

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. 74

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
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B. N. Smith,  
Official Reporter

VOLUMES 74 to 77.

WITNESS:

Clarence Darrow, Vol. 74

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1 Wednesday, July 31st, 1912. 10 o'clock A.M.

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

4 THE COURT: You may proceed, gentlemen.

5  
6 CLARENCE S. DARROW on the stand for further  
7 direct examination.

8 MR ROGERS: Mr Darrow, I call your attention to the where  
9 abouts of Mr Harrington, a witness here, during the month  
10 of December. Will you be kind enough to relate where, ac-  
11 cording to your personal observation, he was after the 2nd  
12 of December, and from that on until such date he was no  
13 longer under your personal observation? A He was around  
14 the offices in the early part of December until about  
15 the 18th, I should say, and then started home to Chicago.  
16 He was overtaken by a subpoena from the United States  
17 District Court at Albuquerque to come back, reaching Los  
18 Angeles about the 22nd or 23rd and came to my house, and  
19 ate and slept there, and stayed there until we moved away,  
20 and he couldn't stay any longer, About the 1st of January  
21 or the last day of December.

22 Q That is to say, he ate at your table and slept in your  
23 bed; was your guest from the 18th day of December on until  
24 approximately the end of the year? A No, he left here  
25 about the 18th.

26 Q From his return after? A From his return, yes.

1 MR ROGERS: Counsel has intimated that we might possibly  
2 stipulate to certain facts. We can prove them readily  
3 enough; take a few moments to do so.

4 MR FREDERICKS: As to when the United States grand jury  
5 was in session, is that it?

6 MR ROGERS: State or United States grand jury?

7 THE WITNESS: United States.

8 MR FREDERICKS: As to when the United States grand jury  
9 was in session?

10 MR ROGERS: Yes.

11 MR FREDERICKS: We found out they were in December in  
12 three days, of course, they were in session a great many  
13 other days, and may have been in session solidly up to that  
14 time and solidly after that time. The three days is  
15 what you want?

16 MR ROGERS: I think it is the 27th, 28th and 29th.

17 THE WITNESS: And the 30th.

18 MR FREDERICKS: I sent one of the men down and he came back  
19 and told me it is.

20 MR ROGERS: May be considered so, and whatever objec-  
21 tions you have to its relevancy --

22 MR FREDERICKS: If we find it really becomes important,  
23 we may want to verify it.

24 THE COURT: Subject to correction it is stipulated that  
25 those three or four days --

26 MR FREDERICKS: They were in session about that time.

1 THE COURT: That is the 27th, 28th, 29th and 30th of Decem-  
2 ber, 1911?

3 MR ROGERS: Yes sir.

4 THE COURT: All right.

5 MR ROGERS: Mr Darrow, I will call your attention to a matter  
6 I overlooked.

7 A Excuse me, if I suggest: you better finish that Har-  
8 rington matter.

9 Q Yes, go ahead and finish that matter.

10 MR FREDERICKS: The parrington matter, you meant?

11 MR ROGERS: What he has been testifying about.

12 A He came to my house and from day to day went to Mr  
13 Lawler in the Federal grand jury, that is he said he did,  
14 I mean. Told me that he had talked with Mr Lawler repeated-  
15 ly, practically every day he was living at my house; that  
16 he had told Mr La wler that he knew nothing whatever that  
17 would in any way reflect on me or connect me with anything  
18 irregular or unlawful, and he said if anything should hap-  
19 pen by way of indictment to me, he would come back and help  
20 prepare the case and do anything he possibly could do to  
21 assist me, while he was living at my house he made those  
22 statements. He also said that if I had had any regard for  
23 myself I would have let this case run on for two years.

24 Q This case -- you mean -- A The McNamara case, so  
25 we could all have made plenty of money out of it, and that  
26 I never could learn to look out for myself in any such

1 matter, as he had known for years. He spoke also, if I  
2 might be permitted to refer to another matter that should--

3 Q Yes. A In his testimony about having some arrange-  
4 ment with me as to compensation out here. He never had  
5 any arrangement or any understanding.

6 MR FORD: Well, pardon me, Mr Darrow, are you referring to  
7 a conversation had at your house? A No. I did suggest  
8 that to you. No, that was another matter.

9 MR ROGERS: With respect to compensation you heard Mr  
10 Harrington's testimony that he should have or he thought  
11 he should have the same fees that was paid to other lawyers  
12 in the case? A Yes.

13 Q And that that was, I understand it, I don't think he  
14 testified exactly to it, but that he thought that was the  
15 agreement, or something of that kind. Now, state what the  
16 facts are about the agreement of the compensation of Mr  
17 Harrington in your own way.

18 MR FORD: I don't want to make any objection but I don't  
19 recall just what date that Harrington testified to that,  
20 if counsel remembers. A I don't remember.

21 MR FORD: Very well; go ahead. A My remembrance, if you  
22 allow me, he said something was said about that before we  
23 left Chicago.

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2s 1 MR. FORD. You are testifying now, then, whether or not  
2 such things existed in Chicago?

3 A Or anywhere.

4 MR. FREDERICKS. The witness is going to testify what the  
5 agreement was with Harrington, as I understand it.

6 A Yes, sir. I made no agreement with him whatever as to  
7 the amount of compensation, and said nothing/<sup>as</sup>to his being  
8 treated the same as any lawyer. He was not employed as  
9 a lawyer but as an evidence gatherer. When we got through  
10 with the cases he told me he thought he ought to have 2500  
11 in addition to what he had already received, and I gave it  
12 to him. A few days after he said he thought he ought to  
13 have a thousand dollars for his expenses going back east, and  
14 I didn't give him that. He had \$5500 and expenses, alto-  
15 gether.

16 Q I am being a little desultory about this, taking up  
17 some few matters I possibly did not call your attention to,  
18 and I now call your attention to a statement of Behm, I  
19 cannot exactly quote it, but if necessary I will find it  
20 in the record--that you told him to keep after him, were  
21 very angry or nervous or excited about this in your office,  
22 and jumped around and ran around and told him to keep at  
23 it until he got him to change his testimony; I think it  
24 referred to the fact, in that connection, he had taken  
25 McManigal's child by the jail where McManigal could see it  
26 and taken the child for McManigal to see. Will you be kind

1 enough to relate whether you ever said anything of that kind?

2 MR. FORD. So as not to have a lack of foundation, I sup-  
3 pose counsel is referring now to the Los Angeles office,  
4 in about the first of July, when Behm had come to Los  
5 Angeles?

6 MR. ROGERS. Yes.

7 MR. FORD. Very well.

8 A Nothing of the sort was ever said by me.

9 Q Well, at the time he spoke about--that you said you  
10 wanted to get McManigal to change his testimony, do you  
11 know that McManigal had ever testified anywhere, as far  
12 as your observation?

13 MR. FREDERICKS. That was gone into yesterday.

14 THE COURT. I think that was gone into yesterday, Mr. Rogers.

15 MR. ROGERS. Yes, sir.

16 Q Did this ever happen: He told you that he did not have  
17 very good success, he said, "The Boy is stubborn, he ain't  
18 going to come across", and that you got up and walked back-  
19 wards and forwards on the floor as if you were very uneasy,  
20 you jumped up and "He says, God", you says, "Truth or no-  
21 truth you have got to get him to come across." Did you  
22 ever say anything like that? <sup>A</sup> I never did.  
23 <sup>A</sup> I could not if I tried.

24 Q Did you use that kind of an expression? A I did not  
25 say any such thing.

26 Q Now, in his testimony he said something about a cry  
given out to him, that is, Behm, to bring the boy over--



1 I take it that the cry came and is intended to mean it  
2 came from the jail, or something like that, from McManigal.  
3 Did you ask him then when he spoke of that matter, if he  
4 ever did speak of it, did you ever ask him if he had taken  
5 the boy over, and did he say, "No, I didn't take him over,  
6 I didn't pay any attention to the hollering," and did you  
7 say, "That is right, God Damn it, tease him and then he  
8 will come across," did you say anything of that kind?

9 A No, I did not.

10 Q Did you use that kind of language, are those things in  
11 your vocabulary?

12 MR. FORD. We object to that .

13 MR. ROGERS. It does not sound like a man like Mr. Darrow.

14 MR. FORD. It is objected to as incompetent, the witness  
15 cannot testify to what his custom was.

16 THE COURT. Objection sustained.

17 Q Well, did this kind of a thing ever happen: Then he  
18 said that you said, "George, when you go back tonight or  
19 the next time, spring this on him, you tell him that if he  
20 ever gets out of here on this case they will indict him  
21 back in Chicago on a murder trial, spring that on him and  
22 see if he will come across then"? A I did not.

23 Q Now, Mr. Darrow, I am not disposed to take the time to go  
24 over each one of these little statements from time to time  
25 testified to, I think it would take a couple of hours to  
26 recite them and repeat them to you; you have heard them,

1 statements of Eehm and statements of Harrington, and  
2 statements of Franklin; if you wish I will do that, but  
3 I will ask you if at any time or at any place, to harrington  
4 ton you ever said anything about bribing jurors or paying  
5 money for that purpose or having money for that purpose in  
6 your hand or getting money for that purpose anywhere, or  
7 anything like that, or that you were afraid if the truth  
8 were told that they would involve you, or anything of that  
9 sort or character at any time or place? A I never did.

10 Q Did you say to Franklin anything whatsoever about bribing  
11 jurors, buying jurors, approaching them or for a financial  
12 matter or anything of that kind? A I never did.

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1 Q Are there any conversations here that come to your mind  
2 now that you recall, without my going over them and taking  
3 the time to repeat every word or line and have you deny it  
4 categorically -- I wish you would make a general statement  
5 about those matters, if you can, if not, I think I will  
6 go over it. A I think it has been all covered, Mr Rog-  
7 ers. There is one suggestion I would like to make to you.

8 Q Yes. A Can I make it from here?

9 MR FREDERICKS: Yes, ask your own question.

10 THE WITNESS: I will try and keep within therecord.

11 MR ROGERS: I will call your attention to one matter about  
12 Mr Cooney. Did Cooney ever tell you that Franklin had  
13 said, as soon as Bain was on the jury, there would never  
14 be a conviction, and you told Cooney to tell Franklin to  
15 keep his mouth shut. Did anything of that kind occur?

