

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.)

No. 7373.

Clarence Darrow,)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 77

I N D E X.

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

Clarence Darrow

6380

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1 August 1st, 1912. 2 o'clock P.M.

2 Defendant in court with counsel.

3
4 CLARENCE DARROW ON THE STAND FOR FURTHER
5 CROSS-EXAMINATION

6 THE COURT: Proceed, if you are ready, gentlemen.

7 MR FORD: Mr Darrow, the order drawing the jurors who were
8 to appear in court on Tuesday morning, was made on Sat-
9 urday, November 25th; is that your recollection? A That
10 is my recollection.

11 Q Do you not recall that the court -- do you wish to see
12 the record? A No; go ahead.

13 Q At the time the order was made also made the follow-
14 ing order, appearing on page 293.

15 MR ROGERS: Wait a moment. That is not the way to intro-
16 duce the record.

17 MR FORD: The record has already been introduced, Mr
18 Rogers. Recall that the court also made the following
19 order: (Reading:) "It was further ordered that the per-
20 sons whose names were drawn as aforesaid, appear and at-
21 tend at this court in Department 9 thereof on Tuesday,
22 the 28th day of November, 1911, at 9 o'clock of the fore-
23 noon of said day." A I don't recall it, but it is
24 probably true.

25 Q You were not there at 9 o'clock. A Scarcely
26 anybody comes into court at 9 o'clock, even if the order

1 is made.

2 Q You were not there at 9 o'clock that morning? A I
3 don't think I was there that early; probaboy about 10 min-
4 utes past.

5 Q About 10 minutes past? A Now, probably. I wouldn't
6 say exactly, Mr Ford.

7 Q You wanted to be there at the drawing, and got there
8 as quickly as you could?

9 MR ROGERS: That is not the drawing; that is the return.

10 MR FORD: Counsel is correct. You wanted to be there during
11 the time that the jurors were being qualified by the court,
12 as quickly as you could? A Mr Ford, no lawyer, especially
13 if he has associates, ever thinks he has got to be there
14 immediately, but I don't know that any such thing was in my
15 mind. My business always was to be present at such times.

16 Q It was your general practice to be present, however,
17 personally, whenever the jurors were being qualified by
18 the court? A My general practice was to be there all the
19 time, whatever was going on, Mr Ford, but I was sometimes
20 late, and never felt I had to be there at any particular
21 minute.

22 Q You testified this morning that you considered it
23 important that you do be present at such times? A I
24 considered it to be important to be present every time.

25 Q And yet, although the jurors were to be present in
26 court that morning at 9 o'clock, for the purpose of being

1 examined, you started to go to the Socialist headquarters
2 to talk to Job Harriman.

3 MR ROGERS: That is objected to as leading and sugges-
4 tive; argumentative and not cross-examination, argumen-
5 tive, especially.

6 THE COURT: The objection on the ground it is argumen-
7 tative, is sustained.

8 JUROR WILLIAMS: May I ask a question?

9 THE COURT: Proceed, Mr Williams; you may.

10 JUROR WILLIAMS: What was the first business to be
11 transacted that morning? A The court calls up --
12 there were 50 jurors, as I recall it, drawn, and his cus-
13 tom was to call in about 10 or 15 who would stand here by
14 the rail, and ask them to present any excuses they might
15 have for not serving -- for instance, they were too old,
16 if they were probably old or deaf or not naturalized, or
17 something else; that was the business; not examination by
18 lawyers.

19 JUROR WILLIAMS: And then the next 10 or 12? A Then the
20 next 10 or 12 until the whole panel were passed over and
21 such excused as the court knew could not serve in any
22 event, so as to save the time of the court in examining by
23 lawyers.

24 Q And was that work done entirely by the Judge? A Coun-
25 sel never had a chance to ask any questions at that time.
26 It generally took about half a day, where there were 50.

1 JUROR WILLIAMS: That is all.

2 MR FORD: You stated on direct examination, Mr Darrow,
3 that you were the author of various books? A yes,
4 amongst the rest, that pamphlet which you have there.

5 Q "Crime and Criminals"? A Yes sir. That is, that
6 is the stenographer's copy of an address that I deliver-
7 ed off-hand in the county jail to the prisoners.

8 Q You have read it since? A I have.

9 Q And found it correctly expressing your ideas?

10 MR ROGERS: Objected to as not cross-examination, incompe-
11 tent, irrelevant and immaterial. Now, I will say this to
12 counsel, I will enter a stipulation right now. If Mr
13 Darrow's philosophy or views on general sociological
14 and ethical subjects are matters of consideration here
15 and they will put in Mr Darrow's books, I will sent a
16 copy -- three or four copies in and let the jury read
17 every book he ever wrote, at their leisure. I don't
18 believe that they can take isolated sentences or a part
19 of a little book, but if counsel will allow me to put in
20 Mr Darrow's books, I will put them all in in a very mo-
21 ments without the slightest difficulty.

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2s 1 MR. FORD. There is no objection before the court.

2 MR. ROGERS. Object to it as not cross-examination.

b 3 MR. FREDERICKS. If the court please, the forepart of this
4 witness's examination he was permitted to testify as ^{to} the
5 books he had written and to his business capacity and the
6 idea of giving his sentiments and ideas. He named two or
7 three or more books that he had written--I don't remember
8 that he named specifically--said he had written some essays
9 and said he had written a couple of novels, and it is pos-
10 sible he said some others. Now, Mr. Ford is asking him about
11 another book that he now states that he wrote and which he
12 did not mention at that time, and I presume is going to ask
13 him if he did not express certain things at that time and
14 if those are not his sentiments and ideas. If the Court
15 will excuse me for not rising--

16 THE COURT. Certainly.

17 MR. FREDERICKS. If the matter was pertinent at all as
18 showing Mr. Darrow's sentiments, it is pertinent now on
19 cross-examination to show the rest of them.

20 MR. ROGERS. If counsel will mention--

21 THE COURT. I do not understand that the direct examination
22 went into the question of his sentiments as expressed by
23 his writings; a mere statement of fact that he had written
24 some books; that he had been a lawyer; that he had parti-
25 cipated in a number of features that had been more or less
26 in the public eye, in the public mind, but I think the objec-

1 tion it is not cross-examination is well taken.

2 MR. FREDERICKS. Well, your Honor--

3 MR. FORD. On the morning of Mr. Franklin's arrest, Mr. Darrow,
4 did you entertain the following state of mind: There is
5 no such thing as a crime, as the word is generally under-
6 stood. I do not believe there is any sort of distinction
7 between the real moral condition of the people in and
8 out of jail. One is just as good as the other. The people
9 here (in jail) can no more help being here than the people
10 outside can avoid being outside. I do not believe that
11 people are in jail because they deaire to be. They are in
12 jail simply because they cannot avoid it on account of
13 circumstances which are entirely beyond their control, and
14 for which they are in no way responsible?

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

16 MR. FORD. Wait just a moment--

17 MR. ROGERS. No, I am going to take an exception.

18 MR. FORD. Q Did you not entertain--

19 MR. ROGERS. I am going to take an exception right here.

20 MR. FREDERICKS. Well, take it.

21 MR. ROGERS. I am going to take it. If your Honor please
22 your Honor just ruled they could not do that. Mr. Ford in
23 the teeth of your Honor's ruling and in defiance thereof,
24 turned around and started to read an isolated sentence.
25 I stipulated he could put in Mr. Darrow's works. Now, he
26 is attempting to read, and viciously and intentionally, and

1 in misconduct, to read that which your Honor told him was
2 not competent. Now, what kind of law are we living under
3 here? When your Honor rules, as I understand that is the
4 rule we have to go by. Counsel turns around immediately
5 and intentionally and viciously reads, and doesn't correctly
6 read at that. Now, if your Honor please, we take an excep-
7 tion to that.

8 MR. FREDERICKS. It becomes another matter when asked
9 under other circumstances and entirely different ruling
10 undoubtedly would be made under the circumstances.

11 MR. FORD. Your Honor has ruled practically that we cannot
12 offer books in evidence at this time because no foundation
13 has been laid for their introduction, either by reason of
14 any matter that has already been brought out on direct
15 examination or by reason of any statements made by the
16 witness on cross-examination. I am now propounding a ques-
17 tion to this witness in which I may use material from what-
18 ever source I desire to obtain it, but I am asking him for
19 the state of mind on Tuesday, November 28th. If he admits
20 that state of mind I will never be able to put in any books
21 containing those statements, because he admits that state of
22 mind on Tuesday. If, on the contrary, he denies he had that
23 state of mind then I have some foundation for offering a
24 book, and will present an entirely different situation to
25 your Honor. It is possible I may lay the foundation for the
26 introduction of this book. It is possible I could not, but
whatever/^{the}reason may be I have a right to use the book or

P 1 any other material in my possession for the purpose of
2 framing a question to the witness as to his state of
3 mind on Tuesday the 28th day of November, and that is the
4 object of the question, to get the state of his mind on that
5 day; if he admits that the sentiments expressed in my
6 question correctly express his sentiments on that day, that
7 is the end of the book, if I am using a book--and I can
8 state frankly that I am in framing my question--however, I
9 am not asking him if he wrote this book, I am not asking
10 him if he delivered such sentiments on another occasion
11 before the county jail of Chicago or some other place, I
12 could not under your Honor's ruling, I am not--

13 THE COURT. Mr. Ford, your explanation clears up one thing,
14 that you understood the court to sustain the objection to
15 your last question upon the ground that no foundation was
16 laid. Such was not the ruling of the court, however, the
17 objection was sustained upon the ground that it was not
18 cross-examination, so your laying the foundation will not
19 affect the matter in any way, shape or form.

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1 MR FORD: I am not laying the foundation for the introduc-
2 tion of the book.

3 THE COURT: I do not see how you can expect to show the
4 state of mind on the 28th day of November by lectures or
5 addresses or books of previous expressions of opinions
6 upon matters not connected with that case; if they are
7 instances relating to or connecting that particular case,
8 they are pertinent, but you cannot wander so far afield.

9 MR FORD: The point is that I put to the witness on the
10 stand this question: "Do you believe, and did you believe
11 on November 28th, that a man should be punished merely be-
12 cause he has broken some law; and he should answer, "I
13 do not"; I have then a right to follow it up, "Do you not
14 believe and did you not then believe that it being wrong
15 to punish a man for violating the statute law, that the
16 state is doing wrong in attempting to put people in jail
17 for breaking the laws, is it not, and was it not, on Novem-
18 ber 28th, your opinion that you, as an attorney, had a
19 right to do anything you saw fit to do, that would pre-
20 vent the law from punishing a man, did you not think you
21 had the right to violate that law yourself if it was nec-
22 essary; wouldn't the ends justify whatever means that
23 you saw fit to employ, wouldn't your duty be, under your
24 peculiar opinions, to prevent the state from punishing
25 the individual; isn't your opinion that the individual is
26 not responsible for his actions, but that society is

1 responsible; that they can no more help being in jail
2 than they can being out of jail; that the place where they
3 happened to be is one over which they have no control
4 and is one in which the circumstances of society force
5 them, and it is wrong to punish a man, to hold him respon-
6 sible for more than his capacity calls for?"

7 THE COURT: I see your point, Mr Ford, but I do not think
8 it would be proper cross-examination to go into the ques-
9 tion of the abstract view of a defendant, or that the de-
10 fendant might or might not have held upon a given sub-
11 ject as cross-examination responsive to the direct examina-
12 tion brought out here.

13 MR ROGERS: In reply to counsel --

14 MR FORD: The court has ruled --

15 MR ROGERS: -- I am going to reply to your absolutely
16 incorrect and knowingly and intentionally ^{mis-}representing
17 the defendant --

18 MR FORD: Now, if your Honor please --

19 MR ROGERS: If your Honor pleases, the abstract proposi-
20 tion as to criminal responsibility has been a considera-
21 tion of philosophers for a long time. I presume I have
22 a shelf at home filled with books --

23 MR FORD: We will accept the stipulation -- we will ac-
24 cept the stipulation to offer this book in evidence.

25 MR ROGERS: You offer all his books?

26 MR FREDERICKS: All right; offer every one of them.

1 MR ROGERS: Farmington --

2 MR FREDERICKS: Everyone of them.

3 MR ROGERS: And the jury may read them at their leisure.

4 THE COURT: What is this stipulation?

5 MR FREDERICKS: That all of the books written by Clarence
6 Darrow may be admitted in evidence.

7 THE COURT: It is admitted and stipulated that the jury is
8 to have these books?

9 MR ROGERS: Yes sir.

10 MR FREDERICKS: They are evidence for whatever purpose.

11 THE COURT: To read and take them to their room, at this
12 time, or at the time of deliberation?

13 MR FREDERICKS: Oh, no, as evidence.

14 THE COURT: I want to know what the stipulation is.

15 MR FREDERICKS: The stipulation is they are introduced
16 in court as evidence, and the jury is entitled to see
17 them.

18 MR ROGERS: In view of the fact that counsel has mis-
19 stated, and deliberately misrepresented Mr Darrow, I want
20 to complete my statement --

21 THE COURT: Mr Rogers, you cannot assume that --

22 MR ROGERS: If your Honor pleases, in view of the fact
23 whether intentional or not, he has misrepresented this
24 defendant --

25 THE COURT: That is different.

26 MR FORD: Well, your Honor --

MR ROGERS: -- Then I propose to state this: --

1 MR FORD: My argument was addressed entirely to the court,
2 I assumed a hypothetical state of mind.

3 THE COURT: What books are now offered? State what are
4 the books.

5 MR ROGERS: If your Honor pleases, I propose -- you might
6 as well quit it, because I am going to say this, If the
7 court does not stop me.

8 MR FORD: We ask the court to stop you.

9 MR ROGERS: If your Honor pleases he has stated here Mr
10 Darrow has by hypothesis and inuendo entertained certain
11 views --

12 MR FORD: I will want to --

13 THE COURT: I assume counsel has some proper statement
14 he wants to make, an assignment of error or something of
15 the kind.

16 MR FORD: He interrupted me in the middle of a question be-
17 fore I had completed my question, your Honor. Your Honor
18 allowed him to interrupt me.

19 THE COURT: Mr Ford, if he hadn't interrupted you, I
20 would have.

21 MR FORD: Very well, then, your Honor, I will ask your
22 Honor to do the same with Mr Rogers making the statement
23 here as to what the state of mind of this defendant is,
24 as a matter of fact, before the jury;

4p 1 he is not under oath and cannot testify and even if he were
2 under oath he could not testify what Mr. Darrow's state of
3 mind was, it would be a mere conclusion on his part as to what
4 his state of mind was. My remarks to the court are not
5 any evidence in this case and counsel has no right to chal-
6 lenge the correctness of my remarks to this court for the
7 purpose of addressing the jury. If your Honor desires
8 to hear from Mr. Rogers on that point, then in order that
9 the minds of the jury may not get confused and accept the
10 statements of Mr. Rogers when as a matter of fact they are
11 not evidence, I would ask if the argument is to continue
12 that the jury be excused.

