

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.)

Clarence Darrow,)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 6

I N D E X.

Direct.

Cross.

Re-D.

Re-C.

FRANKLIN, BERT H.

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1-Smith 1

May 29, 1912. 9:30 o'clock A.M.

2 Defendant in Court with counsel; jury called, all present.

3 Case resumed.

4 MR ROGERS: I think, if your Honor please, I might present
5 to your Honor's consideration at this moment a matter which
6 I think will appeal to your Honor's sense of fitness. We
7 have been somewhat unfortunate since this trial commenced.
8 Not only did Judge McNutt become ill at the first of the
9 trial, I may say he has been confined to his bed ever since
10 the trial commenced. After Mr Appel came into the case a
11 member of his family, a resident at his house, has died,
12 and Mr Appel, has of necessity to devote some time to the
13 preparations for the funeral and the comforts of his family.
14 The funeral is this afternoon and Mr Appel, of necessity,
15 must be absent from the court room. We feel we are not
16 asking too much when we ask your Honor that you do not sit
17 this afternoon.

18 THE COURT: You needn't ask it. The Court of its own
19 motion when it adjourns at noon to-day will adjourn over the
20 afternoon out of respect to Mr Appel's feelings and his
21 necessary absence. Tomorrow being a legal holiday, the ad-
22 journment, when it does take place this noon, will necessar-
23 ily be until Friday morning at 9:30, and the interested
24 parties may govern themselves accordingly, and I may say to
25 the gentlemen of the jury that as heretofore, facilities
26 will be afforded by which you can, if necessary, with a

1 deputy sheriff visit your places of business, and of course,
2 always in his presence, transact such business as may be
3 absolutely necessary in the same manner as you have done in
4 the previous adjournments. I am glad to see by the pictures
5 in one of the morning papers, apparently you are comfortable
6 while not in court.

7 A JUROR: Your Honor, can't always tell by newspaper report.

8 THE COURT: I think it is the duty of the Court and the de-
9 sire of the Court that every comfort and facility should be
10 afforded you during this necessary term of confinement.

11 MR FORD: Mr Franklin, take the stand.

12

13 BERT H. FRANKLIN, on the stand for fur-
14 ther direct examination:

15 MR FORD: I desire first to show a document to counsel for
16 the defense before exhibiting it to the witness. Mr Frank-
17 lin, I ask you to look at the document which I have exhibited
18 to counsel, and state whether or not you have ever seen this
19 before? A I have.

20 Q This document which purports to be a deposit slip show-
21 ing moneys deposited with the First National Bank of Los
22 Angeles --

23 MR APPEL: Wait a moment.

24 MR FORD: -- on October 6th, 1911. State whether or not
25 that is in your handwriting?

26 MR APPEL: Wait a moment. Your Honor, we move to strike out

1 what the District Attorney said in describing the deposit
2 slip. We ask your Honor to admonish the jury not to take
3 that into consideration, and we object to the question on
4 the ground that it is incompetent, irrelevant and immaterial,
5 and no foundation laid and has no bearing upon the issues in
6 this case.

7 MR FORD: I have only stated, your Honor, what it purports
8 to be in order to identify it. The jury will understand
9 that the document itself is only evidence when admitted.

10 THE COURT: The jury, of course, will bear in mind at this
11 time or any other time, it is not to be considered unless
12 some attorney in the case comes forward and has the oath
13 administered and takes the witness stand, and in that case,
14 of course, he is a witness; but in the trial of this kind,
15 attorneys must be allowed a great deal of latitude in making
16 statements, but they are not to be regarded; and this state-
17 ment, like the others, is not to be regarded as evidence.
18 Let me see this document. Who put the writing on this, Mr
19 Franklin? A I did.

20 THE COURT: And the figures? A Yes sir.

21 MR FORD: The document to which I have attracted your at-
22 tention then, or the written portions of it, are in your
23 handwriting? A All except the letter M, which appears upon
24 the date stamp.

25 Q When did you write that document?

26 MR APPEL: Objected upon the ground it is immaterial.

2s 1 THE COURT. Well, laying the foundation.

2 MR. APPEL. I know, your Honor. That is not the proposi-
3 tion. You cannot examine the witness concerning a docu-
4 ment which is not in evidence, and he cannot examine the
5 witness concerning the contents unless it is in evidence,
6 and the document is, we contend, being immaterial, the
7 surrounding circumstances attending its execution would
8 not necessarily be material, otherwise, your Honor, in the
9 examination of the witness they might get sufficient in
10 there to be a substitute for whatever oral testimony the
11 witness gives with reference to the document itself, when
12 the document itself would not be--

13 MR. FREDERICKS. You have to lay the foundation.

14 THE COURT. That cannot affect this particular question,
15 "When did you write that?" Just answer as to that and to
16 no other.

17 MR. APPEL. I can easily appreciate what he is going to
18 say.

19 THE COURT. Objection overruled.

20 MR. APPEL. We take an exception.

21 A October 6, 1911.

22 MR. FORD. Q What did you do with the document after
23 you wrote it?

24 MR. APPEL. The same objection.

25 THE COURT. Overruled.

26 MR. APPEL. Exception.

1 A I presented it at the teller's window together with a
2 check for \$1,000 given to me by Mr. Darrow, and presented
3 at the same time a check drawn on my own account for \$500.
4 MR. APPEL. Now your Honor will see that my contention with
5 respect to this matter was correct. Now, the district
6 attorney has already stated here in the presence of the
7 jury and your Honor what this paper is. Now the witness
8 adds to his answer and goes beyond a responsive answer and
9 explains the situation so that if your Honor should rule
10 we are right in keeping that document out, still that mat-
11 ter is here before the jury in the guise that they are
12 laying the foundation to introduce this in evidence, and
13 of what use is the objection that we make if your Honor
14 should rule with us. Of what use is it to us or what
15 benefit to the defendant, or what benefit would it be to
16 us in the presence of this testimony given here which is
17 unresponsive to the question, which I necessarily anti-
18 cipated.

p 19 MR. FREDERICKS. We must show it is material before we
20 can offer it, your Honor, or else it will be objected to
21 on the ground it has no connection with the case.

22 THE COURT. Are you ready to offer it now?

23 MR. FORD. Just a moment I will be. Will you read the last
24 question. (Last question and answer read by the reporter)

25 Q BY MR. FORD. Now, the teller's window of what bank?

26 A The First National Bank of this city. I will say that

1 I presented my bank book at the same time .

2 Q And the thousand dollar check which you presented with
3 the document was the check concerning which you testified
4 yesterday? A Yes, sir.

5 MR . FORD . We now offer the document in evidence as People
6 Exhibit No. 7 .

7 MR . APPEL . We object to it on the ground it is incompetent
8 irrlevant and immaterial for any purposes whatsoever, hear-
9 say, no foundation laid.

10 THE COURT . Objection overruled .

11 MR . APPEL . We except .

12 MR . FORD . I will ask to read it into the record . I will
13 read Exhibit 7 into the record; "Deposited with the
14 First National Bank of Los Angeles, October 6th, 1911, for
15 credit of B. H. Franklin, by B. H. Franklin, checks, 1,000,
16 total\$1,000." Bearing a rubber stamp endorsement reading
17 as follows: "3 October 6, 1911", and the initial in ink
18 "M" inthe middle of the rubber stamp endorsement.

19 Do the jury desire to look at it?

20 MR . APPEL . Will you be kind enough, Mr. Reporter, to make
21 a notation that the document in evidence is handed to the
22 jury for their examination and they examined the same.

23 MR . FORD . We join in the request, so the record will
24 show it.

25 MR . APPEL . Put down the sneer on the face of the gentleman,
26 too.

THE COURT . Now, now, Mr. Appel .

2-Pete 1 MR FORD: I exhibit to counsel for the defendant the book
2 before I ask the witness any questions.

3 MR APPEL: I do not want to look at it.

4 MR FORD: Do you desire to look at it, Mr Rogers?

5 MR ROGERS: (After examining) -- I have looked at it.

6 Q By Mr Ford -- Have you ever seen this book before, Mr
7 Franklin?

8 MR APPEL: Wait a moment. We object to that upon the ground
9 it is incompetent, irrelevant and immaterial for any purpose,
10 whether he has seen it or not; it has nothing to do with the
11 issues of this case.

12 THE COURT: Objection overruled.

13 MR APPEL: Except.

14 A Yes sir.

15 Q By Mr Ford: State whether or not that is the bank-
16 book referred to by you as having been presented with the
17 exhibit No.7, the deposit slip?

18 MR APPEL: We object to that upon the same grounds as in
19 our last objection.

20 THE COURT: Objection overruled.

21 MR APPEL: Exception.

22 A Yes sir.

23 Q By Mr Ford: State whether or not any entries were
24 made in that book, if you know, at the time the deposit
25 slip was presented to the teller of the First National
26 Bank in this city?

1 MR APPEL: The same objection as last.

2 THE COURT: Objection overruled.

3 A I have not any independent recollection of that, Mr
4 Ford.

5 Q You have not? A No sir.

6 Q Does that book contain the entries of moneys deposited
7 by you with the First National Bank in the year 1911?

8 MR APPEL: The same objection as last.

9 THE COURT: Objection overruled.

10 MR APPEL: Exception.

11 A Yes sir.

12 Q It contains the entries of all deposits made by you on
13 the dates indicated by the entries in the book?

14 MR APPEL: The same objection.

15 THE COURT: Objection overruled.

16 A I couldn't testify to that, because I didn't see the
17 entries put in the book. I presume they are correct, I
18 don't know.

19 Q Did you look at the entries immediately after they
20 were put in the book? A I do not think so.

21 MR FORD: We ask that the book be marked Exhibit 8 for iden-
22 tification.

23 THE COURT: Mark it Exhibit 8 for identification.

24 (Here the document last referred to was marked by the Clerk
25 as Plaintiff's Exhibit 8, for identification.)

