.

11 Q You have not made any such arrangements? A No sir.

12 Q Well, now, you say you met Mr Darrow a great many
13 times at peoples' houses. Does that refer entirely to the
14 time since you came down here this last time, or does it
15 also include the time when you knew him before? A I met
16 Mr Darrow when he first came down this time to take charge
17 of the case that was on hand here, and visited him at his
18 own house a great many times.

19 Q A great many times? A He visited occasionally at my
20 house.

21 Q You are a very great friend of Mr Darrow's, aren't you?

22 A Well, I am not any more than I profess to be to my
23 fellow-men, generally.

24 Q No. You visited him? A Yes.

25 Q You seek him out and associate with him? A Yes sir.

26 Q Go to his house? A Yes sir.

1 Q And pick him out from the general herd of humanity?

2 A He is in trouble.

3 Q He was not in trouble when you visited him when he was
4 down here preparing for the defense of the McNamaras?

5 A No sir.

6 Q Did you seek him out then and visit him? A Oh, I
7 didn't visit him very much at that time; I treated him
8 like I did any other citizens.

9 Q You say you called on him a great many times during
10 that time? A The great many times that I called on him is
11 since that time.

12 Q I know, but didn't you say just now you called on him
13 a great many times when he was down here in the early
14 summer of 1911? A That was not the intention,- my
15 intention to say I called on him a great many times pre-
16 vious to coming down here this last time.

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1 Q Well, he was not in trouble then, previous to your coming
2 down here this last time? A No.

3 Q Very well. What was the occasion of your calling on
4 him prior to that time if it was not a matter of great
5 friendship? A Well, Mr. Darrow is a scholarly man, a
6 philosophical man and a man that stands well in the world
7 generally, and it is creditable to anybody to know him, is
8 my judgment.

9 Q Yes, and now, having given us that philosophy, is that
10 the reason you singled him out and went to visit him?

11 A I seek the best society I can find, usually.

12 Q And you picked him out for that reason? A I might
13 pick you out for the same reason, Captain.

14 Q I do not think you would for the same reason. A Per-
15 haps not.

16 Q You never have, have you? You never called on me?

17 A I had the pleasure of meeting you during your political
18 campaign, I think.

19 Q You never called on me, though? A No.

20 Q You know hundreds of people you never called on as you
21 have Mr. Darrow? A No. I am familiar with your chief
22 deputy, though, he is a friend of mine.

23 Q Yes. I have no doubt you have other friends, but what
24 I am getting at is this, Mr. Darrow is a particular personal
25 friend of yours, is that not correct? A I hope I have
26 more than one or two particular personal friends.

1 Q Yes, and he is one of them, isn't that correct?

2 A Yes, sir, he is one of them.

3 Q That is all I have been trying to get at. A All
4 right.

5 ~~Q Your philosophy corresponds to that of Mr. Darrow's?~~
6 You find you are kindred spirits?

7 MR. APPEL. I object to that.

8 ~~A My philosophy corresponds to my own judgment.~~

9 ~~MR. APPEL. Just a moment.~~

10 THE COURT. Strike out the answer for the purpose of the
11 objection.

12 MR. APPEL. I object to the question because the question
13 is indefinite, the philosophy end of it, what particular
14 philosophy, whether it is a Hindoo philosophy or whether it
15 is an ordinary Whittier philosophy, or an ordinary philo-
16 sophy which in my poor judgment we all have in Southern
17 California--I object to that, that would not illustrate
18 to the jury what kind of philosophy he is talking about:

19 MR. FREDERICKS' We do not want to illustrate that; that
20 would be immaterial.

21 MR. APPEL. I object to the question on the ground the
22 question is indefinite, immaterial, the philosophy speaks
23 of many subjects.

24 MR. FREDERICKS' I don't care anything about it, I will
25 withdraw it.

26 THE COURT. The question is withdrawn.

1 MR. APPEL. Yes, I hope so.

2 MR. FREDERICKS. That is all.

3
4 REDIRECT EXAMINATION.

5 MR. APPEL. Q There is one question I think propounded to
6 you on cross-examination, if I remember it right, without
7 alluding to it now, that is, that in that first conversa-
8 tion or in one of those conversations which you spoke about
9 Franklin saying that Captain Fredericks was a great friend
10 of his, I thought you were about to say what else he said
11 in that regard. Do you remember what else he said in that
12 regard? A I remember quite a lengthy talk on Captain
13 Fredericks.

14 Q I am only speaking of that in reference to the chances
15 that Mr. Franklin entertained or the hope that he entertain-
16 ed that he would not go to the penitentiary, only in that
17 respect I am asking you.

18 Q Well, he said that Captain Fredericks was a friend--

19 MR. FREDERICKS. Just a moment, Mr. Watt. There is no
20 question pending. When there is one and I wish to object
21 to it, if you will permit me--

22 MR. APPEL. I will ask the question. Will you state what
23 else he said in that respect, pointed out in my question.

24 MR. FORD. ~~Objected to as not redirect examination, a matter~~
25 ~~gone into on direct examination.~~

26 MR. FREDERICKS. No, it isn't. No foundation laid.

1 MR. FORD. Does not in any wise impeach or tend to impeach
2 the testimony given by Franklin:

3 THE COURT. Objection sustained.

4 MR. APPEL. We take an exception. We offer to show by the
5 witness now that as a part and parcel of the conversation
6 referred to by the witness in which Captain Fredericks's
7 name was mentioned that Franklin was giving his reasons why
8 he would not be sent to the penitentiary, expressing some
9 intimate friendly relations existing between Mr. Fredericks
10 and himself, and we offer to show that the reasons he gave
11 for hoping and expressing the utmost belief and certainty
12 that he would never be prosecuted by Mr. Fredericks, simply to
13 explain my question.

14 MR. FREDERICKS. It seems to me counsel's remarks are
15 inconsistent with the other attitude of Franklin that he
16 had been browbeaten and forced to testify--

17 MR. ROGERS. To which we take an exception as an expression
18 on the weight of the evidence.

19 THE COURT. In view of the offer Mr. Appel has made, I
20 think the cross-examination perhaps opened the door to such
21 an inquiry.

22 MR. FREDERICKS. Of this witness?

23 THE COURT. Yes.

24 MR. FREDERICKS. I didn't ask him anything about his con-
25 versations at all, I didn't refer to any of them except
26 in one particular. That was to ask him if Franklin had

1 told him three separate times, the three separate times
2 that they had met, if Franklin had told him that Darrow
3 didn't give him the money, that he was being then and there
4 a stranger to Franklin, that is all I asked him about
5 those conversations. I didn't go into the conversations
6 at all.

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1 MR FORD: Further than that, your Honor, the subject mat-
2 ter of this witness' testimony was certain impeaching
3 questions. Now, the prosecution or the adverse party
4 had a right, when the impeaching question was put to the
5 witness, and something else was said, to ask him if
6 they wanted to go into that, that would not be new subject
7 matter, although might be new answers. The testimony on
8 direct and redirect must be confined to the impeaching
9 question for which a foundation has been laid, and in this
10 particular case, of course, no new matter was brought out,
11 because the new conversations were not touched upon.

12 MR APPEL: here is the proposition, your Honor; both as a
13 matter of explaining his testimony that he gave on direct
14 and explaining his testimony that he may have given on
15 cross, it is material, but it is material in other respects.
16 Your Honor, we have taken an issue here, which has been de-
17 fined here in the course of argument time and time over
18 again. Our contention is, your Honor, that there was no
19 crime committed under the evidence; that there was a con-
20 spiracy between Franklin, Lockwood and others, unnecessary
21 to mention, to simulate the commission of a crime, and
22 by simulating the commission of a crime, make it appear
23 that Darrow had something to do with it, and we have been
24 introducing evidence here that long before the prosecution
25 claimed on their behalf that there was any attempt or a
26 single act done tending to show the premeditation or the

1 furthering of the commission of a crime that they had laid
2 a trap for Darrow long before he came to the state of Cal-
3 ifornia, and that that trap was continued up to the pre-
4 sent time, up to the trial of this case. Now, they have
5 introduced evidence here to show that a crime was commit-
6 ted. We have a right to show that no crime was anticipat-
7 ed by them, in reality, but simply a simulation of crime.
8 Now, we have a right to show that by any declaration that
9 was made by those who contended that a crime was com-
10 mitted, doesn't necessarily show, your Honor, on cross-
11 examination, that we asked the witness anything about it,
12 but I say that we have the right to call witnesses here
13 upon the stand, even if we didn't call the attention of Mr
14 Franklin to it or the attention of anyone to it, to show that
15 Franklin, who claims to have committed a crime as an agent
16 and as a co-conspirator of this defendant, in fact, com-
17 mitted no crime. We have a right to show that Franklin
18 said this was all arranged beforehand; this was all arrang-
19 ed beforehand. It was understood that I should go down
20 there and pretend to use Darrow's money for this, and in
21 fact, I didn't use it. It was all understood between me
22 and the District Attorney that he and I had a perfect
23 understanding and the witness has already said that
24 Franklin said, we were confederates -- Fredericks and I
25 were confederates in the alleged commission of this crime,
26 and there must be corroboration before I can be convicted,