13 MR. ROGERS. After counsel has quit and made his statements
14 now he is too cowardly to stand here and let me make mine.
15 No, sir, that does not go.

16 THE COURT. Wait a minute, Mr. Rogers! The court had
17 already stated that it was going to hear you.

18 MR. ROGERS. Very well, sir.

19 THE COURT. And the Court has been very indulgent in hear-
20 ing you, Mr. Rogers, but there is absolutely no excuse for
21 your remarks just now and the court will not permit you to
22 make such a remark. You have a proper remedy; your appeals
23 to this court have never been in vain, and you want to be
24 heard, but you cannot stand here and say that counsel
25 on the other side is cowardly and make that kind of a remark,
26 it cannot go on, Mr. Rogers.

1 MR. ROGERS. If your Honor pleases, when I find myself
2 wrong your Honor saw me do it this morning, you will always
3 see me stand up and admit it. You saw me this morning,
4 when I might have stood still and taken advantage of your
5 Honor's misapprehension or condition of mind that was not
6 true, you saw me take it back. I will always do it when I
7 am wrong. Counsel has undertaken to take an unfair
8 advantage here to influence and misrepresent, and I protest
9 against it and I think I am within my rights.

10 THE COURT- Not when you--

11 MR. ROGERS.---And if I am not within my rights I would like
12 to know where a man's rights commence.

13 THE COURT. Not when you use that word. We never will get
14 anywhere in the calm deliberation of a court of justice
15 when words of that kind are used.

16 MR. ROGERS. I am frank to say I am not accustomed to mask
17 my statements.

18 THE COURT. That word cannot be used in that way.

19 MR. ROGERS. I call your Honor's attention to--

20 THE COURT. Just a moment. You have used a word that
21 cannot remain in the record without being expunged. Do
22 you wish to withdraw it?

23 MR. ROGERS. I do not, sir. I say that counsel's attempt
24 to make this statement and then to shut me off from making
25 my statement is unworthy of a lawyer, unworthy of fair
26 treatment in a court room, is unworthy of--I confess I would

1 not do it for him, if I made a statement and he wanted to
2 make a reply he certainly would have the right to do it
3 and I would not attempt, by calling attention to the fact
4 he still wanted to ask a question or anything else, to shut
5 it out. Whatever explanation can there be for it? Now,
6 if your Honor desires to say anything to me I stand here
7 ready to take it.

8 THE COURT. Be seated, Mr. Rogers, and consider this matter
9 a little bit. I regret to take up the time on it, but it
10 is better to do it now than to let these matters go too
11 far. The Court felt, when the incident occurred yesterday,
12 that it was cleared up this morning, as the best kind of
13 an illustration of the unwisdom of allowing a hasty remark
14 escape from counsel's lips. These matters tend to
15 detract from the fairness and continuity with which the
16 case is put before the jury and I am greatly shocked that
17 counsel should use the term in a moment of excitement and
18 insist upon it at this time, particularly when the court
19 had even before objection to the word that was used,
20 indicated that when the time came he would be heard. The
21 judge of this court is in control of the situation and not
22 counsel on the other side or on the defendant's side,
23 and the weeks and months we have worked here together
24 justifies counsel in assuming that he will be heard; he
25 has always been heard if there has been an occasion, when
26 counsel has urgently desired and shown a real desire to be

1 heard on any occasion and on any question, and if he has
2 been shut off I do not at the present moment recall it.

3 I am going to pass the incident for the present and I
4 trust before the afternoon adjournment counsel has had a
5 chance to think the matter over, perhaps, I trust will
6 take proper occasion himself--I have confidence in it.

7 We will pass the matter for the present until the afternoon
8 adjournment, but I repeat, these things cannot and will not
9 be permitted and the matter will be brought up again
10 before adjournment. Now, Mr. Rogers, I will hear you.

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1 MR ROGERS: If your Honor please, the interrogation of
2 counsel, after having been told by your Honor that books
3 of Mr Darrow's would not be permitted, and after my state-
4 ment that if they proposed to introduce Mr Darrow's books
5 and his philosophy as a whole, I had no objection, and it
6 might all go to the jury in order that they might under-
7 stand this man who sits before them and his views --
8 counseled then deliberately picked up a pamphlet and attempt-
9 ed to read a few sentences therefrom indicating by his
10 argument a moment later in the presence of the jury that
11 such views were criminal, conducive to criminality, we
12 might say, indicating in his mind that there was no such
13 thing as criminality. That, if your Honor pleases, is not
14 justified by the conditions; it is not justified by the
15 fact that the defendant is a witness on the stand, and
16 that he is being cross-examined; his views upon the sub-
17 ject are the views of the very best writers upon penology
18 that we read today. I venture to say I have as good a li-
19 brary on the subject as exists in California, and I ven-
20 ture to say not one well considered book in that library
21 takes any contrary view from that. If your Honor pleases,
22 the other day there walked into my office a little man,
23 not as tall as my table, carrying a little cane about as
24 long as a table knife, and he sat up in a chair and his
25 feet could not get to the floor. I sat and talked to him
26 for the first time, for a few moments, and I was astonished

1 and amazed at the marvelous intellect and wonderful capa-
2 city of mind that that deformed little person showed.
3 I am told that he has three or four brothers and sisters
4 who are the same; his father and mother are people of
5 ordinary size and capacity, and through some mismating --
6 that we know nothing about, they have produced these dwarfs.
7 Now, if your Honor pleases, I stand here, and if it is
8 criminal, let it be so -- I stand here to say when a man
9 is born with a deformed brain, when a man is born with that
10 kind of short stature, and where a man is born with his fore-
11 head, as this man's legs were short, that there is no
12 such thing in the eyes of God and man as condemning that
13 man for his state of mind any more than I condemn this
14 marvelous little person who sat there because his legs were
15 not as long as from my fingers to my elbow. Now, if
16 that is criminality -- and counsel has argued here in the
17 presence of this jury -- every well-considered philosopher
18 in the world, from Mark Twain's suppressed book "What is
19 man" which has just come on, only 300 books -- from Mark
20 Twain's book to Comte and Kant, you will find it all
21 through the philosophy of this world -- when we breed horses
22 for the purpose of form and figure and speed, and we use
23 one sire and one dam because of their qualities, how can
24 it be it is criminal for a man who thinks and who reads to
25 be damned in a criminal court room where he is on trial
26 for his liberty, because he says the same things that

1 philosophers have said for generations?

2 Now, having answered what I believe to be a mischaracter
3 ization of the defendant, and very briefly at that, having
4 in mind nothing but to reply to his little argument -- we
5 are what we are born to be, subject, of course, to the
6 intervention of Divine Providence and the will, if some may
7 have one -- but who knows whose will it is I have. I
8 did not choose my father and my mother -- my grand parents--
9 at all. And if they handed to me an insufficient will
10 along with an insufficient lung, is it criminal for a man
11 to deliver an address as I am doing now, saying that this
12 belief, as it is the belief of every right-thinking man,
13 is criminal? Now, counsel has stood here and denounced
14 this man because he said men were not responsible for what
15 their ancestors handed down to them, and I say it is mis-
16 conduct, if your Honor pleases, it is the philosophy of
17 the last 500 years. There was a time when they dragged
18 out of court daily, and they hung for stealing
19 small things. In the days of Charles II there were over
20 200 things for which they hung people. In the days of
21 Christ, when they brought the woman to him, charging her
22 with adultery, they said, "It is the law of Moses that
23 she should be stoned"; in other words, that she should
24 be killed. And what did the Master say? "Go thou and sin
25 no more", and "Neither do I condemn you".

26

6p 1 Now, I characterize that as misconduct, a con-
2 demnation of a defendant for his philosophy which is right
3 in the eyes of every right thinking man in this country.

4 I stipulate, in accordance with the offer
5 of Mr. Ford, that every book Mr. Darrow wrote, "Resisting
6 Evil", "Farmington", "The Persian Peril" and other essays",
7 and "An Eye for An Eye," "Crime and criminals", shall be
8 taken to the jury room and they are at perfect liberty to
9 read everything he wrote in those books.

10 THE COURT. Those books are now introduced?

11 THE WITNESS. There is an essay on Tolstoi you might add to
12 that.

13 MR. ROGERS. An essay on Tolstoi. I do not care to have
14 them put in, if your Honor pleases, just simply to have
15 them done as is done, to pick up one isolated statement--

16 THE COURT. I understand the entire books are before the
17 jury.

18 THE WITNESS. I suppose the jury are not bound to read them.

19 THE COURT. The jury may read so much of them as they see
20 fit.

21 MR. FREDERICKS. And they may be referred to in argument
22 the same as any other thing that is in evidence. .

23 THE COURT. Anything that is introduced in evidence must
24 be read to the jury unless there is objection to the con-
25 trary, probably with the exception of Webster's Dictionary--
26 ordinary documents must be read. Is it stipulated that

1 these will not be read here in court before the jury but
 2 that such portions may be read in argument as counsel may
 3 desire but that the jury may take the entire books to their
 4 room and read such portions as they may desire.

5 MR. ROGERS. Yes, sir.

6 JUROR GOLDING. You mean separately or all at once?

7 THE COURT. All go to the jury under the stipulation when
 8 they retire for deliberation.

9 MR. ROGERS. They don't have to wait to bring in a verdict
 10 until they read all those books.

11 MR. DARROW. May I make a suggestion?

12 THE COURT. Yes, sir.

13 MR. DARROW. I don't like to appear in this Dr. Jyckle and
 14 Mr. Hyde way.

15 THE COURT. Your suggestion is now made as counsel and it
 16 will so appear in the record.

17 MR. DARROW. Why not just let the jury take them at this
 18 time or tomorrow morning and read them at such time as they
 19 see fit or not at all, as they see fit.

20 MR. FREDERICKS. If they are in evidence they are in evidence.
 21 Now I am afraid that we don't quite agree. As I remember
 22 counsel said he would not stipulate that they might be in
 23 evidence and not read to the jury, so if that is--if the
 24 record stands that way then we will have--

25 MR. ROGERS. For "read to the jury" I substitute ^{the} stipula-
 26 tion that the books may be delivered to the jury and if they
 desire to read them they may.

1 MR. FREDERICKS. No, your Honor, I think if they are intro-
2 duced they should follow the usual rule of other evidence,
3 that is, they are in evidence to be used in argument, and
4 all such portions as we want to, but that, of course,
5 requires the reading of them to the jury, unless counsel
6 waives that.

7 MR. ROGERS. I waive that and substitute therefor the
8 statement that the jury are at liberty to take them as they
9 retire from the box now as soon as I can get the books, and
10 let them take them and read them themselves. I will not
11 put them in evidence to be manhandled and misquoted in
12 argument, but if they can be given to the jury and let them
13 understand them and read them at their leisure, if they so
14 desire. If they do not desire they need not read them.
15 Let them go as a bulk into the jury room, now, and let these
16 jurors read them if they so desire, read any parts of
17 them that they so desire.

18 MR. FREDERICKS. We couldn't stipulate to that.

19 MR. ROGERS. We are not going to put these books in and have
20 you pick out isolated sentences here and there--

21 MR. FREDERICKS. Let's withdraw them and take it up among
22 ourselves.

23 MR. ROGERS. I would rather the books go to the jury. They
24 can take them to their room and read them at their leisure,
25 any part of them.

26 MR. FORD. The law provides a time when the jury is

1 entitled to have evidence in the case, and that is when they
2 retire for deliberation. They are not allowed to take the
3 exhibits with them to their jury room at any other time, and
4 counsel knows that is not proper and not permitted by law.
5 Now, it is stipulated they are in evidence and they are
6 in evidence.

7 THE COURT. It is an unusual method. Perhaps if we pass
8 it for a moment counsel can agree on some method and
9 accomplish the end which seems to be desired. Just pass
10 the matter for the present.

11 MR. FORD. You don't desire to make any stipulation with
12 regard to this one book, "Crime and criminals"?

13 MR. DARROW. Perfectly willing to let that go with the rest.

14 THE COURT. pass the entire matter.

15 MR. ROGERS. Let that go with the rest.

16 MR. FORD. Q At noon on Tuesday November 28th, or rather
17 at 2 o'clock on Tuesday November 28, 1911, you saw Mr.
18 Davis and he reported to you at that time what had occurred
19 between Franklin and himself. You gave him a check for
20 \$10,000 at that place, I believe you testified to all that
21 this morning? A I said there was some doubt in my mind,
22 Mr. Ford, as to whether I had seen him before, as you
23 recall.

24 Q You wish to change it in any way now? A Not at all.
25 I am going to let it stand as it is. I don't think you
26 summed it up correctly. Before I forget it, might I correct
one statement of yesterday and explain it? scanned by LALAWLIBRARY

7s 1 Q In reference to what matter? A In reference to the
2 time I went to Washington.

3 Q Yes. A I just ask you now because I might not think
4 of it again.

5 Q Yes. A I have been thinking that over since and I
6 believe I came to California before I came to Washington.
7 Mr. Gompers came to see me before I came here, at Kankakee,
8 with the other gentlemen whose names I mentioned, while I
9 was trying that case, and spent an evening with me. As
10 quick as I got through with that case I came to Los Angeles,
11 and I went from there to Chicago and from there to Washing-
12 ton, and Mr. Tveitmoe was on the same train going from San
13 Francisco to Chicago. I am very sure that is correct.

14 Q You stopped off at Chicago and he went on to Washing-
15 ton? A Yes, and I followed a few days after and met him
16 in Washington.

17 Q Were you retained--that is, did you agree to defend the
18 McNamaras at ^{the} Kankakee conference or was it postponed
19 until the Washington conference? A No, I suppose I had
20 fairly agreed at the Kankakee conference. Couldn't
21 very well come here and then enter my appearance and not
22 go on with it, so I suppose I must have agreed with them
23 at that time.

24 Q returning to the events of Tuesday. Where did you go
25 Tuesday afternoon? Did you stay in court all afternoon?

26 A I don't remember. Perhaps that record will show.

1 Q I don't know, I will look at it. The minutes of
2 Tuesday, November 28th, will show that the case was resumed:
3 "The jurors, counsel and the defendant J B McNamara
4 present and the examination of juror Edward Haskell resumed
5 and challenge by the people for cause; said challenge
6 is resisted by the defendant. Guy L. Rockwell and
7 William C. Doane are sworn and testified on the part of the
8 people in the examination of juror Edward Haskell. Further
9 hearing was continued to November 29, 1911, at 9 A.M."

10 The record, as you will observe, Mr. Darrow, does not say
11 at what time court convened, but on the minutes of Monday,
12 November 27th, in the case of People vs J B McNamara,
13 I read you the latter part of the record, which shows,
14 "Further hearing was continued until Tuesday November 28,
15 1911, at 2 P.M." Having read that record to you from
16 page 294 of the minutes of Judge Bordwell's court--

17 MR. DEHM. If I may suggest, if you follow those minutes
18 out you will find that they examined the venire of jurors,
19 if you follow those minutes, there are other minutes of
20 that day. That probably occurred in the morning.