16 A That was not the evidence, Mr Rogers.

17 Q You remember the incident? A I remember it. I guess  
18 I can state the evidence, if you are willing.

19 Q I will put it to you then: Did he ever tell you that  
20 Franklin had been talking too much, that he had said that  
21 they never would convict J.B. while Bain was on the jury?

22 MR FORD: Reading from what page?

23 MR ROGERS: Reading from page 1469, and then on page 1471--  
24 that you simply said, "Thank you", or "all right", or some-  
25 thing of that kind? Now, have you any recollection of  
26 any such matter being brought to your attention, Mr Darrow;

1 if so, state what it was. A I have no positive recollec-  
2 tion as to Cooney, but matters of that sort occurred many  
3 times during the trial of getting that jury, that someone  
4 would refer to different members on the jury, as always  
5 happens in every case, and say, "This man, we think is all  
6 right; there won't be a verdict as long as he is there",  
7 and I did in that case, many times, instruct everyone con-  
8 nected with me never to say a word about any juror for  
9 fear the other side would get a pointer and get rid of him  
10 if he was favorable, and there is no doubt they instruct-  
11 ed on their side, as every lawyer does, and I might have  
12 had that conversation, although I do not recall it.

13 Q As a matter of fact, it is the universal practice among  
14 lawyers to instruct all persons to make no reference what-  
15 ever to members of the jury or their probable attitude,  
16 and that happened in that case, is that not true?

17 MR FORD: We object to that as argumentative and incom-  
18 petent.

19 MR ROGERS: No harm in answering it:

20 MR FORD: There is harm in asking argumentative questions,  
21 and the law does not permit it.

22 THE COURT: " It is argumentative, but I think a harmless  
23 question, although argumentative. Objection overruled.

24 MR FORD: Objection what?

25 THE COURT: Objection overruled, because it is harmless.

26 MR ROGERS: You may answer?

1 A That has always been my practice and that of every law-  
2 yer I came in contact with. I know it is the practice of  
3 the other side, in the McNamara case.

4 MR FORD: We move the last portion of the answer be stricken  
5 out as incompetent, irrelevant and immaterial, and not  
6 responsive to any question before the court.

7 THE COURT: It is not responsive. You can strike it out  
8 on that ground. The witness stated he would like to con-  
9 fer with counsel outside the record. He may do so if he  
10 wishes.

11 MR ROGERS: There was a matter you were about to suggest.  
12 You can state it from there.

13 MR FREDERICKS: Or ask his own question. He is counsel.  
14 No reason why he shouldn't ask himself a question.

15 MR ROGERS: " He may make a suggestion of any matter I over-  
16 looked.

17 THE WITNESS: Mr Fredericks; I was going to ask if it was  
18 a customary matter to look up jurors to get information  
19 concerning them before the calling of the jury into the box.  
20 There might someone doubt whether that was a proper pro-  
21 ceeding.

22 MR ROGERS: Well, did you ever hear of a lawsuit tried  
23 before a jury where efforts were not made to ascertain all  
24 the facts available concerning talesmen who were about to  
25 be put into the box? A I never knew of a case  
26 where there was any great public feeling or discussion

1 where both sides didn't do it, if they had money enough to  
2 do it, and I know it was done by the state and by us in  
3 the McNamara case.

4 Q Every lawyer that tries his case properly --

5 MR FORD: I think the question has been fully answered.

6 MR ROGERS: Yes. Now, how many indictments did you un-  
7 derstand there were against J.B. McNamara on the 27th or 28th  
8 of November, 1911? A I believe there were 19 indictments  
9 for murder, separate ones, and as many against his brother.

10 MR FORD: One more against his brother.

11 A Have I got the number wrong?

12 MR FREDERICKS: You have got enough.

13 MR ROGERS: Well, Mr Darrow, if you started out to pay  
14 \$5000 per for jurors, or even \$500 for talesmen, that is,  
15 before they were sworn in, in 19 cases, how long do you  
16 think you would have lasted financially?

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4s 1 MR. FORD. Just a moment, we object to that as argumenta-  
2 tive, incompetent, irrelevant and immaterial and a hypo-  
3 theoretical question.

4 THE COURT. Objection sustained, it is argumentative.

5 MR. FREDERICKS. Especially in view of the fact the state  
6 doesn't always try all of its cases.

7 THE COURT. Objection sustained. Let's not argue it.

8 MR. ROGERS. Q Do you think of anything else you would  
9 like to bring up? A I don't.

10 Q If there is any matter of the conversations that we  
11 have not taken up, I say to your Honor I can go through  
12 the system of picking out every one of these conversations  
13 and having him deny them.

14 THE COURT. The prosecution has made no objection to the  
15 method you have pursued and the court sees no objection.

16 MR. ROGERS. It is for expediting the matter, and I don't  
17 want it to appear I overlooked some conversation purposely.  
18 If we happen to come to any we think of later--now you may  
19 cross-examine.

20 JUROR DUNBAR. May I ask a question, your Honor?

21 THE COURT. You may.

22 JUROR DUNBAR. Mr. Harrington testified in reference to a  
23 code that was used, that he copied in a dictionary, which  
24 was used by Mr. Tveitmoe and Mr. Johannsen and also by him-  
25 self, and he stated that you gave him a copy to copy into  
26 this dictionary. I would like to ask you if you did so?

1 MR. ROGERS. May I modify that by asking him to explain  
2 about all the codes you had, go into the code matter?

3 MR. FREDERICKS. Take the Juror's question first.

4 MR. ROGERS. I just simply wanted him to take the whole  
5 matter.

6 A Suppose I answer this my own way. We had two codes dur-  
7 ing the time. We had first a code made from a dictionary.  
8 I don't recall who made that up. I think the evidence--I  
9 think Mr. Warrington said it was gotten up in San Francisco,  
10 but I don't remember. I don't recall giving it to him, but  
11 it is entirely possible that I did. I knew of it and advised  
12 it. Both sides had a code.

13 MR. ROGERS. Well, every lawyer has a code if he can have  
14 one? A Every business man, everybody else, if he wants  
15 to keep secrets. Then I feared this code was too easy, and  
16 so I had another code made up, that I never could read  
17 or never used but had it interpreted at different times.  
18 We had two of them.

19 MR. ROGERS. Q Now, the second code, Mr. Darrow, that was,  
20 you say, you were never able to use that yourself?

21 A I never used it. I don't mean I never used it. If I  
22 wanted to send a telegram I had it translated, and if one  
23 came to me I had it translated.

24 MR. ROGERS. Q You couldn't do it yourself? A I could--  
25 I could have learned it, no doubt, but I was too busy.  
26 It was a very difficult one.



1 MR. ROGERS. Now, you say you don't remember, in answer to  
2 Mr. Dunbar's question, you don't remember whether Johanssen  
3 gave you that code or you gave it to him? A The ques-  
4 tion was whether Harrington--whether I gave a code to  
5 Harrington. I don't remember. It is very likely I did.

6 JUROR DUNBAR. He stated it was destroyed or lost.

7 A Yes, I think his testimony was that I gave him a code with  
8 names of various individuals. The first code he got was  
9 in San Francisco and that afterwards I gave him names to  
10 paste in the book, and perhaps the whole code anyway.  
11 It is entirely possible and probable that I might have done  
12 so. Of course, I knew he had it and we all had one, that  
13 had any occasion to use it.

14 THE COURT. Any other juror wish to ask a question?

15 MR. ROGERS. Mr. Darrow, speaking of using the codes--  
16 pardon me.

17 JUROR GOLDING. Just tell me how many persons in the United  
18 States were directly interested in your handling of the  
19 McNamara case through their contributions to the defense  
20 fund, through their affiliated unions?

21 A Yes, approximately 2 million.

22 JUROR GOLDING. Two million people? A That is, there  
23 were more than that. The total membership of the American  
24 Federation of Labor is upwards of two million. When this  
25 case started there was to be a call for 25 cents apiece  
26 from the membership and I think about a quarter of them

1 paid, upwards of \$200,000. Outside of the membership  
2 of the unions there were large numbers of people in all  
3 walks of life and large numbers of organizations, like the  
4 socialistic organization throughout the country who were  
5 interested, and who contributed something, and who were  
6 interested in it, but there was at least two million that  
7 were directly interested in the way you spoke of.

8 JUROR GOLDING. Just one other subject, about Joe Scott.  
9 He was supposed to be a prominent man here politically,  
10 socially and commercially, and supposed to be on the other  
11 side, as far as the labor situation was concerned in Los  
12 Angeles. How did it come that he became affiliated with  
13 you in the defense of the McNamaras, and what stand did  
14 he take on the compromise of the case? A Why, Joe  
15 Scott was supposed to be and was an influential man in  
16 Chicago--

17 MR. ROGERS. No, Los Angeles.  
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1A--Or in Los Angeles. I heard of him before I left Chicago.  
2 I think he visited J. J. McNamara in jail before he was ever  
3 employed. They were members of the same organization,  
4 and he was employed like any other lawyer because of his  
5 being a lawyer and his position in Los Angeles, like any  
6 other lawyer. The first time this matter of settlement  
7 was mentioned to Mr Scott was on Thanksgiving Day, and  
8 he at once approved it. I told him at that time how long  
9 it had been under discussion.

10 JUROR GOLDING: He had not been mentioned before? A He  
11 had not. I told him how long it had been under discussion  
12 and he at once approved of the proposition. It had not  
13 been mentioned to Mr Harriman, either, which I ought to  
14 say, because for these several weeks preceding he had prac-  
15 tically had nothing to do with the case, and was busy as a  
16 candidate for Mayor, and of course, I knew and we all  
17 knew, that this matter would seriously involve his cam-  
18 paign, and that he was not in position to advise and ought  
19 not to be asked to take any such responsibility.