1 and add to that his statement, oftentimes made to various
2 persons under different circumstances at different times,
3 both
4 before he pretends that he made a statement to the District
5 Attorney concerning the facts of this case, both before and
6 after that, "I will never be sent to the penitentiary."
7 "Mr Fredericks is a good friend of mine. We have a per-
8 fect understanding in reference to this matter"; to this
9 witness, to Pirotte; we were confederates in this matter.
10 It is true that the evidence already shows that Lockwood
11 at some period of time became a confederate of the Dis-
12 trict Attorney's office in simulating that he was willing
13 and perfectly desirous of accepting a bribe, not that he
14 says that he would be influenced by what he says, he act-
15 ed under instructions of the District Attorney. Can't we
16 further show that Franklin made similar statements? Can't
17 we show affirmatively that Franklin's own version of the
18 affair that he was a confederate of the District Attorney
19 in the alleged commission of the offense? That fact, your
20 Honor please, that Lockwood has so far said, he being one
21 of the parties to the alleged commission of the offense,
22 a necessary party, for in all cases of bribery, there must
23 be two persons who agree on the subject of bribery. There
24 must be the giver and there must be the taker. Now, we
25 propose to show by this witness that Franklin, in the
26 course of those conversations, stated, your Honor, "I
never will go to the penitentiary; I have had a perfect

1 understanding of this matter with the District Attorney;
2 there is a bond of friendship between he and I", and I
3 am not calling for the witness to state what reason he
4 gave for that, because I don't think it would be material
5 to this case, but I am asking him to state what he told him
6 in that regard, and we can call Tom, Dick and Harry here
7 and show Franklin told them before he commenced the commis-
8 sion of any act tending in some manner to show that he
9 was acting in a criminal way, that he had a perfect un-
10 derstanding with the District Attorney about it. He said
11 already -- some evidence is in here we were confederates,
12 and if confederates means anything, then we have a right
13 to show the full effect and meaning of that word.

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1 We have a right to show what he said inexplaining to this
2 witness how they were confederates and in view of the
3 evidence here it is so apparent to any one, in view of the
4 fact that this case has been closed and the conduct of the
5 District Attorney has not been explained, that they sat by
6 and they instructed Lockwood to go ahead and they furnished
7 the means, that is, means of information, and they made it
8 possible for him to meet Franklin. I say as an affirmative
9 fact we have a right to show that: We have a right to
10 show this was a fake and a frame-up; it was a trap; that
11 he had persistently followed and that this case is nothing
12 but one of the steps taken to convict Mr. Darrow. We have
13 already the evidence of Mr. Franklin tending to show that
14 fact, "They never wanted me, they want Darrow." Franklin
15 himself says that Tom Johnston, his alleged lawyer, came
16 over to him and said they didn't want him, but they wanted
17 Darrow. He didn't say it came from the District Attorney's
18 office. Mr. Franklin didn't say that, but he did say that
19 he did say that.

20 MR. FREDERICKS. He didn't say Darrow.

21 MR. APPEL. Yes, they want Darrow.

22 MR. FREDERICKS. That is not what Mr. Franklin--

23 MR. APPEL. Do you vouch for the truth or veracity of
24 Mr. Franklin in some respects?

25 MR. FORD. We vouch for his present truthfulness on the
26 stand, yes.

MR. APPEL. I say that Franklin said in answer to the

1 question propounded to him whether or not Mr. Johnston
2 came back to him and said that the District Attorney said
3 they didn't want him, that they wanted Darrow, he said
4 No he didn't say that, that the District Attorney's office
5 said that, but he said it to me, not as coming from the
6 District Attorney's office, I almost quote his language.

7 MR. FORD. The question before the court is whether there
8 is any redirect examination of this witness now. There is
9 no question before the court at all.

10 MR. APPEL. Yes, there is a question.

11 MR. FREDERICKS. When counsel is through—

12 MR. APPEL. I am simply explaining on what theory I am
13 asking the question. Now--and I am arguing to the court,
14 that it is in perfect harmony, in perfect accord with out
15 theory of the case, and with the testimony and before we
16 get through we are entitled to this item in order to fur-
17 ther our chain of reasoning and chain of facts which we
18 will claim before this jury it is all a frame-up, pure and
19 simple, and we will prove it from the lips of their own
20 witnesses, we have a right to call for that testimony.

21 MR. FREDERICKS. Well, may it please the court, the posi-
22 tion is just this: Section 2052 of the Code of Civil
23 Procedure says a witness may also be impeached by statements
24 he has made at other times inconsistent with his present
25 testimony, but before this can be done the statements must
26 be related to him, etc., so that no foundation was laid for

1 the introduction of this matter. With due respect to the
2 witness who is on the stand, and not wishing to comment
3 on his testimony while he is on the stand, we may wish to
4 take the attitude before the jury that what he has testi-
5 fied to here did not occur at all, except that they had a
6 meeting there, they had a dinner there, that these state-
7 ments were not made. We may wish to take that attitude;
8 it may appear to us to be the logical one to take. Feeling
9 in that way about it we deem it to be our duty to keep out
10 everything that is not legally entitled to be presented.
11 We are very glad to get Mr. Appel's views now, of his
12 theory of the case, which disposes of the little brown man
13 and of Burns and of Harrington and of the man from San
14 Francisco and everywhere else, and brings the issue down
15 to the fact now that the District Attorney of Los Angeles
16 County was attempting to bribe the McNamara jury--

17 MR. APPEL. No, no--

18 MR. FREDERICKS. --to vote for an acquittal. Now, we are
19 glad to get that theory of it.

20 MR. APPEL. No, not necessarily--

21 MR. FREDERICKS. --because we have been in the dark; we
22 thought perhaps it was going to be some other theory, but
23 we now know that the theory of the defense is that the
24 District Attorney, that when Franklin went to Bain and
25 put up this jury money to get Bain to vote on that jury
26 to vote against us, that that was our money and we were buy-

1 ing Bain to vote against us and that when he went to
2 Underwood and tried to get Underwood to vote against us
3 that we sent him to Underwood, and we sent him to Smith to
4 vote against us and we sent him to Yonkin to get Yonkin
5 to vote against us, we are glad to get that theory, be-
6 cause we know now what we must meet, and it is kind for
7 counsel to give it to us; before we were hunting for a lit-
8 tle Brown man--

9 MR. APPEL. Franklin will see him and will show him up,
10 he is your witness.

11 MR. FREDERICKS. Yes, Franklin is our witness--

12 MR. APPEL. He was with him and he ought to bring him up
13 to you.

14 MR. FREDERICKS. We will maintain, when the time comes,
15 that Mr. Franklin never made any statement about the Dis-
16 trict Attorney being any confederate of his; that will be
17 our position and we will argue that to the jury and with
18 that feeling, in that attitude towards the testimony of this
19 witness, we feel that we should invoke the rule and not
20 permit him to go any further than the law allows him in his
21 testimony. Now, Section 2052 covers the matter and there
22 has been no foundation laid, and it is not redirect.
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1 THE COURT: Just a moment. I want to look at the transcript
2 a moment, and then I will hear from you further, Mr Appel.
3 I was looking to find the testimony you were directing
4 my attention to. Can you call my attention to the page on
5 which it occurs?

6 MR APPEL: yes sir, your Honor; look at page 4965 of the
7 transcript.

8 MR FREDERICKS: But that is direct testimony.

9 MR APPEL: That is what I am referring to.

10 MR FREDERICKS: Cross-examination would make it proper
11 in redirect.

12 MR APPEL: No, you evidently, Mr Fredericks, misunderstood
13 the two grounds upon which I said, either on cross or
14 direct examination, I used that expression.

15 MR FREDERICKS: yes.

16 MR APPEL: I wish to further attract the attention of the
17 witness to the testimony and if he said any other facts
18 in reference to this question of confederacy, we have a
19 right to explain it by using Mr Franklin's words in what
20 manner he claimed they were confederates, if Mr Franklin
21 didn't use that word "confederate", but he indicated some-
22 thing of a like meaning, or if he said they had a per-
23 fect understanding when he went to bribe any jurors, that
24 it was for the purpose of trapping someone else, to simu-
25 late the commission of an offense; I have a right to have
26 the witness explain it and I am only asking him in order

1 to ~~amplify the meaning~~ of the word "confederate" in what
2 manner Mr Franklin meant it.