21 MR. FORD. The clerk has reversed them. I have read the
22 morning in already. I just wanted to refresh your recol-
23 lection that on Tuesday afternoon you were in court and
24 were examining the juror Edward Haskell. Do you remember
25 the examination of Mr. Haskell? A yes, that refreshes my
26 recollection, Mr. Ford. I remember Mr. Haskeell's examination

1 very well, it was a long one.

2 Q There was considerable strife between you and Mr. Horton
3 of the District Attorney's office that afternoon over
4 Juror Edward Haskell? A I would not call it strife. We
5 always got along nicely.

6 Q Some contention about it? A Some contention.

7 Q What is, you were each fighting each other on the question
8 whether the Juror should remain? A I wanted to keep him
9 and he wanted to let him go.

10 Q And he asked a good many questions which you were
11 denouncing as improper at that time? A I am not much of
12 a denouncer, Mr. Ford.

13 MR. APPEL. We object upon the ground--

14 A Probably objected to it.

15 MR. APPEL. --it is not cross-examination and immaterial.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.

18 A I remember the examination perfectly well, probably as
19 well as I do anything that occurred, probably a little
20 better, on account of some peculiar circumstances connected
21 with it, and I know it was very long on the part of Mr.
22 Horton who took generally a long time when he wanted to
23 disqualify a juror, and then he called two impeaching
24 witnesses whose testimony I also remember. I think that
25 would have taken up all the afternoon.

26 Q MR. FORD. Now, Mr. Parrow, if you had made up your

1 mind on Sunday that both J J and J B McNamara were to
2 plead guilty, if you entertained the same state of mind
3 on Monday and again on Tuesday, why did you resist so
4 vigorously the attack upon the competency of Mr. Waskell
5 as a juror?

6 MR. APPEL. Wait a moment, we object to that upon the ground
7 it is incompetent, irrelevant and immaterial and not cross
8 examination.

9 A I wish you would withdraw it.

10 THE COURT. Objection overruled.

11 A On Saturday and Sunday and Monday I had no more doubt
12 about the settlement than we do about affairs in life that
13 seem settled, although nothing is settled until it is
14 finished. On Tuesday morning Mr. Franklin was arrested.
15 I didn't know how it would affect the settlement. I was
16 very much afraid on Tuesday and on Wednesday and until
17 Thursday night that all our efforts would go for nothing
18 and these men might be killed and there was nothing for us
19 to do at any time except to go right along just as we had
20 always gone in the face of the newspapers and the public
21 and everybody concerned, until it was tied.

22 Q You saw Mr. Steffens on Tuesday noon, did you not, at
23 your office, the day of Franklin's arrest?

24 MR. ROGERS. Now, if your Honor please, he has asked that
25 twice in that form.

26 MR. FORD. Referring to that event again.

1 MR. ROGERS' Counsel has been told by the witness. I object
2 to it as not cross-examination. Counsel has been told by
3 the witness he didn't say it was at noon.

4 MR. FORD. Q you saw Mr. Steffens during the day between
5 10 o'clock and 4 o'clock on Tuesday, November 28, 1911?

6 A Undoubtedly. I saw him Tuesday afternoon.

7 Q And at that time you had a discussion with Mr.

8 Steffens with reference to the effect of the arrest of
9 Franklin? A I did.

10 Q Upon the compromise of the case? A I did.

11 Q At that time did Mr. Steffens tell you he had just
12 come from the office of Meyer Lissner? A He had two
13 conferences with me.

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1 Q Did he not, just after 2 o'clock, noon, on Tuesday
2 the 28th day of November, 1911, at your office, to you, he
3 and you being alone, say to you that he had just come from
4 the office of Meyer Lissner? A I am not certain; I think
5 he did.

6 Q And did he not at that time and place say to you that
7 he didn't think the arrest of Bert Franklin would have
8 any effect upon his people, and that the compromise could
9 go through? A He said he didn't think it would, but I
10 could very easily see that it very likely might, as it
11 did.

12 Q When did it? A It cost J. J. five more years.

13 Q That is your conclusion? A Yes. Yes, that is all
14 it is, too.

15 Q Did you not send Mr Davis back on Tuesday or Wednes-
16 day to have a conference with Captain Fredericks in re-
17 gard to this matter? A Wednesday?

18 Q What time on Wednesday? A You know it is clear out
19 of the question for me to be sure. I think it was in the
20 morning. It might have been at noon. I heard Mr Davis
21 testimony and he was not certain, either.

22 Q You heard Mr Davis say, however, that the District
23 Attorney said it would go through? A I did.

24 Q And that was on Wednesday morning, November 29th?

25 A I think Mr Davis did not say it was on Wednesday morn-
26 ing.

1 Q He said it was Tuesday afternoon or Wednesday morning,
2 did he not? A No, he did not; he said he was not sure at
3 what time it was on Tuesday.

4 Q You knew from the District Attorney, through Mr Davis,
5 before Wednesday afternoon, that the arrest of Franklin
6 would not affect the compromise of the case, if you would
7 consent to let J.J. plead guilty? A Now, you are refer-
8 ring to Tuesday or Wednesday?

9 Q At any time up to Wednesday at 2 P.M. A No, I did
10 not.

11 Q Didn't Mr Davis so report to you? A No, and he didn't
12 so testify

13 Q Did you not on Tuesday afternoon call on Captain Fred-
14 ericks at his office in company with Mr Davis? A I
15 think not; I think it was Wednesday.

16 Q Wednesday morning or afternoon? A That I am not cer-
17 tain.

18 Q Was that not before Wednesday afternoon when you were
19 examining Juror Haskell? A I am not certain of that.

20 MR ROGERS: Wasn't the examination of Haskell on Tuesday?

21 MR FREDERICKS: Tuesday and Wednesday. A Better find
22 that now, and make sure of it. As I recall it you said it
23 was on Tuesday.

24 MR FREDERICKS: The examination was on Tuesday afternoon
25 and went over until Wednesday morning.

26 MR ROGERS: Counsel just said on Wednesday afternoon.

1 MR FORD: I was incorrect. A May I tell what Mr Davis
2 reported to me on Wednesday when he came back?

3 Q No. I will come back to that a little later.

4 MR ROGERS: I think, if your Honor please, the question
5 calls for it.

6 MR FORD: There is no question before --

7 MR ROGERS: The question calls for it. I think the witness
8 has a right to relate it.

9 MR FORD: The last question was answered and the witness
10 wants to know if he can't volunteer something concerning
11 the next day.

12 THE COURT: Let's see what it is. A I think you asked
13 me if Mr Ford --

14 (Last question read by the reporter.)

15 A When Mr Davis reported to me on Wednesday --

16 MR FORD: That is the one I objected to, your Honor, un-
17 til I reach it.

18 THE COURT: I asked Mr Darrow what it was, not for an
19 explanation of what it was, what answer it was you wanted
20 read? A It was the answer to Mr Ford's question preceding
21 that, whether Mr Davis did not report to me on Wednesday
22 that Mr Fredericks was willing to accept that.

23 THE COURT: Do you want to go back and amplify your
24 answer to that question? A I wanted to add to it.

25 THE COURT: I think you have a right to it.

26 A He also reported the same day as he testified, that

1 both pleas must be entered together, and none of us --
2 neither of us never knew until after a long conference on
3 Thursday, that we could get J. B. to plead guilty with J.J.

4 MR FORD: But weren't you present with Mr Davis when he
5 went? A I think not.

6 Q Didn't you and Mr Davis together go to the office of
7 Captain Fredericks on Wednesday, November 29th? A We
8 might have gone at one time on Wednesday, but Mr Davis
9 first made a report on Wednesday.

10 Q Did Davis visit Captain Fredericks before the time
11 you went in company with him? A I think so.

12 Q Now, at the time you went in company with Captain Fred-
13 ericks -- or, with Mr Davis, to Captain Fredericks' office,
14 what conversation occurred at that time and place?

15 A The same conversation, that they must plead together.

16 Q Just give it to us in the words, as near as you rem-
17 ember it. Can you remember it? A Mr Fredericks said
18 that he would still put through the agreement for ten
19 years, with a life sentence for J.B., but they both must
20 plead together.

21 Q Well, on Wednesday, November 29th, 1911, you continued
22 the examination of the jury, did you not, Mr Darrow?

23 A The record shows that, does it?

24 MR FREDERICKS: yes. A Well, I did, undoubtedly, then.

25 MR FORD: And it was on Wednesday that the challenge for
26 cause of the People against Juror Edward Haskell was allow-

1 ed; is that correct? A I don't remember, Mr Ford, but I
2 will assume it is, if you are reading it from the record.

3 Q I am reading from the record and the record so says.

4 A Well, I will assume that is right.

5 Q You remember that among others the name of Mr Krueger
6 was drawn in the box on Wednesday, J. J. Krueger? A I
7 have no definite recollection of Mr Krueger's name. Of
8 course, I have known since it was, and undoubtedly knew
9 it then. I think the examination of Mr Krueger must have
10 been short, and no special features about it.

11 Q And you recall that on Wednesday, the 29th day of Nov-
12 ember, 1911, at the hour of 5 o'clock in the presence --
13 in the afternoon of said day, that the court drew another
14 venire? A I don't recall it. I have heard it read in the
15 record, and I have no doubt it is true.

16 Q Well, you kept informed as to what was being done at
17 the time? A I did, Mr Ford.

18 Q And your lack of recollection is due more to a lack
19 of memory at this time, and not due to a lack of informa-
20 tion at the time? A Oh, no; I knew then.

21 Q You knew that then? A I did, I knew everything about
22 it.

23 MR APPEL: You mean an order was made to draw a jury at
24 that time?

25 MR FORD: And the names were drawn, the 50 slips of paper
26 were drawn containing the names of persons at 5 o'clock on

1 the afternoon of Wednesday the 29th. And that those
2 jurors were ordered to be summoned and brought into court
3 on Friday, the 1st day of November at 9 o'clock in the
4 forenoon of the 1st day of November? A If the record so
5 states, it must be.

6 MR ROGERS: The 1st day of November?

7 MR FORD: The 1st day of December, 1911. Well, you had
8 assurance at the time that that jury was drawn that Captain
9 Fredericks would accept a plea of guilty on the part of
10 J. J. to ten years, is that correct? A He said he would.

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9s 1 Q And he also told you at that time that he would accept
2 a plea of guilty from J B and not oppose life imprisonment?
3 MR. APPEL. The witness didn't say that. He said on
4 We dnesday, both from Mr. Davis and from Mr. Fredericks that
5 he had the assurance that the arrangement would go through,
6 provided both of them should plead guilty, that is what he
7 said, and he says that he didn't know at that time, during
8 Wednesday after receiving that information whether the
9 thing could go through or not.

10 A I was going to add that, Mr. Appel.

11 MR. APPEL. That is what he said.

12 A I didn't know Wednesday it would be ^{disposed} of I had very
13 serious doubts, although I thought it would.

14 MR. FORD. Q On Wednesday evening at 5 P.M.-- A I had
15 very serious doubts all the time, from the time that
16 Franklin was arrested until we finished.

17 Q You knew on Wednesday evening at 5 P.M. that Captain
18 Fredericks insisted on both JJ and J B pleading guilty
19 together at the same time? A I did.

20 Q You knew that your clients were willing to plead guilty?

21 A Separately, yes.

22 Q You knew, however, that they would not plead guilty, or
23 at least J B would not--I withdraw that question. You knew
24 that J B had also said that he would not plead guilty if
25 his brother was sentenced, up to that time? A yes.

26 Q And you labored all day Thanksgiving Day to overcome

1 that determination? A We labored sometime Thanksgiving Day,
2 two or three or four hours.

3 Q You went there at what time in the afternoon? A I couldn't
4 say, half past 10 or 11.

5 Q In the morning. And at 2 o'clock Mr. Davis telephoned
6 Captain Fredericks that they had not come to any satisfactory
7 conclusion as yet? A I couldn't state.

8 Q You heard him so testify on the stand, did you not?

9 A Yes, but I couldn't state.

10 MR. APPEL. He is asking for his information.

11 MR. FORD. Q As a matter of fact you had not come to any
12 determination at 2 o'clock, is that correct? A It would
13 be entirely out of question for me to tell the minute or
14 even the hour that it was disposed of.

15 Q You labored under great strain that day in trying to
16 get them to accept the terms? A Not only that, my
17 mind is so constituted it don't remember little things
18 like that.

19 Q Little things like that at the end of a big case.

20 A Like the fraction of a minute or the fraction of an
21 hour, when it happened seven or eight months ago. There
22 were other things in it.

23 Q Isn't it a fact it was late in the afternoon? A I
24 believe it was.

25 Q And isn't it a fact, your best recollection, it was
26 long after 2 o'clock in the afternoon? A No, I have no

1 recollection as to the time except it was in the afternoon
2 and I think late.

3 Q Do you recall where you had lunch that day? A I don't,
4 Mr. Ford, I guess I didn't have any.

5 MR. APPEL. What he ate?

6 MR. FORD. It was Thanksgiving Day is the only reason that
7 I thought you might remember.

8 A I missed my Thanksgiving meal. We had company at the
9 house; I didn't get it. It didn't bother me much because
10 I don't eat turkey.

11 Q Who employed Governor Gage to defend Mr. Franklin?

12 MR. APPEL. We object upon the ground that it is not
13 cross-examination.

14 THE COURT. Overruled.

15 MR. APPEL. We except.

16 A Mr. Davis told me he did.

17 MR. FORD. Q Who paid him? A Nobody. Never got a cent,
18 unless Mr. Franklin did.

19 Q Don't you know of your own knowledge that Mr. Franklin did
20 not pay him?

21 MR. APPEL. Objected to as immaterial and not cross-
22 examination?

23 A I couldn't know of my own knowledge.

24 THE COURT. Objection overruled.

25 MR. APPEL. We except.

26 MR. FORD. You gave Mr. Franklin, through Mr Davis.

1 one thousand dollars on one occasion and three hundred
2 dollars on another occasion after his arrest, is that
3 correct? A That is right, as I remember it.

4 Q When was the \$300 given to Mr. Franklin? A I couldn't
5 tell you, Mr. Ford, when either was given to him. I think
6 it was along the middle of the month of December or a little
7 before--I couldn't tell you--I think it was sometime then.
8 No, I think the \$300 was given to him because he said he
9 wanted some money on account of his daughter's wedding.

10 Q Was that after his arrest? A Yes.

11 Q A few days? A That was a few days after.

12 Q And the other \$1,000 was given about the 15th of December?
13 I don't care about the exact date? A I would think so.
14 I wouldn't want to be held down to days, but I think
15 about that date.

