

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)
)
) Plaintiff,)
)
) vs.)
)
) Clarence Darrow,)
)
) Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 72

I N D E X.

Direct. Cross. Re-D. Re-C.

Clarence S. Darrow, 5913

1 Tuesday, July 30, 1912. 10 o'clock A.M.

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

4
5 CLARENCE S. DARROW on the stand for fur-
6 ther direct examination.

7 MR ROGERS: Mr Darrow, on last evening, having interrogat-
8 ed you as to whether or not you had a conversation on
9 October 5th with Franklin, and whether you gave him a check
10 on October 6th, I asked you if you gave him any check on
11 October 6th, and you said you did not. A I did not, for
12 any purpose.

13 Q I will ask you if you gave him any check approximately
14 at that time. You say you gave it to him the 5th? A I
15 gave him a check on October 4th for \$1000 at his request.

16 Q Is that the check? A That is the check.

17 Q Correctly dated, the date you gave it to him? A It
18 was.

19 Q For what purpose did you give it to him? A When-
20 ever he needed money for himself and his men and his ex-
21 penses, he asked me for it and I gave him money, sums from
22 \$200 to \$1000 by check.

23 Q By money for his men do you mean to pay the men that
24 were working for him? A To pay for the work and his ex-
25 penses.

26 Q Did you give him this check or any other check for the

1 purpose of paying Bain or any other juror any money what-
2 soever? A I never did.

3 MR ROGERS: I offer this check in evidence.

4 A Might I suggest, Mr Rogers --

5 Q Yes sir. A -- that the check be withdrawn and the
6 photograph be substituted in the record?

7 MR ROGERS: At the proper time, Mr Darrow. We will intro-
8 duce the check first.

9 MR CLERK: Defendant's exhibit O.

10 MR ROGERS: I read the exhibit. (Reading:) "Los Angeles,
11 California, October 4, 1911. Commercial National Bank
12 of Los Angeles. Pay to the order of Bert H. Franklin
13 \$1000." figures-- "One Thousand Dollars", written ont.
14 "C. S. Darrow, Trustee." Endorsed on the back, "B. H.
15 Franklin. Los Angeles Clearing House 33. First National
16 Bank , October 6th, 1911." Now, Mr Darrow, reading from
17 page 369 of the record I call your attention to the testi-
18 mony of Bert H. Franklin as follows, commencing at line
19 17: "I asked him if he wanted me. He then asked me
20 what I thought about Mr Bain." Now, this is on October
21 6th. "I asked him if he wished me to see Mr Bain along
22 that line and he said yes, and asked me if I thought I
23 could get him. I told him I thought I could; that Mr Bain
24 was the kind of a man if he didn't want to go in that way
25 he would come out and tell me so, and that would be all there
26 would be to it. He said, all right, I will give you a

1 check for \$1000. He turned to his desk and wrote the check
2 and handed it to me and I left the office." Now, that
3 is October 6th. Did anything of that kind occur, or such
4 a conversation happen between you and Mr Franklin?

5 A ~~I had no conversation with him whatever in reference~~
6 ~~to Mr Bain, excepting, possibly, as I would any other juror~~
7 ~~on October 6th, and I gave him no check on October 6th.~~

8 Q At that time did he say to you, "Do you want me to
9 see Mr Bain along that line?", and did you say, "Yes.", and
10 did you say to him, "Do you think you can get him?", and
11 did he tell you he thought he could, that Mr Bain was the
12 kind of a man if he didn't want to go in that way he would
13 come out and tell Franklin so, and that would be all there
14 would be to it, and did you say, "All right, I will give
15 you a check for \$1000", or anything like that at that
16 time or any other time? A No such conversation ever
17 took place between us at any time.

18 Q Now, there are a whole lot of statements in there
19 about what he said to you and what you said to him about
20 Mr Bain. Without going over them word for word, or seriatum
21 I will ask you if you ever discussed with Mr Franklin any-
22 thing about improperly approaching Mr Bain, paying him any
23 money, buying him as a juror, getting him to qualify, or
24 anything of that substance or purport or effect or
25 inclination or leaning, one way or the other? A Nothing
26 of that kind. I discussed Mr Bain with him.

1 Q Now, at the discussion of Mr Bain with him, have you
2 any recollection of what he said to you and what you said
3 to him? A My recollection is not very definite, but being
4 refreshed by reports and such recollection as I have, I
5 have some recollection of it.

6 Q Well, state it. A State what?

7 Q Yes --

8 MR FORD: Just a moment. If the court please, the witness
9 has said that his recollection was refreshed by reports,
10 and we would like to see those reports; we are entitled to
11 that, under section 2047.

12 MR ROGERS: I do not think so.

13 MR FORD: The witness is just now about to state that his
14 recollection is refreshed by reports which he has read,
15 and we are entitled to see those reports.

16 MR ROGERS: Go and get that big book of reports. Now,
17 you may state the conversation. I will show counsel the
18 reports.

19 MR FREDERICKS: The further objection, that the time, place
20 persons present, have not been stated sufficiently.

21 MR ROGERS: That is not the rule when it is a defendant.

22 MR FREDERICKS: There should be some attempt about it, a
23 general conversation that may have occurred at any time with-
24 in a period of two months, is not a clear question to per-
25 mit the witness to answer.

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2p 1 MR. ROGERS. There is no rule requiring us to lay the
2 foundation as to contradiction where the defendant is called
3 upon to take the stand and directly state what happened and
4 state what his views or his reasons were for that; we are
5 not contradicting, we are explaining.

6 MR. FORD. We are entitled to look at those reports.

7 THE COURT. Counsel has sent for those reports, and I presume
8 intends to present them to you as quick as they can be pro-
9 duced in court, and it may take a few minutes.

10 MR. ROGERS. Yes.

11 THE COURT. He can go on on some other matter.

12 MR. FORD. Yes, on some other matter, we have not any
13 objection to that.

14 THE COURT. The court took no action because Mr. Rogers
15 immediately sent for the reports.

16 MR. FORD. I understood counsel was going on--

17 MR. ROGERS. It is just simply a general report on Mr. Bain.
18 A That is what I meant by "report." It has been refreshed
19 also by considering the matter of Mr. Bain and the length of
20 time he was in the jury box, and Mr. Franklin's testimony, and
21 I have some remembrance of it myself.

22 MR. ROGERS. Q You may relate what he said to you about it,
23 as near as you can recall it, and what you said to him
24 about Mr. Bain, and all that was said.

25 MR. FORD. We object to the question at the present time
26 until we have had an opportunity to examine the foundation
upon that ground, that the foundation has not been laid.

1 MR. APPEL. We will stop the trial right here, your Honor,
2 until we get the reports.

3 MR. FORD. There is undoubtedly some other branch of the
4 subject they can take up.

5 MR. APPEL. No, we will sit right here. We are on that
6 subject and we want to finish it.

7 MR. FREDERICKS. We have always been required to produce
8 any memorandum that any of our witnesses refreshed their
9 memory on.

10 MR. APPEL. Except the dictagraph.

11 MR. FREDERICKS. You will get that.

12 THE COURT. You are entitled to them, too.

13 MR. APPEL. Except Mr. Tveitmoe's testimony.

14 MR. FORD. Tveitmoe didn't refresh his recollection from any
15 testimony.

16 MR. APPEL. No, but you did.

17 THE COURT. The witness has stated his recollection is
18 refreshed only in part by the memoranda, and I do not think
19 it is of sufficient importance to delay the matter until the
20 clerk gets back here.

21 MR. FORD. We do, your Honor, and we have a right to cross-
22 examine, under the law, if we desire so to do. It may be
23 when we see the reports we will have nothing whatever to say.

