

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. 76

I N D E X.

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

Clarence Darrow

6223

THURSDAY, AUGUST 1, 1912; 10 A.M.

1 Defendant in court with counsel. Jury called; all present.

2 Case resumed.

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5 THE COURT. Gentlemen, I have glanced over the transcript
6 this morning and referring to page 6146 and subsequent
7 pages I want to clear up one ruling so that it may save
8 difficulty hereafter, and if counsel deems it of importance,
9 will entertain a motion to strike out certain testimony.
10 Page 6146, there was an objection made by Mr. Appel, among
11 other objections we find at the page indicated, 6146, line
12 14, "The document has not been shown to witness or counsel
13 on the other side." The balance of the objection, the
14 court is satisfied was properly overruled, but as to that
15 feature, in overruling that part of the objection, the
16 court was rely^{ing} as stated again on page 6150, line 15, "The
17 Court is acting upon the presumption the defendant has copies
18 of all these telegrams." Subsequent discussion revealed the
19 fact, through an oversight, that particular telegram was
20 not in the possession of the defendant. Had it been in
21 their possession for a day or two there would be no particular
22 occasion for stopping the proceedings in court and showing
23 them what he had already had. That assumption appeared to
24 be erroneous, after later developments--

25 MR. ROGERS. Now, if your Honor please--

26 THE COURT. But the court was relying on that assumption.

1 MR. ROGERS. On yesterday, when we went through these
2 messages we couldn't find that telegram, and I stated
3 yesterday it was a cheap trick to try to put in a telegram
4 that, believing we had been furnished with all the copies.
5 Now, it subsequently develops, and I intended to state it
6 to your Honor this morning, I just told Mr. Geisler it
7 should go into the record, that was a Postal telegram, and
8 it appears that several of these Postal telegrams were left
9 at the office, among some cipher telegrams we were trying
10 to read by various methods. My remark was not justified,
11 because counsel had given us a copy of that telegram, not
12 exactly in the form which it appears here, according to
13 my information, doubtless a mistake of the stenographer or
14 typewriter. It is proper I should apologize to Mr. Ford
15 for the remark I made yesterday about it. It was not here.
16 I have not personally looked at the telegrams and was in-
17 formed we hadn't received a copy, therefore, I made the
18 remark. My remark was without foundation, because Mr. Ford
19 had given me a copy of that, because we thought other cipher
20 telegrams of the Postal Telegraph Company were not in the
21 court room, therefore, my remark was entirely unjustified,
22 and Mr. Ford has my apology for having said that, and your
23 Honor too.

24 THE COURT. The Court will accept it as an amende honorable
25 of gentlemen, and call that branch of the incident closed.
26 The fact remains, however, that the court having assumed the

1 def endant had that telegram, was in error in its ruling.

2 Now, if that ruling is--

3 MR. FREDERICKS. No, counsel has just said they did have
4 it.

5 THE COURT. They did not have it available at the time.

6 MR. FREDERICKS. Oh, didn't have it here.

7 THE COURT. Did not have possession of it. I will say that
8 I based the ruling upon the theory that it was mong the
9 telegrams here present. If it hadn't been it seemed like
10 an idle thing to stop and hand it over again. /^{If}It is

11 deemed of importance the court will entertain a motion to

p 12 strike it out. I do not wish it understood at all that

13 the court rules or has admitted the rule or established a

14 precedent or having ruled that any witness may be examined

15 in regard to the contents of any written document, tele-

16 gram or any other written document, without first showing

17 that document to counsel for the defense and the witness.

18 Without this statement it might be such an interpretation

19 might be placed upon that ruling, and that is the purpose--

20 MR. ROGERS. I want to say one further thing in regard to

21 showing messages.

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1 Of course we were furnished with, as your Honor can see,
2 slips of paper which Mr Fredericks said yesterday were clip-
3 ped out of some evidence brief or trial brief, something of
4 that kind, and they are nothing but copies; they pretend
5 to be nothing but copies. Now, the rule which calls for
6 the inspection, under section 1000 does not preclude the
7 original of which this purports to be a copy, being shown
8 to us; that comes under another section, if your Honor
9 pleases.

10 THE COURT: Yes, you are entitled to the original, if you
11 want it. I was not informed as to the true statement of
12 the facts; I supposed, until the discussion came up, that
13 you had the documents that had been delivered. Of course,
14 the originals would come from the telegraph office.

15 MR ROGERS: There is another matter I want to call your
16 Honor's attention to, speaking of this code matter. We
17 have diligently, and with the aid of experts, applied this
18 code, which was discovered by Mr Ford, to certain of
19 these telegrams and we get most remarkable and unique
20 results, results which we are prone to think indicate that
21 the code is not entirely correct, in other words, it
22 does not mathematically demonstrate itself. One telegram
23 turned out to mean a statement to somebody to ^{save} the whiskey;
24 if I had sent that telegram, it possibly might be attribut-
25 able to me, but Mr Darrow would not send such a telegram
26 as that.

1 MR FORD: What telegram?

2 MR ROGERS: I don't know which one it was. So I am in-
3 clined to think that counsel either has another code or
4 that this code is not entirely accurate. We will do the
5 best we can with it; some of it works out and I think he
6 has another code, and we are not disposed to admit the cor-
7 rectness of this code.

8 THE COURT: I do not understand you are admitting the cor-
9 rectness of it.

10 MR ROGERS: No sir, nor we do not want to be put in that
11 position. It does work out, according to the recollection
12 of various people, it does work out more or less correct-
13 ly with respect to some of them, but it won't work with
14 some of them.

15 MR FORD: The telegrams of the last month and a half, I
16 believe, work out, do they not?

17 MR ROGERS: pretty close. Somethings you have to guess
18 at.

19 MR FORD: Your Honor will recall, and the evidence already
20 shows, there was one dictionary code introduced, which
21 was used on the Johannsen telegram; this code is formed
22 only as an explanation for the telegrams for the month
23 of November, and possibly a part of October; we ascertain-
24 ed the code did not work prior to a certain date, indicat-
25 ing that another dictionary had been used on that date.
26 If we introduce any of those, we will give counsel all

1 the codes in our possession.

2 MR DARROW: We ought to have it now.

3 MR FORD: All the codes in our possession in regard to that
4 matter.

5 MR ROGERS: Some of this matter we are talking about, if
6 your Honor please, as Mr Darrow said, yesterday, this te-
7 legram was nothing but one of a series; if the matter was
8 under consideration and various aspects presented from
9 time to time, one telegram is not understandable without
10 the remainder of them; some of them we can figure out and
11 some of them we are unable to figure out, not having the
12 code or dictionary. We have done the best we could with
13 it, and if he has another code and purposes to introduce
14 those telegrams -- even suppose he does not, we are entitled
15 to it.

16 MR FREDERICKS: It is rather a strange thing that we should
17 be called upon to furnish a code for the defendant's own
18 telegrams.

19 THE COURT: I do not see anything strange about it.

20 MR FREDERICKS: You do not?

21 THE COURT: No.

22 MR FREDERICKS: Those are his telegrams, and it is his
23 code.

24 MR ROGERS: He did not write it, in that sense -- I leave
25 it to Captain Fredericks' own sense of fairness, he did not
26 write it.

1 MR FREDERICKS: No, but it is something that the defense,
 2 in the defense's own affair, and naturally, even though
 3 Mr Darrow has forgotten the code, or never actually knew
 4 what it was, he certainly would be in much better posi-
 5 tion to dig it out than we were.

6 MR ROGERS: We have not had these to dig this out until
 7 yesterday.

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3p 1 MR. FREDERICKS. You can sit up nights and dig it out from
2 your own codes.

3 MR. ROGERS. That is true enough, and we are doing it,
4 but we have not had these telegrams as long as counsel has,
5 counsel has had them for months and we have had them only
6 for a few hours.

7 MR. FORD. We are informed that a certain man prepared that
8 code, we asked him for assistance in the matter and he gave
9 us a dictionary which did not come within 40 miles of
10 furnishing the code to any of them; we asked him for the
11 code and he says there was no symmetry to the code, it
12 was mislaid, it had been destroyed, so we were compelled
13 to go out and purchase every conceivable small dictionary
14 in town, we bought perhaps half a dozen or more small dic-
15 tionaries, and we had to labor with them and fit them and
16 we got some remarkable messages too, which did not develop
17 to be the right messages. Now, the party who drew up that
18 code for Mr. Darrow could undoubtedly give him all the
19 assistance, at least, which he gave us, which was none at
20 all.

21 THE COURT. Of course, the diligence and industry of counsel
22 is commendable, but I must assume, if you desire to intro-
23 duce ^{a number} of these telegrams ^{ted} interpreted under the code
24 and are able to interpret other codes, that you will fur-
25 nish the defense the same facility for interpreting them,
26 if he deems them to be in his favor and wants them.

1 MR. FREDERICKS. On the ground that we are the attorneys
2 also for the defendant, we will tell him where he can buy
3 the books and he can go and buy them.

