

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,)
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 Plaintiff,)
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 vs.)
)
 Clarence Darrow,)
)
 Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 70

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Le Compte Davis,		5664	5722	5733
Fletcher Bowron,	5734			
Mrs. Anne Hartenstein	5736	5738		
Frederick M. Webb,	5740	5742		
John Drain,	5749			

B. N. Smith,
Official Reporter.

AFTERNOON SESSION.

July 26, 1912; 2 P.M.

Defendant in court with counsel.

L E C O M P T E D A V I S,

on the stand for further cross-examination:

MR. FREDERICKS. Q At adjournment of the court, Mr. Davis, we were talking about the time when Mr. Darrow came into the court room on the morning of the 28th of November, after Franklin had been arrested, and of his appearance as to agitation and so forth. Now, did you discuss that matter there in the court room with him, the matter of the arrest of Franklin? A Not any more than he told me there had been an arrest made.

Q And you say he was agitated at that time and you were also, is that correct? A Yes, sir, I thought that our negotiations for the compromise were at an end then.

Q And you say you also felt, I presume, that as an attorney in the case where one of the detectives had been arrested on such a charge, might attach some reflection to the attorneys themselves, did you not, Mr. Davis? A Not myself, no, sir.

Q That there might attach some reflection to Mr. Darrow?

A I didn't give a thought to that part of it.

Q And you had a talk with John Harrington, you say, that day at noon in the Higgins Building? A It was afternoon.

1 Q What time was it? A I would think it would be about
2 between 4 and 5 o'clock or possibly 5 o'clock, about the
3 time we were getting ready to close up the office.

4 Q And at that time--was that after Mr. Franklin had gotten
5 out on bail? A Yes.

6 Q At that time the question of whether or not Mr. Darrow
7 had anything to do with it was discussed, was it not?

8 A No, except the presence of Mr. Darrow in the vicinity of
9 the arrest brought the discussion up, and the statement
10 from Mr. Harrington. I can give you the details of it if
11 you wish.

12 Q Well, we will get them presently. A I didn't under-
13 stand what you said.

14 Q We will get them presently. There was, then, some dis-
15 cussion as to Mr. Darrow's position in regard to the matter,
16 him having been--he having been in the position or in the
17 vicinity at the time of the arrest? A I can give you the
18 full conversation and then you may judge as to whether
19 there was a question or not and the jury may judge it.

20 We went into the room and Judge McNutt said to me, "I have
21 been informed that Mr. Darrow as in the presence of--in the
22 immediate vicinity that this arrest took place." He says,
23 "Do you know anything about that?" And Mr. Harrington said,
24 "I know one thing, that nobody with this office could have
25 anything to do with it." He said, "I have been here for a
26 long time in the office; I have known Mr. Darrow for a long

1 time and I am entirely familiar with all the surrounding
2 circumstances in this case," and he said, "no one in this
3 office could have been connected with it."

4 Q That was what Mr. Harrington said at that time?

5 A Yes, sir.

6 Q Mr. Harrington was defending Mr. Darrow and everybody else
7 in connection with that office? A If you choose to put
8 that construction upon his language.

9 Q You had, however--Mr. Darrow had, however, that morning,
10 told you, I believe you said, that he was in the vicinity
11 at the time of the arrest? A I asked him who told him,
12 he said, "I was either going to or coming from some conven-
13 tion and he saw it."

14 Q Mr. Darrow had told you that? A Yes, sir.

15 Q That morning among the first things? A Well, what lit-
16 tle discussion we had.

17 Q In court? A I think he told me here in the court room,
18 yeasir, not in this court room, but in the one just beyond
19 here.

20 Q That was along about 10 o'clock that morning? A A lit-
21 tle after 10 I would think.

22 MR. DARROW. Half past 9, Mr. Fredericks.

23 MR. FREDERICKS. I don't know.

24 A I would not pretend to place it within 15 or 20 minutes
25 of the actual time.

26 Q Somewhere between 9 and 10, at any rate, between 9 and half

1 past 10? A yes, somewhere between 9 and half past ten,
2 I would be sure.

3 Q When did you first discuss with anybody the question of
4 Mr. Darrow's having anything to do with this matter?

5 A I haven't the slightest idea.

6 Q Well, was this talk with Harrington the first time?

7 A That was the first that I remember to have ever had the
8 question arise.

9 Q Mr. Darrow was not present at that time? A No, he was
10 not in the room at that time.

11 Q That question came up by reason of Judge McNutt having
12 learned that Mr. Darrow was in that vicinity? A He learned
13 it and he said besides that, in the conversation, "they tell
14 me that he actually had \$4,000 that was taken from the
15 man--that is ^{from} the man whom he had given it. I wonder who
16 could have given it to him and have any connection with
17 that." Mr. Harrington spoke up and said he was sure he
18 could not have gotten it from anybody in this office.

19 Q The fact that Mr. Darrow was in that vicinity at the
20 time of the arrest is what called it to--is what called
21 it to Judge McNutt's mind and is what he was talking
22 about? A I can't say that. I will give you the conversa-
23 tion as it occurred.

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1 Q We are talking about Harrington, John R. Harrington,
2 not Job Harriman. A Yes, I know.

3 Q You so understood it? A Yes. He was detective, or
4 assistant attorney.

5 Q Yes. Mr Keetch asked me a question which made me think
6 I might have been using the word "Harriman". A No.
7 John R. Harrington, to whom I referred.

8 Q Isn't it a fact, Mr Davis, that shortly after this Mr
9 Darrow showed you his bank books and accounts in the en-
10 deavor to convince you of his innocence in this matter?

11 MR ROGERS: We object to that as irrelevant --

12 MR DARROW: Let him answer. A I went over his bank books
13 and accounts.

14 Q For this purpose and with this idea in mind? A No,
15 not for ~~the~~ purpose of convincing me that he had not done
16 it, but to show me where all the funds had gone to in his
17 hands, etc -- there was not enough money to pay all the
18 attorneys.

19 Q At that time, however, he did not tell you anything
20 about \$10,000 having been gotten by him by check in San Fran-
21 cisco, did he? A I don't know at that time, I don't
22 know whether he did or not, I don't remember.

23 Q Didn't you tell Mr Ford he didn't tell you about
24 \$10,000 in San Francisco at that time? A I told Mr
25 Ford he didn't tell me so at the time Mr Ford called my at-
26 tention to it, but not at that time, I don't think the

1 question came up at this time about my examining the
2 books. I think it was at the time he is alleged to have
3 received.

4 MR DARROW: Read that answer.

5 (Last answer read.)

6 A My answer is not as clear by any manner or means, my
7 meaning there -- my meaning is this: that the occasion
8 that Mr Ford inquired of me concerning, was not the oc-
9 casion of my going over Mr Darrow's books. I had a
10 conversation with Mr Ford, it was before the grand jury
11 and I presume he has the testimony on that subject relative
12 to what he asked me about the \$10,000.

13 Q Didn't you tell Mr Ford you knew all the moneys re-
14 ceived by Mr Darrow, and that Darrow had told you how they
15 were expended and did not mention this \$10,000 in San
16 Francisco? A You mean, that I said to Ford that Darrow
17 did not mention it, or I did not mention it?

18 Q Didn't you say this to Ford? A No, I did not say that.
19 I said I knew all the moneys Mr Darrow received, I was
20 satisfied I did, and I knew how he had expended them, to
21 him, but I never said anything to him about that \$10,000
22 that Darrow had not said anything to me about the \$10,000,
23 I knew of. My testimony before the grand jury will dis-
24 close what I said, I testified before the grand jury.

25 Q That was written up and you got a copy of it, too,
26 didn't you? A No sir, I got no copy of it.

1 Q Well, it was written up in this case, I suppose?

2 A I presume so.

3 Q Well, I don't care anything about the matter. A Mr
4 Ford did ask me if I knew of his receiving \$10,000 at the
5 time he did, he asked me if I was in San Francisco oncer-
6 tain dates, I told him what dates I was in San Francisco,
7 and he asked me if I knew of his receiving the \$10,000 at
8 that time, and my testimony was that I didn't know of it.
9 Since thinking that over --

10 MR DARROW: Finish your answer. Wait a minute, he has not
11 finished his answer. A I was going to say, since
12 thinking the matter over, it comes to my mind clearly that
13 is what I said to Mr Ford, I knew Mr Darrow had told me
14 if I was in San Francisco at any time to apply for money at
15 a certain place, but he never told me that he got the
16 \$10,000, that I remember of. He may have done so.

17 Q Well, did you ever apply for money at the place he told
18 you in San Francisco? A No. I always had enough money
19 when I went to San Francisco, without asking anyone for
20 money.

21 Q You also visited the District Attorney's office repre-
22 senting Mr Franklin several times after his arrest, and
23 talked with Mr Ford in regard to getting the District
24 Attorney to recommend that if Franklin would plead guilty -
25 recommend that Franklin, if he should plead guilty,
26 should be let off with a fine, did you not?

1 MR APPEL: Wait a moment. We object to that as not cross-
2 examination; it would be hearsay, incompetent, irrelevant
3 and immaterial for any purpose; it would not affect this
4 defendant, he, acting for Mr Franklin, as his attorney.
5 We didn't go into any conversations between him and Mr
6 Franklin when he was acting as attorney, we simply asked
7 him questions tending to impeach the testimony of Mr
8 Franklin, your Honor, as to what Mr Franklin said to Mr
9 Darrow, and as to what Mr Darrow said to him in the pre-
10 sence of Mr Darrow; we confined our whole examination to
11 that. They cannot go into conversations outside of the
12 defendant for the purpose of bringing out any facts, either
13 to corroborate Franklin or to bring any fact against Mr
14 Darrow; that is a part of their direct case, if they could
15 connect it at all.

16 MR FREDERICKS: This witness has testified to conversa-
17 tions with the District Attorney in regard to this matter
18 of pleading guilty, and all that sort of thing.

19 MR APPEL: If there is anything in the record there that
20 he said in regard to any conversation he had with the
21 District Attorney with reference to getting anything,
22 let him show it.

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3p 1 MR. FORD. This is preliminary to the question dealing
2 with this \$10,000 bail money concerning which this witness
3 testified also.

4 MR. APPEL. That does not necessarily mean any conversation,
5 your Honor, between Mr. Davis and any member of the District
6 Attorney's office in reference to the \$10,000 at all, it
7 would not be cross-examination.

8 THE COURT. If this question is preliminary, however, it
9 can be answered yes or no.

10 MR. APPEL. I submit, the question he undertakes to give
11 the substance and the subject of the conversation, not only
12 what he said, but the substance of what he said, or that
13 they claim Mr. Davis said to the District Attorney.

14 THE COURT. Read the question.

15 MR. FREDERICKS. It goes into the relations between this
16 witness and the entire case.

17 (Last question read.)

18 THE COURT. Objection sustained.

19 MR. FREDERICKS. Q Weren't you requested by Mr. Darrow, if
20 possible, to make some such arrangement with the District
21 Attorney's office, if you could? A No.

22 Q Weren't you instructed, or didn't you go to the District
23 Attorney's office, after Mr. Franklin had been held to
24 answer in preliminary examination, and didn't you go to
25 Mr. Ford and offer to pay that fine out of the \$10,000 bail
26 money that was put up?

1 MR. APPEL. Wait a moment--we object to that upon the
2 ground that it is not cross-examination; it is incompetent,
3 irrelevant and immaterial for any purpose whatsoever; that
4 it doesn't tend to impeach the witness or contradict him
5 in any way, shape or manner, or show any bias or prejudice
6 or interest on his behalf, and it doesn't tend to prove
7 any fact against this defendant, so far as this defendant
8 is concerned it would be hearsay, and, therefore, not admis-
9 sible against him.

10 THE COURT. Objection overruled.

11 MR. APPEL. We except.

12 A ↓ did not.

13 MR. FREDERICKS. Q didn't you have a talk about using that
14 bail money or a part of it to pay the fine, with Mr. Ford?

15 MR. APPEL. Wait a moment--we object to it on each and all
16 the grounds stated in our last objection to the last ques-
17 tion just propounded to the question, and upon the fur-
18 there ground that the question as a question is not com-
19 petent because it doesn't contain the essential elements
20 of the impeaching question required by the Code; not
21 cross-examination.

22 THE COURT. Objection overruled.

23 MR. APPEL. We except.

24 A My talk with Mr. Ford was exactly the same as my talk with
25 you, Captain Fredericks; that out of the money that was
26 taken off of Mr. Franklin there you people expected to pay

1 the fine if he plead guilty.

2 MR. FREDERICKS. Q you were willing that it should be paid
3 out of that? A Out of the money that was taken from him.
4 We had nothing to do with it. I didn't care what you did
5 with it, yes, sir.

6 MR. APPEL. I suppose that may go in subject to the same
7 objection I made before, and the same ruling?

8 THE COURT. Yes, sir; the same objection, the same ruling
9 and the same exception.

10 MR. FREDERICKS. Q Well, that was 4,000. Did you agree
11 to make up the deficit, if that fine was 5,000, did you
12 agree to make up the deficit between 4,000 and 5,000 out
13 of some other fund? A I did not.

