

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. 78

I N D E X.

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

Clarence Darrow

6387

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WITNESS:

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1 FRIDAY, AUGUST 2, 1912; 10 A.M.

2 Defendant in court with counsel. Jury called.

3 All present. Case resumed.

4
5 MR. DARROW. A little matter in this record on 6381, Mr.
6 Ford asked a question, before the 14th day of January--
7 "the 14th day of January"and it should read"Before the
8 14th day of January."

9 MR. FORD. That was my understanding, however, as you have co.
10 corrected it.

11 MR. DARROW. Then let the record show it.

12 MR. FORD. I can look at my notes and let you know.

13 MR. DARROW. I can correct it and just say that was my
14 understanding of the question. I can state it from here,
15 because Mr. Appel wants to use this transcript.

16 THE COURT. Very well.

17 MR. DARROW. My understanding that the question at page 6381--

18 THE COURT: This is offered in the nature of correcting
19 your testimony of yesterday?

20 MR. DARROW. Yes, sir. The question was, "Before the 14th
21 day of January," and the answer was "Yes". The transcript
22 says "The 14th day of January." My understanding was
23 that he said, "Before the 14th day of January."

24 MR. APPEL. Your Honor will see that the preceding two
25 questions indicate that that would be the idea, trying to
26 fix the day because it was fixed by the answer.

1 THE COURT. At any rate the witness now fixes the date
2 before the 14th day of January and not on that day.

3 MR. APPEL. We think the question is that way.

4 MR. DARROW. The question was whether I had a conversa-
5 tion before the 14th day of January, or didn't have one,
6 and I said Yes or No, I don't recall what the answer was.

7 MR. APPEL. He said this at 6380, "When did Mr. Davis tell
8 you? A I think it was the earlier part of January.

9 "Q 1912? A That is what I think. I would not be certain
10 as to the date.

11 "Q The 14th day of January." It must have been, "Before
12 the 14th day of January," and he said, "Yes."

13 MR. FORD. Do you desire to wait for Mr. Rogers?

14 MR. DARROW. No, I guess not.

15
16 C L A R E N C E D A R R O W,
17 on the stand for further cross-examination.

18 MR. FORD. Q The Turner whom you mentioned in your testi-
19 mony concerning Biddinger, is Mr. W. J. Turner who lives
20 at 4234 Jackson Boulevard, Chicago, Illinois? A That is
21 the man.

22 Q That was the man who was associated with you as a
23 detective in Idaho, you testified? A He was, yes.

24 Q Did you have any communication with Mr. Turner after
25 you came to Los Angeles? A I did.

26 Q In reference to Mr. Biddinger? A I did.

1 Q I show you a document which purports to be a telegram
2 dated September 8th, 1911, Los Angeles, addressed to
3 W. J. Turner signed "D", and purporting to be charged to
4 the account of C. S. Darrow. I will ask you if you directed
5 that that telegram be sent to Mr. Turner? A I think so.

6 MR. FORD. We offer it in evidence as People's Exhibit
7 Number 47.

8 MR. APPEL. Just wait a moment--we object to that upon the
9 ground it is incompetent, irrelevant and immaterial and
10 not cross-examination.

11 THE COURT. Let me see it.

12 MR. APPEL. And not rebuttal of anything that Mr. Darrow has
13 testified to upon the witness stand; not tending in any
14 manner to contradict him, and if material at all, it was
15 material as an item of evidence of the people's case in
16 chief, and we object to its introduction at this time on
17 the cross-examination of the witness.

18 MR. FORD. He has testified very fully in regard to the
19 Biddinger incident, and this is cross-examination of the
20 Biddinger incident. I am stating to the court just what
21 my reasons are without interruption.

22 MR. APPEL. That sort of answer, to testify very fully,
23 is a very full statement in the sense it is very general,
24 and that may be an argument. We met Mr. Biddinger's
25 testimony. Now, they undertake to show what declarations
26 this witness had with Mr. Turner. That don't tend to contra-

1 dict him, that don't tend in any way, shape or manner to
2 modify his statement.

3 MR. FORD. Not offered by way of modification. We are
4 asking on cross-examination--

5 THE COURT. Just a moment. I want to refresh my memory as
6 to some testimony. The objection is overruled.

7 MR. APPEL. We except.

8 MR. FORD. When you mark that I will read it to the jury.

9 THE WITNESS. I want to suggest, Mr. Ford, that was in
10 answer to a telegram sent to me September 8th, which I
11 want you to introduce with it.

12 MR. FORD. By whom? A Mr. Turner.

13 Q Have you the telegram you received on that day?

14 A I have a copy.

15 Q You have a copy of that telegram? A Yes, so have you.

16 MR. APPEL. That is one of the copies furnished us by them?

17 A Yes.

18 MR. APPEL. Now, your Honor will see that it is an answer
19 of the defendant, this purports to be an answer to some-
20 thing proposed to him. Your Honor will see one of the
21 reasons for the objection, that a part of the correspondence
22 does not show the full import of it.

23 MR. FORD. We can only put one in at a time. I avow my
24 intention to give Mr. Darrow an opportunity to put that in
25 and will do so immediately following this, your Honor.

26 THE COURT. All right.

1 MR. FORD. Exhibit Number 47. I will now read it into
2 the record. Postal Telegraph blank, night lettergram.
3 Clock mark indicating or pointing to the hour between
4 3 and 4.

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1 charge. Los Angeles, Cal., September 8, 1911. W. J. Tur -
2 ner; Jackson Boulevard, Chicago, Illinois. Would not prom-
3 ise except will do right for anything of value. D. Charge
4 C. S. Darrow." Do you wish me to read this print that has
5 been made since or subsequent? A Oh, no.

6 MR FORD: That telegram, Mr Darrow, you say was in response
7 to a telegram received by you from Turner on the same day,
8 September 8th, 1911? A That is my remembrance, yes.

9 Q The substance of a telegram that you received on that
10 date --

11 MR APPEL: Wait a moment. I object --

12 MR FORD: Pardon me. The telegram which you received
13 on that day, you say has been lost? A I have not it.
14 Yes, the telegram has been lost.

15 Q Do you know whether it has been destroyed? A I don't
16 know; probably has; I haven't it.

17 Q It was your custom to destroy your telegrams as soon as
18 you received them?

19 MR APPEL: I object to his asking him what his custom is.

20 MR FORD: He testified yesterday --

21 MR APPEL: Then, why ask him again if you have it in the
22 record?

23 MR FORD: I think so; I am not sure.

24 MR APPEL: No, your Honor, that is not right.

25 THE COURT: This is merely laying the foundation, I pre-
26 sume, for showing the loss of the telegram.

1 MR APPEL: That may be the apparent innocent way of doing
2 it, but it is not that. I object to any custom.

3 THE COURT: All right. Objection sustained.

4 MR APPEL: Cut a man's throat under the guise of being
5 his friend.

6 MR FORD: Is the objection sustained?

7 THE COURT: Yes.

8 MR FORD: Did you yesterday, or did you at any time dur-
9 ing your examination, testify it was your custom to des-
10 troy telegrams as soon as they were received?

11 MR APPEL: Wait a moment.

12 A No.

13 MR FORD: What was your testimony on that subject, Mr Dar-
14 row.

15 MR APPEL: We object to that. He has no right to call upon
16 him to say what his testimony was; he has a record, and we
17 object to that as immaterial what he testified to.

18 THE COURT: Objection sustained.

19 MR FORD: It is a good deal easier than to look up the re-
20 cord.

21 THE COURT: Not under objection.

22 THE WITNESS: I am willing to state the facts, if you want
23 me to.

24 MR FORD: Very well; state the facts about that -- about
25 your telegrams, I mean. A As a general rule I destroy
26 at once all unimportant telegrams or letters; if I need

1 to keep one any length of time I keep it.

2 Q By saying you save important telegrams, you are refer-
3 ring not to the subject matter, but to the question wheth-
4 er or not it was important to you, in your mind, to pre-
5 serve them; is that what you mean, Mr Darrow?

6 MR APPEL: We object to that, because his meaning is per-
7 fectly plain, it is English, and anyone could understand
8 it.

9 THE COURT: Objection sustained.

10 MR FORD: I will confess, your Honor, that I can give two
11 interpretations to the answer of the witness; a telegram
12 might be of great importance to me, that is, the subject
13 matter might be of great importance to me, and not the
14 telegram itself of no particular importance after I read
15 it, but I would destroy it; on the other hand, the subject
16 matter might not be of great importance, and it might
17 be of importance to preserve the particular document.

18 THE COURT: What is the use of spending all this time on
19 laying the foundation for secondary evidence which the wit-
20 ness has asked for?

21 MR APPEL: Yes, your Honor.

22 MR FORD: I thought I had that telegram, Mr Darrow.

23 THE WITNESS: I have a copy here which I will assume is
24 correct; it came from your office, but I will assume it is
25 correct.

26 MR FORD: You received a telegram from Mr Turner on Sept-

1 ember 8th, 1911, as follows: "Party here will leave soon
2 has valuable stuff what arrangements to you want me to make
3 with him. Wire home address." Signed, "T". Is that cor-
4 rect? A I think that is correct.

5 Q And the "T", you understood at that time to mean Mr
6 Turner? A I did.

7 Q And addressed your reply to Mr Turner? A I did.

8 MR APPEL: We better put that copy in, Mr Darrow.

9 THE COURT: Do you want to offer the copy?

10 MR APPEL: Yes, your Honor, the witness says they furnish-
11 ed it to us.

12 THE COURT: You may. Do you want it marked as defendant's
13 exhibit?

14 MR APPEL: Yes, your Honor.

15 THE CLERK: Defendant's exhibit R.

16 MR FORD: Perhaps we can find the original, and we would
17 prefer to have that in.

18 THE COURT: You can substitute the original later on, and
19 subject to correction, if the copy should have a typograph-
20 ical error.

21 (Document last referred to marked Defendant's Exhibit
22 R.)

