

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. 7

I N D E X.

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

Bert H. Franklin,

474

B. N. Smith,  
Official Reporter

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1-Smith

May 31, 1912. 9:30 o'clock A.M.

2 Defendant in Court with Counsel.

3 Jury called; all present. Case resumed.

4

5 BERT H. FRANKLIN, on the stand for  
6 further direct examination:

7 MR FORD: The last time you were in Court, Mr Franklin,  
8 you were testifying concerning a conversation had with Mr  
9 Darrow in reference to a paper at the Alexandria Hotel.  
10 Will you state what that paper was? A It was a list of  
11 names of men that appeared upon the list, as I had them, of  
12 jurors in the McNamara case.

13 Q Any particular venire?

14 MR ROGERS: It may be well not to lead him.

15 A I don't know the number of it.

16 MR FORD: Well, with reference to any date.

17 A The 25th day of November, 1911.

18 Q What other name appeared upon that --

19 MR APPEL: Your Honor, of course we interpose no objection  
20 to this evidence of the witness concerning the contents of  
21 papers and documents, believing it is under our objection  
22 that it is secondary; that we made heretofore, no foundation  
23 laid.

24 MR FORD: Mr Franklin --

25 THE COURT: Now wait a moment. You want to get Mr Appel's  
26 statement?

1 MR FORD: I don't care anything about his statement. I  
2 withdrew the question. I was interrupted before I finished.

3 THE COURT: All right, go ahead; propound your question.

4 MR FORD: You stated that Mr Darrow pointed to two names  
5 upon that paper and George W Lockwood was one of them.

6 MR ROGERS: He has not stated anything of the kind, as I  
7 understand it.

8 MR FORD: Yes, he did, on Saturday.

9 MR ROGERS: I may be mistaken. If he has stated it he  
10 doesn't need to state it again.

11 MR FORD: mm I just directed his attention to that statement.  
12 What was the name of the other person appearing upon the  
13 list to which he had directed your attention?

14 MR APPEL: Wait just a moment. Of course, we said before  
15 we made objections to the introduction of any oral state-  
16 ments concerning the contents of papers not being the best  
17 evidence, secondary; and no foundation laid. I say, I don't  
18 want to interrupt the witness as we go along here, as it is  
19 admitted to be objected to on those grounds and with the  
20 same ruling of the Court.

21 MR FORD: If we seek, your Honor, to establish a document by  
22 that class of evidence it would be secondary evidence and  
23 no foundation has been laid, and it would be improper. I  
24 wish to state we are not attempting to prove the documents,  
25 but simply directing the attention of the witness to such  
26 matters in order that the conversation concerning it may be  
brought up, that is all. Not seeking to prove the documents.

1 The 9th venire is in evidence here itself, and is the best  
2 evidence of its own contents -- should be the 11th venire.

3 THE COURT: All right, proceed then.

4 MR FORD: Answer the question. A Read the question.

5 (Last question read by the reporter)

6 Q What was the name of that other person? A A K Kruger,  
7 of the Palms.

8 Q Do you know Mr Kruger? A Yes sir.

9 Q Where does he reside? A Just south of the Palms in  
10 this County.

11 THE COURT: Mr Franklin, you will speak just a little louder.  
12 We have this fan operating up here and it makes it necessary  
13 to talk a little louder. A Yes sir.

14 MR FORD: Now, have you stated all the conversation that  
15 occurred at the Alexandria between you and Mr Darrow on that  
16 occasion? A I don't remember just what part of it I have  
17 told. If you will read it to me I can tell you.

18 Q Just state the entire conversation, now, so that we may  
19 start fresh, that you had with Mr Darrow at the Alexandria.

20 MR APPEL: Wait a moment.

21 MR ROGERS: That is unique, your Honor, but we will let it go.

22 MR FORD: There has been a break of a day and a half and the  
23 witness doesn't remember everything he stated in that conver-  
24 sation.

25 A I went into the Alexandria Hotel, to the Grill Room of  
26 the Alexandria Hotel, and met Mr Darrow and Mr Lincoln Stef-

1 fins at a table on the west side of the dining-room. Mr  
2 Darrow asked me to have dinner and I told him I had been to  
3 dinner. He asked me if I would have a drink and I told him  
4 yes. He then pulled from his pocket a paper and pointing  
5 to the name of George N Lockwood and A K Kruger, he made the  
6 statement, "that looks better"; and I said, "yes, that looks  
7 better". He then requested me to take the list or the paper  
8 to my office and compare them with the reports as rendered  
9 by my operators and mark those that were good and those that  
10 were bad for the defense. I informed him that under his  
11 instructions that I had some time before that taken all of  
12 the reports as rendered as fast as they came in and were  
13 typewritten, I had taken the originals and the copies to  
14 his office.

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1 He then instructed me to get Mr. Russell, who had the combina-  
 2 tion of the safe, and had charge of those records, as I  
 3 understood it, and have him come to the office and compare  
 4 them and make a report on them. He also informed me that  
 5 there were two of his men, one of which worked with--for  
 6 me, rather, part of the time, and part of the time for Mr.  
 7 Darrow personally, either at his office or at my office,  
 8 but I don't know which he said at the present time, and  
 9 that they would assist me in any way I could and get two or  
 10 three more of my men and get busy.