3 MR FREDERICKS:" But, there was no foundation laid for it
4 on direct examination, and it is immaterial, your Honor,
5 and it is certainly --

6 MR APPEL: Oh, no, I read the question to him from the
7 transcript.

8 THE COURT: Page 865, was it?

9 MR APPEL: Here is the question which I propounded to him :
10 "Now, you may state whether or not in that conversation,
11 as a part of the same conversation, whether or not Mr
12 Franklin, in addition to the matter you have already tes-
13 tified to, did or did not say he was smart enough or lawyer
14 enough, one or the other, to know that they could not
15 convict him in the Lockwood case", and further, on page
16 866, line 11, "and he, Franklin, and Lockwood and Freder-
17 icks, were confederates, to that effect or words to that
18 meaning"? "A -- yes sir, he said that."

19 MR FREDERICKS: But the question was never asked of
20 Franklin.

21 MR APPEL: And you will find it in the cross-examination
22 of Franklin when he was on the stand, page 866, we laid the
23 foundation for that.

24 MR FREDERICKS: Not in regard to Fredericks being a con-
25 federate.

26 THE COURT: The question in my mind is whether or not the

1 branch of the testimony suggested by Mr Appel was brought
2 out on direct examination of this witness or on cross-ex-
3 amination. Now, it appears it was brought out on direct
4 examination, therefore, it is incompetent to go into it
5 again at this time, and the order heretofore made sustain-
6 ing the objection is reaffirmed.

7 MR APPEL: Very well, your Honor. In order to make the
8 record complete, I offer to prove --

9 MR FREDERICKS: Counsel has already made his offer; it
10 is in the record.

11 MR FORD: That is what the court is ruling on.

12 MR FREDERICKS: He has already made the offer to prove.

13 THE COURT: Amplifying the offer, to make it clear.

14 MR APPEL: I offer to prove by the witness, Mr Franklin at
15 that time and place, explained in what way they were con-
16 federates, that is, he explained it had already been under-
17 stood as to what he should do and Lockwood should do in
18 respect to the subject of that inquiry. Now, I suppose,
19 in view of your Honor's ruling, that offer is rejected?

20 THE COURT: Oh, yes; that being substantially as heretofore
21 made, it is likewise rejected.

22 MR APPEL: Yes sir, and we take an exception.

23 THE COURT: Yes sir.

24 MR FORD: Of course, the offer to prove is predicated upon
25 impeaching questions testified to by the witness; of
26 course, if they have independent proof of that matter, it

1 is a different subject.

2 THE COURT: Well, the offer is in conjunction with the con-
3 text; the record shows what it is.

4 MR APPEL: Mr Watt, did you ever hold any public posi-
5 tion outside of the state of California? A Yes sir.

6 MR FREDERICKS: We object to that as immaterial, not re-
7 direct, and move that the answer be stricken out.

8 THE COURT: The motion to strike out is denied. A yes
9 sir.

10 MR APPEL: What position and where?

11 MR FREDERICKS: We object to that as not redirect.

12 THE COURT: Objection overruled. A I was a member of the
13 state senate in Montana one session.

14 Q Do you know of any reason, or did Franklin express
15 to you any reason or did Franklin have any business with
16 you that led him to speak freely with you or not?

17 MR FREDERICKS: That is objected to as calling for a con-
18 clusion of the witness; not redirect; immaterial; fully
19 gone into. That would be a clear conclusion of this
20 witness.

21 MR APPEL: The prosecution here, have even argued their
22 questions to the witness. They said to him, "Now, here
23 is a perfect stranger, you met him a few days before and
24 he opened his heart to you". Now, I want to show --

25 THE COURT: Let us have the answer.

26 MR FREDERICKS: But he testified to a fact. We can argue

1 that and counsel can argue that.

2 THE COURT: All right, get the answer.

3 MR APPEL: How one detective confided in another detec-
4 tive, and would tell him how smart it was --

5 THE COURT: Mr Appel, I must have the answer.

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6p 1 A Mr. Franklin said he was very anxious to get away from
 2 Los Angeles, the scene of his great trouble and difficul-
 3 ties, and he wanted to start a new business in a new place,
 4 and Mr. Pirotte had debated the question of opening a
 5 detective office in Venice and I was introduced to him as
 6 a party well acquainted with the city of Venice, an ex-
 7 official there, and a party worthy of his confidence, and
 8 on those grounds, why, Mr. Franklin was of my idea, you might
 9 say, and told us what he did, and through confidence with
 10 Mr. Pirotte started off, and through my friendship with Mr.
 11 Pirotte the same relation was established between him and I.

12 ~~MR. FREDERICKS. I move that the answer be stricken out as~~
 13 ~~an attempt to relate the witness's belief and opinion~~
 14 ~~whether it was confidential, and, "we had the same ideas and~~
 15 ~~relations," Pirotte had.~~

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

17 MR. APPEL. That is all.

18 RE-CROSS-EXAMINATION.

19 MR. FREDERICKS. Q He did admit he had had some trouble in
 20 Los Angeles, Mr. Franklin? A He admitted he was in very
 21 bad disrepute up here in his own home.

22 Q Trouble? A Yes.

23 Q It was not just a frame-up with the District Attorney,
 24 it was trouble, real trouble? A The time he was sent by
 25 Judge Cabaniss he didn't think he had any trouble.

26 Q No. You were a member of the Montana legislature what

1 year were you a member of the Montana legislature? A 1896.

2 Q Did they elect a United States Senator that year?

3 A I didn't say United States senator, I said said State
4 senator.

5 Q no. I say, did they elect a United States senator in
6 that year? A Not in '97, no, sir.

7 Q Didn't elect one that year? A No, sir.

8 ~~MR. APPEL. He missed another case of bribery.~~

9 MR. FREDERICKS. Did they elect one while you were a member
10 of the legislature?

11 A They did not.

12 Q They did not? A You mean Senator Clark, I presume?

13 ~~MR. FREDERICKS. Oh, I don't mean anybody. That is all.~~

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16 F R E M O N T O L D E R,

17 a witness called on behalf of the defense, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 MR. DARROW. Q Give us your name, please? A Fremont
21 Older.

22 Q Where do you live? A San Francisco.

23 Q What is your business? A Managing editor of the San
24 Francisco Bulletin.

25 Q How long have you been managing editor of the San Fran-
26 cisco Bulletin? A 17 years.

1 Q You have been acquainted with me for some time, have
2 you? A Yes, some years.

3 Q Do you know John R. Harrington? A Yes.

4 Q How long have you known Mr. Harrington? A Why, I don't
5 remember exactly; shortly after you came out here in the
6 McNamara case, I think I met him.

7 Q Did you meet him first in San Francisco? A Yes, in my
8 office.

9 Q Did you have any business relations with him, did he
10 ask you to do something for him? A Yes, he asked me to
11 furnish a thousand dollar bond for him.

12 Q When was that?

13 MR. FREDERICKS. Just a moment--Your Honor, my attention was
14 attracted to something else when that question was asked
15 and I wish to object to it and move to strike it out.

16 THE COURT. Strike it out for the objection.

17 MR. FREDERICKS. The question I wish to object to is, "Did
18 he have any business with him at that time."

19 THE COURT. The answer to that question should be yes or no.

20 MR. FREDERICKS. If it is answered yes or no I have no ob-
21 jection to it.

22 THE COURT. Yes.

23 A I don't know whether that is business or not.

24 MR. DARROW. Q Well, did he call on you for any purpose?

25 A He called me on the 'phone for a certain purpose.

26 Q When was that? A I don't remember the date it was, I

1 think it must have been in September sometime; I don't
2 remember the date; it was the time he was arrested, what-
3 ever time that was.

4 Q Along the latter part of September? A I have nothing
5 to go on there; I have a recollection it was sometime in
6 September, I don't remember the date whether it was the
7 early part or the latter part.

8 Q What was the matter for which he called you on the 'phone?
9 MR. FREDERICKS. That is objected to as immaterial--well
10 I will withdraw the objection.

11 A He rang me up on the telephone and said he had been
12 arrested and I asked him what for and he said--I think he
13 said for contempt in not answering certain questions that
14 had been asked him before the grand jury in Los Angeles,
15 and that the officer was there with him and caught him
16 unawares and he had no money and he needed a thousand
17 dollars at once.

18 A JUROR. We cannot hear you.

19 THE COURT. The jurors say they cannot hear you.

20 MR. FREDERICKS. Let the reporter read the answer as far
21 as it has gone.

22 THE COURT. Read the answer.

23 (Last answer read.)

24 A --(Continuing) that that was the bail fixed--

25 MR. DABROW. Q Well, did you fix the matter for him?

26 A Yes.

1 MR. FORD This time has been fixed as the 19th of Septem-
2 ber, is that correct?

3 MR. DARROW Yes, that is correct.

4 MR. FORD. Before the beginning of the trial of the Mc-
5 Namara case?

6 MR. DARROW. About that time, anyway.

7 A I drew a thousand dollars out of the bank and went down
8 to the office in the Metropolis Bank Building, the Building
9 Trades office where he was and went with him to the police
10 station and gave the bail for him and had him released.