24 MR. ROGERS. Probably not.

25 MR. FORD. Probably we wont. I do not anticipate we will,
26 but it is our duty to see whether we will or not. As a

1 matter of fact, we do not anticipate we will have any
2 objection to the question, but we want to see what the wit-
3 ness has refreshed his recollection from.

4 THE WITNESS. I think I can state without the reports, your
5 Honor.

6 THE COURT. Of course, it is irregular to proceed without it,
7 but we will proceed without it now, with the understanding,
8 Mr. Rogers, that you will produce it and show it to counsel.

9 MR. ROGERS. Yes, I will produce the only report I have any
10 knowledge of.

11 THE COURT. Yes, sir. All right, go ahead.

12 MR. ROGERS. Q Go ahead and relate the conversation as near
13 as you can recall it about Mr. Bain and all the conversation
14 you ever had with Franklin about Bain. A I probably could
15 not do that, Mr. Rogers, but I will give you the substance
16 that I can remember.

17 MR. FORD. At what date was this? Pardon me.

18 A Various dates, Mr. Ford, I couldn't give you any special
19 date. If I may preface it by simply saying that in every
20 instance where we passed on a juror all the lawyers and Mr.
21 Franklin were consulted, Mr. Franklin because he not only had
22 charge of the getting of special reports on all jurors--I
23 mean general reports--but also special reports wherever
24 a juror was left in the box with any opportunity of taking
25 him. The majority of the jurors, of course, were not
26 accepted by anybody, passed out and disqualified, if I may

1 so state. Mr. Bain was one of the earlier jurors and amongst
2 the first who was accepted in the first bunch. Mr. Franklin
3 told me what the reports showed, that Mr. Bain was a car-
4 penter, he had been a working man all his life. We didn't
5 tell me, as he stated, that he had ever been opposed to unions
6 he told me that he had known Mr. Bain and believed he would be
7 a good juror. Our efforts, of course, in that kind of a
8 case, was to get as many men--

9 ~~MR. FORD. Just a moment--we object to any explanation of the~~
10 ~~witness's motive. The question now before the court is~~
11 ~~calling for a conversation concerning Bain and we move to~~
12 ~~strike out the comment of the witness's purpose as not being~~
13 ~~responsive to the question.~~

14 THE COURT. It is merely explanatory, I think, to the con-
15 versation, to make it intelligible.

16 MR. FORD. After he has answered the question, your Honor,
17 any explanations that are necessary may be made, but the
18 conversation can be recited in substance, at least, and
19 does not require any explanation; it is different from a
20 straight question put to a witness that calls for a yes
21 or no answer and then an explanation by way of modification,
22 ~~but in this case the question calls for] conversations.~~

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1 THE COURT: The objection is overruled. I think the wit-
2 ness is within his rights.

3 MR FORD: It was a motion to strike out.

4 THE COURT: The motion to strike out is denied.

5 MR ROGERS: Go ahead, Mr Darrow, if you can. A Why,
6 our efforts in this case, as in all cases, where labor
7 and capital were involved was to get, if possible, as many
8 men who were working men and whose natural sympathies would
9 be with our side as we could get.

10 MR. FORD.: Now, if the court please, I move to strike
11 out the statement of the witness, "Our effort was to get
12 working men in labor and capital cases", and so forth, as
13 not being responsive to the question before the court,
14 which is, "What was the conversation."

15 MR ROGERS: Now, if your Honor please --

16 THE COURT: You say your efforts were -- were those your
17 instructions to Mr Franklin? A I told Mr Franklin on
18 every occasion that that was one of the main things we
19 were interested in.

20 THE COURT: Motion to strike is denied.

21 MR ROGERS: Go ahead, if you can. A Mr Bain sat in the
22 box a long time and we had frequent discussions about
23 him as we did every other juror who sat there.

24 Q By "we had frequent discussions," who do you mean,
25 Mr Darrow? A All the lawyers, and Mr Franklin and perhaps
26 some of the men who were working for Franklin. I was inform-

1 ed that his natural sympathies would be --

2 MR FREDERICKS: That is, by Mr Franklin? A By Mr
3 Franklin, yes -- with the working classes. That he had
4 been a carpenter all his life, and Mr Franklin said he was
5 a man of independent character, and he thought he would be
6 a good juror. On my examination of him he made answer
7 that he helped organize the first union ever formed in Los
8 Angeles --

9 MR FORD: just a moment. To that we object upon the ground
10 that it is not responsive to the question. I think it is
11 apparent that it is leading to an entirely different mat-
12 ter.

13 MR ROGERS: Never mind that. Explain fully your reasons
14 for --

15 MR FORD: I have a right to moid something. I am address-
16 ing a motion to the court.

17 THE COURT: And counsel has consented that it be stricken
18 out.

19 MR FORD: He said, "Never mind it". Your Honor, I am
20 not accustomed to see that kind of language in court.

21 THE COURT: That is what you meant, was it not, Mr Rogers.

22 MR APPEL: Mr Rogers meant that he didn't care for that
23 statement.

24 MR ROGERS: If your Honor please, this is the defenant,
25 and these infinitesimal and puerile objections for the simple
26 sake of breaking up the testimony of the witness and pre-

1 venting him defendang himself and presenting his case, are
2 rotten and wrong in every court in this country, and I
3 will stand here to say so every time I can.

4 MR FREDERICKS: Now, may it please the court, that is not
5 the purpose of the prosecution --

6 THE COURT: No.

7 MR FREDERICKS: -- and they are not rotten and they are not
8 wrong --

9 THE COURT: Mr Fredericks; the court will take care of
10 this matter.

11 MR FREDERICKS: -- I know, but we don't want this witness
12 to make a speech on the stand. He is an able, capable law-
13 yer, who knows how to put his best foot first, but he is
14 now a witness --

15 MR ROGERS: I take an exception and I ask my exception be
16 entered right now.

17 MR FREDERICKS: It is entered. But he should be treat-
18 ed as any other witness is, and not permitted to make a
19 speech on the witness stand, and to run along and make
20 a running statement and speech, to which we cannot ob-
21 ject. That is all we ask for, that this witness be govern-
22 ed by the same rules other witnesses are, so we may con-
23 fine the matter to see what we want to object to, if we
24 want to object, but not permit him to make a speech. When
25 it comes to making a speech to the jury, making an address
26 to the jury and going over these matters, he will have a

1 peculiar advantage of doing that --

2 MR ROGERS: I take a further exception.

3 MR FREDERICKS: -- if he chooses to, and undoubtedly will
4 be able to do it -

5 MR ROGERS: We take an exception.

6 MR FREDERICKS: -- now, after all these exceptions -- but,
7 on the witness stand, under oath, we maintain that he
8 should be bound by the same rules that other witnesses,
9 and if he is going to stray afield and try to make a speech
10 on the witness stand, and compel us to make these objec-
11 tions -- we are making them against our will; we would
12 rather not have to make them; we would rather not have to
13 make them; we would rather ~~have~~ he would go
14 along without objections, but if he doesn't observe the
15 rules or his counsel does not observe the rules, we have
16 got to make them, that is all.