11 Q What were the names of these two men whom he referred to,  
 12 employees? A Keene, Fitzpatrick and <sup>Mr.</sup>Cooley or Cooney,  
 13 I don't know which, Cooley, I think--Cooney.

14 Q P. J. Cooney? A Yes, sir,--I then bid him goodnight  
 15 and left.

16 Q You went to the office, did you then? A I did--

17 Q Did you see Mr. Cooney or Mr. Fitzpatrick that night?

18 A I did.

19 Q Where? A At my office.

20 Q Did you direct them what you wanted them to do?

21 MR. ROGERS. That would not be leading at all, if your Honor  
 22 please. I think this is a character of witness that ought  
 23 not to be led. We have requested it three or four times,  
 24 and I assign the question as misconduct, because I think  
 25 the district attorney knows better; it has been called  
 26 to his attention over and over again, and I protest against



1 his conduct.

2 MR. FORD. I maintain I have a right to ask if he did ask  
3 them to do anything and what it was. I have not led  
4 him or suggested to him what it was--I will put it in the  
5 mildest form I possibly can. Withdraw that.

6 Q BY MR- FORD. What was said and done between you and Mr.  
7 Cooney and Mr. Fitzpatrick?

8 MR. APPEL. We object to that on the ground that no founda-  
9 tion has been laid, hearsay; incompetent, irrelevant and  
10 immaterial to any purpose.

11 THE COURT. Objection overruled.

12 MR. APPEL. We take an exception.

13 A I told Mr. Fitzpatrick and Mr. Cooney that I intended to  
14 send that list of names with Mr. Mayer, another one of  
15 my operators, who was there, to the office of Mr. Darrow  
16 and have them compared and that I would get a report from  
17 Mr. Mayer that night late and I would send a report on the  
18 men I wished them to look up by the chauffeur of an auto-  
19 mobile that would be at their residence at 6 A.M. in the  
20 morning--6 A.M. And they left. No, I--pardon me--I told  
21 Mr. Cooney and Mr. Fitzpatrick that all names appeared on  
22 the list as given to them by the chauffeur in the morning  
23 that were marked N.G., that they were to repair to the  
24 neighborhood in which those people lived and, if possible,  
25 get a telephone and telephone to the person whose names  
26 appeared thereon, and tell them that / <sup>their</sup> name had been

1 drawn upon a jury list for the McNamara case and if they  
2 didn't wish to serve that they had better get away from home  
3 because it was necessary to have a personal service for  
4 them to appear in court.

5 MR. APPEL. I move to strike out the statement of the witness  
6 as to what he informed Fitzpatrick and Cooney and what  
7 instructions he gave them with respect to the telephoning  
8 referred to by him to the proposed jurors, upon the ground  
9 that it is incompetent, irrelevant and immaterial, no  
10 foundation laid, has nothing to do with the issues in the  
11 case, and it is immaterial to any matter or thing in this  
12 case.

13 THE COURT. The motion to strike out is denied.

14 MR. APPEL. We take an exception.

15 Q What particular part of the country did you send Mr.  
16 Fitzpatrick and Mr. Cooney? A I think it was in the  
17 vicinity--

18 MR. APPEL. The same objection as last.

19 THE COURT. Objection overruled.

20 MR. APPEL. Exception.

21 A If my memory serves me correctly, I sent them into the  
22 southwesterly portion towards Moneta, Gardena, and in the  
23 vicinity of Long Beach, and I am not certain about that but  
24 I think I gave them one name at South Pasadena.

25 Q What was the purpose intended by you in giving those  
26 directions--

1 MR. APPEL. We object to that on the ground that it is in-  
2 competent, irrelevant and immaterial, hearsay--

3 MR. FORD. I didn't finish my question.

4 MR. APPEL. Well, then, finish your question.

5 MR, FORD. I will ask counsel to give me a little time, Mr.  
6 Franklin, wait a moment and give Mr. Appel time to object.

7 A I have waited. I have not answered.

8 MR. FORD. I will withdraw the question and reframe it.

9 Q What object had you in notifying these men, these jurors,  
10 to avoid jury service?

11 MR. APPEL. We object to that on the ground it is incompet-  
12 ent, irrelevant and immaterial, hearsay; no foundation  
13 laid; it has nothing to do with the issues of this  
14 case, calls for an opinion of the witness, calls for his  
15 conclusion, calls for his own individual intentions, and  
16 no foundation laid in any way, does not tend to connect the  
17 defendart with any of the matters about which he testified.

18 MR. FORD- He is testifying to his own intent, your Honor,  
19 and certainly if he remembers his own intent that would be  
20 a fact concerning which he is the very best person quali-  
21 fied to answer.

22 MR. ROGERS. We think that is immaterial.

23 THE COURT. I think the objection that it calls for his  
24 conclusion is well taken and it is sustained on that ground

25 MR. FORD. His own intent, your Honor?

26 THE COURT. It is a conclusion of the witness.

1 MR. FREDERICKS. It brings out a fact as to what was in  
2 his mind at that time, a fact which will be a material  
3 fact in this case.

4 THE COURT. I believe that is a conclusion the jury must  
5 draw from all the things he did.

6 MR. FREDERICKS. Well, it is a conclusion, but a fact also,  
7 I think, showing what this man's--what the intention of  
8 these conspirators was.