11 Q And you put up the bail? A I did.

12 Q Did you have any conversation with him at that time in
13 reference to the matter? A Why, on the way--

14 MR. FREDERICKS That should be answered yes or no.

15 MR. DARROW. Q yes or no? A yes.

16 Q Did Mr. Harrington say this to you, in substance:

17 Page 2089. did you ask him whether there had been any
18 corruption or bribery in reference to witnesses or any other
19 matter connected with the case and did he thereupon reply
20 that what the prosecution was trying to do was to put one
21 of the attorneys for the defendant on the stand in order
22 to find out what they could about the evidence for the
23 defense in the McNamara case;

1 that MR Darrow had instructed him especially, and everyone
2 connected with the case, that there should be no viola-
3 tion of the law in any way, even in the preparation of the
4 conduct of the case, and that he knew of no bribery or
5 other corrupt practices in the conduct of the case, and
6 did not believe it was possible there was any, and that
7 he didn't know of any intention on the part of any person
8 in that behalf, or words to that effect or in substance. X

9 MR FORD: ~~We object to that on the ground that it occur-~~
10 ~~red on the 19th of September, long before any of the mat-~~
11 ~~ters concerning which testimony has been introduced, are~~
12 ~~concerned or Harrington's connection with it, and it does~~
13 ~~not impeach or tend to impeach any testimony given in the~~
14 ~~case, being a period long prior to the actual trial of the~~
15 ~~case.~~

16 THE COURT: The objection is overruled. A I cannot recall
17 just what portion of that was said at the time on the way
18 to the jail; I think I came to Los Angeles with him on
19 that night, if I remember rightly, and we discussed the
20 whole case; he said that in substance; he said it more
21 definitely than that; he said the other side was --

22 MR FREDERICKS: Just a moment.

23 THE COURT: Mr older, we have to make a record here by
24 question and answer.

25 MR DARROW: I will ask you to state just exactly what he
26 said.

1 MR FREDERICKS: ~~Just a moment.~~

2 MR DARROW: Use the language as near as you can.

3 MR FORD: Objected to upon the ground that section 2052
4 has not been complied with in the present question. Be-
5 fore this can be done, the statement must be related to the
6 witness; to Mr Franklin, the circumstances, time, place
7 and persons present before he can be impeached by Mr
8 Older -- or Mr Harrington. I beg your pardon. The
9 statement must be related to Mr Harrington exactly,
10 with the circumstances of the time and place and persons
11 present. Now, Mr Harrington was not asked about any con-
12 versation with the witness on the way to Los Angeles. He
13 was asked either on the way from the office or from the
14 jail to Mr Older's office, if the following conversation,
15 either in substance or effect. Now, Mr Older says he did,
16 he don't remember the exact words, but he has said he
17 don't remember that, but he did in substance. Then he
18 goes on about a trip to Los Angeles; about other things
19 that were said, and wants to relate that, for which no
20 foundation has been laid. The only object of this is to
21 impeach the testimony of Harrington, and the law must be
22 complied with.

23 MR APPEL: The witness has a right to explain it; that is
24 the rule that is established by the decisions of this
25 court, when a witness said that he said that in substance
26 the witness has a right to use the language as he remembers

1 Mr Harrington used it in explanation of the substance of
2 the words.

3 MR FREDERICKS: On that occasion.

4 MR APPEL: On that occasion.

5 THE COURT: I quite agree with you as to that, but here
6 is a conversation, the foundation question is, "on the
7 way to the jail". Now, the witness, apparently, is refer-
8 ring to the conversation on the train between San Fran-
9 cisco --

10 MR APPEL: No, he said he had further conversation on the
11 train.

12 MR FREDERICKS: He was going to relate what he had on the
13 train.

14 THE COURT: Let me see what that question is.

15 MR APPEL: Let the answer be read.

16 THE COURT: Read the question and answer.

17 A I will confine myself to what was said in my office.
18 I remember now that when I said that that was said in my
19 office.

20 MR FORD: Object to that, because it was not asked what
21 was said in his office. ^{asked what was} He was said on the way from the
22 jail to the office. The witness has already said he
23 can't remember what was said from the jail to the office.

24 A I haven't said that.

25 MR APPEL: He didn't say anything of the kind.

26 MR FORD: Well, the record shows what he said. Let me ad-

1 dress the court.

2 THE COURT: I want the record. I want the record at once.

3 MR FREDERICKS: Our position is this: he cannot state what
4 was said after he has said yes. Now, Mr Harrington was
5 asked, did such and such a conversation occur, and that
6 conversation was recited to him, and the time and place
7 and persons present, all of which is a part of the question
8 and he said, no. Now, this witness has been asked the
9 same question.

10 THE COURT: That is exactly the point.

11 MR FREDERICKS: And has said yes, therefore, that ends
12 the matter. He cannot be asked any further what was said
13 or any other conversation that was given. He has said
14 that that wa said.

15 THE COURT: The record is not here, gentlemen, and I want
16 to ask you a question, and then I will hear you. Is this
17 question which you asked Mr Older to state precisely what
18 was said, are the facts to the time and place fixed in the
19 impeaching question?

20 MR APPEL: Exactly, your Honor.

21 THE COURT: Then, if you will reframe the question, it
22 will save sending for the other reporter.

23 MR APPEL: We want to ask, in view of Mr Older's state-
24 ment, he said, yes, that in substance, not exactly in that
25 language, your Honor -- he went on -- he says he stated
26 and then they stopped him. Now, we say, state what he
stated.

1 THE COURT: Let's get thereford here on that. Counsel is
2 going to reframe the question, so as to save sending
3 for the other reporter.

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8s 1 MR. FORD. I think Mr. Older can tell it gery quickly. He
2 said he wanted to say something.

3 MR. DARROW. You make the point between the jail and the
4 office and in the office. If so get your man in here and
5 stop this quibbling.

6 THE COURT. Let's have the question.

7 MR. FORD. We object to being called quibbling. Yester-
8 day we were referred to as being contemptible. Now, we
9 make them for the reason we told them we would have Frank-
10 lin and Harrington here, we told them we would have them
11 here and there is no necessity of making any such remarks
12 as that. If they want to put the proper question to the
13 witness they have a right to do it, and we are not quibbling
14 at all, but we are for certain reasons, which are well
15 known to your Honor, on an impeaching question.

16 MR. ROGERS. On page 2809 you will see where it appears
17 that Mr. Harrington fixes the place himself.

18 THE COURT. I am reading from page 2809.

19 MR. FREDERICKS. Where it says from the jail to his office
20 and in his office.

21 THE COURT. The question has been withdrawn and Mr. Darrow
22 is offering to reframe it.

23 MR. DARROW. Now, your Honor, the answer here shows that
24 it is entirely competent.

25 MR. FREDERICKS. Why not ask the question.

26 MR. DARROW. Because Mr. Ford is objecting all the time for

1 the reason that it was in the office, part of it instead
2 of going to the office.

3 THE COURT. If you will ask the question now, Mr. Darrow.

4 MR. DARROW. State what he said.

5 MR. FORD. Where and when?

6 MR. DARROW. At that time either on the road from jail or
7 to your office or in your office.

8 MR. FREDERICKS' I don't care anything about the question,
9 whether it was on the way to the office or on the way back
10 from the office or in the office. We don't care anything
11 about it. This witness has said that that conversation did
12 occur, that ends the matter. He has said yes it did occur.
13 That ends it. He cannot go any further now and give
14 other conversations which occurred. The impeachment is
15 complete. It is now a matter of veracity between the two,
16 unless on cross-examination--

17 THE COURT. You are right, he cannot go on and give other
18 conversations but he said that conversation occurred in
19 substance.

20 MR. FREDERICKS' I don't think he qualified it at all.

21 MR. APPEL. Read the record.

22 THE COURT. My recollection is satisfactory.

23 MR. FREDERICKS. Very well, if he said in substance.

24 THE COURT. He said in substance and has indicated a desire
25 to clear up just what was said in that particular matter.

26 He desires to do that so he has that right. Counsel has

1 asked him to do so and I regard the question as proper.

2 MR. FREDERICKS. May I say one more word? Does the court
3 rule that this witness can give the entire conversation
4 that occurred between these two men?

5 THE COURT. The court has just ruled that he cannot give
6 the entire conversation but he has been asked a question
7 in precise words and he says that that is the conversa-
8 tion that substantially took place. He said, yes, in
9 substance, and has indicated a desire to exactly state
10 what was said in that connection. He may say what was
11 said in that connection and no other.

