

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. 75

I N D E X.

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

Clarence Darrow

6114

B. N. Smith,
Official Reporter.

1 AFTERNOON SESSION. July 31, 1913; 2 P.M.

2 Deferdant in court with counsel .

3 MR. FREDERICKS If the Court please, Mr. Ford is delayed
4 just a moment. He will be here in just a moment, and as
5 far as this question is concerned, we have looked it over
6 in the transcript since luncheon and we find it goes into
7 probably a little different field and it might be consider-
8 ed a little different than we intended and we withdraw it.

9 THE COURT. Very well.

10
11 C L A R E N C E S D A R R O W,

12 onthe stand for further cross-examination.

13 MR. FORD. I wantto beg the court's pardon--

14 THE COURT. I shall assume there was good reason for it.

15 MR. FORD. Without going into any conversation, you learned
16 very early before you were really employed inthe case that
17 itwas alleged, at least, on the part of the prosecution,
18 that Mr. Tveitmoe was involved in the matter of the Times
19 exploasion? A No, I learned that they were investigating
20 him.

21 Q Well, then, there was at least a suspicion he was involved,
22 on the part of the prosecution? A In some people's mind,
23 no doubt .

24 Q When you met him in San Francisco and remained there a
25 couple of days, in June, you came then to Los Angeles?

26 A I think so.

1 Q Did any one accompany you on that trip to San Francisco
2 to see Mr. Tveitmoe? A I think Mr. Nockles was with me on
3 the first trip.

4 Q And he accompanied you to Los Angeles? A We did.

5 Q Where did you stop when you arrived in Los Angeles?

6 A The Alexandria.

7 Q Do you recall that date? A I do not.

8 Q But that was early in June? A I think so. Haven't you
9 any memorandum that would show me, if you have I would be
10 satisfied.

11 Q I haven't at this time. A Well, if you find it different
12 correct it. I am uncertain about it.

13 Q You recall that on May 25, 1911, the time to answer the
14 indictment against J J and J B McNamara was extended, and
15 at that time Mr. Scott, Mr. Davis and yourself were added to
16 counsel? A That was when Mr. Rappaport was here, wasn't it?

17 Q May 25, 1911; yes, that is my recollection. A I presume
18 that is right, but I wouldn't say that I know it.

19 Q It is really the latter part of May, then that you came
20 to San Francisco and met Mr. Tveitmoe? A Oh, you misunder-
21 stood me. I said wasn't that the time it was extended
22 when Mr. Rappaport was here. He came before I did.

23 Q May we have those records, Mr. Smith, of Judge Bordwell's
24 court, the minutes of May 25, 1911. I will fix the date also
25 in another way. You testified here that you met Mr. Biddinger
26 in Chicago early in June, either at your office or at the

1 Union Reataurant. A I testified I thought that was the
2 time.

3 Q Do you recall whether that was before or after your first
4 visit to California? A I wouldn't be certain, Mr. Ford.

5 Q The minutes of May 27, 1911--

6 MR. ROGERS. This has not been introduced.

7 MR. FORD. This has been introduced, I believe.

8 MR. FREDERICKS. Yes, those are all introduced, that is, if
9 it refers to this case.

10 MR. FORD. I think it has, however. (Reading)

11 "It is ordered that Clarence S. Darrow, Joseph Scott,
12 and LeCompte Davis be, and they are hereby substituted as
13 attorneys for defendants with Leo M. Rappaport and Job
14 Harriman defendatn's attorneys of record; and there coming
15 on regularly for hearing motion on behalf of the defendants
16 to extend time within which to answer, and the people
17 being represented in court by the District Attorney at
18 Los Angeles County, California, J. D. Fredericks and Assis-
19 tant District Attorney, W. J. Ford, and the defendants,
20 J J McNamara and J B McNamara, by their attorneys, Messrs.
21 Darrow, Scott, Davis and Harriman; the defendants and each
22 of them being present, motion to extend time to answer
23 presented, argued and submitted. Whereupon it is ordered
24 that defendant's said motion to extend time within which to
25 answer be, and the same is hereby granted, and time to answer
26 is extended to July 5, 1911, at 10 o'clock A.M."

1 MR. ROGERS. Mr. Ford, do you claim that because a man
2 appears of record he is personally present in the court
3 room?

4 MR. FORD. No, I don't, but I am calling that record to his
5 attention to ask him if he was not present at the time
6 your name was added as attorney of record in the case of
7 People vs J B McNamara--just to get at the date is the
8 only important matter. A It might have been last May.
9 I would infer from that I was here because I don't believe
10 Mr. Scott and Mr. Davis were employed until I got here,
11 although I think Mr. Rappaport discussed it with one of them,
12 but I don't think they were employed until I got here. I
13 might have gotten here the last of May. I would not pre-
14 tend to be certain about it.

15 Q Your best recollection is now, having seen the record,
16 that you were here on May 27, 1911? A That is the 29th,
17 isn't it, the entry down below is the 29th?

18 MR. FORD. It is evidently a copy of this--the heading at the
19 top is May 27, 1911.

20 MR. ROGERS. That appears to be the 27th.

21 MR. FORD. Just immediately following is the record of
22 Monday the 29th. You recall that it was Saturday morning
23 that you were substituted in court? A I don't believe I
24 remember it, Mr. Ford. I presume that I was here when that
25 record was made.

26 Q Then you must have come to Los Angeles on your first visit

1 and had been in Los Angeles on May 27, 1911. How long did
2 you remain on that occasion in Los Angeles?
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3 MR ROGERS: I do not think that necessarily follows.

4 I am probably attorney of record in half of the countiss
5 of California in some case or other, and I do not always
6 get there, but the record, as a rule, shows it.

7 MR FORD: I am not basing it on the record, I am basing it
8 on the witness' personal recollection and simply use the re
9 cord to refresh his recollection.

10 MR ROGERS: He says he does not recall, that it is prob-
11 ably true, but the record does not show it.

12 THE COURT: That is subject to correction.

13 MR FORD: I might state for the benefit of counsel, there
14 is no hidden purpose in this. A If it is important I
15 can fix it by the hotel register, that is, if the exact
16 date is important, I can fix it, but I would not pretend
17 to fix it from memory.

18 MR FORD: I think that can be done, and we can tell from
19 the hotel register whether they are correct. I think, how-
20 ever, that is correct.

21 Q How long did you remain in Los Angeles on that occa-
22 sion? A Probably a week, but I am not certain about
23 that.

24 Q Mr Nockels remained here the entire time? A He did.

25 Q Mr Nockels was here in reference to the same case?

26 A He was.

1 Q And assisted you before and since that time in the
2 McNamara case, whenever you needed his assistance? A When-
3 ever I wanted any information in Chicago or any assistance,
4 he could give me, he was always to do it, and I called
5 on him at different times.

6 Q His full name is Edward Nuckles? A Edward Nockels.

7 Q And what official position does he occupy? A Secre-
8 tary of the Chicago Federation of Labor.

9 Q And any other official position in labor circles?

10 A I think not.

11 Q When did you first meet Mr Nockels in reference to this
12 case? A Well, he was one of the men that urged me to
13 undertake it. I presume I talked with him very soon after
14 the taking of the McNamaras.

15 Q Now, before you came to Los Angeles the first time,
16 did you employ Mr Harrington before you came? A My impres-
17 sion is I did, but I would not be certain of that.

18 Q Isn't it a fact you did employ him before you came to
19 Los Angeles, and that he went to Indianapolis and Tifen,
20 Ohio, to Cleveland, Detroit, and other places getting
21 information and evidence for you before you came to Los
22 Angeles? A He went after information early, probably be-
23 fore I came to Los Angeles, but I wouldn't say that for cer-
24 tain.

25 Q You sent him to various relatives of Ortie E. McMani-
26 gal to gather up correspondence from Ortie, showing the

1 whereabouts of McManigal by the postmarks on various
2 dates? A No.

3 MR APPEL: Wait a moment, now. We ask that the answer be
4 stricken out for the purpose of making our record.

5 THE COURT: Strike it out for the purpose of the objec-
6 tion.

7 MR APPEL: We object to that as not cross-examination --

8 MR BORD: If there is any argument on it, the question is
9 withdrawn.

10 THE COURT: The question is withdrawn and the answer is
11 stricken out.

12 Q What was the work Mr parrington was employed on at
13 that time?

14 MR ROGERS: At what time?

15 Q Before the witness came to California, the latter part
16 of May?

17 MR ROGERS: He had not employed him at that time, he said
18 it was within the possibilities, but he does not state it.

19 A I don't know whether I employed him before I came or
20 on my return, but he was employed to investigate and
21 gather evidence.

22 Q After leaving Los Angeles on your first visit, to what
23 place did you go? A As far as I can recall, I went
24 back, right straight back home.

25 Q You mean Chicago, of course? A Chicago.

26 Q How long before you came to California again?

1 A Mr Ford, since I have testified this morning, I think
2 there may be some question whether I went to Washington
3 after my first visit here or before it. I might have
4 gone there after, instead of before; very likely I did.

5 Q That is, you went from Los Angeles to Washington?

6 A No, I went to Chicago.

7 Q And from Chicago, then to Washington? A I am not
8 saying I did. I went there, but I am not certain whether
9 it was before or after I came to Los Angeles; that could
10 be fixed, if it is important.

11 Q At what hotel did you stop in Washington? A Willard:

12 Q The Willard Hotel? A The New Willard.

13 Q When did you return to Los Angeles again? A The first
14 days in July, as I recall it; the last of June or the 1st
15 of July.

16 Q It is the dates I want now, Mr Darrow, and for that
17 reason -- A The plea was July 5, was it not?

18 Q The plea was on July 5th, and upon motion of counsel
19 for defendant, and by consent of the District Attorney,
20 it was continued to the next day, July 6th, 10 A.M.

21 MR ROGERS: It does not say who appeared.

22 MR FORD: Continued on July 6th to the 7th. A Do you
23 know what day of the week July 5th was?

24 MR FREDERICKS: July 5 was Wednesday, according to this.

25 A Wednesday?

26 MR FREDERICKS: Yes.

1 A I arrived here on Sunday morning, either the preceding
2 Sunday or the Sunday before.

3 Q Before the 4th of July? A Yes.

4 Q And you were here on the 4th of July? A I think so.

5 Q Then, during the following week, during the week of
6 the 4th of July, the motions to quash the indictments were
7 argued and submitted to the court for ruling? A Were they?
8 I do not think they were. I think it was a month or six
9 weeks later than that; I am sure it was not done in that
10 short a time.

11 Q According to the minutes, it was argued during that
12 time, continued to July 12, according to the record on
13 July 12, Wednesday, July 12, 1911 -- do you wish to see
14 it, Mr Dafrow? A No, you read it to me.

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3p 1 Q The defendant's motion to quash indictments and People's
2 objections thereto were resumed and the defendant's motion
3 to quash the indictments were denied, and the causes contin-
4 ued to Friday, July 14, to be then set for trial? A July
5 12?

6 Q Yes, July 12, the motions were denied. A About two
7 weeks after I arrived, however.

s 8 Q That is about 2 weeks after your arrival? A About that.

9 Q And how long did you remain in Los Angeles before making
10 Los Angeles your headquarters then from that time forward
11 until the present time? A I am still here.

12 Q Have you made any trips east during that time? A I have
13 not.

14 Q You have made frequent trips, however, to San Francisco?

15 A Been to San Francisco a number of times since then.

16 Q Have you been outside of the state since that time?

17 A Have not.

18 Q Your trips to San Francisco were for the purpose of con-
19 sulting with Mr. Tveitmoe and Mr. Johannsen on numerous occa-
20 sions? A Now, how do you mean: Were my numerous trips
21 for that purpose or did I get there sometime for that purpose,
22 or was that the only purpose?

23 Q Well, whatever purpose you went up there for.

24 MR. ROGERS. You get a question and then we can get the
25 matter out of him.

26 MR. FORD. I want to allow him to testify with as little

1 interruption as possible. A I went to San Francisco some
2 times for pleasure, sometimes to consult about the case.
3 Once or twice to interview witnesses, and I had various
4 consultations with Mr. Tveitmoe at some of which Mr. Johannsen
5 was present.

6 Q During that same period, Mr. Tveitmoe frequently consulted
7 with you at Los Angeles, is that correct, in reference to the
8 case? A I don't believe he was here over twice.

9 Q About how many times did you call on him at San Francisco?
10 A That would be hard to tell. Probably 6 or 8. That is
11 only a guess. Not always on business.

12 Q You met Mr. Biddinger in June at Chicago, is that correct?

13 A I told you, Mr. Ford, I was not quite sure whether it was
14 before the first time or when I went back.

15 Q Well, assuming, Mr. parrow, that you were here on May
16 25, 1911, and that you were here again about the latter part
17 of June or early in July, would you say at the present
18 time that the time you saw Mr. Biddinger was between your
19 first and second trips to California? A If I assume
20 that it would not help me in the least. I might have seen
21 him before I came the first time and I might have seen him
22 between the two times. I can't carry those little things
23 in my head.

24 Q What is your best recollection? A I haven't any.

25 Q Have you any means of figuring it out to your own satis-
26 faction? A Have you got those copies of telegrams? I might

1 be able to.

2 MR. ROGERS. These are the ones they gave us. I don't know
3 anything about them.

4 MR. FORD. I will get to those telegrams later.

5 A I haven't any, Mr. Ford, at hand, that I can think of.

6 Q I will just drop that question for the present. At the
7 time you came to Los Angeles and presented the motions to
8 quash the indictments, you employed Mr. Franklin to do
9 some investigating in order to base your motion to quash
10 upon his investigations, did you not?

11 MR. ROGERS. He has not said he presented the motion to
12 quash the indictment. He may have done so but it is not
13 in evidence.

14 MR. FORD Supposing it is not, this is cross-examination
15 and the witness can answer. I am not bound to stick only
16 to the things that are in evidence on cross-examination.
17 On direct I am.