16 Q You suspected on November 28th, as soon as you heard
17 of the arrest of Franklin, that it was a frame-up?

18 A I had all kinds of theories, and that was one.

19 Q And did you suspect Mr. Franklin of having framed anything
20 up? A I didn't know. I thought it was entirely possible.

21 Q And yet you paid him \$1,000 on December 15th, or approxi-
22 mately about that date, notwithstanding the fact that
23 you suspected him of having framed something up?

24 MR. APPEL. That is argumentative and not cross-examination.
25 We object to that as argumentative. We can have the facts
26 and he can draw what inferences he wants.

1 THE COURT: Objection sustained.

2 MR. FORD. You advised with Mr. Franklin about the case up
3 until January 14, 1912, did you not? A No, I talked to
4 him a few times about it.

5 Q When and where did you talk? A Oh, I don't recall. He
6 would drop in my office occasionally. I don't think very
7 often, and once in a while say something about it.

8 Q Did you ever ask him on November 23th where he got the \$4,000
9 that was taken from Captain White or Mr. Lockwood? A I did
10 not. Mr. Davis did. He told me.

11 Q In your presence? A No.

12 Q Did you ever ask Franklin yourself at any time where he
13 got that money? A I don't think I ever did.

14 Q Wasn't the reason that you did not ask him because you
15 knew of your own knowledge where he got it? A It was not;
16 no such reason.

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1 Q You knew that it was charged that he had given \$4000 to
2 Captain White and that 500 of that had been transferred to
3 Mr Lockwood? A I knew the charge, certainly.

4 Q And you never had enough curiosity to ask him personally
5 about it? A Why, I had enough interest in it to have him
6 asked by his counsel.

7 Q He had been your employe up to that time? A Yes.

8 MR ROGERS: That is somewhat argumentative.

9 THE COURT: Do you object on that ground?

10 MR ROGERS: Yes sir.

11 THE COURT: Sustained.

12 MR FORD: You met him daily during that time? A What
13 time?

14 Q During the latter part of August, September, October
15 and November? A I met him daily.

16 Q Talked with him every day about the prospective jurors?
17 A I wouldn't say every day, but probably almost every
18 day

19 Q He was in possession of your opinions and secret be-
20 liefs concerning the various persons who were called as jur-
21 ors? A No.

22 Q You consulted him daily about the qualification of
23 jurors? A I got his opinion and discussed them.

24 Q Did you not, on November 25th, at the Alexandria
25 Hotel, in the presence of Mr Steffens, when you introduced
26 Mr Franklin to Mr Steffens, say to Mr Steffens, "Mr Frank-

1 lin is one of the few men whom I can trust with my inner-
2 most secrets? A I don't recall ever saying that of Mr
3 Franklin.

4 Q At that time? A If I did, I think I was mistaken,
5 but I don't recall.

6 Q Assuming you were mistaken, you didn't believe you
7 were mistaken on November 25th? A I didn't say anything
8 of that kind.

9 Q Well, I am asking you. A I don't recall any such
10 language, and don't think I ever said any such thing.

11 Q You did have confidence in Mr Franklin on November
12 25th, 1911? A I did.

13 Q And having that confidence in Mr Franklin at that time,
14 isn't it possible you did say that to Mr Steffens?

15 MR APPEL: Wait a moment. We object to that upon the
16 ground it is incompetent, irrelevant and immaterial, and
17 not cross-examination, argumentative, going into the realms
18 of possibility and imagination.

19 THE COURT: Objection sustained.

20 MR FORD: Do you recall whether you did or did not say it?

21 MR APPEL: Now, he has answered. I object to that.

22 THE COURT: Objection sustained.

23 MR FORD: I don't think he has.

24 THE COURT: I think he has answered it.

25 A I don't recall saying it. Isn't that all a man can
26 say? You know something of psychology.

1 MR FORD: It is liable to mislead Mr Appel. He thinks
2 that is something like palmistry.

3 Q You know Mr Franklin was employed to investi gate the
4 trial jurors in the McNamara case by you about August 9th,
5 1911?

6 MR APPEL: Wait a moment. The witness has answered that
7 time and time again, at the beginning of his examination.
8 They asked him when he employed him, about what time he com-
9 menced, and then they went to work, your Honor, and then re
10 freshed his memory. They got it when it was.

11 THE COURT: Let me have that question. (Last question read
12 by the reporter.) I think that matter has been gone
13 into.

14 MR FORD: On direct examination only.

15 THE COURT: I think on cross-examination.

16 MR FORD: I asked him about employment on the grand jury,
17 your Honor, but not on the trial jury. He said, if your
18 Honor will recall, that he stated somebody else had em-
19 ployed him with reference to the grand jury before he got
20 here, or found him employed. I haven't gone into the trial
21 jury at all on cross-examination. A You are wrong about
22 that, Mr Ford. I said after I got here, the first I heard
23 of him he came in one day on account of having been called
24 by somebody else.

25 MR FORD: The point I was making was in reference to the
26 grand jury. I haven't say anything in reference to the

1 trial jurors.

2 THE COURT: You maybe right about that.

3 MR FORD: May I see that book, Mr Rogers, to which the
4 witness' attention was called the other day?

5 MR GEISLER: It is not here in court.

6 MR ROGERS: I will get it for you. I will get you that
7 entry.

8 MR FORD: That is all I desire to look at.

9 THE COURT: Objection overruled.

10 A Is it the Bain entry you want?

11 MR FORD: Yes.

12 MR GEISLER: It is down to the office.

13 MR FORD: Can you send for it?

14 MR ROGERS: Yes.

15 THE WITNESS: Am I to answer that question?

16 THE COURT: Yes. A He was employed by the defense.

17 I don't remember the exact date.

18 MR FORD: Well, you were the one who paid him?

19 A Well, I was the cashier, and paid him.

20 Q And you were the one who employed Mr Davis and Mr Scott
21 and Mr Harriman and Mr McNutt? A Not Mr Harriman.

22 MR ROGERS: I thought that was gone into to a certain ex-
23 tent.

24 THE COURT: Objection overruled.

25 A Not Mr Harriman.

26 MR FORD: All but Mr Harriman? A Mr Davis had been spoken

1 to before I came and was recommended, and so was Mr Scott,
2 and I approved it, and did go to them and I presume it was
3 I who you can employ them.

4 Q You were the paymaster of all of them? A Of those
5 lawyers, yes.

6 Q And of Mr Franklin and Mr Harrington? A As far as I
7 know, yes.

8 Q The first jury venire was not drawn until September
9 30th, 1911. Calling your attention to the records that have
10 been introduced in this case, you recall that fact? A If
11 that is the record, yes.

12 Q Mr Franklin, during the month of August, after the
13 9th, about 20 days left in the month, and during the
14 month of September, was engaged in looking up the jurors
15 generally as their names appeared upon the great general
16 list of trial jurors? A Yes, he had the whole list and
17 was looking them up.

18 Q I presume that one of the reasons that induced him to
19 employ Mr Franklin was the fact that he had lived here,
20 or you were informed he had lived here a great number of
21 years, and had quite a wide personal acquaintance among the
22 persons likely to be called as jurors; is that correct?

23 MR APPEL: We object upon the ground he has no right to
24 presume anything himself and then tell the witness that he
25 presumes it. Let him ask him why he was employed and he
26 can tell you.

1 MR FORD: Is that presumption -- am I right in so presuming

2 A That is only Mr Ford --

3 THE COURT: Wait a minute.

4 MR ROGERS: We take an exception to it.

5 MR FORD: It is answered.

6 THE COURT: No, it is not answered. Mr Appel offered
7 an objection here. Mr Ford stated he had not finished
8 his question, and the court therefore, permitted the ques-
9 tion to be finished. Now, we have one question before the
10 court. I assume that the objection stated and the question
11 was partly asked. Objection overruled.

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1 MR. APPEL. We except.

2 A It has been answered.

3 MR. FORD. I think it has. I said that was one of the
4 reasons.

5 Q When the first jury list was drawn on ~~December~~ ^{September} 30, 1911
6 you went over the list at once with Mr. Franklin, did you
7 not? A I did, all of us did.

8 Q And you noticed among other names the name of Bain at
9 that time? A It was on the first list, wasn't it? If it
10 was I noticed it.

11 Q you had a favorable report upon that name at that time?

12 MR. APPEL. Wait a moment, we object to that--go ahead.

13 A To my mind the report was favorable.

14 MR. FORD. That report.

15 A It was not unfavorable, certainly.

16 Q That report had been made by one Eckland on August
17 18th, as it appears in your book that was here the other
18 day, is that correct? A That I don't recall, Mr. Ford.

19 The report itself I considered favorable on account of
20 his being a working man and his age and there was nothing
21 unfavorable in it.

22 Q What I mean is this: That at that time you had before
23 you a report that had been made by one of Franklin's employes
24 Mr. Eckland, who had visited Mrs. Pain on August 18th
25 1911? A I did.

26 Q In addition to that you had a personal verbal report

1 from Mr. Franklin as to what he personally knew about Bain?

2 A He told me what he personally knew about him.

3 Q He told you how well acquainted he was with him?

4 A I don't recall how well, but he said he knew him.

5 Q When that first venire was drawn you directed Mr. Frank-
6 lin to get additional special reports on these jurors in
7 addition to the general reports which had been previously
8 prepared, is that correct?

9 MR. APPEL. We object to that because the witness has not
10 so testified. The witness has already testified on cross-
11 examination and on direct examination that whenever it
12 was necessary they asked him for special reports on any
13 particular juror they wanted to find out about. He has
14 not stated that he asked him for special reports on all the
15 jurors or on these jurors, as the question indicates.

16 THE COURT. Objection overruled.

17 MR. APPEL. Exception.

18 MR. FORD. Q Go ahead. A I didn't ask for special
19 reports on every juror. Wherever a juror was passed by both
20 sides in that case, you know it took a good while before
21 we would have enough men in the box to draw, probably from
22 two weeks to three or four, and whenever one was passed
23 by both sides so we knew the only way to get rid of them
24 was preemptory, I would get a special report, and sometimes
25 would otherwise, so I would have a special report on Mr. Bain
26 more than one. I was as careful as I knew how to be.

1 Q Did Mr. Franklin make a daily report to you concerning
2 investigations during the day? A No, he would make it when-
3 ever it was called for or we thought it was necessary.

4 Whenever any of us would ask him; he made it to me no more
5 than to any other lawyer in the case.

6 Q Were those reports of Mr. Franklin in writing or verbal?

7 A Both ways.

8 Q Did he make you written reports as to what his men had
9 been doing, or were his written reports confined to his own
10 personal investigations? A You mean written reports what
11 his men had been doing towards looking up men?

12 Q Yes. A I don't know, sometimes written and sometimes
13 verbal, no doubt, that is, he would have a man look it up
14 or two men look it up. If we had a special report then
15 generally Mr. Franklin would report to one of us lawyers.

16 Q What I am getting at is this, Mr. Parrow: Mr. Franklin
17 made you two kinds of reports, one report signed by the
18 man he employed, and other reports signed by himself, as
19 to what he himself had been doing. A The only reports
20 that I received of the first character were the ones that
21 were tabulated in a book, and those purported^{to}/be signed by
22 certain men who had made that investigation.

23 Q Men who were employed by Franklin? A Men employed by
24 him. After that if any of us wanted a special report he
25 would either make them verbal or in writing, and then on
26 some occasions got other people to make us special reports,

1 numbers of those cases because I can call your attention
2 to it.

3 Q Frequently Mr. Franklin in his investigations of jurors
4 would interview the members of the family of the juror, is
5 that correct?

6 MR. APPEL. Wait a moment--we object upon the ground it is
7 calling for hearsay.

8 MR. FORD. I withdraw it. That is correct. Q Frequently
9 Mr. Franklin made reports to you that he had visited
10 some relative of the prospective juror, is that correct?

11 A A number of reports showed that.

12 Q Do you recall whether or not he ever made any report
13 he had visited Mrs. Bain the wife of juror Bain?

14 A The report in the book shows that the interviewer, who-
15 ever it was, visited Mrs. Bain.

16 Q You are referring to the report of August 18th?

17 A Yes, the Eckland report.

18 Q But you had other reports? A I don't recall, Mr. Ford.

19 Q This report that is in the book is not the original
20 report? A No.

21 Q It is merely memorandum made up from the original report?

22 A It is a copy of the original report, as I understand.
23 It was made in Mr. Franklin's office and made so each one
24 of us would have one.

25 Q When was this book made up that has been exhibited in
26 court? A It was made up--it grew, that is, certain number

1 number of investigations would be made and kept on these
2 sheets and was in a book, and then as others were made and
3 kept they would add to it.
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1 Q Have you the reports of what Mr Franklin was doing on
2 October the 4th? A I have no reports of what he was doing
3 any day, other than is contained in the book.

4 Q Have you any reports in that book of what he was doing
5 on October 4th?

6 MR APPEL: Wait a moment. We object to that --

7 A I don't know --

8 MR APPEL: Wait a moment. We object to that as not cross-
9 examination; incompetent, irrelevant and immaterial; not
10 the best evidence; not cross-examination.

11 THE COURT: Objection sustained.

12 MR FORD: The witness has testified, your Honor, as to
13 transactions between himself and Mr Franklin on that day.

14 MR APPEL: Because the witness is generous enough to allow
15 you to interrogate him improperly is no reason why we
16 should allow it.

17 THE COURT: The objection is sustained.

18 MR FORD: " Did Mr Franklin make any report to you that he
19 had visited Mrs Bain on Friday, October 6th, 1911? A Did
20 he make a report on Friday, October 6th? No, not that I
21 recall.

22 Q No. Did he make a report to you as to what he did
23 do that day at all? A Nothing that I can recall.

24 Q Have you it in that book? A I have no report in the
25 book, except what you saw.

26 Q I only saw the one to which my attention had been

1 directed. A There is no other report regarding Mr Bain
2 in the book.

3 Q Have you a report of what Franklin did on that day?

4 A I know one thing he did, but I have not examined the
5 book to find out what else he might or might not have
6 done, and probably could not tell if I did.

7 Q That is one thing that appears in the book of reports?

8 A No, one thing that appears by my check of October 4th.

9 Q That he went to a bank and deposited the check? A No,
10 I have no such memorandum as that at all. I know he got
11 the check.

12 MR APPEL: On the 4th, you mean? A Yes, the 4th, that is
13 what he is referring to.

14 MR FORD: Have you any report of a visit made by Frank-
15 lin on Mrs Bain on October 6th anywhere? A I have answer-
16 ed that, Mr Ford, didn't I?

17 MR ROGERS: Answer it again. A I will answer it again.
18 No.

19 Q Now, did you receive any report from him on October
20 6th, verbal or otherwise, concerning Mrs Bain? A Noth-
21 ing that I know about.