14 Q Now, this is the testimony before the grand jury, Mr.
15 Davis, and I will ask you if you did not testify before the
16 grand jury?

17 THE COURT. Just a moment, for the record, the witness
18 answered there. Mr. Appel, I suppose you want the same
19 objection and the same ruling and the same exception?

20 MR. APPEL. Yes, sir.

21 MR. FREDERICKS. Q On the 29th of January, 1912,
22 beginning at line 5: "Q--You have examined local deposits
23 in local banks--" I think I will have to go back a little
24 further. The question back on page 10, line 26: "Q--You
25 never had at any time been informed by Mr. Darrow that he
26 kept the accounts of the McNamara defense fund in any place

1 other than Los Angeles? A--Never at any time. I will
2 say, Mr. Ford, that the accounts, as far as I knew of it,
3 were open to inspection. I know they were open to inspec-
4 tion by me, as far as that goes. The defense fund for
5 attorneys fees was slow in coming in and he would say, 'I
6 have a check for so much'.

7 "Q You have examined local deposits in local banks?

8 "A Not local bank but simply what he showed me; the bank
9 book; what he had put in and what he had drawn out.

10 "Q Were you ever informed by Mr. Darrow at any time that
11 he had cashed any checks received from the American Federa-
12 tion of Labor at any other place other than at Los Angeles?

13 "A I never was.

14 "Q Were you ever informed that he had received a check
15 from Frank Morrison the latter part of August, 1911, which
16 was cashed or endorsed to O. A. Tveitmoe--cashed by O. A.
17 Tveitmoe in San Francisco? A No.

18 "Q Were you ever informed by Mr. Darrow that Mr. Tveitmoe
19 kept any portion of the fund received from outside sources?

20 "A Never was.

21 "Q Or that Mr. Tveitmoe was to use any of those funds?

22 "A I never heard anything of that kind. Mr. Darrow never
23 gave me that information.

24 "Q Mr. Darrow never gave you that information? A Mr. Darrow
25 never gave me that information at any time." Did you so
26 testify?

1 MR APPEL: Wait a moment. Now, we object upon the ground
2 that it is not cross-examination; upon the further ground
3 that it does not tend to contradict or impeach the witness
4 in any manner; that it doesn't tend to impeach or contradict
5 any statement made by him, either on cross or direct exami-
6 nation; that if asked on cross, that it is upon a matter
7 which was not cross-examination, and that they are not en-
8 titled to contradict the witness upon any matter drawn by
9 them as a fact on their side of the case, and upon which
10 the witness was not examined by the defense on direct.
11 That is incompetent, irrelevant, and immaterial and
12 hearsay,
13 and not admissible for any purpose; not binding upon the
14 defendant.

14 THE COURT: Objection overruled.

15 MR APPEL: We except.

16 A I testified that way. That is true.

17 MR FREDERICKS: That is true? A That is the truth.

18 Q At the time George Behm came here to Los Angeles, how
19 long had you known Mr Darrow? A Very short time before
20 I met Mr Behm.

21 Q Two or three weeks or two or three days? A I wouldn't
22 know whether it was two or three weeks or two or three
23 days. I don't know whether he came with Mr Darrow or not.
24 If he did, I am satisfied I never saw him for a few days
25 afterwards; probably a week, is my best recollection.

26 Q And had you met Mr Darrow prior to that time?

1 A Prior to the time he came here?

2 Q yes. A Never.

3 MR DARROW: just a moment. You mean prior to the time
4 Mr Behm came, or prior to the time I came.

5 MR FREDERICKS: Prior to the time you came.

6 MR DARROW: Permit me to state something to you. I was
7 here first, a week or so.

8 MR FREDERICKS: I am coming to that. A That is what I
9 said.

10 Q You were here -- Mr Darrow was here a week or so be-
11 fore Mr Behm came? A yes sir.

12 Q Prior to that Mr Darrow was a stranger to you, was he?

13 A Well, I think now that I must have known Mr Darrow
14 longer than that. I met Mr Darrow when he first came here
15 to take up the preparation of the case. I was thinking
16 that that was at the beginning of the trial. Mr Behm
17 didn't come here for -- I would think ten days after Mr
18 Darrow did.

19 Q Well, wasn't it about like this: Mr Darrow came out
20 here first, at the time that these men were arraigned and
21 the matter of their plea -- appeared for them and the
22 matter of their plea went over for a month or so and he
23 went back to Chicago, and he came out here again? A I
24 believe that is right, although I don't have definite re-
25 collection enough about it to swear whether he ever went
26 back to Chicago or not. It slipped out of my mind if he

1 did.

2 Q Did you meet him when he first came here? A I met
3 him when he first came here, I know.

4 Q At any rate, you hadn't known -- you didn't know him
5 before he came out here on this case? A Never.

6 Q All right. We will put it that way. And then you
7 remember after he was here, do you, for a few days, he
8 went away and was gone probably a month? A Your state-
9 ment of it leads me to believe it was so, but I don't have
10 any definite recollection of it now.

11 Q Does your memory approximate that? A I would think
12 so, yes sir.

13 Q So that at the time Mr Behm was here, Mr Darrow and
14 you were comparative strangers; correct? A Well, every
15 man must be a judge of that for himself.

16 Q When did you first talk over this question of these
17 two men pleading guilty with Joe Scott, if ever, or have
18 it talked over in the presence of yourself and Joe Scott?

19 A The first time that I ever talked it with Mr Scott
20 or heard Mr Scott talk it with anybody else, was on Thanks-
21 giving day.

22 Q As far as you know, is that the first time that Mr
23 Scott knew that these men were talking of pleading guilty?

24 A As far as I know.

25 Q That was Thanksgiving Day? A Thanksgiving Day.

26 Q Mr Scott was one of the attorneys in the case? A He

1 was.

2 Q Right along with the rest of you every day in court?

3 A He was.

4 Q On that same Thanksgiving Day, didn't Mr Darrow then
5 inform Mr Scott in your presence that they were thinking of
6 making a plea of guilty? A Not in my presence, he didn't.

7 Q Did you inform Mr Scott of that fact? A No sir; Mr
8 Darrow had a talk with Mr Scott before I got into the place
9 of meeting.

10 Q Into the jail; is that it? A Before I got to the
11 place of meeting.

12 Q Where was the place of meeting? A I think we went
13 from Mr Darrow's office.

14 Q That was Thanksgiving Day? A That was Thanksgiving
15 Day.

16 Q You sure Joe Scott didn't come into the jail accident-
17 ally while you people were there? A He was at the
18 jail. Whether he came in accidentally or not, I don't
19 know.

20 Q When you walked from the office over to the jail who
21 was in the party, Thanksgiving Day? A I don't know
22 whether Mr Scott was along, or whether he was not along;
23 I don't know whether Mr Steffens went along at the same
24 time we went or whether I went by myself, and met them
25 there.

26 Q When was the first time you personally discussed this

1 question of pleading guilty, with J. J. McNamara? A When
2 was the first time I did personally?

3 Q Yes. A At Thanksgiving Day.

4 Q When was the first time you personally discussed the
5 question of these men pleading with J. B. McNamara; at
6 the same time? A Oh, I presume the first serious dis-
7 cussion I had with him was at that time.

8 Q Thanksgiving Day? A Yes.

9 Q So that your only knowledge as to whether anyone else
10 had previously discussed this question with either of
11 those men, is hearsay? A Yes, from what the men told me
12 and what the boys --

13 Q What somebody told you. A What somebody told me and
14 what the boys themselves told me.

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1 MR. DARROW. Will you read that question and the answer?
2 (Last two questions and answers read.)

3 A When I refer to the "boys" I refer to the McNamara
4 Brothers.

5 MR. DARROW. I don't know whether that answer explains
6 the question or is a full answer to the question or not.

7 A What is that?

8 MR. DARROW. I don't know whether that answer makes it
9 clear as to what you mean.

10 MR. FREDERICKS. I will go at it a little further, anyway.

11 Q What time in the day was this discussion you had with
12 J J McNamara? A You mean at the county jail?

13 Q Yes. Thanksgiving Day.

14 MR. APPEL. I object to that, because he has gone all over
15 that, your Honor.

16 MR. FORD. Not yet, on cross-examination.

17 A It lasted practically a whole--

18 THE COURT. Wait a minute until we get a ruling on it.
19 The objection is overruled.

20 A It lasted practically the whole day.

21 MR. FREDERICKS. Q Practically all day? A We went there,
22 I presume it was about 10 o'clock, and went out and had
23 our dinner and we were there again in the afternoon and
24 that is the time I telephoned to you.

25 Q When you telephoned to me at 2 o'clock, you had not
26 succeeded in getting the consent of both of them to plead
guilty, is that correct? A Yes, we had.

1 Q At 2 o'clock? A Yes, and a long time before that,
 2 but there were many things we had to take into considera-
 3 tion, many things that had to be done with reference to
 4 John's mother and things of that kind that we took up
 5 practically the whole day. Mr. Darrow, I know, took instruc-
 6 tions for the mother, and instructions about various
 7 things and that took up practically all day long.

8 Q Well, they had not both consented to plead guilty prior
 9 to the time Mr. Lincoln Steffens left, had they?

10 MR. ROGERS. That is misleading, if your Honor please, and
 11 not cross-examination. They may have consented separately
 12 and may have consented together, and what not, and that
 13 question does not bring the matter out and does not give
 14 the witness an opportunity to explain, not cross-examination.

15 THE COURT. Objection overruled.

16 MR. ROGERS. Exception.

17 A I thought they had. I don't know what time he left, but
 18 I am satisfied they had.

19 Q All right, you think they had. Now, there are two or
 20 three conversations here I want to ask you about. You say
 21 that at this conversation on the 14th day of January with
 22 Mr. Darrow and Mr. Franklin, and yourself, up in your office
 23 or the library of your office-- A Mr. Rush's room.

24 Q Yes, Mr. Rush's room, Franklin said that Johnston had
 25 come to him from Mr. Ford? A That is what he told us.

26 Q Now, did you hear that Mr. Johnston stated the first time

1 he ever took this matter up he took it up with Mr. Ford at
2 the request of Mr. Franklin?

3 MR. APPEL. We object to what he heard Mr. Johnston state.

4 MR. FREDERICKS. This is preliminary.

5 MR. APPEL. It is not cross-examination, it is not even
6 preliminary.

7 MR. FREDERICKS. I will ask the other question too, and
8 then the court can determine whether it is or not.

9 MR. APPEL. I object to his telling the witness as to whe-
10 ther he heard Johnston state anything contrary to his
11 statement or any modification of his statement as to what
12 he heard Franklin say on the 14th day of January, and
13 it is incompetent, irrelevant and immaterial for any pur-
14 pose whatsoever. He has no right to tell him what
15 Johnston said or any one else said. The only question is
16 what he testified to, is what Franklin said at that time
17 and that was only in contradiction of Mr. Franklin's
18 testimony, only in part. Mr. Franklin did admit that he
19 said that Johnston came to him and that he told him certain
20 things and we asked him whether or not he sent Johnston to
21 Mr. Ford and he denied it and he admitted substantially the
22 conversation, This is Franklin, not what Johnston
23 testified, we never asked Mr. Davis whether he had any con-
24 versation with Mr. Johnston or whether he heard Mr. Johnston
25 say anything, we simply asked him to testify as to the
26 facts which we thought and we still think were contra-

1 dicting Mr. Franklin as to that conversation. Mr. Franklin
2 testified whatever he said there was a matter which was
3 suggested to him by Mr. Davis and Mr. Darrow and we asked
4 Mr. Davis whether or not they suggested that or whether Mr.
5 Franklin said that as coming from Mr. Johnston, who pre-
6 tended, or claimed, as the witness stated, that he came
7 from Mr. Ford.

8 MR. FREDERICKS. It is a matter of refreshing the witness's
9 memory, to see whether after he would hear that would
10 cause him to possibly doubt that Franklin had said that
11 Johnston came from Ford.

12 MR. APPEL. That may be done in a star chamber proceeding,
13 you may tell a party that so and so said so and so, and
14 how dare you say this, to make him change his testimony,
15 but that cannot be done in court, you cannot tell a witness
16 so and so has said so and so in court or elsewhere, now
17 after I told you he said so, do you still adhere to your
18 testimony about what you have said heretofore--that is not
19 proper.

20 THE COURT. Read the question.

21 (Last question read.)

22 THE COURT. Objection overruled.

23 MR. APPEL. We take an exception.

24 A I don't know that I understand the question the way
25 you put it, did I ever hear Johnston say so?

26 Q Did you ever hear that Johnston had testified here in

1 court that he came to Mr. Ford at Franklin's request and
2 that he did not come to Franklin at Ford's request?
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1 MR APPEL: Wait a moment.

2 Q Did you ever hear that he said that?

3 MR APPEL: We make the same objection, on the ground it
4 is incompetent, irrelevant and immaterial, not cross-
5 examination.

6 THE COURT: The objection is sustained.

7 Q Now, you had some conversations which you have nar -
8 rated here, with Mr Franklin, in the presence of a third
9 party? A What conversations are those?