26 MR ROGERS: Before we get away from the subject, I want to

1 move to strike out the exhibit 7 and call your Honor's
2 attention to the case of the People against Blackman, 127
3 Cal, reading from page 1251: "Objections were made --"

4 THE COURT: (Interrupting) -- Let me see it, Mr Rogers.

5 MR ROGERS: Yes sir. (Handing book to Court) It is a case
6 I tried myself. And the Lanterman case, 9th Appellate.

7 MR APPEL: You have some recollection of it.

8 MR FREDERICKS: Yes. There is nothing similar in this case,
9 though, it doesn't look like it.

10 MR ROGERS: Absolutely, on all fours.

11 MR FREDERICKS: I think not.

12 MR FORD: Your Honor will remember in this case the witness
13 wrote the document himself, in the case in Court now.

14 MR APPEL: Give me a parallel case where it was not written
15 by himself. Here is one case, your Honor, where the witness
16 himself had not written the memorandum.

17 THE COURT: The distinction, as I see it here, is the sole
18 purpose of this evidence is to offer it for the purpose of
19 tracing the money. There is a difference there.

20 MR APPEL: Certain documents prepared by witnesses in the
21 absence of defendant, or prepared by third persons, cannot --
22 where the witness is personally present and can testify it
23 by himself, certainly those documents cannot help him.

24 For instance, if your Honor pleases, suppose I testify that
25 anybody gave me a thousand dollars for a certain purpose,
26 all right. What did you do with it? I deposited it in the

1 Bank. That is all right. I say what I did with it. What
2 did you do with it? I drew the money from that thousand
3 dollars to do what I was told to do, and I did do it. Now,
4 the entry of the bank on its books showing that one thousand
5 dollars was deposited by me is secondary evidence; it is
6 only a statement made by third person not in Court, and not
7 under oath, concerning the fact. Now, under the constitution
8 and under the Federal as well as the State constitution, the
9 defendant wants to be confronted by the witnesses, that is,
10 they must speak in his presence, and whatever they said
11 away from him outside of court is hearsay evidence.

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48 1 It is the worst kind of evidence. It is hearsay; doesn't
2 bind upon him. In a criminal case even books kept in the
3 general course of business concerning a transaction are not
4 evidence.

5 MR. FREDERICKS. But this is not a book, Mr. Appel; it is a
6 record made by this witness.

7 MR. Appel. I know, they are now--take the illustration,
8 a simple memorandum made by me that Mr. Fredericks stated
9 to me on a certain day certain things. Now, that matter is
10 in dispute in court. Very well; I go on the stand and
11 state Mr. Fredericks stated to me certain things. Now,
12 did you make the memorandum at that time? Where is that memo-
13 randum? Here it is, I made it at the very moment. Now,
14 can you introduce that memorandum in evidence? The Code
15 says memorandum is not admissible but the cross-examiner
16 has a right to see the memorandum and he may read its con-
17 tents to the jury if he so pleases--the cross-examiner--
18 the Code says that but what I read there on that piece of
19 paper at the time is a statement in writing that I made
20 just exactly as if I had told a third person. Mr. Fredericks
21 told me so and so. Your Honor would not permit me to say
22 that immediately after Mr. Fredericks made the statement to
23 me that I told Mr. Ford here and what did you tell Mr. Ford?
24 I told him what Mr. Fredericks said to me--you would not
25 allow me to testify to that. So this memorandum itself,
26 it is a hearsay statement. It is like a statement made to

1 a third person. There is no difference in the rule. And
2 that North Carolina case, your Honor, is your Honor, and
3 all United States decisions and, of course, this is of
4 importance here because this will be followed by a lot of
5 these matters, and I have decisions on all kinds of evidence.
6 THE COURT: I realize the importance of this ruling.

7 MR. APPEL. If your Honor will let me suggest this to your
8 Honor. Your Honor, I don't want anybody to take--I don't
9 want to make any idle objections. They don't do us any
10 good. Your Honor understands I take an interest and I feel
11 in these matters.

12 MR. FORD. There is absolutely nothing before the Court at
13 this time.

14 THE COURT. Yes, there is a motion to strike out.

15 MR. APPEL. I say, if your Honor thinks it of importance,
16 your Honor allow us to show your Honor the authorities.
17 I say from entries of all kinds, from telegrams up in
18 this state, and in other states and in the Carlson case
19 we must have cited the decisions on every point. I have
20 decisions on that that this is the most dangerous kind of
21 evidence against a defendant, because your Honor will see
22 that he don't bring it into existence; he has no knowledge
23 of that entry; it was not made in his presence, when he
24 could speak, when he could repudiate it himself. Your
25 Honor, if I was to loan a man a thousand dollars, I can't
26 be allowed to corroborate that by my own testimony by
saying that I wrote to that effect to somebody telling him

1 that. I can't corroborate that by saying, your Honor,
2 that I went down to the bank and deposited that sum of
3 money there and then immediately drew it out. I could
4 show a check that I gave to this man because then that is
5 binding upon this man, if it passed through his hands, of
6 course, the presumption is that is the money I loaned him,
7 but here Mr. Darrow sits here and this memorandum, your
8 Honor, if admitted, made away from him, down in a bank,
9 made by a third person not in his presence. I say they
10 are not material and so many cases of that kind have been
11 decided in criminal cases. I can show your Honor that in
12 a civil case the entries in a book in a store showing that
13 certain goods were sold to me in the absence of evidence
14 that they were delivered to me are held to be absolutely
15 necessary by the rule of custom, by the rules of commerce
16 that it is good evidence, prima facia evidence of the
17 delivery of those goods without further evidence that those
18 goods were delivered, because that is taken from the exper-
19 ience in ordinary transactions in life,

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but in a criminal case such a rule as that does not apply.
 Why, because a presumption we raised from a transaction of
 that kind in ordinary affairs between man and man, indep-
 endent of any question of the criminal intent, does not
 apply in a criminal case where the presumption of evidence
 out generals, overcomes, predominates over every other pre-
 sumption, so you must put your finger upon every fact that
 the defendant did, upon every fact that his attention was
 called to for the purpose of showing his conduct with res-
 pect to that transaction.

MR FORD: May I be pardoned, Mr Appel, just a moment, to ask
 you whether your objection is as to the competency of this
 witness' testimony, and as to the competency of the document
 with reference to the fact sought to be proved by the docu-
 ment, or is your objection to the competency to the fact it-
 self?

MR APPEL: I am objecting to the testimony that -- I am ob-
 jection to the entries of this record in evidence.

MR FREDERICKS: This is a motion to strike out this Exhibit.

THE COURT: Yes sir, that is /^{the} motion before the Court, to
 strike out this Exhibit.

MR APPEL: Your Honor will find decisions in the 66 Cal,
 108, 116, 117 and 126. We can read them to your Honor in a
 moment, and any questions with respect to account books,
 your Honor will see that it has been in this /^{state} in the 117th
 Cal (citing other authorities), that the defendant by

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1 ordinary writings made by him not in the presence of the
2 defendant was sought to be introduced -- (citing authorities).

3 Entries in the course of business are only admissible
4 only when the enterer had personal knowledge of the fact
5 entered and where the defendant was bound by those. I can
6 cite decisions from every State in the Union upon that.

7 MR FORD: We agree with you that ^{is} a good law in reference to
8 those cases.

9 MR APPEL: That is the rule announced in that case, the
10 Lanterman case and in the Blackman case, your Honor can
11 easily see how a man could go out there -- suppose I want
12 to make evidence against a man, I can go and write almost
13 anything in the world, testify to the fact and corroborate
14 myself, and say "Yes, I made a writing to that effect", and
15 it makes no difference whether I made it or a third person
16 made it, that is hearsay; it was done outside of my presence.
17 It is the easiest thing in the world to convict a man --
18 all I have to, is to come down here and commit a crime with
19 someone else and then I can come into court and testify
20 against him and I can corroborate myself. Now, I say I will
21 show you entries of the exact facts as I went along.

22 MR FORD: Now, if the Court please, it is sometimes diffi-
23 cult for me see or to determine just to what point the ob-
24 jections have been addressed by counsel for the defendant in
25 this case; but there are two questions that are raised by
26 the motion to strike out in this matter; one is, is it compe-

1 tent to show what became of the money delivered to the
2 defendant or by the witness to the defendant? Is it compe-
3 tent to show what Mr Franklin did; is it competent to show
4 all the evidence tracing the money? Is it competent to show
5 the money corroborating the witness on the stand? Now, or-
6 dinarily in the ordinary case, the acts of other parties are
7 not admissible against the defendant, and in all the cases
8 cited by counsel they were attempt to show acts done by
9 people other than the defendant without any showing being
10 made whatever that those other persons were acting in con-
11 cert with the defendant; in other words, that they were
12 co-conspirators, but in this case the acts of this man were
13 done -- transactions of the defendant were done in accord-
14 ance with the agreement entered into between the two, to do
15 and commit a certain crime, therefore the acts of the
16 defendant -- I mean acts of the witness are admissible just
17 the same as though the defendant himself had gone down and
18 done those acts. That is why I asked counsel if his ob-
19 jection was addressed to the competency of the act itself,--
20 of the fact itself, or whether it was addressed to the compe-
21 tency of the evidence,

6s 1 by which we sought to prove the act itself, so that in
2 this case the acts of the defendant, Mr. Franklin, whatever
3 Mr. Franklin did or said during the continuance of the con-
4 spiracy and in furtherance of the conspiracy are admissible
5 even as against this defendant. Contrary to the general
6 rule, by reason of the fact that a conspiracy will be proven
7 in this case. Even though he has no personal knowledge
8 of it and even though the precise things done were not con-
9 templated in their details by the defendant. The only
10 thing requisite is that the general design existed, there-
11 fore, whatever Franklin did in furtherance of the conspiracy
12 is admissible so much for the fact, Your Honor has ruled
13 on that portion of the objection so, your Honor, it is
14 not necessary to dwell further on that point whatever.
15 Whatever Franklin did in furtherance of the conspiracy is
16 admissible. Now, the next question goes as to the admis-
17 sibility of records made by Mr. Franklin himself. In the
18 Blackman case the records sought to be introduced were the
19 records made by a bookkeeper who had committed suicide,--
20 Bolton, I think his name was. The defendant was being
21 tried in that case for embezzlement. It was necessary for
22 the prosecution to show that the moneys had come into the
23 hands of the defendant. The defendant was secretary of the
24 corporation. They sought to introduce in evidence entries
25 in books not made by the defendant but made by somebody else
26 There was no attempt made to show that the person who did
make those entries was in any wise acting in concert with