23 MR FORD: Now, on August 5, Mr Darrow, you were informed by
24 Mr Turner that Mr Biddinger was in Los Angeles, and Mr
25 Turner asked you if you could arrange to meet Mr Biddinger
26 at that time, did he not?

1 MR APPEL: We object to that as incompetent, irrelevant
2 and immaterial, not c ross-examination; conversations
3 between MR Turner and the defendant here are hearsay, and
4 incompetent, irrelevant and immaterial for any purpose,
5 not c ross-examination; the witness not having testified
6 in chief as to any conversation he had with Mr Turner, and
7 it could not have been admissible in evidence on his be-
8 half, as that would have been hearsay, and whatever is
9 hearsay on direct examination and not admissible in evi-
10 dence, they cannot cross-examine him on.

11 THE COURT: Mr Ford, to what subject on direct examination
12 is this question responsive?

13 MR FORD: The Biddinger subject.
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1 MR. APPEL. Your Honor, Mr. Biddinger may come in and show
2 a state of facts from his own standpoint; he makes out
3 his case, and he says this occurred: Mr. Darrow said this
4 to me and I said this to him. Now, there it stands.
5 The defendant, all that he is called upon to answer is to
6 answer that state of facts; the defendant comes upon the
7 stand and says, "No, that is not the case, the case is
8 this, I hired Mr. Biddinger to give me information, or he
9 explained he could give me information, he offered to give
10 me information, I hired him to do that." Now, there is the
11 evidence, there are the two issues, there are the two sides.
12 Now, can they either prop up their case or can they show by
13 circumstances on the part of the defendant coming from his
14 lips, to which he did not advert, by showing that he had
15 a conversation with me or with your Honor or with somebody
16 else to which he did not advert? To which he did not
17 testify? And which he could not have testified in
18 answering the evidence of Mr. Biddinger--

19 THE COURT. Before the reporter goes I want him to read the
20 question.

21 (Last question read by the reporter.)

22 MR. FREDERICKS. Is counsel through?

23 MR. APPEL. Your Honor will see they cannot cross-examine
24 a defendant in that way. They are not entitled to any con-
25 versation between him and Mr. Turner, as to what Mr. Turner
26 told him.

1 MR. FREDERICKS. I don't think the rule of cross-examina-
2 tion is as narrow as counsel would make it. As I understand
3 his position is this: Unless a witness on direct examina-
4 tion is interrogated in regard to a conversation, why, he
5 cannot be asked about that conversation. Now, suppose a
6 witness on direct examination is asked what were your--
7 not literally, but in effect, what were your relations with
8 Mr. Biddinger? He says, "I hired Mr. Biddinger to bring the
9 information, and so forth. Now, our contention being that
10 he hired Mr. Biddinger to do an unlawful act, may we not
11 then ask this witness, "Is it not a fact that ^{at} such and such
12 a time you did get such and such a message from Mr. Biddinger,
13 and that that message was in regard to the showing of an
14 unlawful act." Now, of course, I am making a hypothetical
15 case ^{through,} but that would destroy the idea that we cannot
16 ask the witness about another conversation even if he
17 didn't testify to it. Suppose a witness testifies, "I had
18 a conversation with so and so to such and such effect."
19 Now, suppose, that even he had a conversation with another
20 man absolutely opposite to that, cannot we ask him, "Didn't
21 you have at another time," not brought out on direct
22 examination, "another conversation with another man,"
23 naming him, and so forth; entirely different, and recite
24 it and show it?

25 MR. APPEL. Of course, that would be contradictory.

26 THE COURT. The range of cross-examination

1 between a defendant--

2 MR. FREDERICKS. This is taken to be cross-examination.

3 MR. APPEL. If you point out any fact--

4 MR. FREDERICKS. This is preliminary.

5 MR. APPEL. It is not preliminary. You cannot ask for
6 what Tom, Dick and Harry said to a defendant as preliminary

7 evidence. There is too much preliminary business here.

8 I venture to say two-thirds of this testimony introduced
9 on the part of the People on the direct case is preliminary;
10 a subterfuge of every kind and description. Here is the
11 proposition: If they can point out to your Honor, I want
12 to be fair about this--I can see how that evidence might be
13 material. If they can point out to your Honor that Mr. Darrow
14 here on the witness stand made any statement of any kind or
15 shape that could be contradicted, could be crossed by what
16 Turner told him about Biddinger being in Los Angeles, they
17 are entitled to show it. That is true. As a contradictory
18 matter, if on the other hand they are undertaking to show
19 that the conversation was had between Mr. Turner and the
20 defendant here, as an item of evidence, your Honor, that
21 goes to aid their case in chief, then it is not contra-
22 dictory of the witness but it is in aid of their case
23 in chief, and that is not admissible on cross-examination.

24 Now, isn't the line drawn clearer there, if Mr.
25 Darrow had said anything about Mr. Turner in the course of
26 his examination in chief, that he had no knowledge of the

1 fact that Mr. Biddinger was here in Los Angeles on the 5th
2 day of August, that he had no arrangement to meet Mr.
3 Biddinger in pursuance to information given him by Mr.
4 Turner, if he said that on cross-examination or if he said
5 that in his direct examination, they have a right to ask him,
6 didn't Mr. Turner say to you, arrange with you or direct
7 you and tell you that Biddinger was here on the 5th day of
8 August and for you to meet him; that would be cross-
9 examination, but let them point out in the testimony of
10 Mr. Parrow in his examination in chief wherein or where he
11 ever spoke of any conversation with Turner about that time
12 or referred to any correspondence with Turner concerning
13 Biddinger, and wherein does this matter contradict anything
14 he said? So it cannot be cross-examination. If it don't
15 contradict, if it is in line with what Mr. Parrow said,
16 it cannot be cross-examination. Cannot be introduced on
17 Cross-examination, if it is contradictory of any matter
18 that he has testified in chief it is admissible, but if it
19 is an item of evidence tending in any manner to show any
20 facts in favor of their case it is not cross-examination.
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1 MR FORD: We withdraw that question to save argument. I
2 show you what purports to be the telegraph office's copy,
3 Mr Darrow, of a telegram of September 8th, to you --
4 Pardon me, it has already been testified to. A Sept-
5 ember 8th?

6 Q September 8th, yes, that one concerning which you have
7 already testified to. I wanted to give you the telegram
8 office file of it.

9 MR APPEL: Is it the same as the copy?

10 MR FORD: It is the same as the copy.

11 MR APPEL: You introduced that in evidence.

12 MR FORD: We offer that in evidence in lieu of the
13 copy. That will be marked what --

14 THE CLERK: 48.

15 THE COURT: It will be substituted for the copy.

16 MR FORD: Let me read the whole of that into the record
17 so we will have it as it appears. Exhibit No.48. (Read-
18 ing.) " 81 X 22 Collect. B. Chicago, Ills. Sept. 8,
19 1911. Clarence Darrow, Higgins Bldg., Los Angeles, Calif.
20 Party here will leave soon has valuable stuff what ar-
21 rangements do you want me to make with him wire home
22 address. T. 1:11 P.M." As soon as you were employed
23 to defend the McNamaras, Mr Biddinger -- you sent Mr
24 Harrington up to Detroit to inquire into the circumstances
25 of the arrest of J.B.McNamaras, did you not? A I would
26 rather change my name, if you don't mind. You called me

1 Mr Biddinger. I object to that.

2 Q Mr Darrow? A Yes, that is better.

3 MR APPEL: Wait a moment.

4 MR FORD: We withdraw the question. A Before you
5 take that, if you please, there is another telegram
6 in reference to the same matter that ought to be introduc-
7 ed; September 19th, ten days later.

8 MR FORD: Well, you will have an opportunity to take that
9 up. A I want to do it now.

10 MR APPEL: Your Honor, wait a moment. It appears now in
11 evidence here, and the witness has so testified, that
12 there is another telegram in connection with the corres-
13 pondence that your Honor allowed in evidence over our
14 objection. Now, if we offer now, your Honor, as a part
15 of the answers of the witness, a copy of another telegram,
16 the witness has just adverted to, as part of the same cor-
17 respondence and we shall ask that it be marked as evi-
18 dence and read to the jury as a part of that correspondance
19 or else we ask your Honor to strike it all out. We are
20 entitled to the whole of it or to none.

21 MR FORD: If the court please, the law provides an oppor-
22 tunity for counsel to do the very thing that he now seeks
23 to do. It allows them on redirect examination to go into
24 all matters taken up on cross-examination and complete
25 them:

26 THE COURT: Let me ask the witness a question: Mr Dar-

1 row, is it necessary to introduce this third telegram to
2 explain the others? A It ~~ask~~ your Honor.

3 MR FORD: If the court please, I object to the court's
4 question, and I object -- it doesn't ~~modify~~ amplify the
5 answer to the preceding question.

6 THE COURT: Let me see the telegram.

7 A It modifies and explains it.

8 MR FORD: If the court please, it don't modify and ex-
9 plain the answer. It may modify, in the mind of the wit-
10 ness, it may modify and explain the subject matter, but
11 there is an opportunity provided for in law to take that
12 up. I have the right, if the court please, to conduct
13 the examination along the subjects that I desire to, and
14 when I have finished on a cross-examination, the law pro-
15 vides an opportunity then for them to put in all the evi-
16 dence that they think will amplify and explain the testimon
17 given on cross-examination.

18 THE COURT: No doubt but what you are right about that,
19 but a witness has a right to explain matters --

20 MR FORD: Explain answers, yes. I have no doubt of that.
21 The answer before the court is, yes, he received ^a certain
22 telegram on September 8th. The fact he received a tele-
23 gram on another date, does not modify his answer that he
24 received a telegram on this day.

25 MR APPEL: Section 1854, states this, Code of Civil Pro-
26 cedure: (Reading:) "When part of an act, declaration,

1 conversation or writing is given in evidence by one party,
2 the whole on the same subject may be inquired into by the
3 other; when a letter is read, the answer may be given;
4 and when a detached act, declaration or conversation or
5 writing is given in evidence, any other act, declaration,
6 conversation or writing, which is necessary to make it un-
7 derstood, may also be given in evidence."