18 THE COURT. Mr. Rogers is not objecting to it. He merely
19 called attention to it. Go ahead.

20 A I did not employ Mr. Franklin. The first time I ever saw
21 Franklin, he came to the offices, because somebody had
22 employed him to make some investigations in reference to
23 whether the grand jurors, who found the indictments, were
24 prejudiced or not. I am not certain who did employ him
25 first, nobody seems anxious to take the responsibility, but
26 I know I saw him there first.

1 Q you mean nobody seemed anxious to take the responsi-
2 bility of employing Mr. Franklin at that time? A I don't
3 mean at that time, and that could not be inferred from what
4 I said.

5 Q No one wanted to assume the responsibility of incurring
6 the expense? A No, I didn't mean that.

7 Q Just explain what you do mean. A I mean at this time
8 and in view of subsequent events, nobody seems to want to
9 say they were the one who first employed Franklin.

10 Q At the present time you cannot find any one on your side?

11 A I can't tell now. I know I first saw him in my office
12 when he came at somebody's request, to get affidavits in
13 reference to the grand jury.

14 Q Who prepared the motion to quash the indictment?

15 A Mr. Davis did most of it. He being more familiar with
16 criminal law than the rest of us.

17 Q Isn't it a fact, Mr. Davis introduced Mr. Franklin to you?

18 A I think not.

19 Q Mr. Scott, then? A My impression is he did, but I am
20 not certain of that. He came there--

21 Q Joseph Scott introduced Franklin to you? A I didn't
22 say he did. I say that is my impression, but it might have
23 been someone else. He came into the office when a con-
24 siderable number of us were together, and they introduced
25 him to me, somebody, and I was told why he came, and what he
26 had done before, and that he had had experience in that line

1 and that he was going to get these affidavits.

2 Q Have you talked with Mr. Scott since the time of your
3 indictment about the question as to who employed Mr.
4 Franklin?

5 MR. APPEL. Wait a moment--we object to that as not cross-
6 examination.

7 MR. FORD. The witness a moment ago said he couldn't find
8 anybody who would assume the responsibility in view of
9 subsequent events.

10 A I didn't say that.

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1 Q Well, in substance? A No, not in substance.

2 MR APPEL: We object upon the ground it is not cross-exam-
3 ination; incompetent, irrelevant and immaterial, and hear-
4 say, whether he has or not.

5 THE COURT: Objection sustained.

6 MR FORD:" Returning to this telegram of August 23rd, to
7 Biddinger at San Francisco, the day after the telegram
8 was sent, you met Mr Biddinger in San Francisco, did you
9 not?

10 MR ROGERS: Wait just a moment. Now, they haven't got in
11 any telegram, and they cannot identify this thing they
12 have got here, which doesn't appear to have been written
13 by Mr Darrow, and which he doesn't recognize at all, and
14 assumes that this telegram is ambiguous. Mr Darrow says
15 he telegraphed him to the effect that he would be there
16 the succeeding day, and then counsel says, "This telegram".
17 We don't know whether he means the telegram Mr Darrow tes-
18 tified about, or this fugative slip of paper that has been
19 dug up from some where or other which Mr Darrow says
20 is not in his handwriting, and does not recognize.

21 THE COURT: I think the question ought to designate what
22 telegram is referred to.

23 MR FORD: May the question be read, your Honog?

24 THE COURT: yes. Read the question.

25 (Last question read by the reporter.)

26 MR FORD: Now, the witness has already testified that he

1 did send a telegram about that day, your Honor: it is true
2 he has refused to identify the one that has been marked
3 here.

4 THE COURT: Do you refer to the telegram that the witness
5 testified to?

6 MR FORD: I withdraw the question.

7 MR APPEL: Your Honor, he has never refused to identify
8 anything, your Honor.

9 THE COURT: The question is withdrawn.

10 MR FORD: You did send a telegram on August 23rd to Mr
11 Biddinger? A I didn't say so.

12 Q Well, I am asking you now. A I sent a telegram some-
13 time about that time, but I don't know the date.

14 Q Isn't it a fact that you were at the Palace Hotel on
15 August 24th and 25th in San Francisco? A I don't know.
16 If you have that record that will settle it. Very likely
17 I was. If you have got it, we will assume it is correct.

18 Q I have got a record to that effect, and I will show it
19 to you in just a moment. How long did you stay in San
20 Francisco at the time you saw Mr Biddinger? A I couldn't
21 tell you. I probably stayed a day or two; possibly took
22 occasion to go automobiling or something and stayed a lit-
23 tle longer. I have no remembrance about it. It couldn't
24 be long.

25 Q You do recall that you stayed at the Palace Hotel while
26 you were there? A I did on one or two occasions.

1 Q On the occasion that you met Mr Biddinger? A My rem-
2 embrance is that I did. Possibly I went from there to the
3 Fairmont that succeeding day, I don't know.

4 Q To the Fairmont Hotel, you mean? A Yes.

5 Q You did not stay, however, at that trip, any other
6 place, other than the Palace Hotel and the Fairmount
7 Hotel? A I did not.

8 Q Your best recollection is you stayed about two days
9 and came to Los Angeles -- I might say, to refresh your
10 memory, that the Palace Hotel record appears to that ef-
11 fect.

12 MR APPEL: We object to him telling him that. Counsel
13 might be honestly mistaken.

14 A That is probably right.

15 MR APPEL: He may not refresh the memory of the witness
16 by telling him.

17 MR FORD: The record is on the way. I didn't want to be
18 accused of taking any advantage. I did that in all fair-
19 ness. I can wait until the record comes.

20 THE COURT: Is there some other matter you can take up?

21 A August 23rd, you say?

22 MR FORD: August 24th and '5th, is the dates of the
23 Palace. A On one occasion of my visit to San Francisco,
24 I went down to Santa Cruz, and stayed a few days. Another
25 occasion I went to Del Monte Hotel and around through
26 that country. I might have spent some more time there,

1 I don't know.

2 Q Where is the Del Monte Hotel? I don't know

3 whether that was a name of a hotel in San Francisco, or

4 whether -- A Oh, no; down at the ocean, a sort of a re-
5 sort.

6 Q At -- A -- Monterey.

7 Q Monterey. What was the name of the hotel? A Del
8 Monte, isn't it? You folks ought to know that; it is a
9 big hotel down there advertised by the Southern Pacific.

10 MR ROGERS: I have never been there but once, and I don't
11 know. A Hotel Del Monte, I think; I might be mistaken.

12 MR FORD: I am not a hotel directory.

13 THE WITNESS: Neither am I.

14 MR FORD: I am looking for information.

15 MR ROGERS: I will get you a prospectus.

16 A It is the big hotel down there that everybody knows
17 that travels through that country.

18 MR FORD: Excepting me. At what hotel did you stop in
19 Santa Cruz? A I don't remember the name; it is the hotel
20 overlooking the ocean, the Ocean View or some such name.

21 MR ROGERS: Casa del Rey and Seaside are the two of
22 them. A The best one I could find; I don't remember what
23 it was.

24 MR FORD: Now, can you fix approximately the dates of those
25 two visits to those resorts? A I cannot sitting here;
26 I could if you wanted it tomorrow morning.

1 Q Very well; if you will. A Perhaps I could fix it now
2 by consulting with Mrs Darrow about it.

3 Q You may, if you like.

4 MR ROGERS: Come down and consult with her.

5 (Witness does so.)

6 A She does not seem to carry that in her head any better
7 than I do.

8 MR FORD: Very well. Did you return to Los Angeles after
9 meeting Mr Biddinger, and if so, when, after meeting him
10 in San Francisco?

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5p 1 A Well, Mr. Ford, I have just been explaining to you I am
2 not certain of the day I returned, I certainly got back.

3 Q Well, you went back to San Francisco again after that?

4 A Several times.

5 Q Do you recall the occasion of your going to San Francisco
6 and giving Mr. Tveitmoe that check for \$10,000? A I recall
7 the occasion, yes, sir.

8 Q How long were you in San Francisco on that occasion?

9 A I am not certain.

10 Q What is your best recollection? A Well, my present
11 impression is that I was there 2 or 3 days, and that was the
12 time I went to Santa Cruz.

13 Q To Santa Cruz? A Yes, but as to that I might be wrong.
14 I had no occasion to carry that in my head as to what time
15 it was.

16 Q By the way, when you went to the Palace Hotel, you didn't
17 sign the register, it was not your custom to sign the register
18 MR. ROGERS. That is objected to as incompetent, irrelevant
19 and immaterial, not cross-examination. I never sign a regis-
20 ter either. I do not think there is any crime about it.

21 MR. FORD. There is no crime, that is not the purpose; it is
22 simply to show what other evidence of that transaction is
23 the best evidence we can produce.

24 MR. ROGERS. We are not going to be governed by anybody's
25 entries in any book unless they are produced in conformity
26 with the law and the person who made them.

1 MR. APPEL. It is immaterial.

2 THE WITNESS. Better withdraw that objection. Wait a minute--
3 hadn't you better withdraw that objection?

4 MR. APPEL. It is not cross-examination.

5 MR. ROGERS. Do you want me to withdraw it?

6 THE WITNESS. I wish you would.

7 MR. ROGERS. As you will. The defendant withdraws the ob-
8 jection.

9 A It has generally been my custom when there were some
10 things going on that attracted newspaper people and others
11 for interviews and the like, to give a card at the desk and
12 tell them to not put it on the register and not put it on
13 myself; I think sometimes I did and sometime I did not.

14 MR. FORD. Q And that is what you did on August 24th?

15 A I don't know.

16 Q The only point I am trying to make, Mr. Darrow, is the
17 only entry would show would be the hotel bookkeeping instead
18 of your own? A Yes, I presume it is right, Mr. Ford.

19 Q I am not criticising you for not signing. A Well, I
20 didn't want to take a chance, that is all.

21 MR. ROGERS. If that is a book of original entry you
22 should produce the person that makes it.

23 MR. FORD. I am not offering it for that purpose.

24 MR. ROGERS. We are not running the thing this way.

25 MR. FORD. We can produce the clerk, but I am offering it
26 to Mr. Darrow, it is for the purpose of showing him what the

1 record was and showing him we are not concealing anything.
2 MR. ROGERS. If the Palace Hotel ever kept a book like this,
3 I never saw it.
4 MR. FORD. Well, they did.
5 MR. APPEL. There is one down at San Pedro kept that way
6 that they introduced in the Corners case, it looks like it.
7 MR. ROGERS. Oh, well, we are not going to stand for this,
8 nothing doing.
9 THE WITNESS. Mr. Ford, haven't you the telegram that
10 Biddinger sent to me? If you have that will settle it.
11 MR. FORD. Yes.
12 MR. ROGERS. We are not going to fuss with this kind of a
13 thing.
14 MR. FORD. I just wanted Mr. Darrow to look at it, that is
15 all.
16 MR. APPEL. We object to his seeing anything that is not
17 in his handwriting.
18 MR. ROGERS. I do not know whether it is the Palace Hotel
19 register or not.
20 MR. FORD. I do not contend that is a proper way to
21 introduce it, I want to show Mr. Darrow what we have on that
22 day.
23 MR. ROGERS. You have not anything.
24 MR. FORD. We can produce the clerk later.
25 THE WITNESS. I would be very glad to help you on that, if
26 I could.

1 MR. FORD: I appreciate your courtesy, Mr. Darrow, but your
2 attorneys do not want you to.

3 MR. ROGERS. No courtesy by running to the defendant with a
4 book of that kind, if you have got something by which he can
5 refresh his memory according to law, something which he made
6 or something I know about, then you can refresh his recol-
7 lection.

8 THE COURT. Well, the offer is withdrawn.

9 MR. FORD. Q. Have you the telegram which was delivered to
10 you from Mr. Guy Biddinger? A I have not. I don't keep
11 telegrams.

12 MR. FORD. I may have been mistaken about having possession
13 of the telegram from Mr. Biddinger to you, but I have another
14 telegram here of August 23, which might refresh your recol-
15 lection. Q I will ask you to look at this telegram which
16 I have shown to your counsel, and ask you if you remember
17 having sent such a telegram as that? A I have no remem-
18 brance about it. A great many telegrams were sent by me
19 and from our office.

20 Q. Can you tell by the style of the typewriting or anything
21 else on that telegram it was a telegram dictated by you?

22 A Why, from the address and the person, and the contents,
23 I would presume it was my telegram.

24 Q Just notice the date. A August 23.

25 Q 23. Refreshing your recollection from it or judging
26 from that, can you state whether or not you went to San Fran-

1 cisco on the 24th or not, or whetheryou arrived in San Fran-
2 cisco on the 24th? A I presume I did, but I could not say
3 from that certain; I presume I did. Does that correspond
4 with the other, Mr. Ford, with the other telegrams? Does
5 that correspond with the Biddinger matter?

6 MR. FORD. Yes.

7 A The chances are that is the date.

8 MR. FORD. I offer this in evidence as People's Exhibit
9 Number 43, merely for the purpose of fixing the date,
10 August 23, 1911.

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1 MR ROGERS: Wait a moment, now. It has not been offered in
2 evidence yet.

3 MR FORD: I offer it in evidence.

4 MR ROGERS: I know, but that does not entitle you to get
5 it in.

6 THE COURT: Any objection?

7 MR ROGERS: Yes, when we get a chance to.

8 THE COURT: Go ahead with the objection.

9 MR ROGERS: Now, if the telegram can be identified as a
10 genuine telegram of Mr Darrow's I have no objection to its
11 introduction.

12 MR FORD:" It can. We can go down and produce the tele-
13 graph operator, if you require us to do so.

14 MR ROGERS: You cannot do anything of the kind; I challenge
15 you to do it. I object to it on the ground that it is
16 not sufficiently identified, incompetent, irrelevant and
17 immaterial.

18 MR FORD: To prove by the telegraph operator it came from
19 their files and was a telegram sent on that date.

20 MR ROGERS: That does not prove Mr Darrow sent it.
21 If you are going to bind Mr Darrow by telegrams, let us
22 get Mr Darrow's documents here. I am not convinced of
23 some of these documents.