10 Q Well, in the presence of Mr Darrow, for instance,
11 on the 14th of February. A January.

12 Q January, I should say -- you and Franklin and Mr Dar-
13 row being present; just relate that entire conversation.

14 A Mr Franklin came to the office, and I told him to
15 walk into Mr Rush's room, that Mr Darrow and I would be in
16 in a few minutes -- I was going over some matter with Mr
17 Darrow -- he went into Mr Rush's room, and I went in with
18 him and he said, "I made an appointment yesterday to meet
19 you, because I thought it was important to tell you the
20 situation in the case." I said, "What is it?" --

21 Q That was in Mr Darrow's presence? A Mr Darrow was
22 present at that time -- he said, naming the day it was,
23 I don't know whether it was yesterday or day before --
24 but he named the day "Colonel Tom Johnston came to me and
25 said Mr Ford had sent him to me; that he had instructed
26 Colonel Johnston to say to him that if he would come

1 through and tell what he knew about Mr Darrow that he
2 might plead guilty and he would be fined, and that his
3 fine would be taken out of the amount of money that had
4 been taken from Mr Lockwood or Mr White at the time of
5 the arrest", and Mr Darrow spoke up and said, "Well, what
6 do they say Darrow for? Why do they mention Darrow any
7 more than they do Job Harriman or Mr Davis or Mr Scott?"
8 Then Franklin said, "The Colonel said that Mr Ford in-
9 structed him to say to Mr Franklin that if it involved any
10 other other local man that he need not open his mouth or
11 say anything about it", and I said, "What did you say to
12 the Colonel?" He said, "I told the Colonel that I knew
13 nothing against Mr Darrow, that he had been one of the
14 best friends I ever had, that if I told Mr Ford the truth
15 about it that he would not believe it anyway, as to who
16 it was that gave me the money", and he looked over at me
17 and he looked also at Mr Darrow, and he said, "Mr Darrow
18 has been one of the best friends I ever had, and he would
19 be the last person in the world I would lie about", and
20 with that about ended the conversation.

21 Q Now, up to that time had you had any talk with Frank-
22 lin about a third man, a third man, whom he didn't know,
23 and nobody knew, and that he could not find, who had
24 given him this money, a stranger? A Well, unless the
25 court instructs me that I must answer that question, I
26 regard it as a professional privilege not to answer what

1 your client said to you, outside of the presence of third
2 persons. If the court so instructs me, of course, I
3 will be compelled --

4 THE COURT: Do you insist on the question?

5 A I don't think the Captain himself would do it.

6 MR APPEL: I object upon the ground it is not cross-exam-
7 ination.

8 MR FORD: Already been decided when Mr Johnston was on the
9 stand.

10 THE COURT: I am asking you if you insist upon an answer.
11 The objection of the defendant is overruled. A You mean
12 my objection?

13 THE COURT: No; the defendant's objection. I have inquir-
14 ed of the District Attorney whether or not he insists on
15 an answer to the question?

16 MR FREDERICKS: Well, I was just thinking about it, your
17 Honor.

18 THE COURT: Take your time.

19 MR FREDERICKS: Well, if it is the law that he should
20 answer, I guess I should ask it. I ask it.

21 THE COURT: Read the question, Mr Reporter.

22 (Last question read by the reporter.)

23 MR APPEL: Now, your Honor, your Honor will see that the
24 question itself inserts in there an argument of counsel,
25 that you talked with Mr Franklin about a man he didn't
26 know and that nobody knew. Now, let him ask him the

1 straight question, had Franklin said anything to you about
2 the third man having given him the money; not about a man
3 he didn't know, not about a man nobody knew, in view of
4 the evidence here in this case, certainly if Mr Franklin --

5 THE COURT: Do you object upon the ground that it is ar-
6 gumentative?

7 MR APPEL: That it is argumentative, your Honor, and be-
8 cause it involves matters not testified to.

9 THE COURT: I agree with you, it is argumentative. Ob-
10 jection sustained.

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7s 1 MR. APPEL. We don't object to his stating what Franklin
2 told him before that time.

3 MR. FREDERICKS. Then we will go back to the first of it
4 and start in. Q When did you first have your conversation
5 with Mr. Franklin, Mr. DAVIS, in regard to this matter?

6 MR. DARROW. You mean the whole matter?

7 MR. FREDERICKS. In regard to the matter of the bribery
8 for which he was arrested? A The first time I went to see
9 him was at the jail.

10 Q What did he tell you? A He told me he was not guilty.
11 That there had been a job put up on him; that he realized
12 it immediately after he had handed the money to Mr. White;
13 that he was going up to the stree to turn over Mr. Lockwood
14 to some officer and have him arrested.

15 Q Well, by job put up--he was going to have Lockwood
16 arrested? A That is what he said, he was going to turn
17 him over to an officer.

18 Q This was down inthe jail, was it? A This was down in
19 the jail.

20 Q What else did he say? A And that he would have no
21 trouble about proving his innocence; that he was not
22 worrying a bit except being in jail, and if I would get him
23 out of jail there wouldn't be any trouble for him to show
24 the matter in its true light. That is about all the con-
25 versation there was at that time.

26 Q When did you have the next conversation with him?

1 A Oh, I don't know whether I had another one with him
2 that afternoon, but I don't think I did. Probably in a
3 day or two.

4 Q Well, you related some conversation that you had after
5 he was let out on bail, I think the next day, when some-
6 one else was present. Didn't you have a conversation that
7 night with him up in your office? A I don't think I did.

8 Q Up at Franklin's office? A I know I didn't in Frank-
9 lin's office; I never had any conversation with him at
10 night in his office.

11 Q Did you the next day in his office? A The next day
12 at his office probably I did.

13 Q Did you have one that same day, the 28th, at his of-
14 fice? A I don,t think I did.

15 Q Well, the next day, what was that conversation?

16 A Probably went over the whole matter. Now, I had so many
17 talks with Mr. Franklin it will be absolutely impossible
18 for me to state what occurred at any one conversation or
19 what occurred at another conversation. Where you converse
20 with a man 50 or a hundred times about a case it is almost
21 impossible to remember what was said at any one particular
22 conversation.

23 Q We will drift along as near chronologically as we can.

24 A But the matter came up and I told him to have a conversa-
25 tion with Governoe Gage, and that I would do anything
26 that I could to help him along in the matter. There wasn't

1 much discussion with reference to his--to the facts of the
2 case for a week or so afterwards, except what I discussed
3 with him in the jail, to the best of my recollection.

4 Q A week or so afterwards you did discuss the matter
5 very fully with him? A When the preliminary examination
6 was held and the facts came out there, we discussed the
7 matter with him.

8 Q Where was that--you say "we discussed the matter?"

9 A I discussed the matter with him.

10 Q Where was that? A Probably at my office, some on the
11 way from the office, from--

12 Q What did he say about the facts in the case?

13 MR. APPEL. That is objected to upon the ground it is
14 incompetent, irrelevant and immaterial and not cross-
15 examination and hearsay. ^{A--} And I again say to the court
16 that this matter is pending now before the Superior Court
17 as to the guilt or innocence of this man. If they will
18 bring Mr. Franklin here and Mr. Franklin says that Mr. Davis
19 is released from all obligations in the matter I am per-
20 fectly willing to testify. I think it is due me, your
21 Honor, that that be done. I will have no hesitation there
22 after.

23 MR. FREDERICKS. Well, I think--the court having already
24 ruled that the same matter might be gone into with Mr.
25 Johnston--

26 MR. APPEL. About this question whether it be cross-
examination.

1 THE COURT. That is another matter. I think so far as
2 Mr. Davis's objection is concerned, as to the consent of Mr.
3 Franklin, the matter has been very fully gone into in
4 regard to the testimony of Mr. Johnston. He was also an
5 attorney for Mr. Franklin--the court has ruled that in view
6 of the fact that Mr. Franklin came here as a witness and
7 testified to the entire matter, covering the whole story,
8 that that in itself released his attorneys from any obliga-
9 tion, but there is this objection made by Mr. Appel it is
10 not cross-examination.

11 MR. APPEL. Here is the idea, your Honor. We could not
12 examine this witness in regard to what Franklin stated or
13 what he did not state except upon those points upon which
14 Mr. Franklin testified to. Your Honor can see that. We
15 couldn't ask him what did Franklin say to you, generally,
16 because the other side would have said, "Why, there was no
17 foundation laid." Mr. Franklin has testified to certain
18 conversations in which he says Mr. Davis said certain
19 things and Mr. Darrow said certain things. We did that by
20 way of explanation, your Honor, or why he made statements
21 concerning this third man and from whom he got the money.
22 It came out when he testified that he had told Mr. Engle and
23 somebody else certain things about a third man and he said
24 then, your Honor, the reason he made those statements was
25 because he had an understanding with Mr. Darrow and Mr. Davis
26 on the same day a few moments before, meaning the 14th, and
that Mr. Davis and Mr. Darrow had virtually joined in putting

1 up that story for him to tell Mr. Ford about it, and he
2 said that was not his own creation, but it was the creation
3 of Mr. Davis and Mr. Darrow.

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1 Now, we contradict that by Mr Davis, everywhere, wherever
2 he has mentioned Mr Davis, that Mr Davis was to do this or
3 to say this, we have called Mr Davis' attention. We use
4 him as an impeaching witness only. We couldn't ask him
5 what did you tell Mr Davis, in a general way, because
6 we would not have been allowed to do it, therefore, we
7 use him simply as an impeaching witness, concerning decla-
8 rations made by Mr Franklin, which we claim are contra-
9 dicted by this witness. There the matter is before the
10 jury in that sense. Now, they take Mr Davis and say to
11 him, at some other time or place, or at any other time or
12 place, except the times to which you have testified, what
13 did Franklin say to you? We contend, your Honor, that it
14 might have been possible for us to have examined Mr Frank-
15 lin in reference to that: didn't you tell Mr Davis at such
16 and such a time this and this and this, and that, and then
17 we could have brought Mr Davis here to prove by him as
18 to the truth of those facts, under the rule announced by
19 your Honor, and under the decisions, but we couldn't do
20 that -- we didn't do it. Now, I suppose Franklin, during
21 any time, your Honor, made any declarations to Mr Davis
22 which are prejudicial to this defendant, assuming --
23 or prejudicial to any other person -- I don't anticipate
24 it, but assume that we could prove that. Now, he, as a co-
25 conspirator, could not -- they could not introduce his
26 testimony, his evidence, after the alleged commission of

1 the offense in his recital of the occurrence, because that
2 is by way of recitation. It is only those verbal acts
3 when in the pursuance of the object of the conspiracy,
4 that can be given in evidence. It takes it out of the
5 category of hearsay evidence, but here is a crime alleged
6 to have been committed on the 28th day of November, 1911.
7 Now, here is the attorney for Mr Franklin is asked now,
8 what did Franklin tell you about all the facts of the case?
9 For what purpose? Not because Franklin is upon trial here,
10 but a third party is upon trial. Can they introduce the
11 declarations, the recital of Mr Franklin to this witness,
12 with no one else, as against this defendant? I say they
13 cannot do it. Can they do it upon any other pretext? They
14 cannot do it. Can they do it for the purpose of showing
15 the relation of attorney and client? Can they do it for
16 the purpose of showing the state of mind of this witness?
17 I say no; you can only show the state of mind of this wit-
18 ness, but not what somebody told him, but what he may have
19 told somebody, if he denies his interest or his bias or
20 prejudice for the party in whose favor he testifies. If I
21 go upon the stand and testify to a fact, and they want to
22 show I am interested, and that I may possibly have shaded
23 my testimony, they may ask me generally, you say so and so,
24 to so and so; then show my interest. It is right that
25 they should ask me if I deny my interest in the case.
26 They have a right to show it by specific declarations of

1 the witness, but not by what somebody told me. That
2 doesn't tend to reflect the condition of my mind in ref-
3 erence to the case or in reference to any of the parties,
4 and I submit to your Honor, it is not cross-examination.
5 Your Honor can well see how much hearsay can be brought
6 in here, and are we going to try now, the question of the
7 guilt or innocence of Mr Franklin by introducing evidence
8 here of his declarations to his attorney, and the declara-
9 tions of his attorney to him; his advice to him, and the
10 possible situation as between client and attorney, as
11 against this defendant; declarations not made in his pre-
12 sence. It might be admissible in evidence, if your Honor
13 please, as cross-examination in some manner, had Mr Darrow
14 been present; if Mr Darrow responded to what was said or
15 conducted himself in any particular manner or remained
16 silent or acquiesced in any statement made by Mr Franklin
17 to Mr Davis, but he not being present, not being there
18 don't know it himself. Assuming, your Honor, that I were
19 upon the witness stand, and a third party was here, and I was
20 asked to relate what the prosecuting witness told me, and
21 I said, why, the prosecuting witness told me that he,
22 defendant, and he went out here to steal a cow, if the
23 charge was larceny, for stealing a cow, against the third
24 party; would that be admissible in evidence? And yet, if
25 I was called upon the stand to contradict some statement
26 of the prosecuting witness, could they go into all those
declarations either for or against the defendant? They
are not admissible unless the prosecuting witness's atten-
tion -- unless Mr Franklin's attention was called to any
fact which might tend to contradict his evidence.