8 THE COURT: Mr Appel, it goes to the order of proof. Do
9 you want this marked as defendant's exhibit?

10 MR APPEL: Yes, and want it read.

11 THE COURT: You can put it in and read it if you want to.

12 MR FORD: Now, attracting your attention --

13 MR APPEL: Wait a moment. We want to read this. Give us
14 a chance. (Reading:) "Postal Telegraph -- Commercial
15 Cables. Check 8. Paid. Charge E (75) Sept. 19-11. Receiver,
16 E. Los Angeles, Sept. 19, 1911. Mr W.J. Turner, 4234 Jackson
17 Blvd. Chicago, Ills. Send letter containing copies of
18 matters. C.S. Darrow, Filed by G.H., Date 3-4-12. 505 P
19 (O.K.) Charge C.S. Darrow."
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1 MR. APPEL. This is defendant's Exhibit S.

2 MR. FORD. Now, if the court please, I want to concede that
3 whenever a part of a transaction is introduced in evidence
4 that the whole of that transaction may be introduced in
5 evidence. The point I was endeavoring to make, I cannot
6 be interrupted in my cross-examination by counsel and permit
7 them to put in things that should be saved for redirect
8 examination. It is consuming the time that is allotted to
9 us for cross-examination, and I object to it for that reason
10 and no other, and move to strike it out on those grounds.

11 THE COURT. Motion to strike is denied.

12 MR. FORD. Q Did you send Mr. Harrington to Detroit to
13 inquire into the circumstances of the arrest of J B McNamara
14 which arrest took place on April 12, 1911? A Not exactly
15 that, no.

16 Q Well, the arrest of J B McNamara occurred in Detroit
17 on October 12, 1911? A Well, I assume that.

18 THE REPORTER. You said October 12th, do you mean April 12th?

19 MR. FORD. I beg your pardon, I meant April 12th.

20 A If you know I will take your word for it, assume it is
21 true.

22 Q Very soon after you were employed to defend the McNamaras
23 you sent Mr. John R. Harrington to Detroit to get evidence
24 concerning that arrest, did you not or to gather evidence
25 concerning that incident, if you prefer that term?

26 A I don't prefer that I sent him there to gather

1 evidence.

2 Q When did you send him there? A The time your question
3 says, very soon after I was employed.

4 Q And before you came to California the first time?

5 A Yes.

6 Q Did you learn who the persons were who took J B McNamara
7 into custody?

8 MR. APPEL. Wait a moment- we object to that as incompetent,
9 irrelevant and immaterial for any purpose whatsoever, not
10 cross-examination. Now, we will say here to the court right
11 now that this is the only time, and it could only be done
12 in Southern California, notwithstanding our beautiful
13 climate, and the intelligence of our people, and not-
14 withstanding the high standard of intellect of my friend
15 here, it must be, perhaps a mistake on his part, your Honor.
16 There isn't any power on earth, and it is the trans-
17 gression of one of the highest principles which have been
18 protected by every court, that is, by every English speaking
19 court, that you can search into the heart and bosom and
20 mind of an attorney who has taken a case for any one, either
21 in civil or criminal cases, that they can dig out of him
22 whatever information he may have obtained in the course of
23 his employment; that he is to be bound by any act or decla-
24 ration given to him with the standard of his own conscience,
25 the question of whether he is guilty or innocent of an act
26 which they say he was implicated in months and months

1 afterwards--that it can be dug out of him, out of another
2 attorney in the case or any assistant or clerk or anybody
3 connected with the case gives to him in the course of
4 his employment--that he must be judged by what others told
5 him, not by what he said, not by any declaration he made,
6 either a declaration contemplating crime or any arrangements
7 made by him months before to carry on the commission of a
8 crime; that he is to be judged by that. I say, that no
9 lawyer or no man even in the ordinary affairs of life can
10 be safe if a clerk comes to the store and gives an employer
11 some information, then he is to be judged by the informa-
12 tion given to him without respect to whether it was true or
13 false or whether it was erroneous or whether it was correct
14 or not; that it must be held it is cross-examination to
15 dig out of a defendant, because he happened to be a lawyer
16 in another case, as to what information he received through
17 his employes, in cross-examination, your Honor, and do
18 violence to every principle of justice, and if it were not
19 for the fact that we are constrained, your Honor, by
20 the situation here, not to allow this jury to believe we
21 are trying to conceal any fact from it, I would say to
22 this man to refuse to answer it; but we are compelled
23 by this line of evidence to throw the doors wide open and
24 to break every barrier of justice and principle and right
25 so that we shall stand before this jury and say, "Gentlemen,
26 we do not want you to believe here that we are concealing
anything."

1 While I say now, and I can use no other words at
2 my command, for my vocabulary is very limited, than to say
3 it is an outrage on justice that this man's mind should be
4 taken over a whole line of cross-examination and asked what
5 he did months and months before that, his objects, that
6 his purpose, that his aim should be suspicioned at every
7 step months and months before he ever knew Franklin before
8 he came here to take an actual part in the trial of this
9 case, that Harrington went back east and he found informa-
10 tion and he came back and told him this and that and all
11 of that sort of thing--
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1 MR FORD: I will withdraw the question and try to simplify
2 it so that counsel can understand it.

3 MR APPEL: Yes, withdraw the question.

4 MR FORD: Mr Darrow, did Harrington make a report of what
5 he heard and learned up there?

6 MR APPEL: We object to that as not cross-examination;
7 has nothing to do with this case, as to whether he report-
8 ed or not.

9 MR FORD: It is preliminary to the next question.

10 MR APPEL: He says, "It is preliminary". It could not be
11 preliminary to anything. If they want a fact from Mr
12 Darrow, that corroborates any of their witnesses, your
13 Honor, that does not contradict Mr Darrow's statement,
14 it is not cross-examination, and it is, these little fancy
15 plays here, your Honor, they must think we are children;
16 they must think we have had no experience as lawyers,
17 that under the guise of preliminaries, they have to intro-
18 duce a subject here which is not cross-examination.

19 MR FORD: I avow it is entirely confined to the Biddinger
20 incident, your Honor.

21 MR APPEL: In what way has Mr Darrow said anything about
22 what Mr Harrington told him in regard to the Biddinger af-
23 fair?

24 MR FREDERICKS: This is to be answered yes or no.

25 MR APPEL: It must not be answered either yes or no. It
26 is a matter of right.

1 THE COURT: The question is whether or not it is responsive
2 to any matter brought out on direct examination.

3 MR FRED ERICKS: That cannot be determined until the next
4 question is asked.

5 THE COURT: What is this question?

6 (Last question read.)

7 MR FORD: I will simplify the question.

8 MR APPEL: That is preliminary, and now it will follow,
9 what was it he told him.

10 MR FORD: I will withdraw the question and see if I can
11 make it simpler.

12 Q Didn't Mr Harrington report to you that he learned
13 that Biddinger was one of the men who had taken J.B. into
14 custody at Detroit? *Answer A 6415*

15 MR APPEL: Now, we object to that as incompetent, irrele-
16 vant and immaterial, and not cross-examination; it is not
17 cross-examination what knowledge Mr Darrow had before he
18 met Mr Biddinger or anything like that; they want to show
19 that in order to -- let us be frank about it, I hope this
20 jury will appreciate I am only arguing the question and I
21 am not making any admissions against my client -- what is
22 that for? They want to show, your Honor, that Mr Darrow's
23 condition of mind away back at that time, was that this
24 man Biddinger was an important factor in the whole pro-
25 secution of the McNamara boys, and had the information con-
26 cerning them, that it was proper to reach by bribery. That

1 is what they want to show, and that is a part of their main
2 case, isn't it?

3 MR FORD: We congratulate counsel --

4 MR APPEL: Yesterday they stipulated they were not trying
5 to show that Mr Darrow was trying to do anything unlaw-
6 ful and to-day the District Attorney gets up and says they
7 have a right to show he was doing something unlawful by
8 the defendant himself, your Honor. That is the point that
9 I say they cannot show it by him, and it is not cross-
10 examination.

11 MR FORD: This witness has testified fully with regard to
12 Mr Biddinger.

13 MR APPEL: There it is again, the word "fully".

14 MR FORD: Says he is not guilty of any improper conduct
15 with Mr Biddinger at any time and place, but he was exam-
16 ined fully with regard to his knowledge with reference
17 to Mr Biddinger.

18 MR APPEL: Very well. Does this fact show he was guilty
19 of anything; the facts as to the conversation and transac-
20 tions between Mr Biddinger and this witness show, your
21 Honor, or do not show, that he was guilty of any wrong-
22 doing, or not guilty? They must be judged by what they did
23 one towards the other. I might know, your Honor, that
24 there is a million dollars in some place; I might have known
25 it a long time before, I might have been told about it,
26 and I may have talked to a man to go down here and steal
it, and the question comes up in court as to whether or

1 not I told him that. I say I did not tell him that --

2 THE COURT: The question is what subject on direct examina-
3 tion this is responsive to.

4 MR APPEL: That is the point, your Honor.

5 MR FORD: That is the point.

6 THE COURT: Now, I make that inquiry of the District At-
7 torney.

8 MR FORD: The subject is the relation of this witness with
9 Mr Biddinger. He has testified on direct examination to
10 a number of transactions that he had with Mr Biddinger,
11 among others, he had denied specifically his dealings
12 with Mr Biddinger were to effect in any way, shape or man-
13 ner, the testimony which Mr Biddinger might give as the
14 arresting officer in the case of people versus J.B.Mc-
15 Namara; he has not expressly denied, as far as I now recall,
16 that he knew that Mr Biddinger was the arresting officer,
17 on the contrary, there are some things before this court
18 from which we might, if we choose, argue that he did know
19 J.B. was the arresting officer, because the witness said
20 that he read all that the papers contained at that time,
21 that he learned many things through the newspapers.
22 He has now testified that he sent Mr Harrington up to De-
23 troit to investigate certain matters up there concerning
24 the arrest of J.B.McNamara. Now, of course, if I have to
25 avow each time the specific purpose of my cross-examina-
26 tion, I do not know --

1 THE COURT: You do not have to state the purpose of it.

2 MR FORD: I will have to this time, your Honor.

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1 THE COURT. But it is necessary to show that the question
2 is responsive.