4 MR. ROGERS. That is very kind, he can go and buy them--

5 MR. FORD. Here are a number of telegrams from October 26th
6 on that are to be read by this code, and the telegrams have
7 not yet been definitely admitted by the defendant, and they
8 are not rendering us any assistance in identifying and
9 introducing the telegrams, in fact raising every technical
10 objection.

11 THE COURT. I think Captain Fredericks's last statement has
12 fully covered this objection, Mr. Ford.

13 MR. FREDERICKS. There is nothing before the court.

14 MR. APPEL. Here is the proposition, your Honor. Mr. Darrow
15 testified on the stand that this subject upon which they
16 are inquiring, your Honor, is a matter covered by a number
17 of telegrams backwards and forwards before the telegram in
18 question here, and if they are entitled to introduce one
19 portion of the correspondence concerning the subject we are
20 entitled to introduce it all.

21 THE COURT. I agree on that point with you, and Captain
22 Fredericks has just stated he would furnish those documents.

23 MR. APPEL. That is all right. The only thing we want is,
24 if they have anything by which they can interpret, and there
25 are any other telegrams bearing upon that same subject, in
26 order to make it intelligent to the court and the jury and

1 everyone else, so that we can look at them, so that these
2 telegrams that were sent, and a part of that telegram--

3 THE COURT. And Captain Fredericks has stated he will fur-
4 nish it to you and that should close the incident.

5 MR. ROGERS. When is he going to furnish it? We have
6 telegrams--

7 MR. FREDERICKS. We will help you read them as fast as you
8 want to here in court; that is, Mr. Ford will, I do not know
9 that I will help you--we will help you as fast as we can in
10 court and when we get through we will tell you where you can
11 go to work and sit up nights on them.

12 MR. DARROW. We want them now because it is a number of a
13 series and, further, there might be considerable cross-
14 examination leading up to any one of them, and we are
15 entitled to them.

16 MR. FREDERICKS. You think there is another dictionary?

17 MR. DARROW. That is what Mr. Ford says, and there must be
18 another dictionary.

19 MR. ROGERS. Mr. Darrow does not know.

20 MR. FREDERICKS. We have the other dictionary and we will let
21 them use it any time they wish to, but we wont have much time
22 to use it here, but such as we have, it is available to
23 them.

1 MR FORD: We do not like to have our property taken away
2 from us, but we will tell counsel where they can buy it.

3 MR ROGERS: Loan it to us for a week or so.

4 THE COURT: There cannot be any difficulty about your
5 purchasing 15 cent dictionaries.

6 MR FORD: It is not that, it is the probable hunting them
7 up, and another thing, we have done certain work in pre-
8 paring for cross-examination of a witness, and I never
9 have heard that a cross-examiner was compelled to furnish
10 the material which he had in his possession so as to --
11 that the witness might guard himself against cross-examina-
12 tion.

13 THE COURT: If the cross-examiner is going to interrogate
14 the witness in regard to the contents of a written instru-
15 ment and he has the means of interpreting that written
16 instrument, he must furnish that means.

17 MR FORD: Just as soon as we start on any telegrams --

18 THE COURT: Counsel has stated they will proceed to do
19 that, and take whatever time is necessary when these mat-
20 ters come up to interpret them, but it would be an idle
21 compliance with the statute to hand to counsel for the de-
22 fendant a document in a language or in a cipher that was
23 unintelligible to them. If it can be made intelligible
24 it must be made intelligible before any question is asked.
25 I believe that is the meaning of the statute, they shall
26 not only be shown the matter in cipher, in which it may

1 be, but if it appears the cipher is unintelligible, the
2 spirit of the law is to be complied with by making it
3 intelligible, before the witness can be asked in regard to
4 it.

5 MR ROGERS: In view of Mr Darrow's answer, your Honor
6 please, this matter commenced along time ago, and that
7 there was other correspondence. In view of the fact they
8 have given us at least three messages of the same kind in
9 cipher, which cipher is not understandable under this code,
10 it appears that the matter is one of a series of documents,
11 and that under the law we are entitled to know the series
12 before any one of the documents --

13 MR FREDERICKS: " Undoubtedly that is the entire series
14 that you have got right there, those three telegrams, and
15 they are all translatable by that code. They are the alpha
16 and omega; there is nothing before and nothing after.

17 MR FORD: After we have finished our cross-examination,
18 and if, perchance, we have not gone into code telegrams
19 which are not covered by the present code, why, we will
20 be glad to give counsel every possible assistance and
21 will even give him absolute translations of these messages,
22 together with the dictionary, and save them all the work
23 possible, so when it comes their turn to introduce evidence
24 they will have every facility to do it. We want everything
25 to go before the jury, but at the present time we want
26 to guard our information as far as possible. Now, I don't

1 like to discuss this matter in the presence of the jury
2 too much.

3 THE COURT: I don't think there is anything before the
4 court.

5 MR FREDERICKS: There is nothing before the court. Why
6 don't we go on with our testimony?

7 MR ROGERS: We ask that we be allowed to look at the code
8 whereby they claim to interpret the telegrams between
9 Leo M. Pappaport and Mr Darrow, on the ground that the
10 messages --

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5s 1 MR. FREDERICKS. Your Honor, we had--
2 MR. ROGERS. Pardon me--
3 MR. FREDERICKS. I thought I could shorten it.
4 MR. ROGERS. Now, let's see if we ought to have it.
5 MR. FREDERICKS. You have it now, you got it last night,
6 that code.
7 MR. ROGERS. There are three messages here that Mr. Darrow--
8 we have some in English that relate to the same matter;
9 that the whole series ought to be understandable at one
10 time.
11 MR. FREDERICKS. You say there are three messages that
12 this code won't translate?
13 MR. ROGERS. Mr. Darrow already testified there was corres-
14 pondence from time to time.
15 MR. FREDERICKS. Let's see what these telegrams are. Give
16 us the dates of them and we will see if it is necessary so
17 we can translate them.
18 MR. ROGERS. October 3rd, October 23rd, October 12th.
19 MR. FORD. Haven't you got one of October 4th?
20 MR. ROGERS. One in English on October 3rd.
21 MR. FREDERICKS. Well, now--
22 MR. ROGERS. We might have worked this out very readily our-
23 selves. I appreciate Mr. Ford's statement we ought to have
24 worked this out ourselves. Your Honor can see we didn't
25 have this; don't know what they were and had no copies
26 until a day or so ago. They have had them for months.

1 MR. FREDERICKS. We didn't have all of them for months. We
2 got some of them yesterday.

3 MR. ROGERS. I am speaking of the telegrams to Rappaport.

4 MR. FREDERICKS. That is the three.

5 MR. ROGERS. These three are the ones you gave me. I don't
6 know whether there is any more or not.

7 MR. FORD. The one of October 23rd--do you admit the
8 telegram and then I will give you the code?

9 MR. ROGERS. I should say not. I am not bargaining, I am
10 asking for a right.

11 MR. FREDERICKS. You want to know what they mean.

12 MR. APPEL. In order to see whether we admit them or whether
13 we deny them.

14 MR. FREDERICKS. All right, here is one dated October 12, 1911
15 sent by Rappaport to C. S. Darrow, signed by Darrow, sent
16 by Darrow to Rappaport. All right, that is 93-32-1-5-43.
17 Now, what does that mean?

18 MR. ROGERS. Don't read it out.

19 MR. FREDERICKS. That is what you wanted us to do.

20 MR. APPEL. No, here is the idea, Mr. Fredericks. Just
21 a moment--here are a number of papers in a foreign language.

22 MR. FREDERICKS. I have got you.

23 Mr. APPEL. We want to know what they say before we say they
24 are or are not. It is like seeing a sack--holding a cat
25 there inside of it--

26 MR. FORD. We are going to give it to you right now.

1 MR. FREDERICKS. I thought you wanted it right out. Now,
2 here is another one dated October 3, 1911. It wont mean
3 anything to read it aloud. "October 11, 5 there until 45
4 22 requires." That is from Mr. parrow to Mr. Rappaport.

5 MR. ROGERS. No, it is signed D and to Leo M. Rappaport--
6 we don't know whether it is from Darrow or not.

7 MR. FREDERICKS. Here is another one dated October 23rd,
8 purporting to be to Mr. Rappaport signed Darrow. "Then
9 21-18 67-4 58-12 62-12 then will try 84-18 10-14
10 99-12 coming very slowly. October 23, 1911."

11 MR. APPEL. I think I can tell what that is.

12 MR. FREDERICKS. Now, we have given you our translation of
13 that.

14 MR. ROGERS. Are these all the telegrams to Rappaport that
15 you have?

16 MR. FREDERICKS. I don't know.

17 MR. FORD. Now, with regard to that matter, counsel has
18 just asked if these are all the telegrams to Rappaport
19 we have. Personally we don't look after these things..
20 We take the telegrams and turn them over to a stenographer.
21 I presume they are. From time to time we get from various
22 sources additional telegrams. Up to this time it is all we
23 have as far as we know.