22 THE COURT: The court will take the afternoon recess at
23 this time. MR Rogers?

24 MR ROGERS: I have deliberated over the matter, sir, con-
25 sidered the record, and the record speaks for itself. Per-
26 sonally, of course, I did not charge Mr Ford with being a

1 coward. I say his acts in trying to prevent me from stat-
2 ing my side of the matter, which he had intentionally
3 brought to your Honor's attention, in that fact, I reiter-
4 ate it; that act was not brave; if one man speaks on one
5 side he should permit a statement on the other side also.

6 THE COURT: Mr Rogers, he had no power to prevent your
7 speaking, and did not do it.

8 MR FREDERICKS: I think we can consider that on our side,
9 a withdrawal of the word "coward".

10 MR ROGERS: I did not apply it personally to Mr Ford.
11 Mr Ford and I are personally good friends. I referred to
12 his acts.

13 THE COURT: There are some of these so-called short and
14 ugly words that have no place in a court room, and that
15 is one of them. I feel, gentlemen, that it is a very
16 serious menace to the process and proper conduct of a
17 trial to apply these words, no consequence what counsel
18 on one side or the other may think, it is of no conse-
19 quence, going further, what the fact may be; lawyers are
20 not on trial here in their conduct, and we cannot stop
21 every few minutes to try a lawyer on either side and de-
22 termine whether or not he is guilty of some such charge.
23 I expect the gentlemen on both sides to strictly live up
24 to the avowal made here in court a few days ago, upon
25 their honor as gentlemen, to refrain absolutely from per-
26 sonalities. The statement was made, and an acceptance

1 by the prosecution, the statement by Mr Rogers is a withdrawal
2 and I deem the remark and the incident closed, but I feel
3 it proper to avail myself of this opportunity to call
4 the attention of counsel to that positive assurance.

5 MR ROGERS: In view of the way your Honor puts it -- I
6 never have been unmannerly in a court room in any court,
7 or ever had a disposition to interfere with judicial pro-
8 ceedings, and I certainly have too high a regard for your
9 Honor to interfere with your Honor's personal good will
10 and the control your Honor may personally have over this
11 court room, and if your Honor feels that it is not a mat-
12 ter for the other side, but a matter of consideration
13 for your Honor, if I have offended your Honor's kindness
14 and disposition, I apologize to you, sir.

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1 I am not disposed to think myself, which I certainly have
2 a right to maintain, I had not a right to characterize the
3 conduct, not Mr Ford himself, as I say -- we are too good
4 friends, and have been since we were boys, I know he is
5 not a coward -- I saw fit to say his action in that behalf
6 was cowardly, and I have not seen any reason to see yet
7 that it was brave -- but I apologize to your Honor for
8 interfering with your Honor's court-room, if that is the
9 view your Honor takes of it, and I take pleasure in apolog-
10 izing to you.

11 THE COURT: It is not a personal matter at all, but the
12 less we have of these suggestions or personalities, the
13 better we will get along, and the more quickly we will
14 get this case to the jury. Bear in mind your former
15 admonition, gentlemen of the jury, and we will retire for a
16 recess of 10 minutes at this time.

17 (After recess.)

18 MR FORD: Have you that book of reports?

19 MR ROGERS: We cannot take these pages out, if your Honor
20 pleases, and we will just simply ask Mr Ford not to --

21 MR FORD: I ask the same privilege be granted to me that
22 was granted to them.

23 THE COURT: You had a loose-leaf book, in which those
24 things can be done, but it is a different physical condi-
25 tion; it is a very easy matter to have a copy of it.

26 MR FORD: I am just as much entitled to the whole of that

1 book as they were to the telegrams; however, if the court
2 holds I shall not look at any page but that, I shall not
3 attempt to, but incross-examination of this witness I am
4 entitled to the same courtesy --

5 THE COURT: It is not a matter of courtesy; it is a mat-
6 ter of right.

7 MR FORD: It is a matter of right, then.

8 MR ROGERS: We are perfectly willing that Mr Ford shall
9 have what we talked to the witness about, anything con-
10 nected with that, I do not think we are compelled to
11 show him this whole book, and let him go prewling around
12 through it and see all these reports.

13 MR FORD: Well, that case is ended. Are there any reports
14 from Mr Fowler in that book? A There are not.

15 I will let the court examine it and if he finds one give
16 it to you.

17 MR FORD: Let me look at that page then, that is, if
18 the court rules that is all I can look at.

19 THE COURT: I have not ruled that at all. Let us cross
20 one bridge while we are at it and take that one up and
21 if another application comes up we will determine it then.
22 At the present time there is only one question before
23 the court, and that is acceded to, but you cannot tear
24 it out because it destroys the book.

25 MR ROGERS: Oh, --

26 MR FORD: I will not look at any others. The report from

1 Mr Eckland, that is a copy of the original report that
2 was handed to you by Mr Franklin, is it, Mr Darrow?

3 MR APPEL: No, your Honor. The witness has not stated that.

4 MR FORD: I am asking is that true.

5 MR APPEL: No. He said Mr Franklin furnished three or
6 four copies, one for each lawyer. Now, that is a copy
7 furnished him -- A Just a minute.

8 MR FORD: This is not a copy of any report furnished
9 somebody else. A That is Mr Davis' book; it is not
10 mine, but mine is like it, so it is a copy of a report of
11 some original, I assume.

12 Q This is a copy of a report that was handed to Mr
13 Davis and you had one just like it? A A duplicate, yes.

14 Q And where is the original that was handed to you?

15 A The original was not handed to me.

16 Q Where is the book that was handed to you? A I don't
17 know where that is; it is just the same as this, however.

18 MR FORD: I will read this into the record, if there is no
19 objection, so that we can refer to it. (Reading:)

20 "Robert T. Bain --" I suppose that should be "F" Bain?

21 THE WITNESS; I presume so. I am willing to correct it.

22 MR FORD: (Continuing reading:) "Age 69; residence, Los
23 Angeles; American; carpenter; veteran G.A.R.; protestant;
24 republican; owns home; Examiner; Equitable Savings Bank.
25 wife has no decided opinion; on his way East to New York to
26 attend encampment; does not belong to any union; will be

1 absent about one month. (Wife)(August 18, 1911.) (Eck-
2 lund)."

3 Q I call your attention to the word "wife" occurring in
4 parenthesis. That indicated to you that the investi-
5 gator had got his information from the wife, did it not?

6 A That is what it indicated. It might or might not make
7 it very good.

8 Q I beg your pardon? A Which might or might not
9 make it very good information, but that is what it indi-
10 cates.

11 Q So you gathered from that that Mr Ecklund had visited
12 the wife of Mr Bain on August 18th, 1911? A If that is
13 the date.

14 Q Yes, that is the date. A No, I don't need to look
15 at it. Yes.

16 MR APPEL: The date of the report?

17 MR FORD: Yes, the date of the report is August 18th, 1911.

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1p 1 MR. ROGERS. I don't know whether that is the date of the
2 report or the date of the visit, it might be the date of the
3 visit--August 22nd, August 23rd, August 21--

4 MR. FREDERICKS. How do these come, by alphabet?

5 MR. ROGERS. No, they do not run alphabetically.

6 MR. FREDERICKS. What is there on the book, if anything, to
7 indicate the date the report was made? A Why, the only
8 thing to indicate is, I think the leaves were put on at the
9 back, and that is near the front.

10 Q On where? A I think the leaves are put on--excuse me--
11 I think they started that the first and added to, here,
12 all these are later in the book and those are earlier and
13 I think that indicates it was very early (indicating on
14 book.)

15 Q Now, Mr. Darrow, is that the only report you ever got
16 through Franklin or any of his investigators concerning
17 Robert F. Bain? A You mean in writing?

18 Q Yes. A As far as I know.

19 Q Do you know whether there are any other reports on Mr.
20 Bain in that book? A Why, I practically know there are
21 none; I have never been through that book for that pur-
22 pose, but I am sure there are no others, Mr. Ford. We have
23 an index for that and the index refers to this page.

24 Q Where is that index?

25 MR. GEISLER. It is down at the office.

26 THE WITNESS. I can bring that up in the morning.

1 MR. FORD. Q Now, you stated you received no report, as
2 far as you recollect, from Mr. Franklin on the 6th of October
3 concerning any visit to Mrs. Bain on that date?

4 A I recall none.

5 Q Did you ever receive any report on any date that he had
6 visited Mrs. Bain on October 6th, 1911? A No.

7 Q After examining Mr. Bain in court you were satisfied that
8 the answers agreed with the previous information which you
9 had upon the subject and that he was a juror satisfactory
10 to you? A Well, the answers never agreed exactly with
11 the previous information, but substantially, in this case,
12 but I was satisfied that he was very much better than the
13 ordinary run for me; it was very hard to get an un-
14 prejudiced juror in that case, there had been so much talk
15 about it, so much feeling over it.

16 Q All in all you were satisfied, then, that he would have
17 been a satisfactory juror? A I was--I wont say I was
18 satisfied, I thought so.

19 Q You still think so?

20 MR. ROGERS. What is that?

21 (Question read.)

22 MR. APPEL. It makes no difference what he thinks now.

23 THE COURT. Objection sustained.

24 A I don't know what I think about it.

25 MR. FORD. Q Coming down to the--may I have that check,
26 Mr. Smith, the Franklin check-- A The one we introduced

1 you mean?

2 MR. FORD. Yes.

3 THE CLERK. Is that the last one introduced?

4 MR. FREDERICKS. Yes, the last check.

5 THE CLERK. It is in the clerk's office.

6 MR. GEISLER. We asked that it be kept in a safe place.

7 THE COURT. Yes, there were several exhibits taken down
8 to the clerk's office.

9 MR. FORD. I hope this clerk is a safe place.

10 THE COURT. Well, a safer place.

11 THE CLERK. Shall I get it?

12 THE COURT. Yes, go and get it.

13 MR. FORD. Q When Mr. Franklin had gone over the list of
14 jurors with you, the original list, before any venires
15 were drawn, he told you he was acquainted with George
16 N. Lockwood, did he not? A I do not recall it; he might
17 have.

18 MR. FORD. Did you find any reports in there, Mr. Rogers?

19 MR. ROGERS. Suppose I do. I want to see the materiality
20 of them.

21 MR. FORD. I would ask permission of counsel to examine any
22 report they find on Mr. Lockwood there.

23 MR. ROGERS. What for? How does it become cross-examina-
24 tion? Mr. Lockwood was never in the box.

25 MR. FORD. Well, he has testified, however--

26 MR. ROGERS. He testified he never spoke a word to Mr.

1 Darrow in his life or Mr. Darrow to him.

2 MR. FORD. But the witness on the stand has testified con-
3 cerning his relations with Mr. Franklin and Mr. Lockwood.

4 MR. APPEL. But, he says that Mr. Franklin never talked with
5 him about Mr. Lockwood.

6 A I said I could not recall that he had, that he might
7 have.

8 MR. FORD. Q You do not recall that you ever had any
9 reports on Mr. Lockwood? A I recall that there is a
10 report in this book.

11 Q On Mr. Lockwood? A Yes.

12 MR. FORD. May I see that report?

13 MR. APPEL. No, it is not a report from Mr. Franklin.

14 MR. ROGERS. It is not a report from Mr. Franklin at all.

15 MR. APPEL. The only cross-examination on this witness
16 would be in reference to what conversations he had, either
17 written or verbal from Mr. Franklin concerning Juror Lock-
18 wood, that would be cross-examination; if he had 100,000
19 letters or reports from 100,000 different individuals
20 given to him concerning Juror Lockwood it would not be cross-
21 examination and, furthermore, there is not any power in
22 the court or any one else to compel a defendant to furnish
23 any evidence.

24 THE COURT. This application is not made to the court.

25 Mr. Ford is addressing counsel.

26 MR. ROGERS. Was it a personal request?

1 MR. FORD. That is it.

2 THE WITNESS. If you do not object I do not object.

3 MR. ROGERS. A personal request. Very well, I am per-
4 fectly delighted to accommodate you.

5 MR. FORD. Q You do not recall having ever read a report
6 about Mr. Lockwood? A I recall having read a report about Mr
7 Lockwood, certainly.

8 Q Do you recall having discussed the report of Mr. Lockwood
9 with Mr. Franklin? A Now, wait a minute, Mr. Ford. Do
10 you mean, do I recall --you said, do I recall ever having
11 read a report. I do.

1 Q Yes. A I don't know whether you think I mean I recall
2 having read one before it was drawn out of the box, or
3 ever, as you said -- I just don't want to be misunderstood,
4 and I do not suppose you want me to be.

5 Q Do you recall discussing on that general list, before
6 the first venire was drawn, the subject with Mr Franklin,
7 the names of some of the persons with whom he was personally
8 acquainted? A I do.

9 Q Do you not recall having discussed the name of George
10 N. Lockwood? A I do not.

11 Q Before September 30, 1911, with Mr Franklin? A I
12 do not. I might have, but I do not recall it. I can tell
13 you the reason why one was true and the other not, if you
14 wish.

15 MR APPEL: Explain it, Mr Darrow.

16 MR ROGERS: Go ahead and explain your answer.

17 THE COURT: Go ahead. A Mr Bain was passed by both
18 sides up to peremptories, and we invariably got all the
19 information we possibly could, before we ever left a man
20 in the box. Mr Lockwood was never called in.

21 Q I am talking about Lockwood.

22 MR APPEL: I know, and he says he can explain the difference
23 in his mind; the statement concerning one --

24 MR FREDERICKS: If the witness understands we are talking
25 about Lockwood. A No, Mr Fredericks, he says, "You do
26 recall discussing other names, but you do not recall Lock-

1 wood"; evidently drawing the inference of why one and not
2 the other.

3 MR FORD: No. I asked you if you do not recall having
4 discussed with Mr Franklin the names of various persons
5 with whom Mr Franklin was acquainted, before any venire
6 was called, and you said you did -- I did not ask --

7 MR ROGERS: Let us see if he did.

8 A If you asked that question, I answered it wrongly. I
9 do not recall any particular name I discussed with him
10 before any venire was drawn.

11 Q I was not asking you that question. Do you recall the
12 fact, whether you recall the names or not, that you did
13 discuss with Mr Franklin the names of persons with whom he
14 was personally acquainted and wonder whether or not they
15 would be called into the box soon, or things of that sort?

16 A Leave off the last and I will answer it yes.

17 Q I will leave off the last, then? A All right.
18 I don't remember what I wondered.

19 Q Answer the rest of the question. A I will answer
20 the rest of it yes.

21 Q Did he ever at any time or place tell you that George
22 N. Lockwood was a former associate of Mr Franklin's in
23 the sheriff's office? A I don't remember it, but it is
24 very likely he did.

25 Q Did it ever happen, Mr Darrow, that a report came in
26 concerning some personal friend of Mr Franklin's, some re-

1 port made by one of Franklin's employes, which Mr Franklin
2 disagreed with?