3 MR. FORD. It is necessary to show that Mr. Biddinger was
4 a witness for the prosecution, as counsel had guessed.

5 MR. APPEL. Guessed? I didn't have to guess, I can look
6 into you every minute I look at you, and it is simple enough.
7 The question is whether it is cross-examination.

8 THE WITNESS. May I add a word here to Mr. Appel's argument?

9 THE COURT. Yes.

10 THE WITNESS. Just by way of argument.

11 THE COURT. yes.

12 THE WITNESS. of course, I am in a delicate position here,
13 of course, I do not want the jury to think I am not willing
14 to answer anything that comes along. I have tried to be
15 frank and answer fully, but beyond all that I am a lawyer
16 and practicing for 35 years I know I was never fined or
17 rebuked by a court in all that time, and this and a great
18 deal of other information came to me as a lawyer, and while
19 the incident of the McNamaras is closed, it is just as
20 much privileged as if it was open, and beyond that, there
21 are 54 people under indictment at Indianapolis for trans-
22 porting dynamite to all parts of the country, and I could
23 not possibly, even if they took my liberty, I could not
24 possibly give up any confidence that I learned from anybody
25 touching any of those matters, I could not do it, even
26 if the court ordered me to.

1 MR. FORD. Now, on that point, your Honor, if the Court
2 please, the only communication that is privileged is the
3 communication between an attorney and his client; what
4 the attorney learned from outside witnesses is not privileged.
5 If Mr. Darrow sent Mr. Harrington up to Detroit and Mr. Harrington
6 there learned from the officers that Biddinger was one
7 of the arresting officers or one of the persons who took
8 J B McNamara into custody, whichever way he prefers, and
9 that it was claimed that J B had made some damaging admis-
10 sions to Mr. Biddinger, those are facts that he did not learn
11 from his client, those are facts that were not communicated
12 to him in the confidential relation, or the relation ex-
13 isting between attorney and client, those are matters which
14 are not privileged, and those are matters to which this
15 witness's declaration at this time, as far as the 54 defend-
16 ants in Indianapolis are concerned, would be purely hearsay,
17 inadmissible, and could not be used against them, so that
18 there is no privilege whatever attached to that. We have
19 argued this question of privilege quite extensively.

20 MR. APPEL. But, you are not stating the law.

21 MR. FORD. Your Honor has held, and section 1881 of the
22 Code of Civil Procedure provides that it is only the
23 relation between attorney and client that is privileged,
24 only the communications passing between them--

25 MR. APPEL. Let us state the law--let us see--he does not
26 know it--

1 THE COURT. I have got your idea, Mr. Ford.

2 THE WITNESS. Your Honor, I can answer this question without
3 betraying any privilege or anything that has come to me
4 without harming anybody, unless myself, and I am willing
5 to do it. I just want to say to the court, when the time
6 comes, whatever the effect on me, I will have to refuse, but
7 this question at least I can give him the information with
8 perfect safety to anybody, unless it is to myself, and I
9 am not afraid of that.

10 MR. APPEL. I would rather have a ruling of the court,
11 although if the ruling is against us the witness has
12 announced he is willing to answer, of course.

13 A This one.

14 MR. APPEL. I would rather have a ruling.

15 THE COURT. Read the question.

16 (Question read.)

17 THE COURT. All right, you can answer that question.

18 A I can do that.

19 MR. APPEL. We take an exception.

20 A I presume he did, but whether he did, I knew already that
21 that fact did not make him a witness or make me want to use
22 him in any way whatever, any more than any other officer
23 making any other arrest.

24 MR. FORD. Q At the time you talked to Biddinger you knew
25 from various sources that Biddinger was one of the arresting
26 officers, that arrested J B McNamara? A I undoubtedly knew

1 it.

2 Q You also knew at that time he was the officer who
3 arrested J J McNamara at Indianapolis on April 22, 1911,
4 and that he was one of the officers who brought J J McNamara
5 to California?

6 MR. APPEL. We object to that as not being cross-examination:
7 incompetent, irrelevant and immaterial.

8 THE COURT. Objection overruled.

9 MR. APPEL. Exception.

10 A I do not recall I knew he was the officer in Indianapolis,
11 I knew there were a lot of them, and I certainly did not
12 want his testimony, there were plenty of officers in
13 Indianapolis who had charge of that arrest, as there were
14 in Detroit.

15 MR. FORD. Q But you knew he was one of the persons who
16 were present at that arrest and one of the persons who
17 accompanied J J McNamara to California? A Yes, and
18 I would not ever have thought enough of it to get his
19 testimony in the face of the others.

19 MR. APPEL. We object to that as not cross-examination.

20 THE COURT. Objection overruled.

21 MR. APPEL. We except.

22 MR. FORD. I move to strike out the last part of the answer,
23 "I would not ever have thought enough of it to get his
24 testimony in the face of the others", as not responsive.

24 THE COURT. The motion is denied.

25 A I also knew there were 4 or 5 other officers in Detroit
26 and probably upwards of 50 in Indianapolis.

1 Q You also knew that Biddinger claimed J B had attempted
2 to bribe him?

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1 MR APPEL: We object to that on the ground it is not cross-
2 examination, incompetent, irrelevant and immaterial for
3 any purpose whatsoever, and if it was a fact, it should
4 have been shown on the case in chief.

5 THE COURT: The objection is sustained.

6 MR FORD: It is going to the witness' knowledge, your
7 Honor, of J.B. -- I mean of Biddinger, and of Biddinger's
8 relation to the case at the time he talked to him.

9 THE COURT: I do not think that branch of it is responsive
10 to anything brought out on direct examination. There is a
11 line of testimony that is open, but this is not it.

12 MR FORD: May I be heard on that subject, your Honor?

13 THE COURT: Briefly.

14 MR FORD: Mr Darrow testified, or, rather, Mr Biddinger tes-
15 tified that he at that time had told Mr Darrow all about
16 the circumstance.

17 THE COURT: yes, I know that, but this is cross-examina-
18 tion of the defendant; in spite of every broad latitude
19 given by the direct examination, there is still --

20 MR FORD: If your Honor will not anticipate me, and will
21 let me state my position, I think I can make it clearer.

22 Mr Darrow upon the stand, was asked (respecting the Bidding-
23 er conversation, and if your Honor will remember, made an
24 omnibus denial of all those conversations, made a denial
25 that he knew of those transactions in effect, or at least,
26 they might argue to this jury by reason of his having

1 denied the conversations, that he did not know of Bidding-
2 er's relation to the case in any way, shape or form, and
3 if your Honor will have my question^{read} you will find I used
4 the word "know". I don't care anything about the fact
5 whether Biddinger was a witness or not at this time, the
6 point I want to get at is this, did you have knowledge of
7 the fact that Biddinger claimed that J.E. had made cer-
8 tain damaging admissions? This witness denies that Bid-
9 dinger told him that, denied that in his direct examina-
10 tion.

11 THE COURT: I do not think he was asked that on direct
12 examination at all. He was asked in regard to an alleged
13 confession of J.E. to Biddinger, and he made a certain
14 answer to that, but I do not recall he was asked any-
15 thing in regard to the matter covered by your question.

16 MR FORD: Mr Darrow, you testified on direct examination to
17 the conversation that you had with Mr Biddinger in Chicago
18 early in June, did you not? A I testified to the conver-
19 sation -- I did.

20 Q Yes, and you testified on direct examination that you
21 did not have the conversation that Biddinger said you had,
22 is that correct.

23 MR APPEL: Wait a moment. The witness is entitled to see
24 what the testimony is, the record has been made. A Yes,
25 I would like to see that --

26 THE COURT: Yes, I want to see the record on that.

1 MR APPEL: Let him see what the record is. A I will
2 take a chance on it, as far as I am concerned, if the
3 court wants to see it --

4 MR FORD: Do you desire to see the record? A No.

5 THE COURT: If the witness is satisfied --

6 MR FORD: All right, answer the question. A If I don't
7 get it quite the same I guess there will be no harm done.

8 MR APPEL: We can argue it. A Shall I answer it, your
9 Honor?

10 THE COURT: Yes.

11 A What is the question?

12 (Question read.)

13 A I testified I didn't have all that he said; I tes-
14 tified that some things that he said were untrue, there
15 might have been some things he said I found were true,
16 even if he did say them. I don't remember; some things I
17 denied, I know that.

18 Q Did you not say that he had told you at that time that
19 J.B. had made certain admissions, without going over them
20 in detail? A I think I did; that is my remembrance.

21 Q Now, didn't you at that time know from some other
22 sources that Biddinger claimed that J.B. had made cer-
23 tain admissions to him? A Now, will you tell me what
24 sources?

25 Q From any sources.

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

1 A It is not cross-examination.

2 THE COURT: The objection is sustained.

3 MR FORD: Did you not know at that time that Biddinger
4 would be a witness in the case of the People versus J.B.
5 McNamara in reference to the arrest of J.B. McNamara at
6 Detroit, in reference to conversations had on the train be-
7 tween Detroit and Chicago, in reference to conversations
8 had and things that transpired at the house of Detective
9 Reed of the Chicago Police Department in Chicago, and in
10 reference to the incidents of the arrest of J. J. McNamara
11 at Indianapolis on the 26th day of April, 1911, and in
12 refer ence to the trip of J. J. McNamara to California,
13 and in -- well, those, at any rate, or any of them?

14 MR APPEL: We object to that on the ground that is a very
15 voluminous question, and that some of those questions have
16 already been answered and passed upon by the court, subject
17 to objections on the part of the defendant; upon the fur-
18 ther ground they are asked only for the purpose of calling
19 the jury's attention to the matter that he is seeking to
20 put here before the court, before the jury, notwithstand-
21 ing your Honor's having sustained similar objections as
22 to some parts of it, and it is not cross-examination, and
23 immaterial and not limited to any particular time, place or
24 circumstance, and it is ambiguous, unintelligible, un-
25 certain and otherwise tangle-footed; I don't know what
26 other word to use.