24 MR FORD: The defendant is.

25 MR ROGERS: I take an exception to that. The defendant
26 has not said so, he says he does not recognize it.

1 MR FORD: He says he believed it to be the same document.

2 MR ROGERS: What is that?

3 MR FORD: I understood he said he believed it to be the
4 same document.

5 MR ROGERS: If you are going to produce evidence here,
6 let us get evidence.

7 THE COURT: I do not think the telegram has been suffi-
8 ciently identified. Objection sustained.

9 MR FORD: Was it not your custom, Mr Darrow, on matters
10 of this sort, telegrams, to dictate your telegrams to the
11 stenographer and tell her to sign your name in type-
12 writing and send it? A I often did that, and others,
13 often signed my name to telegrams they dictated, so the
14 telegrams would come to the office.

15 Q Well, the time you saw Mr Biddinger and the time you
16 saw Mr Tveitmoe were two different occasions; is that cor-
17 rect? A Well, now, do you mean, did I see Tveitmoe on
18 the trip up there?

19 Q No, I mean the time you delivered the check to him
20 to be exact. A Yes.

21 Q Two different trips to San Francisco. A I should say
22 they were, yes.

23 Q And you were in Los Angeles between the two trips?

24 A Undoubtedly.

25 Q Now, when did you leave Los Angeles to go to San
26 Francisco to see Mr Tveitmoe?

1 MR ROGERS: On what occasion?

2 Q On the trip when you gave him the check on September
3 2nd? A That I cannot tell you, neither am I sure that
4 I came back, but I think I did, between those two dates.

5 Q Do you recall being in Los Angeles on the 26th day of
6 August, 1911, and at that time having a conversation with
7 Mr Johannsen about some man in San Francisco, and discuss-
8 ing the question of whether Mr Davis ought to see him, and
9 at that time sending a telegram to Mr Tveitmoe to the fol-
10 lowing effect --

11 MR ROGERS: Wait a minute. Wait a moment. That does
12 not go in any court on earth, reading a document in any
13 such fashion as that. If they have a telegram, let us see
14 it, show it to the witness, and see if he sent it.

15 MR FREDERICKS: Counsel read a newspaper.

16 MR ROGERS: That doesn't make any difference. That is
17 misconduct, and every lawyer knows it; it is a trick.

18 THE COURT: Well, gentlemen, I don,t know what counsel is
19 going to do.

20 MR ROGERS: I know he is going to commit misconduct, and
21 I am going to stop him.

22 MR APPEL: He is going to read a telegram which he says
23 is as follows.

24 THE COURT: The court has no power to anticipate what a
25 lawyer is going to do.

26 MR APPEL: The question shows he is going to do it, it is

1 in your presence; he is holding in his hand, in your pre-
2 sence, in my presence, in the presence of the jury, and
3 asking the question, "Didn't you send a telegram which reads
4 as follows:"-- and when he says "reads as follows", every-
5 body knows from his peculiar position there, with his feet
6 up there, the telegram before him, and his eyes upon the
7 paper, he is about to read it. Does it require that we
8 should have it demonstrated in order to see that?

9 We contend that telegram must be shown to us first,
10 your Honor, as required by the code, that the witness must
11 not be interrogated until he has seen it.

12 THE COURT: Mr Appel, if counsel are guilty of miscon-
13 duct, they will have to answer for it, and the court
14 has no power to prevent counsel from propounding a question
15 in such form as he may desire, and the question is not
16 propounded --

17 MR ROGERS: Does your Honor rule that he can sit here and
18 read a document in that fashion and put a question of
19 that sort in a criminal case?

20 THE COURT: The court is not ruling that he may or may not
21 do anything, but the court does rule that it has no power,
22 and it is beyond the right of the court to direct counsel
23 as to the form and manner in which they should --

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1 MR. ROGERS. I have been practicing criminal law for 15
2 years and I have seen courts stop counsel time and again
3 when they were deliberately and maliciously committing mis-
4 conduct.

5 THE COURT. Mr. Rogers, this court will not do it and has
6 refused to do it on both side and will continue to do it.

7 MR. APPEL. We are asking for what the code requires to be
8 done, your Honor, and that is this: That a witness--that
9 the witness before he is examined upon a writing or the con-
10 tents of a writing, or the writing called to his attention,
11 must be first shown to counsel on the other side.

12 THE COURT. There is no doubt about the correctness of the
13 rule.

14 MR. APPEL. Your Honor is permitting him to do it. Now,
15 will it be stipulated to the fact, so as to make our
16 ruling, that counsel in his question is about to read
17 a telegram or a paper which he claims to be a telegram --
18 that that paper has not been shown to counsel for the defend-
19 ant, nor that it has not been shown to the defendant;
20 that it has not even been shown to the court, and then let
21 those facts be stipulated, and let our objection to the
22 question go in, I object to his reading the telegram or to
23 his including it in any question or to calling the atten-
24 tion of the witness to it upon the ground and for the reason
25 that no foundation has been laid, in that he has not shown
26 the telegram to the witness; that he has not shown it to

1 counsel; that he is doing it for the purpose of evading
2 the plain provisions of the law--the plain provisions of the
3 rule contained in our code concerning the examination of a
4 witness upon the witness stand, concerning a written document
5 and it is incompetent, irrelevant, immaterial and not cross-
6 examination, and that it is being done for a subterfuge and
7 a trick upon this defendant and upon his counsel.

8 MR. FREDERICKS. We stipulate nothing your Honor except--

9 MR. APPEL. Will counsel deny he was about to read that
10 telegram in the presence of this jury and in the presence
11 of the Court?

12 MR. FORD. The only thing I will do, when your Honor has
13 ruled, I will finish my question. Your Honor doesn't know,
14 nobody knows but myself whether I am going to read this
15 telegram, if I am going to read it, or whether I am going
16 to read it correctly.

17 MR. ROGERS. I suppose counsel contends we are all fools,
18 including the jury and we cannot see.

19 MR. FORD. No, we didn't say anything--

20 MR. FREDERICKS. We don't assume anything in regard to the
21 jury in that regard.

22 THE COURT. The court is composed of the attorneys and they
23 have their peculiar duties and responsibilities, and the
24 court and the jury have their own separate responsibilities,
25 but it is within the right and province of attorneys on
26 either side, as long as they continue to propound their

1 questions in respectful and proper language, not offen-
2 sive to the witness, to proceed to do it; if they violate
3 the rules laid down, why, then their cause must suffer for it
4 but the court cannot and will not attempt to say to counsel
5 he must not ask a question that has not yet been asked, and
6 that may never be asked. I will not undertake to read the
7 minds of any lawyer to see what he is going to do or what he
8 is not going to do.

9 MR. APPEL. We have our objection. I think our objection
10 covers the point.

11 (Last question read by the reporter.)

12 MR. ROGERS. I call for the production of the telegram,
13 "To the following effect," and in view of the fact that before
14 this jury and before the court, if the court will look, he is
15 producing what purports to be a telegram and reading there-
16 from. He has not shown us it is one of the telegrams which
17 he pretended to give a copy of to us, and we do not know that
18 it is a genuine telegram or a trick, in fact we think the
19 latter, and we call for the enforcement of the rule, that
20 before a question is asked of the witness concerning a
21 written document, it must be shown to counsel and to the
22 witness; the law so says.

23 THE COURT. If counsel is going to ask any question concerning
24 a written document I shall assume that he will comply with the
25 law. I don't know what he is going to do.

26 MR. APPEL. He must do it before he asks the question at all.

1 It is imperative, it is--

2 THE COURT. I know the statute.

3 MR. FORD. Q Do you recall at that time of having tele-
4 graphed to Mr. Tveitmoe for the purpose of getting his advice
5 as to whether or not Davis should see the man of whom you
6 and Johanssen had talked the night before?

7 MR. APPEL. We object to that as not cross-examination. It
8 is incompetent, irrelevant and immaterial for any purpose
9 whatsoever; that the witness upon the stand, being the
10 defendant, has never been examined in chief on the part of
11 the defense, concerning any telegram or concerning any con-
12 versation, or concerning any matter which is the subject of
13 the question or connected therewith. The document has
14 not been shown to the witness or counsel upon the other side,
15 and he is being examined concerning a document, to wit,
16 a telegram, not being the best evidence, and calling for
17 secondary evidence and hearsay. We never asked this witness
18 about that.

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1 MR FREDERICKS: Your Honor, they took this witness over
2 the entire field --

3 THE COURT: Let me have the question. Never mind, I know
4 it. I haven't in mind the date to which this question re-
5 fers.

6 MR FORD: August 28th, 1911.

7 THE COURT: Objection overruled.

8 MR APPEL: We except. A I do not now recall having a
9 conversation with Johannsen in Los Angeles on August 28th,
10 about some man in San Francisco or about sending a tele-
11 gram to Mr Tveitmoe in reference to having Mr Davis go
12 there. If such a thing happened, I don't recall it.

13 MR ROGERS: Now, of all the cheap tricks I ever saw --
14 did I get a copy of this.

15 THE COURT: Wait a moment.

16 MR FORD: Do I have to tolerate such language?

17 MR ROGERS: You do.

18 THE COURT: No, you don't. Now, we will stop right here.

19 MR APPEL: Wait a moment, your Honor. We want to see if they
20 gave us a copy of that. No copy given to us of that,
21 your Honor.

22 THE COURT: Now, that is a very different statement,
23 gentlemen, and a very proper statement, the one you now
24 make, but to say, "Of all the cheap tricks I ever saw" --
25 how are we ever going to get through with a case of this
26 kind --

1 MR ROGERS: When we proceed according to the law and the
2 code.

3 THE COURT: We will proceed according to the law and the
4 code, but we will not have that kind of remarks inject-
5 ed in therecord. Now, let it be unde rstood right here
6 and now that that whole thing must stop. Any proper ob-
7 jection that counsel on either side have here will be lis-
8 tened to with the utmost courtesy by this court, but that
9 language cannot be tolerated and will not be tolerat-
10 ed. Now, let's stop it right here?

11 MR ROGERS: They agreed to furnish us copies of telegrams
12 and then without daring to show the witness that tele-
13 gram or daring to show us that telegram, they take advantage
14 of the ruling, which we believe to be entirely erroneous,
15 they put a question concerning a telegrafam. We looked
16 through our telegrams and don't find it. Am I not justified
17 in saying we have been tricked? If I have not been jus-
18 tified in it, I never saw a trick perpetrated in a court
19 room. If counsel had handed me the telegram and said,
20 "Here is the telegram," according to the code, "I will show
21 it to the witness", then we would have been -- we would have
22 simply said to him, "You didn't give us a copy of that ac-
23 cording to your agreement", but they knew they didn't give
24 us a copy.

25 MR FREDERICKS: No, we knew nothing of the kind.

26 MR ROGERS: And we can't find a copy of it.

1 MR FREDERICKS: We are not in that kind of business.

2 MR ROGERS: Why was the concealment of the telegram and
3 the unusual and unlawful and illegal method of its
4 presentation. I will stand here and defend my client, and
5 it isn't right that that kind of a thing be done in a
6 criminal case.

7 THE COURT: If the question and answer and the ruling
8 of the court was erroneous, they will have to dispose of
9 that in another place. The court has carefully consider-
10 ed it, and considered it legal. Now, the question is
11 whether or not the rule -- or whether the stipulation has
12 been violated, in not presenting to you the copy of that
13 telegram.

14 MR FREDERICKS: In regard to the telegram, I told counsel
15 we had not the originals, but we had copies, and that is
16 correct, but we have gotten the original since then,
17 and I think that this -- I aimed to give him every one of
18 them.

19 MR ROGERS: I acquit you, Captain Fredericks.

20 MR FREDERICKS: And I am looking to see -- if I didn't give
21 it to him, they wanted it in a hurry that night, and we
22 didn't have the telegrams all copied, because there were
23 two or three hundred of them, so we went to one of our
24 trial briefs and clipped them out and destroyed an entire
25 brief in order that they might have them early that night,
26 because they were mixed up in other things that was not

1 included in the stipulation. Now, if they haven't a copy of
2 that telegram --

3 MR ROGERS: There is nothing in the telegram we care any-
4 thing about, except the method.

5 MR FREDERICKS: Now, counsel can bank on it that we gave
6 him everything that we thought we had.

7 MR ROGERS: I don't care anything about it except the
8 method of its presentation.

9 THE COURT: I think, Mr Rogers, the court should consider
10 Captain Fredericks' statement. If you haven't a copy it
11 has been mislaid --

12 MR ROGERS: Go ahead. I don't care anything about the con-
13 tents of the telegram, except I don't like to be handled
14 that way in the court room. If they have a copy, show it
15 to counsel according to the code; show it to the witness,
16 but don't rub it up in your hands, and says, "Did you send
17 a telegram like this or not?" It hasn't ever been done in
18 any case I have ever been in and I protest against it.

19 MR FREDERICKS: Are all these the telegrams that I --

20 MR ROGERS: I didn't go through them.

21 MR FREDERICKS: We certainly had more telegrams than
22 these.

23 THE COURT: The court is acting upon the presumption that
24 the defendant has copies of all those telegrams.

25 MR ROGERS: That may be. I said I didn't like the method
26 of presentation in the court room.

1 THE COURT: I assume you had copies of them all.

2 MR ROGERS: There is nothing in the tele-gram we care
3 anything about. They can introduce it, if Mr Darrow recog-
4 nizes it, that is all there is to it.

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9s 1 MR. FORD. Q I hand you a telegram which I have already
2 exhibited to your counsel, Mr. Darrow. Can you fix the
3 date as to whether or not you were in Los Angeles from that
4 telegram? A If I sent this telegram it would indicate
5 I was here the 28th.

6 Q Do you know whether or not you sent it? A I do not.

7 Q Are there any marks--

8 MR. ROGERS. What is that, Postal or Western Union?

9 A Whatever marks are on it would indicate I didn't, but
10 I might have just the same--I don't know what it refers to.
11 There is nothing in it to call my attention.