1 Now, if Mr Franklin had said upon the witness stand,
2 your Honor, if Mr Franklin had said upon the witness stand,
3 "I told Mr Davis that Mr Darrow was innocent", could they
4 bring that out for the purpose of proving that fact, un-
5 less he came upon the stand and said, "I told Mr Davis
6 he was guilty." If he had said, "I told Mr Davis at a
7 certain time and place that Mr Darrow was guilty", then
8 we could bring Mr Davis to ask him whether or not he did
9 say or not, but they cannot go into any other declara-
10 tions of that kind. I submit it is not cross-examination,
11 and opens the field here to a vast amount of redirect ex-
12 amination, your Honor, upon which we have not questioned
13 the witness at all, and in view of the fact, your Honor,
14 they can bring declarations of Mr Franklin against Mr
15 Darrow here, and corroborate him, because Mr Franklin's
16 testimony here, your Honor, stands uncontradicted, and no
17 one has contradicted that he said, after arrest, that he
18 said he told the fact to Engle and others about Mr Darrow -
19 Lawler and Engle, he told Lawler and Mr Ford concerning Mr
20 Darrow, yet, in one part of his testimony he says here,
21 "I never told any man on God's foot stool that Darrow had
22 given me that money." Is it to contradict that state-
23 ment of their own witness that they want to ask Mr Davis
24 about that? We didn't touch upon that. I submit it is
25 not cross-examination.

26 MR FREDERICKS: The point is this: cross-examination of

1 the witness is for the purpose of ascertaining the wit-
2 ness' memory and veracity, his ability to recite correct-
3 ly those things which he attempts to narrate. Mr Franklin
4 has said that this witness told him, or that he collaborated
5 with this witness about making up this story about a third
6 man. The witness has said he did not, at a certain time
7 and place --

8 MR DARROW: Or any other place.

9 MR APPEL: Or any other place.

10 MR FREDERICKS: Did this witness say he did not at any
11 other place?

12 MR APPEL: Yes sir.

13 MR FREDERICKS: Very well. If this witness said on direct
14 examination ^{he} did not make this statement to him, either
15 at the time specified or at any other place, then it be-
16 comes the duty of the cross-examiner to interrogate this
17 witness as to the other conversations which he had with Mr
18 Franklin.

19 MR DARROW: You misunderstood what I said.

20 MR FREDERICKS: Say it again, and see if I can get it.

21 MR DARROW: I said, which is a fact, that Mr Davis said
22 he never prompted or assisted or told Mr Franklin to make
23 this statement at that place or any other place.

24 MR FREDERICKS: Or any other place; that is what I am argu-
25 ing.

26 MR DARROW: You are arguing that Franklin never said it any

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other place.

MR FREDERICKS: Now, this witness, having so stated on direct examination, that Franklin never had this conversation with him, it now becomes the duty on cross-examination to inquire of him what Franklin did say at the various conversations, in order that the jury may determine what their relations were, in order that the jury may determine the probability of this witness' memory and the probability of reciting correctly the facts, in order that the jury may know the relations between the two, and the things they did talk about, and, in other words, in order that the jury may weigh, as between this witness and the other, the question as to which is reciting correctly, the facts, and it certainly becomes now, more than ever, since counsel has called my attention -- called the attention of the court to the fact that the witness here has denied the fact that Franklin never made the statement to them. It becomes now absolutely necessary to go into all the conversations that he had with Mr Franklin.

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1 MR. DARROW. If the court please. Just a moment. I
2 explicitly corrected Mr. Fredericks, but then he didn't seem
3 to understand what I said. Mr. Davis was not asked whether
4 Franklin ever said that he got this money from some third
5 man or not; Mr. Davis was asked specifically whether he,
6 Davis, had told Franklin to say any such thing at his office
7 on the 14th or at any other time or place, and that he
8 answered, that is the question; I thought I set Mr. Fred-
9 ericks right, but I evidently did not. He was asked whe-
10 ther he, Davis, ever at any place or time told Franklin to
11 make such a statement.

12 MR. FREDERICKS. That is the way I understood it.

13 MR. DARROW. That is not the way you stated it.

14 MR. FREDERICKS. That is the way I thought I was stating
15 it. I wish to assure the court I have a good deal of
16 delicacy, a good deal of feeling, being an attorney myself,
17 and having some regard for the traditions of the profes-
18 sion and the tradition that an attorney must not relate
19 what the client tells him; I am frank to say I was loath
20 to ask this, but it is the law, as the court has ruled, and
21 being the law it is my duty to follow the law, and that
22 is the question.

23 MR. APPEL. Your Honor, just one work finally. Now, the
24 very object of counsel in asking this question shows that
25 he is not pursuing what he wants to do. He wants to ask
26 Mr. Davis whether or not he made that--whether he suggested

1 that Franklin should say that a third party had given
2 him the money at some other time than the 14th. That
3 does not call for what Franklin told him; he cannot prove,
4 your Honor, that Davis told Franklin to say those things
5 by getting the declarations of Franklin to the witness.
6 Any one can see that ^{that} does not require any law, just requires
7 a little reasoning. If I go upon the stand and I say I
8 never told your Honor such and such a thing to represent
9 such and such a thing, then they ask me on the other side,
10 "Why, what did his Honor tell you upon different occasions?"
11 That would be no cross-examination of that point. They
12 could ask me, "What did you tell him upon other occasions
13 in regard to the subject only" but they can say to him,
14 "Didn't you tell him upon other occasions, prior to the
15 14th day of January--" that is the question at issue.
16 Now, didn't you tell him prior to the 14th day of January
17 that he shall say to Mr. Ford that a third party had given
18 you the money, that the party was from San Francisco or from
19 Chicago--that is true, but they cannot ask this witness,
20 "What did Franklin say to you?" or on the denial of the
21 witness that he made a suggestion of that kind to Franklin,
22 there is no use throwing dust upon a proposition of that
23 kind and trying by any sort of artifice or by any sort
24 of sophistry, your Honor, to get in here declarations of
25 Franklin to this witness in the guise of cross-examination
26 as a question as to whether or not Davis suggested to him

1 a certain state of facts or not. Is there any trouble to
2 reason that out?

3 MR. FORD. There is one other ground, if the court please--

4 MR. APPEL. I thought we were going to stop this.

5 MR. FORD. There is one line of authorities I was going
6 to name. It has been argued to this court that is, where
7 a part has been introduced the whole conversation may be
8 introduced and one conversation about a person and about
9 whom he is testifying, all of that conversation may be
10 introduced in order to explain that evidence, presumably
11 to enable the jury to decide by comparison with the other
12 conversations whether the witness is telling the truth
13 as to the particular conversations or not, and to explain
14 it, and that matter has been argued fully to this court and
15 your Honor has decided that parts of conversations intro-
16 duced the whole of it may be admitted.

17 MR. APPEL. I will point out the absolute undoundness of
18 that reasoning also. We did not introduce any conversa-
19 tions. They introduced the conversations themselves, your
20 Honor. We put the witness on to deny that state of facts.
21 Franklin said on direct examination that Darrow had given
22 him the money and it is true that on Cross-examination we
23 had a right to ask him, "Didn't you tell Engle or others
24 naming the witnesses--"

25 MR. FORD. Engle, who is that?

26 MR. FREDERICKS. You mean Dingle?

1 MR. APPEL. If that is not his name I will call him by any
2 other name. We are all liable to make these mistakes--
3 THE COURT. It is of no consequence.

4 MR. APPEL. It is of no consequence, your Honor. Now, let
5 us see the reasoning of these gentlemen. We did not intro-
6 duce those conversations, we did not ask this witness as
7 to the conversations or to any particular conversations he
8 had with Mr. Franklin, they introduced Mr. Franklin and he
9 said that Darrow gave him this money. On cross-examina-
10 tion we have, as a matter of right, to say to him, "Didn't
11 you tell others, didn't you tell Johnston, for instance,
12 didn't you tell others, that a third party had given you
13 the money? Didn't you describe that third party? Didn't
14 you say that if you could get time, if you could get a few
15 weeks or thirty days, didn't you send work to Mr. Ford that
16 if you could get a little time that you could get that man,
17 that you could come through and show him who gave you the
18 money; that you had engagements with him and he had not kept
19 them, you had been trying to find him since your arrest and
20 you had not been able to do it, didn't you describe a man,
21 didn't you point to a third party as a party who gave you
22 the money?" It is right and just that we should ask him
23 on cross-examination, and he says, "No, no, it was this
24 way, I did say that," he couldn't deny it that he had said
25 it, because he had said it to many--"but Davis and Darrow,
26 down there on the 14th day of January, told me to say that,

1 to try to make Ford believe that and Mr. Davis suggested to
2 me that if I made that statement and made Ford believe that
3 it would leave Darrow out of any complicity in the commis-
4 sion of this offense", and that is the language of the
5 record. He said that, that is, he denied that he did
6 say so of his own accord, and how does he get out of it?
7 By putting it upon Davis and Darrow, that they fabricated,
8 they made up that story, which would have been, your
9 Honor, the most terrible evidence against Mr. Davis and
10 against Mr. Darrow. We did not introduce the conversa-
11 tion; if we bring Mr. Davis upon the stand and ask
12 him, "Did you suggest to Mr. Franklin that he should make up
13 such and such a story and say that?" And Davis says, "No."
14 Now, the witness Franklin, having said that was suggested
15 to him upon two or three occasions, we then say to Mr.
16 Davis, "Did you suggest that to him upon that day or
17 upon any other time and place or any other time" and the
18 witness says, "No." Now, what becomes of the theory of
19 the District Attorney when we introduce a conversation, the
20 whole of the conversation may be introduced. The whole of
21 the conversation had, on the 14th day of January, has been
22 interrogated of this witness and he has given it to you a
23 little while ago and we made no objection. Now, if I
24 call Mr. Davis's attention to any other time included in the
25 statement of Mr. Franklin that he suggests it to him two or
26 three other times prior thereto, and if it was suggested

1 to him after the 14th day of January, it would not have
2 any significance here, because Mr. Franklin says on the 14th
3 day of January this story was invented, but to contradict
4 him we asked him whether or not he had made a statement of
5 that kind to Mr. Johnston two days prior to the 14th, to
6 show the absurdity of his testimony, and he admitted he
7 had such a conversation with Mr. Johnston two days before
8 the 14th, when he was supposed to be his attorney then,
9 your Honor. Now, we introduced no conversation on the part
10 of this witness; we introduced contradictions, flat-
11 footed contradictions, perfectly responsive to the attitude,
12 to the position of Mr. Franklin here upon the stand. Now,
13 they want to ask him, "What did Franklin say to you upon
14 other occasions?" Is that pertinent? Is that connected
15 with the testimony of this witness so that it may be
16 cross-examination? Can they, under such an excuse as
17 that, undertake to go into all that Franklin said to him
18 here? Now, if your Honor please, we do not want anybody
19 to think that this witness, or that we are afraid that
20 this witness is going to say that Franklin at any time
21 told him that Mr. Parrow had given him any money. It is
22 not that, or gave him the particular money in question; it
23 is not that; it is this: that under the guise of this
24 cross-examination they undertake to bring in here a whole
25 lot of irrelevant matter which may possibly, if your Honor
26 please, upon redirect examination extend this examination

1 forever, and try other additional issues which were not
2 introduced here by the prosecution themselves. We are
3 here with this witness responding to a situation put here
4 before the jury by the District Attorney, and no more, and
5 any other declarations made by Mr. Franklin to him, I say,
6 is hearsay and is not proper, it is not cross-examination.
7 THE COURT. I want to make a brief examination of the trans-
8 cript before ruling on the objection, and I will do that
9 during the recess.

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1 MR FORD: Before your Honor takes a recess, I want to call
2 your Honor's attention to another authority, in the case of
3 People versus Doyell --

4 MR APPEL: I do not wish to interrupt counsel, but --

5 MR FORD: I do not want to argue.

6 MR APPEL: Of course, your Honor has a right to hear counsel,
7 but I submit, if he does argue that we have a right to
8 respond; that is all, and this argument will be indetermi-
9 nable.

10 MR FORD: I want to cite your Honor a case, the case of
11 People versus Doyell, in the 48th Cal., which relates to
12 fabricated testimony.

13 THE COURT: yes, I have had my attention called to that
14 several times during the trial.

15 Gentlemen of the jury, bear in mind your former admo-
16 nition. We will take a recess for 15 minutes at this time..

17 (After recess.)

18 (Le Comptee Davis on the stand.)

19 THE COURT: The objection of the defendant is sustained.

20 A I think I remember, you said the next conversation I
21 had with him.

22 MR FREDERICKS: Well, then, we will go back a step.
23 You have narrated the conversation in the city jail.
24 Did you ask him at that time where he got the \$4000?

25 A I did not.

26 Q Did he tell you? A He did not.

1 Q I presume the court means that that objection will
2 stand to this line of questions?

3 THE COURT: Yes sir, that is the purpose of it; the pur-
4 pose of hearing the long argument on it.

5 MR FREDERICKS: When, if ever, did you first learn where
6 he got the \$4000? A I never learned where he got it,
7 actually.