12 MR. FREDERICKS. Well, taking even that view of it, which
13 of course we will take if the court rules on it, but that
14 is cross-examination, your Honor. That is a point for
15 us to bring out in substance as an answer to the question.
16 The question is asked of Harrington, Did you say that or
17 that in substance and he denies it. This witness is asked
18 and he says yes he said it in substance. It is the same
19 question. The witness should not be permitted to go that
20 far, if he does go that far.

21 THE COURT. The witness is cautioned not to go into any
22 other matter, except the matter that was brought out in the
23 impeaching question.

24 MR. FORD. In order that the witness may not go outside
25 the record, your Honor--I wish to hand him--

26 THE COURT. I will hand him my copy.

1 THE WITNESS. I would like to see it.

2 THE COURT. Here it is right here on page 2809, beginning
3 at line 20.

4 MR. FORD. 23, the conversation.

5 THE WITNESS. May I read this part here and then go on and
6 state what was said in this connection?

7 THE COURT. In that connection, Mr. Older, confine your
8 answer strictly to what was said in that conversation.

9 A I will do that.

10 MR. FORD. As I understand it the witness is going to give
11 the exact language that was stated--that was brought out--
12 the language that was said here?

13 THE COURT. Yes, sir. A Darrow said to Mr. Older asked
14 him whether there had been any bribery--

15 MR. FREDERICKS. I think the jury will not be able to hear
16 you unless you turn around this way.

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1 A OR any other matter connected with the case and you
2 thereupon replied, all the prosecution was trying to do
3 was to put one of the attorneys for the defendant on the
4 stand, in order to find out what they could about the
5 evidence for the defense in the McNamara case. Right
6 there Mr Harrington told me that he had been employed to
7 prepare this case for trial, and he had been calling
8 upon witnesses and arranging to have them attend the trial,
9 and testify. He had been doing it in an orderly and pro-
10 per way, and that he was instructed to do it in that way,
11 and that the other side was using money and bribing wit-
12 nesses and handicapping him in every way, and that this at-
13 tempt to bring him before the grand jury and have him
14 testify there as to who he had seen and who he talked to
15 was merely a plan on the part of the prosecution to find
16 out what he had been doing; that he was instructed by Mr
17 Darrow to do the thing regularly and that he had to do
18 it regularly, and that he was being met on every turn
19 with bribery from the other side; they were buying witness
20 and debauching everybody that he came in contact with.
21 That was the substance of the talk in my office after
22 we left the jail.

23 MR DARROW: Was any particular witness referred to at
24 that time? A Mrs Ingersol, that was the Ingersol --

25 MR FREDERICKS: just a moment.

26 THE COURT: Strike out the answer for the purpose of the

1 objection.

2 MR FREDERICKS: Objected to as no foundation laid.

3 MR DARROW: Part of the conversation.

4 MR FORD: I ask that the witness be instructed not to
5 answer so rapidly.

6 THE COURT: Yes, Mr Older, we have to make a record. I
7 will ask you to give counsel a chance to object. Objec-
8 tion sustained.

9 MR DARROW: Your Honor, if we are going to take a recess
10 at this time --

11 THE COURT: Yes; I see the hour. I am glad you called
12 my attention to it. (Jury admonished; recess for 5 min-
13 utes.)

14 (Recess.)

15 MR DARROW: I think I ought to make an offer there.

16 THE COURT: That was in regard to Ingersol.

17 MR DARROW: The special thing that was under discussion
18 that we expect to show they were especially discussing
19 at that time the question of a witness named Ingersol
20 upon which the arrest had been made under, and claimed
21 that some improper methods had been used in connection with
22 that witness.

23 MR FREDERICKS: Some improper methods by the defense.

24 MR DARROW: By the defense, of course, or by Mr Harrington.

25 THE COURT: Well, the objection is the foundation is
26 not laid, and I agree with the prosecution in that respect.

1 objection sustained.

2 MR DAWSON: Were you down to Los Angeles on or about the
3 23rd day of November? A Yes.

4 Q That was a few days before the McNamara case was dispos-
5 ed of? A Yes.

6 Q Did you see Mr Harrington at that time? A Yes.

7 Q Did you have a conversation with him in reference
8 to his arrest in San Francisco, and in reference to the
9 case? A Yes.

10 Q Where did you see him? A I saw him at your office.

11 Q That was in the Higgins Building? A In the Higgins
12 Building.

13 Q Page 2807. At that time did you say to Mr Harrington ✓
14 ton, or ask Mr Harrington, how he came out in his contempt
15 case, and did he reply -- and then did you say to him --
16 did he then reply to you that the case had been dismis-
17 sed or words to that effect, and then did you say -- then
18 did he say, "The prosecution was only trying to find out
19 the evidence for the defense in the McNamara case, and that
20 there never had been any bribery of any sort or any ille-
21 gal practices in any connection with the case, and that
22 he had been instructed by Mr Darrow and cautioned that
23 everything in connection with the McNamara case must be
24 done according to law, and that he had carried out Mr
25 Darrow's instructions in every particular, and there had
26 been no bribery or corruption of any sort in connection

1 with the case." Did he say that in substance? A That
2 was the substance, yes.

3 Q On what date was that?

4 MR FORD: Mr Older, give us an opportunity to object.

5 We don't care -- we didn't care to, then.

6 A I will try to remember.

7 MR DARROW: What was that date?

8 MR FORD: That has already been fixed. A November 23rd.

9 MR DARROW: Have you anything by which you can remember
10 as to the date you were down here? A Yes.

11 MR FREDERICKS: We object --

12 MR DARROW: And have you done it? A Yes.

13 Q Did you have a consultation with me on that date?

14 MR FREDERICKS: Objected to as immaterial and hearsay.

15 MR DARROW: That is preliminary, and I think we will show
16 its materiality.

17 MR FREDERICKS: If it is the date --

18 MR DARROW: I asked him if he had a consultation with
19 me on that day.

20 MR FREDERICKS: That was -- if it is for the purpose of fix-
21 ing a date --

22 THE COURT: The counsel says it is preliminary. He can
23 have it.

24 MR FREDERICKS: Well, yes or no. He can see when the
25 next question comes. A Yes.

26 MR DARROW: And what was the subject of that consultation?

1 MR FREDERICKS: That is objected to upon the ground it is
2 hearsay.

3 MR FORD: Calling for self-serving declarations on the
4 part of Mr Darrow.

5 MR DARROW: Not at all. We expect to show by this witness
6 that on that date he came down here and consulted with me
7 and with Mr Steffins concerning the disposition of the
8 McNamara case, and the entering of a plea of guilty.

9 MR FREDERICKS: The one against J.B.

10 MR DARROW: The one against J.B., entering a plea of
11 guilty and a consultation with reference to both cases.

12 MR FORD: Now, if the court please, that would be a self-
13 serving declaration. The declaration of this witness would
14 be purely hearsay. The declarations of Mr Darrow would be
15 self-serving declarations which the law does not permit to
16 be introduced in evidence.

17 MR DARROW: Cannot be any question in this case, but we
18 have a right --

19 THE COURT: I think it is a circumstance that the de-
20 fense have a right to show.

21 MR FORD: Even though it is self-serving?

22 THE COURT: It is in the nature of self-serving testi-
23 mony, but not within the rule of exclusion. Objection
24 overruled.

25 MR DARROW: With whom was that consultation? A With
26 you and Mr Steffins.

1 Q Were you sent for to come? A Yes.

2 Q By telegram? A yes.

3 Q Have you the telegram with you? A Yes.

4 Q Let me see it. We offer this telegram in evidence.

5 THE CLERK: Defendant's exhibit L.

6 MR FREDERICKS: We think it is immaterial: We make the
7 objection on that ground. We don't care to argue it.

8 THE COURT: Objection overruled.

9 MR DARROW: This is a telegram on a Western Union blank:

10 "Los Angeles, California, 2/2 -- November 22, 1911 --
11 10:22 A.M. Fremont Older, Bulletin, San Francisco.

12 Can you get to an important conference at Hotel Alexan-
13 dria here tomorrow? Clarence Darrow. Lincoln Steffens
14 November 22, 1911."

15 Q Did you have a conversation with Mr Steffens and myself
16 on that day? A yes.

17 MR ROGERS: What day is that?

18 MR DARROW: The 22nd. A 23rd.

19 MR DARROW: Oh, you got here the following morning ?

20 A The morning of the 23rd.

21 Q You took a night train from San Francisco? A yes.

22 Q Where did you meet us, or were we at several places?

23 A I met Mr Steffens at the Alexandria and he asked me to
24 go up with him to your office where I met you at noon,
25 at the recess, at lunch.

26 Q Were you advised with us to the matter? A yes.

1 Q And state what was said in reference to a settlement
 2 of the McNamara case between Mr Steffens and you and my-
 3 self at that time?