1 the defendant; that he was a conspirator with the defendant
2 in the commission of the crime. Absolutely no showing
3 in the Lanterman case. In that case they sought to convict
4 the coroner upon records that were made in the office of a
5 company, records made by men who had absolutely no knowledge
6 of the transaction, made by men who had never seen the
7 defendant and were not acting in any wise in concert with
8 him. We are not doing that in this case. We are trying
9 to show what Mr. Darrow's--Mr. Franklin did--we want to show
10 that he went to the bank, deposited the check of Mr. Darrow
11 for \$1,000, drew out \$500 and took it out to give it to
12 Bain. Now, we have a right to corroborate that witness
13 by all the evidence existing with reference to that fact.
14 If he went to the bank and made out a deposit slip and
15 deposited one thousand at that time, if he drew out a
16 check at that time, and those documents are in evidence,
17 certainly they are all evidence of the highest class.

p 18 We will show by other evidence, other than that
19 of this witness, that that was Mr. Darrow's check he deposit-
20 ed, and that that deposit slip was filed in that bank on the
21 6th of October, during the pendency of this McNamara case
22 and before the arrest of the witness and all the witnesses,
23 either one of them, and as your Honor knows, we must show
24 by some other evidence that at least the defendant is con-
25 nected with this bribery and we want to show that it was
26 his money that went to the bribe-taker Bain, and we pro-

1 pose to trace it. We are going to show by testimony
2 independent of Mr. Franklin's that that deposit slip was
3 filed in that bank on that day and filed by Mr. Franklin and
4 kept there up until this morning. I might state that the
5 document which I sought to introduce yesterday, I dis-
6 covered was a copy and not the original, so I had to go
7 to the bank this morning and get the original.

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1 MR. ROGERS. I might suggest, if your Honor pleases, that
2 counsel's reasoning is very like the reasoning of the good
3 old preacher who came back and told his congregation that
4 he knew that the story of the Ark resting on Mt. Arrarat
5 was true because he had been in Palestine and seen Mt.
6 Arrarat and saw the ark could rest there. Now, they have
7 a memorandum of deposit, what does that prove? And it is
8 proven by incompetent evidence, under the Blackman case.
9 However, if a witness makes a memorandum at the time and
10 testifies to facts set forth in the memorandum, that docu-
11 must be handled in accordance with the Code and not other-
12 wise.

13 MR. FORD. We are not offering it as a memorandum for the
14 purpose of refreshing the recollection of the witness. The
15 witness testified with regard to the transaction indepen-
16 dently of any memorandum. I now offer the memorandum itself
17 as one of the things done by Mr. Franklin, part of the
18 res gestae in this case, part of the things done in carry-
19 ing out the conspiracy and tracing the money; not offering
20 it for any other purpose, not offering it as a memorandum.

21 MR. APPEL. Your Honor will see the vice of that argument;
22 there are no earmarks on this memorandum that identifies
23 the money. How do you trace money? You trace money by
24 showing that it came into my hands and from my hands it
25 passed into Judge Campbell's hands here and passed along
26 there, but if I make a memorandum myself or any one else

1 makes a memorandum that I gave it to Judge Campbell, that
2 memorandum is not evidence. Don't you see that it does
3 not identify the money? My statement, the witness' state-
4 ment here that he gave it to the bank is the mode of trac-
5 ing the money. That is what he said, that is what he did
6 with it, but the memoranda that we make as we go along of
7 the existence of the very fact testified to by the witness
8 are not evidence.

9 MR. FORD. I wish to state to your Honor, there will be
10 other witnesses testify concerning ~~the~~ that deposit
11 slip and testify as to the nature of the deposit and will
12 testify that it was the check of the defendant Clarence
13 Darrow; further than that, we will show the bank on
14 which it was drawn, we will show it was paid out of the
15 account of Clarence Darrow in the Commercial National Bank
16 in this city. I make that as an avowal, not as evidence
17 in the presence of the jury, but for your Honor.

18 MR. APPEL. I will say, whatever other evidence they are
19 introducing in the case doesn't make a fact material in
20 the issue. I say this paper itself under any and all
21 circumstances--I don't care what they will introduce in
22 evidence--I say this paper itself under any and all cir-
23 cumstances is not evidence in this case as against this
24 defendant. That is what I am claiming.

25 MR. FORD. Submitted.

26 THE COURT. This matter was presented last night and again

1 this morning, and I had it on my mind quite a little.
2 It seems to me, Gentlemen, that the test is this: was
3 the act done in furtherance of the alleged conspiracy?
4 If so, the evidence should be received; if not, it should
5 not be received. Applying that test I think it is evidence
6 which should be received. The motion to strike out is
7 denied.

8 MR. APPEL- We except.

9 Q BY MR. FORD. Now, Mr. Franklin, you stated that you
10 presented a check on your own account at that time. I
11 submit to counsel for defendant what purports to be a
12 check signed by B. H. Franklin on the First National Bank,
13 dated October 6, 1911. I exhibit the same document to
14 you, Mr. Franklin, and ask you whether or not it is the check
15 or that document is the check to which you referred to in
16 your testimony.

17 MR. APPEL. We object to that on the ground it is incompetent
18 irrelevant and immaterial, no foundation laid.
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-Pete 1 MR FORD: I withdraw the question in that form, Mr Appel.

2 Q By Mr Ford: State whether or not you ever saw that
3 document before? A That check is made out --

4 MR APPEL: Now, your Honor, I want you to admonish this man.

5 A Yes sir. --

6 MR APPEL: Wait a moment. Your Honor, the last examination,
7 you will see how he elaborated in giving his answers. We
8 submit, your Honor, the witness should be admonished.

9 THE COURT: Mr Franklin, you must answer the questions pro-
10 pounded to you by counsel directly and concisely as you are
11 able to do, and when you see that counsel on the other side
12 desire to get their objection in, give them a chance to do
13 so. They have just as much right to put in an objection as
14 you have to answer, and you will be given the same chance
15 as they have, but in order to get an orderly record here
16 there must be one man speaking at a time, and not any un-
17 necessary words used.

18 A Pardon me, your Honor, I didn't intend to use them.

19 THE COURT: Let us get the question read.

20 MR FORD: It has been answered.

21 THE COURT: Read the question.

22 (Last question read by the reporter)

23 A I have.

24 Q By Mr Ford: When was the first time you ever saw it?

25 A The First National Bank.

26 Q On what date? A October 6th, 1911.

1 Q In whose handwriting is it? A Mine.

2 Q What did you do with it after you wrote it?

3 MR APPEL: We object to that on the ground it is incompetent,
4 irrelevant, immaterial, what the witness did with it; the
5 document is not in evidence, that has not been introduced
6 in evidence, is immaterial for any purpose whatsoever, hear-
7 say.

8 MR FORD: I am laying the foundation to show its connection
9 with this case, your Honor. I will offer it as soon as I
10 show its connection with this case.

11 THE COURT: Objection overruled.

12 MR APPEL: We except.

13 A What was the question please?

14 (Question read)

15 A Presented it to the teller of the First National Bank
16 for payment.

17 Q By Mr Ford: And what, if anything, did you receive in
18 return?

19 MR APPEL: Wait a moment. I object to that as immaterial
20 for any purposes whatsoever, hearsay, not binding upon the
21 defendant, the acts of third persons in connection with
22 this case; they are immaterial and self serving.

23 THE COURT: Objection overruled.

24 MR APPEL: We take an exception.

25 A I received five hundred dollars in currency.

26 Q And is this document which you hold in your hand the

1 one you presented at the time on presentation of the deposit
2 slip and Clarence Darrow's check for \$1,000?

3 MR APPEL: We object to that as leading and suggestive --

4 THE COURT: It is --

5 MR APPEL: -- and upon the further ground that counsel is
6 undertaking to put an answer in the mouth of the witness.

7 MR FORD: I withdraw the question.

8 Q What other documents, if any, were presented at the
9 time you presented this check to the bank?

10 MR APPEL: We object to that as incompetent, irrelevant and
11 immaterial, and hearsay, no foundation laid.

12 THE COURT: Objection overruled.

13 MR APPEL: Exception.

14 A My bank-book, deposit slip, a check for \$1,000 drawn by
15 Clarence Darrow and this check.

16 MR FORE: We offer the check in evidence as People's Exhibit
17 No.9.

18 MR APPEL: We object to that on the ground it is incompetent,
19 irrelevant and immaterial for any purposes whatsoever; it is
20 hearsay, no foundation for it.

21 THE COURT: Objection overruled.

22 MR APPEL: We take an exception.

23 (Here the document last referred to was marked by the Clerk
24 People's Exhibit 9).

25 Q By Mr Ford: Now, what did you do with that \$500 in
26 currency? A At that time? Q Yes. A Put it in my
pocket.

1 Q You testified at the close of yesterday's examination
2 that you had visited Mrs Bain once in the afternoon and that
3 you called again at the house in the evening? A Yes sir.

4 Q Of October 6th, 1911? A Yes sir.

5 Q Did you still have that \$500 with you at that time?

6 A Not all of it, I don't think.

7 Q You had the larger portion of it? A Yes sir.

8 MR ROGERS: I protest against this leading.

9 MR FORD: It is leading. I apologize.

10 the court; Objection sustained.