3 MR APPEL: Wait a moment. We object to that because that
4 is a conjecture, your Honor, and it is speculative, and
5 fishing, and it is indefinite; it does not tend to illus-
6 trate any point one way or the other, out of 1600 names,
7 and it is not cross-examination. If they want to know
8 anything concerning the jurors in question, let them come
9 right up to the point, get hold of it, and stay with it,
10 and not go fishing around here, meandering around the
11 outskirts of the question.

12 THE COURT: Read the question.

13 (Question read.)

14 A I do not recall it.

15 THE COURT: I think it is speculative. The objection is
16 sustained on that ground.

17 MR FORD:" Do you know Mr Holmstrup? A I do not.

18 Q Do you know who he was? A I recognize the name as
19 being one that was on reports.

20 Q Employed by whom? A Mr Franklin.

21 Q I will ask you to look at this report. A On Lock-
22 wood?

23 Q Yes. And state whether or not you ever read that
24 report at any time? A I can state that without looking at
25 it.

26 Q Yes. A That I have.

1 Q When and where? A I have read it since this case begun.

2 Q Did you ever, before this case began, read that report?

3 A That I don't know. There were 1600 odd in here, and I
4 couldn't possibly remember.

5 Q You have no recollection of ever having read that report
6 or having discussed the name of Lockwood with Mr Franklin,
7 prior to the 28th day of November, 1911? A I don't
8 remember; it is possible that I did, however.

9 Q Did you, on November 28th, 1911, ask Mr Franklin who
10 Mr Lockwood was? A Ask him who he was?

11 MR APPEL: November 28th, he says. A No.

12 MR FORD: Read the last question and answer.

13 (Question and answer read.)

14 A You mean, referring to the name, ask him who he was?

15 Q Yes. A No.

16 Q At the time he was arrested, or after he was ar-
17 rested, you learned that a man named Lockwood and a man
18 named White were implicated in the transaction that occur-
19 red on November 28th? A I did.

20 Q And you never asked Mr Franklin who George N. Lock-
21 wood was, or who C. E. White was?

22 MR APPEL: We object to that on the ground it is not
23 cross-examination; it is incompetent, irrelevant and imma-
24 terial, and upon the further ground that the acts and decla-
25 ration of the defendant after the alleged commission of the
26 offense are never evidence, either one way or the other.

1 THE COURT: Objection overruled.

2 MR APPEL: We take an exception. Any question about the
3 law, your Honor?
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1 THE COURT. No, I think not. I think it is one of those
2 matters opened up on direct examination on the question of
3 motive.

4 MR. APPEL. We never asked him what conversations he had
5 with Mr. Franklin concerning Lockwood.

6 THE COURT. On the same theory--

7 MR. APPEL. It is after the arrest of Franklin.

8 THE COURT. Yes, I know.

9 MR. APPEL. It is not cross-examination, your Honor, there-
10 fore, upon that ground. We asked him concerning whether
11 he had any transactions with him on November 28th and
12 he denied seriatim, word by word, the testimony given here
13 by Mr. Franklin concerning the transaction. Now, that we
14 failed to ask him concerning Lockwood after Franklin's
15 arrest, or whether he asked him anything concerning that
16 is not evidence or cross-examination and would not be
17 evidence, that he failed to ask him, and would not be
18 evidence that he did ask him. You cannot prejudge a
19 man by what he does, as to whether or not he was guilty of
20 any crime yesterday by his acts after the alleged commission
21 of the offense, which they have fixed as the 28th day of
22 November, 1911, about the hour of 9 o'clock on that day.
23 Now, any statement made by him, any statement made by
24 him showing he had previous knowledge or any omission on his
25 part to make any statement can never be given in evidence.
26 If there is any question--

1 THE WITNESS. I would rather answer, if you do not mind.

2 MR. APPEL. I understand, but it is a question of right
3 and justice.

4 THE COURT. Let me give you my point of view of the
5 matter and then if you want to be heard I will hear you.
6 I am admitting this as part of the cross-examination upon
7 the theory it is properly directed to the examination in
8 chief as to the state of mind and lack of motive.

9 MR. APPEL. State of mind when, your Honor?

10 THE COURT. State of mind at the time, on the 28th day of
11 November.

12 MR. APPEL. That he failed to say anything, for instance, if
13 he had been asked a question, "Didn't you discuss it imme-
14 diately after the arrest of Mr. Franklin, didn't you discuss
15 it with him? " And the witness says, "No, I did not."
16 They can call his attention to any declaration made by this
17 witness, but his failure to have any conversation, his
18 failure to ask questions himself, can never be given in
19 evidence; the mere acquiescence of a defendant to a situa-
20 tion without making any declarations or acts himself can
21 never be given in evidence against him, not even if you
22 talk to a defendant, if you say to the defendant things
23 after things and he does not act with reference to it, he
24 does not say anything with reference to it, his conduct in
25 that respect can never be given in evidence in chief, and
26 if it could not be given in evidence in chief, how much less

1 on cross-examination? The subject was not touched upon.

2 THE COURT. I realize the force of your argument, Mr. Appel,
3 but this question of the state of mind showing lack of
4 motive--

5 MR. APPEL. State of mind after the arrest of Mr. Franklin?

6 THE COURT. State of mind with reference to all the acts and
7 declarations in and about that time.

8 MR. APPEL. The situation?

9 THE COURT. The situation, the facts.

10 MR. APPEL. The fact that a man does not say anything, does
11 that show his state of mind?

12 MR. FREDERICKS. Where he should say something.

13 MR. APPEL. What right have they to say that he should
14 say something? That is the very point, your Honor, that
15 there is not any power on earth that has ever made evidence.
16 I venture to say, your Honor, that the Supreme Court of this
17 state has said often where you have said to a witness,
18 "Now, here, Mr. Franklin has been arrested, what are you
19 going to do about it?" And he makes a denial of his com-
20 plicity in it, that that declaration made by the witness
21 could not be admitted in evidence.

22 THE COURT. Let me have this question.

23 MR. APPEL. That you cannot come down here and get up
24 before the jury little suspicious circumstances--

25 THE COURT. Let me have the question.

26 (Question read.)

1 MR. ROGERS. That is indefinite as to time.

2 MR. FORD. At any time.

3 THE WITNESS. Well, let me answer it.

4 MR. APPEL. We want a ruling. If you want to try the case--

5 THE COURT. Let us get a ruling on it. Objection overruled.

6 MR. APPEL. Exception.

7 A Now, what is the question? I wont bother you again,
8 gentlemen. I ought not to do it, I know.

9 (Last question read.)

10 A That question does not follow from the one before.

11 MR. FORD' I did not make any claim it did.

12 A Yes, you say in the question before, "You never asked
13 him".

14 Q I have asked you that question and the court has ruled
15 it is admissible. A I talked with him at least as to
16 who he was and I think I talked with him on the afternoon
17 of the 28th. When you asked the question before, when I
18 talked to him on the 28th, I assumed you meant in the morn-
19 ing, because Franklin said he talked with him--

20 Q. Where did you talk with Franklin on the afternoon of the
21 28th about Mr. Lockwood? A Something was said about him
22 at that time, we had our meeting.

23 Q Where? A At the place we had it, I think it was Mr.
24 Franklin's office.

25 Q What was said?

26 MR. APPEL. He has answered that already this morning.

A You meen in reference to LockwOod--

1 MR. APPEL. He said--

2 THE COURT. I think that has been answered.

3 MR. FORD. No, Lockwood's name was not mentioned.

4 MR. APPEL. Yes, he said he was bringing that man over there
5 to deliver him to some officer.

6 A I certainly said that, Mr. Ford.

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1 MR APPEL: He has been examined fully on that point.

2 MR FORD: Let me ask the witness one question.

3 Q Did you, in telling it had occurred at Mr Franklin's
4 office this morning, or wherever the meeting was, in relat-
5 ing the conversation, did you say anything that was said by
6 Mr Franklin about Lockwood? A I think I said that he said
7 he was taking him over to the corner to deliver him up,
8 and --

9 Q And -- A And at that time, I knew who he was.

10 Q At that time, you knew who he was? A Yes.

11 Q From whom did you get the information? A Knew it
12 from the newspapers, and from general gossip and from
13 everybody you would meet during the day.

14 Q Did you ask Mr Franklin at that conversation who
15 Lockwood was? A I do not recall, but I undoubtedly said
16 something to him about who he was, and Franklin replied
17 what he was and how long he had known him.

18 Q Did Franklin at that time tell you he had been to see
19 Lockwood? A No -- you mean been to see him previously
20 to that?

21 Q Yes. A No.

22 Q Did he ever at any time or place tell you he had been
23 to see Lockwood?

24 MR APPEL: Now, if the question relates to Mr Franklin
25 telling Mr Darrow after his arrest, after the alleged com-
26 mission of the offense, we object to that as absolutely

1 immaterial, and it would not be evidence, even on direct
2 examination; declarations made to a defendant by a third
3 party as to what he did before would be a recital simply
4 of past events by alleged coconspirators, and they are
5 never given in evidence, mere recitals even from one co-
6 conspirator to another, are not evidence of what he had
7 previously done; the declarations of a co-conspirator
8 when in pursuit of the object of the co-conspiracy, may
9 be given in evidence against his con-conspirators, but mere
10 recitals and historical facts of things that had trans-
11 pired, would not be given in evidence, cannot be given
12 in evidence, and that is a positive and absolute rule of
13 law; and if it is a question relative to whether or not
14 Franklin said anything to him as to who Lockwood was be-
15 fore the commission of the offense, the objection, of
16 course, would not be tenable, but the question being one
17 that does not give the time or place, and it assumes to
18 cover all time -- and I object on the ground it calls
19 for declarations made by Mr Franklin as to past offenses,
20 either to the witness or to anyone else concerning his
21 alleged relations to Mr Lockwood, and would not be evi-
22 dence.

23 MR FREDERICKS: It is not put in under the rule of the tes-
24 timony of an accomplice, but the declarations of a defend-
25 ant in regard to a crime he is charged with, which are ad-
26 missible at all times.

1 MR APPEL: Not what Franklin said to him.

2 MR FREDERICKS: Whether they are after the crime or be-
3 fore the crime, the declarations of a defendant in regard
4 to the crime are admissible always, and conversations he
5 has had in regard to a crime are always admissible.

6 MR FORD: The witness has testified to his relations with
7 Franklin up to the 14th of January, long after the com-
8 mission of the offense.

9 MR APPEL: That has nothing to do with that.

10 THE COURT: That question changes your argument, then,
11 Captain Fredericks, whether admissions of a defendant are
12 admissible -- if you are asking this on that theory, the
13 question does not ask for declarations of defendant, but
14 of Mr Franklin.

15 MRFREDERICKS: All conversations with the defendant, elim-
16 inating the idea of conspiracy, the theory upon which you
17 can give the conversations between a defendant and someone
18 else, and in so doing give what that someone else said.

19 THE COURT: But this question does not ask for a conver-
20 sation.

21 MR FREDERICKS: I think it does.

22 THE COURT: It asks for what Mr Franklin says.

23 MR FREDERICKS: Yes, and that is permissible as showing
24 the reply which the defendant made thereto, if he made any.
25 If it is made after the commission of the offense.

26 THE COURT: If you want the conversation, I think you ought

1 to ask for it.

2 MR FREDERICKS: I assume it is intended to get conversa-
3 tions.

4 MR FORD: If the court please, this witness has testified
5 on direct examination as to his relations with Franklin,
6 covering a period long after the commission of a crime,
7 and he has testified that Franklin said certain things
8 about the commission of that offense, for instance, that
9 Franklin said that he was trying to trap George N. Lock-
10 wood. Now, when he has told one conversation, we are entitled
11 not only to the whole of that conversation but to every
12 other conversation he ever had with that man upon that sub-
13 ject, George N. Lockwood. That is the law, and I am ask-
14 ing purely, as a matter of cross-examination, regardless
15 of what theory it was put in upon direct examination.
16 I am asking it simply because it was a subject matter
17 that was gone into on direct examination, namely, his
18 relations with and conversations with Franklin, conversa-
19 tions and relations on the part of this witness who was on
20 the stand.

21 MR APPEL: No, your Honor.

22 THE COURT: If you want the conversation you better ask
23 for it, and you will get a ruling on it, but the question
24 in this form, the objection to it is sustained.

25 MR FORD: Did you ever, at any time of place, between the 28th
26 day of November, 1911, and the 14th day of January, 1912,

1 or on the 14th day of January, 1912, have any conversation
2 with Bert H. Franklin other than the conversation you have
3 related that you had in Franklin's office on the 28th day
4 of November, 1911?

5 MR APPEL: Wait a moment.

6 Q About and concerning George N. Lockwood?

7 MR APPEL: We object to that on the ground it is not
8 cross-examination, that it is incompetent, irrelevant
9 and immaterial, that it is seeking to introduce conversa-
10 tions between Mr Franklin and the defendant other than those
11 upon which he was examined in chief in his own defense;
12 your Honor will remember that we went over the testimony
13 of Mr Darrow prior to the 28th day of November --

14 THE COURT: I remember the conversation he had gone into
15 after his arrest, which was in regard to the bond mat-
16 ter, and the fine.

17 MR APPEL: Yes, we simply answered the testimony of Mr
18 Franklin in that respect. Mr Rogers went seriatim over
19 one conversation after another.

20 THE COURT: That brings us down to the question of whether
21 or not Mr Ford is right about his contention that he is
22 entitled to any conversations upon that subject matter.

23 MR FORD: If the court please, the witness has testified
24 that he never gave this money to Franklin, that he never
25 gave him any money to bribe Lockwood; he has testified now
26 he never read any reports upon Lockwood and to some slight

1 extent has testified to what conversations he did have
2 about Lockwood; those conversations did not go into the
3 subject matter fully, the subject matter, his conversations
4 with Franklin about Lockwood. Now, I want to go fully
5 into that subject matter, and to know whether the conver-
6 sations here related as occurring between himself and Frank-
7 lin were all that ever occurred upon that subject matter,
8 George N. Lockwood.

9 THE WITNESS: Mr Ford, you are mistaken in one statement
10 there.

11 THE COURT: The only conversation --

12 MR FORD: What is that?

13 THE WITNESS: Pardon me, you are mistaken in one statement.

14 MR FORD: Correct me, if I am.

15 THE WITNESS: I did not say I did not ever read any report
16 on Lockwood at that time; I said I did not recall it, but
17 I very likely had.

18 THE COURT: You are asking now for conversations after
19 Franklin's arrest?

20 MR FORD: Yes, your Honor.

21 THE COURT: The only conversations if my memory serves me
22 right, the only conversations upon which this witness was
23 interrogated in his examination in chief occurring after
24 Franklin's arrest, were in regard to the bond matter, and
25 the money to pay the fine and to rehabilitate himself,
26 under some other circumstances.