9 Q. BY MR. FORD. Did you have any desire in your mind as  
10 to whether these men should serve or not, that is, the jurors  
11 whom you had directed them to notify?

12 MR. APPEL. Wait a moment. We object to that on the same  
13 ground stated in our last objection to the previous question

14 THE COURT. Objection is sustained.

15 MR. FORD. What reports did you have upon these jurors  
16 whom you had notified, Cooney and Fitzpatrick, to warn off  
17 of jury service?

18 MR. APPEL. We object to that upon the ground it is hearsay  
19 irrelevant and immaterial and calling for an opinion and  
20 conclusion of the witness; calling for his construction  
21 of reports; not the best evidence; outside of the issues  
22 in this case and not binding on the defendant.

23 MR. FREDERICKS. One of the very narrow rules of evidence,  
24 and yet one of the things which counsel has declared here  
25 in a statement in this case would be that this whole matter  
26 was a frameup. Now, it seems to me that the acts and the

1 ideas of this man showing what he was doing, whom he was  
2 working for, whether--he has testified here that he was  
3 warning certain men whose names appeared on this panel;  
4 that is, that they were being warned by some telephone call  
5 that their names did appear so they could get away and not  
6 be served. Now, it seems to me that it is very material  
7 to show whether those men so warned were favorable to the  
8 prosecution or favorable to the defense. Now he is stating  
9 he marked them N.G. Of course, that might mean--and in the  
10 generally accepted sense might mean something else.

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Smith THE COURT: That is a hieroglyphic term; why don't you have  
2 him explain it?

3 MR ROGERS: If your Honor please, I expect that they will  
4 cover it up, now, that I call their attention to it, but  
5 so far the witness has not seen fit to say that he did this  
6 at Mr Darrow's direction. He has not said, notwithstanding  
7 he has gone all over the conversation, that Mr Darrow had  
8 given him -- he has not said that Mr Darrow told him to do  
9 anything of the kind. I expect he will say so now, doubt-  
10 less, but it has not come up yet, and therefore the conver-  
11 sation is without foundation and is absolutely incompetent.  
12 I will put my finger on the face of it all, it is collater-  
13 al --

14 MR FORD: If the Court please, whether Mr Darrow had told  
15 him to do so or whether he had told him not to do so is  
16 wholly immaterial. Here is a man acting in concert with  
17 Mr Darrow, and Mr Darrow is responsible for every act done  
18 by this witness during the time that the conspiracy was in  
19 existence, ~~and~~ as long as those acts and declarations were  
20 in furtherance of the conspiracy, and that is the law.

21 MR ROGERS: That never was the law in any civilized country  
22 and never will be the law in any civilized country, and  
23 counsel cannot show me one syllable in any law that holds  
24 or declares the acts of a man outside of his directions and  
25 scope of his employment are material.

26 MR FORD: Just state, Mr Franklin, what the letters H G mean?

1 A No good.

2 Q No good for whom?

3 MR APPEL: We object to that, if your Honor please; that is  
4 asking for an opinion of the witness, trying to add to some  
5 written document; trying to interpolate something into a  
6 written document. Your Honor has allowed him to state what  
7 those letters had without the document being here; without  
8 our being able to cross-examine the witness about those  
9 documents, and not appearing here, and now he says the  
10 letters N G appeared there in those documents. Now he is  
11 asking him what N G means, and he says "no good". I supposed  
12 anybody knew that when they say a fellow is N G they mean he  
13 is no good. Now he says, "no good for whom"? We object to  
14 what was in his mind. It is one of those things that would  
15 affect the defendant's mind, that must be given in evidence.

16 MR FREDERICKS: That cannot all be shown at once, your Honor;  
17 has to be shown a little at a time, and step by step.

18 THE COURT: Overruled.

19 MR APPEL: Exception.

20 MR FORD: Answer the question, no good for whom?

21 A Now, Mr Ford, you will have to make your question a  
22 little plainer.

23 Q You have answered that the letters N G stood for no  
24 good. We ask you for whom they were no good? A On that  
25 particular paper? Q Yes. A I can't answer that question,  
26 Mr Ford, for this reason; I did not prepare that paper and I

1 did not mark them. They were marked by one of my operators  
2 and I can't tell you.

3 Q Had you ever gone over these names with Mr Darrow?

4 A These particular names on this venire?

5 Q I mean with any of the names that appeared upon the  
6 venire? A Yes sir, I had.

7 Q And had you discussed whether or not they were N G for  
8 the prosecution or N G for the defense?

9 MR ROGERS: Object to that as leading and suggestive;  
10 incompetent, irrelevant and immaterial, and no foundation  
11 laid.

12 THE COURT: Just a moment, gentlemen. Read that last  
13 question.

14 (Last question and objection read by the reporter)

15 THE COURT: Overruled.

16 MR ROGERS: Exception.

17 A I don't remember any name that appeared on that particu-  
18 lar venire except the names rather of George N Lockwood and  
19 A K Kruger, I think the initials are, and a man, I think,  
20 whose name was Ijams, something of the kind, who lived in  
21 Lankershim. We had discussed previous to that time the  
22 merits, you may say, of Mr Lockwood and Mr Kruger.

23 MR FORD: Now, at these various -- in these various discus-  
24 sions, was it or was it not your custom to use the letters  
25 N G to indicate the conclusions you had arrived at in ref-  
26 erence to any particular juror? A That was usual, yes sir.