1 MR. FORD. We submit the question.

2 THE COURT. The objection is overruled.

3 MR. APPEL. We take an exception.

4 A I could not know in Chicago in May he would be a witness
5 in Los Angeles in December.

6 MR. FORD. Q Whether you could or not, did you? A The
7 question is answered.

8 MR. APPEL. We object to it as not cross-examination.

9 THE COURT. I didn't hear the question.

10 MR. FORD. The witness has not answered directly, he could
11 answer yes or no.

12 MR. ROGERS. No, your Honor--

13 A I answered it when I said I could not.

14 MR. FORD. Q you mean you did not? A I mean I answered
15 the question, unless the court says I have not.

16 MR. FORD. I am entitled to a direct answer, and I do not
17 desire to reflect upon the defendant or any other witness;
18 possibly in his mind he may think he has answered the
19 question, but instead of that he has presented an argument,
20 he says, "I could not in Chicago in May know he would be
21 a witness in Los Angeles in December." The question is,
22 "Did you know he would be a witness in those matters?"

23 MR. APPEL. How could he know, he was trying one side of
24 the case.

25 MR. FORD. Why cannot he answer yes or no?

26 MR. APPEL. Does the District Attorney know?

1 THE COURT All right.

2 THE WITNESS. If the Court thinks that is not in effect a
3 direct answer, I will make a direct answer.

4 THE COURT. I think it can be answered more directly.

5 A I did not and could not.

6 MR. APPEL. The District Attorney could not have known.

7 MR. FREDERICKS. The District Attorney could know.

8 MR. FORD. I think he answered the question while Mr. Appel
9 was talking--

10 A I said that I did not and could not know and didn't care.

11 Q You had been practicing law for 35 years? A Pretty
12 close to it at that time, yes.

13 Q At that time? A Yes, at that time.

14 Q You knew that persons in the situation of Mr. Biddinger
15 were frequently called as witnesses and almost invariably
16 called as witnesses?

17 MR. ROGERS. We object to that--

18 A I knew they were never called if anybody could help it,
19 a man like Biddinger.

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

22 (AFTER RECESS.)

23 THE COURT. Proceed, gentlemen.

24 MR. FORD. I don't remember whether there was an un-
25 answered question before the court or not.

26 THE WITNESS. I think not, Mr. Ford.

1 MR. FORD. Q you testified, Mr. Darrow, if I am not mis-
2 taken, that there was no compensation, no specified com-
3 pensation agreed on between you and Mr. Franklin. Am I
4 wrong or right on that? A I did.

5 Q What difference did it make to Mr. Franklin whether the
6 case was won or lost?

7 MR. APPEL. We object to that as immaterial and argumenta-
8 tive.

9 THE COURT. Sustained on the ground it is argumentative.

10 A I would rather answer it if you don't mind.

11 MR. FORD. I withdraw that question. A I would rather
12 answer it.

13 MR. FORD. I will put another question. A All right.

14 Q Was it intended by you that Mr. Franklin's compensa-
15 tion would be greater if the case were won-- A No.

16 Q --than if it were lost? You met Mr. Biddinger at
17 the Alexandria Hotel on August 15th. Was that appointment
18 made over the 'phone the night before? A I answered I
19 thought it was made over the telephone. I think he called
20 me up. I know I didn't call him up.

21 Q You knew, Mr. Darrow, ^{that} at the time that J J McNamara
22 was arrested in Indianapolis on April 22, 1911, that they
23 searched him and that they found some keys on his person,
24 among them being duplicates of the keys that J B had when
25 he was arrested, and which keys fitted the locks at Jones's
26 barn at Indianapolis where dynamite was kept, and the lock
of Ortie McManigal's father's barn at Tiffin Ohio where more

1 dynamite was kept? A I can't answer that question.

2 MR. APPEL. Wait a moment.

3 MR. FORD. Let me finish the question. And did you not say
4 in discussing that matter with Mr. Biddinger, "That is a damn
5 strong piece of evidence against him; I wish you could
6 get hold of it," referring to the keys?

7 MR. ROGERS. Objected to as incompetent, irrelevant and
8 immaterial, a double question, not cross-examination.

9 MR. FORD. I withdraw it and split the question up. Did
10 you not--

11 MR. ROGERS. Just a moment--

12 MR. FORD. I will withdraw it and split the question up.

13 MR. ROGERS. It don't make any difference--

14 MR. FORD. I withdraw it and put another question.

15 MR. ROGERS. I still have the floor.

16 MR. FORD. I withdraw the question.

17 MR. ROGERS. We take exception to the asking of the question
18 in that form or in any form, being a recitation of certain
19 matters claimed; not cross-examination, because Mr.
20 Biddinger was on the stand and if he said anything to Mr.
21 Biddinger, when they opened the case up, it is their duty to
22 produce it. They can't double shoot the turn this way,
23 as they say out in Arizona where Mr. Appel comes from--
24 you cannot impeach a witness on collateral matters of that
25 kind. It is incompetent and absolutely should not be asked.
26 We take an exception.

1 MR. APPEL. Not even in Arizona.

2 MR. ROGERS. Not even in Arizona.

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1 MR FORD: If the court please, this witness --

2 Mr Biddinger: You did testify to the facts I have narrated,
3 on page 3292 of the transcript they will find it. And this
4 witness on the stand denied that he had been informed by
5 Mr Biddinger of those facts, and denied that he said "That
6 is a damned strong piece of evidence against him; I wish
7 you would get hold of it." I will leave it to the wit-
8 ness himself, if he didn't deny it. I ask the witness --

9 MR APPEL: Don't refer to the witness.

10 THE COURT: Where is it in the transcript?

11 MR FORD: Biddinger's testimony is page 3292.

12 MR ROGERS: Where is Darrow's testimony?

13 MR FORD: The defendant testified as to what did occur at
14 that conversation, and on page 6052 or '3, I think it is,
15 he denied everything.

16 MR ROGERS: Let's see it.

17 THE WITNESS: May I correct you on that last statement?
18 It has been made so many times.

19 MR FORD: I will correct it myself, Mr Darrow. Mr Dar-
20 row denied having any conversation with Mr Biddinger ex-
21 cept such as he, Mr Darrow, testified to in court.

22 THE WITNESS: That is on page 6053?

23 MR FORD: 6053.

24 THE WITNESS: Is that Biddinger's?

25 MR FORD: Yes.

26 THE COURT: Do you want to look at it, Mr Darrow?

1 THE WITNESS: There has been a statement made about an
2 omnibus denial, which everybody got wrong. There wasn't
3 any such denial. You, Mr Ford, misstated this inadvert-
4 ently.

5 MR FORD: If I did, I am willing to correct it.

6 THE WITNESS: Of course, I knew you would be. May I read
7 this, because this has come up so often. There is 6053.

8 MR FORD: I withdraw the question and put it to you this
9 way, Mr Darrow. You did testify as to the conversation
10 you had with Mr Biddinger at your office in Chicago. I
11 will now ask you if that was substantially all that was
12 said between you and Mr Biddinger at that time? A I
13 don't know, Mr Ford.

14 Q Well, did you, at that conversation, in referring to
15 the fact that J. J. had been searched at police head-
16 quarters in Indianapolis, and that Biddinger had secured
17 from J. J. keys that were the duplicates of keys --

18 MR ROGERS: Where does that come?

19 MR FORD: 3292 of the transcript. That they were dupli-
20 cates of keys that J. B. had when he was arrested in
21 Detroit; that they fitted the lock of Jones' barn in
22 Indianapolis where dynamite was kept, and the locks of
23 Ortie McManigal's father's barn at Tiffin, Ohio, where
24 more dynamite was kept; did you not say, "That is a damned
25 strong piece of evidence against him; I wish you could get
26 hold of it"?

1 MR APPEL: Now, subject to the same objection, it is not
2 cross-examination, and incompetent, irrelevant and imma-
3 terial.

4 MR FORD: Cross-examination on the conversation concerning
5 which the witness testified in direct examination.

6 MR GEISLER: Where is the testimony?

7 MR FORD: Where is the testimony in Biddinger's testimony?

8 The testimony about Biddinger begins at page 5976: "I
9 know a Guy Biddinger. I wouldn't attempt to say I know a
10 man by that name." "There is a possibility that I might
11 be mistaken. There were two meetings, one in my office,
12 and one next door in the Union restaurant." 5980.

13 MR ROGERS: The point is, what we wanted to know, where
14 they find that in Biddinger's testimony. When they show us
15 that in Biddinger's testimony --

16 MR FORD: I told you -- 3292.

17 MR ROGERS: Now, of course, if your Honor please, I take
18 it counsel has misinterpreted the statement, and that is
19 why I couldn't get at it. All the foundation he has for
20 it, as I get it from the transcript -- I may be mistaken,
21 is as follows: "Q -- When you met Mr Darrow here in Los
22 Angeles on the 15th day of August, what time of the day
23 was it you met him first?" Now, he is trying to show it
24 back East, back in Chicago. "What time of the day was it
25 you met him first? A -- About 8 o'clock in the morning.

26 Q -- What occurred between you at that time and what was

1 said and done?" Objection upon the ground who was pre-
2 sent and the place. Mr Fredericks amends the question:

3 "At the time you met him here in Los Angeles in the Alex-
4 andria, who was present? A -- Just Mr Darrow and myself.

5 Q -- Where did you meet him? A -- In the bar of the Alex-
6 andria."

7 MR FORD: That was where the conversation was had about
8 keys?

9 MR ROGERS: Precisely.

10 MR FORD: Very well. I withdraw the question.

11 MR ROGERS: It is not wise to try to get him to say some-
12 thing about back in Chicago.

13 MR FORD: I will withdraw the question and reframe it.

14 At the time you meet Mr Biddinger in Los Angeles at the
15 Alexandria, did you not at that time, referring to the
16 keys that had been taken off of the person of J. J. McNama-
17 ra, when he was searched in Indianapolis by Biddinger,
18 did you not know at that time that those keys were dupli-
19 cates of the keys that J. B. had when he was arrested or
20 hadn't you learned they were duplicates of the keys that J. B.
21 had when he was arrested; that they fitted the locks at
22 Jones' barn at Indianapolis, where dynamite was kept, and
23 the locks of Ortie McManigal's father's barn at Tiffen ,
24 Ohio, where more dynamite was kept, and did you not then
25 say to Biddinger, "That is a damned strong piece of
26 evidence against him; I wish you could get hold of it."