8 Q Do you know of your own knowledge whether or not he
9 ever went to Governor Gage's office and consulted him
10 in regard to the facts of his case? A I have seen him
11 there, and have seen him when he said he was going there,
12 and coming back, but as to the consultation he held with
13 the Governor, I don't know of my own knowledge.

14 Q You don't know whether he ever had any or not, of your
15 own knowledge? A No sir.

16 Q Who else were attorneys for Mr Franklin, say, at the
17 time he plead guilty? A I don't know unless I would say
18 that Mr George Adams and yourself; I don't know.

19 Q Well, was Mr Appel also his attorney that morning,
20 when he plead guilty? A I saw Mr Appel there, but if he
21 was, he came into the case without any consultation with
22 me about it.

23 Q Now, let's see; we have got the conversation of the
24 14th. Did he say anything at that conversation on the 14th
25 about having gotten this money from some stranger, compara-
26 tive stranger? A Except he referred to it in the manner

1 that I said, that if he told Mr Ford the truth about it,
2 that -- he told Colonel Johnston that if he told Mr Ford
3 the truth about it, he would not believe him.

4 Q Well, he had talked it over with you about having
5 gotten this money from a stranger, and you think that is
6 what he referred to? A Well, this is what he said to me
7 on ~~that~~ subject. If you want me to say and the court
8 rules I have to --

9 THE COURT: I don't think there is any privilege here at
10 all, Mr Davis, as far as that is concerned.

11 A At the time of the preliminary examination at which
12 time Governor Gage and I were representing him --

13 MR FREDERICKS: Of the Lockwood or the Bain? A When
14 the testimony -- Lockwood case, I think it was -- or Bain,
15 I won't be sure -- whichever one was held first --

16 MR FORD: That is the Lockwood. A When the statement
17 was made that the money was paid to Mr White by Mr Franklin,
18 on the way back I asked him if Captain White -- if they
19 could prove by Captain White that the money was paid to
20 him by him, Franklin, and he said, "I guess they can come
21 pretty near it." Well, I said, "Who gave it to you?"
22 Well, he said, "The party that gave it to me they will
23 never get; he is not in the city." Then, you will remem-
24 ber, I presume, Mr Fredericks, I spoke to you about it
25 and told you I thought if you wanted to get the right
26 party you would have to look for a third party, and you

1 and I held quite a long consultation about it.

2 Q Well, you were Mr Franklin's attorney at that time?

3 A yes, but I didn't tell you what Mr Franklin said.

4 Q I know that. A I gave you what my opinion was about it.

5 Q But you were not dealing with the District Attorney
6 at that time and giving him any information that would
7 be of any particular use and comfort to him, were you, on
8 that subject? A I don't know; you were insisting at
9 that time that -- said to me that on the connection of
10 Mr Darrow with it -- I was saying I didn't think he had
11 anything to do with it, if anybody gave it to him it was a
12 third party, and I gave you my reasons for thinking so,
13 with the exception of what Mr Franklin had said to me.

14 Q Well, that story of a third party, then, was a differ-
15 ent story from the one that Franklin first gave you
16 down in the jail, was it not?

17 MR APPEL: Wait a moment. I object on the ground it is
18 assuming a state of facts not testified to by the wit-
19 ness, or that Franklin told him anything down to the jail
20 about the third party. The witness just testified a
21 little while ago, your Honor, that Mr Franklin did not
22 tell him from whom or what person he got the \$4000, and
23 he says the only time he ever heard about it from Mr
24 Franklin or asked him in referance to the matter was this
25 time at the preliminary examination, one of those two
26 cases, and the question assumes that he and Mr Franklin

1 had told Mr Davis down at the jail anything in reference
2 to that matter. Upon the other ground, it asks for an
3 opinion or conclusion of the witness, not cross-examina-
4 tion in that respect. He cannot tell --

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13s 1 THE COURT. I think it is calling for a conclusion or
2 opinion. I think it is not competent. Objection sustained
3 on that ground.

4 MR. FREDERICKS. Q You remember having a conversation with
5 Mr. Ford up in your own office just before you went before
6 the grand jury in which you said, "Well, if Darrow is guilty
7 I hope you don't get him."

8 MR. APPEL. Just a moment--let me hear that question.
9 (Last question read by the reporter.)

10 MR. APPEL. Now, we object to that question, your Honor,
11 upon the ground that it is incompetent, irrelevant and
12 immaterial and not cross-examination, and simply trying
13 to introduce a hypothetical condition of things which
14 would not be evidence one way or the other; statement
15 based upon a mere probability or possibility, if, if.
16 It isn't the assertion he was guilty; it is not the as-
17 sertion of a fact, it is simply the expression of a wish,
18 a desire, based upon a possibility of such a thing and
19 if. I submit it is not cross-examination.

20 MR. FREDERICKS. Shows the witness's feelings, that is all.

21 MR. FORD. Shows the witness's friendship for the defendant.

22 THE COURT. You will have to lay a foundation for that.

23 MR. FORD. We have a right to show a witness is extremely
24 friendly to the defendant. We are not required to ask
25 him in any particular manner or form. We can show it by
26 acts and declarations as well as by asking him the straight

1 question. We have a right to prove it by any competent
2 evidence. The Code provides the precise facts in dispute
3 may be proven or any other fact from which that fact may be
4 logically deducted, and in this case, a witness said
5 even if Mr. Darrow is guilty I hope you wont get him, or
6 you wont convict him, that would be an expression from which
7 the jury might draw the logical deduction that this witness
8 is extremely friendly to Mr. Darrow. Now, we are not
9 required to ask him, are you friendly or unfriendly. The
10 question was about a conversation in your office just before
11 you went before the grand jury. That is the foundation as
12 to the time, place and persons present.

13 MR. APPEL. I am not talking about that foundation. I am
14 talking about this foundation: They raise an issue here
15 in their own minds; they have not asked the witness whether
16 he is very friendly, unfriendly or extremely friendly to
17 the defendant or not. They have not asked him whether his
18 desire is that Mr. Darrow be acquitted or his attention is
19 not called to any declarations that might contradict a denial
20 on the part of the witness, and that is the foundation that
21 is always--that is, they must raise an issue; are you
22 friendly or unfriendly to the defendant? Are you extreme-
23 ly desirous he should be acquitted? The witness says,
24 "No, I am not desirous he should be acquitted," then they can
25 say, didn't you say so and so at such a time? They must
26 raise an issue in order to call for declarations tending

1 to prove the fact or what the witness may assert about a
2 party, that is the way to raise the issue.

3 MR. FORD. We are not seeking to impeach the witness on
4 this point.

5 MR. APPEL. The code says that any assertion which may
6 prove a specific fact in dispute--there is no fact in dis-
7 pute that can be proven by any declaration of the witness
8 here.

9 MR. FORD. We are not seeking, if the court please, to
10 impeach the witness, we are seeking to introduce a piece
11 of evidence from which the jury may conclude the relations
12 that existed between this witness and the defendant. Now,
13 we don't have to ask a straight question. We can ask about
14 any facts which will throw any light upon the subject. We
15 don't have to ask the witness if he is friendly or un-
16 friendly, and seek to impeach him if he doesn't give a
17 satisfactory answer. We can put a set of facts to the wit-
18 ness and let the jury conclude what his feelings were.

19 THE COURT. The Court has ruled on that question several times
20 in this case and I think in this particular matter. If not,
21 objection sustained.

22 MR. FREDERICKS. Q you did talk to Mr. Ford in regard to
23 having Mr. Franklin plead guilty, did you not, Mr. Davis?

24 A yes, sir.

25 Q were you representing Mr. Franklin at the time? A I was.

26 Q Did you talk with Mr. Franklin and get his consent to

1 plead guilty? A No, I did not. Mr. Franklin maintained
2 his innocence to me for a long long time until practically
3 he went to plead guilty. I think he will say so.

4 Q you say he maintained his innocence for a long, long time
5 but he finally ceased to maintain his innocence to you,
6 did he not? A The day he came up in to court and I was
7 sitting in Judge Willis's chambers, he came in, was the
8 first time he told me he was going to plead guilty.

9 Q Well, is that the first time that he told you that he
10 told you he was guilty? A It is the first time that he told
11 me he was guilty.

12 Q Then why were you seeking to secure or see what could
13 be done if he did plead guilty if you didn't know if he
14 was or not? A Simply from the evidence in the case, con-
15 vinced me that he was guilty.

16 Q Didn't Mr. Ford tell you in one of these negotiations that
17 he would accept a plea of guilty of Franklin and extend
18 leniency to him, providing Franklin would tell him where
19 he got that \$4,000?

20 MR. APPEL. Wait a moment--we object to that as immaterial
21 and hearsay and not cross-examination. Whatever the Dis-
22 trict Attorney said to him cannot be given in evidence.
23 That is sort of a self-serving proposition.

24 THE COURT. Let me have that question again.

25 (Last question read by the reporter.)
26

1 MR ROGERS: Your Honor please, it is well to bear in mind
2 on the testimony of Franklin himself, is that on the 14th
3 day, your Honor, he met a man named Dingle, as he left
4 the office, and at which a conversation occurred between
5 himself and Mr Davis. Thereupon, I think that night or
6 the succeeding night, the record will show, very close
7 to the same night, and he got into communication with Mr
8 Ford, and from that time on, day after day, at the same
9 time: that he was supposed to be telling Mr Davis some
10 one thing and another, he was really acting for Mr Ford,
11 under his direction, and, on the 25th --

12 MR FREDERICKS: These questions refer to a time before
13 that, if Mr Rogers --

14 MR ROGERS: Before the 14th of January?

15 MR FREDERICKS: Yes, they refer to the time before that.

16 MR FORD: I don,t think counsel wants to misstate the tes-
17 timony. The testimony says that Franklin made a written
18 statement on January 25th it was not until two nights
19 before that he had told Ford anything.

20 THE COURT: You can argue the testimony to the jury when
21 the time comes, bjt not now. Let's have that question.
22 There seems to be a misunderstanding as to the date.

23 MR FREDERICKS: I will fix the date, before the 14th
24 of January.

25 MR D ARROW: I would just like to correct that statement--
26 Mr Ford has a habit of making so many: Mr Franklin swore

1 that he testified before the grand jury on the 20th.

2 MR FORD: The 29th.

3 MR DARROW: The 20th, the record shows it.

4 MR FORD: The record is wrong then.

5 MR ROGERS: Anything he said after he began these nego-
6 tiations with Mr Ford --

7 MR FORD: If the record shows that Franklin testified be-
8 fore the grand jury on the 20th --

9 THE COURT: Let's get the question now.

10 MR FORD: I think that is an error in the record that has
11 got to be corrected.

12 THE COURT: Read the question now. (Last question read
13 by the reporter.) Now, the time to which this question
14 refers is fixed at a time prior to the 14th day of Jan-
15 uary.

16 MR FREDERICKS: yes.

17 THE COURT: All right. Answer the question.

18 MR DARROW: Exception.

19 A I think he did.

20 MR FREDERICKS: Did you communicate that to Mr Franklin?

21 A I do not think I did, I do not think I said anything
22 to Mr Franklin at that time about entering a plea of guilty
23 for him, he had said he was innocent.

24 Q Why didn't you tell that to Franklin, if you recall what
25 the reason was? A I may have said it, although I don't
26 have any recollection now, whether I did or not.

1 Q Have you any recollection as to whether Franklin ever
2 said anything in reply to that, if he did say it? A At
3 that time?

4 Q Yes. A No, I do not have any recollection of
5 taking up anything definitely with Mr Franklin until
6 after that.

7 Q It was not because you didn't want Mr Franklin to tell
8 where he had gotten the \$4000, was it, Mr Davis, you
9 didn't report this to him? A I didn't care whether he
10 did or not, it was a matter with him.

11 Q Didn't you tell Mr Ford that if that contingency hap-
12 pened and Mr Franklin plead guilty, he would only do so
13 on condition that the entire investigation of the bribery
14 matter was ended and stopped?

15 MR APPEL: We object to that on the ground it is not cross-
16 examination, it is incompetent, irrelevant and immater-
17 ial, calling for hearsay evidence, not in the presence of
18 the defendant, not binding upon the defendant.

19 THE COURT: objection is sustained.

20 MR FREDERICKS: Now, there was a conversation you testi-
21 fied to on direct examination which you had with Mr Franklin
22 the next day after his arrest. Do you remember where that
23 was and who was present? A What was the conversation,
24 Captain? I have forgotten now.

25 Q Well, I just have made a note here you had a conver-
26 sation with Franklin, you were testifying to having a

1 conversation with Franklin on the next day. Do you
2 remember having such? A Oh, I had a conversation, cer-
3 tainly, with him, the next day.

4 Q As your direct examination was confined only to conver-
5 sations you had when there were third persons present,
6 this must have been probably one where Mr Darrow was pre-
7 sent. Do you remember having a conversation when Mr Dar-
8 row was present the next day after Franklin's arrest?

9 A (No response.)

10 Q Well, I will jump over that. Maybe it will come to
11 you. A I cannot recall. I think what they inquired
12 of me about on the direct examination, if Mr Franklin
13 said a certain thing about Mr Darrow, on the next day, is
14 what I think I was interrogated about. I have no definite
15 recollection of what the conversation was.