1 Q That was your custom? A Yes sir.

2 Q Now, under your custom, when you used the letters N G,  
3 it meant no good for which side did you mean they were no  
4 good?

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5s 1 MR. APPEL. Wait a moment, we object to that on the same  
2 ground I stated in our previous objections to this line of  
3 testimony.

4 THE COURT. Overruled-

5 MR. APPEL. Exception.

6 A No good for the defense for whom I was working.

7 MR- FORD. Q And then when you saw the letters "N.G."  
8 opposite the names of these jurors, whom you directed,  
9 Cooney and Fitzpatrick to warn, to avoid jury service, you  
10 understood that it meant they were unfavorable to you?

11 A Unfavorable.

12 MR. APPEL. Just a moment. Just see if we can get a ruling  
13 in our favor.

14 MR. FREDERICKS. All counsel has to do is to ask for it.

15 MR. FORD. Well, make the objection. I will ask the witness  
16 to answer the question if you are not going to make your  
17 objection.

18 THE COURT. Go ahead, Mr. Appel.

19 MR. APPEL. I am waiting for the district attorney to in-  
20 struct me or command me. I object to the question on the  
21 ground it is incompetent, irrelevant and immaterial; calling  
22 for hearsay evidence, calling for the conclusions of the  
23 witness; calling for his opinion and no foundation laid, and  
24 because the question assumes a conclusion not testified to  
25 by the witness and he is putting a construction upon the  
26 evidence of the witness which is not warranted by the  
evidence, but it is the conclusion of the district attorney

1 and we assign his conclusion in his question, that conclu-  
2 sion, as misconduct and error.

3 MR. FORD. Now, if the Court please, I desire to be heard  
4 in that matter just a moment. Whatever the witness may  
5 have thought at the time the paper was shown to him, was  
6 a conclusion on his part at that time. It was, however,  
7 a conclusion upon which he acted, and a conclusion which he  
8 carried out in directing men to do certain things. That  
9 was a conclusion, we will admit, but now whether or not such  
10 a conclusion existed in the mind of the witness at that  
11 time is a fact which we desire to introduce in evidence  
12 and the witness' testimony as to whether or not he had a  
13 conclusion, and as to what that conclusion is, is a fact  
14 concerning which we desire to have him testify at this  
15 time, and believe it admissible--what that conclusion was  
16 at that time.

17 MR. ROGERS. May I suggest--

18 THE COURT. Objection sustained.

19 MR. FORD. Now, what did you do, if anything, on Sunday the  
20 26th of November, 1911? A Everything that I did?

21 Q Well, I will--did you see George N. Lockwood that day?

22 A I did.

23 Q At what place? A At his house at Walnut station.

24 Q That is near Covina, this county? A Not a great way  
25 from Covina.

26 Q Who else was present at that time? A During my conversa-

1 tion with Mr. Lockwood?

2 Q During your conversation with Mr. Lockwood. A Not any  
3 body.

4 Q Just state what was said and done between you and Mr.  
5 Lockwood at that time and place.

6 MR. ROGERS. He has not given the time, if your Honor  
7 please. He might say what time of day it was, possibly.

8 MR. FORD. We have given the date.

9 MR. ROGERS. We can all see that, we have been in court,  
10 if your Honor pleases, too long to be fooled with that kind  
11 of a thing. He ought to give the time of day. Ask him  
12 what he did on that day and then he goes on and calls atten-  
13 tion to one particular thing. Let us have the time of day,  
14 we are entitled to it.

15 MR. FREDERICKS. There is nothing to it, if counsel will  
16 make his objection.

17 MR. ROGERS. I have made my objection, no foundation laid  
18 for it.

19 Q BY MR. FORD. Just state the time of day you saw him, as  
20 near as you can remember.

21 THE COURT. The question is withdrawn, I understand.

22 A About 11;30 A.M.

23 Q BY MR. FORD. Just state the conversation at that time  
24 and place. A I told Mr. Lockwood I wished to speak to

25 him. We walked to the rear of his house and entered the

26 barn--the stable--I asked him if he had been served with a

1 jury summons in the McNamara case and he told me no he  
2 had not, and I told him I wished to have another talk with  
3 him in regard to acting as a juror. "Well," he said,  
4 "Pert, that is a dangerous proposition", and asked me what  
5 I could do. I told him that I could give him \$500 in cash  
6 and guarantee him that he would get \$3,500 more at the  
7 conclusion of the trial of J. B. McNamara, if he voted for  
8 acquittal. He told me that he would think the matter over  
9 until the next afternoon at about 4 o'clock, when he would  
10 come to Los Angeles and ring me up on the telephone and  
11 tell me where we could meet. I requested that he come to  
12 the office but he said that he didn't wish to do that and  
13 it was left in that way. I gave him my telephone numbers  
14 and left and I told him at that time I was ready at that time  
15 to give him \$200 in cash if he wished to accept it.