1 MR ROGERS: Counsel is imagining again. His recollection
2 is running riot. Instead of being in Chicago, we have
3 got it here to Los Angeles, and this is what Biddinger --
4 if Biddinger could tell the truth at all, this is what
5 he said: "I told him that I had keys that I had taken
6 off of J. J. McNamara when I searched him at police head-
7 quarters at Indianapolis. They were the same duplicates
8 of keys that McNamara had when he was arrested in Detroit.
9 He says, that is a damned strong piece of evidence against
10 him, and he should get hold of it." Nothing about
11 Jones' barn, Robin Hood's barn or Grandpa's barn.

12 MR FORD: I haven't put it in the question. I put it in
13 the question, I asked him if he said, "That is a damned
14 strong piece of evidence against him; I wish you could get
15 hold of it," referring to the keys that were taken off
16 the person of J.J. at police headquarters in Indianapolis,
17 and didn't you know that those keys that had been secured
18 from J.J.'s person were duplicates of the keys that J.E.
19 had when he was arrested in Detroit; that they fitted
20 the locks of Jones' barn at Indianapolis where dynamite
21 was kept, and the locks of Ortie McNamigal's father's barn
22 at Tiffen, Ohio, where more dynamite was kept.

23 MR ROGERS: Before that question is answered, I call for
24 a reading of the preceding question.

25 MR FORD: It is immaterial whether I said it or not.

26 MR ROGERS: It is material whether this witness is trying

1 to be tricked.

2 THE COURT: The court has ordered the reading of the last
3 question. Let's have it read.

4 MR FORD: If the court please --

5 THE COURT: Read the last question. (Question preced-
6 ing the last question read by the reporter.) That is
7 the question before the court.

8 MR APPEL: Now, your Honor --

9 MR ROGERS: Is that the question before the court?

10 THE COURT: That is the question you wanted, and the only
11 question before the court. Mr Ford was attempting to
12 reframe the question without withdrawing this one.

13 MR ROGERS: That question is a triple question.

14 MR APPEL: Your Honor will see after a certain conversation
15 referring to the keys that has been -- assuming that they
16 had been, he assumes --

17 MR FORD: Allow me to withdraw it and see if we cannot
18 get some evidence.

19 THE COURT: Question withdrawn.

20 MR FORD: I withdraw the question. Did you not tell Mr Bid-
21 dinger at the Hotel Alexandria in Los Angeles, about the
22 15th day of August, 1911, referring to some keys that had
23 been taken from the person of J. J. at Indianapolis,--
24 J. J. McNamara -- at Police headquarters at Indianapolis,
25 did you not say, "That is a damned strong piece of evi-
26 dence; I wish you could get hold of it." A No.

1 Q Did you not know that the keys -- withdraw the ques-
2 tion. Did you not hear or learn or know at that time in
3 any way that the keys that were taken from the person of
4 J. J. at Indianapolis, were duplicates of the keys that
5 were taken from the person of J. B. at Detroit, and that
6 they fitted the locks of Jones' barn, where dynamite was
7 kept in Indianapolis, and that Ortie McManigal's father's
8 barn at Tiffen, Ohio, where more dynamite was stored,
9 and the vault in the basement of the building in which the
10 offices of the International Association of Structural
11 Bridge & Iron Workers were, where clocks and nitro-glycer-
12 ine and fuses and fulminating caps were kept?

13 MR ROGERS: Objected to as not cross-examination, incompe-
14 tent, irrelevant and immaterial, and assuming facts not
15 testified to, not in evidence. Said, "Did you not learn,
16 did you not know, did you not hear, did you not know such
17 and such things", and then counsel recites them, a dozen
18 or two of them; not cross-examination. A witness ought
19 not to be permitted to be interrogated in that manner.

20 MR FORD: If the court please, I would like to be heard
21 just a moment on that because the witness first denied
22 making the statement. I want to show certain things in
23 his mind, to show his state of mind and show the likeli-
24 hood he did make that statement.

25 THE COURT: Better ask him again.

26 MR FORD: Didn't you think that was a strong piece of

1 evidence against J. J. McNamara?

2 MR ROGERS: What was?

3 MR FORD: The keys that were taken off him at Indiana-
4 polis.

5 MR APPEL: He assumes it was --

6 MR FORD: On cross-examination I can assume anything?

7 MR APPEL: No, you cannot assume anything the witness has
8 not testified to. He assumes that those were facts, your
9 Honor. He assumes that there were keys that were dupli-
10 cates of other keys. He assumes there was dynamite,
11 that there were clocks and that there were pieces of pipe,
12 and he assumes lead pipe and iron pipe and steel pipe,
13 and everything else under the sun, and then he says
14 these things by saying, didn't you think that was a strong
15 piece of evidence. Now, the witness could say if that was
16 so, it was, if that is true. I think it was, if that was
17 so, I would have thought -- any lawyer would have thought
18 that was a strong piece of evidence -- damned strong
19 piece of evidence, but the fact that Biddinger may have
20 said so, couldn't be a strong piece of evidence, because
21 if a detective comes to me and tells me anything like that,
22 I take his statement and I look at it with a microscope
23 before I even will admit the truth or veracity of it.

24 Now, because he might have thought that, if such things
25 did exist, would it follow from that that he was likely
26 to have said to a detective -- a detective, trying to sell

1 information coming from the other side, would it be like-
2 ly that Mr Darrow, a lawyer on the other side of the case,
3 would have been informing^{him} that he thought that was a
4 strong piece of evidence. That is a line of inquiry;
5 perfectly ridiculous, your Honor. He assumed that these
6 things existed, and if the witness says yes, I thought so,
7 then the counsel is going to argue there -- there he will
8 say to the jury, these keys were taken from the McNamaras,
9 these keys and this dynamite was found down there and these
10 clocks were in the vault, and all that.

11 He assumed the existence of all those things, and in as-
12 suming the existence of those things, he asked Mr Darrow
13 whether he thought that was a very strong piece of evidence.

14 THE COURT: I think that is much better as you have now
15 stated it, "It is a very strong piece of evidence."

16 MR APPEL: I know, I was quoting. I never used that lan-
17 guage in my life, for I never used such an expression.
18 I really am ashamed of it to have used it here.

19 THE COURT: Counsel has a perfect right to use it as a
20 quotation; I think it ought not to be done in argument.

21 MR APPEL: There are a good many words in the dictionary
22 that are used as quotations only.

23 THE COURT: Now, let's have the question. (Last question
24 read by the reporter.)

25 A I couldn't answer that if I tried.

26 THE COURT: Objection sustained. It is too broad a question.

1 MR FORD: Did you not learn that the prosecution or that
2 Biddinger claimed to have taken some keys from J. J. Mc-
3 Namara at police headquarters in Indianapolis? A Learned
4 from who?

5 Q From any source?

6 MR APPEL: That is not cross-examination.

7 A What the prosecution claimed?

8 MR APPEL: His attention not being called to any particu-
9 lar person, time or place.

10 THE WITNESS: The question is did I learn what the prosecu-
11 tion claimed?

12 MR FORD: Yes.

13 THE COURT: I very much doubt it is cross-examination.

14 MR FORD: I withdraw that question. Did you not hear
15 that some keys were taken from the person of J. J. McNama-
16 ra at police headquarters in Indianapolis? A From whom?

17 Q Anybody? A Suppose I heard it from my client, would
18 you want me to tell that?

19 Q No. A Well, then, from whom?

20 Q From anybody but your clients? A I would not tell
21 that. I might have heard it from somebody working for me
22 or I might never have heard it.

23 Q Did you not know that there were some keys taken from
24 the person of J. J. McNamara at Police Headquarters in
25 Indianapolis?

26 MR APPEL: That is not cross-examination; it is immaterial.

1 A You asked me if I didn't know it? No, I didn't.

2 MR FORD: Did you ever hear it?

3 MR APPEL: That is objectionable on the same ground.

4 MR FORD: Did you ever hear anyone say it, of course,
5 what you may have heard from your own clients --

6 MR ROGERS: Might be well enough to tell us when he heard
7 it. Wouldn't be of any effect unless he heard it before the
8 conversation with Biddinger. If he heard it afterwards
9 it would not have any relevancy to the case whatever.

10 THE COURT: I think this cross-examination is assuming a
11 wider range than the very broad direct examination just-
12 ified. There is lots of difference between the cross ex-
13 amination of a defendant and a coconspirator.

14 MR FORD: Did you not have in your mind at the time that
15 you were talking to Biddinger at the Alexandria Hotel on
16 August 18th, 1944, information from some source other
17 than your clients that J.J. McNamara had been searched at
18 police headquarters at Indianapolis and that some keys
19 were taken from him? A You want to know what I had in
20 my mind on that morning? I got too much. Take some sim-
21 ple fellow that don't carry much. I can't answer it.

22 Q Did you know at that time, in any way, shape or form,
23 or had you heard in any way, shape or form from any source
24 than your clients?

25 MR APPEL: Objected to upon the ground --

26 MR FORD: -- that J. J. had been searched at police head-

1 quarters at Indianapolis, and that some keys had been
2 taken from him?

3 MR APPEL: That is the same question and we ask your Honor
4 to instruct counsel not to ask it again.

5 MR FORD: That question has not been sustained.

6 MR APPEL: There, your Honor --

7 MR FORD: The witness has answered the question in a way
8 that was not responsive.

9 A I have not answered that question or evaded it.

10 THE COURT: I think I sustained an objection to that, Mr
11 Ford. I sustained the objection on the ground it was too
12 broad a latitude on cross-examination, broader than the
13 direct examination permits.