24 MR. ROGERS. That is, you go over to the United States
25 District Attorney's office and bring them over here.

26 MR. FREDERICKS. Well, they have given us all they have.

1 We think we have everything and I think you have everything
2 we have.

3 THE COURT. The District Attorney has made a perfectly fair
4 answer.

5 MR. ROGERS. Yes, sir, he has made a perfectly fair answer.

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1 MR FORD: We don't want to put ourselves in the position --
2 if we get any additional we will inform counsel.

3 MR APPEL: Of course, you are only speaking with regard
4 to your present knowledge. If you get any further knowl-
5 edge you will tell us about it.

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7 CLARENCE S. DARROW on the stand for
8 further cross-examination.

9 MR FORD: Now, that counsel have all the codes, I will ask
10 them if they have examined the telegrams that were introduc-
11 ed yesterday, and if they desire to withdraw their objec-
12 tion to the introduction?

13 MR ROGERS: The gentleman has not admitted them yet.

14 MR FORD: Have you made any investigation of those three
15 telegrams with a view of ascertaining their authenti-
16 city, Mr Darrow? A I have not. I have investigated as
17 to reading them.

18 Q You told us perhaps you could identify them if you had
19 the code. A I didn't understand I so stated.

20 Q Did you receive and send those telegrams? A I pre-
21 sume I received them, and sent them, or ordered them sent.

22 Q By those telegrams, I refer -- let me have those last
23 three telegrams, Mr Smith. By the telegrams, I refer to
24 exhibits 43, 44 and 45. 43 purporting to be a telegram
25 from Leo M. Rappaport to Clarence S. Darrow, from Leo M.
26 Rappaport, dated November 29th, and which has been inter-

1 preted, "May I spend thousand to regain Indianapolis
2 evidence." Did you receive such -- that telegram from Mr
3 Rappaport about that date? A I think so.

4 Q Referring now, to exhibit --

5 MR ROGERS: Pardon me, might we suggest this: when you
6 say, "Did you receive that telegram", I take it that, if I
7 may be permitted, with respect to the foundation, I could
8 clear it up in a moment.

9 THE COURT: Go ahead.

10 MR ROGERS: Mr Darrow, is it or not a fact, that when a
11 telegram came in cipher, that you did not see the original
12 telegrams, but that on the contrary you were given the trans-
13 lation of it by one of the clerks? A That is the fact.
14 I think I have testified to it before.

15 Q That you did not see the original telegram, but merely
16 the translation that was handed to you by someone?

17 A That is ~~the~~ fact about it.

18 Q How is that with respect to these that were sent;
19 did you prepare them yourself, or did you merely direct
20 that a telegram to that effect or in that sense be sent?

21 A I directed that telegram be sent telling what I wanted,
22 and it was written by someone else.

23 MR FORD: Then, as I understand, referring to this exhibit--
24 referring again to exhibit 44, you did receive from some-
25 one in your office the interpretation of the message on
26 November 29th, 1911, and that interpretation as given to

1 you was from -- or addressed to you, signed by Leo M. Rappa-
2 port, dated November 29th, and read, "May I spend thousand
3 to regain Indianapolis evidence?" A I believe that is
4 correct.

5 Q What did you do with that document which was handed to
6 you at that time? A I don't know.

7 Q Do you know whether it is in existence now or not?

8 A Probably not.

9 Q And the exhibit which I have shown you is substan-
10 tially in substance the code telegram stating those facts?

11 A I think so.

12 Q We then offer it as secondary evidence, the original
13 document -- secondary evidence of the contents of the docu-
14 ment which the witness has testified, your Honor, and ask
15 that it be marked 44.

16 MR APPEL: Just in order to preserve the record, we object
17 to the introduction of the alleged telegram upon the
18 ground no foundation has been laid; it is incompetent,
19 irrelevant and immaterial, not the best evidence; it is
20 secondary evidence; it is collateral to any issue in this
21 case, not cross-examination, and the statute foundation
22 for the introduction of secondary evidence not having been
23 complied with.

24 THE COURT: Objection overruled.

25 MR APPEL: We except. What exhibit is that?

26 THE COURT: This is exhibit 44 for identification, and now

1 becomes exhibit 44.

2 MR FORD: Calling your attention now, Mr Darrow, to ex-
3 hibit No.43 -- A That is the one of the 29th, is it?

4 Q Yes sir, 29th. This purports to be a telegram to
5 Leo M. Rappaport dated Los Angeles, Cal., November 29th,
6 1911, and signed C. S Darrow, in typewriting, and which
7 has been interpreted by the code given you yesterday to
8 mean, "May spend thousand dollars if necessary." I will
9 ask you now, did you on that date direct someone in your
10 office to put such a message, "May spend thousand if
11 necessary", in code? A I believe I did.

12 Q What became of the message which you delivered to the
13 one in your office, the original document, "May spend
14 thousand if necessary?"

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7s 1 A In the regular course of business it would be sent, I
2 don't know outside of that. Probably sent.

3 Q But the English message, "May spend thousand if necessary?"

4 MR. ROGERS. He has not said that he wrote that.

5 MR. FORD. No, I haven't said so either.

6 A I haven't it, and I presume it is destroyed.

7 MR. FORD. Then we offer, if the court please, this telegram
8 which has been marked 43 for identification, as people's
9 exhibit 43, and as being secondary evidence of the con-
10 tents of the original message, which cannot be found at
11 this time.

12 MR. APPEL. Wait a moment. We object upon the ground that
13 it is incompetent, irrelevant and immaterial and not cross-
14 examination. Upon the further ground that no foundation
15 has been laid for the introduction of the paper in ques-
16 tion; that no sufficient statutory foundation has been
17 laid for the introduction of the message in question;
18 that the document has not been identified by any person
19 there was to be a copy or a translation nor contain a
20 direction or the language or the meaning or the intention
21 of the witness, and that it is immaterial for any purpose
22 whatsoever.

23 THE COURT. Objection overruled.

24 MR. APPEL. We take an exception.

25 MR. FORD. I now attract your attention, Mr. Darrow, to
26 a document which has been marked 45 for identification,

1 dated December 1, 1911, purporting to be a telegram addressed
2 to Leo M. Rappaport signed Darrow in Code and which had
3 been interpreted, according to the code furnished you
4 yesterday to mean, "Do not spend that thousand dollars."
5 I will ask you if on that date you directed any one in your
6 office to send such a message to Mr. Rappaport.

7 MR. APPEL. Of course, these questions, your Honor are sub-
8 ject to the same objection made yesterday to this general
9 line of testimony.

10 THE COURT. The same objection, the same ruling and the
11 same exception, that it is not cross-examination.

12 A I presume that is correct.

13 MR. FORD. Q And what became of the message--the original
14 message in English made before the translation into cipher?

15 A I haven't it. I presume it was destroyed with every-
16 thing else in the office we didn't keep.

17 MR. FORD. We then offer your Honor the document which has
18 been offered/⁴⁵for identification as People's Exhibit Number
19 45, and as containing secondary evidence of the contents
20 of the original document, which has been destroyed.

21 MR. APPEL. We make the same objection that we made to the
22 other documents.

23 THE COURT. The same objection, the same ruling and the
24 same exception. Mr. Clerk, you mark this as People's Exhibit
25 45.

26 MR. FORD. Q Referring to the Biddinger matter a moment,

1 Mr. Darrow-- A Mr. Ford, I don't want to interrupt you,
2 but there is a series of these, I think I am entitled to.

3 MR. FORD. I expect to return to them a little later.

4 MR. ROGERS. If you are going to leave the matter now--

5 MR. FORD. You have a right on redirect examination to put
6 everything in that I don't put in on cross. I think you
7 know that already. Will you read the question?

8 (Last question read by the reporter.)

9 MR. FORD. Referring to the Biddinger matter, you met Mr.
10 Biddinger at the Alexandria Hotel about August--at the
11 Alexandria Hotel in Los Angeles on August 16th and again on
12 August 17th, is that correct? A I don't know, it is
13 probably about correct.

14 Q And on one of those dates did you hand to Mr. Biddinger
15 the document which has been marked Exhibit Number 30?

16 A Probably my writing, looks like it, undoubtedly is.

17 Q Your writing. Did you give it to Mr. Biddinger at that
18 time? A I don't remember.

19 Q Did you give him any memorandum at that time? A That
20 I don't recall. Very likely I gave him my telephone
21 number, and the memorandum Job Harriman would probably
22 indicate that he could get that out of the book.

23 Q Are the words "Job Harriman" in your handwriting?

24 A They are.

25 Q And the words "Home 493" in your handwriting? A It is.

26 Q And the figure 3 under the figure 4, is that in your

1 handwriting? A I presume so, it is not quite so plain.

2 Q The word "Broadway", is that in your handwriting?

3 A It is.

4 MR. ROGERS. What did you say?

5 A It is.

6 MR. FORD. Q The word "Palace" is that in your handwriting?

7 A It is not.

8 Q Is that correct? A That is correct.

9 Q You don't know whether you gave that to Mr. Biddinger on
10 that occasion or not? A I do not. I very likely did, but
11 I have not any distinct recollection about it.