20 MR ROGERS: You mean by that latter statement that while  
21 you didn't doubt Mr Harriman's self-sacrificing character  
22 and his willingness, possibly, to sacrifice his own inter-  
23 ests, as every lawyer does to his clients, yet, you didn't  
24 wish to put it up to him under those conditions at that  
25 time while he was in that campaign.

26 MR FORD: Objected to as irrelevant and immaterial.

1 The only thing we are interested in are the facts, and  
2 not the reason why.

3 THE COURT: Objection overruled. A It was not only Mr  
4 Harriman's personal interest, but of course, he had  
5 a very large following here in Los Angeles, and a very  
6 hot and bitter campaign, and we had very high hopes of  
7 winning, and his own allegiance were divided between these  
8 people who were his supporters and his clients, and we  
9 thought we had no right to put it up to him. We discussed  
10 that with the men and the lawyers.

11 THE COURT: Any other juror want to ask a question?  
12 Is that all, Mr Golding?

13 JUROR GOLDING: yes sir, thank you.

14 THE COURT: All right. Take up the cross-examination.

15 MR ROGERS: Just a moment. One thing suggested to me.  
16 Suggested by Mr Golding's question. I will ask you to  
17 state from the people that were actually contributing money,  
18 aside from these 2,000,000 men that you have spoken of,  
19 is it or not a fact that there were many people interested  
20 in the case from one standpoint or another, whether like  
21 Mr Tveitmoe, because he was mentioned concerning it, peo-  
22 ple whowere vitally and materially and personally interest-  
23 ed in the matter? A Everybody in the United States took  
24 sides on that case, and were interested, actively inter-  
25 ested.

26 MR FREDERICKS: I think that is going too far. Of course,

1 if one of the jurymen wanted to go that far, but Mr Gold-  
2 ing didn't want to go that far. A I understand what you  
3 mean now.

4 MR FREDERICKS: Calls for a conclusion of the witness and  
5 is immaterial.

6 MR ROGERS: yes, that answer is not exactly responsive.

7 THE COURT: yes, strike out the answer.

8 MR ROGERS: You understand what I mean? A Yes, I under-  
9 stand what you mean.

10 MR FREDERICKS: We maintain the question calls for a con-  
11 clusion or opinion of the witness, and is immaterial.

12 MR APPEL: Calls for a fact.

13 MR FREDERICKS: It is immaterial, covers that point.

14 MR APPEL: It is very material.

15 THE COURT: Let's have it. Objection overruled.

16 A There were other indictments, threats of still more.  
17 Many people were seriously interested.

18 MR ROGERS: How many people? A I don't know.

19 Q Would it exceed a score?

20 MR FREDERICKS: That seems to be awfully speculative. We  
21 object to it on the ground it is immaterial.

22 MR ROGERS: I am handicapped; I cannot talk -- you can.

23 A Nobody knew, Mr Rogers, what efforts there might be  
24 in any direction. I heard it claimed here that Mr Har-  
25 riman was interested, which I never believed.

26 Q At the time of the trial before November, is it or not  
true that there were investigations concerning this mat-  
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1 ter, to your knowledge, made against numerous people in  
2 various parts of the United States? A There were.

3 Q You don't know all of who they were? A I do not.

4 Q Indictments were found here in the federal grand  
5 jury, to your knowledge, were they not?

6 MR FREDERICKS: There were no indictments found in the  
7 federal grand jury, in regard to this case.

8 MR ROGERS: Not in regard to this case, but in regard to  
9 the Times matter.

10 MR FREDERICKS: Oh, no.

11 MR ROGERS: Growing out of it.

12 THE COURT: Well, let the witness answer, whichever the  
13 fact may be. A Yes, there were indictments found in the  
14 federal grand jury growing out of this case here, and in  
15 Indianapolis, the two McNamaras were indicted here by  
16 the federal grand jury, after they had received their sen-  
17 tence, in connection with Mr Tveitmoe and others, for the  
18 transportation of dynamite; Mr McManigah, who has been their  
19 main witness, was taken back to Indianapolis before the  
20 Federal grand jury to relate there the same matters he was  
21 relating here, and there were 50 odd men indicted there,  
22 54, I think.

23 MR FREDERICKS: That was long after this case? A Not  
24 long, Mr Fredericks, it began before this case was ended.

25 MR FREDERICKS: Mr Ford is going to cross-examine. A You  
26 can both do it.

MR FREDERICKS: No

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6p 1 THE COURT. Have you finished your direct examination?  
2 MR. ROGERS. I think so. There may be a question or two.  
3 If any juror desires to ask a question on any matter that  
4 is not clear, I would like to take it up. There may be  
5 something that occurs later.  
6 MR. FORD. We would like the direct examination to finish.  
7 MR. ROGERS. I have said so.  
8 THE COURT. The record shows that counsel has finished the  
9 direct examination.  
10

11 CROSS-EXAMINATION.

12 MR. FORD. Q I call your attention, Mr. Darrow, to the  
13 testimony of Mr. Harrington with reference to the codes, if  
14 you recall it, and correct me if I am in error--that Mr.  
15 Harrington testified that prior to his meeting Johannsen  
16 and Tveitmoe in San Francisco in July, that you had given  
17 him a slip of paper containing the names of various persons  
18 with letters opposite the names and indicating the persons,  
19 the letters constituting a code of the names of those persons,  
20 more or less an imperfect code, and you had given him a  
21 slip of paper containing those, and when they afterwards  
22 decided to use a dictionary that he copied those letters,  
23 together with the names for which the letters stood, in the  
24 back of this little dictionary that has been introduced as  
25 exhibit 23. You recall that testimony and I state it cor-  
26 rectly? A I recall the testimony, Mr. Ford.



1 Q Isn't it a fact that the first code was one which you  
2 yourself made up and which consisted of letters designating  
3 the names of various individuals? A I do not think so.  
4 I think the code was all made at the same time, but I may  
5 be in error; we did use letters or figures designating  
6 various individuals, and I think that was made in connec-  
7 tion with the dictionary, but I am not certain.

8 Q Didn't you have a code and use a code before July, the  
9 latter part of July, 1911? A You mean the latter code, the  
10 dictionary code?

11 Q No. Use a code in which you used letters to represent  
12 the names of individuals so that the other side would not  
13 find out to what individuals your telegrams were referring?

14 A Very likely. I am not certain, but very likely we did.  
15 The code matter was discussed before I left Chicago.

16 Q With whom? A Mr. Rappaport, of Indianapolis.

17 Q I will ask you-- A May I add, so that the jury will  
18 know who he is?

19 Q I will return to Mr. Rappaport in a minute.

20 MR. ROGERS. Go on and add what you wish.

21 MR. FORD. Q Go ahead and tell who Mr. Rappaport is.

22 A He was the representative of the structural iron workers  
23 in Indianapolis, a lawyer.

24 Q Anything further you want to tell the jury about Mr.

25 Rappaport? A Not now, no. He was here once in the McNamara  
26 case.

1 Q I will ask you to look at the writing in the back of that  
2 dictionary and look at the letters indicating the names  
3 of persons there. A I see them.

4 Q You have seen this dictionary, the writing in the back,  
5 Mr. Rogers, before. Do you recollect whether or not those  
6 letters correctly designate the names of the individuals  
7 there written? A I do not.

8 Q Have you any reason to believe they are incorrect?

9 A I have no reason to believe either way; the only reason  
10 I have to believe it incorrect is its source, Mr. Harrington.

11 Q Aside from its source, you think it is correct? A I do  
12 not know, I have no remembrance.

13 Q Have you really any doubts on the matter, Mr. Darrow?

14 A Well, there are no letters here except for the first three  
15 and I have not the slightest remembrance as to those.

16 Q Let me read the letters to you: A, Flora; second one  
17 is Tweit, B-A.O.-- A I did not observe that.

18 Q The third is, John, C, initial A; the fourth is Brice,  
19 D; the fifth is Darrow, E; the sixth is Harrington, F;  
20 the seventh is Smithy, G; the next is Caplin, H; the next  
21 is Castle, I; the next is Clancy, J; the next is Harriman,  
22 K; the next is Nockles, Ed. L--were these initials the  
23 initials you used at the beginning of your employment to  
24 indicate the names of those individuals? A Now, first,  
25 the reason I didn't know the letters or recognize them is  
26 because they are put on the end of the name as if it was

1 part of it.

2 Q I can readily understand that. A That is the reason  
3 I didn't recognize that. I have no remembrance as to what  
4 letters were used for different names; I do know letters  
5 were used.

6 Q On the first of December, 1911, the day that the McNamaras  
7 plead guilty, J B and J J you sent a code telegram to Mr.  
8 Rappaport concerning that matter, did you not? A I did.

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1 MR FORD: You have the copies; we gave you, a copy of that.

2 MR ROGERS: The Postal or Western Union ?

3 MR FORD: I think it is postal.

4 MR ROGERS: Go ahead, we will find it.

5 Q I will let you look at my copy, Mr Darrow (handing  
6 document to witness). A All right.

7 Q In which the word "D" occurs, and the word "O" occurs;  
8 do you recall sending such a telegram?

9 MR ROGERS: Well, now, that telegram, if your Honor  
10 pleases, is in code; Mr Darrow says he doesn't know that  
11 code, and never was able to use it.

12 MR FORD: If the court please, this is cross-examination.

13 MR ROGERS: That is true enough. I do not object to the  
14 telegram being identified, but this, in this shape, it is  
15 like a telegram sent in a foreign language. The witness  
16 says he doesn't understand, like a translation, it ought  
17 to be shown him, if they have a translation, it should be  
18 shown him. I do not see how any man can identify a code  
19 telegram of that sort which he says he didn't prepare him-  
20 self and could not prepare, didn't know how.

21 MR FORD: I am not pretending to translate, your Honor, any-  
22 thing except those two letters, to which I have directed  
23 his attention, and as to the question itself, it refers --

24 THE COURT: I think the question is competent for that  
25 purpose, if it is limited to that.

26 MR FORD: I am only offering it for the purpose of get-

1 ting at those two letters, and have only attracted the at-  
2 tention of this witness to those two letters. This wit-  
3 ness is perfectly competent to take care of himself and does  
4 not need assistance of counsel on a matter of that sort.