11 Q By Mr Ford: Just state what occurred at the house in
12 the evening; whom did you see there? A Robert Bain.

13 Q Just tell what occurred at that time and who was present?

14 A I went to the door and knocked, and Mr Bain came to the
15 door. I said: "Hello, Bob". He says: "Hello, Bert, come
16 in". I went in the house. He asked me to sit down. He asked
17 me how I was getting along, and I told him very well. I
18 asked him where he was working, what he was doing, and he
19 told me. I have forgotten the location now. I asked him if
20 he had steady work, and he said "Yes, for the last few weeks".
21 I asked him if Mrs Bain was at home, and he said "No", that
22 she had gone -- I don't remember where, I asked if she had
23 spoken to him in regards to me, and he said that she had.
24 I asked him what he thought about the matter and he said
25 he raised some objection when his wife spoke about it, but
26 she had convinced him that it was to the interest of both
of them to accept the proposition as he was getting old, and

1 that it would only be a matter of two or three years until
2 he would have to quit his labors. I asked him his financial
3 condition. He told me that he had but very little money, and
4 he was paying for his place. I then asked him if he would
5 accept \$500 in cash with the promise of payment of \$2,000
6 more after the McNamara case was closed and he had voted for
7 an acquittal. He said that he would. I then took from my
8 pocket-book \$400 and gave it to him -- no, pardon me -- I first
9 asked him if the curtains were drawn, and investigated myself
10 to see if they were. I then gave him \$400 in currency, with
11 instructions under no circumstances to use that money for any
12 purpose whatever for at least two months after the McNamara
13 case had closed. I advised him to run a grocery bill, telling
14 the grocery man they were unable to pay their bill: I also
15 told him that he had better have his wife call on the District
16 Attorney or the Court for his jury fees as often as possible,
17 telling them it was necessary to have it for her living.
18 I gave him the \$400 and he accepted it. He asked me at that
19 time what assurance he would have of getting the money, the
20 balance of the money, and I told him there would be no
21 question about that, that his position would be far superior
22 to ours, that we would be compelled to pay the money, if we
23 didn't he could report it. He agreed to that, and then I
left.

24 Q Where did you get that \$400? A First National Bank.

25 Q State whether or not it was the same four hundred --
26 part of the same currency which you had received on Exhibit

1 No.9 in this case, check for \$500?

2 MR DOGERS: I object to that as leading and suggestive.

3 THE COURT: Objection sustained.

4 Q By Mr Ford; What did you do with the \$500 you received
5 from the First National Bank eventually, or any portion of it,
6 on the check which has been introduced as Exhibit No.9?

7 A I couldn't tell you what I did with it, except \$400 of
8 it.

9 Q What did you do with \$400 of it? A I gave it to
10 Robert F. Bain.

11 Q The \$400 which you have just testified to is part of
12 the \$500 which you received on check Exhibit No.9?

13 A I don't know Exhibit No.9. The check I cashed --

14 MR APPEL: I object to that as leading.

15 THE COURT: It is leading. The witness has said he didn't
16 know Exhibit No.9.

17 A I don't know the number, Mr Ford.

18 MR FORD: Let me have the Exhibit No.9, Mr Clerk.

19 Q What did you do with the money you received on the check
20 which you now hold in your hand, and which has been marked
21 Exhibit No.9, and with any part of it? A Part of the money
22 I received on that check, namely, \$400, I gave to Robert F
23 Bain.

24 Q In the evening? A Yes sir, about seven o'clock.

25 Q On what date? A October 6th, 1911.

26 Q At the time you delivered this money to Mr Bain, was
anything said as to what action he should take or what

1 position he should occupy?

2 MR APPEL: He has testified to that, he has said what was
3 said there.

4 THE COURT: I think that has been asked and answered.

5 Q By Mr Ford; Did Mr Bain, at that time, promise to do
6 anything in return for this \$400?

7 MR APPEL: We object to that. That is very suggestive.

8 The witness has undertaken to relate the conversation.

9 Now, from that conversation, we ought to know what was done.

10 THE COURT: Objection sustained.
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10p 1 Q BY MR. FORD. How long did you stay there on that
2 occasion, Mr. Franklin? A About forty minutes.

3 Q What did you do then after leaving Mr. Bain's? A I
4 came back up town, I don't remember where I went.

5 Q How did you get out to that house in the evening?
6 A In an automobile.

7 Q And who drove the automobile? A Mr. McKelvey.

8 Q Did you ever report this matter to Mr. Darrow? A I did.

9 Q Where and when? A The next day, at his office.

10 Q Who else was present when you made the report to him?

11 A Nobody.

12 Q His office was in the Higgins Building, corner of Second
13 and Main street, in the City of Los Angeles at that time?

14 A Yes, sir.

15 MR. APPEL. Second and Los Angeles?

16 MR. FORD. Second and Main street in Los Angeles.

17 MR. APPEL. Don't make a mistake.

18 MR. FORD. Will you read my question.

19 (Question and answer read.)

20 Q BY MR. FORD. Just state what was said there at that
21 time between you and Mr. Darrow. A It would be impossible
22 for me to repeat the conversation, Mr. Ford, except in
23 substance.

24 Q Well give it to us in substance. A I reported to
25 him I had seen Mr. Bain, I had paid him the money, that he
26 had promised to vote for an acquittal and Mr. Darrow asked

1 me if I thought he would stand? And I told him, Yes, I
2 didn't think there was any question about that at all,
3 that his wife wielded a great influence over him and that
4 she had prevailed upon him to accept the money and that
5 there was no question about his standing pat in what he had
6 agreed to do.

7 Q What if anything did Mr. Darrow say in reply to that?

8 A He said that was good.

9 Q Did you ever see Mr. Bain again in reference to that matter
10 during the continuance of the McNamara case? A After he
11 was drawn?

12 Q Yes. A No, sir. Pardon me--

13 Q You understodd my question to be confined to the McNamara
14 case? A Yes, sir, I understand that after he was drawn
15 on the jury, you mean.

16 MR. FORD. I withdraw that question.

17 Q Did you ever see him after October 6th, the night you
18 had called on him at his home? A Yes, sir.

19 Q When did you next see him and at what place? A At
20 his home, and I think on Sunday night, but I am not sure.

21 Q That was the Sunday night following the 6th of October?

22 A Yes, sir.

23 Q Who else was present? A I think Mrs. Bain, but I am
24 not sure, but I think she was there, though.

25 Q Tell us what occurred at that time. A I told him I
26 had called in to see him again to see if everything was

1 all right as he was to report later, and he told me that
2 it was, and I left. That is the substance of it. There
3 was something said in regard to me giving him the other
4 hundred dollars--there was \$500 was mentioned, and I didn't
5 have it with me, I told him that would be all right, he
6 would get that in the final payment.

7 Q Did you have any further conversations with Mr. Bain at
8 any time between that and the time he was drawn for
9 service in the jury box? A No, sir.

10 Q Did you have any further conversations with Mrs. Bain
11 in reference to this subject? A Before he was drawn?

12 Q Before he was drawn as a juror or before he went into
13 the jury box? A No, sir, I think not.

14 Q During the time that Mr. Bain was serving in Department
15 9 on the McNamara case, which I will refer to as being
16 indictment No. 3969, did you have any conversations with
17 Mrs. Bain? A Yes, sir.

18 Q When and where? A I couldn't tell you when, I can
19 tell you where.

20 Q How many conversations did you have with her? A Just
21 one.

22 Q At what place? A My office.

23 Q Was that before or after Mrs. Bain was sworn in as a
24 juror? A About two weeks after, I think.

25 Q About two weeks after he was sworn in as a juror?

26 A yes, sir.

1 Q Any other persons present besides yourself and Mrs.
2 Bain? A No.

3 Q What was said and done there in your office at that time?
4 MR. APPEL. Wait a moment, we object to that on the ground
5 that it is incompetent--you call for the conversation in
6 order to make my objection intelligible--you call for con-
7 versations had long after October 6th?

8 MR. FORD. I call for a conversation had after October 6th
9 but during the continuance of the conspiracy and in fur-
10 therance of the conspiracy.

11 MR. APPEL. I didn't ask that. I am asking you for the
12 time. I don't need your instructions; just simply to
13 see if I should object. And after delivering the money
14 to Mr. Bain? We object to the evidence and any declara-
15 tions of the witness to Mrs. Bain or to any one else con-
16 cerning the transaction, in question or concerning any other
17 matter or thing or any declarations made by Mrs. Bain to
18 him or any conversation between them on the ground that
19 they are,

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-Smith incompetent, irrelevant and immaterial, and hearsay and no
2 foundation laid for the introduction of that evidence. 0

3 THE COURT: Mr Clerk, will you give me the 122nd Cal. I
4 expect you are relying on People vs Cullam in the 122nd Cal?

5 MR APPEL: I rely on the general principle. I don't know
6 what that decision --

7 THE COURT: The general principle is stated here, I think.
8 The objection is overruled.

9 MR APPEL: Exception.

10 A JUROR: Your Honor, have we the privilege of looking at
11 the Exhibits that have been put in?

12 THE COURT: Of looking at the Exhibits? Yes sir, you have a
13 right to look at the Exhibits.

14 THE JUROR: I would like to look at the bank-book.

15 MR FREDERICKS: We have no objection to them looking at it,
16 but it has not been introduced in evidence, only for identi-
17 fication. Has to be connected further. It will be improper
18 to look at it.

19 MR FORD: If counsel for the defense has no objection they
20 can look at it now.

21 MR APPEL: We take exception to remarks of that kind for
22 this reason, that counsel attempts to put us in the position
23 of having to ask --

24 MR FORD: I withdraw the remark.

25 MR APPEL: --and to put us as a witness here before this
26 jury. Now, your Honor, --

1 THE COURT: The Court will not permit the jury to see it,
2 even with the consent of both parties, until properly
3 introduced in evidence.

4 MR FREDERICKS: That is the reason I made the statement by
5 myself, rather than for the defense to make it.

6 A Read the last answer.

7 (Last answer read by the reporter)

8 A I said "Good evening, Mrs Bain"; she said "How do you
9 do, Mr Franklin". I asked her how she was getting along and
10 she said not verywell; said she was attending court each
11 day and that it was very hard for her to have Bob away from
12 her. I asked her if she had been attending court each day
13 and she said she had. I told her I thought under the cir-
14 cumstances that was ill advised. I asked her if anyone
15 approached her and attempted to talk to her. She said "yes".
16 I asked her who it was, and she said she didn't know.
17 She said she was sitting in the court-room --

18 MR APPEL: Just a moment. My objection, of course, went to
19 the admissibility of the evidence upon every point. Now, we
20 object to any declarations made by Mrs Bain to the witness
21 here, or by the witness to Mrs Bain, concerning the past
22 transactions or concerning the acts of a third party, or
23 concerning anything that transpired between Mrs Bain and
24 any other person as hearsay, incompetent, irrelevant and
25 immaterial, not waiving the objection originally made to
26 the whole line of this testimony.