12 MR. FORD. That doesn't recall any occasion to your mind?

13 A Does not.

14 Q Do you know what day of the week it was you went to San
15 Francisco on the occasion of giving that check to Mr. Tveit-
16 moe? A I do not.

17 Q Do you recall meeting any other persons besides Mr. Tveit-
18 moe up there? A My recollection is that was the time
19 Mr. Davis and his wife went also, and we went that same time
20 down to Santa Cruz, but I am not certain of that either.

21 I sent many telegrams and made many trips, and unless there
22 was something special I would not remember the circumstance.

23 Q I will get at it another way. At the time you went up to
24 San Francisco and stopped at the Palace Hotel on the 24th and
25 25th, you were accompanied by Mrs. Darrow, were you not?

26 A She went up with me a number of times.

1 Q On the time you saw Biddinger? A I don't know.

2 Q Do you remember anything else you did on that trip to
3 San Francisco when you gave Mr. Tveitmoe the check for \$10,000?

4 A I think at that time Mr and Mrs Davis and Mrs Darrow and
5 myself went to Santa Cruz.

6 Q After the second of September? A I think so.

7 Q How long did you stay in Santa Cruz, approximately?

8 A About two days, I guess. No, I think we got there--
9 I think we stayed one night and one day.

10 Q And did you return to Los Angeles or go somewhere else?

11 A To Los Angeles.

12 Q Do you recall how long you were away from Los Angeles all
13 together on that trip? A I do not.

14 Q Approximately? A I am not certain. That is the time I
15 went to Santa Cruz. I would say we were away from 3 to 4
16 days, but I don't recall. Nothing to recall it by.

17 Q Where did you give this check to Mr. Tveitmoe? A In
18 his office.

19 Q Where did you get that check? A Got it in the mail.

20 Q When and where? A In Los Angeles.

21 Q How long before you went up north? A I don't
22 remember. The check would show about how long.

23 Q After you came to Los Angeles in July you had a great
24 deal of correspondence by letter and telegram with Mr. Rappa-
25 port in Indianapolis? A July?

26 Q After you had come to Los Angeles in July? A I had cor-

1 respondence all the time with him.

2 Q About the case? A Yes .

3 Q The evidence to which I attracted your attention this
4 morning or alleged evidence, as you prefer to call it, which
5 was seized in Indianapolis, consisting of dynamite and
6 fuses, fulminating caps, clocks and so forth, had been
7 taken before the Indianapolis grand jury, the grand jury
8 of Marion County , Indiana, had they not?

9 MR . APPEL . Wait a moment --we object upon the ground it is
10 not vcross-examination . It is incompetent, irrelevant and
11 immaterial, hearsay, assuming a fact not testified to by
12 the witness . Assuming a knowledge on the part of the witness
13 to which he has not testified; assuming a state or condi-
14 tion of things to which the witness has not testified; no
15 foundation laid; it is immaterial; it is an independent
16 fact to which the witness has not testified; has nothing
17 to do with the case, no time fixed showing any connection
18 between the witness's testimony given on direct examination
19 and a fact in the case .

20 THE COURT . Overruled .

21 MR . APPEL . We take an exception . Now, your Honor, we
22 would like to be heard onthe question of cross-examination .

23 THE COURT . Mr. Appel, this is a branch of the case that
24 was gone into and disposed of during your absence this morn-
25 ing .

26 MR . APPEL . It was disposed--has your Honor disposed of the

1 constitutional question as to how the limits are in cross-
2 examination--

3 THE COURT. This matter has been gone into and I am satis-
4 fied this is a proper question on cross-examination.

5 MR. APPEL. I just wish to know this: I don't know but
6 what there had been some misapprehension as to the rule.
7 Does your Honor rule directly against the case of People
8 against O'Brien?

9 THE COURT. The Court has fully in mind section 1323, and
10 at least some decisions pursuant thereto.

11 MR. APPEL. Your Honor familiar with that decision?

12 MR. FORD. I object to the court being catechized.

13 THE COURT. I believe that the interpretation of Section 1323-

14 MR. APPEL. Let the record show, then, your Honor, that
15 your Honor is making this ruling upon this question with
16 full knowledge and with a full understanding of the rule
17 laid down in the case of People against O'Brien in the 66th
18 California.

19 THE COURT. I don't particularly recall that case. I am
20 basing the ruling on Section 1323.

21 MR. APPEL. I just want the record to show there is no mis-
22 understanding.

23 THE COURT. I don't recall that case, Mr. Appel. If there
24 is something particular about that case that you think I
25 ought to have my attention called to, let's have it.

26 MR. APPEL. The defendant is entitled, of course, to be

1 heard, if the court has absolute information upon the
2 law, of course, then we don't have to be heard.

3 THE COURT. The court is satisfied as to the law upon that
4 matter.

5 MR. APPEL. Very well, we take an exception.

6 A Read the question.

7 (Last question read by the reporter.)

8 A I have no information on that.

9 MR. FORD. Q Weren't you informed that such was the fact?

10 MR. APPEL. wait a moment--we object to that.

11 MR. FORD. Let me finish the question,--by Mr. Rappaport.

12 MR. APPEL. We object upon the ground it is not cross-
13 examination. It is incompetent, irrèlevant and immaterial;
14 that it calls for hearsay declarations. That any declara-
15 tions made by any one to the witness here are hearsay just
16 as much as if any witness came upon the housetops of Los An-
17 geles and said something, and not cross-examination. The
18 rule is absolute here and in every state that you cannot
19 introduce incompetent evidence or irrelevant matter or
20 cross-examine the witness concerning declarations made to
21 him by any one which are not pertinent to his direct
22 examination, and not cross-examination.

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1 THE COURT: Objection overruled.

2 MR APPEL: We take an exception.

3 A I had heard from Mr Rappaport that some articles claim-
4 ed to have been taken from the basement of the building
5 where J. J. McNamara had his office , were before the Marion
6 County grand jury.

7 MR FORD: Also some articles consisting of dynamite and
8 nitro-glycerine from the Jones barn near Indianapolis?

9 MR APPEL: Wait a moment. We object upon the ground that
10 it -- upon the same grounds stated in our previous ob-
11 jection to this line of examination, so as not to be inter-
12 rupting.

13 THE COURT: Overruled.

14 MR APPEL: We take an exception.

15 A I think I heard some articles were taken from the
16 barn owned by a man named Jones, near Indianapolis, were
17 before the grand jury of Marion county, Indiana. I think
18 I was informed by letter.

19 MR FORD: Also that letters and correspondence generally
20 between J. J. McNamara and O. A. Tveitmoe, Ryan, Hawkins
21 and various business agents throughout the United States,
22 of the International Association, that had been taken
23 from the office of the International Association?

24 MR APPEL: Will your Honor consider our objection to this
25 as already made to the other questions, to this question,
26 and also we add that the witness ought not to be interrogat-

1 ed on any hearsay evidence or hearsay writings, or any
2 writings of any kind. The writing not being produced, and
3 not being shown to the witness or counsel upon the other
4 side, and calling for transactions and declarations and
5 private relations or other relations of any kind or
6 nature, or any conspiracy or the commission of other crimes,
7 or the commission of other attempts at crimes, between
8 third parties not connected with this case as being hear-
9 say and incompetent, irrelevant and immaterial, and not
10 cross-examination.

11 THE COURT: Objection overruled.

12 MR APPEL: We take an exception.

13 A I heard by letter that the correspondence, files and so
14 forth of the Industrial Bridge & Iron Workers of Indian-
15 apolis were taken possession of, and the organization was
16 seeking to get them back, and there was a controversy in
17 court about it.

18 MR FORD: Now, you understood, Mr Dafrow, that the Los
19 Angeles authorities were trying to get possession of that
20 evidence, particularly the clocks and dynamite fuses for
21 use as evidence in the case of People versus J. B. McNamara
22 and J. J. McNamara? A I understood so.

23 MR ROGERS: I object --

24 MR FORD: He read it to me, the answer the witness had
25 given.

26 THE COURT: If he gave an answer strike it out for the

1 purpose of the objection.

2 MR ROGERS: ~~We object to that as incompetent, irrelevant~~
3 ~~and immaterial, and not cross-examination, and I call your~~
4 ~~Honor's attention in addition to the other objections~~
5 ~~which have been made, due to the fact, over our objection~~
6 ~~and against what we believe to be the correct rule, they~~
7 ~~were permitted to introduce in their case evidence concerning~~
8 ~~other offenses, if so they be, and we spent weeks here~~
9 ~~trying whether Diekelman was in Albuquerque, and whether~~
10 ~~Mrs Caplin went to Reno, and all that sort of thing, with~~
11 ~~a view of determining, of course, the bearing upon the is-~~
12 ~~sue whether or not Bert Franklin gave Lockwood \$4000 down~~
13 ~~at Third and Los Angeles street. Now, then, on cross-exam-~~
14 ~~ination, they seek to resume where they left off, and~~
15 ~~prove by the defendant, if so they may, other acts, if~~
16 ~~there were any. Now, one thing is sure, either they had~~
17 ~~no right to put it in their main case, or they have no~~
18 ~~right to put it in now, because they cannot make two~~
19 ~~bits of a cherry in a criminal case. They have got their~~
20 ~~case in. They put in, over our objection and against our~~
21 ~~protest, the instances where they claim there was con-~~
22 ~~spiracy to defeat the ends of justice. Now, they closed.,~~
23 ~~When they said , that is all, and in rebuttal and incross-~~
24 ~~examination they cannot start in on their main case again~~
25 ~~and try to make issues out of it. I don't think they can.~~
26 I don't know what they are driving at, but it appears

1 to me an effort to draw from the witness some kind of an
2 admission that he was guilty of something else, such as sup
3 pressing evidence, something of that kind. Now, if they
4 had anything of that sort, if they have any proof of it,
5 your Honor permitted them to introduce evidence of that
6 sort of thing in their direct case. I don't know when
7 this matter is going to stop, whether they can be permitted
8 to go on incross-examination and then in rebuttal, and
9 possibly in sur-rebuttal, but one thing is sure, they cannot
10 have their case divided up into half a dozen different
11 turns, as it were, with a vacation between each. Having
12 opened up that subject, and your Honor having told them
13 they could go into collateral matters, when they said,
14 "That is all", they cannot do anything in cross-examination
15 and they cannot bring up collateral matters on cross-examina
16 tion, so far as the defendant is concerned. It is elementary
17 law, if your Honor please -- or his knowledge.

18 MR FREDERICKS: Well, your Honor, we make no claim that
19 the defense, in which Mr Darrow was in charge, didn't have
20 the right to any legal process that they could institute
21 in Indianapolis to get in possession of that evidence. We
22 make no such claim. We make no claim that any legal steps
23 that they may have taken to gain possession of that evidence
24 were wrongful or were criminal.

1p 1 And counsel is mistaken when he says we are trying to show
2 that this defendant committed another wrongful act in trying
3 to get this evidence. If it was right he could get it and
4 he could get it through court proceedings, if he did get it
5 through court proceedings and tried to get it through court
6 proceedings, there was nothing wrong about it, and we made
7 no such contention, it is cross-examination pure and simple.
8 MR. ROGERS. Then, what is the relevancy of it, if your
9 Honor pleases?

10 MR. FREDERICKS. That will appear.

11 MR. ROGERS. We object to it on the ground it is not cross-
12 examination.

13 MR. FORD. To show the hopelessness of the case.

14 MR. APPEL. He might have known all that, your Honor, he
15 might have known everything, he might have been informed
16 long before he came to Los Angeles, he might have been long
17 before to see Mr. Biddinger concerning these matters from
18 hearsay, or what he was told by other persons, and that
19 is not to be taken as a fact, whatever a person told this
20 witness is not evidence, what someone told him is not
21 evidence, your Honor. I can cite any number of authorities
22 and very recent authorities of our courts upon that subject,
23 that you cannot introduce in evidence, either by the
24 defendant or by someone else, what he was told. He may have
25 known all that, and the issue came, did he tell Biddinger,
26 tell such and such a thing? The witness says, "I didn't

1 tell him." The fact he may have known this case to exist
2 does not necessarily imply, is not cross-examination of the
3 fact whether he told Biddinger certain things or not, and
4 that is the law.

5 THE COURT. It seems to me, this brings up practically the
6 same question that was partly argued at adjournment at 12
7 o'clock.

8 MR. FREDERICKS. No, your Honor, it does not, and I can make
9 it very plain.

10 THE COURT. Very well.

11 MR. FREDERICKS. I do not care to disclose the purpose of
12 this cross-examination at this time. I think it is perfectly
13 fair for us to go into this matter, and it is not opening
14 up of a great big lot of stuff as counsel says it is, purely
15 on the question in point.

16 THE COURT. Let me have the question and then we will take
17 a recess. Have it written up for me. Gentlemen of the
18 jury, bear in mind your former admonition. We will take
19 a recess for 10 minutes.

20 (After recess.)

21 THE COURT. The question under consideration at the time of
22 the recess was this, as the reporter has handed it to me:
23 "Now, you understood, Mr. Darrow, the Los Angeles authori-
24 ties were trying to get possession of the evidence, parti-
25 cularly the clocks and dynamite fuses for use as evidence
26 in the case of People vs J J and J B McNamara." Do you

1 gentlemen wish to be further heard on that matter? Objec-
2 tion overruled.

3 MR. APPEL. Exception.

4 A I think I heard it somewhere.

5 Q Mr. FORD. Well, as a matter of fact, wasn't Mr. Rappaport
6 instructed by you to use all legal means possible to resist
7 the state, the Los Angeles authorities from getting possession
8 of the evidence that was back there before the Marion County
9 grand jury at Indianapolis?

10 MR. ROGERS. We object to that as not cross-examination,
11 incompetent, irrelevant and immaterial; no foundation laid.