16 Q That was the substance of the conversation you had at  
17 that time? A As I remember it; yes, sir.

18 Q Did you receive a telephone message next day from him?

19 A I did.

20 Q About what time of day? A At about 5:30 o'clock, I  
21 believe.

22 Q Where were you at that time? A At my office.

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ete 1 Q Just state what the conversation was over the telephone  
2 with Mr Lockwood at that time and place? A Mr Lockwood  
3 said -- or a man I supposed was Mr Lockwood -- it sounded  
4 like his voice -- he said, "Bert, it was impossible for me  
5 to come in to-day, I had to irrigate my alfalfa", and I  
6 asked him what he wished to do. He then asked me if I  
7 could come out to his house that night. I thought the  
8 matter over for a moment and told him I could. I asked him  
9 what time he wished me to come -- no, I told him I would be  
10 there about 8:30 o'clock, and he requested that I come out  
11 about nine, that his wife was ill, and would at that time  
12 be asleep, and we would not disturb her. I told him I would  
13 be there as near that time as possible.

14 Q Returning to your conversation of Sunday, November 26,  
15 1911 -- withdraw that question for a moment -- do you know  
16 Captain White? A Captain C E White?

17 Q Yes. A Yes sir.

18 Q Did you ever mention him at any time in any conversa-  
19 tions with Mr Lockwood?

20 MR ROGERS: I submit again, if your Honor please, we are  
21 entitled to have this witness relate the conversation without  
22 suggestion, without intimation, without telling him in which  
23 conversation any particular thing belongs. Here comes  
24 counsel again with the tip that the conversation --

25 MR FORD: (Interrupting) -- If your Honor please, I object  
26 to the use of the word "tip" by counsel. We have a right to

1 ask this witness' attention to a particular matter, and I  
2 defy counsel or anybody else to say this is a tip. It was  
3 simply directing him to the certain occasion, ~~and~~ asking him  
4 if he ever had any conversation concerning that man, and then  
5 I will follow it up and ask him when and where and what the  
6 conversation was. This witness has had a great many conver-  
7 sations with various people.

8 MR ROGERS: I say again, it was a suggestion and a tip,  
9 deliberately made, and I will show it to him.

10 THE COURT: Mr Ford -- Now, Mr Rogers, the Court will hear  
11 you and I want to say to you gentlemen, we will proceed  
12 orderly; it is absolutely necessary; when counsel has the  
13 floor, of either side, he has a right to be heard, and if he  
14 says anything that is improper the Court will act upon it,  
15 but the Court must act as the sole judge as to whether or  
16 not counsel's language is proper to be used in Court.

17 MR ROGERS: I want to call your Honor's attention to this  
18 matter --

19 MR FREDERICKS: There is no objection being made.

20 MR ROGERS: I call your attention to this matter: The ques-  
21 tion began this way: "Returning for a moment to the con-  
22 versation of the 26th, I will ask you whether Captain White's  
23 name was ever mentioned, or do you know Captain White?"  
24 What was the necessity for impressing that statement "return-  
25 ing now to the conversation of the 26th"? Why was not  
26 counsel willing to say What was the conversation of the 26th

1 let us have it all, let us hear what was said on the 26th".  
2 He went over the conversation of the 26th, the witness said  
3 nothing about Captain White, and now he comes back and says  
4 "Returning for a moment to the conversation of the 26th",  
5 then he withdraws that question for the moment, and then he  
6 says "Do you know Captain C E White?" I say again that it  
7 was a deliberate tip to tell him of the conversation of the  
8 26th; it could not have been for any other purpose or object,  
9 and it was not included in the question; it was leading and  
10 suggestive, and it ought not to be necessary; this is the  
11 kind of a witness, if your Honor pleases, who ought to be  
12 asked to relate the conversation and to that we have not  
13 objected. Let him relate the conversations as they oc-  
14 curred, let counsel say "on the 26th, did you have a con-  
15 versation" as he has been, without our objection at all.  
16 But now, when he needs something that was not put into the  
17 conversation of the 26th, he says to the witness: "Return-  
18 ing now for a moment to the conversation of the 26th", then  
19 he says "I will withdraw it for a moment", and branches off  
20 onto something else, and says "Was Captain White's name  
21 ever mentioned, or do you know him?"

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7p 1 I have been in court too long, if your Honor please,  
2 not to see that; every man in this courtroom can see it,  
3 the witness can see it, and that is not fair with this kind  
4 of a witness--with the statement in front of them that  
5 they have had Mr. Franklin make and swear to, which they  
6 have never seen fit to furnish us a copy of, they take  
7 advantage of the situation and before them they have his  
8 statement signed and sworn to by him, by which they are  
9 proceeding, and now, if your Honor pleases, we are entitled  
10 to the enforcement of at least the ordinary rules of examina-  
11 tion and evidence. As the courts very frequently say,  
12 sometimes the only protection a defendant has against a  
13 witness of this kind is the strict enforcement of the rules  
14 of evidence. I can show you dozens of cases where that  
15 comes in, and if your Honor please, I submit when they  
16 ask for conversations all they ought to do is to ask this  
17 witness, who seems to be willing enough, what was said at  
18 a certain time, what conversation did you have, was that  
19 all of it, can you remember any more, is there anything  
20 else you can tell us, and then not go back when they seem  
21 to need something and put it in. I say, it is unfair, if  
22 your Honor please, and I protest against it.