1 MR FORD: The evidence will show that Mr Bain and Mrs Bain,
2 as well as the witness on the stand, were accomplices and co-
3 conspirators of the defendant.

4 THE COURT: Overruled.

5 MR APPEL: Exception.

6 (Last answer read by the reporter) X/

7 A And she was crying when a man came and sat down beside
8 her and asked her if she was interested in the case. She
9 told him only to the extent that her husband was one of the
10 jurors. He asked her which one, and she told him Robert
11 Bain, and pointed him out. I asked her for a description
12 of the man and she gave it to me. I told her who I thought
13 it was.

14 MR APPEL: Now, he ought to state.

15 THE COURT: Yes.

16 MR APPEL: If it is admissible at all, of course subject to
17 our objection.

18 THE COURT: State fully the conversation.

19 A I am attempt^eing to do that.

20 THE COURT: You said you told her who you thought it was.

21 A I don't know his name. I was going to follow that des-
22 cription of the man. The description of the man was a
23 tall, angular man, wore glasses, spoke German -- English
24 brokenly. I told her I thought it was a man who was pre-
25 tending to be a reporter on the New York Post, and that she
26 had better not talk to him any more, and advised her to stay
away from the court room.

1 MR APPEL: Now we move to strike out all of the statement
2 of the witness with reference to the conversation with Mrs
3 Bain and all the statements of Mrs Bain with reference to
4 the transactions between herself and someone else, and all
5 of the declarations stated by the witness to have been made
6 by Mrs Bain concerning the acts and declarations of third
7 parties, as hearsay and prejudicial to the defendant.

8 THE COURT: Motion to strike out is denied.

9 MR APPEL: Take an exception.

10 MR FORD: Now, Mr Franklin, you have told us all that you
11 recall of the direct conversations with Mr Darrow in refer-
12 ence to the bribery of Mr Bain, have you? A All that I
13 remember, yes sir.

14 Q I withdraw that a moment. Have you finished this
15 conversation with Mrs Bain? A No sir. X
X

16 Q Just continue; I beg your pardon. A Mrs Bain told me
17 that she thought that she should have more money in advance,
18 and I told her I would try to arrange it for her to get it
19 and she then left.

20 Q Did you at any other time meet her again with reference
21 to that subject?
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A No, I did not, I tried to but I didn't.

Q Now, do you remember the occasion of the first venire being drawn? A Yes, sir.

Q Do you remember? A I don't remember the occasion of it being drawn; I know it was drawn.

Q You remember what date it was?

MR. APPEL. Wait a moment.

MR. FORD. Just to fix the date.

MR. APPEL. Not the best evidence.

MR. FORD. We are not trying to prove the date of the venire; the record shows that.

THE COURT. Overruled.

A I haven't any independent recollection of it, no, sir.

MR. FORD. How long after the first venire was drawn was it before you received a list of names who appeared upon the venire?

MR. APPEL. Wait a moment--we object upon the ground that it is leading and suggestive and it assumes facts not testified to by the witness and it assumes--

MR. FORD. Withdraw the question. Did you receive--

MR. APPEL. Wait a moment. I take exception to counsel's manner of examining this witness, in instructing the witness by his question, by suggestion made to him, and then afterwards withdrawing the question, which shows a system on the part of the witness to be unfair and to violate the rules of law in that respect. Now, we start in on that

1 line of exception, comes so often.

2 THE COURT. I cannot agree with you it shows system. It
3 is done sometimes and ought not to be, that is true.

4 MR. APPEL. The jury will have occasion to see it and the
5 record will show what he has done.

6 MR. FREDERICKS. Your Honor, we always don't see those
7 things in the same way, counsel on one side asks a ques-
8 tion--

9 MR. APPEL. That is the reason we are on opposite sides.

10 MR. FREDERICKS. And being objected to and thinking it is
11 not proper, withdraws it and when he asks it, I presume he
12 is asking it in good faith.

13 MR. APPEL. What you do properly so often after admoni-
14 tion of the Court.

15 MR. FORD. Q Did you receive a list of the names drawn on
16 the first panel, Mr. Franklin? A I received a list of
17 names purporting to be the names of those drawn.

18 Q From whom did you receive that list? A I think, sir,
19 Judge Bordwell personally, but I am not sure about that.

20 Q Now, the record shows, Mr. Franklin, that that first
21 venire--

22 MR- APPEL. I object to his telling the witness on the
23 stand what the record shows or informing him to enable
24 him to testify.

25 MR. FORD. I withdraw the question. Q Assuming that the
26 first venire was drawn on the 29th day of September, 1911,
at what date did you receive that list from Judge Bordwell?

1 A If I received it from Judge Bordwell I think I received
2 it the day following the 29th.

3 Q Well, if you received it from anybody else what day did
4 you receive it? A I am quite positive the next day.

5 Q Now, did you discuss that list of jurors drawn with any
6 person?

7 THE COURT. I don't know what the witness means by that
8 answer. You said the next day.

9 A He asked me in relation to a certain day and I told him
10 following that date was the next day.

11 MR. FORD. Assume that venire was drawn on the 29th of
12 September, 1911 you received a copy of the list of jurors
13 drawn on the Third of September? A Assuming that to be
14 the date I should think so.

15 Q Now, did you discuss that list--

16 THE COURT. Just a moment. This is a good time to take a
17 recess for five minutes.

18 (Jury admonished. Recess for five minutes.)

19 (After recess.)

20 BERT H. FRANKLIN, on the stand
21 Direct Examination resumed.

22 THE COURT. You may proceed, Gentlemen.

23 BY MR. FORD. Q Now, going back to the date you received
24 this list of jurors drawn on the first venire. Did you
25 discuss that list of any of these persons on it with Mr.
26 Darrow at that time? A yes, sir.

1 Q Where? A At his office in the Higgins Building in
2 this city.

3 Q How long after you received the list? A I don,t remem-
4 ber.

5 Q Well, whether it was the same day or the same week or
6 the same month. I don't want to lead you. A Well, I am
7 quite sure it was the same day, in fact I know it was.

8 Q Who else was present besides you and Mr. Darrow, if any
9 one? A I don,t think there wasany one present at that
10 time.

11 Q What didcussion did you have with Mr. Darrow at that
12 time inreference to these people? A We took the list and
13 went over them, he questioned me in regard to those that
14 I knew, as to their qualifications, and I think compared
15 them with my reports.

16 Q He asked you concerning those you knew by investigation
17 or personal knowledge? A He always asked me that, who
18 I knew personally, what I knew about them.

19 Q Anything further inreference to those that you knew
20 personally? A No; no, sir.

21 Q Or did he at that time say anything in reference to the
22 case itself or his desire to win it or otherwise? A Oh, he
23 always impressed--Mr. Darrow always impressed upon my mind
24 that he wished to win the case, if possible. That it was
25 an important case in his life and probably would be the
26 last one he would evertry of that importance. I don't

1 remember that he said that that day, though, particularly,
2 Q State what your custom was with reference to discussions
3 of that character?

4 MR. ROGERS. I object to that as irrelevant, incompetent
5 and immaterial. State what happened. This kind of a
6 witness ought to say what the conversations were.

7 THE COURT. Yes, I think so.

8 A At what time?

9 THE COURT. Either the conversation itself or the sub-
10 stance of it.

11 Q BY MR. FORD. How often did you talk to him--or did
12 he talk about his anxiety to win the case? A Oh, not
13 very often, I couldn't tell you.

14 Q Well, about how many times? A Probably ten times al-
15 together.

16 Q About how many times did he talk over your personal
17 acquaintance with jurors? A Quite often.

18 Q Previous to the 6th day of October, 1911? A Yes, sir.

19 Q When did he first bring up the discussion of your
20 personal acquaintance with jurors? A The time that I
21 showed him the list of jurors.

22 Q Was there anything said as to the intimacy of your
23 acquaintance with these--

24 MR. APPEL. Your Honor, certainly, I would ask that he
25 would not ask leading questions, or he would not suggest
26 to the witness.

1 MR. FORD. I am not suggesting. I am asking if anything
 2 was said with reference to the intimacy, which will be
 3 answered yes or no, and if his answer is in the affirmative
 4 I will ask him what was said. I want to direct his atten-
 5 tion to certain things that I am interested in; there are
 6 a great many things I am not interested in.

7 THE COURT- I think that is leading, but it is harmless.
 8 Answer the question.

9 A Read the question, please.

10 (Question read.)

11 Q BY MR. FORD. (Continuing)--Jurors with whom you had a
 12 personal acquaintance? A It is a little difficult to
 13 answer, Mr. Ford. I don't know just what you mean.

14 Q Answer as near as you can. A Mr. Darrow asked me about
 15 different ones, in fact, read over a part of the list of
 16 jurors the first day I talked to him in regard to it, and
 17 as he called the names I responded and told him whether I
 18 knew them or not, and who they were and where they lived.
 19 At that time Mr. Davis was present.

20 Q Now, you stated yesterday that you procured the list
 21 with all the names of jurors who were in the jury wheel,
 22 that Miss Tyson had prepared it. Directing your attention
 23 to that matter: Did you ever go over that list with Mr.
 24 Darrow? A You are basing your question, Mr. Ford, upon
 25 something I don't think I testified to. I testified to what
 26 purported to be a list.

1 Q Very well. This purported list of names of persons.

2 A I went over that list with Mr. Darrow, yes, sir.

3 Q Whendid you go over that list with him? A The day
4 they were finished.

5 Q Do you remember any names in particular that day you
6 discussed with Mr. Darrow?

7 MR. ROGERS. I suggest, if your Honor please, we are en-
8 titled to have this witness say where the conversation
9 occurred, if he may.