14 MR FORD: If your Honor holds I cannot go into that sub-
15 ject at all, why, I don't want to be asking further ques-
16 tions.

17 THE COURT: Unless you can call my attention to some sub-
18 ject matter gone into on direct examination in the trans-
19 cript to which this is responsive.

20 MR FORD: The only subject matter is the conversation at
21 the Hotel Alexandria, and the witness's present denial
22 that he said it is a qualified strong piece of evidence
23 against him, and we want to show his state of mind, to show
24 the likelihood of his having made such a statement, that
25 is all.

26 THE COURT: There may be a lot of further questions that

1 could probably be asked on that line, but it seems to me
2 it is not cross-examination. As far as it is responsive
3 to the direct interrogatory --

4 MR FORD: Have you thought over the matter of the telegram
5 that you sent to Mr Biddinger on August 23rd, Mr Darrow,
6 so that you now recall who it was that wrote the telegram
7 for you, the Johnson telegram? A No, I haven't, and
8 would not. It isn't important enough. Such
9 a Telegram was sent by my authority, and I haven't given
10 any consideration as to who wrote it or where. It was
11 done under my authority, and that is all that is necessary
12 that I can see.

13 Q Turning now, to the conversation with Mr Steffens at
14 the Hotel Alexandria on the 25th day of November, 1911,
15 Saturday evening -- A Yes.

16 Q You said that you ^{handed} a list of jurors to Mr Franklin
17 that evening? A I think so.

18 Q Did you not also send for Mr Russell that evening?

19 A I don't remember; I might have. If he asked me to, I
20 did.

21 Q And had Mr Russell come down to the office and get
22 the reports on the jurors for Mr Franklin? A If Mr Frank-
23 lin asked me to I did, and I believe he said on the wit-
24 ness stand he did ask me to.

25 Q Now, what was the list was that you handed to Mr Frank-
26 lin? Was it the list you had received in court? A I pre-

1 sume so.

2 Q Had you checked the list over before meeting Mr Franklin
3 that evening? A Probably had. I always did it, the first
4 thing. We always did it together.

5 MR ROGERS: What do you mean by "together"? A The law-
6 yers who were present always went over -- somebody took
7 the names and somebody else the book, and went on down.
8 If we had any special information that caused us to change
9 any of them, we might have changed them at the time.

10 MR FORD: That list consisted of two pieces of paper, did
11 it not? A I don't recall. I can tell if I see it.

12 MR ROGERS: I don't know how a man is going to identify
13 check marks like that.

14 MR FORD: I am showing you a document. It don't call for
15 any comments from you.

16 MR ROGERS: I don't know what it calls for. This docu-
17 ment is not enlightening to us.

18 MR FORD: No claims have been made in regard to it yet.
19 I now show you a document which has been shown to your
20 counsel, which has been commented on.

21 MR ROGERS: Correctly and truthfully.

22 A You will have to let me look these over.

23 MR FORD: Attracting your attention, Mr Darrow, to the
24 paper -- to the two sheets of paper, and the typewriting
25 on the two sheets of paper, and those two things alone at
26 this time, state whether or not those two sheets of paper

1 with the typewriting on it were the lists that you handed
2 to Mr Franklin in the Hotel Alexandria that evening?

3 A I can't say.

4 MR ROGERS: Wait a moment, Mr Darrow. I would like to have
5 the answer stricken out.

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

8 MR ROGERS: Just for the sake of establishing a principle,
9 not that we care anything about this piece of alleged
10 evidence, but if Mr Franklin testified concerning that
11 matter in his direct--in the state's direct case, and if
12 he attempted to tell all he knew, and produced all the
13 facts that there were, and the prosecution had ^{it} in its
14 possession, assuming that this is a document which he gave
15 them, and it must have been given to them by him, assuming
16 that it is a genuine document, for the sake of the argument,
17 and that Franklin gave it to them, it is part of their
18 main case, the same as the conversation was, and cannot be
19 put in in this fashion. If Franklin wanted to identify
20 that or try to tell the jury that was the document, they
21 should have produced it in their direct case.

22 Now, I don't care enough about it to argue the
23 matter, except that they cannot double it in this fashion.
24 It is one of the elementary rules of the trial of criminal
25 cases that their case must come in in order that we may
26 meet it. They cannot subdivide it up and take part of

1 Franklin's statement at the Alexandria Hotel and then call
2 him back and put on another part of it; take his conversa-
3 tion and bring back an alleged document. Now, I don't
4 consider the matter, so far as this evidence is concerned,
5 is worth considering, but the principle of the thing has
6 been settled so many times, if your Honor please, that
7 counsel ought not to produce it at this time. If they had
8 it and Franklin gave it to them, and it is genuine, it
9 should have been produced when Franklin was interrogated
10 about it in chief.

11 MR. FORD. This witness has testified to the circumstances
12 and it is purely cross-examination.

13 MR. ROGERS. Cannot be cross-examination any more than
14 cross-examining a defendant, didn't you say to Franklin
15 thus and so. If Franklin had not testified to it--

16 MR. APPEL. Mr. Darrow has not denied that he had the list
17 there of jurors, that he gave Mr. Franklin a list or not.
18 He has not denied that statement.

19 THE COURT. I think the objection of the defense is--

20 MR. APPEL. We object to it/^{it}is not cross-examination.

21 MR. FORD. If the Court please, supposing Mr. Franklin had
22 not testified to the conversation at all, had with Mr.
23 Darrow that evening, supposing we had not gone into that
24 matter of Saturday night at all, and this witness testified
25 on direct examination, by way of his own defense, as to
26 what had occurred there, wouldn't we have the right to

1 find out all that did occur and to introduce all the
2 documents that were produced at that time in court and
3 to examine--

4 THE COURT: This is a hypothetical question and not
5 expressive of the state of facts,
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1 MR. FORD. Your Honor is always anticipating me. I simply
2 want to go from one point to another; that is the situa-
3 tion in which your Honor would undoubtedly hold we
4 would have a right to produce this document to this witness
5 and cross-examine him about it, if he testified on direct
6 examination to the conversation, we would have a right to
7 cross-examine him on that conversation. Now, in the present
8 case, Mr. Franklin has testified to the conversation. He has
9 not introduced, giving time or place--introduced while he
10 was testifying, certain documents that were present at the
11 conversation--

12 MR. APPEL. That is claimed at present.

13 MR. FORD. The matter now brought out was matters that
14 we deem of some importance since Mr. Steffens has testified
15 and since Mr. parrow has testified, and we have a right to
16 cross-examine this witness concerning any matters on
17 which he gave testimony on direct examination. We have a
18 right to examine him fully, and our right to cross-examina-
19 tion of the witness does not depend in any way, shape or
20 form upon what any other witness may have testified to in
21 the case or may not have testified to in the case. Our right
22 to cross-examine this witness depends solely upon the
23 direct examination of the witness, and that is the only
24 thing that it depends on. Our right to cross-examination
25 is as wide as the examination in chief of the witness, and
26 it is not limited by what we may or what we may not have

1 done with other witnesses, or with regard to other pieces
2 of evidence. It may be true that we would have had a
3 right to put this list on direct examination--I mean on
4 the direct presentation of our case, and it may be true
5 our failure to put it on the direct presentation of our
6 case would prevent us from putting it in by testimony
7 in rebuttal, but it does not affect our right to cross-
8 examine upon it on cross-examination of one of the
9 defendant's witnesses, if the defendant's testimony--or if
10 the testimony of the witness uncovers the subject. If the
11 testimony of the witness uncovers the subject--if he had
12 covered the subject we had a right to examine him fully on
13 the subject and our right to cross-examination is not limit-
14 ed by what we did on some other occasion or what we did not
15 do on some other occasion. Our right to cross-examination
16 of this witness depends solely upon the subject matter
17 of his direct examination.

18 THE COURT. Mr. Ford, we are spending a good deal of time on
19 a moot question, in view of the fact that the witness said
20 although his answer was stricken out, that he could not
21 identify the document. It leaves the question here,
22 obviously, a moot question, but I will restore the answer.

23 MR. ROGERS. Exception.

24 MR. FORD. Then I ask that the document be marked for
25 identification People's Exhibit 49.

26 MR. APPEL. Why should it be marked for identification

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when the witness has not identified it? What business has it got in the record?

MR. FORD. So the record will show what document is referred to. Now, will you read the answer as it stands, Mr. Smith?

MR. ROGERS. Do I understand your Honor overrules the objection?

THE COURT. Yes, sir.

MR. ROGERS. Exception.

1 A I have examined it more closely, and I do not believe I
2 ever saw them before.

3 MR. APPEL. Before this time?

4 A Before now.

5 MR. FORD. Q Your answer was arrived at, or, rather, your
6 opinion was arrived at by comparison with some other
7 document, is that correct? A It was not; it was not.

8 Q You refreshed your recollection on that by some document
9 you had in your hand?

10 MR. APPEL. We object to that. Q MR. FORD.
11 this list in your hand. / At the time you had

12 MR. APPEL. We object to that as immaterial, how he
13 refreshed his recollection, or anything at all about it.

14 A I would like to answer it, if you don't mind, Mr. Appel.
15 Excuse me for being a lawyer and a witness both.

16 MR. APPEL. All right.

17 A No. I looked at a paper in my pocket for the sake of
18 comparing them, comparing something on the paper with a
19 mark that I saw on there; the reason I say I don't believe
20 I ever saw it is, first, because I am very confident that
21 no lists were ever made by us on paper like that; secondly,
22 because I never delivered a list to Mr. Franklin that did
23 not have every juror, practically every juror marked according
24 to the book, and, thirdly, because I know that most of the
25 markings on that paper I have never seen and had nothing
26 to do with.

1 Q Well, I had not asked your attention to the markings.

2 A You asked me how I answered this question.

3 Q May I see the memorandum with which you compared that,
4 and by which you refreshed your recollection?

5 MR. APPEL. No, no.

6 A I did not refresh my recollection from any memorandum.

7 Q By which you compared--

8 MR. APPEL. Now, then, your Honor, he didn't say he compared
9 anything, he is mistaking the witness's attitude here every
10 minute and at every turn.