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4s 1 MR. APPEL. Your Honor, we take an exception to the attitude
2 and to the sense and to the meaning of everything that Mr.
3 Fredericks said here imputing to the witness a desire on
4 his part to make a speech or impute to the witness a motive
5 for answering in the way he is answering, or imputing to
6 counsel on the other side of the defense a desire on their
7 part to give opportunity to the witness on the stand
8 to make a speech. We object to that on the ground that it
9 ascribes to the witness an impure and improper, and a
10 fraudulent motive, and places him before this jury as a
11 trickster, and a fraud upon this court. Now, your Honor,
12 we ask of your Honor to permit the examination of this wit-
13 ness in the manner we are proceeding, for the purpose of
14 expediting this trial, for the purpose of not cutting off
15 his narrative. That he is not a witness like the average
16 witness, your Honor, that he is a witness who has his pecu-
17 liar way of expressing his ideas, his narrative way of
18 expressing his ideas. He probably has a better command of
19 language than the ordinary witness, and that there is no
20 particular rule of law by which the witness must frame and
21 clothe his ideas or convey them to the jury, if it were so,
22 then, your Honor, the manner in which the witness should be
23 examined would be tested by the ability and by the knowledge
24 of the lawyer examining him, and I have seen lots of lawyers
25 who were absolutely so deficient in knowledge, both as to
26 human experience and as to law and as to rhetoric that they

1 couldn't spell their name right, and it would be a shame
2 to put an intelligent witness on the stand and have him
3 answer questions in the manner that would convey ideas to
4 the ignorance of the one examining him, and here, your Honor,
5 we find a witness who can answer these questions, and who
6 can premise his reasons why, and the object of this examina-
7 tion is--what is the object? It is the object to show to this
8 jury why it was that juror Bain was allowed to go upon the
9 witness stand, and this witness is going on to say what were
10 the considerations that prevailed in his mind and prevailed
11 in the mind of his cocounsel there in allowing that juror
12 to remain on the jury, and that is the object of this ex-
13 amination, and perhaps the witness, in anticipating that
14 point, is going a little astray, but it cuts no figure and
15 does no injury to any one. He is stating his sentiments,
16 and counsel here said, "Never mind that," he addressed that
17 remark to the witness, "Never mind", going into that, and
18 immediately he asked a question that would bring the witness
19 to have his answer responsive to the object of the examina-
20 tion. No harm done--there was nothing said here that would
21 in any way reflect upon counsel on the other side. Of
22 course, counsel have a right--they have a right to keep out
23 conclusions or opinions; they certainly have that right,
24 that we have, but there is nothing in the statement of the
25 witness that would injure any one except that it would show
26 exactly the attitude of the witness's mind when juror Bain

1 was allowed to remain on that jury. We ask that he be
2 allowed to explain what were the motives and his condition
3 of mind that actuated him in not objecting to juror Bain,
4 and that is legitimate evidence.

5 THE COURT. Gentlemen, the court is amazed at this heated
6 discussion that arose, that the record will show, from a
7 motion to strike out a portion of the answer, which counsel
8 on the other side immediately conceded was a correct motion.

9 MR. ROGERS. No, sir, I beg your Honor's pardon; I did not
10 so concede and do not now.

11 THE COURT. I inquired of you whether or not your statement,
12 "Never mind" was a consent to the motion to strike.

13 MR. ROGERS. I didn't understand your Honor--

14 THE COURT. Then what is your understanding here?

15 MR. ROGERS. There is a misunderstanding, because before
16 your Honor takes me in that attitude--

17 THE COURT. That is the attitude in which I took you.

18 MR. ROGERS. No, your Honor, I have been misunderstood. I
19 did not intend to say or convey that meaning if I so in-
20 formed your Honor, I beg your Honor's pardon. I didn't mean
21 to say it.

22 THE COURT. Then I am still more concerned to know what
23 you meant.

24 MR. ROGERS. This is what I meant: In the examination of
25 the record last night and a continuation of the attitude of
26 Mr. Ford this morning means to me, who is a trial lawyer, and

1 who has seen these things very many times, it means to me
2 that Mr. Ford is making these objections, as they are shown
3 by the record of yesterday which I have before me and which
4 has been studied by me, means that Mr. Ford is doing nothing
5 but trying to break up Mr. Darrow's testimony with objec-
6 tion after objection, puerile and infinitesimal, done for no
7 purpose in the world but to break up the continuity of the
8 narrative and destroy the effect of the testimony of Mr.
9 Darrow, which is proceeding in a very general way, it is
10 true, but in a way which we have a right to ask the witness
11 to testify. If your Honor wants to sit here a week and have
12 me ask these small questions as they might come along, I
13 will do it. I don't want to. There hasn't been one word
14 in Mr. Darrow's testimony that was not proper that should be
15 given. Some of it, possibly, may not have been responsive
16 to the exact question and that is the puerile objection
17 always made.

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1 There has nothing been said here that the jury ought not to
2 know and that your Honor does not want to know. Once in a
3 while it is possible that I have not asked the question to
4 bring it out. Mr Darrow being a lawyer knows, as soon as he
5 finishes his answer, I will ask that question, or, ought to,
6 at least, and as soon as I ask it he answers, as upon yes-
7 terday, on five different occasions, if your Honor please,
8 a motion to strike out was made because it was not responsive.
9 I immediately asked the question and the answer came back
10 in the same words that were stricken out; in other words,
11 it was just simply boyish. Now, I say, and I maintain it,
12 and I have nothing to take back, Mr Ford's meaning is noth-
13 ing in the world but an attempt to destroy the continuity
14 of this narrative, and his objections are peurile, and I
15 have nothing to take back.

16 THE COURT: I think we have gone into this matter too far
17 already. I cannot agree with counsel. I think that it
18 is, at least, making the work of this examination much
19 slower to go into these matters in a semipersonal way
20 that this has come up. The court has never yet undertaken
21 to direct counsel to object or not to object at such
22 times, which action would be a serious invasion of the
23 rights of counsel, and whether or not the defense conceded
24 that the prosecution's motion to strike out was properly
25 taken, the court assumed that it was taken, because it is
26 a proper motion and the portion of the answer to which the

1 motion was directed, will now be stricken out by order
2 of the court.

3 MR FORD: If the court please, my motives have been attack-
4 ed here, and I wish to say this to the court, whether it
5 appears later on or not my understanding
6 was correct and the motion to strike out had not been
7 conceded by counsel. The law provides that certain tes-
8 timony is admissible --

9 THE COURT: There is no question about your motives, Mr
10 Ford. Your motion has been granted, and the court has
11 entire confidence in your position being the one that
12 you ought to take, as you interpret your duty in that
13 matter, and no criticism upon the performance of your duty.

14 MR FORD: Yes, then I will ask your Honor to protect me
15 from such words as puerile and rotten, whether my at-
16 tempts be so awful as to be puerile or whether my ability is
17 rotten in this matter, I have a right to be protected from
18 such language in this court, and I ask your Honor to take
19 some steps to protect me from such language.

20 THE COURT: You are quite right in that.

21 MR ROGERS: In that behalf, I call your Honor's attention
22 to the record at 5904, and if I haven't the right to apply
23 those words to that record, I never saw a record I would
24 have a right to apply it to.

25 MR FREDERICKS: I don't think counsel ever did see a record
26 he would have a right to apply that to.

1 THE COURT: It isn't a question of what the record may
2 show on that matter, but the use of language of that kind
3 called for just exactly such a delay as has occurred here,
4 and it accomplishes nothing. It is no part of the case,
5 and counsel must -- I am going to make this admonition very
6 emphatic; counsel must curb their inclination to use terms
7 of that kind. They have been used too much; they are used
8 too much in courts habitually, and have been used too much
9 in this case, and ^{if we are} ~~I am~~ going to get along with this case
10 and get through in any reasonable time, it must be elim-
11 inated. Counsel must restrain that impulse, no matter
12 what he thinks about it. Counsel sometimes in an excited
13 argument, when a lawyer might have a very unkind thought
14 towards another, it passes off and he forgets it, but he
15 ought not to give expression to it. It calls for de-
16 lays; calls for interruptions which occurred just like
17 this, and the court does criticize counsel for the use of
18 a term that is improper, and counsel is admonished to re-
19 frain from the use of the term here, or from the use of
20 similar terms. Now, let's get along.