10 MR. FORD. I beg your pardon.

11 MR. ROGERS. And who was present, if persons were present.
12 It would enlighten us as to the matter. It does not leave
13 us, we cannot apprehend the situation.

14 MR. FORD. I think there is justice inthat objection.

15 Q Where did you go over this list with Mr. Darrow and who
16 was present? A At his office in the Higgins Building in
17 this city and Mr. Davisand myself and Mr. Darrow were present.

18 Q Did you ever go over the list with him alone at any
19 time? A Oh, yes, on numerous occasions.

20 Q When was the first time-- A Not the full list, Mr.
21 Ford. That was the only time we discussed the full list
22 of jurors, that I remember of.

23 Q Where is that original list? A I think I have it at
24 my office, I am not sure.

25 Q Of the jurors. Do you remember any of the names that
26 were on it? A Oh, yes, I remember a few of them.

1 Q State whether or not the name of George N. Lockwood
2 was upon that list.

3 MR. APPEL. Wait a moment. That is not the best evidence.

4 THE COURT. The objection is sustained.

5 MR. FORD. Perhaps that is correct.

6 Q Now, did you at any time before the beginning of the
7 trial discuss the name, have a conversation with Mr. Darrow
8 in reference to George N- Lockwood? A Before the trial
9 started?

10 Q Yes. A I don,t think so.

11 Q Do you know George N. Lockwood? A Yes, sir.

12 Q Did you ever see him in reference to this case?

13 A Yes, sir.

14 Q When was the first time you saw him? A in reference
15 to this case?

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-Petel Q Yes, . . . A It was either Thursday or Friday,
2 in the first part of November. I think it was November 8th
3 or 9th.

4 Q 1911? A Yes sir.

5 Q Previous to your having seen Mr Lockwood on that date,
6 had you had any discussion with Mr Darrow concerning him?

7 A Yes sir.

8 Q Going back to another matter. How long have you known
9 Mr Lockwood? A About twelve years.

10 Q About how long? A About twelve years.

11 Q Had you seen him at all to speak to prior to the date
12 you saw him in reference to the case? A Yes sir.

13 Q On the 8th of November? A Yes sir.

14 Q How long before that? A The 4th of November.

15 Q The 4th of November? A Yes sir.

16 Q Well, had you had any discussion with Mr Darrow in
17 reference to Mr Lockwood before the 4th of November?

18 A Yes sir.

19 Q At what place? A At his office.

20 Q And who was present? A Nobody but Mr Darrow and
21 myself.

22 Q And how long before the 4th of November? A I can't
23 tell you.

24 Q Can you fix it in reference to any other matter?

25 A You are alluding now to the 4th day of November?

26 Q You stated it was before the 4th day of November, and

1 if you are unable to state the exact length of time before
2 that-- A No sir, I could not tell you when it was.

3 Q Was there any other matter connected with the conversa-
4 tion which can fix the 4th in your mind? A No sir, not at
5 that time.

6 Q Was it after you had received this purported list of
7 jurors, purported list of jurors whose names were in the
8 jury wheel? A Yes sir.

9 Q By the way, how many names were in that list? A 1674.

10 Q It was between the date you received that list, the
11 date of your first visit to Mr Lockwood on the 4th of Nov-
12 ember, that you had a conversation with Mr Darrow at his
13 office? A Yes sir.

14 Q Who else was present? A Nobody but Mr Darrow and my-
15 self.

16 Q State what the conversation was? A Mr Darrow asked --
17 no. I told Mr Darrow that I thought I could talk to Mr
18 Lockwood, that his name might be drawn, that he was a man in
19 whom I had the utmost confidence, a man of character, and I
20 thought that Mr Lockwood's friendship for me would be such
21 if he didn't wish to accept the proposal as offered to him
22 he would tell me so, and that would end the matter. I told
23 him I questioned very much whether he would take it or not.
24 I was not a bit afraid to talk to him, because I had the
25 utmost confidence in him.

26 Q Didn't know whether he would take what, Mr Franklin?

1 MR ROGERS: Let us have the conversation.

2 THE COURT: Yes.

3 MR ROGERS: What he said.

4 THE COURT: State what further was said.

5 Q By Mr Ford: You stated that you had told Mr Darrow you
6 didn't know whether Mr Lockwood would take it or not?

7 A Would accept it or not, would be the proper name.

8 Q Accept it or not. Now, to what were you referring?

9 A Accept any proposal.

10 MR ROGERS: That is the same question your Honor ruled upon.

11 THE COURT: I think it is, Mr Ford. Let the witness go on
12 and tell what was said.

13 A I have told all that was said, I think, as I remember it.

14 Q By Mr Ford: Previous to your mentioning Mr Lockwood's
15 name as being willing to accept it, did you have any dis-
16 cussion as to what "it" was?

17 MR ROGERS: The same objection is made to the same question.
18 I take exception to the third iteration and reiteration of
19 the same thing after the Court's ruling upon it. Let the
20 witness, who is under a peculiar class, let this witness
21 state the conversation if he can. We are entitled to that.

22 THE COURT: Objection sustained.

23 Q By Mr Ford: Did you have any discussion of any matters
24 before you informed Mr Darrow that you were personally ac-
25 quainted with Mr Lockwood? A I have given you the con-
26 versation, Mr Ford, as I remember it.

1 Q What matter were you discussing when you mentioned --

2 A I can tell you what I had in my mind, but I cannot tell
3 you what Mr Darrow had in his mind.

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15s 1 MR. FORD. I don't want you to. Have you given me all the
2 conversation that you had on that occasion? A As I
3 remember it, Mr. Ford, yes, sir.

4 Q Previous to that conversation, Mr. Franklin, had you had
5 any discussion with Mr. Darrow in reference to people
6 whom you could see and talk to? A Yes, sir.

7 Q When and where, how long previous to that day? A At
8 his office.

9 Q At his office, and about how long prior to this con-
10 versation? A I had numerous conversations with Mr. Darrow
11 from the time I received the list of jurors up until the
12 time of my arrest, but it is impossible for me to fix any
13 date--particularly at the time when I had these conversa-
14 tions with him. The conversations I can tell you in sub-
15 stance what they were.

16 Q Well, tell us the first occasion on which Mr. Darrow
17 discussed with you the possibility of your being able to
18 see and talk confidentially with some of the persons
19 whom you knew on that jury list.

20 MR. APPEL. We went over that yesterday before they
21 started in with any evidence concerning the Bain affair and
22 conversations had with this man pertaining to this case was
23 commenced sometime when they were walking on Spring street
24 and so on.

25 MR. FORD. Your Honor will recall that the witness testi-
26 fied that the first direct conversation about the bribery

1 matter was with Bain--with Mr. Darrow concerning Mr. Bain
2 was on the 5th of October, 1911. Now, I want to show
3 what conversations were had indirectly bearing upon it
4 and which led up to the direct discussion on October 5th.
5 THE COURT. Some conversations other than those testified
6 to?

7 MR. FORD. Other conversations, and I went down the line
8 as far as Bain was concerned. The jury is entitled to know
9 the conversations leading up to that direct offer of bribery
10 THE COURT. Go ahead.

11 A Upon numerous occasions Mr. Darrow asked me the question
12 of how many of the jurors that I could see and talk to.
13 I told him upon all those occasions that I thought there
14 were about 25 men whose names appeared on that list of
15 jurors that I could see and talk to.

16 MR. FORD. Q What did he reply?

17 MR. ROGERS. Now, I suggest, if your Honor please, that
18 it is nothing but the rule of law that we be told where,
19 when and in whose presence, if in any presence, these
20 conversations occurred. Ought not to ask him these kind
21 of questions.

22 MR. FORD- Q Tell when and where these various conversa-
23 tions were had with Mr. Darrow, as near as you can. A In
24 the very nature of things, Mr. Ford, it would be simply im-
25 possible to tell you the time. I saw Mr. Darrow each day
26 in his office, I think.

1 Q Between what dates? A Between the 10th day of August,
2 1911 and the 23th of November, 1911, closer than that I
3 cannot give you.

4 Q You said in his office? A Yes, sir.

5 Q Any other persons present when these conversations
6 were had with Mr. Darrow in reference to that matter?

7 A No, sir, not in the immediate presence.

8 Q Well, you understood when I said with reference to that
9 matter, the discussions about the persons whom you could
10 see and talk to? A Yes, sir.

11 Q Now, how many conversations about Lockwood did you
12 have before you visited Lockwood? A On November 4th?

13 Q Yes, with Mr. Darrow. How many conversations did you
14 have with Mr. Darrow? A I couldn't say, Mr. Ford.

15 Q You don't recall in particular? A You understand
16 there was so many names, I don't remember. 1670 of them.

17 Q Now, on the 4th day of October you did visit Mr. Lockwood,
18 George N. Lockwood? A Upon what date?

19 Q The 4th day of November you did visit Mr. Lockwood?

20 A Yes, sir.

21 Q Do you recall approximately how many--withdraw that.
22 Do you recall whether or not Mr. Bain's name appeared upon

23 the first venire drawn in the case of People vs. J. B. Mc-
24 Namara on indictment 3969? A The first venire that was
25 drawn, to my knowledge, yes, sir.

26 Q Your discussion with--was your discussion concerning Mr.

1 Lockwood before that first venire was drawn? A I haven't
2 any independent recollection.

3 Q I mean with Mr. Darrow about Lockwood? A I understand
4 what you mean. I haven't any independent recollection but
5 from the very nature of things I must have talked to him
6 before that time.

7 MR. ROGERS. If your Honor please, we move to strike that
8 out, "the very nature of things" he must have done anything
9 The whole thing is very unnatural and in the nature of
10 things wont carry much with it.

11 THE COURT. Stricken out.

12 MR. FORD. I ask that counsel's comment, "that it was
13 unnatural" be stricken out.

14 THE COURT. The jury has already been admonished to dis-
15 regard them.

16 MR. FORD. Q Did you look for the name of Lockwood on the
17 first venire to see whether or not it appeared there?

18 A No, sir, I did not.
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Smith Q Did Mr -- Did you have any discussion with Mr Darrow
2 as to whether the name of Lockwood was on the first venire?