5 MR ROGERS: I take an exception to that kind of statement.  
6 There is a direct statement in the Supreme Court Reports  
7 of this state that characterizes such a statement as mis-  
8 conduct, a statement of that kind. I am not trying to  
9 take care of the witness; I am merely calling attention to  
10 the fact if he sent such a telegram as that --

11 MR FORD: If the court please, this is cross-examination,  
12 and I am not bound by one single answer that this witness  
13 may give.

14 THE COURT: Are you aware of the fact that the court has in-  
15 dicated a ruling in your favor, and counsel on the other  
16 side has asked to be heard on that matter?

17 MR FORD: I beg your pardon, your Honor, I was not aware  
18 of that.

19 MR APPEL: The question came up this way; he showed it to  
20 him and he says, "You sent a telegram to Mr Rappaport?",  
21 and he says, "Yes, I did", and then he comes there and assumes  
22 that is the telegram and asks him "You used these two let-  
23 ters" o and some other letter -- now, the witness has  
24 not said, your Honor, he ever used them; he has not identified  
25 that telegram as the telegram he sent; he does not say  
26 that is the telegram he sent. Now, we object to his being

1 questioned concerning the telegram that he claims the  
2 witness sent because he assumes that the witness has iden-  
3 tified that telegram as the telegram he sent, and he assumes  
4 that is the telegram; and no foundation has been laid;  
5 the telegram has not been offered in evidence, he cannot  
6 examine him concerning a paper until, of course, some found-  
7 ation has been laid. What is the use of examining a man  
8 concerning a newspaper here, your Honor, if the witness  
9 says, "I do not know whether that is the paper I prepared  
10 or not?" It ought to be done in that way; it ought not  
11 be assumed that that is the telegram unless the witness  
12 has stated that it is the telegram. Now, if it is in  
13 the power of the witness to say that is the telegram or  
14 a copy of it, they can draw that information from him and  
15 then they can say, "Now, if this is the telegram you sent,  
16 or a copy of it, it is in your recollection these are the  
17 words you used, tell us what this letter means?"

18 THE COURT: Let me get this matter right. Is this a docu-  
19 ment produced by the defense?

20 MR APPEL: No, your Honor.

21 THE COURT: Is this a copy of the document produced by  
22 the prosecution for the defense?

23 MR APPEL: I don't know what he is showing him, but we have  
24 a paper that purports to be that telegram, I suppose so,  
25 I don't know.

26 THE COURT: You have not yet answered my question. This

1 document was presented here from the hands of the defense,  
2 now, is that one of the documents that --

3 MR APPEL: No, we did not present it; we didn't examine him  
4 about it.

5 THE COURT: No. I do not make myself clear. I mean,  
6 its physical production in the court, within the last few  
7 minutes, came from the hands of the defense. Now, are  
8 they producing this document and is this one of the docu-  
9 ments furnished them at their request a few days ago, by  
10 the prosecution?

11 MR APPEL: No, I suppose the telegram they have been asking  
12 the witness about, is a copy of the one they have furnished  
13 us, your Honor, and we took it out here for our own infor-  
14 mation.

15 THE COURT: All right; then I understand the situation.

16 MR APPEL: Now, your Honor will see that that telegram is  
17 in some language, of some kind, probably either in Japanese  
18 or some extinct language that may have existed down here  
19 during the beginning of the world, but the witness has not  
20 said that is the telegram.

21 THE COURT: yes, I think you will have to lay a foundation.  
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8p 1 MR. APPEL. We can see they have a right to examine the  
2 witness as to the meaning of it, but he ought to identify it  
3 first, he ought to say this is the telegram, or I can iden-  
4 tify it, but he cannot examine him until some foundation has  
5 been laid.

6 MR. FORD. If the Court please, it was not my intention at  
7 the beginning to examine him in reference to these matters  
8 of that original code, but as long as the juror had gone into  
9 that matter I thought it might be wise to take it up at the  
10 present time and dispose of it.

11 THE COURT. At the present time this paper is a fugitive  
12 piece of paper present here and nobody seems to know any-  
13 thing about it, and we have to get some identification of it.

14 MR. FORD. If the court will pardon me, I will produce the  
15 original telegram a little later. All I want to get is if  
16 the witness has any independent recollection, and I simply  
17 call his attention to the copy we have furnished him in  
18 order that it might refresh his recollection and in order to  
19 be perfectly fair, I am not making any attempt to introduce  
20 this paper. I simply ask this question in this form--

21 THE COURT. Do you withdraw the question?

22 MR. FORD. I will withdraw the question. Do you recall  
23 sending a telegram to Mr. Rappaport on the 1st of December,  
24 1911, concerning the pleas of guilty interposed by J J Mc-  
25 Namara and J B McNamara? A I sent a telegram in answer to  
26 an inquiry sent from him to me.



1 Q On that day? A On that day, I think.

2 Q And that telegram was sent in one of your codes?

3 A Undoubtedly.

4 Q Now, do you recall that the letter D and the letter O  
5 occurred in those code telegrams, the capital D with a  
6 period after it, and the capital O with a period after it.

7 MR. APPEL. Wait a moment--

8 A I have told you, Mr. Ford, I have no recollection whatever  
9 as to the letters that were used to designate the various  
10 names, that is true.

11 Q But you do recall letters were used? A I do.

12 Q To designate the names of individuals? A I do.

13 Q Now, J B McNamara was frequently known as Brice throughout  
14 the case? A Yes.

15 Q He was your client? A He was.

16 Q And you were constantly making inquiries about Brice  
17 throughout the trial? A I made a great many inquiries about  
18 him.

19 Q And constantly sending telegrams and letters concerning  
20 him? A I don't know what "constantly" means, I sent a good  
21 many.

22 Q Well, frequently, we will say. A yes, frequently.

23 Q Do you recall, Mr. Darrow, that the letter D was used to  
24 indicate his name? A Mr. Ford, I have said over and over  
25 again I have no recollection as to what letters were used  
26 as to any particular name, which is true.

1 MR. ROGERS. Let us have this original telegram, before any  
2 further questions are asked, in order to see who drew it or  
3 wrote it.

4 MR. FORD. I will have it immediately after recess.

5 MR. ROGERS. Get the original and we will find out whether  
6 Mr. Darrow wrote that telegram.

7 THE COURT. It is about time for the morning recess. Gentle-  
8 men of the jury, bear in mind your former admonition. We  
9 will take a recess now for 5 minutes.

s 10 (After recess.)

11 THE COURT. You may proceed.

12 MR. ROGERS. A matter of some consequence came up and Mr.  
13 Appel asked to be excused a little time to look the matter  
14 up. We will go on.

15 THE COURT. All right.

16 MR. FORD. I will take up another matter for a moment, Mr.  
17 Darrow. Q That you did send a telegram on August 23rd, 1911  
18 to Mr. Biddinger at the St Francis Hotel in San Francisco?

19 A I did.

20 Q And that you signed the name Johnston to it? A I don't  
21 remember. I didn't sign mine.

22 MR. ROGERS. Let me see it.

23 MR. FORD. After you have looked at this document, which  
24 has been shown to Mr. Rogers-- A Yes.

25 Q Is that document in your handwriting? A It is not.

26 Q In whose handwriting is it? A I don't know.

1 Q Is that the handwriting of Mrs. Darrow? A It is not.

2 Q You are positive of that? A Absolutely positive.

3 Q Whose handwriting is it, if you know? A I answered  
4 your question, sir.

5 Q Do you remember who was present when this telegram was  
6 written? A I do not.

7 Q Do you remember to whom you gave it to have it forwarded?

8 A I do not.

9 Q Did you go there personally.

10 MR. ROGERS. He has not said he forwarded that telegram.

11 MR. FORD. Q Did you go personally to the office of the  
12 telegraph company? A I haven't the slightest recollection  
13 except that I wired him that I was coming.

14 Q That telegram was not charged to your account, was it?

15 A No remembrance whatever about it, sir.

16 Q Was it not your custom to have telegrams--I withdraw that  
17 question. Did you not have an account with the Postal  
18 Telegraph Company at that time? A I did.

19 Q And you frequently had telegrams charged to your account?

20 A Certainly did.

21 Q Why didn't you have this telegram charged to your account?

22 MR. ROGERS. He has not said yet that is the telegram he  
23 sent, your Honor please, not cross-examination. Assuming  
24 something he has not said.

25 MR. FORD. He said that was the telegram that was written  
26 under his direction.

1 MR. ROGERS. He has not so said.

2 A I don't know whether this was written or not under my  
3 direction.

4 MR. FORD. Q Do you know that that was the telegram which  
5 you sent to Mr. Biddinger? A I do not. I told you, Mr.  
6 Ford, that I sent a telegram to Mr. Biddinger at that time  
7 informing him that I would be in San Francisco the next  
8 day.

9 Q Did you not a moment ago state that this was the telegram?

10 A I don't think so.

11 Q Is that the language used in the telegram? A Why--

12 MR. ROGERS. Wait a moment--

13 A I don't suppose I can remember the language of every  
14 telegram I sent.

15 MR. ROGERS. --that is not a proper question, not cross-  
16 examination. If they have a telegram of Mr. parrow's let  
17 them present it and show it and we have no objection in the  
18 world.

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1 MR FORD: That is it.

2 THE COURT: Objection overruled.

3 MR ROGERS: Exception. A I have told you distinctly that  
4 I have no remembrance as to the language used, excepting  
5 that it was to convey to him that I would be there next day.

6 MR FORD: You saw the telegram which was written at that  
7 time, did you not, that you sent to Mr Biddinger?

8 A That question has been answered, that I have no rem-  
9 embrance about it excepting I wired him the fact I would be  
10 there the next day.

11 Q You signed it under an assumed name? A I signed  
12 another name to it.

13 Q Did you sign it yourself? A I have answered that  
14 question.

15 Q You answered, "I signed another name to it." What I  
16 mean to say, did you personally? A I told you I have  
17 no remembrance about it.

18 Q You may, then, have allowed somebody or directed some-  
19 body else to sign a fictitious name? A I may have told  
20 somebody to sign that telegram. Just a moment. Do you  
21 know what office that came from here? That may help you  
22 a little.