16 Q Do you remember a conversation now, which you had
17 with Mr Franklin the next day after his preliminary exam-
18 ination?

19 MR DARROW: Well, where do you refer? I object unless he
20 states where and calls his attention to it.

21 THE COURT: Objection sustained.

22 MR FREDERICKS: I do not care enough about it to look it
23 up.

24 Q This man that came to you and told you about Diekel-
25 man, was Billy Gannan, wasn't it? A He didn't come
26 to me at all; he came to Mr Darrow.

1 Q Did you see him at all? A He took me into the room
2 where he was; I didn't know his name. I can give some-
3 what of a description of him, but I couldn't tell you his
4 name.

5 Q Well, try your hand at a description. A I think he
6 was a man built something like Mr Timmons back there.

7 Q Rather slender, about 150 pounds? A And stood rath-
8 er erect, yes, and my recollection is that he had a slight
9 mustache; I won't be sure.

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15p 1 Q And age about what? A I would say anywhere from 27 to
2 37.

3 Q Did you ever hear of Billy Gannan? A If I have ever
4 heard of him, I don't recall the name or anything I heard
5 about him.

6 Q You were not present in Chicago when Mr. Darrow had a
7 conversation with George Behm at any time ever, were you?

8 A I was not.

9 MR. FREDERICKS. I think that is all.

10
11 REDIRECT EXAMINATION.

12 MR. APPEL. Q Mr. Davis, one question I wish to ask you.
13 Don't you remember that when Mr. Franklin came in before
14 Judge Cabaniss and entered his plea that you and I were
15 then engaged in trying the case of People against--

16 A Connors?

17 Q One of those Connors cases? A Yes.

18 Q It was not the Connors case, but the other one?

19 A The Maple case.

20 Q The other one.

21 MR. FORD. Bender.

22 Q The Bender case, and we were examining the jury at
23 that time? A Yes.

24 Q And had I ever appeared in court for Mr. Franklin in any
25 of those cases? A You never did and you never have, so
26 far as I know, at any time.

1 Q Don't you remember that Mr. Franklin at that time stood
2 near Mr. --that Mr. Ford went into Judge Cabaniss's chambers
3 and then came out and Mr. Franklin came and stood over by
4 the side of Mr. Ford, and there was no one representing
5 him in entering his plea, that Mr. Ford took charge of the
6 whole matter there in court? A He took charge of the--
7 MR. FREDERICKS. We object to that as calling for the con-
8 clusion of the witness.

9 THE COURT. Objection sustained.

10 MR. APPEL. Exception.

11 Q Isn't this the fact, that whatever was said on behalf
12 of Mr. Franklin was said by Mr. Ford?

13 MR. FORD. We object to that as calling for a conclusion of
14 the witness, as to whether anything that was said was said
15 on behalf of Mr. Franklin.

16 THE COURT. Objection sustained.

17 MR. APPEL. We take an exception. We offer to show now, in
18 view of the cross-examination of the witness upon the
19 matters as to who represented Mr. Franklin at the time of
20 entering his plea, we offer to show that Mr. Franklin came
21 in there, into that court room, and that Mr. Ford appeared
22 there upon the scene, calling there, went into Judge
23 Cabaniss's chambers, that he came out, that the case on
24 trial then was interrupted for some moments in order to
25 take the plea of Mr. Franklin and that Mr. Franklin was then
26 represented by no one except Mr. Ford.

1 THE COURT. You may make the showing.

2 MR. APPEL. I offer to show that.

3 THE COURT. But not by conclusions of the witness, but
4 by statements of what was said and done.

5 MR. FORD. We have no objection to counsel showing it
6 by competent and relevant facts, by competent testimony.

7 MR. APPEL. We offer to show that by the witness.

8 MR. FREDERICKS. We maintain, your Honor, that it is en-
9 tirely immaterial.

10 MR. APPEL. The insinuations came here, you know, I was
11 representing this man.

12 THE COURT. The Court has held that you may make the
13 showing.

14 MR. APPEL. I want to show he was the only person repre-
15 senting Franklin.

16 THE COURT. You can show he was.

17 MR. APPEL. Well, then, we will put Judge Cabaniss upon the
18 stand.

19 MR. FREDERICKS. If Appel says he was not representing
20 him--

21 MR. APPEL. Then I ask why--

22 MR. FORD. I will tell you why. I had a copy of the court
23 records made and I noticed, much to my own surprise, ac-
24 cording to that record, Mr. Franklin was represented in
25 court by attorneys LeCompte Davis and H. H. Appel.

26 MR. APPEL. We are not responsible--

1 MR. FORD. That probably is true, but we have not offered
2 it as evidence.

3 MR. APPEL. We are not responsible for incompetencies--

4 MR. FORD. If you will permit us to make an explanation--

5 MR. APPEL. You knew it was not true.

6 MR. FORD. I didn't know anything about it until I saw
7 it in the record.

8 MR. APPEL. You knew very well I had nothing to do with
9 this case.

10 MR. FORD. Captain Fredericks has just said that if
11 you say you were not his attorney let it go at that.

12 MR. APPEL. I do say it, your Honor, I never was his attor-
13 ney, and, furthermore, I will say right here, your Honor,
14 that man talked to me from day to day as his friend and
15 I have kept his confidence as sacred as if I had been his
16 attorney and I never uttered a word of what he has said
17 to me, either as attorney for Mr. Darrow or any other living
18 man--he came to me--

19 THE COURT. Under the stipulation of the District Attorney,
20 Mr. Appel's statement is accepted as if it were made under
21 sworn testimony.

22 MR. APPEL. If they desire to call me as to what he said,
23 I will do so.

24 MR. DARROW. If your Honor will excuse me just a moment, I
25 want to call counsel's attention to the statement I made,
26 which is to be found on page 1371, Volume 18.

1 MR. FREDERICKS. A question of fact?

2 MR. DARROW. Yes, as to Franklin, as to the time he appeared
3 before the grand jury.

4 MR. FORD. Mr. Darrow, after consultation--I was under the
5 impression he went there on January 29th, the date the
6 indictment was returned; I may be mistaken and if I find
7 during the night it was the 20th instead of the 29th I
8 will announce it in court.

9 MR. DARROW. I want to read it right now.

10 THE COURT. Let us see about this witness, he is very
11 anxious to get away.

12 MR. DARROW. It came up here in connection with the witness.

13 THE COURT. All right.

14 MR. FORD. If the record shows at the present time in
15 regard to what Mr. Darrow says, it was on the 20th, and that
16 is a fact, I do not see any necessity of reading it.

17 MR. DARROW. I want to show it.

18 MR. ROGERS. Counsel said the 29th and we want to show
19 the record says the 20th.

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1 MR FREDERICKS: We don't care whether it is the 29th or
2 the 20th.

3 MR DARROW: We care.

4 THE COURT: I will hear from you, Mr Darrow.

5 MR DARROW: On page 1371 Mr Franklin says: "I have a mem-
6 orandum here which shows I appeared before the grand jury
7 on January 20th, 1912". Mr Appel then says, "I offer
8 this in evidence, your Honor; I will read it, with your
9 Honor's permission (reading) 'January 20, 1912. Home in the
10 morning. In the afternoon went before the grand jury,
11 later to track meet.'"

12 MR FORD: I think probably that is correct, and I was
13 mistaken, your Honor, when I made the statement a few
14 minutes ago as to the date. However, I will look it ^{up} and
15 affirm it in the morning if necessary.

16 THE COURT: All right.

17 MR APPEL: Mr Davis, on cross-examination, the statement
18 was brought out from you that after Mr Franklin had inform-
19 ed you about the third party having given him the money
20 and he was not in the city you informed Mr Fredericks of
21 that fact. Didn't Mr Fredericks at that time say to you
22 that Mr Browne would go to San Francisco? A I didn't
23 inform Mr Fredericks that Mr Franklin had said so.

24 Q That you said to him a third party -- A What?

25 Q That a third party, he better look for a third party?

26 A I told him, in my opinion, he better look for a third

1 party.

2 MR ROGERS: A little louder. A I told him, in my opinion
3 he better look for a third party. He never said any-
4 thing about Mr Browne going to San Francisco, but I saw
5 by the press a day or so afterwards he was going there for
6 that purpose, that Mr Browne said he was looking for a
7 third party.

8 MR FORD: I move to strike out the last part of the wit-
9 ness' answer, as not responsive to the question, as being
10 hearsay, what Mr Browne had said in the newspaper.

11 THE COURT: What Mr Browne said will be stricken out.

12 MR FORD: And what the newspaper said, will be stricken out
13 also, your Honor? What the witness saw in the newspaper
14 is not responsive to the question, and certainly is not
15 competent testimony.

16 MR APPEL: It is only fixing the time of the conversa-
17 tion. Whatever was said in the newspaper is not evidence.

18 MR FORD: We have not got the date of the newspaper, so
19 that does not fix anything.

20 THE COURT: Strike it out.

21 MR APPEL: All right.

22 Q Now, Mr Davis, there is a matter here which may possi-
23 bly left in confusion and I beg leave to ask you this
24 question: When did you assent or consent to the plea of
25 guilty of the McNamaras? A On Sunday night, when Judge
26 Mc Nutt and I were talking, and he said "The boys said

1 it would be all right with organized labor", and he said,
2 "Davss, this is going to be hard enough for Dafrow any-
3 how, he has got burden enough to bear, without having you
4 objecting to it"; and he says, "that is one reason why I
5 am glad I can talk with you tonight by yourself; I think
6 you ought to come over and consent to this matter", and I
7 said, "Under the view of the boys as to what you say,
8 he being leading counsel, I am perfectly willing."

9 Q That was on Sunday before the arrest of Franklin?

10 A yes sir.

11 Q Now, on the following Monday, as you have already tes-
12 tified, the next day, Monday, after seeing MR Fredericks,
13 and reporting back to MR Darrow and the other parties and
14 having then some sort of a basis for understanding what
15 term of years J. J. McNamara would get, was there or was
16 there not a mutual assent and consent on the part of the
17 attorneys that such a plea as that should be entered, and
18 such a term of years for J. J., and J. B. should be ac-
19 cepted?

20 MR FREDERICKS: We object to that on the ground it calls
21 for a conclusion of the witness.

22 MR APPEL: I do not want to ask him what was said.

23 MR FORD: I think it has been covered fully by direct tes-
24 timony and cross.

25 MR APPEL: This is in answer to a question by the Dis-
26 trict Attorney, up to that time nothing was done and noth-

1 ing was agreed upon, and all that; he asked him a lot
2 of those questions, some of which we objected to, and some
3 we didn't object to, and this is in order to bring the
4 matter clear before the jury.

5 MR FORD: The witness has stated the facts and counsel
6 cannot ask the witness' opinion.

7 MR APPEL: I will ask him in this way: when you came back
8 from Mr Fredericks' office, and stated to Mr Darrow or to
9 Steffens and to the other attorneys if there were any
10 others there, that Mr Fredericks had suggested that the
11 term of years that he would recommend for J. J. McNamara
12 as to punishment would be, say, 10 years, and with a life
13 sentence for J.B., I will ask you whether or not at that
14 time anyone connected with the defense, including espec-
15 ially Mr Darrow, rejected or dissented or said anything
16 contrary to their acceptance of that proposition or not.

17 MR FORD: We object to that on the ground that the portion
18 which refers to the words "rejected or dissented" calls
19 for a conclusion of the witness; on the further ground
20 that the matter has been fully covered on direct examina-
21 tion and cross-examination as to the actual facts there.

22 MR APPEL: I am asking whether such a thing occurred, and
23 he can say yes or no, and then I can ask him what was said.

24 MR FORD: The objection is it is fully covered insofar as
25 it is competent.

26 THE COURT: The objection is overruled, and the witness may

1 answer yes or no. A No.

2 MR APPEL: Now, what did they say then, upon your giving
3 them that information that you got from Mr Fredericks?

4 MR FORD: We object to that on the ground it is fully
5 answered on direct and cross-, and it is not redirect
6 examination.

7 THE COURT: The objection is overruled.

8 A Well, as I said, Mr Appel, they instructed me to go
9 ahead and bring negotiations to a settlement to get J.J.
10 off if possible, and if not, to get any less term than
11 ten years, and if I could not get any less than that to
12 take the ten years and life for J.B.

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17p 1 Q Then as I understand, the instructions given to you by
2 Mr. Darrow and the other gentlemen were to the effect you
3 should make such arrangements, if possible, to get J J with-
4 out any punishment or if not to get a less term than 10
5 years, and if not possible to enter a plea or to arrange
6 for the entering of a plea of guilty on the part of both
7 McNamaras and accept the 10 years punishment for one and
8 the large imprisonment for the other, is that right?

9 A Yes, sir.

10 Q Did you assent to that? A I did, or I would not have
11 gone and negotiated it.

12 Q There is one fact I did not touch upon on direct examina-
13 tion. Do you remember having any settlement with Mr.
14 Franklin sometime late in December, after the plea of
15 guilty--or early in December after the plea of guilty by
16 the McNamaras, having a settlement concerning his claims
17 for work and labor and so on? A I do.