23 MR. FREDERICKS. Now, may it please the Court, we bow with  
24 reverence to counsel's knowledge of the law and to his great,  
25 long years of experience in court, and concede all that. But,  
26 we also claim that he has no right to make such a speech as

1 he has made now. There is a way of examining witnesses  
2 that has been in existence since courts were. That is to  
3 ask questions, and those on the other side who do not  
4 approve of those questions have the right to object to  
5 them and then the court rules on the objection. Now, there  
6 is no objection filed, there is no objection asked, there  
7 is nothing that the Court can rule on, and yet counsel takes  
8 advantage of the situation to make a long speech. Now,  
9 that may be intended for the Court--

10 THE COURT. (Interrupting-) I understand counsel objected  
11 on the ground the question was leading and suggestive.

12 MR. FREDERICKS. (Continuing) --no, I do not think there is  
13 any objection made at all. I listened carefully and there  
14 has been no objection made. Now, so far as--if counsel  
15 wishes to discuss the merits of the thing, if he is dis-  
16 cussing it, we will discuss it--

17 THE COURT. (Interrupting) I am assuming that the objection  
18 as stated is before the Court.

19 MR. FREDERICKS. (Continuing) --very well, I will reply with  
20 that idea in mind. Here is a witness on the stand who is  
21 narrating conversations that occurred almost over half a  
22 year ago, he has been narrating, as the Court will notice,  
23 many such conversations. It is true that this witness'  
24 testimony shows that he is an accomplice and that his  
25 testimony should be viewed in a manner the statute says, and  
26 it should be scrutinized very carefully, and all that, but

1 that does not mean that we shall not try to show this  
2 jury in every honorable and proper way that we can, just  
3 what the truth was, and if the witness is asked to tell  
4 what happened at a certain conversation last October, and  
5 has gone over that conversation but has forgotten to tell  
6 some particular point, are we barred from knowing and remem-  
7 bering or thinking what we do, what that particular point  
8 is? Are we barred now from asking that witness such  
9 questions as will call his attention to that point in  
10 order that it may be brought out to the jury and put in  
11 testimony?

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Pete 1 Or must we drive on and forget it, leave it out, and thereby  
2 deceive the jury, deceive the jury against our own interests,  
3 perhaps? It is the purpose of an examination to let the  
4 jury know just what happened. Now, that is all we are aim-  
5 ing to do, we want the jury to know just what this witness  
6 testifies happened there, and we only want to do those things  
7 that will show that to the jury, and it cannot be said we must  
8 stop a witness when he has said what occurred and narrated  
9 it, and we feel morally sure in our own mind he has for-  
10 gotten something. Would it be proper for us to stop then,  
11 would it be proper for the Court to permit us to stop then?  
12 Certainly not. We must go as far as possible. Of course,  
13 we cannot suggest answers to the witness, and we do not  
14 intend to, but to say the difference between a question  
15 that is leading and one that is not leading is a relative  
16 matter, a relative difference, and the vice of a leading  
17 question is putting the answer in the witness' mouth, but,  
18 directing his attention to some particular thing which he  
19 may have inadvertently left out, certainly has no vice to  
20 it; if it has, then we must pass on and deceive this jury  
21 and go on, knowing that we have done it. Now, we cannot  
22 do that. I think there are two sides to these things, and  
23 we only want to go as far as will be fair to bring out the  
24 entire matter, and then let this jury weigh the witness'  
25 testimony with the scales provided for it.

th 26 MR FORD: Now, if the Court please, I want to make a state-

1 ment. I examined this witness with reference to a conver-  
2 sation that occurred on Sunday, November 26th. I then went  
3 over to a telephone conversation on Monday, the 27th.  
4 Then it was suggested to me by Captain Fredericks that the  
5 conversation in relation to Mr White had not been brought  
6 out. I immediately turned to ask the witness if he had  
7 testified to all the conversation that occurred on Sunday,  
8 but I didn't finish the question for this reason: this is  
9 known to me, and is known to your Honor, and <sup>is</sup> known to  
10 everybody who tries cases in courts, that the witness had  
11 already testified, as he thought, fully to all the conver-  
12 sation that occurred the preceding day. If I had asked him  
13 that question, not knowing what was in my mind, he would  
14 probably have come to the conclusion that he had testified  
15 in full, and would have so answered. It would have been  
16 absolutely necessary for me to attract his attention to  
17 the particular portion of the conversation that I wanted  
18 brought out. I did not say "Did you on such and such a  
19 time and place do such and such a thing in reference to  
20 such and such a man?" I asked him if he knew Captain White,  
21 and if he had had any conversation, not the day before or  
22 any other day, but I asked him two questions: "Do you know  
23 Captain White?" And he says, "You mean Captain C E White?"  
24 I said "Yes". Said he did know him. I then asked him if  
25 he had any conversation at any time with Mr Lockwood. I have  
26 a right to attract his attention in that matter. That is

1 not a tip and I ask the protection of this Court, and I want  
2 to know whether I am going to get it, from insinuations  
3 such as made by counsel, insinuating that I have deliberate-  
4 ly tried to put something in the mouth of that witness.  
5 I don't think it is a fair construction on my language.  
6 I want to know whether the Court is going to protect me  
7 against it?

8 THE COURT: I think your point is entirely without merit;  
9 the distinction between what counsel on the other side  
10 designates a "tip", and what you designate as a suggestion,  
11 is of <sup>so</sup> little consequence to my mind, except perhaps the  
12 form, the phraseology, that amounts to pretty much the  
13 same thing in its last analysis, and I see no occasion  
14 for <sup>the</sup> feeling advanced on that subject.