23 Q Purports to be from the Los Angeles office. A There  
24 are a number of them here.

25 Q Do you recall from what office you sent the telegram?

26 A I do not, but I would say the reason it was not in a

1 charge account, was most likely because it was sent at  
2 some other office than the regular office; I don't know  
3 that that is true.

4 Q Do you recall that the telegram was addressed to Guy  
5 Biddinger, St Francis Hotel, San Francisco, California?

6 A I recall that I addressed a telegram to Guy Biddinger  
7 at about that date, or that one was sent by my direction  
8 about that date, and that he was stopping at that hotel, be-  
9 cause I found him there; that is why I recall that.

10 Q Do you recall that the words contained in the telegram  
11 were as follows: "Suggestion has been followed"? A I  
12 do not.

13 Q Do you recall what the words were that you used in  
14 the telegram? A I do not. I recall what I meant to con-  
15 vey to him and what I did convey to him, that I would be  
16 there.

17 MR FORD: We offer the telegram at the present time,  
18 and ask it be marked for identification, your Honor.

19 THE CLERK: People's exhibit 42.

20 THE COURT: For identification.

21 MR FORD: Now, returning to Mr Rappaport -- you have already  
22 stated Mr Rappaport was the attorney for the International  
23 Association of Structural Bridge & Iron Workers at Indian-  
24 apolis? A He was.

25 Q He was also -- he also came to Los Angeles shortly af-  
26 ter the arrest of J. J. McNamara, did he not? A He came

1 here before I did.

2 Q And was one of the attorneys present at the arraignment  
3 for J. J. McNamara? A I so understood; I was not here.

4 Q Well, you learned that from the record afterwards,  
5 which has been introduced? A I think so; at least, I  
6 learned it from him.

7 Q You recall that record has been introduced here showing  
8 the attorneys present to have been Leo M. Rappaport and  
9 Job Harriman, at that time, did you not? A I do not, but  
10 I have no doubt it is true.

11 Q You met Mr Rappaport when you came here? A No, I met  
12 him in Indianapolis first.

13 Q When did you meet him in Indianapolis? A I think in  
14 May.

15 Q 1911? A Yes.

16 Q At that time had you been retained as an attorney by  
17 the American Federation of Labor? A No, I met him first.

18 Q Before you were retained? A Yes.

19 Q Well, to get at dates, I will switch to another mat-  
20 ter for a moment. You were retained as an attorney by  
21 the American Federation of Labor through Mr Gompers?

22 A Probably I better state just what happened without  
23 making it long, and then it is a question of law whether  
24 I was retained by them.

25 Q All right; just state what happened? A The American  
26 Federation of Labor was interested in defending these men,

1 especially J.J., and they asked me to go to Washington.  
2 I met Mr Gompers in the Executive Board, and they urged  
3 and insisted that I go into this case, and they discussed  
4 the question of raising funds. I promised to go in. I  
5 supposed my retainer was by the men whom I was defending;  
6 they were to pay the expenses. I mean by that, the Ameri-  
7 can Federation of Labor and such other people as wanted to  
8 contribute.

9 Q I attract your attention to check No.2 for \$15,000,  
10 contained in People's exhibit No.10. A No.2?

11 Q No.2; check for \$15,000, dated June 13th, 1911.

12 A Yes, I see it.

13 Q When and where did you receive that check? A It was  
14 mailed to me.

15 Q Mailed to you at Chicago? A Yes.

16 Q And deposited by you in Chicago? A Yes.

17 Q In the Western Metropolis Bank Building? A The  
18 western Trust & Savings Bank.

19 Q The Western Trust and Savings Bank, that is correct.  
20 Was that the first moneys you had received as a retainer  
21 in the case of People vs. J. B. McNamara and J. J. Mc-  
22 Namara, for the purpose of fixing the date? A I didn't  
23 receive this as a retainer.

24 Q Well, was it the first moneys you had received  
25 an any account in that case? A I believe so. I can ex-  
26 plain that.

Q Well, explain it. A There was a check for \$15,000



1 that I had thought came from the Bridge & Structural  
2 Iron Workers, and sent to me and deposited in Chicago, but  
3 I think this is the check, and I think that is the first I  
4 received.

5 Q There was another check for \$15,000 direct from the  
6 International Association of Bridge & Structural Iron Work-  
7 ers? A I didn't say that.

8 Q I am asking you. A I think not. I think it was the  
9 same check, and that they got it from the Bridge & Struc-  
10 tural Iron Workers.

11 Q You mean the American Federation received \$15,000  
12 from the Bridge & Structural Iron-workers. A Yes

13 Q And afterwards, Frank Marrison, secretary of the Amer-  
14 ican Federation of Labor, mailed you this check?

15 A That is my impression, Mr Ford.

16 Q That check was dated on June 13th, 1911? A It seems  
17 to be, yes.

18 Q And was received by you a day or two after that and  
19 deposited about June 16th, that being the stamp on --

20 A Probably.

21 Q How long before that was it that you were retained  
22 to defend -- that you had agreed to defend the McNamaras?

23 A I don't remember.

24 Q Approximately. A The matter was under discussion for  
25 probably a month while I was seeking to have them take some-  
26 body else, but when I positively agreed to come was in Wash-

1 ington and I would say two weeks before, but I would not be  
2 certain about that, Mr Ford.

3 Q Let's see if we can get at the date in another way.  
4 You recall that J. J. McNamara was arrested on April 22nd,  
5 1911? A About the latter part of April.

6 Q You don't recall the exact date? A I do not. I had  
7 no interest in the case at that time any more than anybody  
8 else, and there is nothing by which I can fix it.

9 Q How long after his arrest was it before you were ap-  
10 proached? A Before he had got to California.

11 Q Before he had got to California, and who saw you in  
12 that behalf? A My recollection is that I was first tele-  
13 phoned to from Indianapolis.

14 Q By whom? A I think Mr Ryan, possibly Mr Rappaport.

15 Q By Mr Ryan, you refer to F. M. Ryan, the president  
16 of the International Association of Bridge & Structural  
17 Iron Workers? A Yes. It was either him or one of the  
18 executive board or Mr Rappaport.

19 Q Did you go down to Indianapolis? A I did.

20 Q How soon after the arrest of J. J. McNamara? A I  
21 think within three days.

22 Q Assuming that he was arrested on April 22nd, you went  
23 to Indianapolis before April 25th, 1911?

24 MR ROGERS: Wait a moment. Let's see what that arrest  
25 means. I desire to inquire what does counsel mean by ar-  
26 rest of McNamara. As a matter of fact, McNamara was appre-

1 hended, as I understand --

2 MR FREDERICKS: Two McNamaras, different times.

3 MR ROGERS: J.B. A J. J. he is referring to.

4 MR FORD: I don't want to quarrel over terms --

5 MR ROGERS: Taken to Chicago and kept out of public cus-  
6 tody, and I understand there is some considerable legal  
7 question as to whether or not they were ever arrested back  
8 there.

9 MR FORD: I am only getting at the time and I don't want  
10 to quibble over terms.

11 MR ROGERS: I am not quibbling. I want to know what it is.

12 THE COURT: All right, if you make it clear what time.

13 MR FREDERICKS: J. J. was arrested, perhaps a week after in  
14 Indianapolis.

15 MR FORD: Perhaps we can stipulate -- A Your questions  
16 I have been answering have been referring to J.J.?

17 Q Yes sir. We can stipulate these two facts, just to  
18 get at the facts; that J.B. was removed from Detroit to  
19 Chicago on April 12th, 1911, and J. J. McNamara was remov-  
20 ed from Indianapolis to California on April 22nd, 1911.

21 MR ROGERS: You ought to know, we were both in Chicago.  
22 If you say that is the time that is all right; I will take  
23 your word.

24 MR FREDERICKS: It is in the testimony here.

25 MR FORD: Just to fix the two dates. Now, that would be  
26 about April 25th you went down to Indianapolis, and saw

1 Mr Ryan and Mr Rappaport and other members of the executive  
2 board? A As near as I can remember. I was trying a case,  
3 if you permit me to say there, so there won't be any mis-  
4 take -- that run a month or six weeks, in Kankakee, Illi-  
5 nois, which was outside of my home, and I was there every  
6 day, and during that time this matter of my going there  
7 was under discussion, and some of them came there to see  
8 me, but I think I went to Indianapolis perhaps on Saturday  
9 or Sunday, or sometime during the progress of that case,  
10 and I think I went there before J. J. had reached Cal-  
11 ifornia; that is my recollection of it.

12 Q Well, the 22nd of April was Saturday. A It was.

13 Q Now, you went there sometime during the following week  
14 within three days, would be Monday or Tuesday? A I think  
15 so.

16 Q You didn't go on Sunday after he was arrested?

17 A I don't believe I did. I would not be certain about  
18 those dates, though, Mr Ford.

19 Q That was the first time you had ever met Mr Rappaport?

20 A It was.

21 Q Do you recall whom else you met there besides Mr  
22 Ryan and Mr Rappaport? A I met several members of the  
23 executive board.

24 Q H. S. Hawkins? A I met Mr Hawkins and Clancey --  
25 who are the other members?

26 Q Hawkins and Clancey the only two you remember of

1 meeting? A I met others.

2 Q Did you meet Frank Webb of New York? A What is the  
3 name?

4 Q Frank Webb? A I don't recall him.

5 Q Did you meet Mike Young of Boston? A I think so,  
6 but I am not certain.

7 Q Did you meet Leglitner? A I think so; I am not sure  
8 about any of the names, but Clancey and Ryan, and who is  
9 the other man I mentioned -- Hawkins.

10 Q Hawkins is now secretary-treasurer, succeeding J.J.  
11 McNamara? A Yes.

12 Q Who at that time was a member of the executive board?

13 A He was.

14 Q At that time did you discuss with Mr Rappaport the  
15 necessity of a code? A I am not certain. I did before I  
16 came west.