18 Q Did you then have a settlement with him on behalf of the
19 defense? A I paid what he said was due and owing to him.

20 Q Did he at that time or at any other time prior to that
21 time furnish a statement of his expenses or what was actually
22 due him, that is by figures? A No, not in writing, but
23 he stated that they owed him about so much, so much money
24 he had paid out to these people that had made the reports
25 for him and so forth, and he didn't go into any extended
26 or minute details of the business, but he said there was

1 so much due and I asked Mr. parrow and he said that he
2 thought that he had about that amount.

3 Q Who paid that? A I did.

4 Q Was that paid for any other purpose or for and on ac-
5 count of any other matter except to settle what Mr. Franklin
6 then claimed to be justly due him for labor and services
7 performed, prior to the 28th day of November, 1911?

8 A For no other purpose. I paid him and took his receipt.
9 MR. APPEL. That is all.

10
11 RE-CROSS-EXAMINATION.

12 MR. FREDERICKS. Q Paid him according to his own figures?
13 There wasn't any dispute? A I didn't do it until I went
14 and asked Mr. parrow if they were correct.

15 MR. FREDERICKS. Q Mr. Darrow reimbursed you for what you
16 paid him? A Yes, I got the money from Mr. parrow, I think,
17 to pay him.

18 Q How much was the final settlement? A I think the
19 final settlement was \$1500, I don't know. I paid him on
20 two or three different occasions.

21 Q Never was any further dispute whether any more was owing
22 him? A Never was any further dispute.

23 Q You thought that money was honestly due him when you
24 paid it to him, did you? A I thought so, both said it
25 was.

26 Q Mr. Darrow thought so, and did he state so? A I told

1 him that Mr. Franklin said there was that much due to him,
2 and he wanted, if he could get it or part at a time.
3 Mr. Darrow said it was, that he thought that was about
4 right.

5 Q Mr. Darrow thought it was about right? A I don't know
6 whether he thought it was just or not. I never asked him.
7 I never cared.

8 Q You didn't think that he was working for the National
9 Erector's Association?

10 MR. APPEL. We object to that. This witness has said
11 nothing in regard to what Mr. Franklin--

12 THE COURT. Objection sustained.

13 MR. FREDERICKS That is all.

14
15 F L E T C H E R B O W R O N,

16 called as a witness on behalf of the defense, having
17 been first duly sworn, testified as follows:

18 DIRECT EXAMINATION.

19 MR. ROGERS. Q Your name, please? A Fletcher Bowron.

20 Q Where do you reside? A Los Angeles.

21 Q And the street and number? A 356 South Bunker Hill.

22 Q What is your business or occupation? A Newspaper repor-
23 ter.

24 Q And with what paper are you now connected? A Los Angeles
25 Examiner.

26 Q How long have you been in the newspaper business?

1 A Why, I don't recollect just now, some several years,
2 about three, I think.

3 Q Do you know Bert H. Franklin? A I do.

4 Q Do you know Harrington? A I do.

5 Q John R. Harrington? A I do.

6 Q Did you ever have a conversation with John R. Harrington
7 relative to Mr. Darrow? A I have.

8 Q Did Mr. Harrington tell you--did he say when he was wait-
9 ing as a witness or to be called before a grand jury that
10 he knew absolutely nothing against Mr. Darrow and couldn't
11 tell anything against him of any kind, that he knew of
12 no corruption or bribery of any sort, or words to that
13 effect or in substance? A Substantially that, yes.

14 Q Now, that was while he was waiting to be called as a
15 witness before the county grand jury in February?

16 A I believe it was February; I am not sure as to the
17 date.

18 MR. ROGERS. That is all.

19 MR. FREDERICKS. That is all.
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1 MRS ANNE HARTENSTEIN, a witness called on
2 behalf of the defense, being first duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION

5 MR DARROW: What is your name? A Mrs Anne Hartenstein.

6 Q Where do you live? A 1715 East Forty-Third street.

7 Q What is your business? A Stenographer.

8 Q Were you employed by the defense in the McNamara case?

9 A I was.

10 Q Do you remember who employed you? A Mr Harriman
11 originally engaged me.

12 Q And about when -- it doesn't make any difference, the
13 exact time? A The early part of the case; I don't rem-
14 ember exactly when.

15 Q Now, during a considerable portion of the time where
16 was your office there in the building? A 923 Higgins Build-
17 ing.

18 Q That was the room between my office and Mr Harring-
19 ton, was it not? A Yes sir.

20 Q And on the opposite side of the hall from Mr Harriman?

21 A Yes.

22 Q You did work for all the people there, more or less?

23 A All who came around and asked for it.

24 Q Did you know Bert Franklin? A I saw him come in and
25 out there, yes sir.

26 Q And of course you knew Mr Harrington well? A Yes

1 sir.

2 Q Do you know whether Mr Franklin went into Mr Harring-
3 ton's room at different times, or whether they were togeth-
4 er? A Yes.

5 Q Often or not? A Almost every day, when Mr Franklin
6 came in.

7 Q How would you happen to see them together? A If I
8 had occasion to go in there or go out of my room, or
9 when I would see them come in.

10 Q And up to what time did that continue? How late, up
11 to what time was it, the end of the case, or what time?

12 A Why, the day Mr Franklin was arrested.

13 Q Did you have any conversation with Mr Harrington
14 on the day of Franklin's arrest, do you remember? A Yes
15 sir

16 Q On the afternoon that Franklin was arrested, did Mr
17 Harrington say to you that he had no knowledge or intima-
18 tion of any kind of any bribery or corruption in the Mc-
19 Namara case, or any suspicion of it? A Yes sir.

20 Q Where were you at that time? A In Mr Harrington's
21 room.

22 Q Did you have any other conversations with him about
23 this matter later? A Sometime later, yes sir, about a
24 week or so.

25 Q Now, later than that, in the month of December, did
26 you have some conversations with him?

1 MR FORD: We object to that as incompetent, irrelevant
2 and immaterial, and no foundation laid.

3 MR DARROW: 2840.

4 THE COURT: Objection overruled.

5 MR DARROW: 2840, about the middle of the page. Did Mr
6 Harrington say to you later than that in December, at
7 different times, that he did not believe Mr Darrow ever
8 had anything to do with trying to bribe any juror?

9 A yes sir.

10 MR DARROW: That is all.

11

12 CROSS-EXAMINATION

13 MR FORD: The first time you talked with Mr Harrington,
14 what was the words that he used? A I don't remember the
15 exact words.

16 Q What were the words that he used? A I don't remember
17 the exact words.

18 Q I see the exact words -- Didn't Mr Harrington say to
19 you, "I had no knowledge that there was any corruption
20 going on with the jury during the pendency up to the time
21 of Franklin's arrest?" A Those are the substance of it,
22 but I don't remember the exact words.

23 Q Well, those may be the exact words -- well, that is
24 all.

25 MR DARROW: Did he say up to the time of the arrest, or did
26 he say he had no knowledge then or suspicion? A he

1 didn't mention arrest. He simply said he had no knowl-
2 edge.

3 Q And he had several conversations in the month of Decem-
4 ber.

5 MR FORD: Objected to as not redirect. I only asked
6 her one question.

7 THE COURT: Objection overruled.

8 MR DARROW: Several of these conversations in December,
9 did he? A Yes sir.

10 MR DARROW: That is all.

11 MR FORD: At that time both Mr Franklin and Mr Harrington
12 were employed by Mr Darrow in the defense? At the time
13 you had these conversations -- at the time you saw Mr
14 Franklin and Mr Harrington together, you knew that they
15 were both employed by the defense, coming in and out?

16 A Yes sir.

17 Q By the way, when did you get acquainted with Mr Frank-
18 lin, in order to know him, to know who he was? Have you
19 seen him since his arrest? A Yes sir.

20 Q Where did you see him? A On the street.

21 Q On the street. At the time you appeared before the
22 grand jury, did you know who Mr Franklin was? A I had
23 been away from the office a little while, and I couldn't
24 think right away who he was. I remembered afterwards who
25 he was.

26 Q You told the grand jury you couldn't exactly place

1 him? You had heard his name -- you couldn't place him,
2 didn't know him, didn't you? A yes sir.

3 MR FORD: That is all.

4 ---

5 FREDERICK M. WEBB, a witness called on be-
6 half of the defense, being first duly sworn, testified as
7 follows:

8 DIRECT EXAMINATION

9 MR ROGERS: Mr Webb, where do you live, sir? A West Forty
10 First street.

11 Q The number? A 1326 West Forty-First street.

12 Q What is your business or occupation? A I am the
13 president of the Lower California Onyx Company.

14 Q And you were called as a juror in the McNamara case?

15 A yes sir.

16 Q Did you go into the box? A yes sir.

17 Q Did you have the distinguished felicity to be lock-
18 ed up a while with the jury?

19 MR FORD: Objected to as calling for a conclusion of the
20 witness as to what distinguished felicity is.

21 MR ROGERS: All right, if counsel's sense of humor has to
22 be amputated, I will take it right off. Were you incar-
23 cerated or sequestered with the jury while you were in
24 the box as a talesman? A yes sir.

25 Q How long? A From Friday, about 10 o'clock, until
26 Monday, about 10 o'clock.

1 Q While you were in there was there an old man named
2 Bain in the room, one of your compatriots? A yes sir.

3 Q Companions? A yes sir.

4 Q Did you hear him talk any? A I did.

5 Q Where was that that you heard him talk -- do you
6 remember -- I am directing your attention, of course, to
7 a particular incident; a conversation which you were kind
8 enough to relate to me. I attract your attention to that
9 matter. Where was that? A Well, the conversation that
10 I overheard took place when Mr Bain was in the passageway
11 to the right and south of the north room in which we slept.

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19s 1 Q Did he talk to you? A He was not talking to me, no,
2 sir.

3 Q With whom did he talk? A I don't know the gentleman's
4 name. I didn't see the party to whom he was talking.

5 Q Now, in that conversation, I am unable to give you the
6 precise language, not having the book here--it didn't come
7 up--

8 MR. FREDERICKS. You can ask him what it was as far as we
9 are concerned.

10 MR. ROGERS. Q What did Bain say on that occasion?

11 A Well, I heard him use this expression--I heard him
12 talking of the McNamara men and he says, "In so far as I
13 am concerned, the sons-of-bitches will get all that is
14 coming to them from me."

15 MR. ROGERS. That is all.

16
17 CROSS. EXAMINATION.

18 MR. FREDERICKS. Q How do you know what he was talking
19 about? A Because I heard him talking about the McNamaras
20 and about them.

21 Q You don't know who he was talking to? A I do not, the
22 man he was talking to was in the passage to my right.

23 Q Do you remember the jury was very much annoyed by some
24 newspaper photographers during that time and one of them had
25 a picture of Mr. Bain coming after Mr. Bain with a broom,
26 you remember that? A No, sir. I was not in the United

1 States when that took place. I was on the jury for two
2 or three days and I had been away for several weeks and went
3 away immediately afterwards.

4 Q Don't you think he might have been talking about some
5 body that was annoying him? A Not unless the gentleman's
6 name was McNamara.

7 Q Did he use the word McNamara? A Yes, sir.

8 Q Or did he say McNam'ara? A Well, he used--I always
9 used the expression--

10 Q But what did he use? A McNamara.

11 Q Did he say McNamara? A McNamara, yes, sir.

12 Q What did he say again, what did you hear? A Why, I
13 have just related it Captain Fredericks.

14 Q Try it again. A Of course, it is impossible for me to
15 give--this is the substance: "In so far as I am concerned
16 the sons-of-bitches will get all that is coming to them
17 from me."

18 Q Is that everything you overheard? A Why, that is the
19 substance of what I heard and practically all I heard, yes,
20 sir.

21 Q You don't know who he was talking about, do you? A Why,
22 I heard enough before that to know he was talking of the
23 McNamaras.

24 Q What did you hear before that, that is what I want to
25 know? A All I heard was the name was mentioned, I wasn't
26 paying any particular attention to his conversation until

1 I heard the name McNamara or McNam'ara, whichever way it is
2 called, I don't know yet which way it is called.

3 Q What did you hear about that? A Well, previous to
4 that expression I heard very little other than I had
5 my attention called by the name McNamara.

6 Q I want that sentence, if you remember it, or the sub-
7 stance of it, in which McNamara was used. A Well, I have
8 related what I heard, Captain.

9 Q Yes, but what you have related as having heard didn't
10 have the word McNamara in it at all, but you say that
11 previously you overheard something, you overheard the word
12 McNamara? A I don't know that I could relate the complete
13 sentence that I heard before that because I didn't have
14 my mind directed to their conversation especially. I was
15 not listening to what they said, and my attention was called
16 to what was said when I heard the word McNamara, and, of
17 course, I listened then.

18 Q Well, was that word McNamara the end of the sentence or
19 the beginning of the sentence it had it in? A Well, I
20 don't think it was the end of the sentence. Just what
21 stage of the sentence it was in--I was busy engaged at some-
22 thing else when--

23 Q What were you engaged in? A Well, my grip had just
24 been brought down from home and I was going over the contents
25 of that.

26 Q And you didn't see the man he was talking to? A I did

1 not, no, sir.