1 MR FREDERICKS: Those are Franklin's conversations.

2 THE COURT: Conversations between this defendant and Frank-
3 lin.

4 MR FORD: This witness has, on his direct examination, made
5 an omnibus denial of every conversation that Franklin ever
6 testified to; that Harrington ever testified to, and sev-
7 eral other persons, made a general omnibus denial of all
8 those things. It has been held in this court --

9 THE COURT: Perhaps you are right --

10 MR FORD: -- If a defendant takes the stand and testifies
11 about this subject, simply saying, "I am not guilty of
12 such a charge", and should stop his direct examination
13 right there, that would open up the whole field on cross-
14 examination. This witness here has denied paying money to
15 Franklin for Lockwood, has denied having any such rela-
16 tions with Franklin at all; has denied ever learning anything
17 from Franklin about Lockwood, except this one thing, that
18 Franklin claimed he was trying to catch Lockwood because
19 Lockwood had solicited a bribe from him, Franklin. That
20 opens up the whole field for every conversation that this
21 witness ever had with Franklin about Lockwood for the
22 purpose of, of course, on our side, showing, if we can,
23 and if such be the fact, as we claim it is the fact, that
24 this witness has not correctly related the circumstances
25 as they occurred; that, as a matter of fact, he did give
26 Franklin the money and that the reason he never asked

1 Mr Franklin who Lockwood was, was because he knew from pre-
2 vious declarations of Franklin, and that the reason he
3 never asked Franklin where he got the money was because
4 he knew he himself had given the money to Franklin and had
5 given it to him for that purpose.

6 THE COURT: Well, do not argue the facts. The question
7 is a proposition of law under which this tender is made.
8 I will hear you, Mr Appel, on it.

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19s 1 MR. APPEL. Well, suppose, your Honor, the best way to do
2 is to read an authority.

3 MR. ROGERS. Pardon me, Mr. Appel. Let me have that question
4 (Question read by the reporter.)

5 THE COURT' No, that question, the objection was sustained.
6 It was the long question following that.

7 (Last question read by the reporter.)

8 MR. APPEL. Now, the only object in asking him that is to
9 show him whether or not if he said he had conversation with
10 him to show whether or not in those conversations he asked
11 Franklin who Lockwood was. Now, your Honor, the witness
12 has already testified that on the 28th, that Mr. Franklin
13 stated to him that this man Lockwood there stated to him
14 there on that day or a day or two after, as it appears in
15 evidence here, that Franklin not only had said he was in
16 the act then of turning Lockwood over to ^{the} officer down there
17 at the corner, but they had discussed the fact that Mr.
18 Franklin said, in the presence of Mr. Davis, and in the
19 presence of Mr. Darrow, that Lockwood had come over to his
20 office and that he had come down there prior to that time
21 to solicit a bribe, and he discussed the fact with his wife
22 present, and neither his son or his daughter was present at
23 the time that occurred. Now, to ask this witness after-
24 wards, whether after that conversation, he says, Who is
25 this man Lockwood, or ask him anything about it, would be
26 perfectly superfluous. There was, as the witness stated,

1 that he had information who Lockwood was, that it was a
2 matter of general discussion down here in the court room
3 immediately after arrest of Franklin; that it was a
4 matter that had been discussed here publicly; there
5 were rumors there that he claimed to be a juror. The
6 evidence is here that immediately after the arrest, at the
7 time of the arrest ~~that~~ he was present, ~~that~~ that Mr. Browne
8 said to him, "This man is under arrest; I am going to
9 arrest him." The evidence is already here that Mr. Darrow
10 heard in the court room within half an hour or so after
11 the arrest that Mr. Browne had said to him, "I have arrested
12 this man for jury bribing." That he came here in the court
13 room and it was a matter of general discussion, and to say
14 that under those circumstances that ^{if} Mr. Darrow after that
15 didn't say to Franklin, "Who is this man Lockwood,"
16 and to argue from that, having all that information in his
17 mind, because he didn't say that, and that is the idea
18 of getting this question now, is to circumvent the ruling
19 of the court a little while ago, your Honor sustained the
20 objection, as I understood it, or having it under considera-
21 tion, if you please, why didn't you ask him? That is the
22 argument, and counsel has made here this reason why they
23 want to ask him because he didn't say to him after knowing
24 who Lockwood was and after having seen Franklin state,
25 "I was going to turn Lockwood up," and then supplement
26 that explanation, that Franklin had come down to his office

1 to solicit a bribe, would it be any evidence against the
2 defendant, because he didn't question a man and ask him
3 who was Lockwood? Your Honor can see there is absolutely
4 nothing in it, but I do say, as a matter of right, they have
5 no right to cross-examine this witness concerning any con-
6 versations to which he testified. Mr. Franklin went on and
7 stated a number of conversations which he said he had between
8 the 28th day of November and the 14th day of January, 1912.
9 He stated seriatim what conversations he had. He said that
10 after the 14th day of January--after that he didn't
11 talk to Mr. Darrow. Mr. Darrow has said that he don't remember
12 having met him or talked to him after that, and we responded
13 to those conversations; we asked him what did Mr. Franklin
14 say in this respect, and what did you say. Did you say so
15 and so? And wherever he saw that Mr. Franklin had made a
16 misstatement he has contradicted him. Wherever he saw
17 Mr. Franklin has made a true statement he has corroborated
18 him. Now, can they go into other conversations? I say it
19 is not cross-examination. Now, upon the other point, suppose
20 Mr. Franklin had said to this man, "I went down there and to
21 bribe Juror Lockwood." This man had already took it. Mr.
22 Franklin has said here upon the stand that he was maintain-
23 ing his innocence all the way through up to the time that
24 he plead guilty. That is the evidence of Mr. Franklin here.
25 Now, to say that Mr. Franklin would say Mr. Darrow at any
26 time between the 14th day of ^{of November, 1911, had} January and the 28th ^{any}

1 discussion concerning his guilt, in order to draw an
2 admission or acquiescence on the part of Mr. Darrow here
3 that he himself was guilty of any complicity in this crime,
4 I say is not cross-examination, and it is not admissible
5 in evidence. Now, Chief Justice Beatty in the case of
6 People against Deshard, (Quoting from authority).

7 Now, there are a number of other cases on that
8 point that after the commission of the offense, your Honor,
9 where ever any one says to the defendant here anything,
10 or conducted himself with reference to the crime that he has
11 committed, that where the defendant is during all that
12 time and to the present time denying his complicity in the
13 crime that any statement made to him as a statement by
14 other persons or by any one who claims to have been a co-
15 conspirator with him in the commission of the offense, is
16 not evidence, it is hearsay. Now, that is affirmative
17 evidence. They undertake to introduce here. It is not
18 cross-examination of any conversations to which Mr. Darrow
19 has admitted. It is true that they don't want Mr. Darrow to say
20 what was said, or what he said in response to anything
21 that was said, but they want to show acts and conduct on the
22 part of Mr. Darrow here, independent of his evidence that he
23 gave here in direct examination, which is a part and parcel of
24 their case in chief. They had a right to say to Mr.
25 Franklin, Did you talk to Mr. Darrow concerning what you and
26 Lockwood did? Yes. Did Mr. Darrow ask you who this man

1 Lockwood was? No. That would have been all right. The
2 inference would have been irresponsible, at least the argu-
3 ment would have been made that it was not necessary for
4 Mr. Darrow to ask him who Lockwood was, because there was a
5 perfect understanding who he was and what the transaction
6 was, but to extract that portion from the defendant I say
7 is making him a witness against himself in the most innocent
8 way, and yet, your Honor, I say it is incompetent, irrele-
9 vant and immaterial and not cross-examination.

10 MR. FORD. On page 6053 of the transcript the witness
11 practically denies everything. He has denied on page 6054:
12 "Q Are there any conversations here that come to your
13 mind now that you recall without my going over them and
14 taking the time to repeat every word or line and have you
15 denied categorically--I wish you would make a general
16 statement about these matters, if you can, if not, I will
17 go over it? A I think it has been all covered." And there
18 was the answer of the witness. People against Deshara
19 has nothing to do with the cross-examination, and the point
20 we make, your Honor, is that Franklin has related various
21 conversations had with this witness after his arrest, up
22 to and including the 14th day of January 1912. This
23 witness has, generally speaking, without taking the trouble
24 to deny each specific conversation, denied that any of
25 those things occurred. Now, I am going in, on cross-
26 examination, to the various conversations he had with Mr.
Franklin after his arrest, up to and including the 14th day of

1 January, which is strictly cross-examination. It matters
2 not what the effect of it is. I don't have to stand here
3 and argue the admissibility or non-admissibility of it.
4 The question here merely is, is it cross-examination. Does
5 it cover the subject matter that was testified to on direct
6 examination by this witness? This whole point, your Honor,
7 I am not offering it specifically for any particular purpose,
8 because I don't have to.

9 MR. ROGERS. If I understand it, your Honor please, this
10 is a question directed to Mr. Parrow asking him if he had
11 any conversation of any kind with Mr. Franklin after arrest,
12 about Mr. Lockwood, other than those he has related, am I
13 about correct in the general purport of it?

14 THE COURT. That is substantially the question as the court
15 understands it.

16 MR. FORD. Substantially, yes.

17 MR. ROGERS. Mr. Appel and I agree that the objection^{to} that,
18 in that form, should be withdrawn. The witness can answer
19 whether he ever did have any conversation after arrest with
20 Mr. Franklin about Mr. Lockwood at all. The question is
21 not clear--this question, of course, don't follow the
22 line of interrogation which was suggested by me, having
23 given this document--we have strayed a long way from that
24 document.

25 THE COURT Then the objection is withdrawn?

26 MR. ROGERS. The objection is withdrawn provided it is

1 understood that it doesn't follow that line of cross-
2 examination, and relates--so that it is thoroughly under-
3 stood, relates to the question and the matter after Mr.
4 Franklin's arrest. Mr. Darrow had any conversation with
5 Franklin about Lockwood other than those related.

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1 THE COURT: That is your question, as it, Mr Ford?

2 MR FORD: The question is before the court, and --
3 if you will just read that question to the court.

4 MR ROGERS: It is not here.

5 MR FORD: Well, to get at it this way, I will put it brief-
6 ly along this line: Did you ever have any conversation
7 with Mr Franklin concerning Mr Lockwood other than those
8 you have related?

9 MR APPEL: That is not the question. Your Honor sustain-
10 ed an objection to that. Your Honor remembers, and then he
11 limited --

12 MR FORD: Between the dates November 28th, 1911, and Jan-
13 uary 14th, 1912. A There were other things he said to
14 me.

15 Q What were the other things he said to you about Lock-
16 wood? A I don't know whether I could tell them all. I
17 could tell some of them.

18 Q About Lockwood? A yes.

19 Q All right. Tell us everything he told you about Lock-
20 wood. A I don't know as I can tell you everything at
21 this time.

22 Q Everything that you recall; that is all we ask for,
23 of course. A He told me Lockwood had been to his office
24 once or twice to solicit a bribe. He told me that he had
25 known him in the sheriff's office, and known him well, and
26 they were friends, and that he was also a friend of the

1 District Attorney -- I am referring to Lockwood now.

2 He said Lockwood was, and that he had been connected with
3 the jail here for -- outside of it, for a number of years.

4 I don't remember how long: Captain of the chain-gang.

5 I don't remember what else he said. He was a friend of
6 Captain White's.

7 Q When did he tell you of this? A Different times soon
8 after.

9 Q How many times did you see him between the 28th day
10 of November, 1911, and the 14th day of January, 1912?

11 A I didn't see him very often.

12 Q Approximately, how often? A Oh, perhaps five or six
13 times:

14 Q Once a week? A I saw him more at first than I did
15 later.

16 Q For the first two weeks you saw him nearly every day,
17 did you not? A I don't think so. I saw him a number of
18 times.

19 Q Take the period from his arrest up until the time of
20 his second preliminary examination upon the Bain charge,
21 how frequently did you see him? A Well, the first week
22 after his arrest, I didn't have much chance to see him,
23 if I had tried, because I was very busy. I probably saw
24 him -- oh, I don't know, six or eight times.

25 Q Did he ever tell you that he had been out to Lockwood's
26 house? A I don't think he ever told me any such thing at

1 any time.

2 Q Neither at the time it occurred or since that time?

3 A He did not.

4 Q Did you ever ask him if he had been out to Lockwood's
5 house? A I asked him frequently about it after the first
6 few days.

7 MR APPEL: You mean after his arrest? A Yes, a few days
8 after his arrest.

9 MR FORD: Did you ever ask him if he had been out to
10 Lockwood's house, is the question.

11 MR APPEL: Object to that. The witness has been asked
12 that question and has answered it.

13 MR FORD: He has not answered it. He has been asked that
14 question, but he has not answered it.

15 THE COURT: Let's have another answer.

16 A I don't recall whether I ever asked him that question
17 or not. I don't recall ever asking it of him.

18 MR FORD: Isn't it a fact you never asked him? A I don't
19 know whether I did or not.

20 Q Did you receive a copy of the transcript of the pre-
21 liminary examination in Judge Young's office? A I did not

22 Q You know the one I refer to? A Yes, because I have
23 seen it since.

24 Q You have seen both since, on the Lockwood and the
25 Bain matter? A I have.

26 Q That was since this trial began? A Yes.

1 Q Since the trial began? A I won't say that.

2 Q Well, within the last couple of months? A During
3 either the trial or the preparation, this one, mine.

4 Q Since your indictment? A Yes.

5 Q You never heard before your indictment that Lockwood
6 claimed Franklin had come out to his house on the 4th of
7 November, 1911, and that he visited there on Sunday night,
8 November 26th? A I didn't say that.

9 Q Well, had you? A Yes.

10 Q Well, when did you first learn that? A Right away.
11 You said first heard and then you said learned; which do
12 you mean? Q Either one. A They are different.

13 Q Well, did you ever hear? A Yes.

14 Q When? A Right away.

15 Q Right away after what? A After his arrest.

16 Q From whom did you hear that? A Newspapers.

17 Q Did you ever ask Franklin at that time if that was true?

18 A I think I did; I am not certain.

19 Q Who was present when you asked him that? A I don't
20 know whether I ever asked him when anybody was present, or
21 I ever asked him at all, but he told me.

22 Q What did he tell you? A He told me about his relation
23 with Lockwood.

24 Q Did he tell you that he had been out to the house?

25 A I don't recall that he ever did. He told me Lockwood
26 had been to his office.

1 Q How do you recall that you asked him?

2 MR ROGERS: He has answered that two or three times that
3 he doesn't remember. That is not fair.

4 MR FORD: You saw in the paper that it was alleged that Frank-
5 lin had been out to Lockwood's house? A Yes.

6 MR APPEL: He has already answered that.

7 MR FORD: He has answered now for the first time.

8 Then, you asked Franklin if that was true.

9 MR APPEL: Wait a moment.

10 MR FORD: Well, did you? A I have answered that a good
11 many times.

12 Q Now, I haven't got an answer to it yes or no.

13 A Well, very well. I will give you another one. I don't
14 recall whether I asked specifically if he had been to Lock-
15 wood's house or not.