21 MR ROGERS: Mr Darrow, you may state what Mr Bain said
22 in your hearing with respect to his qualifications, which
23 you started to say in your answer, but which was stricken
24 out, and why did you keep him on the jury. Explain your-
25 self fully in that respect.

26 MR FREDERICKS: This refers to in court, does it, Mr

1 Rogers?

2 MR ROGERS: Yes, and his reasons for taking Mr Bain?

3 A I have refreshed my memory by Mr Bain's testimony,
4 which Mr Fredericks gave me the other day; without that I
5 probably would not remember as much of it. On Mr Bain's
6 examination he said he had been a carpenter and a working
7 man all his life, that he helped organize the first union
8 ever organized in Los Angeles; that he never had any trouble
9 with the unions in any way; that he simply dropped out of
10 it at one time when he left the city, as I recall it; he
11 said that he would stand by his convictions regardless of
12 any other man's convictions on a jury. He was an old man,
13 and I have found from my experience that old men are
14 generally more charitable and kindly disposed than young
15 men; they have seen more of the world, and understand it.

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6p 1 MR. FORD. Now, just a moment, pardon me. I move to
2 strike out the witness's experience as to other cases as not
3 responsive to the question as to what Mr. Bain had said in
4 court.

5 THE COURT. Is that enumerated to any person in ^{the} question?

6 A I do not think it was.

7 MR. ROGERS. It does not need to be done.

8 MR. APPEL. The question was, what was said between them and
9 what considerations, what induced him, what were his motives.

10 THE COURT. Yes, I think that answer is all right. The
11 motion to strike out is denied.

12 MR. ROGERS. Q Now, did you know at the time you took Mr.
13 Bain that Mr. Franklin, if he did, ever visited Bain or talked
14 to him or gave him any money or saw his wife or anything of
15 that sort? Did he report any such thing to you and did you
16 learn it in any way? A I never knew of any visit or any
17 money or any conversation with his wife. Mr. Franklin told
18 me he knew him well and had for years, and the kind of a
19 man he was.

20 Q Did he say to you at any time, the next day or any other
21 time, that he had seen Mr. Bain, had paid him the money, that
22 Bain had promised to vote for an acquittal, and then did
23 you ask him if he, Franklin, thought he would stand, did
24 Mr. Franklin say, "Yes", he didn't think there was any ques-
25 tion about that at all, that his wife wielded a great influen-
26 over him and that she had prevailed upon him to accept the

1 money and that there was no question about his standing
2 pat in what he had agreed to do", and did you thereupon
3 say, "That was good" or anything like that or in substance
4 to that effect or purport, or any part of it? A No con-
5 versation of that sort ever took place between us.

6 Q or anything like it? A Nothing that Mr. Burns
7 detectives could listen to if they had been around.

8 MR. FORD. I didn't get that answer.

9 MR. ROGERS. I guess they will strike that out without a
10 puerile objection.

11 MR. FORD. if the court please, I call your Honor's at-
12 tention to the statement by counsel and I ask that I be
13 protected from such language.

14 MR. APTEL. I didn't hear it, what was said?

15 MR. KEETCH. Without puerile objections.

16 MR. ROGERS. I said, "I guess they will strike that out
17 on us without any puerile objections."

18 THE COURT. You should not use the word "puerile objection",
19 Mr. Rogers. You know that and we all know that. Let us
20 get along without the use of those terms. I do not want
21 to give very much time and consideration to those comments
22 and expressions that counsel on both sides know are not
23 seriously meant and passing to the person addressed or
24 passing one ear out of the other, they are not regarded
25 seriously by lawyers, but they ought not to occur and they
26 must not occur.

1 MR. ROGERS. I did not mean it for Mr. Ford. I meant it for
2 Mr. Appel and if Mr. Ford heard it, it goes.

3 THE COURT. Mr. Ford heard it, the court heard it, and it
4 should not occur, and must not occur. Let us get along.

5 MR. APPEL. I think I can compromise that, your Honor,
6 agreeing to take the blame for everybody here and get
7 along smoothly.

8 THE COURT. Strike out the answer.

9 MR. FORD. I did not ask that it be stricken out, there
10 was no motion to strike it out, I just wanted to hear it.

11 THE COURT. Let us hear it.

12 (Last answer read.)

13 MR. ROGERS. I beg your pardon, that is not the record.
14 A correct the record first.

15 MR. ROGERS. "Nothing that Mr. Burns detectives could not
16 listen to, had they been around".

17 MR. FREDERICKS. Whatever it is it is out.

18 MR. ROGERS. Certainly the answer is not correct.

19 MR. APPEL. We insist on the record being correct, we have
20 been patient here.

21 THE COURT. The record is corrected now. The record was
22 to the court's recollection of what the witness has said,
23 but it has been stricken out.

24 MR. APPEL. A word or two might make a great deal of
25 difference in arguing to the jury.

26 MR. ROGERS. Q Speaking of Mr. Bain, Mr. parrow, I call your

1 attention to a memorandum contained in a book--I do not
2 offer the book, but I ask you if that portion of it found
3 on page 30, under the head of "Robert F Bain" is what you
4 referred to?

5 MR. FORD. We object to the witness being shown the book
6 unless previously exhibited to counsel.

7 MR. ROGERS. Wait a moment until he gets through. I am
8 going to finish my question if it takes a week. Q I will
9 ask you if that which I now show you is that to which you
10 referred to when you said you refreshed your recollection
11 from reports.

12 MR. FORD. We object to that on the ground that the proper
13 foundation has not been laid, and the document to which the
14 witness's attention has been called and concerning which the
15 witness has been asked has not previously been exhibited
16 to adverse counsel.

17 THE COURT. Objection sustained.

18 MR. ROGERS. I said I would show the book to counsel and I
19 will at the proper time, but I must know if that is what he
20 refers to, before I show it to counsel, because I do not
21 propose to show him a document that is not the correct
22 document.

23 MR. FORD. We have no objection to counsel conferring with
24 his client and getting that information.

25 A I can answer it from here.

26 MR. APPEL. We may ask him the question--

1 THE COURT. You may confer with your witness.

2 MR. APPEL. It is not a matter of evidence--

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1 MR FORD: The witness has nodded his head to the jury and
2 the question may be answered, and we withdraw the objec-
3 tion, as it is equivalent to an answer.

4 MR ROGERS: If you withdraw the objection, and he says it
5 is the same thing, I will show it to counsel.

6 A If I did that, I didn't know it, your Honor. I certain-
7 ly did not look at the book when Mr Ford objected and didn't
8 know I nodded my head.

9 MR FORD: I beg your pardon. I misunderstood it, and I
10 beg your pardon. A I didn't mean to.

11 (Book exhibited to counsel.)

12 A May I look at it, Mr Rogers, if you are going to ask
13 about it?

14 MR ROGERS: What do you answer to the question? A This
15 is the memorandum, the general memorandum that I spoke of.

16 Q Did you have any other report in writing that you
17 know of? A I do not recall any. I might have or might not
18 have had; probably did -- I don't know.

19 Q Now, proceeding to the matter of Mr Krueger. Did you
20 ever know or hear of Mr Fowler ever going to Krueger and
21 offering him any money whatever, or interrogating him with
22 reference to being a juror, or putting four matches down
23 on the floor or anything of that nature, kind, sort or
24 disposition whatever? A Not until I got into the trial
25 of this case.

26 Q Did you ever before know, if it be true, which we do not

1 concede -- but if it be true -- that Fowler went to him at
2 all? Did you ever talk with Fowler about going to him or
3 ever have anything to do with Fowler's going to him, or
4 have anything to do with anybody talking to Krueger about
5 his being a juror, or paying him money or promising him
6 anything whatsoever? A I never knew Mr Fowler, I never had
7 any business with him of any sort, up to be beginning of
8 this case.