15 MR FORD: I think the word "tip" as used by counsel is a  
16 slang term. He can stop anywhere short of profanity.  
17 Perhaps he will swear at me next time and your Honor will  
18 come to the conclusion --

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1 THE COURT. I do not understand the word tip as being  
2 offensive in any way shape or form and cannot construe it  
3 as such. Perhaps not as convenient a term as "suggest";  
4 in its last analysis. It seems the same thing. I under-  
5 stand the English language. Let's not waste any time  
6 on these matters.

7 MR. ROGERS. I do not object to his asking if he had a  
8 conversation on the 26th and in that way getting before  
9 the jury the truth of this thing, which we desire as much  
10 as they, and which we will spend some time in endeavoring  
11 to reach in the interest of the truth of this testimony,  
12 which we desire to have before them, for God knows we,  
13 as much as they, desire to have this witness' testimony,  
14 which we do not concede to be the truth, and we have the  
15 right to measure this testimony.

16 MR. FREDERICKS. Now, counsel is making an argument on this  
17 witness' testimony and are we to sit here and listen to it,  
18 whether this witness is telling the truth.

19 MR. ROGERS. We have a right to contest that testimony by  
20 the rules which centuries have sent down to us; we contend  
21 that his testimony is not true and we have a right to test  
22 it by each of the combined rules that the ages have brought  
23 to us, and the law has laid it down; the law is  
24 common sense, and therefore we have the right to say that  
25 the rule shall be abided by, if so it may be. Now, the  
26 rules are that you cannot suggest to a witness, but there

1 are times when counsel may be permitted to suggest and  
2 lead, in the discretion of the Court, that is where it appeals  
3 to the Court as a matter wherein he should exercise his  
4 leniency, and to a certain extent overlook the strict  
5 rules. This is not one of those cases. Counsel should  
6 say if he is going to avoid such arguments, as he has had,  
7 he should say, as I believe I would say, if I had sat where  
8 he is, "Do you remember of saying--of mentioning Captain  
9 White to Mr. Lockwood? Yes. When was that done? At what  
10 conversation and let him tell and not give it to him as  
11 counsel did. Now, turning to the conversation of the 26th--  
12 I withdraw that question--did you ever talk about Captain  
13 White? Why, I tell your Honor--I withdraw nothing. It  
14 was a subterfuge and a suggestion. There can be no other  
15 construction to it. If this witness is as a matter of  
16 fact telling the truth, let's trust him to tell it without  
17 being bolstered and without being suggested to, and I  
18 appeal to your Honor that if your Honor will go through the  
19 decisions as we have gone, and if your Honor desires to  
20 see them you shall see them, that an accomplice's testimony  
21 must be given in accordance with the strictest rules of  
22 testimony, and it is to be viewed with distrust, and no dis-  
23 cretion on the part of the Court should be allowed to permit  
24 leading and suggestive questions and it must be corroborated  
25 by evidence which by itself--

26 MR. FREDERICKS. Isn't that an argument to the jury?



1 MR. ROGERS. And in order that that may be done, in order  
2 that the corroboration may be relating to the exact matter,  
3 the exact testimony must be given without suggestion. Now,  
4 in this matter, I don't know whether this is a proper place  
5 to bring it up, but I spent a great deal of time, according  
6 to the record, protesting to this conduct on Thursday--I  
7 mean on Wednesday. I spent a great deal of time protesting  
8 against it and the record/<sup>shows</sup> your Honor said over and over  
9 again that this witness should not be led, and there should  
10 not be suggestion to him, and I renew my protest at this  
11 time and I incorporate it in the record as an exception to the  
12 district attorney--

13 MR. FORD. Your Honor seems to be under the impression  
14 that the question asked by me was suggestive. I now  
15 ask--I asked that question to bring out a certain thing  
16 that I attracted the mind of the witness to address a  
17 certain matter with reference as to the manner which he  
18 should testify on that matter. There was absolutely no  
19 suggestion by the question.

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Smith The question is absolutely not leading in that sense or  
2 form. The question before this Court is: "Did you ever  
3 mention the name of Captain White to Mr Lockwood in any  
4 conversation". That is the question, if you will have it  
5 read.

6 MR APPEL: May I offer a suggestion? I think that the  
7 criticism of Mr Rogers only referred to the language used  
8 in the question. Counsel seems to take it Mr Rogers  
9 referred to some purpose of counsel. We are only saying  
10 that the construction which the question -- the various  
11 questions propounded in reference to that subject was in  
12 effect a suggestion to the witness something that he should  
13 testify. Now there is nothing in that -- now, the word  
14 "tip" is not necessarily insulting at all. It is used very  
15 commonly. It is a short word and many people don't know  
16 anything about the use of the word "suggestion" and they  
17 use "tip" and all that, and in reference to Captain Freder-  
18 icks objecting to our saying that --

19 MR FORD: If the Court please, I object to any further argu-  
20 ment on the subject except the objection before the Court,  
21 instead of discussing Mr Rogers, or Captain Fredericks, or  
22 anybody else.