17 Q How long did you stay in Indianapolis? A One day, I  
18 think.

19 Q Then what did you do in reference to this case, of  
20 course? A Well, I don't recall exactly. I was very much  
21 tied up in court at that time, and I think Mr Rappaport  
22 and perhaps Mr Hawkins, and possibly someone else came up  
23 to Kankakee, which was between Indianapolis and Chicago,  
24 and I had a conference there with them one evening.

25 Q How long after this first conference? A You are  
26 not trying to be exact as to dates, I take it?

1 Q No, approximately? A I should think within a week.

2 Q When next did you meet anybody else in connection  
3 with the case? A That I couldn't say. I went to Washing-  
4 ton afterwards.

5 Q How long after this Kankakee conference? A It is not  
6 clear in my mind how long after.

7 Q It was before you came to California the first time?

8 A It was before I came the first time.

9 Q You have testified already that you came to Cal-  
10 ifornia about the 1st of June, 1911? A Well, I was prob-  
11 ably mistaken if I said about the 1st of June. Probably  
12 later than that, considerably.

13 Q About the 10th of June? A If that is important I  
14 could probably fix the date.

15 Q Well, you came first to San Francisco? A I did.

16 Q At what hotel did you stop? A I think the Palace.

17 Q The Palace Hotel. Now, about how long before your  
18 trip to California was it that you went to Washington?

19 A I am not certain.

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1 MR. ROGERS. You mean the first trip, Mr. Ford?

2 MR. FORD. Yes.

3 A I am not certain. I think only a few days.

4 Q Whom did you meet at Washington? A Met Mr. Gompers and  
5 Mr. Mitchell and Mr. Huber.

6 Q He is the president of the Woodworkers Union? A Presi-  
7 dent of the carpenters.

8 Q Carpenters Union at Indianapolis? A Yes, sir.

9 Q John Mitchell is Vice President of the American Federation  
10 of Labor? A One of them.

11 Q And Sam Gompers is the president of the American Federation  
12 of labor? A Yes.

13 Q Was Frank Morrison present at that meeting? A Yes.

14 Q He is Secretary of the American Federation of labor?  
15 A Yes.

16 Q Any one else you met at that conference? A Yes, there  
17 was probably most all of the executive board; some 10 or 15  
18 members. Some of whom I had not known personally, and whose  
19 names I don't this moment recall, most all of them were there.

20 Q Now, approximate as near as you can the time between that  
21 meeting and your first trip to California. A Can't do  
22 any better than I have on that.

23 Q A couple of weeks? A I think about a week.

24 Q At that time did you definitely agree to take the case?

25 A I did.

26 Q And that is the first time you had definitely agreed to

1 take the case? A It was.

2 Q At that time what arrangements, if any, were made as to  
3 your compensation?

4 MR. ROGERS. Object to that as not cross-examination. Section  
5 1323 of the Penal Code is adviser upon that subject, if  
6 your Honor please.

7 MR. FORD. I am not asking for the amount of the compensa-  
8 tion or anything of that kind?

9 MR. ROGERS. Why, certainly, the question--

10 A I thought that was what you were asking for.

11 MR. FORD. No, just the arrangement that was made.

12 THE COURT. I don't think it is cross-examination.

13 MR. FORD. He has testified by whom he was to be paid and  
14 who his clients were, and it is preliminary to other matters.  
15 I am not particular about the amount at present.

16 THE COURT. Well, if you are not going into that, that  
17 is another matter. I thought you were getting at the amount.

18 MR. FORD. No, not the amount.

19 THE COURT. All right.

20 A Read the question.

21 THE COURT. With that explanation you may have the question.

22 (Last question read by the reporter.)

23 A The American Federation of Labor were to take up the ques-  
24 tion of raising funds for carrying on this case--

25 MR. ROGERS. You mean the McNamara case, not this case?

26 A No, not this case, the McNamara cases, and were to co-



1 operate with any organizations or people and with the  
2 Structural Iron Workers to try and provide for them.

3 MR. FORD. Q NOW, at that time, Mr. parrow, did you have  
4 any knowledge or intimation that this case concerned any  
5 persons other than J J McNamara and J B McNamara? A I did.

6 Q From whom did you derive that information? A Newspapers  
7 first.

8 Q And before that date? A I did.

9 Q You knew, then, that you were being retained to protect,  
10 the interests of persons other than J J McNamara and J B  
11 McNamara, without specifying who the persons were?

12 A No, nobody else had been arrested, but undoubtedly I  
13 would consider it my duty to protect anybody else as far as  
14 I could.

15 Q To prevent exposure of any other persons connected?

16 A I didn't say that, Mr. Ford.

17 Q Well, I am asking you that. A No.

18 Q Then, just what did you mean, Mr. parrow? A I meant  
19 to defend anybody probably who was involved in it. There  
20 were other indictments and talk of still others.

21 Q You say there were other indictments? A Yes.

22 Q You refer at that time to the indictments against Schmidt  
23 and Caplan? A Yes, and John Doe and James Doe and Richard  
24 Roe and whoever else there was--James Stiles.

25 Q You mean for the Times affair, we will put it that way,  
26 there were other indictments for the Times affair?

1 A Those were all I was interested in.

2 Q And did you at that time have any knowledge or intimation  
3 or expectation that there might be indictments of other  
4 persons for other affairs connected with the-- A I did  
p--5 not. I had no knowledge or information concerning any  
6 other affairs.

7 Q Well, after that conference--I beg your pardon, withdraw  
8 that question--was Mr. Rappaport present at that conference  
9 in Washington? A I think he was. I am quite sure he was,  
10 but not absolutely sure.

11 Q That was the third time, then, you had met Mr. Rappaport?

12 A I would not say that. He was at my house once or twice,  
13 and I think he came to Kankakee, but I would not pretend  
14 to state the chronological order of things or how many times  
15 I met him.

16 Q It is the third time concerning which testimony has been  
17 given, at least. A Probably.

18 Q You met him once at Indianapolis, a few days after your  
19 arrest, once at Kankakee and the third time at Washington, and  
20 you may have met him at other places besides those three, and  
21 prior to the conference in Washington? A I may have, I do  
22 not think so, however.

23 Q You had understood at all three of these conferences, he  
24 was representing J J McNamara and the International Association  
25 of Structural Bridge and Iron Workers? A I had understood  
26 he was representing the International Bridge and Structural

1 iron workers, and through them he had been representing  
2 J J McNamara in this matter.

3 Q You learned at that time that he represented the Inter-  
4 national Association of Structural Bridge & Iron Workers  
5 when raids were made on the offices, and dynamite clocks,  
6 fuses and fulminating caps were seized, did you not?

13p7 MR. ROGERS. I do not think that is cross-examination.

8 A I think you had better cut that question up, Mr. Ford.

9 MR. FORD. I will withdraw that question.

10 Q You learned he represented the International Association  
11 of Structural Bridge and Iron Workers when a lot of in-  
12 criminating evidence was seized at the offices of the Inter-  
13 national Association of Structural Bridge & Iron Workers?

14 MR. ROGERS. I object to that as not cross-examination, calling  
15 for a conclusion and opinion of the witness; Section 1323  
16 of the Penal Code, if your Honor please--

17 A I will answer it and explain it--

18 THE COURT. It is merely a matter of fixing the time.

19 MR. ROGERS. Let the question be read. Let us see if it is  
20 merely a matter of fixing time.

21 THE COURT. read it.

22 (Last question read.)

23 MR. ROGERS. It has not even an element of time about it.

24 MR. FORD. I will withdraw the question in that form.

25 Q Up to the time you had that conference at Washingt,  
26 did you make any effort to learn upon what evidence the

1 prosecution relied against the McNamaras? A Very little  
2 effort.

3 Q You did learn, however, that the authorities at Indiana-  
4 polis had seized some clocks and bombs, dynamite, nitro  
5 glycerine, fuses, electric caps to explode the dynamite with,  
6 at the offices of the International Association of Struc-  
7 tural Bridge & Iron Workers, either through the newspapers  
8 or elsewhere? A No. Now, I will explain the answer.

9 Q Yes. A I learned that they had dynamited--that the  
10 Burns people had dynamited the safe and broken into the  
11 offices and kidnapped J J McNamara and that they pretended  
12 and said that they had taken dynamite from the basement of  
13 the building and some clocks from somewhere, but I was  
14 informed that they were not either the dynamite or the  
15 clocks; that the organization was not in any way responsible  
16 for them.

17 Q Well, you learned, then, that the prosecution claimed  
18 to have found-- A I did.

19 Q --these various articles which I have enumerated at the  
20 offices and in the basement under the offices of the Inter-  
21 national Association of Structural Bridge & Iron Workers?

22 A No, I do not recall that I recall that they found any  
23 in the offices, but in the basement under.

24 Q In the basement under? A Yes, sir.

25 Q You also learned that the place where it was found in the  
26 basement was alleged to have been or claimed to have been a

1 vault used exclusively by J J McNamara, that is, the claim  
2 was made it was used exclusively? A I don't know about the  
3 "exclusively"; I know it was claimed it was his vault.

4 Q You also learned at that time that the prosecution claimed,  
5 through Burns and others, including the Indianapolis authori-  
6 ties, to have seized some dynamite and nitro glycerine in a  
7 barn just south of Indianapolis, which barn was owned by one  
8 Jones, a member of the Bridge Men's Union, and which barn was  
9 rented by J J McNamara, or at least alleged to have been  
10 rented by J J McNamara.

11 MR. ROGERS. I object to that as not cross-examination.

12 We have no objection to their going, in a reasonable way  
13 into whatever they think is material. Mr. parrow has nothing  
14 to conceal, but, nevertheless, we are not going, if your  
15 Honor pleases, without my objection, to go clear through  
16 that McNamara business, because if we do I will start in at  
17 San Francisco and come on down. Good Gracious! we took  
18 three months to put in the evidence before the county grand  
19 jury upon which the McNamaras were indicted, I know, because  
20 I was there myself--it took three months to do it. Now, Mr.  
21 Ford is going to pick out some of his glorification,  
22 possibly some things he did, Mr. Burns did and so forth and  
23 so on, and I do not see that has got anything to do with  
24 what happened down at Third and Los Angeles Street, myself,  
25 and I think it is not cross-examination and Section 1323 does  
26 not permit it.