9 MR FREDERICKS: This present case? A This present case.
10 He says I was introduced to him at some time during the
11 McNamara cas. I probably was. I met so many people down
12 here, but I do not recall him, and I -- finishing that
13 answer -- I never had anything to do with anybody seeing
14 Mr Krueger; I didn't recall there was such a man until
15 I heard it here.

16 Q Did you authorize anybody to have anybody else, Mr
17 Fowler, or whomsoever, go to Mr Krueger and offer him
18 anything whatsoever? A I did not.

19 Q Or endeavor to persuade him by illegal means or
20 monetary considerations whatever, to either go on that
21 jury or vote in any way whatsoever? A I did not. I
22 knew nothing about Mr Krueger. He probably was examined
23 here, but I have not seen the man since, and do not remem-
24 ber that I ever saw him -- I mean, he probably was examined
25 as a juror in that case.

26 Q Now, you remember the testimony of Mr Franklin about

1 him going down to Krueger's after having seen you at the
2 Alexandria Hotel, in company with Mr Lincoln Steffens,
3 he thinks it is the night, according to his testimony, of
4 the 25th. Now, Mr Darrow, state whether or not on the
5 25th, at the Alexandria or at any other time or place,
6 you authorized, directed, induced or participated or knew
7 of Mr Franklin going to Mr Krueger to offer him any
8 money, to see him or give him any illegal consideration
9 to advance him any money, to get him on the jury or any
10 thing of that kind? Just answer that question fully.

11 MR FORD: To that we object as to form, not as to sub-
12 stance, as calling for a conclusion of the witness, as to
13 authorizing and directing -- the proper thing is to ask
14 him what was said and done.

15 THE COURT: Objection overruled.

16 A I never had any conversation with him in reference to
17 any such matter with Mr Krueger or anybody else at any time
18 or place.

19 Q Now, he says, of course, and you remember, that at
20 the Alexandria Hotel, you took a list of jurors out of
21 your pocket on the 25th of November, and that on looking
22 it over, you said, "Well, that looks better", or something
23 to that effect, in the presence of Mr Steffens, and that
24 you told him to get busy, or something of that sort.

25 Now, state whether or not anything of that sort occurred,
26 and relate fully all that you remember of the happenings
on the evening of the 25th of November, with respect to Mr

1 Franklin. A May I preface that a little with the get-
2 ting of the list?

3 Q Yes, I will include that in the question. Preface
4 it by any explanation you desire to make, to make that an-
5 swer complete.

6 MR FORD: The witness has put a question to himself, and
7 we are informed of it, and there is no objection to it.

8 A I will try to stick to what it ought to be. That
9 venire was drawn, as I suppose it was eight or ten times,
10 possibly more during the progress of that case -- you pro-
11 bably know exactly, and if you do I will just as soon that
12 you state it --

13 MR FORD: I think it was either 11 or 12.

14 A Well, probably 11 or 12 times -- it was drawn out of
15 the box standing here on the table, and we, lawyers were
16 in the habit of waiting until it came out and making up
17 our list right there, so as to get it immediately. In
18 the number, which was generally 50, sometimes 40, we would
19 always find some names upon which we had no report, people
20 were absent or something or other; but we had no report,
21 and we would at once see that Mr Franklin got those lists
22 to get reports, if possible, where he had none, get any
23 additional information we could.

8p 1 Q You say, "at once". What do you mean by that, immediately
2 after the list-- A Immediately after the drawing on the
3 25th day of--

4 Q November-- A November--if that is the date, which I
5 will assume. I do not recall the date except I know it was
6 a Saturday, about that time we had a drawing in the morning,
7 my remembrance is about 11 o'clock; it might have been a
8 little earlier or a little later, it could not have been much
9 later anyway--that was after--well, I wont state that--
10 the 25th day of November we took the list as usual, when it
11 was drawn out here--

12 Q At what time? A Before noon, I think about 11 o'clock,
13 and on that list, as I have learned by refreshing my memory
14 since--I could not remember it--from these reports and other--
15 wise, on that list of 50 there were 10 names upon which we
16 had no report whatever, which was an unusually large number.
17 ~~I did not give that list to Franklin at all on account of the~~
18 ~~progress in the settlement of the case.~~

19 Q What is that answer, please?

20 (Last portion of answer read.)

21 A I thought it would never be needed. Sometime in the after-
22 noon, or towards evening, he either called me up or saw me--
23 I am not certain which--I think he called me up, and asked
24 me why I had not given him a list and where it was, and I
25 told him I would be taking dinner that night at the Alexan-
26 dria Hotel and he could get the list there, that was 6

1 o'clock or afterwards, 6 or 7 or 8 hours after the drawing.
2 I had the list in my pocket, undoubtedly marked from the
3 book and from private information, from whatever sources I
4 received, mostly from Franklin, perhaps all--as a matter
5 of fact, as I have discovered since, the list was much more
6 favorable than the ordinary list. Krueger's name was on
7 that list.

8 Q Well, you remember that from the circumstance of the occa-
9 sion or from subsequent investigation? A I only remember
10 it from its being introduced here in evidence, that list--
11 I don't remember--

12 Q From seeing it on the list here? A I don't remember it
13 at all. I might have known it then, probably did, but it
14 had passed out of my mind entirely, and I have ascertained
15 by reference to this same book that Krueger's name in the
16 book was marked favorable. What we called "favorable".

17 I did not at that time suggest anything to him in reference
18 to any special name. I might or might not have said the
19 list looked better than usual, I don't know. It did, I know
20 that. He asked me whether--he says, "There is not much
21 time for those, and I had better get busy right away."

22 Of course, I couldn't tell him what we were doing in this
23 case, and did not.

24 Q What do you mean by that, "couldn't tell him what you were
25 doing?" What do you mean by that? A In reference to
26 a settlement.

1 Q You mean the settlement initiated by Mr. Steffens?

2 A yes. I said nothing to him about it, and could not.
3 He got the list and he says, he looked it over, there was
4 an indication of how many men there were there upon
5 which there was no reports, and he asked me if I could not
6 send him some men to help him, which was not an unusual
7 thing with him. I said after dinner I would go back to the
8 office and if I could find any men I would send them, and
9 I doubtless did send Mr. Cooney or Mr. Fitzpatrick both, I
10 ~~have no remembrance of it, but I did not tell Mr. Cooney at~~
11 that time that he was to telephone to any juror--

12 MR. FORD. Pardon me--

13 MR. ROGERS. I will get to that.

14 A I guess that may be stricken out.

15 MR. FORD. I move to strike it out as not responsivel

16 THE COURT. Strike it out. We will take the morning recess
17 at this time.

18 MR. FORD. Pardon me, you struck out the last part of it?

19 THE COURT. Yes.

20 MR. ROGERS. Struck out what?

21 A That I did not tell Mr. Cooney.

22 MR. FREDERICKS. We can take it up afterwards.

23 MR. ROGERS. Yes.

24 THE COURT. (Jury admonished.) Recess for 5 minutes.

s 25 (After recess)

26 THE COURT. All parties and jury are present, gentlemen;

1 you may proceed.

2 MR. ROGERS. Q Now, you say, you have said in your last
3 answer, Mr. Darrow, that you did not give that list of the
4 25th to Mr. Franklin at the usual time, namely, in the morn-
5 ing; did not give it to him until he came to you at night?

6 A The usual time, if I may correct you.

7 Q Yes, sir. A Was immediately after it was drawn.

8 Q That would be in the morning, would it not? A Oh, yes,
9 or before noon; as soon as it was drawn.

10 Q And you have said your reason for that was that the pend-
11 ing settlement had reached such state and condition that
12 you did not give him that list. That was your reason?