12 Q When you met Mr. Biddinger in San Francisco, you were
13 stopping at the Palace Hotel? A I was.

14 Q And at that time you were occupying room 6097?

15 A I don't know; I don't remember the rooms I occupy at
16 hotels.

17 Q I beg your pardon? A I don't remember the rooms I occupy
18 at various hotels.

19 Q Have you any means of finding out, Mr. Darrow, what room
20 you occupied? A I have none.

21 Q When you met Mr. Biddinger in San Francisco, did you
22 tear off a piece of paper and give it to him, containing
23 your room number? A I have no remembrance at all about it.

24 MR. APPEL. Let us take a ruling on this, your Honor. If
25 that is any cross-examination if the witness says on direct
26 examination--

1 THE WITNESS: Suppose you let me answer.

2 MR APPEL: I know, but it is a waste of time; if Mr Bidd-
3 inger testified to an immaterial fact, we didn't care any-
4 thing about, we certainly would not ask the witness about
5 it, and whether he has got the room number there of the
6 Palace or not, it would not be material. I don't suppose
7 we ever asked Mr Darrow about it, and why should he be cross
8 examined upon anything he has not denied or affirmed, one way
9 or the other. It is only to save time I am suggesting
10 this.

11 MR FORD: The witness testified --

12 THE COURT: Objection overruled.

13 A I prefer to answer it, Mr Appel. I don't want to
14 interfere with you, but I prefer to answer it.

15 MR FREDERICKS: What is the question?

16 (Last question and answer read.)

17 MR FORD: Attracting your attention to exhibit 29, did
18 you ever see that paper before? A I don't recall ever
19 seeing that paper before.

20 MR FREDERICKS: That paper refers to a little -- A You
21 mean the little one?

22 MR FORD: Yes, referring to the little paper. A My mem-
23 ory does not get down so fine as that.

24 Q Do you know in whose handwriting those figures are?

25 A It does not look like mine, but it might be.

26 Q Look at it, and see what your best judgment is about
that matter.

1 MR APPEL: We object to that as not cross-examination. Let
2 us see. Your Honor will remember the Baird case, that I
3 read yesterday. There they had introduced on the part of
4 the People certain documents, certain forgeries, contempo-
5 raneous with the one in question; the defendant went upon
6 the stand and testified concerning the one in question;
7 he didn't testify concerning the others. Now, that is in
8 this case -- it is only the principle that is parallel --
9 this is collateral, they cannot make him an expert in hand-
10 writing in any way, shape or manner in order to prove their
11 case; this man said that he gave it to him. Now, they
12 undertake to corroborate him by making the defendant a wit-
13 ness against himself in favor of the prosecution. I sub-
14 mit, on principle, that is all wrong. It is of little
15 importance so far as we are concerned, whether he gave him
16 the number of his room or anything like that, or whether he
17 wrote it on a small piece of paper, on the margin of a
18 newspaper or on a whole newspaper or on a map, it makes no
19 difference about that, but upon principle, it is wrong, and
20 it is in direct violation of the rules of evidence. It takes
21 more time to argue than the matter is worth, but we do not
22 propose to allow this liberality without being checked in
23 some way or other, and as we are contending for that prin-
24 ciple of law, we make these objections in order to be con-
25 sistent right along.

26 THE COURT: Objection overruled.

1 MR APPEL: We take an exception.

2 A Mr Ford, if you will let me ask you a harmless question
3 I think I can clear this up.

4 MR FORD: Very well.

5 THE WITNESS: Does that memorandum you showed me from the
6 Palace Hotel show I occupied room 6097?

7 MR FORD: This is a memorandum accompanying a statement of
8 the clerk on the back -- A The bill is receipted, isn't
9 it?

10 MR ROGERS: Yes, you paid your bill, evidently.

11 A Now, I do not need to see it, Mr Ford --

12 MR FORD: It is room 6097, and date of arrival, 8/24,
13 departure 8/25. A I do not recognize this handwriting;
14 it does not look like mine, but I have no doubt that
15 either Mr Biddinger or I wrote it in accordance with my
16 statement that was my room number. Is that satisfactory
17 to you?

18 MR FORD: After looking at it carefully, is it your best
19 judgment it is in your handwriting or Mr Biddinger's?

20 MR APPEL: The same objection we made before.

21 MR ROGERS: It is very strong corroboration --

22 THE COURT: Objection overruled.

23 MR APPEL: We except.

24 A It does not look like mine and I never have had the
25 pleasure of any intimate connection or correspondence
26 with Mr Biddinger, and I do not believe I ever saw his

1 handwriting, but I have no doubt that that memorandum was
2 made because it was my room and I told him so.

3 Q Would you write the figures 6097, Mr Darrow, on a
4 little slip of newspaper.

5 MR APPEL: We don't care whether he does or not, but we
6 want to be consistent and we object to any direction to
7 write that, not that we care for it, but because it is
8 wrong to allow it, because it is --

9 THE COURT: Objection overruled. A I think I won't write
10 it. Isn't the statement sufficient to cover it? I have no
11 doubt that was made.

12 MR APPEL: He cannot be compelled to act in court for
13 anybody --

14 THE COURT: No.

15 MR APPEL: Why does your Honor overrule our objection?
16 And let us get a ruling on that. The witness on the stand
17 is not an expert on handwriting; we did not ask him to be an
18 expert, your Honor, and we have been liberal and the wit-
19 ness has been liberal in saying, the effect of this thing,
20 of bringing out the fact or circumstance, if it was written
21 by Mr Biddinger it was because he told him so, it was his
22 room number.

23 MR FORD: We will save all this argument, if the witness
24 does not want to do it, we won't insist on it. A I do not
25 object to writing it for any reason excepting I fully
26 answered, and my statement is sufficient for the record;

if it is not, I would not object to doing it.

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1 MR. FREDERICKS. We will let it stand the way it is.

2 THE COURT. The question is withdrawn?

3 MR. FREDERICKS. No, we will let it stand the way it is, the
4 witness has refused to write it and we ill not press the
5 matter.

6 MR. APPEL. He did not refuse to write it.

7 MR. FREDERICKS. Yes, sir.

8 MR. APPEL. I said the court-

9 MR. FREDERICKS. He said in the record he would not do it.

10 A Bring it back, Mr. Ford, and let me write it, will you,
11 just to accommodate you?

12 MR. FORD. Thank you.

13 A Now, what do you want me to write?

14 MR. FORD. 6097 and a capital R and a small o, Ro.

15 A All right. (Witness writes on paper.)

16 MR. FORD. We offer this in evidence as People's Exhibit
17 Number 46.

18 MR. ROGERS. Just a moment--if it made one particle of
19 difference I would probably call your Honor's attention to
20 the rules of law in the premises, but your Honor remembers
21 the story of the preacher who said that he knew that
22 Noah's Ark rested on Mt Ararat because he had been there
23 and seen the mountain. Now, here is Mr. Darrow, he says
24 he was in San Francisco and saw Biddinger and told him the
25 number of his room, and what difference does it make--
26 they are bound in collateral matters by their own cross-

1 examination and they cannot contradict it. I can show
2 you, I presume, a dozen authorities on that by walking in
3 there and bringing down a dozen different books, when
4 they are cross-examining on collateral matters, they are
5 bound by their own answer and they cannot contradict it.

6 THE COURT. The objection is overruled. ⁱⁱⁱMark it as an
7 exhibit.

8 MR. FORD. Q now, to gett this record straight Mr. Darrow--
9 MR. ROGERS. You could not straighten that record if you
10 tried.

11 MR. FORD. We object to being interrupted by those
12 remarks of counsel, your Honor.

13 THE COURT. Oh, it is harmless.

14 MR. APPEL. We are talking about the record, your Honor,
15 the record is crooked, that is all. We don't mean counsel
16 is or anyone. That is, that the record is too crooked to
17 straighten it out.

18 THE COURT. Proceed, Mr. Ford.

19 MR. FORD. To have the record straight, Mr. Darrow--withdraw
20 the question--you would not deny that is your handwriting
21 at this time?

22 MR. ROGERS- We object to it as already asked and answered
23 and not cross-examination.

24 THE COURT. The objection is sustained on the ground it is
25 already asked and answered.

26 A I have already fully answered it.

1 MR FORD. Would you give me that telegram, Mr. Smith, the
2 Johnston telegram that was introduced yesterday?

3 THE COURT. Gentlemen of the jury, bear in mind your former
4 admonition. We will take a recess for 5 minutes.

5 (After recess.)

6 THE COURT. You may proceed, gentlemen.

7 MR. FORD. (Conferring with Mr. Fredericks.) We are not
8 losing any time, your Honor, we are saving time.

9 THE COURT. All right.

10 THE WITNESS. I am saving time, too.

11 MR. FORD. Q you were present, Mr. Darrow, on Main street
12 near Third when Mr. Franklin was arrested? A I was. Very
13 near it.

14 Q In crossing Third street, going towards Fourth, if
15 you crossed on the west side of the street you had only
16 one street intersection to cross, is that right?

17 A Oh, I don't know.

18 Q until you got to Fourth street. A I don't figure
19 out that fine when I cross a street.

20 Q I am asking you now if that is not a fact.

21 A What is this you are asking me?

22 MR. FORD. Read the question.

23 (Question read.)