12 THE COURT. Objection overruled.

13 MR. ROGERS. Exception.

14 A Instructed how? By letter or telegram or--

15 Q Any way.

16 MR. ROGERS. The same objection.

17 THE COURT. Objection overruled.

18 A Just a minute. I think Mr. Rappaport wrote me about the
19 proceedings there, in reference to it, and I think I wrote
20 him or sent him word to take charge of that himself, and to
21 keep it there if he could, that it had no bearing on this
22 case, and to attend to it there, in substance.

23 Q Have you that correspondence? A I have not.

24 MR. FREDERICKS. The witness says that he stated it had no
25 bearing on the case. He is not giving that as his opinion
26 that it had no bearing on the case.

1 A What I meant was, that I so wrote him. I might not have
2 put it in, but I think I did. At least, that was my view
3 of it.

4 MR. FORD' That was the contention you were going to try to
5 make if the case came to trial? A I should say we were,
6 that had nothing to do with the Times explosion at all.

7 Q You were convinced, however, at the time you allowed these
8 men to plead guilty that the prosecution would succeed in
9 getting it in evidence and that it would be impossible
10 to overcome such evidence?

11 MR. ROGERS. We object to that as incompetent and immaterial,
12 not cross-examination, a double question.

13 THE COURT- Objection overruled.

14 MR. ROGERS. Exception.

15 A I was not convinced of it. I never know what a judge
16 will do or a lawyer or a jury or anybody else, and I did
17 not fear it in the least, or very little. It was not that
18 that worried me.

19 Q You were informed subsequently that the United States
20 grand jury at Indianapolis, in that district, in the district
21 including the county of Marion, had taken possession of the
22 evidence and taken it from the county grand jury?

23 A I heard--

24 MR. ROGERS. The same objection, if your Honor please.

25 THE COURT. Objection overruled.

26 MR. ROGERS. Exception.

1 A I heard they had taken possession of certain articles.
2 I don't know whether it is evidence or not, I don't think
3 it ever was in this state or would have been or could have
4 been.

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1 Q Had taken possession of the articles, such as the dyna-
2 mite and clocks, etc., that were alleged to have been
3 found there.

4 MR ROGERS: The same objection --

5 A All articles that were alleged to have been found in
6 the basement and in the barn, I heard that.

7 Q Did you not instruct Mr Rappaport to take all possi-
8 ble means, I use it -- all possible legal means to regain
9 that evidence?

10 MR APPEL: We object to that on the ground it is incompe-
11 tent, irrelevant and immaterial, and not cross-examination,
12 has no bearing upon the case, and by this question they
13 undertake to introduce some other elements into the case,
14 which was a part of the People's case, that the witness did
15 not refer to or in any way was examined concerning any com-
16 munications between him and Mr Rappaport concerning the
17 subject in question. It is immaterial for any purpose,
18 and no time, place, persons present or circumstances are
19 named in the question, no foundation laid.

20 THE COURT: Objection overruled.

21 MR APPEL: We except.

22 A I don't recall whether I had any correspondence with
23 him in reference to the matter after the federal grand jury
24 took hold of the matter or not, I might or might not have
25 had.

26 Q Were you not trying to enable the International ASSO-

1 ciation to regain possession of its property?

2 MR APPEL: We object to that upon the same grounds stated in
3 our last objection to the question just propounded before
4 this.

5 THE COURT: Objection overruled.

6 MR APPEL: We except.

7 A What do you mean by "property"?

8 Q Withdraw that question. Did you not instruct Mr
9 Rappaport that he could spend \$1000 to regain possession
10 of all those articles for you, from either the county grand
11 jury or the federal grand jury?

12 MR ROGERS: What federal grand jury and what county grand
13 jury?

14 MR FORD: At Indianapolis.

15 MR APPEL: We object to that as not cross-examination;
16 incompetent, irrelevant and immaterial for any purpose
17 whatsoever; that the witness has never testified in his
18 direct examination concerning that transaction or concern-
19 ing any transaction of that kind, with Rappaport, and no
20 foundation is laid, the time, place and persons present are
21 not fixed in the question; it is immaterial to any issue
22 in this case.

23 THE COURT: Objection overruled.

24 MR APPEL: We except.

25 A I don't remember. If I did, it must have been by let-
26 ter and telegram, and you should show me a copy of it.

1 Q Have you any copies of the telegrams you sent to Mr
2 Rappaport in code? A I have none.

3 Q Have you the code which you used at that time?

4 A I never had it.

5 Q Do you know whether there is any such code in ex-
6 istance? A I don't know of any; there is none, unless
7 it is in the possession of you people.

8 Q Have you had access to any such code? A I have not.
9 I take it you mean recently? I had access to it during the
10 time I used it.

11 Q Have you, Mr Darrow, any independent recollection of
12 having sent a telegram to Mr Rappaport on December 1st,
13 1911, the day the McNamaras plead guilty, notifying Mr
14 Rappaport not to spend the \$1000 which you had previously
15 authorized him to spend in regaining the evidence?

16 MR APPEL: We object to that on the ground it is incompe-
17 tent, irrelevant and immaterial, not cross-examination.
18 He is asking a question concerning the subject not tes-
19 tified to by the defendant or gone into by the defendant him
20 self, and the asking of the question and the examination of
21 the witness in reference to that subject, being inviola-
22 tion of the constitution of the state of California and
23 in violation of the case of People versus O'Brien, the
24 leading case in this state upon the subject, in 66th Cal.,
25 page 603, where it is said, "A defendant in a criminal
26 prosecution, who has become a witness in his own behalf,

1 cannot be cross-examined as to any facts or matters not tes-
2 tified to^{by} him on his examination in chief."

3 THE COURT: That is precisely the language of section
4 1323, isn't it?

5 MR APPEL: Yes, but here in this case, your Honor, the
6 witness -- there the case was a case of forgery, and he
7 testified in direct examination concerning the forgery
8 at issue, and then they asked him on cross-examination
9 whether or not he had had something to do with other for-
10 geries, and while that matter might have been brought out
11 in the direct case of the People, the Supreme Court held
12 that he ought not to have been compelled to testify.
13 Now, here the witness has testified in reference to the
14 Biddinger matter, and they are asking him whether or
15 not he also tried to get up some scheme with Rappaport to
16 conceal evidence. Now, you cannot do that on cross-
17 examination. This case is directly in point, your Honor,
18 absolutely in point. "The defendant was charged, in an
19 information filed by the District Attorney of San Francisco,
20 with the embezzlement of a certain sum of money, to-wit
21 \$1000, the same bein the property of the state, and on
22 the trial, he was called and examined as a witness on his
23 own behalf. On the examination in chief his testimony was
24 directed and confined to the alleged embezzlement of the
25 particular sum of money mentioned in the information, but
26 on the cross-examination he was examined generally, as a

1 witness in the case. This course of proceeding was objected
2 to very frequently by his attorney, but the objections were
3 as often overruled by the court, and the examination was
4 allowed to be as general as could have been made of any
5 other witness in the case; the District Attorney, in fact,
6 making the defendant his own witness on behalf of the prose-
7 cution. The question is: was this course of procedure re-
8 gular and proper under the law."

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13p1 "Section 13, Article I, of the Constitution declares that
2 no person shall 'be compelled in any criminal case to be a
3 witness against himself.' There is, therefore, no power
4 in the court to compel a defendant in a criminal case to
5 take the stand; and it has been held that the failure
6 of the defendant to testify in the case is not a circumstance
7 from which any unfavorable inference can be drawn against
8 him; and the provision of the statute is to the same
9 effect. But by Section 1323 of the Penal Code, it is pro-
10 vided that 'a defendant in a criminal action or proceeding
11 cannot be compelled to be a witness against himself; but
12 if he offer himself as a witness he may be cross-examined
13 by the counsel for the People as to all matters about which
14 he was examined in chief. His neglect or refusal to be a
15 witness cannot in any manner prejudice him, nor be used
16 against him on the trial or proceeding.' It is only under
17 and by virtue of the foregoing provision of the Penal Code
18 that a defendant in a criminal prosecution can be a witness
19 at all; and when he is called on his own behalf and examined
20 respecting a particular fact or matter in the case, the
21 light of cross-examination is confined to the fact or matter
22 testified to on the examination in chief. Such is the
23 express language of the statute, and when the court, as it
24 did in the case at bar, allowed the prosecution to make the
25 defendant a general witness in its behalf, it invaded a
26 right secured to the defendant not only by the statute but

1 by the constitution. For this error the judgment and order
2 are reversed and the cause remanded for a new trial."

3 Now, your Honor will see here, the people brought
4 in Mr. Biddinger, Mr. Biddinger testified Mr. Darrow stated to
5 him something in reference to getting hold of some of the
6 evidence which the People are alleged to have, had, which
7 he was going to bring here from the east, made some kind
8 of a statement here about Darrow saying he was going to send
9 a couple of his boys to knock him in the head and take it
10 away from him on the train. Now, that is a matter and sub-
11 stance which was brought out by the People against this defend-
12 ant; the defendant went upon the stand and he said con-
13 cerning his relations with Biddinger, he said that he never
14 had any such understanding with Mr. Biddinger; he explained
15 fully his relations with Mr. Biddinger, he explained his own
16 opinion about it. Now, upon the cross-examination of this
17 they are asking him whether or not he attempted to get
18 Rappaport to do the same thing, which they claim Biddinger
19 testified here. Is that proper? Isn't that compelling this
20 witness to testify against himself? Is it proper to
21 examine him at all in reference to that matter? Did he ever
22 say a word here as to his conversation with Mr. Rappaport in
23 reference to that subject? Did he ever utter a word in
24 relation to any correspondence between himself and Rappa-
25 port concerning any evidence which they claim the conversa-
26 tion there had? And I might go on and illustrate time and

1 time over again; another case, we have here, your Honor, in
2 which the defendant was put upon the stand and he testified
3 concerning a forgery, concerning the forged instrument upon
4 which he was tried, he gave his own version of it, then
5 they asked him whether or not he had made other forgeries
6 and he was compelled to testify by the court, and the Supreme
7 Court said, whether true or not, they had invaded his con-
8 stitutional rights and the court had gone further than
9 was permitted by the constitution in examining that witness,
10 and they reversed the case for that reason. I can cite
11 numbers of other cases in which, upon cross-examination they
12 have crossed the border line of cross-examination, in one
13 case which I read to your Honor here, when this matter
14 was discussed, in reference to collateral matters, I showed
15 your Honor case after case, that on cross-examination they
16 could not ask the witness whether he had ever committed or
17 had conversations with other persons or attempted to commit
18 other similar offenses. Now, your Honor will see they are
19 asking him concerning his dealings with Rappaport, concerning
20 evidence, trying to induce this jury to believe that Mr.
21 narrow himself had attempted to get Rappaport to keep
22 evidence from coming here to be used against the McNamaras.
23 If such was the fact, that was a part of their own case,
24 under your Honor's ruling, which they say had no reference
25 at all to the case.

1 MR FREDERICKS: Will counsel permit me to interrupt just a
2 moment?

3 MR APPEL: Yes sir.

4 MR FREDERICKS: Counsel is not arguing the point that we
5 have in mind. We agree with counsel in his argument of
6 the law, it is probably correct, if this defendant induced
7 him, Biddinger, or tried to induce Mr Biddinger to purloin
8 or to steal any of the evidence, that would be a crime, but
9 if this witness hired Mr Rappaport to go into court and
10 try to get this evidence ^{by means} of court proceedings, that would
11 not be a crime, and we make no claim, as I said before,
12 we make no claim whatever, that there was any wrongful
13 act on the part of this defendant in hiring Mr Rappaport
14 to get possession of this evidence, as long as it was
15 done through the courts, and there has been nothing to
16 indicate that it was being attempted in any other way.

17 MR APPEL: Now, your Honor, let me show, even if this de-
18 fendant had sat down here and written a statement, "I
19 wrote to Mr Rappaport by all means to keep those clocks
20 from coming down to Los Angeles", his confession in ref-
21 erence to that matter, would not be admissible on cross-
22 examination, when he had not touched upon that evidence.
23 "Evidence of distinct and substantive offenses cannot be
24 admitted in support of another offense by asking the defend-
25 ant concerning it, for it is not competent on cross-
26 examination to introduce ⁱⁿ evidence admissions of the

1 defendant if he had a tendency or if he had committed
2 other offenses tending to show his guilt." Mr Wharton
3 on Criminal Evidence. The same rule is held in the case
4 of --

5 THE COURT: The court fully agrees with you, Mr Appel.

6 MR APPEL: Now, your Honor, the admission of a defendant
7 that he has committed acts other than the one upon which
8 he has been examined, are not permissible on cross-examina-
9 tion -- admissions of a defendant that he has committed
10 burglary on previous occasions committed in the same house,
11 are not admissible -- declarations or admissions of the de-
12 fendant of the commission of other crimes than the one
13 charged with, are inadmissible --

14 MR FORD: We are not trying to prove an illegal act in this
15 particular matter.

16 MR APPEL: yes, that is what they say.

17 MR FREDERICKS: We stipulate it.

18 MR APPEL: But they are not entitled to prove any ille-
19 gal act on the part of this defendant, they are not entit-
20 led to prove anything in reference to collateral matters
21 by him; if it was admissible on direct examination they
22 should have introduced it, and if it was not admissible
23 on direct examination, it is not admissible on cross-
24 examination, and if it was admissible on direct examination
25 it was part of their case, and they cannot compel this de-
26 fendant here to testify in reference to that matter, because

1 he did not touch upon it in his direct examination, and
2 the code is so plain, and the provisions of the consti-
3 tution are so plain that anyone who reads can understand
4 them easily, and I say, to allow this examination of this
5 kind is an absolute violation of our oath and our alle-
6 giance to the constitution of this state.

7 THE COURT: The court fully agrees with counsel's conten-
8 tion as to the principles of law laid down, the consti-
9 tution and the code provisions, and its interpretation,
10 but the District Attorney here has made an avowal in open
11 court he is not seeking to show any attempt to suppress
12 evidence or to commit any other unlawful act by this line
13 of testimony; the court is of the opinion that this line
14 of examination is proper cross-examination, directed to
15 the subject gone into on direct examination of lack of
16 motive. Let the examination proceed upon that theory.