13 A I never expected to use it. *(The list)*

14 Q Now, at the time he gave you and asked you for the list or
15 talked to you about the list at the Alexandria Hotel along
16 in the evening after 6 o'clock, why did you give him the
17 list at all? A I had to go right on with everything con-
18 nected with the case, so far as the public and everybody
19 associated was concerned, just the same, until it was
20 finally disposed of.

21 Q Now, did Mr. Franklin know of the pendency of these negotia-
22 tions for the settlement of the case? A We did not.

23 Q Did you ever tell him about that? A I did not; I told
24 nobody that it was not necessary to tell.

25 Q Now, that evening when you said you sent him some men,
26 you started to say something about Cooney and Fitzpatrick.

1 Said you would send them over to him. You may state whether
2 or not you have any recollection of sending Cooney and Fitz-
3 patrick over to him that night? A I don't believe I have.
4 I doubtless sent them, but I don't think I remember at all
5 who I sent or whether I sent anybody.

6 Q There has been some testimony here with respect to
7 Cooney and Fitzpatrick on that night, that there was some
8 telephoning done either by Cooney and Fitzpatrick or other
9 persons, to talesmen who were on this list, warning them that
10 they were to be called as jurors, as the case may be. Now,
11 state whether or not you ever advised such a thing or knew
12 of such a thing being done? state fully all you have to say
13 upon that subject. A I never said ^{such} anything to Cooney
14 in the world. I doubtless told him to report to Franklin.
15 I never heard the discussion of such a matter but twice.
16 I did discuss it twice.

17 Q In such matter as that, you meant telephoning-- A Tele-
18 phoning to jurors. One day, I don't know when it was, but
19 during one of the previous lists, Judge Bordwell spoke to me
20 and said that some jurors or one juror, whatever it was, had
21 told him that somebody had telephoned him that he was about
22 to be summoned in this McNamara case. He said he didn't
23 know who did it or the members and he didn't propose to in-
24 vestigate it, but he said, "I am going to speak to the other
25 side and I wish you would speak to your men and tell them if
26 any of them have telephoned anybody not to do it, because it

1 is hard enough to get jurors here the best we can do, and
2 if jurors know they are to be summoned they will evade
3 service." I saw Mr. Franklin right after, told him what
4 Judge Bordwell had said and told him that his instructions
5 had always been to ~~not do anything~~ in reference to this
6 case that would not stand the closest investigation, and if
7 he or any of his men had done it in the past they must not
8 do it in the future. He said he knew nothing about any such
9 thing. Those are the only conversation I ever had in refer-
10 ence to the matter during the progress of the case, and that,
11 I will say, was about the middle of the time we were getting
12 the jury.

13 Q And before the 25th? A A good while before; probably
14 3 or 4 weeks.

15 Q Now, then, you say you did not instruct Fitzpatrick and
16 Cooney or Franklin or any other person to telephone jurors,
17 or know it was being done except in the way you have said, when
18 Judge Bordwell spoke to you about a month or so before?

19 A Fitzpatrick didn't so state. I didn't instruct Cooney
20 or Fitzpatrick or Franklin or anybody.

21 Q Now, I attract your attention to the matter of Lockwood,
22 Mr. Darrow. Do you know anything about--did you know any-
23 thing about Lockwood? Did you direct, authorize, request
24 or suggest to Franklin that Lockwood or any other juror
25 should be approached financially with monetary consideration?

26 A I did not. You asked me whether I knew about him. You
mean in that way?

1 Q In any way; explain fully. A I don't know, I might
2 have had a report on him from Franklin, who has testified
3 he knew him well, and he might have told me that he knew him,
4 and that he would trust him, I don't know about that. I don't
5 recall any such thing but he made me many reports of many
6 jurors where he thought he had certain information or opinion
7 of his own, but I recall no such thing. Certainly I never
8 had any conversation with him in reference to anything
9 improper or unlawful or corrupt with Lockwood.

10 Q Did you have any conversation with him about allowing \$5000
11 or any other sum for the purpose of bribing jurors, paying
12 them any money, paying Franklin a thousand dollars, or jurors
13 any sum whatever? A I did not. He never received any
14 thousand dollars from me for any juror.

15 Q Now, I attract your attention to the matter alleged in
16 the indictment that on the morning of November 28th you gave
17 Franklin \$4,000 in bills or currency for the purpose of
18 payment of Lockwood. I will ask you if you did any such
19 thing, gave him any such sum or had anything to do with
20 any such matter? A I did not.

21 Q You recall his testimony that on the morning of the 28th
22 he came to your office in the Higgins Building, that there-
23 upon he asked you for the money, told you that he was going
24 to meet Lockwood, asked you for the money and that you gave
25 him \$4,000 in greenbacks or currency, after having tele-
26 phoned Harriman and Harriman coming up and all that; you

1 remember it, having heard it? A I remember it.

2 Q Will you state whether any such thing happened? A Noth-
3 ing of the sort.

4 Q Did you see Franklin that morning of the 28th, so far
5 as you recall? A Not until I saw him on the street.

6 Q Did he come into your office that morning? A Not when
7 I was there. He didn't come into my private office at
8 any time, for the door was locked.

9 Q Did you see Harriman there that morning? A I did not.

10 Q Did you telephone Harriman there that morning in any way
11 such as has been suggested or was there any such words as
12 you have heard in testimony here, asking him to come up or
13 bring anything or do anything, or say anything to Harriman
14 at all over the telephone that morning? A I did not tele-
15 phone him that morning, or the night before, as Franklin said

16 Q Now, there is no necessity, and I will not take you over
17 the exact statements that Franklin made about meeting you
18 the 27th and the 28th. In your own way, Mr. Darrow, state
19 all you know, everything connected with that matter, so far
20 as you are able to state of your own knowledge, where you
21 were that morning; where you were the night before; whom
22 you saw; whether or not you saw Franklin; whether or not
23 you saw Harriman; where you went and what you did?

24 MR. FREDERICKS. This was the 28th? .

25 MR. ROGERS. The night of the 27th and the morning of the
26 28th, referred to by Franklin in his testimony.

1 MR. FORD. If the court please, if they can cover two dif-
2 ferent days they can cover two different months. I think
3 just as a matter of precaution the witness's attention
4 ought to be directed to one particular day and then go on
5 to the next.

6 MR. ROGERS. There is no sanctity about a day.

7 THE COURT. Two days but one incident.

8 MR. FORD. Very well. Your Honor overrules the objection,
9 then.

10 MR. ROGERS. Go ahead, Mr. parrow, in your own way; just
11 state the matter as you recall it now.

12 A May I suggest?

13 Q yes. A Franklin testified that he had a conversation
14 first at noon, possibly in the morning of the 27th.

15 Q Yes, sir. Well, proceed with that. I am speaking of the
16 Lockwood incident.

17 A You speak of the incident itself?

18 Q Yes, sir, I want you to go over all that incident and
19 tell what you remember of your whereabouts at that time;
20 what you know concerning it, whether Franklin had any such
21 conversations as he testified to here; whether you had
22 anything to do with the matter of Lockwood whatsoever; in
23 your own way just relate.

24 THE COURT. Confine the answer to the days of the 27th and
25 28th.

26 MR. ROGERS. The 27th and the 28th.

1 MR. FORD' The only purpose of my objection, your Honor,
2 was that we might be able to keep the incidents of the
3 different days separate. I suppose the witness will do
4 that.