1 MR. FREDERICKS. If counsel only knew how little the prose-  
2 cution cares for glorification in matters of this kind, he  
3 would not worry--

4 MR. ROGERS. I am not worrying at all.

5 MR. FREDERICKS. The point is, to go into this matter only  
6 to show what the witness knew at the time, what his knowledge  
7 was at the time.

8 MR. FORD. He has testified, your Honor, that he learned  
9 of the strength of the case and discussed that later on  
10 at San Diego with Mr. Steffens. Now, I am going into the times  
11 and places where he learned certain things, strictly cross-  
12 examination.

13 MR. ROGERS. Absolutely not at all.

14 MR. FORD. And there are other objects also, for asking, but  
15 sufficient to admit it.

16 THE COURT. Yes, I think so. Objection overruled.

17 MR. ROGERS. Exception.

18 A I will answer that, though no, and then explain it.

19 MR. FORD. Explain it. A because it could not be correct  
20 with a no answer. I had not learned that the authorities  
21 at Indianapolis had anything to do with it. I had learned  
22 through the newspapers, and perhaps by word of mouth, that  
23 Burns claimed, and perhaps you who were there then, as I  
24 recall it--

25 MR. FORD. In Indianapolis, but not at the barn.

26 A In Indianapolis, that there was some dynamite found in the  
barn of a man named Jones, but I have never heard from any

1 source that he was a member of the structural iron workers,  
2 and I think he was not. I did hear they claimed that the  
3 barn had been rented by J J McNamara, I guess that about  
4 answers it.

5 Q You also learned at that time, through the newspapers, or  
6 other sources, that Burns claimed to have found some dynamite  
7 in the barn of Ortie McManigal's father at Tiffin, Ohio?

8 A I do not--

9 Q --and that that dynamite had been stolen or claimed to  
10 have been stolen from the quarry of Nat Brand? near Bloom-  
11 ville, Ohio, and that it was stolen by Ortie McManigal and  
12 J B McManigal--

13 MR. ROGERS. We object to that as not cross-examination,  
14 incompetent, irrelevant and immaterial.

15 THE COURT. Objection overruled.

16 MR. ROGERS. Exception.

17 A I do not recall learning any such thing at that time.

18 Q You do not recall learning anything about the Tiffin,  
19 Ohio barn? A I do not. It is possible I read some such  
20 thing as coming from Burns in the newspapers, but I do not  
21 recall it. I do the other.

22 Q Now, do you not at this time recall, Mr. parrow, that when  
23 these searches were made on the vault and of the barn, of the  
24 Jones barn, I will call it briefly, that searchwarrants had  
25 been issued by the police court of Indianapolis prior to the  
26 searches being made?

1 MR. ROGERS. I object to that as not cross-examination.

2 MR. FORD. He has testified he did not know the authorities  
3 had anything to do with it.

4 THE COURT. Objection overruled.

5 MR. ROGERS. Exception.

6 A You said the vault and the barn?

7 Q Yes. A Do I recall that search warrants --

8 Q Do you recall of having learned that searchwarrants  
9 were issued? A Oh--

10 MR. ROGERS. The same objection.

11 THE COURT. Objection overruled.

12 MR. ROGERS. Exception.

13 A You mean, heard?

14 Q Yes. A I might have, but I am not certain I did.

15 Q Then you might have heard that the authorities did have  
16 something to do with it? A I might have.

17 Q You learned that, or did you learn from Mr. Rappaport  
18 when he refused to allow the police force of Indianapolis  
19 and the Burns detectives to enter the vault inthe basement  
20 until they did produce a searchwarrant for that vault.

21 MR. ROGERS. We object to that as notcross-examination.

22 THE COURT. Objection overruled.

23 MR. ROGERS. Exception.

24 A You mean whether Mr. Rappaport told me that?

25 Q Yes. A I don't know.

26 Q You don,t remember? A I don't; I do not remember; he



1 may have .

2 Q He may have told you, you may have learned it through  
3 some other source? A Or I may never have learned it.

4 Q You stated, Mr. Darrow, that the safe in the office was  
5 dynamited. I do not suppose it is of any real importance,  
6 but, as a matter of fact, don't you know that a locksmith  
7 was obtained and that he drilled it instead of dynamiting  
8 it? A They showed me the drill holes and as I recall it  
9 said that dynamite was put in to blow it open. I was not  
10 there at either time.

11 Q You do not mean to tell this jury any dynamite was used  
12 in blowing it open, that you ever heard dynamite was used?

13 A Yes, after the drill holes were made.

14 Q Did you see Mr. Rappaport again before coming to Califor-  
15 nia after that conference at Washington? A Before I  
16 came?

17 Q Yes. A I did.

18 Q At what place? A I saw him once at my house, at least,  
19 the night before he left for California, that was before I  
20 came.

21 Q He left before you did. At that time you knew he was  
22 coming to California to represent the McNamaras? A I did.

23 Q How long did you stay in San Francisco when you came the  
24 first time? A I think about 2 days.

25 Q About two days. The first person whom you went to see  
26 in San Francisco was O A Tveitmo, wasn't it? A I think so.

1 Q Was Tveitmoe present at that conference in Washington?

2 A I believe he was, Mr. Ford.

3 Q Was that conference in Washington the firstt time you had  
4 met Mr. Tveitmoe in connection with this case? A I think  
5 he was present at that conference and I think he stopped  
6 at my house going through, called at my house.

7 Q To Chicago? A Yes.

8 Q Then you had seen him twice in connection with this case,  
9 a meeting in San Francisco? A That is my remembrance.

10 Q Were there any other persons from San Francisco present  
11 at that conference in Washington? A I think not.

12 Q Was Mr. Clancy of San Francisco there? A No.

13 Q Mr. Clancy is the Eggene A. Clancy, the Pacific Coast  
14 member of the International Association of Structural  
15 Bridge & Iron Workers? A yes.

16 Q You had met him in Indianapolis? A Yes.

17 Q What other persons did you see in San Francisco after  
18 your arrival, in connection with the case, besides Mr.  
19 Tveitmoe? A You mean the first day?

20 Q Yes. A Mostly newspaper artists.

21 Q I beg your pardon. A Mostly newspaper artists, I do not  
22 recall anybody else.

23 Q Mr. Tveitmoe was the only other man directly interested  
24 that you met? A I would not say that, I do not recall meet-  
25 ing anybody else.

26 Q Did you meet Mr. Clancy at that time? A I think not.

1 Q You have confined it to the first day. You were there  
2 two days? A I said I think two days; I might have been there  
3 but one day. I was getting away as quick as I could con-  
4 veniently.

5 Q Let us cover the whole period. Did you meet any person  
6 other than Mr. Tveitmoe in San Francisco during any of this  
7 time you were on that visit?  
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1 A You mean any person in reference to this case?

2 Q Yes. A You said any person, any other. I do not re-  
3 call that I did, I might have.

4 Q Did you meet Mr Johannsen at that time? A I think  
5 not.

6 Q You had been acquainted with Mr Tveitmoe for several  
7 years, is that correct? A I met him first about three  
8 years ago.

9 Q How frequently had you seen him, between that --

10 A I never had seen him between the time I met him three  
11 years ago and the time he came to my house on the way to  
12 Washington.

13 Q He came to your house on the way to Washington?

14 A That is my remembrance, he went to Washington to at-  
15 tend the meeting of the executive board of the American  
16 Federation of Labor and stopped in Chicago, and called on  
17 me at my house.

18 Q Did you accompany him to Washington? A I did not.

19 Q At the time he called on you at your house, did you  
20 have any conference with him concerning the facts in this  
21 case? A I talked with him about the case.

22 Q He was not your client? A No.

23 Q What conversation did you have with him at that time?

24 MR APPEL: We object to that as not being cross-examination,  
25 he being the defendant, he cannot be cross-examined ex-  
26 cept upon anything that he testified to in chief; the

1 conversation between this witness and Mr Tveitmoe at the  
2 time and place mentioned in the question not having been  
3 gone into and not being pertinent to this case, we object  
4 to it on the ground it is not cross-examination. Now,  
5 the rule of cross-examination is different when it is a de-  
6 fendant, your Honor.

7 THE COURT: Yes, I know the rule.

8 MR FORD: There is no difference, except it is stricter,  
9 your Honor, the rule is more strictly enforced; that is  
10 all.

11 MR APPEL: It is different, the word "different" is used  
12 in the decisions.

13 THE COURT: It seems to me you are getting pretty far afield,  
14 Mr Ford.

15 MR FORD: I am getting to the knowledge of the case, the  
16 mind of the defendant, who told Mr Steffens at San Diego  
17 on Sunday, the 19th day of November, 1911, that the case  
18 was hopeless.

19 MR ROGERS: That brings it up, your Honor. Counsel has  
20 asked about dynamite in the East. Counsel knows perfect-  
21 ly well that the dynamite spoken of as being in the East,  
22 was no part or parcel and has no connection whatever  
23 with any dynamite used at the Times Building; there is no  
24 claim by him or by any other person there was any dyna-  
25 mite in the East brought here, on the contrary, it is  
26 testified to and produced that the dynamite was procured

1 near San Francisco. Now, if we are going to go into the  
2 evidence of the McNamara case, we will never get through,  
3 because this will immediately bring out a redirect examina-  
4 tion concerning other matters, I certainly will go into,  
5 if I am permitted, I will certainly go into the matter, from  
6 its commencement down to the last end of it.

7 MR FREDERICKS: That is your privilege.

8 MR ROGERS: It certainly is my privilege, and it is done  
9 for no good cross-examination, and it is absolutely not  
10 cross-examination, and I move to strike it out.

11 MR FREDERICKS: May it please the court, there are a  
12 great many things in connection with the case of the People  
13 versus McNamara with which Mr Rogers is not familiar.

14 MR ROGERS: I guess you are right.

15 MR FREDERICKS: And one of those features was the fact  
16 that this dynamite was found in Indianapolis and that was  
17 a part of our case here, part of the case of the People  
18 versus McNamara, here in the courts of Los Angeles, and  
19 that dynamite and all that stuff that was found there  
20 was absolutely a part of this case; it is not contended  
21 that that dynamite was used to blow up the Times Building,  
22 because if it had been, it would not have been in Indian-  
23 apolis, and that is self-evident.