24 MR. FORD. From your office to Fourth street.

25 A In crossing Third, if I crossed on the west side I
26 had only one street to cross?

1 Q yes. A I don't know, that is too fine for me.

2 Q You described yesterday the intersection of Third and
3 Main street, did you not? A I said--

4 Q That is answered yes or no. A No.

5 MR. ROGERS. Let him answer as he pleases.

6 A No, I did not. I made some statement about it.

7 Q You stated that just before you got to the point on
8 Main street where Third street intersects on the west
9 side that you crossed over towards the east side of Main
10 Street, is that correct? A I did not, I said about there.
11 I couldn't tell you exactly where I crossed the street.

12 Q You did cross before you got there, did you? A I had
13 to cross before I got there.

14 Q You crossed Main street before you got to the point
15 where Third intersects Main on the west side? A I don't
16 know. In that vicinity.

17 Q You don't now know whether you crossed before you got
18 to Third street or after you got to Third street? A I
19 don't know now and I never did.

20 Q You were walking from Second street towards Third on the
21 west side of Main street, were you not? A I was.

22 Q When did you cross Main street? A You mean in point
23 of time or location?

24 Q Both. A Well, in point of location I crossed it in the
25 vicinity of where Third street runs west from Main; In
26 point of time it was around 9 o'clock, I don't know the
exact minute.

1 Q Well, now, the point where Third street intersects
2 Main street is south of the part where it intersects on the
3 west side, is it not? A That question is not complete.

4 MR ROGERS: Read it please.

5 (Last question read by reporter.)

6 MR RORD: You are correct. I withdraw the question.

7 A You mean the point where it intersects on the east side?

8 Q I will correct the question so as to have the record
9 straight. The point where Third street intersects Main
10 on the west side of the street is north of the point where
11 Third street intersects Main on the east side of Main
12 street? A It is.

13 Q You crossed before you got to the point where Third
14 intersects Main on the East side of the street? A I
15 think so; I am very sure I did.

16 Q When you meet Mr Franklin you immediately saw Mr Browne
17 coming behind him? A I saw him before. I didn't meet
18 him there. I saw him as soon as I saw Franklin.

19 Q You saw the two of them? A I did.

20 Q You started over to speak to Mr Franklin? A I was
21 going to speak to him.

22 Q Did you attempt to speak to him? A I don't know.
23 Mr Browne came in between us and told me that he was going
24 to arrest him or something like that.

25 Q He said not to speak to him? A Yes.

26 Q And you didn't speak to him? A I didn't.

1 Q You testified the other day that whenever the prose-
2 cution didn't have anything else to do they began grand
3 jury proceedings to keep you busy; is that correct?

4 A Is that correct that I so testified?

5 Q Yes. A I think I did.

6 Q And that is your opinion of the fact, is it? A You
7 mean now, during the time --

8 Q I withdraw that question. Did it occur to you --

9 A No, it didn't.

10 Q -- that the prosecution -- what didn't occur to you,
11 Mr Darrow? A What I forsee is running through your head;
12 occurred to me that the prosecution was going to begin
13 another grand jury proceeding.

14 Q What did occur to you? A Nothing.

15 Q You knew that Mr Browne was working for the prosecu-
16 tion? A I did, and I placed no connection whatever be-
17 tween their being on the street.

18 Q But when Mr Browne said, "Don't speak to him";
19 you did believe that there was some connection? A I said
20 so. Connection between what, the two?

21 Q Between Browne's presence there and Franklin's pre-
22 sence there? A I did, he said so.

23 Q And you obediently complied with Mr Browne's order
24 not to speak with Mr Franklin? A I didn't speak to him.

25 Q Did you come down Main street to Second street, or
26 did you go up Third to Spring street? A How is that?

1 Q From that point did you go down Main street to Second
2 street or did you go up Third street to Spring street?

3 A You mean afterwards?

4 Q Yes. A My recollection is I went to Spring street.

5 Q At Third? A I don't know.

6 Q Did you ask Browne at that time why you couldn't speak
7 to Mr Franklin? A I don't recall asking him anything.

8 Q Mr Franklin, you thought, was your employe at that
9 time, did you not? A I thought so.

10 Q And yet you did not attempt to speak to him? A I did
11 not.

12 Q Did you ask Mr Browne at that time why he was arresting
13 Mr Franklin? A I think not.

14 Q Why not? A Probably didn't think of it. It was all
15 done before I had time to think of it before I met him
16 again.

17 Q You caught up to him at the corner of New High and
18 Franklin street? A I did not.

19 Q Where did you catch up? A I didn't catch up anywhere.

20 Q Where did you see Mr Browne again? A About as he was
21 entering the Hall of Records. I don't know the name of
22 that street. Is it New High in front there?

23 Q Of this building? A Yes.

24 Q On Franklin or on New High street between Franklin and
25 Temple? A The street in front of here, whatever it is.

26 Q On the Broadway side side or New High street side?

- 1 A I am not familiar with the streets.
- 2 Q You are facing Broadway now. A I met him almost
3 directly in front of the Hall of Records.
- 4 Q On the Broadway entrance or the New High street en-
5 trance? A I don't know. Not on the Broadway entrance.
- 6 Q On the New High street entrance? A Must have been.
- 7 Q On the east side of the building of the Hall of Records?
8 A Just as I was entering it. I won't give directions. I
9 am not certain about them.
- 10 Q You motioned to Mr Browne to come back to you? A I
11 don't know; I think he was behind the rest of them.
- 12 Q Did you motion for him to stop? A I am not certain;
13 I might have.
- 14 Q And then it was for the first time near the Hall of
15 Records that you learned for what Franklin had been ar-
16 rested? A Yes, I think so.
- 17 Q Did you consult any persons between Third and Main
18 streets, the time you left Third and Main until you came
19 up to the Hall of Records? A I did not.
- 20 Q Why did you come back to the Hall of Records, instead
21 of going down to the Political meeting at the Socialist
22 headquarters? A Because I thought I better.
- 23 Q You better what? A The arrest of Franklin naturally
24 disconcerted me at that time, and was very much more im-
25 portant to me than going to the Socialist headquarters.
- 26 Q And yet not important enough for you to inquire right

1 there when he was arrested, why he was arrested? A Pro-
2 bably was important enough, but I didn't. He went right
3 on and I went right on.

4 Q You didn't follow them and keep them in sight to see
5 where they were going? A I did not.

6 Q You didn't make any attempt at that time to see where
7 Browne was taking Franklin? A I did not.

8 Q Your meeting with him at the Hall of Records was en-
9 tirely accidental? A Yes. I was going to the court room.

10 Q For what purpose? A To attend court.

11 Q To attend the trial of the McNamara case? A Yes.

12 Q On that morning, the only thing being done was the draw-
13 ing of a jury. A I was always here when the jury was
14 drawn.

15 Q Well, but that was the only thing that was being done
16 on that morning? A Yes, that was important, however.

17 Q You always considered that important to be present
18 at the drawing of the jury? A Well, now, Mr Ford, what
19 do you mean -- that that was the time the jury -- the
20 time the jury was drawn out of the box?

21 Q That is what I am asking you? A Well, it was not.

22 Q It was not? A No.

23 Q What was it? A The day the jury appeared.

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26

11s 1 Q The day the jury appeared and were giving their answers
2 why-- A That is it.

3 Q --they could not serve, and the court was inquiring into
4 their qualifications to serve, is that correct? A That
5 is what I thought you meant when I answered your other ques-
6 tion.

7 Q You considered that important that you be there for
8 that purpose? A Why, I always was there.

9 Q You considered that of greater importance than to
10 inquire into the arrest of Franklin? A I did at that
11 time.

12 Q Then why were you going down to a political meeting at
13 that time instead--

14 MR. ROGERS. He hasn't said he was going to a political
15 meeting. He hasn't testified--

16 MR. FORD. I don't want to quarrel over words. Q Why were
17 you going down to meet Mr. Harriman and some anonymous
18 telephone correspondent?

19 MR. ROGERS. He hasn't said he was going to meet some
20 anonymous telephone correspondent. He says he doesn't rem-
21 ember whether he gave his name or not; not cross-examina-
22 tion.

23 A Let me answer it, if you don't mind.

24 MR. ROGERS. Go ahead.

25 A I don't want to interfere with your case.

26 MR. ROGERS. It is your lawsuit.

1 A I had plenty of time to see Mr. Harriman. I didn't
2 suppose it would take long.

3 MR. FORD. Q court convened that morning at 9:30?

4 A I don't know; I think so; I wouldn't say for certain when
5 it convened. Might have convened at 9 but I think it was
6 9:30.

7 Q Well, you came up to court and stayed in court until
8 that proceeding was over, did you? A I did.

9 Q When was it over? A I am not quite certain, Mr. Ford.
10 I think it didn't last long. I have tried to find out and
11 couldn't.

12 Q Did you see any one else connected with the defense/^{of}the
13 McNamara case in court at that time? A I am not sure
14 whether I did or not.