4 MR FORD: To that we object on the ground it is hearsay,
 5 calling for self-serving declarations on the part of the
 6 defendant, and as to the other, as to what Mr Steffens
 7 had said, would be hearsay, pure and simple, and self-
 8 serving declarations, your Honor, are never, at any time,
 9 admissible for any purpose; they were things said by the
 10 defendant, and would not be any evidence of what he ac-
 11 tually did do, and evidence that he intended to do some-
 12 thing else, taken from self-serving declarations of his
 13 and on his part would not be any evidence that the bribery
 14 was not committed, and for that reason, they are immater-
 15 ial.

16 THE COURT: Objection overruled.

17 MR FREDERICKS: We presume that what counsel means by the
 18 "McNamara case" -- how shall we presume what case he re-
 19 fers to?

20 THE COURT: I will ask him to clarify that.

21 MR FREDERICKS: The case against J. B. that was on trial or
 22 the case against J. J. and J. B., both?

23 MR DARROW: All cases connected with that controversy,
 24 especially J. B.

25 MR FREDERICKS: All right, so the witness understands
 26 the question.

MR DARROW: Yes sir; I am asking for the conversation.

1 THE COURT: You may proceed, Mr Older, and answer the
2 question.

3 A May I tell the conversation, what Mr Steffens said
4 to me?

5 THE COURT: The entire conversation precisely as it
6 occurred, word for word, if you can, and if not, the sub-
7 stance of it to the best of your recollection.

8 MR FORD: The witness has asked for a question, what Mr
9 Steffens said to him, I presume that is limited by what
10 was said to him by Mr Steffens in the presence of Mr Dar-
11 row.

12 THE COURT: Oh, yes.

13 MR DARROW: I do not think that is the rule at all. The
14 purpose of this is --

15 THE COURT: That is what you have asked for at this time.

16 MR DARROW: I have asked for the whole conversation.

17 MR FORD: Between all three of you.

18 MR DARROW: Any one of them, what they said to the other.

19 MR FREDERICKS: We shall certainly object to any conver-
20 sation not in the presence of Mr Darrow, it would be the
21 idlest hearsay.

22 THE COURT: For the present you can confine your answer to
23 the conversation had in the presence of Mr Darrow.

24 That, I understand, is the question. I do not rule as to
25 the other part; I am not saying you cannot have that under
26 the proper question and objection, but let us have that

1 separate.

2 MR DARROW: I presume the other comes in more logical
3 order, is the reason the witness referred to it, and per-
4 haps we might as well dispose of it right now.

5 THE COURT: All right.

6 MR DARROW: You may state what was said between you and Mr
7 Steffens or between us three together, by each of us.

8 MR FORD: We object to that part of the question, any con-
9 versation which goes to the conversation between the wit-
10 ness and Mr Steffens, on the ground the time, place and
11 persons present, has not been fixed; as to the time of the
12 conversation with Mr Steffens out of the presence or hear-
13 ing of Mr Darrow; and on the further ground it is hearsay
14 of the most vicious kind; calling for declarations of per-
15 sons outside of court on the part of persons who are not
16 in court, and incompetent, irrelevant and immaterial for
17 any purpose.

18 MR FREDERICKS: The point might be suggested here, your
19 Honor, and we might as well square right away at the issues.
20 As I understand from counsel's statement, he wants to show
21 on the 23rd of November, shortly before the charge of this
22 bribery, that he was making negotiations and talking and
23 figuring on having one of these men, at least, plead
24 guilty, and he wants to show by this witness that that
25 was the case. Is that about a right statement of it?

26 MR DARROW: yes, that will be for premises to argue with,

1 anyhow.

2 MR FREDERICKS: Now, then, I suppose Mr Steffens was --
3 and I simply use the expression in an argumentative
4 sense, was a busy-body, humming around, trying to start up
5 something and do something for himself, trying to butt-
6 in, if I may use a slang expression, because it is very
7 expressive, and more so than elegant, to a situation,
8 trying to start something that was not in the mind of Mr
9 Darrow at all; that Mr Darrow did not believe in or did
10 not concur in, or that he did not concur in seriously;
11 that he was perhaps allowing Mr Steffens to busy himself
12 around in this way to stir up dust or something of that
13 kind, and to detract from the real thing that he was
14 trying to do. I say, that is only a supposition; I am not
15 making that as an argument now -- anything that Mr Stef-
16 fens might say in that regard Mr Steffens alone would be
17 responsible for. We think it would not be admissible in
18 any event, but certainly not unless it came from the de-
19 fendant in this case, and certainly not unless the defendant
20 was privy to the matter, and certainly not unless the de-
21 fendant had sent him to do it, and there is no foundation
22 along that line at all as yet, and maybe there can be one
23 laid, and when there can be one laid along that line, we
24 shall argue even then, that the things that Mr Steffens
25 did outside of the hearing and presence of Mr Darrow cer-
26 tainly can have nothing to do with Mr Darrow's frame of

1 mind; let us weigh Mr Darrow's frame of mind by the things
2 that he said and did, and even then we maintain, as Mr
3 Ford has suggested, that anything that Mr Darrow would have
4 said in that regard would be clearly self-serving, and
5 therefore inadmissible, and we understand that the court
6 has ruled against us on that point, so that unless this be
7 something that Mr Darrow said himself, or something that
8 was said in his presence so that he was bound by it; certainly
9 it would be immaterial to go out into the field and
10 bring in Mr Steffens and John Doe or Richard Roe, and
11 say they had a conference together, and they talked this
12 matter over, and they decided that J. B. McNamara ought
13 to plead guilty. You see, we could not be bound by
14 that, because, on the other hand, and to square the issue
15 away, we intend to show, or try to show, rather, that Mr
16 Darrow had no such serious intention, and will prove it
17 by the facts that he did along in the days that followed
18 that, that will raise an issue, "Did Mr Darrow say I
19 intended to have him plead guilty?" We will say he
20 didn't intend to have him plead guilty, because this is
21 what he did, and how does Mr Steffens or anybody else
22 come into that issue? Let us confine it to Mr Darrow, to
23 the things he said and he did, if it is going to come at
24 all.

25 THE COURT: The question is whether that telegram does not
26 lay the foundation for this question.

1 MR FREDERICKS: How can the testimony of irrelevant and
2 incompetent testimony, lay a foundation for further in-
3 competent, and irrelevant testimony? That cannot lay a
4 foundation simply because Mr Steffens telegraphed to this
5 man, to this gentleman on the stand.

6 THE COURT: But Mr Darrow joined in that telegram.

7 MR FREDERICKS: Oh, no, Mr Darrow did not join in that
8 telegram. The telegram is signed by Lincoln Steffens.

9 MR ROGERS: And by Mr Darrow.

10 MR DARROW: I misled you, without knowing it --

11 MR FREDERICKS: I didn't see any telegram.

12 MR DARROW: I told you it was Steffens, and I didn't
13 remember my name was there, too.

14 MR FORD: Even so, on that point, this telegram from
15 San Francisco purporting to be signed by Clarence Darrow
16 and Lincoln Steffens, there is no showing Mr Darrow auth-
17 orized Lincoln Steffens to sign his name to it, and no show-
18 ing that Mr Steffens authorized Mr Darrow to sign his
19 name to it.

20 MR APPEL: He is offering it in evidence in court, your
21 Honor; he is ratifying it.

22 THE COURT: Captain Fredericks has the floor now.

23 MR FREDERICKS: I will take this with Mr Darrow's name
24 signed to it, which I didn't know, because it does not
25 readily appear that way. Suppose Mr Darrow did sign
26 this and did bring this gentleman down here by this tele-

1 gram, and did have a conference with whom? Now, cer-
2 tainly we cannot be bound by a conference that is had,
3 even in pursuance of that telegram between Lincoln Steff-
4 ens and Mr Older. We do not know what things they may
5 have said. The defendant does not know what things they
6 may have said. They may have gotten together and agreed
7 among themselves, and talked it over, that certain
8 things should be done, and then gone to the defendant and
9 the defendant said no, we won't do it, or they may have said
10 that it should not be done, and the defendant disagreed
11 with them. We cannot be bound by that. We would never
12 end; they could go down here and bring up 100 men on any
13 proposition and say that they had a conference, "We had a
14 talk, Mr Steffens came and made a talk, and he talked to
15 us that this man ought to plead guilty", and all that
16 sort of thing, but all the time Steffens talked, supposing
17 this defendant was sitting back and attending to his case,
18 getting his jury, and all of that sort of thing, that would
19 be the issue, what the defendant was doing. We cannot say
20 what Lincoln Steffens was doing. He may have had some idea
21 of doing something for himself or for humanity, or for
22 the human race, or something of that kind, and that had
23 not anything to do with this defendant. We cannot try
24 Lincoln Steffens in this matter, and the conference be-
25 tween Lincoln Steffens -- now, let us see. Hearsay
26 evidence -- there are only a few kinds of hearsay testimony

1 that are permissible. A man that is a co-conspirator in
2 the commission of a crime can testify to what another co-
3 conspirator said under certain circumstances in further-
4 ance of the conspiracy;

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1 that is when a man may testify as to a dying declaration
2 of a man that is surrounded by certain safeguards, that is
3 another hearsay; there may be one or two others, but they
4 are all specified--I do not recall them now to mind, but
5 nowhere is there specified or permitted a conference between
6 two men outside of the presence of the defendant being
7 admitted in testimony to prove anything that the defendant
8 did do or did not do.