24 MR ROGERS: No part or parcel of the lot.

25 MR FREDERICKS: It is not contended that the dynamite that  
26 was used to blow up the Times Building came from Indianapo-

1 lis, that is not a part of it, but in that dynamite and all  
 2 those bombs and all of those clocks that have been talked  
 3 about here, in Indianapolis, were certainly a part of the  
 4 case against J. B. McNamara and J. J. McNamara, in whose  
 5 offices they were found, and I do not need to go into that  
 6 and argue it; both sides were fighting for that evidence  
 7 back there; both the defense and the prosecution, the de-  
 8 fense to keep it there and the prosecution to get it  
 9 here, there cannot be any serious doubt of that.

10 MR APPEL: It makes no difference what the facts were in  
 11 connectinn with the dynamiting case or the McNamara case,  
 12 the only question involved here is this, rightly or wrongly,  
 13 justifiably or not, having good reasons for it or not,  
 14 the only thing with the evidence of Mr Darrow is, what was  
 15 his condition of mind? He says that he stated and that he  
 16 thought the case insofar as the McNamara boys was concerned  
 17 that it was hopeless, that is, there was no hope of being  
 18 able to acquit them, or save them from a verdict of guilty.  
 19 Now, that is all. As to what the facts were actually in  
 20 respect to the McNamaras complicity in that matter is per-  
 21 fectly immaterial, the People have no right to come in  
 22 here and show there were doubts as to whether or not the  
 23 case was hopeless or not, we cannot go into that; we would  
 24 then be entitled to go and show your Honor all the evidence  
 25 against the McNamaras, to show to this jury and to any  
 26 reasonable man that with that amount of evidence against

1 them that ~~any sane man, any lawyer, having an insight of~~  
2 the facts against them, would be in the same condition of  
3 mind that the witness himself was, but it is not cross-  
4 examination, your Honor, to go and show these isolated  
5 facts, or to show isolated conversations between the wit-  
6 ness and someone else. It is not cross-examination.  
7 And I say that a defendant cannot be called upon to testify  
8 to any link in the evidence that will support the People's  
9 own case which they should have introduced in evidence in  
10 direct examination. We are only meeting this case here;  
11 the People come here and show a state of facts, and we take  
12 those state of facts, and we meet those facts; they cannot  
13 cross-examine him concerning conversations he had with  
14 me or anyone else, from the time he became employed in  
15 the case. It is not cross-examination, and even if it  
16 were material to the case, it would not be cross-examina-  
17 tion, then, your Honor. We would be entitled to bring  
18 that mass of evidence, we would have that right to show  
19 that any conversation concerning dynamite may have been a  
20 part of some conspiracy between several individuals con-  
21 cerning some other matters in some other state, but  
22 what would that have to do with the condition of mind of  
23 this witness? If he said that he gave up all hopes of being  
24 able to save those men, and whether that opinion was based  
25 upon his knowledge of the facts, upon a true knowledge of  
26 the facts, or upon an erroneous belief of the facts, or upon



1 an erroneous deduction or inference from the facts, does  
2 not entitle them to go into conversations with Tom, Dick  
3 and Harry, to which this witness has not testified on di-  
4 rect examination. We cannot try that case all over here.

5 MR FORD: We are entitled to know upon what he relied.

6 MR APPEL: Yes, but you are asking him now, what was that  
7 conversation --

8 MR FREDERICKS: I thought counsel was through --

9 MR APPEL: I am answering Mr Ford's statement. He can  
10 ask him, "Upon what do you base that opinion"; that is  
11 true, because of the circumstances upon which he based  
12 them; he can ask him, "Did you not also base your opin-  
13 ion upon the circumstances?" He can call attention to  
14 some direct circumstance, that would be proper cross-  
15 examination. Nobody denies them that right. He has a  
16 right to go to the witness to ask him concerning every-  
17 thing that induced him to believe that the case was hope-  
18 less insofar as the facts are concerned, but he cannot  
19 say to him, "What conversation did you have with a street  
20 car conductor in Chicago, what conversation did you have  
21 with any man on the train, to which this witness has not  
22 adverted, and if this evidence is to serve some other pur-  
23 poses or some other case, your Honor, your Hought ought to  
24 set a strict rule of cross-examination, because no such  
25 knowl edge and no such thing as this ought to be tolerated.  
26 This man is being tried for one fact, and that fact is what

1 occurred on the 28th day of November, 1911. Now, any mat-  
2 ter in connection with what he has testified concerning that  
3 transaction so interlaced with the facts concerning that  
4 transaction to which this witness has testified and to  
5 which he has adverted, they have a right to cross-examine  
6 him. Nobody denies them that right, your Honor, but  
7 the question is, "What conversations did you have with  
8 Tveitmoe concerning dynamite or concerning any other fact -"  
9 and that has nothing to do with this case.

10 MR FORD: To save time, I will withdraw the question.

11 MR FREDERICKS: No, this point -- there has been sometime  
12 wasted on it --

13 THE COURT: Is the question withdrawn or not?

14 MR FREDERICKS: No.

15 MR FORD: No.

16 MR FREDERICKS: The state of mind of this defendant was  
17 gone into, your Honor, at great length; the defense opened  
18 the door, and they asked this witness what his state of  
19 mind was, whether he was going to have these men plead  
20 guilty, and when he was going to have these men plead  
21 guilty, and why he was going to have these men plead guilty,  
22 especially why. The answer was because the case was hope-  
23 less. Now, we are not bound by that answer, we must cross-  
24 examine now, and see whether in the mind of the witness  
25 ~~the case was hopeless, or if it was hopeless, see whether~~  
26 in the mind of the witness it was not hopeless months

1 before. Now, we are not bound by his answer, and that the  
2 case was hopeless, or he concluded the case was hopeless.  
3 The purpose of the cross-examination is now to find out  
4 upon what he based such an idea, for we cannot look into  
5 his mind and see whether he thought it was hopeless, we  
6 must find the physical things he did, and based it on.

7 MR ROGERS: Are we going to ask this jury to pass upon all  
8 the evidence in the McNamara case?

9 MR FREDERICKS: No, no.

10 MR ROGERS: One moment.

11 MR FREDERICKS: No, it is on what this witness thought,  
12 and what he knew about it, as to whether it was really  
13 there or not, is not the question.

14 MR GEISLER: A fishing expedition.

15 MR FREDERICKS: No, we are not fishing for anybody. We  
16 are trying our own case, and we do not care about any-  
17 body else's case.

18 THE COURT: You have opened up a very large field and  
19 the question of materiality is a very important one in my  
20 mind.

21 MR ROGERS: If your Honor please, if they are going to  
22 produce the evidence here, I can say safely that the  
23 transcript of the evidence taken before the grand jury  
24 is quite as large as that row of books your Honor has  
25 before him, and then there is a lot of evidence which did  
26 not go before the grand jury, and if we are going to re-

1 habilitate all the evidence in the McNamara case to tell  
2 whether Mr Darrow's judgment whether it was hopeless, was  
3 correct, who is going to decide that? Is your Honor?  
4 Is the jury? Certainly not. It is the mind of this wit-  
5 ness, and can your Honor assume to say from the skeleton  
6 presented here in the evidence in the McNamara case, or  
7 can the jury say that the case did not look hopeless?  
8 Why, a man has a right to presume that. A man will go to  
9 one lawyer, who will tell him, "You have a good case", and  
10 he will go to another lawyer, who will say, "I do not think  
11 much of your case; I do not think it can be won." Does  
12 the presentation of all the facts concerning that case to a  
13 layman, or to 12 laymen, or to your Honor's educated mind,  
14 does that determine what the state of this witness' mind  
15 might be?

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Als 1 Why, certainly not. I may look at a piece of evidence and  
2 Mr. Darrow and I frequently have differed about the weight  
3 and effect of evidence. I differed with him. We will  
4 say in this case that certain evidence in my judgment was  
5 of no materiality; he has differed with me. Mr. Appel and  
6 I have occasional differences and I have been compelled--  
7 I have not eavesdropped, but I have been compelled to listen  
8 to discussions between counsel on the other side, in which  
9 they differed most energetically with each other, about  
10 the wisdom and effect of certain evidence. Now, can that  
11 present this evidence to these jurymen, who are not lawyers  
12 and not qualified to pass on it as Mr. Darrow who is a lawyer  
13 --I think, well, under those conditions I think the case  
14 cannot be won. Why, a jury of lawyers could not do it.  
15 I have differed with the Supreme Court and I still differ  
16 with them, but they had the last word.

17 MR. FREDERICKS. Counsel is talking entirely beside the  
18 point, and there isn't the slightest possibility ~~and there~~  
19 ~~isn't~~ of going into any line of testimony here that is  
20 going to take any such length of time as counsel has sug-  
21 gested. Now, that has been a familiar speech of counsel's  
22 to scare us out here because we are getting tired here and  
23 the summertime is going along, and there isn't the slightest  
24 possibility of that kind, but it is not right that we  
25 should be bound by this witness's statement, "I thought so  
26 and so." We have got a right to go back over the history

1 by which he got those thoughts and say, "What did you do  
2 there and what did you do here and what did you do there;  
3 and when did you get this thought--how long have you had it?"  
4 Now, that is cross-examination. On the other side the matter  
5 was gone into here with Steffens who talked along for a day  
6 or so and otherwise, about what this witness thought--or  
7 about what the defendant thought, and all that sort of thing.  
8 Now, let's see what he did think.

9 THE COURT I will rule on the matter at 2 o'clock. I will  
10 hear from you further at 2 if you desire to be heard.

11 MR. APPEL. Is it necessary to present some authorities,  
12 your Honor?

13 THE COURT. I think the statute itself is practically all the  
14 authorities there is. The statute is very plain and simple  
15 in this particular, as far as that is concerned; the  
16 question whether or not this line of argument is a question  
17 of fact, I don't care for any authorities on it, no.  
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19 (Jury admonished. Recess until 2 P.M.)  
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