2 Q What did you say your business was? A I am president
3 of the Lower California Onyx Company.

4 Q Is that a business that is here in Los Angeles? A Well,
5 their office is here. Their business is conducted in
6 Mexico.

7 Q Where is the office? A 702 South Spring Street.

8 Q What business is that? The name doesn't quite convey
9 to me the meaning of what the business? A We are in the
10 business of quarrying Mexican onyx.

11 Q Of quarrying Mexican onyx? A Yes, sir.

12 Q And have a mine down there?

13 MR. ROGERS. Onyx doesn't come in mines. It comes in
14 quarries.

15 A quarries.

16 MR. FREDERICKS. The same thing. Have you a quarry down
17 there? A Yes, sir.

18 Q Where? A About 250 or 300 miles below San Diego.

19 Q In lower California? A Yes, sir.

20 Q And how long have you been in that company? A Since a
21 year ago in March.

22 Q Prior to that what was your business? A I was in the
23 construction business.

24 Q Well, more particular. A Building houses and residences
25 and buildings of all sorts.

26 Q For someone else? A Not much, no. Mostly for myself.

1 I was building mostly for selling.

2 Q And how long were you in that business here in the
3 city? A Oh, about 5 or 6 years.

4 Q Now, this onyx business, dōd you say you had shipped
5 some onyx up into this country? A I did not.

6 Q Have you? A No, sir, only in small quantities of it.

7 Q Sort of a prospect still, is it? A By no means.

8 Q Haven't shipped any of it up? A No.

9 Q Haven't marketed any of it? A Yes, sir.

10 Q where? A New York City, Chicago, Baltimore, Cincinnati,
11 St. Louis, Boston, San Francisco.

12 Q I meant by this country, I mean in the United States.

13 You have shipped some into the United States? A No, sir.

14 We have marketed some but we have not delivered yet.

15 Q You have sold it but not delivered it? A Yes, sir.

16 Q Do you know Mr. Franklin? A I never saw him in my
17 life.

18 Q How many days were you on that jury? A From Friday until
19 Monday.

20 Q How you got off? A Yes, sir.

21 Q How? A Why, I was asked some question with reference
22 to where I was or the question came up where I was about
23 at a time the explosion took place out near General Otis's
24 house and I said that I was near.

25 Q You heard that explosion? A And you said I would make
26 a better witness than juror.

1 Q You heard that explosion? A Yes, sir.

2 Q And therefore was disqualified. Did you give your
3 residence here? A Yes, sir.

4 Q Who are you associated with in business? A H. R.
5 Dodd?

6 A Anybody else? A C. W. Gridley.

7 Q Now, this sentence that you say contained the word
8 McNamara before the one that you heard here you have not--
9 can you put that in any more tangible form than you have?

10 A I wouldn't like to say I could because I wasn't--was not
11 listening to other people's conversation especially and
12 I didn't--I don't know what came as to the beginning of the
13 sentence, I am sure.

14 Q How long was it between that remark and the next remark
15 which you have detailed here? A Well, something was
16 said on the other side that I didn't hear very clearly, and
17 then followed this remark.

18 Q From the other side of what? A By the other party.

19 Q This other party was not within your view? A No, sir.

20 Q Nor within your hearing? A He was out in the little
21 room to the right in the passageway.

22 Q Who did you first tell this to? A Why, the first
23 person that I remember telling it to was my associate
24 in business, Mr. Dodd.

25 Q When did you first tell it to him? A Why, I expect
26 within 3 or 4 days after I came out of the jury.

1 Q was the word "jury" used in that conversation at all
2 between Mr. Bain and this other man? A I couldn't say
3 to that.
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1 Q You didn't hear Bain say if he was on the jury he would
2 do anything, did you? A No, I have just related about
3 what I heard.

4 MR FREDERICKS: That is all.

5 MR ROGERS: That is all. I have no short witness, sir.
6 Wait a moment, before your Honor makes the order of adjourn-
7 ment.

8 THE COURT: All right.

9 MR ROGERS: If your Honor pleases, Mr John Drain, a witness
10 whom we expected to call since the trial commenced has met
11 with an accident, it was while he was down at some health
12 resort, and found himself unable to respond to the subpoe-
13 na sent to require his presence. He has made a written
14 statement, which has been shown to the District Attorney,
15 and he has consented that his written and signed statement
16 may be read to the same effect and purpose as if it were a
17 deposition.

18 THE COURT: Pursuant to that stipulation, it will be
19 received.

20 MR ROGERS: (Reading:) "John Drain makes the following
21 statement: I was standing with F. M. Nickell and Bert
22 Franklin talking about general matters, which I do not
23 now recall, when Frank Dominguez came down the street and
24 I spoke to him, as did the others. Frank then joined the
25 group and shook hands all around, joining in the conver-
26 sation in a general way. Thereupon Franklin invited us

1 all to enter the saloon and have a drink, saying, 'You are
2 not ashamed to take a drink with me, are you?' Whereupon
3 we all said that we were not; and I said, 'You know I
4 don't drink anything but buttermilk', to which Franklin
5 replied that that was a good drink, or 'that's all right;
6 take what you want'. Thereupon we entered the saloon
7 and stood around at the farther or inside end of the bar.
8 We were all close together -- almost touching elbows.
9 Franklin was in the middle between Dominguez and myself.
10 The conversation, after a moment or two, drifted around to
11 the subject of jury-bribery, with which Franklin had been
12 charged, and Mr Dominguez, in the course of the conversa-
13 tion, said, 'I can't believe that an attorney of Mr Dar-
14 row's eminence and standing in the profession would be
15 guilty of anything of that kind; it is absolutely incon-
16 ceivable to me that a man of Darrow's character and repu-
17 tation as a man of honor, would be guilty of such a
18 thing.' I then said, 'I don't believe it, either. I
19 think he is too smart for that.' Whereupon Franklin
20 replied, immediately, "I never received a dishonest dollar
21 from Mr Darrow. He never knew anything connected with
22 this matter. He is too good a man to do anything of that
23 kind. He is the most kind-hearted, generous and the best
24 man that I have ever known in my life, and would not
25 stand for any corruption or dirty work,' and more to that
26 effect. This conversation occurred in a loud tone of

1 voice on Franklin's part, and could readily be heard by
2 anyone close around. Thereupon a man whom I do not know
3 by name, came over to Franklin and took him by the coat and
4 said, 'No, you boys come over and have a drink wth me'.
5 Mr Dominguez and myself declined. Franklin, however, went
6 over with the man, but did not drink with him. The two
7 conversed a short time, and thereupon Franklin returned
8 to us. When this man spoke to Franklin, he took Franklin
9 by the sleeve and pulled at the sleeve to get Franklin
10 to remain with him at the other end of the bar, but
11 Franklin pulled away and returned to us. Nothing ^{more} was said
12 about the Darrow matter, or the Franklin matter at that
13 time, and we shortly left the saloon, leaving Franklin in
14 the saloon when we left.

15 J. H. Drain."

16 MR ROGERS: It will be stipulated Mr Drain was a contract-
17 or and formerly street superintendent of the city and one
18 thing and another of that kind?

19 MR FREDERICKS: yes.

20 MR ROGERS: We are almost finished with our testimony,
21 excepting one very important witness, who will take some
22 time, of course, and we may have some small odds and ends
23 of testimony as one always does have, witnesses who cannot
24 come on the moment, or something of that kind, but we are
25 substantially about what I regard as the most interesting
26 and vital and important matter of all, which will take,

1 with proper care and expedition, possibly a part of a day
2 for the examination. Now, it would break it all to com-
3 mence it tomorrow morning. We are very desirous that this
4 jury shall view the premises and shall make a thorough over
5 sight of the premises

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1 and I think that your Honor has agreed, according to
2 stipulation of counsel, that that should be accomplished.
3 We suggest that if it can be done that the jury view the
4 premises tomorrow morning, and that they view them in the
5 presence of your Honor, as the law requires.

6 THE COURT. Why not go now?

7 MR. ROGERS. I beg your pardon, sir?

8 THE COURT. Why not go now?

9 MR. ROGERS. It is agreeable to us, as far as we are con-
10 cerned, but I would suggest there ought to be some provi-
11 sion ahead of time, if possible, we can get the aid of the
12 police, to keep people away.

13 MR. FREDERICKS. Go down there now.

14 MR. ROGERS. You know how a saloon is down at the corner
15 of Third and Los Angeles, I don't want any crowd gathered
16 around, it would be disagreeable to the jury and disagreeable
17 to all of us, and I think the proprietor of the saloon is
18 entitled to notice that we are coming down.

19 MR. FORD. Tomorrow is a busy day.

20 MR. FREDERICKS. We ought to strike out now and go down
21 there.

22 MR. ROGERS. There must be someone agreed upon to point
23 out things, I do not want to commence Mr. Farrow's testimony
24 on Saturday morning--

25 THE COURT. That is another matter.

26 MR. ROGERS. I am not saying he will be our last witness, but

1 substantially so. There may be one or two other witnesses
2 such as we have been calling this afternoon, but they can
3 be interlarded at one time or another and I am very anxious
4 to simplify the defense, and although we had under the con-
5 sideration the calling of many persons, but I think they
6 would simply be cumulative and according to my judgment,
7 which they seem disposed to follow, to simplify the matter
8 as much as we can--

9 THE COURT. Why not go down to Third and Los Angeles right
10 now?

11 MR. ROGERS. This is the time of day when saloons are very
12 well filled up, sir--you are going to run into a big
13 crowd. I am suggesting that because neither Mr. Fredericks
14 nor your Honor are familiar with such matters.

15 MR. FREDERICKS. You see, Mr. Rogers is defeating the very
16 object we want to accomplish and that is to let this jury
17 go down without having a crowd around. Now, it has been
18 announced that they will go down tomorrow and I think they
19 should not go tomorrow, I think we should adhere to the
20 original idea which evidently slipped Mr. Rogers' mind
21 that we could go and slide down there when everybody didn't
22 know anything about it.

23 MR. ROGERS. That is agreeable to me. I will speak to the
24 Captain of Police and have the matter kind of taken care of--

25 MR. FREDERICKS. Let the Judge do it.

26 MR. APPEL. I think we ought to agree to an order of the

1 court appointing some person who shall be the only person,
2 who shall point out such objects as we may state in the
3 matter.

4 MR. FREDERICKS. I do not think that is necessary, they
5 can see what is there.

6 MR. APPEL. If we want to do it in a formal manner.

7 MR. FREDERICKS. I think it will be better not to say anything
8 Let the jury see what is there, they can see and they
9 know what a bar is.

10 MR. APPEL. But there are things there, your Honor that the
11 jury may be confused about and will appear here in evidence,
12 certain points and objects referred to in evidence of wit-
13 nesses.

14 MR. FREDERICKS. Can you do that?

15 MR. APPEL. Yes, the court can appoint any person that is
16 familiar with the premises to point out and say this is so
17 and so.

18 THE COURT. I have in mind a person that seems to be a
19 witness that neither party quarreled with.

20 MR. FREDERICKS. Why is it necessary, I do not think
21 anybody ought to say--

22 THE COURT. He is on the ground and knows everything about
23 it.

24 MR. FREDERICKS. Let the jury go down, there is nothing
25 there but a bar and a lunch counter and a door and an ice
26 chest and a door that is nailed back.

1 MR. ROGERS. We want them to see the street.

2 MR. AEPPEL. We want them to see Los Angeles street, your
3 Honor, we want them to see the distance between Los
4 Angeles and Wall street; we want them to see the corners
5 of Los Angeles and Third, we want them to see the window
6 where Mr. Browne is said to have looked over there, and
7 see certain things, and there are many windows there and
8 they would not be able to know.

9 THE COURT. We will go down sometime, but we will not
10 advertise it, for the reason that a great many people would
11 be in the way and prevent the very object of the visit
12 and interfere with the clear vision of the very thing that
13 the jury wants to see, and the court will select some
14 suitable and proper person, and before making that selec-
15 tion will confer with counsel on both sides in chambers
16 in regard to such person, and it will not be this after-
17 noon and it will not be tomorrow morning.

18 MR. APPEL. Very well, it may be done at any time that
19 the court may deem best.

20 MR. FREDERICKS. To shorten matters, if the defense will
21 just write out what they want the jury's attention
22 called to and hand that to the court--

23 THE COURT. Yes, that is a very good plan.

24 MR. APPEL. Yes, sir.

25 MR. FREDERICKS. That will cover it. I don't know of
26 anything we want to call the attention to particularly.

1 THE COURT' that is a very good plan and at some con-
2 venient time we will adjourn court and go down there, but
3 it will not be tonight and it will not be tomorrow.

4 Now, about the session tomorrow? I think we have
5 lost a good deal of time, but I agree with you that it
6 has come to a very important point of the trial and you
7 know, you are going to present the testimony, better
8 than I, if time will be saved by going over until Monday.

9 (Discussion as to adjournment.)

10 THE COURT. (After admonishing jury.) The court will
11 now adjourn until 10 o'clock Monday morning.

12 (Here the court took an adjournment until Monday,
13 July 29, 1912, 10 o'clock A.M.)

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