5 MR. ROGERS. There is no sanntity about a day; it is an
6 incident.

7 MR. FREDERICKS. It makes them easier to handle on the
8 reading of the testimony.

9 A I probably saw Franklin on the 27th; I don't recall it,
10 however, but I saw him nearly every day. I did not have
11 any conversation with him in reference to giving him any
12 money for Lockwood or anybody else on the 27th. I did not
13 on the evening of the 27th telephone to find whether any
14 safety deposit vault was open. I had no safety deposit
15 vault myself at any time in Los Angeles. I never had a
16 combination to the safe in the office. When I wanted any
17 papers put in I gave it to Mr. Russell or Mr. Harrington, or
18 Mr. Harriman when he was there. I don't recall seeing Mr.
19 Harriman on the 27th--I might have seen him--nothing to
20 fix it in my mind. I might possibly have seen him over to
21 headquarters. I sometimes had business or did see him
22 there sometimes at the court and sometimes before, but I
23 have no recollection of it. I did not see him with reference
24 to getting any money from him. I never gave him any money
25 to keep for any such purpose. ✓ On the 28th I came down
26 town over the Sunset Boulevard car line. I was living at

1 803 north Bonnie Brae street, which is two blocks from
2 that line and about the same distance from the Temple
3 street line and about the same distance from the Edendale
4 line near Echo Park. Sometimes I came one way and some-
5 times another and sometimes walked down. Sometimes in tak-
6 ing the Sunset line I would walk down to the track and go
7 through the park and up the steps to the viaduct. Sometimes
8 I would go direct along north Bonnie Brae street to the
9 tracks, if I saw no car coming I would walk along until one
10 overtook me, as I usually did. There were more cars on that
11 line and that would be the reason I would go that way at
12 times.

13 MR. FREDERICKS. The witness is now giving a custom, that is
14 the idea, is it?

15 A That is true. Shall I proceed?

16 MR. FREDERICKS. Yes.

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1 A On that morning I came down that way. I don't believe
2 I recall seeing Mr Wolfe on the car. I think I did, how-
3 ever, but I saw him frequently on the car, both coming and
4 going. I did see him at the time I got off at Second and
5 Hill, I believe it was -- that is the usual place. I haven't
6 a distinct remembrance of it outside of that. We walked over
7 to the Higgins Building with him -- possibly I stopped at
8 the cigar stand on the corner; I don't know about that.
9 Anyway, we went to the office together. We were both some-
10 what interested -- considerably interested in Mr Harrim-
11 man's campaign. I was especially discussing some matters
12 with him that I thought might produce some votes, or at
13 least keep them away from the other fellow, and some ref-
14 erences were made to this case. After stopping at his
15 office, as I recall it, we went into mine. I think I
16 got down about half past 8 or a little later; I don't
17 know that I could be sure of the time. I generally came
18 early, and have no reason to think that this was any dif-
19 ferent from any other time, as to the time I arrived. I
20 did not telephone Mr Harriman; did not see Mr Franklin;
21 did not see Mr Harriman; had no business with Mr Harri-
22 man; no special business with Mr Franklin. I had been there
23 a little while when someone called me up and asked me if
24 I would come over to Mr Harriman's headquarters on some
25 political matter. I don't remember the exact conversa-
26 tion; I don't know whether I would be sure, excepting from

1 conversations and what I know about outside matters, as to
2 who called me, although I think he gave me his name at the
3 time. It was probably around 9 o'clock. I know it was
4 before the session of court, and my remembrance is that we
5 were to meet that morning at half past 9, but I might be
6 wrong about that, either 9 or half past -- I think half
7 past. I went down to go to the headquarters. Mr Wolfe went
8 with me as far as his door, which was along the same hall.
9 His office is on the other side of the hall from mine,
10 and I went out. I was on my way to Mr Harriman's head-
11 quarters when I saw Mr Franklin. I was going down on the w
12 west side of the street, and crossing over about at the
13 Third street crossing. The Third street crossing does not
14 run straight across. The north side is north of the south
15 side, that is, I mean the part of Third street that runs
16 east from Main street is south of the part that runs
17 west from Main street -- there is a jog in Third street.
18 I presume I went across about at the west -- at where
19 Third intersects Main street on the west, and as I went
20 across I saw Mr Franklin walking with a man whom I didn't
21 know. Right behind him was Sam Browne, whom I knew very
22 well, and had seen day after day here in court, and other
23 places, and knew he was a special detective for the Dis-
24 trict Attorney's office. One or two other men were with
25 him. I saw Browne as soon as I saw Franklin and I had no
26 thought of any connection between the two. As I went

1 across the street, I was about where they were, and I did go
2 toward Mr Franklin with the intention of speaking to him;
3 I am not sure what it was about. He was interested in
4 the campaign also, and my impression is it was something
5 about that, but I am not certain. Anyway, as I went toward
6 him, Mr Browne came between us and said that he was about
7 to arrest him, or something of that kind, and not to speak
8 to him, and I didn't speak to him. I had no telephone com-
9 munication that morning from anyone that Mr Franklin was
10 to get into trouble, as Franklin stated that I said. I
11 never told him so. ✓

12 MR ROGERS: just in that particular let me stop you a
13 moment. At that time did you say to Franklin, "They are
14 onto you", or anything of that kind, or, "that you are about
15 to get into trouble", something of that kind? You heard
16 Franklin's statement, did you? A Yes. I said nothing of
17 the sort. I would probably let him take his chances rather
18 than go there, if I had known it. I said nothing to him.
19 I said nothing whatever to him. At that time I expected
20 this matter of the McNamara case would be closed at once.
21 When Mr Browne told me that he was about to arrest Frank-
22 lin, of course, I was very much shocked, surprise would be
23 rather a weak word for it. At first I didn't think what
24 to do. At least, I thought -- I didn't proceed to the
25 headquarters. I went back across the street. I think I
26 went to Spring street and from there directly to this

1 building, where the case was to come on for the examina-
2 tion of jurors. As I got up to this building, I saw
3 Franklin with one or two other men and Sam Browne be-
4 hind him. I knew Browne very well, and I said about what
5 Browne related here. I would not pretend to say exactly
6 what I said. I said, "What does it mean?" He says, "We
7 arrested Franklin for jury bribing." I said, "That could
8 not be possible. If I had ever dreamed of any such thing
9 it could not possibly have been." I don't know what else
10 I might have said. I was surprised and shocked. I had --
11 the direct thing that came into my mind was the effect it
12 would have on the settlement of this case, for which I had
13 been working so hard, and which I looked forward to as a
14 means of saving one man's life, if not two; possibly more,
15 and I probably said, "Is there anything you can do about
16 it--" very likely did. I don't recall it, or I don't re-
17 call saying to him that I would make it right with him if
18 he did, but it is not at all unlikely, and he made the re-
19 mark something like, "I will see; leave that to me", or
20 something of that kind.

21 I came on into the court house, and came to the room
22 where they were getting the jurors. Of course, I told Mr
23 Davis about it. By that time it was generally known amongst
24 the newspaper reporters and others, and we were, undoubt-
25 edly, all of us, very much aggitated over the situation.
26 We went on about the jurors, however, for some liitle

1 time until court adjourned. I think we were not here
2 very long; probably we adjourned about 10 or half past *Nov 28*
3 ten that morning. Now, I think that about covers the morn-
4 ing.

5 Q Now, I want to, for the sake of the record, Mr Darrow,
6 I want to ask you if, during that morning or at any other
7 time you gave Franklin any money whatsoever for any such
8 purpose; knew that any money was to be used for any such
9 purpose; you authorized, directed, requested or gave it
10 or participated in any way in the payment of any sum of
11 money whatsoever, to Lockwood or any other person by Frank-
12 lin? A I did not. I never heard of such a thing.

13 Q Now, with respect -- you say you bore in mind -- did
14 you have at that time, on the morning of the 28th or the
15 day of the 27th, \$4000 in currency in your possession,
16 under your control, where you could get it or where you
17 could send for it, or anything of that kind? A I could
18 get it out of the bank, but I didn't have it any where
19 else.