9 MR. FORD. In answer to your Honor's inquiry about what
10 this telegram may lay the foundation for, of course, this
11 telegram is simply a telegram that was received by the
12 witness and upon which he acted in coming to Los Angeles,
13 and going further than that, assuming it was the original
14 telegram and that the defendant's name was attached to it
15 and that Lincoln Steffins name was attached to it, it
16 would not lay the foundation for a private conversation--
17 at the least, your Honor, it could only lay the foundation
18 for a conference to which it refers. It says, "Can you get
19 to an important conference at Hotel Alexandria here tomor-
20 row", the telegram does not specify the nature of the
21 conference, and being signed by the two, it would be nat-
22 urally presumed it was a conference between at least the
23 three of them, Lincoln Steffins, Clarence Darrow and
24 Fremont Older; it would not lay any foundation, at the
25 very best, for the conversation or private conversation
26 between Lincoln Steffins and this witness; there would be

1 no foundation laid for that that would be a conversation
2 held separate and apart. They might be commenting upon
3 Darrow, they might be commenting upon the conference itself
4 but this telegram would not lay a foundation, this tele-
5 gram would not show that whatever Steffins may have said
6 to Mr. Older that he had said with the approval of or as the
7 agent of Mr. Darrow, and after all, it is only Mr. Darrow's
8 state of mind, Mr. Darrow's intentions that we care any-
9 thing about, and first a foundation must be laid to show
10 that whatever Mr. Steffins did he did as the agent of this
11 defendant at that private conference. Of course, what
12 was said at the conversation we don't know but the tele-
13 gram would not lay the foundation for it, because the
14 defendant was there present and whatever was said or done
15 in his presence would be admissible against him.

16 THE COURT. That is precisely the thing that is in the
17 court's mind, Mr. Ford, does this telegram by any inference
18 authorize Mr. Steffins to act for Mr. Darrow, create an
19 agency?

20 MR. FORD. Your Honor is assuming that this telegram lays
21 a foundation for the conference at the hotel between the
22 three of them.

23 THE COURT. Yes, I have assumed that.

24 MR. FORD. Does it go further than that, your Honor is
25 going further than that and assuming in that bare telegram
26 is a sufficient indication that Mr. Steffins was Mr. Darrow's

1 agent to have communicated certain things to him or not.
2 We contend this telegram is the veriest hearsy in its
3 present form and could not establish anything, except
4 perhaps the date upon which Mr. Older came to Los Angeles, it
5 fixes that, and for that purpose perhaps it is admissible,
6 but for no other purpose whatsoever. If Darrow had a con-
7 versation with Mr. Steffins and authorized Mr. Steffins to
8 say certain things to the witness, why, the foundation
9 ought to be laid at least for that, and then we will meet
10 the situation when it arises. We do not believe under
11 those circumstances it would be admissible and certainly
12 the agency for that particular conversation must be shown.
13 I might be your Honor's agent in conducting a certain
14 business out here and the mere fact I had been shown to be
15 your Honor's agent in that matter would not make your
16 Honor responsible for my acts everywhere and with every
17 person. Your Honor would be responsible for my acts as
18 your agent only upon those matters in which I was your
19 agent and acting for you and under your direction. Things
20 done without the scope of my authority your Honor would not
21 be responsible for and there is no foundation here laid as
22 yet to show that Mr. Steffins was talking with Mr. Older
23 previous or after the conference, it has not been shown
24 whether the confersation was alone, but from what counsel
25 has said of that, the defendant himself has said, I presume
26 he is referring to conversations that occurred before the

1 conference at the Alexandria between the witness and Mr.
2 Steffins, and no foundation has been laid for that.

3 MR. DARROW. What do you mean by "foundation"?

4 MR. FORD. I mean, assuming for the sake of argument, that
5 the hearsy testimony would be admissible, which we do not
6 concede--assuming it would be admissible, we contend at
7 least a foundation would have to be laid to show that Mr.
8 Steffins was the agent of the defendant Mr. Darrow in talk-
9 ing with Mr. Older, because the only object of this can be
10 to show that the defendant had in mind doing certain
11 things and therefore he would not have bribed a juror, al-
12 though that would not logically follow, assuming this con-
13 ference to have occurred, because it may have been frustrated
14 and he may have as a last resort kept on bribing a juror
15 the same as he had previously done in the case of Bain.

16 MR. APPEL. That is a matter of argument.

17 THE COURT. That would be a matter of argument.

18 MR. DARROW. I object to the expression--

19 MR. FORD. It is a question of materiality, and the mater-
20 iality of it is a question of fact, and my argument is
21 addressed only to that point.

22 MR. DARROW. Just a moment, I want the record straight.
23 I want the jury instructed, your Honor, to disregard the
24 statement of counsel that I bribed Mr. Bain or anybody else.

25 MR. FORD. We have no objection to that instruction. Our
26 remarks were addressed as--

1 MR. DARROW They were addressed to the court in the
2 presence of the jury.

3 MR. FREDERICKS. It was only a suppositious case.

4 MR. DARROW It was not a supposition. He said I did.

5 THE COURT. Now, gentlemen, you have requested the court
6 to do something and the court is going to do it. Just a
7 moment. Gentlemen of the jury, you have observed from
8 time to time and it has occurred again now, in the heat
9 of argument remarks are made to the court that have no
10 application and are not to be considered by the jury and it
11 happened again just now, and the statement made by Mr.
12 Ford to the effect that as a matter of fact the defendant
13 here did bribe a juror is to be disregarded by you. You
14 will bear in mind the admonition heretofore given you
15 that the evidence upon which you act is solely the
16 evidence which you receive from witnesses sworn on the
17 witness stand together with the deductions you see fit
18 to draw from that evidence, but that statements of counsel
19 not supported by the evidence will be utterly disregarded
20 by you.

21 MR. FREDERICKS. Or even if they are supported by the
22 evidence, your Honor, they should be disregarded as facts.

23 THE COURT. The particular statement now made is to be
24 entirely disregarded by you, it is not evidence, it is not
25 to be considered by you as evidence. Did I make it clear?

26 MR. APPEL. Yes.

1 MR. DARROW. At the same time, I want to allege misconduct
2 and predicate error on the misstatement.

3 THE COURT. The record will so show it.

4 MR. DARROW. Your Honor, I want to say just a few words
5 in reply to counsel. Mr. Fredericks's statement of the law
6 in the main, I think is correct, but not entirely so. The
7 whole question in this matter goes to the intent and the
8 question is simply what was operating on my mind. There
9 cannot be anything else to it. Mr. Steffins may have had
10 no more authority than the man in the moon, he may have
11 had no authority whatever for anything he said or did.
12 That cuts no figure in this case. The question is what
13 I thought about it and that is the only question, the
14 question of motive, and whether it was true or false or he
15 had authority or did not have authority has nothing to do
16 with it, nothing; whether the States Attorney care or
17 do not care or whether he, Mr. Steffins, was anxious to do
18 something for humanity, which is rather a laudable thing,
19 but not in special favor with the District Attorney, or
20 whatever the case might be cuts no figure. The question
21 is what I thought and it is true that the matter must in the
22 end be brought home to me and a conversation between this
23 witness and Mr. Steffins has no bearing and will be stricken
24 out from the record unless they show the connection between
25 Mr. Steffins and myself, I admit all that is true, because
26 it can have no bearing excepting as it affected my mind,

1 to show whether there was a motive for this act that they
2 have charged against me. Counsel has been probably a
3 long while away from the books, as most of us have, and
4 when he states there are two kinds of hearsay evidence,
5 that is absurd.

6 MR. FREDERICKS. I did not limit that.

7 MR. DARROW. First you did and then you began thinking and
8 you found in your mind some other cases where hearsay
9 evidence is admissible. There are hundreds of them. It is
10 admissible to prove title, to prove reputation, to prove
11 ancestry, all kinds of things, although as a general rule
12 hearsay evidence is not admissible, of course, there cannot
13 be any question about that, but this is not hearsay evidence,
14 it comes under an entirely different rule, it is a ques-
15 tion of proof of motive, that is all, and what I said, and
16 as Mr. Fredericks suggests, how I acted, all are competent
17 to prove motive.