3 A I don't think so.

4 Q Did you on any venire before it actually appeared --
5 I will make it a little clearer. A I understand what you
6 mean.

7 Q I withdraw the question. You recall the ninth venire
8 upon which the name of George N Lockwood appeared? A ^I re-
9 call. As I stated before, Mr Ford, These are purported
10 venires. I have no knowledge of my own they were the proper
11 names. I recall the venire that was given to me having Mr
12 Lockwood's name on it.

13 Q You recall you had been given nine lists -- eight lists
14 before that? A No sir, I don't know that the number of
15 lists -- I presume there were about that many.

16 Q Well, calling your attention to the time, the ninth
17 was drawn on November 5th, 1911, you recall that the name
18 George N Lockwood appeared upon the list, or do you?

19 MR APPEL: We object to these questions because counsel
20 assumes here that there is such evidence before the Court.

21 MR FORD: There is a venire in evidence, the ninth venire.

22 MR APPEL: Now he has said the ninth. And he is asking him
23 this, keeps on asking him for the purpose of introducing the
24 contents of a document that is not before the Court and which
25 the witness himself says was a purported paper. We have,
26 of course, been objecting all along to this kind of evidence

1 as not being the best evidence. We are tired of objecting
2 and we ask your Honor, now, if your Honor thinks we are
3 right to do us a favor to admonish counsel not to introduce
4 the contents of a document because it is secondary.

5 MR FREDERICKS: But that ninth venire has been introduced,
6 Mr Appel.

7 MR APPEL: We ask your Honor as a matter of favor if not as
8 a matter of right, to instruct him that it is ^{the} veriest tyro
9 in the profession, and that he cannot introduce the contents
10 of a document by oral evidence except under certain circum-
11 stances. Now, he is asking if his name appeared on a certain
12 paper that is before the Court.

13 MR FORD: I object to having counsel request the Court or
14 anybody else to instruct me as to my duties in Court until
15 I violate them, and the ninth venire is in evidence in this
16 case. I am not attempting to have the witness on the stand
17 testify to the contents of that venire. I am simply directing
18 his attention to that matter contained in that record and in
19 order that the issue may go before the Court I will withdraw
20 the question in its present form and put it in this form:
21 Did you receive on or about the 25th day of November, the
22 date of the ninth venire, a list of names purporting to be
23 the names of those who were drawn on that venire?

24 MR APPEL: Now we object upon the ground that it calls for
25 oral evidence, secondary evidence; not the best evidence.
26 The document itself referred to in the question is the
best evidence; that it could show for itself the purport of

1 the matters referred to and the explanation of the witness
2 or the conclusion of the witness, or opinion of the witness,
3 in reference to what it shows is not the best evidence.

4 THE COURT: What Exhibit did you refer to?

5 MR FORD: This witness has testified --

6 THE COURT: I am asking you what Exhibit you refer to?

7 MR FORD: I am referring to the date of the ninth venire
8 which contains the list of jurors and persons drawn as jurors
9 on the 25th of November, 1911. Now this witness has testi-
10 fied that he used to receive lists of these purported
11 names of those drawn on those various venires. Now, I am
12 asking him on this date if he received such a list. It is
13 merely preliminary, and instructed certain persons whose
14 names appeared in this list.

15 THE COURT: Is this list in evidence?

16 MR FORD: The list is in evidence; it is the ninth venire.

17 THE COURT: I will go back to my original question. What is
18 the number of that Exhibit?

19 MR ROGERS: Number five.

20 MR APPEL: The witness testified to receiving what reported
21 to be copies, not the original. That original is here on
22 file. The witness has stated that several times.

23 MR FREDERICKS: I find that on page 65 of the transcript,
24 written into the transcript.

25 THE COURT: Well, what follows.

26 MR FREDERICKS: Page 65 of the transcript, the name of

1 George N Lockwood introduced under the testimony -- a minute
2 order under the testimony of Clerk Monroe,-- George O Monroe,
3 the entire venire is set out there, their names and addresses.

4 THE COURT: Read the question, Mr Reporter, (Last question
5 read by the reporter) Objection overruled.

6 MR APPEL: We except.

7 A I did.

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17s 1 MR. FORD. Q Did you notice the name of George N. Lock-
2 wood upon such list?

3 MR. APPEL. We object upon the ground it calls for hearsay
4 evidence; secondary evidence; not the best evidence;
5 incompetent, irrelevant and immaterial.

6 THE COURT. Overruled.

7 MR. APPEL. We except.

8 A I did.

9 MR. FORD. Q Now, previous to the name of George N. Lock-
10 wood appearing upon that list you had received various
11 other lists? A Yes, sir.

12 Q At the time of the receipt of the various lists preced-
13 ing the list of that date did you have any discussion with
14 Mr. Darrow as to the name of George N. Lockwood appearing
15 or not appearing among those previous lists?

16 MR. APPEAL. We object to that upon the ground that it is
17 incompetent, irrelevant and immaterial, that it assumes
18 facts not in evidence and upon the ground that it calls for
19 secondary evidence.

20 THE COURT. Objection overruled.

21 MR APPEL. We except.

22 A I cannot answer that question by yes or no. I will have
23 to make an explanation.

24 MR. FORD. Very well. Answer it any way you can as near
25 as you can. A The name, Mr. Lockwood, before that time
26 had been mentioned between Mr. Darrow and myself along with

1 the names of other jurors. Each time a venire
2 was drawn the list was gone over by Mr. Darrow and myself,
3 compared with the reports as rendered by my operators and
4 in his possession, and marked good or bad, and when we
5 read these venires he would--we would look, rather, to
6 see the names we had discussed of men I could talk to
7 were on that list, and upon this particular list the name
8 George N. Lockwood appeared, but he did not mention Lockwood's
9 name to me particularly on that date.

10 MR. ROGERS. If your Honor please, on reflection I notice
11 that the bank book, purported bank book has been offered
12 for identification and while we do not believe that it is
13 admissible under the law, Mr. Golding of the jury, requested
14 that he be allowed to see it and I had--as I say reflected
15 upon that, and I think it is right he should at this time
16 see it so he could understand the testimony and I there-
17 fore, withdraw the objection to it.

18 MR. FORD. In view of the Court's ruling that he would not
19 allow them to see it whether either side consented or not,
20 we have nothing further to say. We will introduce proper
21 evidence at the proper time.

22 THE COURT. Wait a moment.

23 MR. FORD. We haven't offered it yet. We have identified
24 it and expect to offer it later on.

25 THE COURT. I think that the jury should be governed en-
26 tirely by the evidence that is introduced, and this is not

1 as yet a piece of evidence and may never be a piece of
2 evidence. When it is they will have a chance to see it.

3 MR. FORD. When you went out to see Mr. Lockwood on the
4 4th day of November, 1911, at his house, who accompanied
5 you out there? A Mrs. Franklin, my daughter Rose and
6 Kean Fitzpatrick.

7 Q Who was the chauffeur? A Fred Hoffman.

8 Q That was at Mr. Lockwood's home, I think you stated?

9 A Yes, sir.

10 Q The first time? A Yes, sir.

11 Q What occurred at that time? A I went to the door and
12 knocked. Mr. Lockwood appeared at the door in his night
13 dress. I told him I would like to have a conversation
14 with him; he told me it would be impossible that night,
15 that his wife was ill, that he would be glad to see me at
16 a later date, and talk with me. I asked him when he thought
17 he could come in and he said he thought the following
18 Thursday. I asked him to call me up when he got in town
19 and make an engagement so that I could see him. That
20 was all. I bid him good night and left.

21 Q Did he call you up? A I don't remember.

22 Q Did he see you on Thursday? A It was either Thursday
23 or Friday.

24 Q At what place? A At my office.

25 Q That is in the Chamber of Commerce Building in this
26 city? A Yes, sir.

1 Q On Broadway between First and Second streets? A Yes,
2 sir.

3 Q What conversation did you have with Mr. Lockwood at
4 that place and time? A Mr. Lockwood came in the office--

5 Q pardon me just a moment. Who else was present?

6 A Mrs. Franklin.

7 Q Mrs. Franklin? A Yes, sir.

8 Q Was she present in the same room with you and Mr. Lock-
9 wood? A When he came in, yes, sir.

10 Q Was she present during the conversation? A No, sir.

11 Q Just tell what was said. A [Mr. Lockwood came in; he
12 said, "Good morning, Bert." I says, "Hello, George, how
13 are you?" And I said, "you remember Mrs. Franklin,
14 don't you?" And he said, "Yes, I believe I do." He
15 shook hands with her. I requested Mrs. Franklin to step
16 into the other room, which she did. I then asked George
17 to sit down. He took a chair. I asked him how he was
18 getting along and he said, "First rate." I asked him
19 when he moved to the ranch and he told me, I think a year
20 before, previously. I asked him if he had his place
21 paid for, whether he had traded his property on Newton
22 street for the ranch--I have forgotten his reply at this
23 time. I asked him what he raised on his place and he told
24 me some alfalfa and other things. I asked him whether he
25 thought he could make a living on the ranch, how he
26 liked it, and he said, "First rate." I said, "Geroge, I

1 want to talk to you confidentially. May I do so?" He
2 said, "Yes, Bert, you and I always can talk together."
3 I says, "This is a matter that is of a great deal of
4 importance and it might lead to complications, " and I
5 said, "I consider you are my friend and I know that under
6 no circumstances will you repeat anything that is said
7 to you without my permission." He assured me that that
8 was true, he said, "Bert, under no circumstances will
9 I do anything that would cast any reflection upon you."
10 I then asked him if he knew that I was working for the
11 defense in the McNamara case. He told me, "No," he didn't
12 know it, that was the first time he had heard it. He
13 said that he was glad to hear that I was employed and
14 asked me how I was making out, and then I asked George, I
15 told George--pardon me, I will repeat the conversation.
16 I said, "George, you and I are getting old, getting along
17 in years, the both of us I think have worked hard and
18 have accumulated but very little, and I think the time
19 has come when you and I should use our brains a little
20 more and use our feet and hands less." He said, "Yes,
21 Bert, I agree with you." I said, "George, I have a pro-
22 position to make to you whereby you can make some money that
23 will relieve you in your old age and be of material assis-
24 tance to myself at the same time." He said, "All right,
25 Bert, spit it out." I told him--I asked him if he knew his
26 name was in the list of prospective jurors that might be

1 drawn at a future date in the Superior Court of this
2 county and he told me he didn't. I asked him that in case
3 he was drawn, that upon a proper arrangement he would vote
4 for a verdict of acquittal in the McNamara case. "Well,"
5 he said he didn't know, that was a serious question, and
6 he says, "I would want to think that over." I says,
7 "George, you take your time and think it over and if you see
8 your way clear I can give you \$500 in cash and at a
9 future date, and after you have been drawn as a juror and
10 accepted, and after you have voted for a verdict of
11 acquittal in the McNamara case I can give you \$2,000 more."
12 He said, "Bert, that is a matter I would want to think
13 over." I says, "Take all the time you wish, George, but
14 under no circumstances repeat this conversation." He
15 assured me that he would not and left.]