15 Q Mr. Davis was there, was he not? A Mr. Davis was here
16 either when I got here or very shortly after.

17 Q Did you direct any one at that time to ascertain what
18 was being done with Mr. Franklin? A Here in court? I did
19 not.

20 Q Or where he was taken? A I don't recall.

21 Q Did you discuss at that time with any one the arrest of
22 Franklin? A Did I discuss it? I did.

23 Q With whom? A I certainly discussed it with Mr. Davis.
24 I don't know whether I did with anybody else or not.

25 Q What was said between you and Mr. Davis at that time
26 about the arrest? A I told him what I saw and what I heard.

1 Q Just tell us the way you told it to him. A I can't
2 remember how I told it to him.

3 Q Well, tell the substance. A I told the substance to
4 him, that I saw him arrested down on Main street at that
5 place, and that Mr. Browne had said he arrested him for
6 jury bribing.

7 Q What response did Mr. Davis make? A I don't remember.

8 Q What did you say further? A I think that--either he or
9 I said we couldn't understand how such a thing could pos-
10 sibly be, and we wondered whether it would interfere with
11 the settlement of this case, as we had agreed on.

12 Q When you got there the work of examining the jurors
13 had been practically completed? A I think not. I think
14 it scarcely had been commenced; I think it hadn't been
15 commenced.

16 Q Didn't you meet Joe Scott coming out of the court room
17 at that time? A I don't think I did.

18 Q Did you meet him there at that time? A I am not
19 certain whether I did or not.

20 Q Did you tell Scott at that time about Franklin's arrest?

21 A I think so; I think he and I spoke of it.

22 Q In the court room? A I am not certain; I am not cer-
23 tain where I met him or where I saw him.

24 Q You have no recollection on that at all? A I have not.
25 It was common discussion in the court room at that time.

26 Q Any newspaper reporters speak to you at that time?

1 A I think so.

2 Q Did you have any conversation with any of them? A I
3 don't recall; probably did.

4 Q Do you recall what newspaper reporters were present?

5 A I do not.

6 Q Do you recall that you refused to discuss the matter
7 at all with them at that time? A I do not.

8 Q Do you recall that you refused to make any statement to
9 them at that time.? I do not; I might have but I don't
10 redall it.

11 Q What is your best recollection on it? A Haven't any.

12 Q Did they not at that time attempt to get a statement
13 from you in regard to the matter?

14 MR. APPEL. Wait a moment--

15 MR. FORD. I withdraw the word "attempt."

16 A They got one very soon.

17 Q Did they not ask you to make a statement? A I don't
18 recall it; I know I gave them one very soon.

19 Q You did not give them any statement until about 5 or 6
20 o'clock that evening at your office, isn't that the fact?

21 MR. APPEL. Wait a moment--we object upon the ground, if
22 it is for impeachment, that it is incompetent, no foundation
23 laid.

24 MR. FORD. No attempt yet to impeach the witness. It is
25 simply asking him a question about circumstances, what he
26 did. Cross-examination solely. A I could tell what I

1 probably did.

2 THE COURT. Objection overruled.

3 MR. APPEL. Except.

4 A I probably refused.

5 MR. FORD. Just a moment--read the last question.

6 (Last question read by the reporter.)

7 MR. FORD. Q Now, that is the question I would like to
8 answer, Mr. Parrow. A I probably did not give them a
9 statement until I had found out something more about it,
10 but I don't recall.

11 Q You don't recall whether the first statement you made
12 was about 5 or 6 o'clock that night, or in the afternoon?

13 A I do not, but I probably didn't give them one until I
14 found out something about it.

15 Q But that was probably 5 or 6 o'clock that afternoon?

16 A I don't know.

17 MR. ROGERS. That has been asked about three times, if your
18 Honor please. If there is any virtue about 5 o'clock
19 and not talking to the newspaper men until you get ready,
20 that is a pretty good thing to do, of course--

21 MR. FORD. The witness has not answered the question
22 directly. A I answer it directly now. I don't know.

23 Q You don't know? A No.

24 Q Read the last answer before that. When did you find
25 out something about it? A When I had a conversation with
26 Mr. Davis.

1 Q The first conversation in the court room or some subse-
2 quent conversation? A Afterwards, after he had seen
3 Franklin.

4 Q What did you find out at that time, then? A When you
5 said I found out something about it I mean in reference
6 to what Franklin had said, of course.

7 Q What did you find out? A Mr. Davis told me that he had
8 had a talk with Franklin and that Franklin had said that
9 he was not attempting to bribe any juror, and Mr. Davis told
10 me he thought he was not, and that we ought to defend him--
11 ought to give bond for him.

12 Q Didn't Mr. Davis report to you that Franklin had said
13 that ^{if} you had not appeared on the scene that he would have
14 turned Lockwood--that he would have turned the tables on
15 Lockwood and turned Lockwood over to the police?

16 A No, not that way?

12a 17 Q What did he say? A I am not certain whether he said
18 anything about me appearing on the scene, but he didn't
19 say anything about turning the tables on him, but I think
20 he said that Franklin said that he was going to take Lock-
21 wood up to the corner and have him arrested. Might have
22 said also if I had not happened to be there, but I am not
23 certain of that.

24 Q Then that conveyed the information to you that somebody
25 had been soliciting a bribe from Franklin?

26 MR. ROGERS. Objected to as calling for a conclusion or

1 opinion; not cross-examination.

2 A I have stated the substance of what he said as near as
3 I can recall.

4 MR. FORD. Your Honor ruled on that objection.

5 THE COURT. Objection sustained.

6 MR. FORD. Q Did you at that time, as a fact, form a
7 conclusion that some one had been attempting to bribe--
8 or solicit a bribe from Mr. Franklin?

9 MR. ROGERS. Objected to as incompetent, irrelevant and
10 immaterial and not cross-examination; calling for a con-
11 clusion or opinion.

12 MR. FORD. A conclusion at that time, whether it is a
13 fact he drew such a conclusion at that time, state of mind.

14 MR. ROGERS. State of mind is not of necessity admissible
15 because it happens to be state of mind.

16 THE COURT. Objection sustained.

17 MR. FORD. Q Did you at that time receive the information
18 that someone had been soliciting a bribe from Mr. Franklin?

19 MR. ROGERS. Objected to as calling for a conclusion or
20 opinion; not cross-examination. Let him ask him what was
21 said. That has been done. The answer has been given. He
22 was asked what the conversation was. That is all there is
23 to it.

24 THE COURT. Objection overruled.

25 A I don't recall any conversation I have not given you, Mr.
26 Ford.

1 MR. FORD. I would like an answer to the question. I
2 move the answer be stricken out as not responsive.

3 MR. ROGERS. It certainly is responsive. The only way that
4 thing can be answered.

5 MR. FREDERICKS. Read the question.

6 THE COURT. Read the question.

7 (Last question read by the reporter.)

8 MR. FORD. Calls for a yes or no answer. If he wants to
9 modify it--

10 MR. ROGERS. No law on this earth that a man must answer
11 yes or no.

12 (Last question and answer read by the reporter.)

13 MR. ROGERS. Did he receive any information.

14 THE COURT. I think that is an answer to the question.

15 MR. FORD. I think it is an evasion.

16 MR. FREDERICKS. Read the question again.

17 A I think that question he read the court sustained the
18 objection to and there was a question preceding.

19 (Last question and answer read by the reporter.)

20 MR. ROGERS. Did you receive any information? He says,
21 "I have given you all the information."

22 THE COURT. I think that is an answer to the question.

23 MR. FORD. Your Honor, this witness may mean by that
24 answer that he interprets the previous answer, and mean
25 that he did receive such information or it may be that he
26 means the previous answers to mean that he did not receive

1 such information. I am entitled to a direct answer to
2 that question.

3 THE COURT. Whatever those previous answers mean they are
4 in the record.

5 MR. FORD. But, your Honor, there is--

6 THE COURT. It is for the jury to interpret what he means.

7 MR. FORD. There is an answer there that does not satisfy
8 me that the question has been answered.

9 MR. ROGERS. That frequently happens to the cross-examiner,
10 that the answer does not satisfy him. That has been known
11 to occur in my experience.

12 MR. FORD. Q Well, after being at the court house and
13 meeting Mr. Davis, about how long did you remain at the
14 court house after your arrival that morning of Franklin's
15 arrest? A As near as I can recollect I would say from
16 half an hour to an hour.

17 Q Then where did you go? A I think I went to my office.

18 Q Went to your own office. About what time did you arrive
19 at your office? A Well, I presume I was there by half past
20 10 o'clock. I would not say about half past ten, but
21 I would say about that time.

22 Q Whom did you meet there at that time? A I think Judge
23 McNutt was with me and I think Mr. Davis was.

24 Q Any one else? A Possibly Mr. Scott, I am not certain.

25 Q At that time did you receive any telephone message from
26 Mrs. Franklin? A Soon after I got to my office I did, that

1 is, I heard that she had called and I got the message.