16 Q Do you recall whether you had any information upon
17 that subject other than newspaper reports? A I talked
18 with Mr Davis about it, and I talked with various people
19 about it. Various people about it.

20 Q This charge you thought at that time would have a
21 serious effect upon the negotiations which you say were
22 pending at that time?

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32s 1 MR. ROGERS. Objected to as argumentative. Already asked
2 and answered and not cross-examination.

3 MR. APPEL. Fifteen times.

4 THE COURT. Objection sustained.

5 MR. FORD. Q Attracting your attention to the fact that
6 you did so testify, I will ask you if that didn't cause you
7 to ask Mr. Franklin whether it was true that he went out
8 to Lockwood's house on November 4th?

9 MR. ROGERS. Objected to as not cross-examination; argu-
10 mentative and already asked and answered.

11 THE COURT. Objection sustained.

12 MR. FORD. Q Recalling that to your mind that it was im-
13 portant to you, and recalling to your mind the fact that
14 you had seen that in the paper, does that refresh your
15 recollection now as to whether you really did receive
16 that answer from Mr. Franklin personally on that matter?

17 MR. ROGERS. receive an answer--now, if your Honor please,
18 that assumes, "Receive an answer", it is assuming what
19 the witness has declined 4 or 5 times to say that he
20 asked him.

21 MR. FORD. I withdraw it.

22 MR. ROGERS. That would have been a nice thing to get
23 in the record. Counsel shouldn't ask that question.

24 MR. FORD. Oh, it is a shame. Q Refreshing your recol-
25 lection by these events to which I have called your
26 attention, is your memory now refreshed on the subject of
whether or not you received any information from Franklin

1 personally on the subject of his going to Lockwood's
2 house?

3 A I don,t know whether he told me specifically whether
4 he went to Lockwood's house or not, but he told me about
5 his relations with Lockwood and where Lockwood had seen
6 him and what he was doing on the street.

7 Q That was in regard to Third and Los Angeles street, and
8 with regard to Lockwood going to Franklin's office and
9 soliciting a bribe? A Going to his office to solicit a
10 bribe, I think, on several occasions.

11 MR. FORD. Q Mr. Darrow, up until the 14th day of January,
12 1913, the position assumed by Franklin, as far as you were
13 informed, and as far as you knew, was that he, Franklin,
14 was innocent, and that Lockwood had attempted to solicit
15 a bribe from him, Franklin, isn't that correct?

16 A Up until the 14th of January?

17 Q yes. A No.

18 Q Well, that was your understanding on the 28th and 29th
19 of November, 1911? A My understanding was that he said so,
20 yes.

21 Q yes, that he said so. Now, did you ever know him to
22 change that story up until the 14th day of January?

23 MR. APPEL. That is immaterial. I don,t care whether he
24 changed it or not. There has been so many changes, now we
25 are getting to the changes--it is immaterial whether he
26 knew he had changed it or not. The action of Mr. Franklin

1 after the commission of the alleged offense to change or
2 fix it up is immaterial. Mr. Franklin had three or four
3 different theories up until the time someone got hold of
4 him and put it on Darrow. That is about the substance of
5 the whole testimony here, because Mr. Franklin, although he
6 said he had been seen by two or three parties on January
7 14th, and then he commenced to put it on Darrow, yet at the
8 same time he swore right here in open court he never
9 accused Darrow. He says never in his life he accused him.

10 MR. FORD. I withdraw that question to save argument.

11 THE COURT. Question withdrawn.

12 MR. FORD. Q Now, let me get you right. You knew on
13 November 28th and 29th, 1911, that Franklin said that
14 Lockwood had tried to solicit a bribe from him? A November
15 28th and 29th? Yes.

16 Q Now, when were you informed from any source that
17 Franklin did not claim to have been approached by Lockwood
18 attempting to solicit a bribe, if ever?

19 MR. APPEL. Objected to as immaterial. What difference
20 does it make if any one came down and told him that?

21 Is that evidence? I wouldn't hang a yellow dog on such
22 evidence as that, because somebody came to Mr. Darrow and
23 told him Franklin got money from Mr. Ford or that he went
24 and picked Lockwood out of the ocean down here and tried
25 to choke him with a bribe of \$4,000, or any one else, all
26 those statements made to him would not make him understand

1 his situation; wouldn't make him change his own opinion
2 of his own innocence, his own conscience of his own inno-
3 cence. They can ask him what he did do, that would show
4 any complicity in the crime, but as to what somebody told
5 him, your Honor, I just read a decision that what somebody
6 told him is not evidence, it is not cross-examination. The
7 defendant, according to Mr. Ford, ought to go to work and have
8 his tongue cut out and his ears choked up so as not to hear
9 anything or say anything after he is suspicioned of having
10 committed a crime, for fear if he says something he is
11 guilty, and if he don't say anything, having the ability
12 to say it, he is guilty, so by cutting his tongue out the
13 defendant could come on the stand and say, "Why, I didn't
14 hear it because I can't hear and I can't talk because I
15 have no tongue." That is about the only protection a man
16 has so long as the District Attorney's office is run by Mr.
17 Ford.

18 THE COURT. I think the door to this cross-examination is
19 opened by interrogating the witness in chief as to any and
20 all of the conversations that Mr. Franklin and he had. It is
21 found at page 6050 and to '60. Objection overruled.

22 MR. ROGERS. Pardon me, your Honor has not apprehended
23 the question.

24 THE COURT. Let's have it.

25 (Last question read by the reporter.)

26 MR. FORD. I will change it to "by Franklin," instead of

1 "any source."

2 ME. APPEL. The witness has not said Franklin told him
3 anything whatever.

4 THE COURT. Objection sustained.

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1 MR FORD: Were you ever informed by Franklin prior to
2 the 14th day of January, that Lockwood did not attempt
3 to solicit a bribe from him? A I never was.

4 Q Were you ever informed by Franklin prior to the 14th
5 day of January, 1912, that the first discussion between
6 Franklin and Lockwood on that subject was on the visit
7 by Franklin to Lockwood's house on the 4th day of November,
8 1911?

9 MR ROGERS: Now, this style of cross-examination is object-
10 ed to, your Honor please, as not a cross-examination. We
11 do not object, as your Honor has suggested, to their asking
12 what Mr Franklin said to him; what he said to Mr Franklin,
13 but now they refer to a part of the testimony which we are
14 not disposed to admit to be true, we will say, and say,
15 didn't you learn thus and so; no foundation laid for it at
16 all. You cannot ask a witness what he learned about some
17 testimony that somebody may have adventured in the court
18 room. They may ask him, without objection, if they see fit
19 what Mr Franklin said to him; what he said to Mr Franklin
20 under all conditions and circumstances.

21 MR FORD: Withdraw the question.

22 Q You said Mr Franklin told you that Lockwood had visit-
23 ed him, Franklin, at his, Franklin's office. Now, did
24 Franklin ever tell you that he, Franklin, had visited Lock-
25 wood's house before Lockwood came to Franklin's office?

26 MR APHEL: Now, he has answered that several times. Now,

1 when is this going to end? If it isn't going to end
2 tonight, we would like to take an adjournment until next
3 year. He is asking it time and time over again.

4 THE COURT: It may be you are right. I am doubtful of
5 it.

6 MR APPEL: Within the last ten minutes, even, if we have
7 any memory at all, it has been asked, and finally that
8 brought up the discussion, and we read this Deshara case.
9 I remember that Deshara case, your Honor, and then we
10 withdrew the objection and the witness was allowed to answer.

11 THE COURT: Objection overruled. A Read it, please.

12 (Last question read by the reporter.)

13 A No.

2. p. 6378 l. 22-23

14 MR FORD: Never at any time?

15 MR APPEL: Now, then, there you are, your Honor.

16 MR FORD: Now, did you learn -- withdraw the question.

17 Did Mr Franklin tell you on November 28th, 1911, where he
18 got the \$4000 that was taken from the person of White and
19 Lockwood? A He did not.

20 Q Did he ever tell you at any time that he had the
21 \$4000? A He did not.

22 Q Did Mr Davis ever tell you at any time that Franklin
23 had the \$4000.

24 MR APPEL: Wait a minute. We object to that upon the
25 ground it is incompetent, irrelevant and immaterial, and
26 not cross-examination. He can ask him, your Honor, what

1 Mr Davis said, because this witness has already testified
2 what Mr Davis said in answer to Mr Franklin's statement,
3 and several conversations of that kind. He can ask him
4 what he said, but to put to him exactly, did he tell you
5 in so many words, such and such a thing, I say it is not
6 cross-examination, and it is immaterial. Suppose Davis
7 told him that Franklin says he got the money from a man who
8 pretended to be from San Francisco or Chicago, and describ-
9 ed that man. What difference does it make?

10 THE COURT: Objection overruled.

11 MR APPEL: We except.

12 A What is this?

13 (Last question read by the reporter.)

14 A I don't recall that he ever said exactly that.

15 MR FORD: Did he ever tell you anything in substance like
16 that? A He told me that Franklin had once said that he
17 got the money from somebody out of town.

18 Q Now, when did Mr Davis tell you that?

19 MR ROGERS: Just a moment. Let him finish.

20 MR FORD: Pardon me.

21 A I don't know whether he said San Francisco or Chicago
22 or where, but he said he got it from somebody out of town,
23 so Mr Davis told me.

24 Q When did Mr Davis tell you that? A I think it was
25 the early part of January.

26 Q 1912? A That is what I think. I wouldn't be certain

1 as to the date.

2 Q The 14th day of January? A Yes.

3 Q Was that the first time you ever learned that, or heard
4 that, rather, I will say, from any source? A The first
5 time I ever heard he got it from somebody out of town?

6 Q Yes. A I don't recall whether anybody else said that
7 to me or not. I don't know who else ever said it up to that
8 time.

9 Q Was that the first time you ever heard that Franklin
10 had \$4000? A I didn't hear that he had.

11 MR APPEL: I submit he has asked that question, and Mr Dar-
12 row has explained repeatedly, that on the 28th, in the
13 afternoon, it was a matter of common notoriety and discus-
14 sion. He said that.

15 MR FORD: We will eliminate the newspaper; other than news-
16 paper talk. A I probably heard it as a matter of common
17 gossip over and over again from that time on.

18 Q Well, you knew that Mr Franklin didn't have \$4000 of
19 his own money on November 28th? A I didn't suspect him
20 of it.

21 Q You are quite sure he didn't have it, are you? A Well,
22 I didn't suppose he had it.

23 Q Now, did it ever occur to you, getting at your state of
24 mind, before Mr Davis told you that some out-of-town man
25 had given Franklin the money, did the possibility of Frank-
26 lin's having \$4000 on that day ever occur to you?

1 MR APPEL: Now, that is immaterial. That is argumentative.
2 What difference does it make after the alleged commission
3 of the offense, they go and ask him how many different ideas
4 crept into his mind and how he thought this and how he
5 conjured that.

6 THE COURT: I think it is going too far.

7 MR FORD: When did you learn from Mr Davis that Frank-
8 lin had admitted receiving \$4000 but said it was from some-
9 body out of town? Why didn't you ask Mr Franklin about
10 it yourself? A I was afraid of him.

11 Q Afraid of him at that time? A Yes sir; long before.

12 Q When did you first become afraid of him? A V ery
13 soon.

14 Q Very soon after when? A After he was arrested.
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24s 1 Q How long after his arrest? A I couldn't tell. Very
2 soon.

3 Q A day, week or a month? A Probably sooner than a
4 week, but I thought he would be a mighty good man to leave
5 along.

6 Q You had reason to be afraid of him because of the fact
7 you knew you gave him the money?

8 MR. APPEL. Now, your Honor--

9 MR. ROGERS. I am going to take an exception to that
10 question. I will not object to it, you may answer it, but
11 I take an exception to it in the manner it is asked.
12 You may answer.

13 A I did not for any reason on that account, not the
14 slightest in the world, but I had reason because you were
15 after me, and would give him his liberty if he would get me.

16 MR. FORD. Q That was a few days after the arrest of
17 Franklin? A Right straight, and I knew the other interests
18 that would be glad to do it, and have known it from that time
19 to this.

20 Q Did you believe the story that he had received
21 some money from some person out of town? A I believed a
22 lot of things were possible, that among others.

23 Q Well, as soon as you heard that he had \$4,000, did that
24 fact not convince you that Lockwood was not soliciting a
25 bribe but that Franklin had offered the bribe? A No, you
26 observe you have a double question there so I answer it no.

1 Q Do you wish to modify it in any way? A No, it will
2 stand. That is a good answer to that question.

3 Q When you heard that Franklin really had \$4,000, did you
4 then believe that Lockwood had solicited the bribe?

5 A I didn't know what the arrangements was between Franklin
6 and Lockwood and the other people or how such a thing
7 happened to be done in that way, and who was responsible
8 for it, and I am not sure yet.

9 Q Mr. Davis gave you the name of the person from whom Frank-
10 lin got the money? A He did not.

11 Q Did he say it was John R. Harrington? A He did not.

12 MR. APPEL. He just said he didn't say. What is the use
13 of arguing this matter.

14 MR. FORD. I am not bound by one answer. I can ask
15 another on the same subject.

16 MR. APPEL. He can't argue his answers in that way.

17 THE COURT. Do you object to it?

18 MR. APPEL. certainly.

19 THE COURT. Objection sustained.

20 MR. FORD. I just want to ask you one question before
21 adjourning: Q You paid Mr. Harrington \$2500, you testi-
22 fied, I believe? A I did.

23 Q Was that in cash? A It was in cash.

24 Q When? A Either the first of December or very soon
25 after.

26 Q And from what place did you get the cash? A Don't

1 you know?

2 Q I am asking you. A I got it from Mr. Davis who got it
3 on a check from me because we were threatened with
4 attachment proceedings by a faker here in town who did
5 attach some money, and we were threatened with other
6 attachment proceedings, and the money was drawn out of the
7 bank and he gave me that for that purpose. That is how
8 I got it. I told Mr. Harrington that and I supposed you
9 knew it.

10 Q What date? A I couldn't tell you.

11 Q What I know is not in evidence, Mr. Parrow. A I know,
12 but you wouldn't have to ask me if you knew it.

13 MR. ROGERS. Just a moment. Counsel got from me a book
14 which he got as a personal matter on the strength of his
15 going to introduce it in evidence. I inquire if he is.

16 MR. FORD. I intend to at the proper time.

17 MR. ROGERS. Isn't the proper time now?

18 MR. FORD. I will introduce it at my own free convenience.

19 MR. ROGERS. Will you do it tomorrow? Shall I bring the
20 book back?

21 MR. FORD. Yes, bring the book back. Thank you for your
22 courtesy.

23 MR. APPEL. May we ask a question to see if we want to have
24 our other witnesses here tomorrow?

25 (Discussion.)

26 (Jury admonished. Recess until August 2, 1912, at 10 A.M.)