17 MR APPEL: In this case, People against Baird, there the
18 question of motive and scienter and guilty knowledge was
19 involved.

20 THE COURT: If you want to be heard on that --

21 MR APPEL: I just want to call your Honor's attention
22 to it. We are never too wise but what we learn some-
23 hing. I have learned something by reading this decision.

24 THE COURT: If you have any authorities on that branch of
25 the case, let me have them.

26 MR APPEL: All right, your Honor. "The appellant Baird

1 and one John Brown were jointly indicted for the crime
2 of forgery. And the appellant who was tried separately
3 was found guilty. He appeals from the judgment and from
4 an order denying his motion for a new trial. There are only
5 two points made by appellant which needs to be noticed:
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1. ~~That the court erred in admitting evidence of alleged~~
forgeries by appellant other than the one charged in the
indictment; and, 2. That the court erred in allowing
certain questions on the cross-examination of appellant
when on the stand as a witness for himself. 1. It is
charged in the indictment that appellant and said Brown
did falsely, feloniously, etc., make, forge, utter and pass
a certain certificate of shares of stock of the bank of
Madera, a copy of said certificate being set forth in the
indictment. It was introduced in evidence as Exhibit 1,
and it appeared from the evidence of the prosecution that
the said certificate was uttered and passed on the 8th
day of October, 1890. The prosecution were permitted, over
the objections and exceptions of appellant, to introduce
three other documents marked exhibits 3, 4 and 5, two of
which were certificates of stock, and the other a promissory
note, and to introduce evidence tending to show that they
were also forgeries, and that they had been feloniously
uttered and passed by appellant. But these latter instru-
ments were not uttered until the latter part of June 1891,
about 9 months after the alleged commission of the crime
charged in the complaint. Exhibits 3, 4 and 5 bore dates
considerably more than subsequent to the date of the Exhibit 1.
We think that the court erred in allowing these exhibits in
evidence. They were too remote, too long subsequent to the
time of the act charged in the complaint. This is a dangerous

1 kind of evidence at best. It is an exception to the well
2 established rule that evidence of other crimes cannot be
3 introduced to help along a conviction of the crime charged;
4 and it should not be carried any further than courts have
5 already carried it. No case has been cited which would
6 justify the contention of respondent on this subject in the
7 case at bar. 2. Appellant went on the stand as a witness
8 for himself. His testimony was confined entirely to
9 exhibit 1, the certificate which he was charged with forging.
10 On cross-examination he was asked by counsel for the People
11 about said exhibit 3. Objection was made by appellant's
12 counsel on the ground that it was not cross-examination as
13 to a matter about which appellant was examined in chief.
14 The objection was overruled, and appellant excepted. This
15 was error. The judgment and order appealed from are
16 reversed and the cause remanded for a new trial."

17 Here they introduce this evidence of Biddinger
18 on this subject. Mr. Darrow answered it, now they are asking
19 him whether or not he made some attempts through Rappaport,
20 as Biddinger testified here. Is that cross-examination?
21 THE COURT. I think it is cross-examination on the subject
22 matter introduced in the direct as to lack of motive. Objec-
23 tion overruled.

24 MR. APPEL. Exception.

25 A What is it?

26 (Last question read.)

1 A I have a recollection of sending a telegram, but no
2 recollection of its having contained that. It may have,
3 however. I have a recollection of what it was about in
4 the main.

5 MR. FORD. Q Give us the substance of it, as you recall it.

6 MR. APPEL. We object to that. The telegram is the best evi-
7 dence; it is incompetent, irrelevant and immaterial, no
8 foundation laid.

9 THE COURT. Objection sustained.

10 MR. FORD. Q you sent two telegrams that day?

11 MR. APPEL. We object to that,--let the telegrams be shown to
12 the witness; no foundation laid.

13 THE COURT. Objection sustained.

14 MR. FORD. Q I show you one which I have already exhibited
15 to counsel, you know the time on that--

16 MR. ROGERS. Is that the one that has Keno and Peruna in it?

17 MR. FORD. Yes.

18 MR. ROGERS. I have seen that.

19 MR. FREDERICKS. Dated December 1st.

20 MR. FORD. And here is some more Japanese or Volapuk, I
21 don't know which.

22 A Well, let us see it.

23 MR. FREDERICKS. Counsel has just been shown another telegram
24 dated December 1, 1911, to Mr. Rappaport apparently.

25 (Mr. Rogers examines it.)

26 MR. FORD. Q I have shown you a telegram, Mr. parrow, which

1 I have exhibited to counsel, and which purports to have been
2 sent--

3 A Yes.

4 Q About 3 o'clock. A Is that it?

5 MR. FORD_ I think so. A I don't know anything about
6 the hour, the indication on there, which I would not want
7 to swear to. I never saw it before, anyway.

8 MR. FREDERICKS. 3 o'clock what day?

9 MR. FORD. Dated December 1st.

10 A December 1st.

11 MR. FORD. Q The McNamaras had plead guilty at 2 o'clock
12 on the afternoon of December 1st, had they not? A They
13 had.

14 Q Did you not immediately after that realize that there
15 was no further necessity of regaining the evidence consisting
16 of the alleged bombs and clocks and dynamite, etc?

17 MR. APPEL. Wait a moment. We object to that on the ground
18 it is not cross-examination; it is incompetent, irrelevant
19 and immaterial; that the question assumes that the witness
20 has testified that he wanted to regain the articles named
21 in the question, or that there was any desire on his part
22 to regain them, which the witness has not testified to;
23 it is not cross-examination; it is incompetent, irrelevant
24 and immaterial for any purposes.

25 THE COURT. The objection is overruled.

26 MR. APPEL. We except. Furthermore, we object to the ques-

1 tion now upon the ground that it calls for transactions
2 alleged to have occurred after the alleged commission of the
3 offense, and it is not evidence against the defendant.

4 THE COURT. Objection overruled.

5 MR. APPEL. We except.

6 A I will answer that no and then explain it. I might have
7 answered it yes and explained it just the same.

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1 Q Explain your answer? A A good many days before that
2 I realized it was of no further use in the McNamara case,
3 and not to be feared by us. I realized, however, on that
4 date a federal grand jury -- I had heard rumors of there
5 being called here, that they were in session in Indian-
6 apolis, and that in the controversy they were carrying^{on} in
7 Indianapolis to regain possession of whatever they had,
8 was a perfectly proper one to carry on, but the main thing
9 I realized at that time was I didn't want to spend a thous-
10 and dollars because I needed it. If that was contained
11 in the telegram.

12 Q Then, the fact that the McNamaras had plead guilty
13 on that day, made your effort absolutely -- to regain it,
14 of absolutely no value to you at that time, even though
15 it may not have been of value to you sometime before that.

16 MR APPEL: Wait a moment. We object upon the ground it is
17 incompetent, irrelevant and immaterial, and not cross-ex-
18 amination.

19 THE COURT: Objection overruled.

20 MR APPEL: We will except.

21 A See whether I can understand that.

22 MR FORD: I withdraw that question.

23 MR ROGERS: Leave it there.

24 MR FORD: Read the question. (Last question read by
25 the reporter.)

26 A Now, what are you referring to?

1 MR FORD: The effort to regain the Indiana evidence.

2 A Do you mean letters and telegrams and files?

3 Q I mean these clocks -- A And dynamite and clocks?

4 Q Yes. A Altogether?

5 Q Yes. A I was always interested in regaining the let-
6 ters, telegrams and files. They always wanted them. As
7 far as the other was concerned, it was not necessary,
8 of course, in this particular case, but was up to me to do
9 what I could to protect everybody else in the matter.

10 Q But after the McNamaras plead guilty -- I withdraw that
11 question. After you decided that the McNamaras should plead
12 guilty, you had no further use for that evidence?

13 MR APPEL: Wait a moment. We object upon the ground
14 that it assumes that the witness --

15 A Yes. 

16 MR APPEL: -- had any use for it at any time. It is not
17 cross-examination, incompetent, irrelevant and immaterial
18 for any purpose whatsoever.

19 THE COURT: Overruled.

20 MR APPEL: We take an exception.

21 A At all times they wished to regain possession of the
22 stuff that was taken from their offices in the way of cor-
23 respondence, and no doubt wanted to fight out the other ques-
24 tion, too. It might have been brought to Los Angeles in
25 the matters that were immediately threatening and begun be-
26 fore the federal grand jury or might have been used there.

1 MR FORD: But as soon as you made up your mind that the Mc-
2 Namaras were to plead guilty and end the cases, you had
3 no further desire to spend \$1000, and revoked Rappaport's
4 authority to spend \$1000 in that behalf; that is the point
5 I want to get at, Mr Darrow.

6 MR ROGERS: Now, that question, if your Honor please, con-
7 tains something, unless notice would make it entirely dif-
8 ferent from what it appears, and it is not cross-examina-
9 tion. He says, "As soon as you made up your mind;" he
10 is trying, according to my judgment, to commit the wit-
11 ness through the fact that he had not made up his mind
12 until such time as he might have sent a telegram.

13 MR FORD: Oh, no, he can explain that.

14 MR ROGERS: Let's see if that is not so by a reading of
15 the question.

16 THE COURT: Let the witness answer.

17 A I didn't think that was the purpose. Read it.

18 (Last question read by the reporter.)

19 MR APPEL: Let us have the objection, it is not cross-
20 examination.

21 THE COURT: Objection overruled.

22 MR APPEL: Exception.

23 A At the time that telegram was sent, of course, I don't
24 know whether there was any thousand dollars in it, but if
25 there ^{was} that was on December 1st, and I didn't want to spend
26 any more money.

1 MR FORD: When did you make up your mind that you didn't
2 want to spend any more money in that behalf? A I don,t
3 know.

4 Q To get that evidence? A I don,t know. Probably
5 as soon as I thought I would not get any more.

6 MR FREDERICKS: Any more money? A Any more money, yes.

7 MR FORD: After you had decided that the McNamaras were to
8 plead guilty, you did not expect to get any more money?

9 A I did. I got a telegram to that effect.

10 Q As a matter of fact, you didn't, however? A I did not.
11 There was some started, but it never got to me.

12 THE COURT: That is a little confusing. You didn't what?
13 You mean you didn't get any more money? A I didn't get
14 any more money.

15 MR FORD: After you had made up your mind that the McNamaras
16 were to plead guilty, you determined not to spend any more
17 money upon the alleged evidence in Indianapolis, is that
18 correct? A I didn't intend to spend any more?

19 Q Yes. A Read that again.) (Last question read by
20 the reporter.) I didn't say that.

21 Q Well, is that correct? A No.

22 Q When did you tell Mr Rappaport that he could spend
23 \$1000 to regain that evidence?

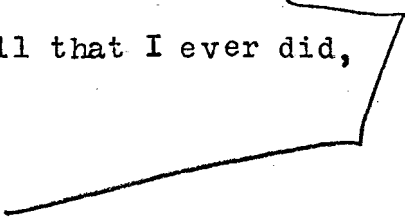
24 MR APPEL: Wait a moment. We object to that upon the ground
25 it is not cross-examination; it is incompetent, irrelevant
26 and immaterial, and not the best evidence; calling for

1 hearsay evidence; calling for oral evidence; calling for
2 secondary evidence, and no foundation laid.

3 THE COURT: Objection overruled.

4 MR APPEL: We except.

5 A That I do not recall. I do not recall that I ever did,
6 but think I did.



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17s 1 MR. FORD. With reference to the time that you had the con-
2 ference on Sunday with the McNamaras--withdraw that question.
3 You have testified already, Mr. Darrow, that on Sunday,
4 November 26th, you had determined that the McNamaras should
5 plead guilty, if necessary? A Yes.

6 Q The both of them? A Yes, I said before that too, but I
7 had on Sunday.

8 Q On Sunday? A Yes.

9 Q The matter was settled. Now, was it before or after that
10 date that you authorized Mr. Rappaport to regain that India-
11 napolis evidence and spend one thousand dollars in doing so?

12 MR. APPEL. We object upon the ground it is irrelevant and
13 immaterial and incompetent and not cross-examination, and
14 upon the further ground that if the instructions were in
15 writing the writing is the best evidence.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.

18 A I couldn't tell you whether it was before or after or
19 not at all, might have been either of the three-- any of the
20 three, rather.

21 MR. FORD. Q Isn't it a fact that on Tuesday the day of
22 Franklin's arrest that you did not intend to have both of
23 the McNamaras plead guilty? A It is not.

24 Q Isn't it a fact that on Wednesday, the day after Frank-
25 lin's arrest, you instructed Rappaport to spend one thousand
26 dollars to regain that evidence? A Might be, I don't know.

1 MR. APPEL. Wait a moment, now--we object upon the ground
2 it is incompetent, irrelevant and immaterial and not cross-
3 examination, that if the instructions were in writing the
4 writing is the best evidence, and calling for secondary
5 evidence and hearsay.

6 THE COURT. Objection overruled.

7 MR. APPEL. We except.

8 A On one of those days I received a telegram from Washington
9 that they had forwarded \$10,000 by check and when the plea
10 of guilty came on December 1st, I was doubtful whether I
11 would ever get that check, which I never did, and we had
12 considerable amounts of bills to pay, and I didn't want to
13 spend any more money.

14 MR. FORD. Q Didn't you endeavor, after Franklin's arrest,
15 to prevent the Indianapolis evidence from coming to Los
16 Angeles?

17 MR. APPEL. Wait a moment; we object upon the ground it is
18 incompetent, irrelevant and immaterial and not the best
19 evidence, calling for a conclusion or opinion of the witness
20 and not cross-examination.

21 THE COURT. Objection overruled.

22 MR. APPEL. We except.

23 A You mean by letter or telegram?

24 MR. FORD. Q In any way. A If it is letter or telegram I
25 have a right to see it and ask for it.

26 MR. FORD. I have a right to an answer to my question.

1 MR. ROGERS. I instruct you you need not answer.

2 MR. APPEL. Your Honor, let's take that issue right here
3 and see about it. Now, you needn't answer it. We are
4 entitled to be fairly examined like any other witness. If
5 it is any letter we ought to see the letter.