2 Q You did not talk to her at that time over the 'phone?

3 A I am not certain; I got the information, anyway.

4 Q Do you not recall at that time talking to her personally
5 over the 'phone? A I do not.

6 Q Well, you may have had a conversation with her over the
7 'phone at that time, as far as you recall, or you may not,
8 is that the situation? A That is right. If I had any it
9 was very short.

10 Q Did she not at that time ask you if it was true that
11 Bert had been arrested? A No.

12 Q What was the message that you received from Mrs. Franklin
13 at that time? A It was in effect for some of us to see
14 her and do something for Bert.

15 Q Did you make any reply to her or send her any word?

16 A I think I said we would be over.

17 Q Over where? A I think to her office.

18 Q That is in the Chamber of Commerce Building? A Yes.

19 Q Bert Franklin's office? A That is my recollection.

20 Q Did you go there and meet her? A I either met her
21 there or at Mr. Page's office, I am not sure which, but I
22 think in the Chamber of Commerce Building.

23 Q At that time had Mr. Page been retained by you? A He
24 certainly had not.

25 Q In any capacity whatsoever? A Now, what do you mean
26 in reference to that?

1 Q to defending Mr. Franklin? A He had not.

2 Q How did you come to direct Mrs. Franklin to go to Gage's
3 office?

4 MR. APPEL. Your Honor, he never said anything of the kind.
5 This man has never uttered that word at all, that he directed
6 her to go down there.

7 MR. FORD. He just testified that he promised to meet her
8 there at her office or Gage's office.

9 MR. APPEL. No, he said he either met her at her office or
10 Mr. Gage's office.

11 MR. FORD. Withdraw the question to save time.

12 MR. APPEL. He withdraws it because it is right.

13 MR. ROGERS. I say it is correct.

14 MR. APPEL. It is not true he withdraws it to save time.
15 If counsel is mistaken about it, why not admit it, like
16 we all ought to admit, that we are liable to err?

17 MR. FORD. I don't think I am. I don't care whether I am
18 or not.

19 MR. APPEL. Then I ask your Honor to instruct the jury now
20 that this witness has not said that he directed her to meet
21 him over there. The record will bear me out.

22 MR. FREDERICKS. The court cannot instruct the jury as to
23 what this witness said.

24 MR. APPEL. Yes, he can instruct the jury on a question of
25 fact.

26 MR. FORD. If the Court please, I may be mistaken or I

1 may not, I don't care anything about it.

2 THE COURT. Question withdrawn.

3 MR. FORD. Q How did you happen to meet her at Gage's
4 office? A I didn't say I did.

5 Q Well, did you meet her at Gage's office? A I said to
6 you that I was not certain at which place.

7 Q Well, were you in Gage's office that morning? A Well, I
8 haven't a distinct recollection at which one we went. I
9 might have been there.

10 Q Might have been in Gage's office? A Yes.

11 Q Well, if you were in Gage's office--^{A--} I can answer your
12 question. ^{Q--} Were you in Gage's office? A I have answered.
13 I have said I was not certain which place I met her.

14 Q That is not the question I am asking you. I am asking
15 you whether you met Mrs. Franklin there or not. Were you
16 yourself in Gage's office that morning? A Not unless to
17 meet her.

18 Q Had you prior to going to Gage's office that morning,
19 ever retained Mr. Gage? A I answered that I had not.

20 You say in the Franklin matter, don't you? Q Yes, I said
21 in the Franklin matter. That is what I am interested in.

22 A That is what I supposed you meant. I had not. I cer-
23 tainly had not.

24 Q Had you met Mr. Gage before? A In any matter?

25 Q Had you ever met him, that is the question.

26 MR. APPEL. That is not cross-examination.

1 THE WITNESS. You certainly want me to understand your
2 questions, don't you?

3 THE COURT. Objection sustained.

4 A If I had met him before that I will answer.

5 MR. FORD. Q Well, when did you meet Mrs. Franklin,
6 whether you met her at the Chamber of Commerce Building or
7 whether you met her in Gage's office? A Sometime in the
8 afternoon.

9 Q Who else was present when you met her? A I think Mr.
10 Davis.

11 Q And yourself and Mrs Franklin being present? A That is
12 my best recollection.

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1 Q Up to that time had Mr Davis been to the city jail to
2 see Mr Franklin? A He had not.

3 Q At that time what conversation did you have between
4 the three of you? A In substance, she told us that Mr
5 Franklin had been arrested and we told her we knew it, and
6 she said he had been working for us, and wanted one of us
7 to go to the county jail or city jail, wherever it was,
8 and find out about it, she wanted him bailed out, if that
9 could be done.

10 MR FREDERICKS: The witness used the word "he" or "she" --
11 she wanted him? A She wanted him.

12 MR FORD: She at that time had not seen Mr Franklin herself,
13 had she?

14 MR APPEL: We object to that as calling for a conclusion or
15 opinion of the witness.

16 THE COURT; objection sustained.

17 MR FORD: She did not say at that time she had seen Mr
18 Franklin, did she? A I don't recall whether she did or
19 not.

20 Q As a matter of fact, didn't she inform you at that time
21 she had not seen Mr Franklin, she wanted some of you to
22 get him out so that she could see him, in substance or ef-
23 fect? A Oh, I don't recall that; she might have.

24 Q Well, what further conversation transpired? A Mr
25 Davis offered to go and went.

26 Q Is that all the conversation that was had at the time?

1 A That is the substance of it.

2 Q Was there any discussion at that time or place as to
3 who should go, you or Davis? A I think not.

4 Q Did you not say -- didn't Mr Davis say "I think one or
5 both of us ought to go", and did you not say, "Well, I
6 agree with you, I think so, too, and you better go?"

7 A Oh, I don't know, maybe.

8 Q Didn't you testify here on direct examination that
9 such was the fact? A I don't know. I testified in sub-
10 stance to what I have here in substance; that is all I
11 can say. I don't remember every word. It means the same
12 to me.

13 Q Well, you probably did say to Mr Davis, for him to go
14 over?

15 MR APPEL: We object to that.

16 THE COURT: Objection sustained.

17 A That does not follow at all, I probably said that --

18 Q Well, did you say that?

19 MR APPEL: We object to that, now, because the witness
20 has been asked and has answered.

21 THE COURT: Your objection has just been sustained.

22 MR APPEL: He is repeating it all over again.

23 MR FORD: This was on the morning of the day that Franklin
24 was arrested, is that correct?

25 MR APPEL: He has answered that several times, your Honor.

26 THE COURT: The objection is sustained on the ground it is

1 already asked and answered.

2 MR FORD: Well, did you remain at the office with Mrs
3 Franklin until Mr Davis returned? A I think not.

4 Q Did you leave before Mr Davis or after Mr Davis did?

5 A Probably we left together; I don't know.

6 Q Did you talk with Mrs Franklin alone there at any
7 time? A No, not that I recall.

8 Q Where did you next see Mr Davis? A I think at my of-
9 fice, but I am not certain.

10 Q Do you know whether you went from the Chamber of Com-
11 merce building to Mr Gage's office, or if you went from
12 the Chamber of Commerce building to your own office, or
13 if you went from Gage's office to your own office? A I
14 couldn't tell you.

15 Q You don't recall that at this time? A I might have
16 gone to either place; I don't recall.

17 Q When Davis returned was Mr Franklin with him? A No.

18 Q Was Mrs Franklin at your office when Davis returned?

19 A I do not think she was.

20 Q When you first met Mrs Franklin that morning, did you
21 ask her if she felt hard toward you? A I did not.

22 Q Did you ask her if she felt sore towards you? A No.

23 Q Did you ask her any question in substance or effect
24 him that? A I did not.

25 Q Did you not, in the hallway of the Chamber of Com-
26 merce Building, you and she being alone, Mr Davis having

1 gone up a few steps --or in the hallway of Gage's office,
2 one or the other, wherever it was you first met Mr s Frank-
3 ling did you not say to her, "Mrs Franklin, don't be
4 too hard on me?"

5 MR APPEL: We object to that on the ground it is incompe-
6 tent, irrelevant and immaterial, not cross-examination;
7 that it is merely collateral, and a witness cannot be
8 impeached on a collateral matter; that it is incompe-
9 tent, irrelevant for any purpose whatsoever, and no foun-
10 dation is laid in the question as required by law to
11 impeach the witness; upon the further ground that if it
12 is evidence in their favor, it was evidence in chief and the
13 witness cannot be cross-examined concerning conversa-
14 tions of third parties, for the purpose of extracting
15 from him any fact that they could have used in evidence
16 against him in their case in chief, and it is in vio-
17 lation of the constitutional provisions of the state of
18 California, regarding the interests of a defendant in a
19 case.

20 THE COURT: Objection overruled.

21 MR APPEL: We except.

22 A I said nothing of the sort.

23 Q Did you say anything like that, in substance or ef-
24 fect? A Didn't I answer it?

25 MR APPEL: We object to that question, because it has
26 been fully answered. He said, "Nothing of the sort."

1 THE COURT: The objection is sustained.

2 MR FORD: Nothing of the sort, your Honor, as I inter-
3 pret it; might mean he didn't say those words or --

4 MR APPEL: It means, "nothing like it."

5 MR FORD: -- or any words like that? A Let me answer it
6 over. I said nothing that would bear any such interpreta-
7 tion in any form, way, shape or manner, or nothing of that
8 kind in substance or purport or literarily or any other way.
9 Will that do it?