16 Q When next did you visit the ranch, Mr. Franklin, Lock-
17 wood's ranch at Covina? A I am not positive as to the
18 date, but I think it was the following Sunday.

19 Q The following Sunday? A I think so. I am not sure.

20 Q What occurred there at that time, and who was present?

21 MR. ROGERS. Pardon me, will you read that?

22 (Last three questions and answers read.)
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Petel A I drove there in a machine. Mr Lockwood was in his
2 front yard, I got oft of the machine and I says: "Good
3 morning, George", or "Good afternoon", ā have forgotten.
4 I spoke to him anyway, and addressed him and shook hands.
5 Well, I said: "George I want to have a little further con-
6 versation with you in regard to the matter we spoke about in
7 the office." He said: "Bert,I have considered the matter
8 and I do not think under the circumstances I had better
9 accept the money, because there is too much danger attached
10 to things of that kind for not only myself but for you";
11 and I asked him if he wished to consider the matter further
12 and he said he did, and I left him. X

13 MR ROGERS: What was that last statement?

14 (Last portion of answer read)

15 Q By Mr Ford: Now, do you recall the 25th of November,
16 Saturday, 1911? A Very well, yes sir.

17 Q Did you, after that date, call on Mr Lockwood? A Yes sir.

18 Q Was that before or after you had received a list pur-
19 porting to be a list of jurors drawn from that venire?

20 A After I had received the list.

21 Q When was it that you saw Mr Lockwood, and at what place?

22 A I saw him on Sunday, the 26th day of November, 1911,
23 at his place at Walnut Center.

24 Q Who was present besides yourself and Mr Lockwood?

25 A During the conversation, you mean, that I had with him?

26 Q Yes. A Nobody, not to my knowledge.

1 Q What was said and done there at that time? A I told
2 George that -- I asked him if he had been summonsed as a
3 juror, and he said "No". Well, I said, "your name appears
4 on that venire which was drawn yesterday and you will be
5 probably served", and he says "yes, probably Van Fleet will
6 serve me as he comes in and out from Covina on the car
7 near my place". And I said, "George, I would like to have
8 you consider that matter again", or, "are you ready to re-
9 consider it?" And he told me that he had thought the matter
10 over and asked me what I could do. I told him that if he
11 would serve upon the jury and vote for acquittal that I was
12 in position to give him \$500 cash and a payment of \$3500
13 after the case was closed, and he had voted for an acquittal.
14 Well, he said He didn't know about that, and asked me what
15 assurance I could give him that the money would be paid to
16 him. Well, I told him we were placed in a position where it
17 would have to be paid of necessity, the very nature of the
18 proposition itself would make it compulsory we should pay
19 it. He said that was all right, but he wanted to be sure,
20 if he was going to take the money, he wanted to be sure that
21 the money would be given to him, he wanted more than my
22 word. I told him that I thought satisfactory arrangements
23 could be made, satisfactory to him, so that he would be
24 satisfied he would receive his money, and we agreed at that
25 time that he should come into Los Angeles the next afternoon
26 at about 4 or 4:30 o'clock and ring me up at the office and

1 make an engagement to see me. He asked me for my telephone
2 number; I took a card which I had and wrote both numbers
3 upon the card, and gave it to him, and left.

4 Q That card is the card which you have already identified --
5 let me have those Exhibits, Mr Clerk, please -- that is the
6 card which you have identified and which has been marked
7 People's Exhibit 6, is it, Mr Franklin? A Yes sir.

8 Q Did you report these visits up to this time to Mr
9 Darrow? A You are speaking now --

10 Q I will go back to the 4th of November visit; did you
11 report that visit to Mr Darrow? A Well, I don't remember
12 the fact of reporting it, nosir.

13 Q Do you remember discussing at all these first visits
14 in the early part of November, with Mr Darrow? A I told him
15 I had seen him.

16 Q What did Mr Darrow say? A He asked me what I thought
17 about it, about him.

18 MR ROGERS: We would like to have the whole conversation,
19 if your Honor please.

20 THE COURT: Yes. What did you say, and what did he say?

21 Q By Mr Ford: Give us the whole conversation.

22 A He asked me if I thought Mr Lockwood was a man to be
23 trusted and I told him emphatically I thought he could, that
24 from my acquaintance with Mr Lockwood for the last number of
25 years I thought him to be a man of sterling integrity and a
26 man that would at least listen to me patiently, and on ac-
count of our friendship repeat nothing that was said.

1 Q What did you tell Mr Darrow about that visit to Mr
2 Lockwood?

3 MR ROGERS: I suggest that is improper, I have just pro-
4 tested against it, I do not think they ought to lead him
5 under these conditions.

6 THE COURT: Objection sustained.

7 MR FORD: That that question is leading, "What did you tell
8 Mr Darrow about your visit to Lockwood?"

9 THE COURT: Yes, he can recite the entire conversation as
10 he remembers it.

11 A Answer the question? Shall I answer?

12 THE COURT: No, don't answer.

13 Q By Mr Ford: Give the entire conversation that occurred.

14 A When? Q After the first visit to Mr Lockwood, you
15 have stated to Mr Darrow.

16 MR ROGERS: No, he said he didn't remember.

17 MR FORD: Perhaps you are right.

18 Q By Mr Ford: What conversation, if any, did you have
19 with Mr Darrow in reference to Mr Lockwood, after your first
20 conversation with Lockwood?

21 A I don't remember any conversation in regard to Mr
22 Lockwood at all after the 4th day of November until the
23 night of the 25th day of November, 1911. I have no inde-
24 pendent recollection of it, except to tell him that I had
25 seen him.

26 Q Tell us what occurred on the 25th day of November,

1. between you and Mr Darrow with reference to Mr Lockwood?

2 MR ROGERS: Where, and the persons present, and the time
3 of day.

4 Q Yes, include all those. A I met Mr Darrow at what is
5 known, I think, as the Grill Room of the Hotel Alexandria,
6 at the corner of 5th and Spring Streets, in this city, in
7 company with Mr Lincoln Steffens. Mr Darrow asked me to sit
8 down and introduced me to Mr Steffens. I told him that I
9 had met Mr Steffens at one time previous, and Mr Darrow
10 asked me if I would have dinner with them. I thanked him
11 and told him I had had my dinner. Mr Darrow then asked me
12 if I would have something to drink, and I told him yes, and
13 then he took from his pocket a paper, opened it, and asked
14 me to look at it with the remark: "That looks better".
15 I glanced at it, and said: "Yes, that looks better than the
16 others".

17 Q Now, at the time he told you "that looks better",
18 what, if anything, did he do with reference to the list?

19 A At that time the drink came, and we drank.

20 MR ROGERS: He has not said that paper he took from his
21 pocket was a list, but counsel puts it to him -- I except
22 to that at this time, and I sincerely assure your Honor that
23 I mean it, I do not think it is proper that they should
24 suggest these things to this witness. The witness says he
25 took a paper from his pocket and I looked over it and Darrow
26 says: "That looks better", and then he says with respect to

1 this list -- if that is not a tip, I never saw one.

2 MR FORD: I beg your pardon, I don't see how it is a tip
3 in any shape or form, it is not intended as a tip.

4 Q What did he do with reference to the paper? Did he
5 make any intimation as to the paper? A Yes, he called
6 my attention to two names appearing on that paper.

7 Q What two names? A George N Lockwood was one of them.

8 Q Well now, is that all the conversation you had at
9 that time and place with Mr Darrow? A No sir.

10 Q Continue with the rest of the conversation.

11 A Mr Darrow asked me to take that list and compare it
12 with my report in my office. I told him, under his request,
13 I had removed all reports as fast as received to his office,
14 and I thought they were locked up in the safe of which Mr
15 Russell had the combination. He then instructed me to get
16 Mr Russell on the 'phone, have him come down to the office
17 and open the safe, compare the list of venire men with my
18 reports ~~xxxx~~ on file in his office and get three or four
19 of the operators and get them busy upon that list.

20 THE COURT: Gentlemen, circumstances of my engagements with
21 the Insanity Commission compel my adjournment. Before doing
22 so, the Court will, as stated, for the reasons presented
23 to you this morning, adjourn until 9:30 o'clock Friday morn-
24 ing, day after tomorrow, and during that considerable inter-
25 view, it is my duty to again admonish you, as heretofore,
26 you should be most careful to avoid how your minds are in-
fluenced by any matter that might be deemed as evidence,

1 outside the evidence as presented to you on this witness
 2 stand and the deductions you may draw therefrom, to avoid
 3 any conversation or discussion upon this subject, you should
 4 not permit anyone else to talk to you and you should not
 5 form or express any opinion in reference to the merits of
 6 this action until the whole matter has been submitted to you.
 7 The Court will now adjourn until 9:30 o'clock Friday morning.

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(Here the Court took a recess until Friday, May 31,
 1912, 9:30 o'clock A.M.)

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