18 Mr. Fredericks says on their side they will claim
19 there will be nothing in it because we went on getting a
20 jury. They have a right to make that claim, although any
21 man of any sense would know there was nothing to it but to
22 go on getting a jury until such time as the case was dis-
23 posed of pending negotiations, but that argument they have
24 a right to make and that claim they have a right to make the
25 same as we have a right to show that at that time there
26 was every expectation in my mind that this case would be

1 disposed of, as it was disposed of. Now, it is not
2 necessary that Mr. Steffins be my agent at all, and it was
3 not in any such sense as that, he was communicating between
4 me and other men, was acting for me and for them, and
5 arranging this matter, and the question is whether I
6 believed that that settlement would result and if I did
7 would I take a chance ongoing out on the public street in
8 midday and having somebody that I scarcely knew pass out
9 money, to say nothing about losing the 4,000, and to say
10 nothing about the ethical and moral question involved.
11 That is all there is to this question, was there a motive
12 or was there not at that time, that is one part and an
13 important part of the defense in this case and we cannot
14 prove it all by one witness, as I have heard Mr. Ford say
15 over and over again, when the state wants to do something,
16 and when I say, "the State" I mean these men who appear in
17 court--they are not the people but they are spoken of as
18 that, they are the representatives elected to certain
19 offices for the purpose of carrying on such offices. When
20 I speak of "the State" I mean them--over and over again in
21 this court and in this trial they have introduced evidence
22 which was the most violent and in some cases pernicious
23 hearsay under a promise to connect, most promises, by the
24 way, not having been kept.

25 MR. FORD. We will argue that question.

26 MR. DARROW. Yes, we will argue it to your heart's content,

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1 when we get to it--I probably, not say "heart's content".

2 THE COURT. I have your point of view in this matter, Mr
3 Darrow, and we are using a good deal of time and I may
4 hear from you later, but I will hear from the District
5 Attorney now.

6 MR. APPEL. Just a moment. We wish to call Your Honor's
7 attention to the decisions, so that they may have a right
8 to argue the law.

9 THE COURT. It may become necessary, but at this time I
10 will state for the information of the District Attorney,
11 that it appears to me that this, while in the nature of
12 hearsay, is in fact and in truth a question of fact as
13 to what influences, if any, were brought to bear on the
14 mind of the defendant and the matter of exercising that
15 influence, if any, and the ultimate effect of that influence.

16 MR. FREDERICKS. I understand the court's position.

17 THE COURT. I think it proper I should hear from the prose-
18 cution, having stated that state of mind on my part.

19 MR. APPEL. We just wanted to point out the law.

20 THE COURT. I have it in mind pretty well.

21 MR. APPEL. To show whether the law is good or not, maybe
22 the code is no good.

23 THE COURT. You may proceed, Captain Fredericks.

24 MR. FREDERICKS. And while we still maintain it is a
25 self-serving proposition, we eliminate that now and we
26 agree with the court upon the theory of the law with that

1 reservation, that we may eliminate--to say we agree
2 with the statement that the court has made. Allow me to
3 carry the court's mind back to the time when Johnston was
4 on the stand and he was interrogated about what he told
5 Franklin in regard to his conference with Mr. Ford.
6 He was not permitted, and I believe properly so, he was not
7 permitted to testify to one word that he said to Ford
8 or that Ford said to him, because that was hearsay, but he
9 was permitted to say what he told Franklin about that
10 conversation. This point is the same. Mr. Steffins and
11 this witness may have had a conversation; may have had an
12 arrangement, may have expressed ideas and views. It is
13 immaterial unless those ideas and views are brought to the
14 notice of this defendant, therefore, the only thing that
15 would be competent and proper in this matter would be for
16 either this witness or Mr. Steffins or someone else to tes-
17 tify what they told Mr. Darrow about that conference, not
18 what in fact did occur at that conference, for we may--
19 they may have told him what occurred before that conference;
20 they may have omitted some of it; they may not have said
21 some of it, but what was brought to the mind of Darrow and
22 what Darrow said in reply to it. Now, under Mr. Darrow's
23 theory that it must be brought home to him, that alone
24 could be testified to, because it could not be the con-
25 versation between these two men just as the conversation
26 between Johnston and Ford would be hearsay, it was not
brought home. Johnston and Ford may have said many things

1 that Johnston did not report to Ford or to Franklin--
2 Johnston and Ford may have said many things that
3 Johnston did not report to Franklin; were not brought to
4 Franklin's mind, that Franklin had no knowledge of. This
5 witness and Mr. Steffens may have said many things that were
6 not brought to the mind or to the attention of this defend-
7 ant, that his mind was not directed to and that his mind
8 did not act on, and that had no effect in any way, shape or
9 form, and it would be wholly improper for this witness to
10 testify to what he said to Steffens or what Steffens said
11 to him, even though he should afterwards say, "Did you
12 state all these things to Mr. Darrow?" because the only
13 material fact in the situation is this, "What did you tell
14 to Mr. Darrow?"

15 MR. FORD. I might add, your Honor, whatever occurred
16 between Mr. Steffens and Mr. Older before that conversation
17 could only illustrate what was in their minds, whatever
18 occurred between Mr. Darrow and either of them after that,
19 even though, if it didn't, a report of that might illustrate
20 Mr. Darrow's mind under the circumstances, but it would be
21 only that portion which would be contained in the very
22 next conversation, so we might as well come down to it at
23 once.

24 THE COURT. As to that, I cannot say, but if it should
25 develop as suggested that outside influences having the
26 confidence of Mr. Darrow, then chief counsel for the McNamans,

1 if outside influences having his confidence were being
2 brought to bear upon Mr. Darrow's mind with a plea of
3 guilty in the McNamara case, it is a question of fact that
4 ought to be presented to this jury, I believe, and that
5 they must weigh and consider it for whatever they may
6 think it be worth.

7 MR. FORD. There were hundreds of people who no doubt
8 desired to see this case ended. There were thousands of
9 them all over the United States--

10 THE COURT. Take the outside influences and this telegram
11 contains--

12 MR. FREDERICKS. Why not confine it to what was said to
13 Darrow?

14 MR. FORD. I was coming to the outside point to illustrate
15 the point I wanted to.

16 THE COURT. I think the weight of Captain Fredericks
17 remarks, he has expressed it in the fullest light.

18 MR. FORD. If the court please, there were hundreds and
19 thousands of people who desired this case to end. They
20 might have written to freinds of theirs to use their in-
21 fluence to have it end. That matter would not be material
22 before this court except in so far as those influences
23 acted uponthe mind of Mr. Darrow and Mr. Darrow responded
24 to them. It is the response of Mr. Darrow to those in-
25 fluences that would indicate what was in his mind, the
26 state of his mind, and I imagine that that is the only

1 theory upon which your Honor is admitting this, the
2 state of mind.

3 THE COURT. Oh, precisely.

4 MR. FORD. Which the defendant entertained at that time
5 as indicating either the motive or lack of motive. Now,
6 whatever Mr. Darrow--or whatever Mr. Steffens did or Mr.
7 Older or any other person may have done is purely imma-
8 terial. The question is what did they report, what did
9 they do with Mr. Darrow, which caused a certain response
10 to be brought from Mr. Darrow, and which would indicate not
11 what they said but the response would indicate what Mr.
12 Darrow had done. Now, whatever Mr. Older and Mr. Steffens may
13 have done, unless communicated to Mr. Darrow would be of no
14 avail in indicating the state of Mr. Darrow's mind, and con-
15 sequently the only thing that could indicate the state of
16 Mr. Darrow's mind would be the communication to Mr. Darrow,
17 and his response to the communication.

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1 Now, if anything was communicated about this conference
2 to Mr Darrow, and Mr Darrow made response, then all that
3 is necessary to get that state of mind would be the commu-
4 nication and the response. They were trying to illustrate
5 with Mr Franklin that Mr Franklin was being coerced, and
6 they tried to show that Mr Johnston delivered a certain
7 message from Ford; what Ford had actually said,
8 to Johnston was absolutely immaterial. The question is
9 what did Johnston communicate as in this case, what is
10 the communication to Mr Darrow, and what response did he
11 make; not what actually occurred.

12 THE COURT: Gentlemen, it is a very important question,
13 and the hour of adjournment has arrived, and I will con-
14 sider the matter a little during the noon hour, and I may
15 hear from you further.

16 MR APPEL: Of course, all questions of this fact, whether
17 under the law we are entitled to the declaration, the real
18 question is whether there is any law for the admissibil-
19 ity of declarations which explain the other.

20 THE COURT: I think I will hear from you at 2 o'clock.

21 MR APPEL: We contend the law in this state is well set-
22 tled.

23 THE COURT: I will hear from you at 2 o'clock.

24 MR APPEL: And any speculation on our part would have very
25 little weight except the law.

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