10 Q That will do. A All right.

11 Q And at that time and place, as indicated in the pre-
12 ceding question, you did not in substance or in effect
13 or words ask her if she felt sore or hard towards you?

14 MR APPEL: We object to that because he has already answer-
15 ed that question. A I thought I made that broad.

16 MR APPEL: In at least ten different ways.

17 THE COURT: Objection sustained.

18 MR FORD: I never laid the foundation the first time I ask-
19 ed that question, your Honor; I asked the general question
20 about a question that occurred there --

21 THE COURT: He certainly has answered it now.

22 MR FORD: No, if your Honor will recall the first question
23 I asked was if Mr Darrow said to Mrs Franklin, "Don't feel
24 too hard on me", and now I am asking if he used th ese
25 words, "Do you feel hard towards me or do you feel sore to-
26 wards me."

1 THE COURT: Well, let him answer. A I did not.

2 MR FORD: In substance or effect you did not? A In sub-
3 stance or effect, by language, gesture, sign-writing, cipher
4 or any other way.

5 Q What time did Mr Davis return from the city jail,
6 approximately? A I don,t know. I think I saw him again
7 perhaps at 2 o'clock; I wouldn,t be certain as to the
8 time.

9 Q Did you return to your office from the meeting with Mrs
10 Franklin before or after lunch? A I don,t know; I don't
11 generally get lunch.

12 Q Did you remain at your office after the conference with
13 Mrs Franklin until you saw Mr Davis again on his return
14 from the city jail? A I cannot tell you.

15 Q You stated you had met Lincoln Steffens about that
16 time, towards noon. A I did.

17 Q He came into your office with a paper in his hand?

18 A I don,t think I said I met him about noon.

19 Q Well, did you meet him about noon? A I don,t know.
20 I met him in the forenoon sometime.

21 Q Was it before or after the conference with Mrs Franklin
22 and Mr Davis? A I think it was after, but I am not cer-
23 tain; it might have been before.

24 Q Was it before or after the return of Mr Davis from
25 the jail? A Before.

26 Q That is your best recollection, it was between the

1 time you had the conference with Mrs Franklin and the time
2 Mr Davis reported what Franklin had said? A My impres-
3 sion is it was ^{but it might have been} before.

4 Q Now, did you see any other persons during that time in
5 reference to this matter? A I probably talked with other
6 people.

7 Q What people?

8 MR APPEL: We object to that as immaterial, not cross-
9 examination, fishing.

10 MR FORD: I have a right to fish on cross-examination.

11 MR APPEL: No, you cannot fish, you can direct his atten-
12 tion to any particular person, if he wants to call his at-
13 tention to any statement that might contradict his testi-
14 mony, but he cannot ask him whether he talked with Mr Tom,
15 Dick, or Harry.

16 THE COURT: Objection sustained.

17 MR FORD: The witness has testified to his movements for
18 that entire day, and I am cross-examining him upon the
19 same thing.

20 MR ROGERS: I know, but the game law is out on fishing now.

21 MR FORD: Who else was present when Mr Davis made the
22 report to you as to what Franklin had said? A I don't
23 recall that anybody was.

24 Q You and he were alone? A I didn't say that.

25 Q Well, weren't you and he alone? A I don't know.

26 Q Where was Mr Davis or Mr Scott or Mr McNutt? A I

1 don't know where they were; I don't think they were there.

2 Q Who do you think was there? A I don't recall now
3 that anybody was there but Mr Davis.

4 Q And where was this report made to you? A I think he
5 came to the office.

6 Q Your office in the Higgins Building? A Well, may
7 I ask you -- excuse me. Was there an afternoon session
8 that day?

9 MR FORD: Yes. A That clears up something in my mind.

10 MR FREDERICKS: I have a note what time court opened
11 that day, I will give it to you. A Will you give it to
12 me?

13 MR FREDERICKS: You may not agree with me, so I better give
14 it to you privately, and you can look it up. A Now, I
15 think I can tell you. I think I saw Mr Davis at the
16 court house about 2 o'clock, and there is where I wrote
17 that check.

18 Q At the court house? A Yes.

19 Q And you did not see him between the time you had the
20 conference with Mrs Franklin and the time you met him at
21 the court house? A I think not; I might have.

22 Q You made no effort to see Mr Franklin, your employe, at
23 the city jail, yourself, from 9 o'clock in the morning
24 until 2 o'clock in the afternoon?

25 MR ROGERS: We object to that as not cross-examination,
26 argumentative, already asked and answered.

THE COURT: It is argumentative.

1 MR ROGERS: It is asked for nothing in the world but ef-
2 fect.

3 THE COURT: The objection is sustained.

4 MR FORD: Did you make any effort between 9 o'clock in
5 the morning and 2 o'clock in the afternoon, to see Mr
6 Franklin personally? A Personally, no. I thought I did
7 enough, I thought you would say I did too much.

8 Q You thought at that time -- A I think at this time.

9 Q At that time, did you think that the District Attorney's
10 office might believe you were doing too much?

11 MR APPEL: We object to that -- A No.

12 MR APPEL: We certainly object to having him say what he
13 might or might not believe; you cannot account for the
14 wanderings of their imaginations and mind.

15 THE COURT: Objection overruled. A I had thought you
16 would interpret it as being, interpret it as being too
17 much, and now you say, or seem to interpret it as being
18 too little.

19 Q Did you think so then? A No, I did not. I didn't
20 think anything about it. I thought what I ought to do
21 under the circumstances and let it go at that.

22 Q At 2 o'clock you met Mr Davis at the court. What
23 conversation did you have with Mr Davis at that time?

24 A I have told you the conversation once.

25 Q Not on cross. A I certainly have; I will tell it
26 over.

1 MR APPEL: He has told what he said to him.

2 MR FORD: At that time you gave him the check for some
3 bail money. What conversation did you have about that?

4 A That was the time, to the best of my remembrance.

5 Q You have already on c cross-examination, told us what
6 Davis reported that Franklin had said. Now, you conversed
7 about some other matters besides what Franklin had said
8 at that time, did you not? A I don't recall we had any
9 conversation with reference to that case which I have not
10 related.

11 Q On cross-examination you have related what Mr Davis
12 reported that Franklin had said at the city jail. A I
13 have related in substance as far as I now recall it --

14 Q Very well. You did not have any conversation about
15 the bond money at the court? A We did.

16 Q What conversation did you have about that? A I told
17 you something about that, but I will state that over, so
18 that there will not be any misunderstanding.

19 Q Yes. A Mr Davis -- I think at that place, or somewhere
20 else, between that time he had asked Judge McNutt to go
21 on a bond with him, and the judge had said that his pro-
22 perty was so situated, being in his wife's name, or large-
23 ly so, he could not sign a bond. Mr Davis told me
24 at this place, whether Judge McNutt was there or not, I
25 don't know, or whether it was the time Judge McNutt was
26 spoken to, I don't know, but that he thought Franklin was

1 not guilty, and we ought to get him out, and if I had
2 money enough in the defense fund to do it, he would stand
3 good for it, for he knew Franklin would not run away, and
4 he drew out of his pocket a check book upon which a check
5 for \$10,000 was written, either by himself or by me and
6 signed by me. That was the conversation about the bond
7 money.

8 Q You are sure that was in the court room? A No, but
9 I think so -- I have a feeling that -- it was not in the
10 court room, but --

11 Q At that time did you have any suspicion -- A Let
12 me finish this, first.

13 Q I beg your pardon. A My remembrance and impression
14 is it was in a little ante-room like that, just out-
15 side of the room. Now, what is the next?

16 Q And that Mr Davis was along with you or Mr McNutt
17 also present? A I told you I was not certain.

18 Q At that time did you have any suspicion of Franklin's
19 fidelity to you? A I had very grave suspicion about
20 that transaction, almost immediately.

21 Q About the report that Lockwood had been trying to bribe
22 him -- A No.

23 Q -- or solicit a bribe from him? A No, about the re-
24 ports that he had been trying to bribe a juror, I thought
25 it was absurd that any such thing could have happened in
26 any such way, and that was the general talk around the room

1 in the morning.

2 Q Why did you think it was absurd? A I thought it was
3 a childish way to accomplish any such thing, if anybody at-
4 tempted to accomplish it.

5 Q Did you get any report at that time from Mr Davis as
6 to the various negotiations Franklin had had with Lock-
7 wood, and how it was they happened to meet at Third and
8 Los Angeles streets? A I have not had any yet as to how
9 they happened to meet there.

10 Q At Third and Los Angeles street? A Yes, or Third and
11 Main, except Franklin --

12 Q It did not occur to you at that time the bolder you
13 do it the less liability there was of detection? A No,
14 it did not, nor since.

15 THE COURT:" Gentlemen of the jury, bear in mind your
16 admonition -- (Jury admonished.) The court will adjourn
17 until 2 o'clock this afternoon.

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