20 Q That is, you had a regular deposit? A I did, two of
21 them.

22 Q I mean, Mr Darrow, did you have this specific money?

23 A I did not.

24 Q Of course, you could go and cash your check for it?

25 A That is all I mean by that. I did not have the money.

26 Q Did you have it in a safe deposit box? A I never

1 had one of my own and I never used anybody else's, unless,
2 possibly, there might be some special occasion for putting
3 some papers in it, which I don't recall now. But I never
4 used it for any such purpose.

5 Q Now, I call your attention to the matter of the
6 \$10,000 in currency that they have referred to in the evi-
7 dence in this case, as secured by Cleveland Damm, and
8 San Francisco, O. A. Tveitmoe on a check on the Riggs
9 National Bank. I will ask you if you ever got into your
10 possession or under your control, in your hands, the pro-
11 ceeds of that check, or the money that that check was cashed
12 for or any part of it? A Had I better state that trans-
13 action?

14 Q yes. First answer the question. A No, I did not.

15 Q Now, state the transaction with respect to that
16 \$10,000 check on the Riggs National Bank, which was cash-
17 ed at the London, Paris & American Bank in San Francisco
18 by Cleveland Damm, and O. A. Tveitmoe.

19 MR FORD: London-Paris Anglo Bank.

20 MR ROGERS: Whatever that long name is.

21 MR FORD: Correct the record, that is all.

22 MR ROGERS: yes, thank you. A Soon after arriving in
23 California, I saw Mr Tveitmoe. I believe I came by the
24 way of San Francisco the first time, and saw him then.
25 He was president -- or Secretary of the Buildings Trades
26 Council, secretary-treasurer of the Building Trades council

1 of the state. I had known him before this time -- about
2 two years before, possibly three -- met him twice. I knew
3 in a general way of his connection, both with labor and
4 the connection they claimed he had with the McNamara case.
5 I knew, of course, that he was more familiar with it than
6 anyone else in San Francisco, and was in a stronger posi-
7 tion with the Trades Union. He told me from the first time
8 I saw him, on several occasions, about his being, for a
9 number of days, as I recall it, before the grand jury here,
10 in reference to the Times explosion case, and about a
11 great many people in San Francisco who were called here
12 for weeks in reference to that case. He told me
13 about various witnesses and gave a general discussion of it
14 all, and that he had been obliged to carry the load of
15 the expenses of that case up to that time, and that he had
16 spent some 25,000 or \$30,000 first and last over that mat-
17 ter. He asked me to reimburse him for it. I told him I
18 couldn't do it at that time, for I hadn't the money, but
19 I would do what I could later if funds came in to warrant
20 it. I knew he had spent considerable sum of money over it,
21 because I knew the condition of people there, and had talked
22 with numbers of them. Every time I went to San Francisco,
23 probably three or four times before this, he asked me
24 about it and wrote me several letters in reference to it.
25 I told him as soon as I could do anything for him I would
26 do it. About the 2nd of September, I don't remember the

1 date -- I wouldn't recall it except for the production of
2 these checks -- I was in San Francisco and gave him one
3 of these checks for \$10,000. He asked me to give it to
4 him on the money he had expended. I told him I couldn't
5 do it at that time, but there was more investigation at
6 that time in San Francisco than there was here. We had men
7 there all the while, and he also had men, and the Burns
8 Agency was very busy in San Francisco, as well as every-
9 where else. I told him that he could take this, and it
10 could be used for the purpose of this case wherever inves-
11 tigation was needed there, or the expense of witnesses
12 was needed there, or if we had to maintain witnesses preced
13 ing the trial and during the trial, and that if I could
14 get any more he could have it; if I couldn't, and there was
15 any left, he should have it to apply on what he had paid.
16 I gave him that check for that purpose, and for that pur-
17 pose only.

18 Q Do you know what became of the check or where he cash-
19 ed it or how he cashed it? Did you get any of the money
20 which he cashed it for, or anything of that kind? A I
21 did not. I had nothing to do with the cashing. I gave him
22 the check.

23 Q Do you know Cleve Damm, as he is referred to in this
24 case, Cleveland Damm? A Yes.

25 Q Do you know what his business is? A A lawyer.

26 Q Whose attorney is he? A Well, I think that he

1 represents the Building Trades Council, as well as other
2 things.

3 Q State who had charge of the defense fund in San Fran-
4 cisco, that is to say, the expenditures of moneys on behalf
5 of the defense up there? A Mr Tveitmoe.

6 Q Do you remember -- you said that there was some consid-
7 erable investigation going on there. Do you remember, as
8 a matter of fact, that it was claimed that the dynamite
9 was bought in San Francisco, and that Schmidt and Caplin
10 and Brice all were in San Francisco up until within a few
11 hours before the Times explosion? A Yes, that was the
12 claim, that all of them came from San Francisco, and the
13 dynamite was purchased there, and there were a great many
14 people who knew the various people connected with it, and
15 there was more investigation there than here, or as much;
16 perhaps not more.

17 Q Now, pursuing that same sum of \$10,000, I will ask you
18 if you ever showed Mr Harrington any roll of money what-
19 ever which you claimed to be \$10,000 or any other sum
20 at any place or under any circumstances, and tell him it
21 was for any purpose whatsoever? You know the conversa-
22 tion I am referring to? A I remember his testimony, yes.

23 Q Now, in your own way -- you remember the house to which
24 he referred in his testimony? A Yes.

25 Q Where was that house? A 803 North Bonnie Brae street,
26 which is close to Echo Park.

1 Q Do you remember whether there was a porch in front of
2 that house? A That house stands very high. You can
3 see it for three or four blocks -- the highest house in
4 that vicinity -- that is not correct, either -- one or
5 two still further up on the hill. Three or four houses
6 across the street, more or less directly, and one joining
7 it below on the same side of the street. There was
8 some 30 oddsteps up to the house, from the street; probably
9 -- I mean 15 or 20 feet above the street. You can see it
10 all parts of it, from the opposite side; from the house
11 below. I have said for several blocks. The porch was on
12 the street toward Sunset Boulevard. I get mixed in some
13 of my directions.

14 Q That would be north, wouldn't it? A Yes, north.
15 The porch is on the north side. 100 feet from the porch is
16 another house. It stands some ten feet higher up. The
17 porch is very brilliantly lighted with electric lights
18 all around it inside the porch, and on the east, I don't
19 know just how many, but enough of them when you pay the
20 bill, but when lighted it could be seen from any distance -
21 any reasonable distance, and it as lighted that night
22 that Mr Harrington speaks of. He was at my house taking
23 dinner. I suppose about that time, I don't remember -- he
24 was in the habit of eating there when he could, and his
25 daughter was with him one evening, probably about that time.
26 I recall an evening when he was there, when Mr Harrington

1 and I went on the porch. Mrs Darrow and his daughter were
2 in the front yard right in front of us, and we sat out
3 there a little while talking about the case, but I didn't
4 have any money in my pocket, at least, not any such amount
5 as that, and I hadn't had it and didn't show it to him,
6 and no such conversation ever took place there or anywhere
7 else with him.

8 Q As he testified to? A As he testified, nothing of the
9 kind.

10 Q Now, do you know why, if such a thing happened, that
11 you got the money on the 2nd of September in the sum of
12 \$10,000 in bills, and had it in your pocket for the pur-
13 pose of bribing jurors, do you know why Franklin testified
14 you had to draw a check on the 6th of October?

15 MR FREDERICKS: Objected to as argumentative.

16 THE COURT: Objection sustained. A His conversation with
17 Harrington --

18 THE COURT: The objection is sustained, Mr Darrow.

19 A I was not answering that. Excuse me. I was calling
20 his attention to something else.

21 THE COURT: I think this is a good time for the noon
22 adjournment.

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

24

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