6 THE COURT. Have you such a document, Mr. Ford?

7 MR. FORD. If the Court please, I am not required to disclose
8 to the witness what evidence I have or upon what evidence
9 I am relying. As to the telegrams, the defendant has been
10 furnished with copies of the telegrams, I think, with the
11 exception of one, which has been overlooked.

12 THE COURT. That is what I am trying to avoid the confusion
13 again.

14 MR. APPEL. Notwithstanding, he is entitled to see the
15 original and see if he sent that telegram, or to refresh his
16 memory from anything that they have, if the question is
17 pertinent and it is cross-examination, and if it is not
18 cross-examination or pertinent he don't have to answer. Let's
19 take this issue up right now.

20 MR. FORD. I have asked the witness a question and I asked
21 ~~if he instructed in any manner, either by sending messages~~
22 or by written document or otherwise?

23 A $\frac{1}{2}$ was asked whether it was a letter or telegram. I did
24 not instruct by sending any messenger.

25 Q Did you instruct in any way?

26 MR. APPEL. Wait a moment. Now, your Honor, we object

1 to that as I said, that brings up the same thing and we
2 ~~instruct the witness not to answer, and we say that if its~~
3 is not cross-examination he don't have to answer, and if it
4 is any writing, he must be shown the document first before
5 he is required to answer. It is only with reference to
6 the fairness with which the witness must be examined. This
7 is the defendant, this is the only witness who has been
8 examined in this manner, and the only witness that has been
9 compelled to be examined in this manner. Every other witness
10 who went upon the stand, and I attract your Honor's attention
11 to it, and I attract this jury's attention to it, that
12 every witness that went upon the stand when they asked
13 them in regard to any writing your Honor required them to
14 show the writing. Your Honor required me to show Mr. Franklin
15 the transcript of the testimony. This being the defendant,
16 he has been singled out for this kind of an examination.
17 The witness here is trying to answer these questions properly
18 and reasonably, and he has to say "I did not," or "I did",
19 just as the facts may be. If they show him a telegram,
20 if he says he did such a thing this witness will say he did,
21 and if he is shown a date he will say that is correct, and
22 that is the only exception to the rule in the examination of
23 witnesses.

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1 MR FORD: ~~This is the first time I ever heard that the~~
2 cross-examiner had to tell a witness what he had in his
3 possession before the witness could be compelled to an-
4 swer. However, to save time, I will withdraw that ques-
5 tion and ask the witness, did you receive a telegram from
6 Leo M. Rappaport on November 29th, 1911? A Let's see it.

7 MR ROGERS: Let's see it.

8 MR FORD: I haven't the telegram that you received, nat-
9 urally.

10 THE COURT: Now, that is one of the telegrams that the de-
11 fendants have received or have not?

12 MR FREDERICKS: May be one of these they did not.

13 MR APPEL: They furnished us some copies.

14 THE COURT: They have them; you have seen the documents.

15 MR APPEL: We have not seen them. We have what they claim
16 are copies. We have a right to take --

17 MR FORD: Just let me make a statement. The defendant
18 asked for the telegrams that were sent by Mr Darrow, and
19 they have got them.

20 MR APPEL: That is what they say.

21 MR FORD: However, before asking the witness --

22 MR FREDERICKS:" We have shown counsel for the other side,
23 now, a telegram. Put some date on it.

24 MR FORD: I now exhibit to the witness a document which
25 purports to be a telegram dated November 29th, 1911, from
26 Leo M. Rappaport at Indianapolis, to Clarence S. Darrow at

1 the Higgins Building.

2 MR ROGERS: Now, if your Honor please, this telegram is a
3 telegram addressed to Mr Darrow. If it came into his
4 possession, how did they get it? Where does it come from?

5 MR FREDERICKS: It came from Indianapolis, Mr Rogers.

6 MR ROGERS: Very well, if it came from Indianapolis, and
7 it was ever delivered to Mr Darrow, how did it get back to
8 Indianapolis?

9 MR APPEL: How did they get it? They said they had no tele
10 grams from Mr Darrow's office.

11 MR FORD: We never had any telegrams from Mr Darrow's of-
12 fice.

13 MR APPEL: Addressed to Mr Darrow, and your Honor will pre-
14 sume, if it was ever received by Mr Darrow, your Honor
15 will presume it was delivered in the general course of bus-
16 iness of the telegraph office to him, and they said here,
17 they said to your Honor, and they said to this jury, they
18 had no telegrams from the files of Mr Darrow here. They
19 said that. Now, if this is an original telegram, which
20 was supposed to get in their hands, how did they
21 get it.

22 THE COURT: There will come a time --

23 MR APPEL: We would rather call your Honor's attention to
24 his statement here, and they are bound by their statements.
25 They are bound by their statements in court just as much
26 as evidence, whether it is true or not, here is the time.

1 MR FREDERICKS: Now, every statement we have made is
2 true.

3 MR APPEL: I simply asked how they come --

4 MR FREDERICKS: Why don't counsel ask instead of making de-
5 clarations.

6 MR APPEL: You stated you had none.

7 THE COURT: There is no question before the court.

8 THE WITNESS: Will you translate it for me, please?

9 MR FORD: Mr Darrow, you never received this paper itself,
10 did you? A No, it is the original at Indianapolis.

11 Q The one written by Mr Rappaport and put in the Indian-
12 apolis office, and whatever you received was a copy that
13 was made here in Los Angeles at the other end of the tele-
14 graph wires; that is correct? A This purports to be a
15 telegram sent in Indianapolis on November 29th, to me
16 in the Higgins Building, and signed by Leo M. Rappaport.
17 Will you please translate it for me, and then I will tell
18 you about it. It gives me no information whatever.

19 Q The first one says, "May I spend a thousand dollars--"

20 MR APPEL: Is that telegram in English?

21 MR FORD: He asked me to translate it.

22 MR APPEL: Is it in English? You are reading it now.

23 MR FORD: No, I am translating it at the witness' request.

24 MR APPEL: Translate nothing; what do you know about it?

25 THE COURT: The witness has requested counsel to trans-
26 late this.

1 MR ROGERS: All right --

2 THE COURT: If that question is to stand, let him go ahead,
3 if he can translate it.

4 MR ROGERS: Translate it.

5 MR FORD: Let me get my dictionary. A Can't you pass
6 me a slip with the translation on it?

7 Q I haven't the translation here, but I think -- I
8 am not sure of this, but I think the last four words are,
9 "dollars to regain evidence". I am only sure of the first
10 four words. I haven't the translation right here at hand.

11 MR ROGERS: If you have the code, let's dig it up?

12 MR FORD: Mr Bailiff, will you bring me a blackboard?

13 MR ROGERS: Dig your code up and let's read it. Now, if
14 counsel proposes to translate it, we call for the produc-
15 tion of the code.

16 MR FORD: I am looking for it.

17 MR APPEL: Wait a moment, now, your Honor. We object to
18 his version of what that telegram means, or showing it
19 to the jury there.

20 THE COURT: All right.

21 MR APPEL: Now, your Honor, he is doing that, your Honor.

22 THE COURT: Now, there is an objection to its being trans-
23 lated.

24 MR ROGERS: No, there is no objection to its being translat-
25 ed with the code.

26 THE COURT: Without the code. All right; let's have the

1 code now.

2 MR APPEL: We object to his using any translation of anyone
3 else, if the code is produced and shows it is correct --

4 MR FORD: Your Honor, I worked away late one morning figur-
5 ing this code out, and I don't know that I am required to
6 give it to anybody else. Do you want me to write the code on
7 the blackboard?

8 MR ROGERS: yes sir, or show us the code, however.

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1 MR. FORD. This is the one I figured out myself. Then I
2 will give the cipher of the code and explain this.

3 MR. ROGERS. No, I will take the whole code, so we may
4 compare and see what the code is, if the code is sufficient.

5 THE COURT. We cannot take the translation of this telegram
6 except we have the whole code.

7 MR. ROGERS. May I ask if counsel is attempting to put on the
8 whole code?

9 THE COURT. I understand that he is.

10 MR. FORD. The code that explains this message--I wish to
11 look at the whole code too.

12 MR. ROGERS. Wait a moment--the court has once held you
13 cannot translate that telegram in that fashion. Let's
14 see that code.

15 MR. FORD. I am just writing it on the blackboard. I will
16 ask you to look at the document which I hold in my hand
17 and which I have shown to your counsel, and ask you if
18 that was the code used by you, or rather a reproduction of
19 the code used by you? A I don't know.

20 Q Does it look like it? A I don't know.

21 MR. ROGERS. You have just shown it to counsel at a distance
22 I would like to look at it. I offer it in evidence for
23 identification as shown to the witness.

24 MR. FORD. We offer it in evidence--this is quite a memoran-
25 dum, and it will be offered in evidence, I will put it in
26 evidence.

1 MR. APPEL. Just for identification to have the record show
2 what he was asking the witness about.

3 MR. FORD. If there is no objection I will put it in
4 evidence as the code--

5 MR. ROGERS. Not as the code, what you think is the code.

6 MR. FORD. That will not do.

7 MR. APPEL. There ought to be some identification of the
8 paper which he has been interrogating the witness about.
9 There is no identification and the record would be silent
10 what he showed the witness.

11 MR. ROGERS. Just a moment. I have offered it in evidence
12 for identification.

13 THE COURT. It will be marked for identification.

14 MR. FORD. This is my own private document, prepared by me.
15 If your Honor desires to put a mark on it I have no objec-
16 tion.

17 THE COURT. Then eliminate this whole matter from the record.
18 Erase this matter from the blackboard. If you are going to
19 use it, use it.

20 MR. FORD. I am only translating it at the request of the
21 witness.

22 THE COURT: Translating it at the request of the witness
23 in the light of the whole code.

24 MR. APPEL. Just for identification.

25 A JUROR. May I ask Mr. Parrow what his answer was to that
26 question, if that was the document?

1 A Oh, this document? I said I didn't know. I was not
2 familiar with the code at all.

3 MR. ROGERS. Mr. Ford just said it was his private memorandum,
4 his private document.

5 MR. FORD. Prepared by me and worked out by me.

6 MR. ROGERS. Very well.

7 THE COURT. All right, mark the document.

8 THE CLERK. Defendant's Exhibit P.

9 THE COURT. For identification. It is not in evidence.

10 Mark it for identification only.

11 A May I make a suggestion to counsel?

12 THE COURT. Yes, outside the record.

13 MR. ROGERS. It has been marked for identification.

14 THE COURT. The document has been marked for identifica-
15 tion, I believe that is true, Mr. Clerk, isn't it?

16 THE CLERK. It hasn't yet.

17 THE COURT. Well, you mark it.

18 MR. ROGERS. Now, I offer this in evidence, your Honor please,
19 as the document claimed by Mr. Ford to convey a means of
20 translation of telegrams, copies of which he says he has
21 furnished us, and which he has attempted to use in trans-
22 lating the telegrams. We do not vouch for its correctness
23 but we offer it as a part-- used here before the jury and
24 the court.

25 MR. FREDERICKS. Well, your Honor, it is not a proper proceed
26 ing for counsel--

1 THE COURT. A little out of order at this time, Mr. Rogers.

2 MR. FREDERICKS. It is in evidence-- the clerk has it. It
3 is available and if on redirect counsel wants to offer it--

4 MR. APPEL. May I inquire, your Honor, what is going on down
5 there?

6 MR. FREDERICKS. Well, we will let it go in.

7 THE COURT. All right, no objection, it will be marked, then,
8 as defendant's exhibit. Mr. Rogers, you want this marked as
9 defendant's exhibit?

10 MR. ROGERS. Yes, sir, as claiming to be a code.

11 MR. FORD. Now, having attracted your attention to this--

12 THE COURT. Just a moment, Mr. Ford. I want to get the
13 record right. Let the record show at this time that the
14 document claimed to be the code, by Mr. Ford, is offered
15 by the defendant as Defendant's Exhibit what?

16 THE CLERK. P.

17 THE COURT. As defendant's Exhibit P and will be so marked.

18 THE WITNESS. May I ask is that code complete?

19 MR. FORD. As far as I have worked it it is, Mr. Darrow.
20 I haven't found anything beyond that code.

21 THE WITNESS. That doesn't seem to me to furnish a means of
22 translation, does it?

23 Q It furnishes the key to the numbers of the page and words
24 of the dictionary which you used. A I haven't got any
25 dictionary.

26 Q Now, having translated, at your request, Mr. Darrow, the

1 message which I showed to you of Rappaport's, November 29,
2 1911, I attract your attention to the translation, "May I
3 spend thousand to regain Indianapolis evidence?" Did you
4 receive a telegram to that effect from Mr. Rappaport on the
5 29th day of November, 1911?
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1 MR APPEL: Well, wait a moment, your Honor. The witness
2 has said that that paper, as I understood, without the dic-
3 tionery, your Honor will see, that Mr Ford has made an
4 admission here, that that paper there with the Chinese
5 language on it, or whatever it may be, must be used togeth-
6 er with a dictionary. Now, that would not be the whole key.
7 Now, we have a right, your Honor, to the whole key, that is
8 if there are two parts, two documents, two books or two
9 things forming a key by which the document is prepared or
10 may be translated, we are entitled to both of them. We
11 ask now before the witness is examined that Mr Ford pro-
12 duce the dictionary. They are talking to that key.

13 MR FORD: I will offer the dictionary before I get through.

14 MR APPEL: We want it now.

15 MR ROGERS: He is asking about that translation; in order
16 that we may intelligently understand our situation in the
17 matter, we ask, the key having been produced, that we get
18 the dictionary in order that we may intelligently deter-
19 mine whether it is a translation.

20 MR FORD: But I have just simply translated this at the
21 request of the witness, your Honor, and I don't think that
22 they have a right to interrupt my method of cross-
23 examination to get what they want. At the proper time they
24 can get it.