11 THE COURT. Well, the witness has not been required to
12 produce any memorandum.

13 MR. APPEL. No, but he ^{compels} the witness to defend himself
14 by his misstatements and it is not fair nor proper.

15 MR. FORD. I have asked the witness a question.

16 MR. FREDERICKS. There is no question pending.

17 MR. APPEL. No, but his manner is objectionable everywhere,
18 it would not be tolerated to do that anywhere, a man who has
19 not got a memory as long as a bobtail--

20 MR. FORD. Q Have you any objection to letting me see that
21 document, Mr. Darrow?

22 MR. ROGERS. You need not answer that, Mr. Darrow; that is
23 objected to on the ground it is incompetent, irrelevant and
24 immaterial; not cross-examination, and you need not produce
25 it.

26 MR. FORD. May I see the exhibit, Mr. Smith?

1 A I will tell you what it is if it will do you any good.
2 MR. ROGERS. You need not answer it, please. I am doing
3 this now.

4 MR. FORD. Q Were you not furnished in court, or furnished
5 with a copy of the list of the jurors made in court by one
6 of the court's stenographers?

7 MR. APPEL. We object to that, your Honor, because that
8 has been asked and answered time and time over again, con-
9 cerning this very list, and not cross-examination.

10 THE COURT. I think that is possible, with the explanation
11 made by the witness--objection overruled.

12 MR. APPEL. We except.

13 A That is possible. Our usual custom was to take the list
14 to the office and have duplicates made so that all of us
15 could have one, and that does not look like any paper that
16 I was accustomed to, in that paper.

17 MR. FORD. Q That is, it does not look like your office
18 paper? A Yes.

19 Q But you are not sure the copy you handed to Mr. Franklin
20 was on your office paper? A I only judge it from our
21 regular custom; that might have been treated differently for
22 the reason we did not expect to try the case.

23 Q And it might not have been as fully marked for the same
24 reason?

25 MR. APPEL. We object to that as immaterial; he is examin-
26 ing him concerning a document now that is not before the

1 court, that has not been introduced in evidence, that the
2 witness says he cannot identify. Now, the provisions of
3 the code are that you cannot examine a witness concerning
4 a written document or its contents or its looks or how
5 it looks or how it does not look, unless the paper is
6 before the court; as to what might have been or what
7 might not have been on the paper looked at is merely, your
8 Honor--it is not anything and it cannot be produced in
9 evidence. If this document had been introduced in
10 evidence on the part of the people in chief, your Honor,
11 the witness had gone upon the stand and said, "That is not
12 the paper because of certain things that appear on it,
13 or that do not appear," then they might have gone into the
14 probabilities of their having been there at the time;
15 but the document is not in evidence and cannot be in evidence
16 and he ought not to be examined concerning a document or
17 what it might have looked like or anything at all about it.
18 THE COURT. That is quite true, but I think he can interro-
19 gate him as to what conclusions might be drawn from the
20 statement just made here as an explanation, a further
21 amplification of that explanation.

22 MR. APPEL. I know, but the witness says, "I don't think I
23 ever saw this paper until now," and he cannot identify it,
24 Have they got a right to go into explanations of how this
25 paper looks or how it does not look?

26 THE COURT. He has undertaken an explanation and it might

1 be amplified to a very limited extent. Objection
2 overruled.

3 A The question escaped my mind. What was it?

4 MR. APPEL. Let me put one general objection that is good
5 here and everywhere else.

6 THE COURT: Yes.

7 MR. APPEL. We will object to the examination of the
8 witness concerning the document in question upon the
9 ground and for the reason that no foundation has been laid
10 for the examination of the witness concerning the contents
11 or the appearance of the document which is held by the Dis-
12 trict Attorney, and which has not been introduced in evi-
13 dence, and upon the further ground that no foundation has
14 been laid as required by the code for that purpose, not
15 cross-examination.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.

18 (Last question read.)

19 MR. ROGERS. Read the last question and answer.

20 (Last two questions and answer read.)

21 A I probably would not have marked it at all for the
22 same reason.

23 MR. FORD. Q Now, attracting your attention to the name,
24 "William Bryan," and the letters "N.G.", is that in your
25 handwriting? A That is the only thing in there that looks
26 like my handwriting, but I suspect that it is not; that is

1 the only thing in there that there is a chance it can
2 look like it, but I do not think that is mine.

3 Q you do not think that the letters "N.G." is your hand-
4 writing? A No.

5 Q You are not sure of that, however?

6 MR. APPEL. There you are. He is examining him concerning
7 a document not in evidence, not cross-examination.

8 A I can tell you why I do not think it is.

9 THE COURT. The objection is sustained.

10 MR. FORD. Q Tell us why you do not think the letters
11 N.G. are your handwriting?

12 MR. APPEL. All right--

13 MR. FORD. The witness said he could.

14 A Because it is pretty near out of the question I should
15 have put a mark after one of the list of 50, and I am
16 certainly that practically every other marking is not
17 mine; it bears some resemblance, but I do not think it
18 bears enough to have been mine, and it could not have been
19 under the circumstances.

20 Q The strong resemblance convinces you--

21 MR ROGERS. He has not said there is a strong resemblance.

22 MR. APPEL. We object to counsel misleading the witness,
23 and deliberately, absolutely, and maliciously--

24 MR. FORD. Q The letters "N.G." does bear a strong
25 resemblance to your handwriting? A Not very; it does
26 some.

1 Q It does bear some resemblance? A But, I certainly
2 would not have marked one name on that list "N.G." and
3 marked nobody else.

4 Q The check mark on the same line with the words "N.G."
5 was that made by you? A I don't think any other thing on
6 there or anything on there was made by me.

7 Q Attracting your attention to that check mark specifically,
8 was that made by you? A I do not think so.

9 Q Attracting your attention to the check mark--

10 MR. APPEL He is examining him concerning a document,
11 we have objected to it once before and your Honor sustained
12 the objection, and counsel is doing the thing in the face
13 of the court, and while your Honor has taken occasion to
14 call us to attention before, you allow the District Attorney
15 to do that very thing which we ought not to do, and there
16 is no rebuke for the District Attorney--

17 THE COURT. Wait a moment now--

18 MR. APPEL. ;--in that respect I protest, your Honor. We
19 ought to be treated alike, your Honor.

20 THE COURT. You are quite right about that.

21 MR. APPEL. I am speaking in the kindest way.

22 THE COURT. The Court has not permitted one question that
23 it believed to be a question concerning the document itself,
24 when objection was made.

25 MR. APPEL. I know, your Honor.

26 THE COURT. And will not do so. Now, there were some ques-

1 tions that were on the borderline, that were permitted over
2 counsel's objection upon the theory that they were responsive
3 to the explanation made by the witness, not otherwise, but
4 the court has not knowingly, at least, permitted any ques-
5 tion concerning the contents of this document, which is
6 not in evidence, over counsel's objection--there may be some
7 questions that have been answered that were not objected to.

8 MR. APPEL. No, I am speaking of counsel's conduct, of
9 asking questions, your Honor, which any man who has an iota
10 of sense would have known were in direct violation of your
11 Honor's ruling.

12 MR. FREDERICKS. The witness said he wanted to answer.

13 MR. APPEL. And this morning he did the same thing all morn-
14 ing long, your Honor sustained objections and he kept on
15 asking them just the same, just absolutely overrides your
16 Honor's decisions here, and he forgets you are sitting on the
17 bench, and I say, it is an outrage on decency, an outrage
18 on this defendant's counsel, and this defendant himself
19 that we must be compelled to object at every turn.

20 MR. FORD. Now, if the court please, as I understand the
21 law, the only foundation for examination upon a document is
22 that the document must be shown to counsel for the defendant
23 and shown to the witness before he is examined upon it.

24 THE COURT. You cannot examine a witness concerning the con-
25 tents of a written instrument that is not in evidence.

26 MR. FORD. That is true, that the document itself cannot be

1 introduced in evidence until it has been identified in
2 some way, but the witness cannot preclude the cross-
3 examiner from examining him upon a document by simply
4 denying that he ever saw the document or by simply claim-
5 ing that he does not recall whether he ever saw the docu-
6 ment or does not know whether that is the document or not,
7 he cannot stop a cross-examination upon it; it is true if
8 he fails to identify it it cannot be introduced until some
9 witness is put on the stand who can identify it, and it
10 cannot be read to the jury until it has been introduced in
11 evidence; but I have a right to go down this document
12 word by word and call his attention to each check mark
13 or mark of any sort that is upon it and ask him if he put
14 that mark there, and for the purposes of the record I have
15 a right to attract his attention, in my question, to
16 some other matter, such as a figure, and I will endeavor to
17 avoid getting in a large amount of substance into the
18 record, but I certainly have a right to cross-examine him
19 upon this document and I am not bound by the mere denial
20 of the witness and a lack of knowledge on his part.

21 THE COURT. The Court has permitted that in so far as
22 it is proper, and as counsel for the defendant says, some-
23 times further than is proper. At any rate, there is no
24 question at this time before the court.

25 MR. ROGERS. May I make a suggestion for your Honor's
26 consideration during adjournment? Cross-examination on

1 collateral matters is sometimes permitted, but it is
2 elementary law, and I can produce plenty of authorities
3 where you cross-examine upon collateral matters you are
4 bound by the answers. Now, he having asked him, it being
5 collateral to the matters set forth in the indictment,
6 having asked him that question, he is bound by the answer
7 of the witness.

8 THE COURT. The court has still indicated its feelings your
9 way.

10 MR. FORD. I am bound by the answer of the witness on cross-
11 examination?

12 MR. ROGERS. On a collateral matter, on cross-examination.

13 THE COURT. There is nothing before the court.

14 MR. ROGERS. Here is this book, Mr. Ford.

15 MR. FORD. Yes, thank you. We will have it here this
16 afternoon.

17 THE COURT. (After admonishing jury.) We will adjourn
18 until 2 o'clock this afternoon.

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