25 MR ROGERS: Now being the proper time, I take it we can get
26 it now.

1 MR FORD: We have to put this witness on the stand --

2 THE COURT: If you want to use the translation in this form
3 Mr Ford, you will have to produce the method by which it is
4 interpreted.

5 MR FORD: I don't want to use it. I did so simply at the
6 request of the witness, translated that one message for him.
7 Incidentally I offered the key because they insisted on
8 it.

9 MR ROGERS: I offered it.

10 MR FORD: You offered it; I beg your pardon. This wit-
11 ness said he didn't know anything about the dictionary
12 and asked me to translate it and I very kindly did.

13 MR ROGERS: Thanking you for small favors, we would like
14 the rest of it.

15 THE COURT: Objection sustained.

16 MR FORD: Objection to what?

17 THE COURT: The question just asked the witness.

18 MR FORD: May I have the question so I can conform to
19 it? I have furnished the witness this translation.

20 Now I am asking him if he sent such a telegram to Mr --
21 or received such a telegram from Mr Rappaport.

22 THE COURT: The court will not permit any questions along
23 that line in reference to that translation until the entire
24 key and code of which this translation is a production --

25 MR ROGERS: I move to strike out the purported translation
26 attempted to be read into the evidence on the ground of your

1 Honor's last ruling.

2 MR FORD: I have a doctionery, only one copy of it. I
3 will ask the witness a question and introduce it properly.

4 THE COURT: It will be in court, and it will not be lost.

5 MR FORD: We are constantly needing it in our work. Mr Dar
6 row do you know what dictionary was used at that time?

7 A I know we had a dictionary.

8 Q Will you look at this dictionary and see if it is one
9 of the same edition? A I would not know, Mr Ford, un-
10 less there was some mark on it. We had two or three of
11 them.

12 Q That is a dictionary purchased by ourselves, so it is
13 not the same dictionary. A I don't know; I know we
14 had a dictionary, and I know we had two different kinds.
15 I never used it for translations myself.

16 MR ROGERS: It has been handed to the witness, I offer it
17 in evidence.

18 MR FORD: You are not going to offer it yet. I am going
19 to offer it.

20 THE COURT: Defendant's exhibit --

21 MR ROGERS: As shown to the witness under the statement.

22 MR FORD: Now, did you not, in response to that telegram --

23 I ask you now, did you not receive a telegram from Mr Rap-
24 paport in substance, and in code, "May I spend thousand

25 dollars to regain Indianapolis evidence?" A Well, now,

26 I refuse to answer it for this reason: that my remembrance is

1 that there was a series of these telegrams, copies of which
2 we have, some of them, at least, and I want to translate
3 them first; that is the only reason.

4 Q What is your independent recollection at this time?

5 A That there were some telegrams back and forth in re-
6 gard to that.

7 Q Have you any independent recollection of receiving a
8 telegram from Mr Rappaport which said, "May I spend thousand
9 to regain Indianapolis evidence?" AI said , Mr Ford, I
10 should refuse to answer until we could translate the series
11 so as to know just what it meant.

12 Q Did you not, in response to that telegram send a
13 telegram to Mr Rappaport on the same day, November 29th,
14 in which you said --

15 MR ROGERS: What company is that, Western Union or Pos-
16 tal?

17 MR FORD: In which you said, "May spend thousand dollars if
18 necessary."? A Now, I will give you my remembrance and
19 version of it, subject to a correction in the morning after
20 I see the rest of these telegrams.

21 Q All right, go ahead.
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21s 1 A I don't want to commit myself, because I am not certain.
2 You translated this last one, did you?

3 Q yes. The translation is right. "May spend thousand if
4 necessary." A you say what day?

5 Q November 29th, the same day you received this telegram
6 from Mr. Rappaport.

7 MR. FREDERICKS. What was the question?

8 MR. FORD. The question was, Did you send such a telegram
9 or rather I have shown Mr. Rogers, this is the original,
10 you have a copy of it.

11 MR. ROGERS. I think I have a copy.

12 A My answer was I will give you my version of it subject
13 to correction after we examine these telegrams by the code.
14 It is a long while ago.

15 Q Did you send that telegram? A I understand the ques-
16 tion now.

17 Q Did you send that telegram? A I am answering it now.

18 Q Very well, just hold it. A I don't need this.

19 Q I ask that the telegram which I have now handed the
20 witness be marked--what number, Mr. Smith?

21 THE CLERK. People's Exhibit 43.

22 MR. FORD. 43 for identification, and that the telegram
23 purporting to have come from Rappaport to Darrow be marked
24 44 for identification. We offer them in evidence.

25 MR. ROGERS. Now, let's have an answer to the question
26 whenever we get ready for it.

1 A The matter was taken up a good while before, by letter, and
2 possibly by telegraph. There were telegrams passed before
3 this, I am very sure, in which the question of recovering
4 the books and documents and files of the office were con-
5 cerned, and that the principle concern and question was
6 pending as to whether they were in the custody of the state
7 court or the federal court and the state court in Indiana
8 held that the organization had a right to the custody,
9 and turned them over to them. Thereupon, Judge Anderson,
10 of the federal court, issued an order directing a marshal
11 to go and get them, which he did. I don't remember exactly
12 the date, but before this date. Mr. Rappaport, a good while
13 before this time, asked that I furnish him some money to carry
14 on this proceeding, weeks before, and we had had con-
15 siderable correspondence over that, whether he should get it
16 direct from Washington or get it through me, I all the
17 time insisting he should get it from Washington. I think
18 another telegram was sent as far back as the 25th or 26th,
19 in regard to this matter.

20 MR. ROGERS. The 25th or 26th, what month?

21 A Of November, and he had also written me and told me he
22 had already incurred expense in reference to it and asked
23 me to make it good, and as I recall it, I did wire him that
24 I would send him a thousand dollars on this matter. In the
25 meantime I had notice that \$10,000 more was coming, and we
26 did want the documents and want them now, and I needed it all

1 to protect the other proceedings and J J McNamara wanted
2 them and the office wanted them. When the plea of guilty
3 was entered everybody came on for money, what was due, and
4 what was not due, and I wanted to save a thousand if I
5 could and I wired them back for that purpose.

6 MR. FORD. Wired back?

7 A I wanted him to get his money from Washington and not
8 from me.

9 Q You wired Rappaport not to spend the thousand dollars,
10 didn't you? A I am not certain. You had better translate
11 it. Let me see it. Probably not on my account.

12 Q Let me have those two exhibits you have, Mr. Smith. Did
13 you not send that telegram on December 1st, and did it not
14 say, "Do not spend that thousand dollars?" A Very likely.

15 Q Isn't that the telegram itself? A I don't know. It
16 seems to be a telegram sent from our office and signed by me.

17 Q Your best belief is that that is the telegram?

18 MR. ROGERS. "Best belief"?

19 A I haven't any knowledge or information about it excepting
20 it looks like a telegram sent from our office and very
21 likely I told him not to spend a thousand dollars, I didn't
22 want him to.

23 MR. FORD. It was charged to your account, wasn't that
24 telegram?

25 MR. APPEL. That is not the way to identify a telegram.

26 MR. FORD. Maybe the witness can identify it.

1 MR. APPEL. He cannot identify it because it is charged to
2 his account.

3 MR. FORD. Let the witness testify. The witness says it
4 seems to be, your Honor. What is your best belief as to
5 that telegram? Do you not believe it to be a telegram which
6 you sent to Mr. Rappaport December 1st?

7 THE COURT. Now, the objection?

8 MR. APPEL. We object to the question on the ground it is
9 incompetent, irrelevant and immaterial and not cross-
10 examination, and not the manner of identifying a telegram.
11 Belief don't cut any figure.

12 THE COURT- ^{don't} I think it is cross-examination. I don't think
13 you can identify that telegram in that way.

14 MR. FORD. I have a right to ask that question.

15 THE COURT. The witness has answered that question. Objec-
16 tion sustained.

17 MR. FORD. You did send substantially the telegram, however?
18 A I sent a telegram or instructed that one be sent, rather.
19 It was always the case with all these key telegrams, not
20 to call on me or expend for me a thousand dollars, and at
21 the same time I cut off every expense there was connected
22 with the management of the office.

23 Q Has this telegram been marked, Mr. Smith?

24 MR. FREDERICKS. No, that has not been offered.

25 MR. FORD. We offer this in evidence and ask that it be
26 marked for identification, People's Exhibit No. 45.

1 MR. ROGERS. Which is it, for identification?

2 MR. FORD: For identification. Q Now, calling your atten-
3 tion to the telegram which has been marked 43 for identifica-
4 tion, and which has been translated, a telegram purporting to
5 be signed C S Darrow, I will ask you if you sent that
6 telegram.

1 MR APPEL: Well, we object to that. That is this that
2 you have translated?

3 MR FORD: yes.

4 MR APPEL: -- on the same grounds stated before; it is
5 not cross-examination.

6
7 THE COURT: Objection overruled.

8 A I have no recollection about it except a general recol-
9 lection I had that kind of correspondence with Mr Rappa-
10 port, concerning money.

11 MR FORD: Isn't it a fact that on November 29th, you
12 did sent a telegram to Rappaport, "May spend thousand if
13 it is necessary?"

14 MR APPEL: Wait a moment; we object upon the ground the
15 telegram is not presented to the witness, and the tele-
16 gram is the best evidence; it is incompetent, irrelevant
17 and immaterial, and not cross-examination, and especially
18 in view of the fact, your Honor, that these telegrams ap-
19 pear to be in some cipher or form or some language which
20 is not intelligible to us, and it is very easy to make wrong
21 translations, and the telegram ought to be produced and
22 shown to the witness so we may have an opportunity to see
23 the language and make any correction if it should be. The
24 very idea, if it were a telegram in the English language,
25 a telegram that the jury could understand or your Honor un-
26 derstand. Very easy for a witness to answer; the telegram
will speak for itself, then.

1 MR. FORD: Referring to the telegram in your hand which has
2 been marked --

3 THE COURT: Wait a moment. Are you showing the witness
4 the telegram in question?

5 MR. FORD: I am withdrawing the previous question and ask-
6 ing a new question. Referring now to the telegram which
7 has been marked forty-three for identification, and
8 which, according to the code, works out, "May spend thous-
9 and dollars, if necessary", and which purports to be signed
10 by C. S. Darrow, I will ask you if you sent that telegram
11 on November 29th, or if you sent any telegram in substance
12 of effect like it, or like the translation thereof?

13 MR. APPEL: We object upon the ground that it assumes that
14 that is what the telegram reads, and that it is based
15 upon the assumption of the counsel there that he knows all
16 about it, and he may not know anything about it. Mr Darrow
17 can identify that telegram whether or not. Then, they
18 should put someone on the stand and say, "I know this code,
19 and I know how to translate this," or the person who pre-
20 pared the telegram. The telegram when it comes here in
21 the Chinese language it ought to be identified and put in
22 evidence and then some person who has intelligence, knowl-
23 edge enough of the language, translate it. Here they
24 want to make him an interpreter. They want to make him a
25 translator; they want to make him have knowledge of that
26 code. He said he didn't prepare them. There is no evidence

1 he prepared them. I might tell a person to telegraph to
2 someone in the Chinese language such and such a thing. He
3 might send a telegram --

4 MR FORD: I withdraw that question. Mr Darrow, did you
5 instruct anybody to put this message in code for you on
6 November 29th, 1911, "May spend thousand dollars if nec-
7 essary?" A Mr Ford, I have the impression that I in-
8 structed them to tell Mr Rappaport about that time that I
9 would stand good for a thousand dollars, but that corres-
10 pondence began a week or two earlier, and that you have
11 other telegrams in reference to it earlier, which I want
12 to examine tonight or some other time.

13 Q But you did?-- A It is one of the series.

14 Q -- send a telegram about November 29th, "May spend
15 thousand dollars if necessary."

16 MR ROGERS: Wait a moment. If your Honor please, the sit-
17 uation is this: counsel is endeavoring to get into evi-
18 dence by this method, telegrams, of course, which the wit-
19 ness says he does not know to be correctly stated. Now,
20 I have had considerable experience with these codes, and
21 I will illustrate by calling your Honor's attention to the
22 fact that a man in his office almost never translates into
23 code himself, or translates out of a code any message which
24 he sends or which he receives. I have no recollection
25 in all my life of translating but one code message. My dis-
26 tinguished and astute friend Mr Dehm, knows all about the

1 codes, and always does it. Now, then, sometimes on retrans-
2 lation of the code, you find the words have not been cor-
3 rectly used. Your idea has not been correctly expressed,
4 therefore, Mr Darrow is entitled before he is trying to say
5 what somebody else did, is correct, for what he said.
6 He is entitled to know just what was said, entitled to
7 look it over; entitled to figure it out by the code or the
8 dictionary. If he told his stenographer to put a telegram
9 into French, and he knows no French, he will say then, he
10 is shown a translation or a claimed translation of that
11 French, he is entitled to know whether or not the person
12 who translated from his language into French did cor-
13 rectly translate, and Mr Darrow, therefore, cannot, seeing
14 he don't know anything about these codes -- said he never
15 translated in his life, he is entitled to look these tele-
16 grams over and see if they were correctly translated by
17 the person that translated them. He cannot be bound by
18 them any more than -- the law has held to that effect.

19 THE WITNESS: May I ask if we have all of those copies?
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33
1 MR. FREDERICKS. We would ask to have the reporter, to
2 make sure of it, to make copies of those telegrams as they
3 have been introduced here, so the defense can have them
4 tonight.

5 THE WITNESS. If we have copies--

6 MR. FREDERICKS. I think you have.

7 Mr. DEHM. We have no copy of that one on the board.

8 Mr. FREDERICKS. Then it is filed with the clerk there.

9 THE COURT. Mr. Reporter, you will do that, make copies of
10 the telegrams that have been filed here, and furnish them
11 to the defense tonight so they can have them. Anything
12 else now before adjournment?

13 (Jury admonished. Recess until 10 o'clock A.M.

14 August 1, 1912.)
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