23 MR APPEL: We have rights ourselves, and I insist --

24 THE COURT: Proceed, Mr Appel, and present your objection.

25 MR APPEL: I am trying to make peace here. Now Captain  
26 Fredericks takes offense because Mr Rogers says something

1 about --

2 MR FREDERICKS: Oh no, I haven't taken offense at anything.

3 MR APPEL: Mr Rogers said in law it is deemed --

4 MR FORD: If the Court please, I wish they would not use  
5 that as a handle in order to repeat the argument made upon  
6 the question of fact and credibility of the witness to this  
7 jury, and I charge that it is an attempt on the part of both  
8 of them to tip the jury off to the argument that they are  
9 going to make later on, and the thing before this Court at  
10 the present time is an objection to the question, and I ask  
11 that your Honor direct the gentlemen to confine their re-  
12 marks to the objection of the question of law before the  
13 Court. If this argument is continued longer I ask that the  
14 jury be excused in order that the evident object of their  
15 remarks may not be accomplished at the present time.

16 MR APPEL: They seem to be afraid anything we say will  
17 affect this jury.

18 MR FORD: Out of sympathy for the jury I ask that they be  
19 excused.

20 MR APPEL: I have the greatest sympathy for you. You don't  
21 seem to understand what I am trying to get at. I am simply  
22 stating Mr Rogers was speaking from a legal standpoint in  
23 reference to the testimony of an accomplice. That being his  
24 statement, that the meaning in law, that the reason why  
25 testimony of an accomplice requires to be corroborated by  
26 credible independent evidence because it is deemed to be

1 shady; to be viewed with distrust, but there is no harm in  
2 saying that which the law says itself, and the law says that  
3 your Honor is bound to tell the jury that, and then the jury  
4 will get it from your Honor. Now, what difference does it  
5 make if you take a dose of salts in coffee or take it in  
6 pure water; you have it both ways.

7 MR. FREDERICKS: Just one word in closing, and it will take  
8 me just a moment -- the point is only this: We are ready  
9 to meet counsel on the argument of this case before the  
10 jury when the time comes, but we are bound by the rules of  
11 law. This witness is going on to tell a story. It is  
12 evident it is their intention to remind the jury, to call  
13 to the jury over and over again, to get the jury scared of  
14 this man's testimony, to think they have got to look at it  
15 with blinders on and all that, and terrify them, and to  
16 hold it up, and all that, and keep them from believing it.  
17 Now that is the reason why we don't want to go into these  
18 things until the right time comes. Counsel wants to read  
19 it to the jury again. Now, the jury knows this is an ac-  
20 complice, why thrash it out today, tomorrow and the next  
21 day and the next day.

22 THE COURT: Gentlemen, I think the argument has gone too  
23 far.

24 MR. APPEL: Your Honor, we take ~~an~~ exception to anything  
25 said by both of these prosecutors concerning <sup>our</sup> purposes here  
26 and assigning too us improper methods because it is

1 misconduct and although it has a little effect on me,  
2 coming from the source it does --

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1 THE COURT. Mr. Appel, you have no right to use that language.  
 2 MR. APPEL. We protest to being scolded by the district  
 3 attorney or any one else. Now, cases have been reversed  
 4 for that, and I protest, your Honor, to this man standing  
 5 up here and telling your Honor in the presence of this jury  
 6 that we are trying to intimidate this jury or we are trying  
 7 to put upon them any false ideas. No such thing. We are  
 8 trying to present this case on our side as we deem just and  
 9 fair, and according to the little intelligence and the  
 10 little thought that we have, and we don't ask for any assis-  
 11 tance on the other side as to legal knowledge or as to any-  
 12 thing else, and I object, your Honor, if this man got  
 13 up before this jury and state anything of that kind it  
 14 would be error. It is misconduct on their part, and I  
 15 went into this discussion good naturedly and tried to make  
 16 peace and tried to show of how little moment the whole  
 17 thing was and Mr. Fredericks wants to get a lot of praise  
 18 here--

19 THE COURT. Don't get personal. MR. APPEL.  
 20 /I will state just exactly  
 21 what I feel and what I mean, and I mean no disrespect in  
 22 any way, shape or manner to your Honor.

22 THE COURT. Your personal remarks, however, in regard to the  
 23 district attorney or any one else--

24 MR. APPEL. How about his personal remarks?

25 THE COURT. I heard none.

26 MR. APPEL. Your Honor allowed them to tell this jury and

1 to tell your Honor that we were trying here to influence  
2 this jury and intimidate them about the testimony of this  
3 witness. How about that? Is that fair?

4 THE COURT. No, sir, it is not.

5 MR. APPEL. Have I no right to protest, your Honor? That  
6 is all I want to do.

7 THE COURT. Gentlemen, I agree with Mr. Appel's last state-  
8 ment that this whole matter is too trivial to occupy the  
9 large amount of time it has. The objection is that the  
10 question is leading and suggestive. The counsel insists,  
11 as they have a right to insist, the examination of this  
12 witness shall be by the strict enforcement of the rules of  
13 evidence. I think that the question from which it is pro-  
14 pounded, the manner in which it is presented is subject  
15 to that exception, and that the objection is well taken  
16 and it is sustained.

17 MR. FORD. Your Honor, may I have the question read?

18 MR. ROGERS. It has been sustained. I don't see any--

19 MR. FORD. I think your Honor has forgotten the question.

20 Mr. Rogers himself conceded that the question was proper in  
21 its form. What he objected to was the questions that had  
22 been preceding it and withdrawn. I leave that to Mr.  
23 Rogers himself.

24 THE COURT. That is not my understanding of the situation at  
25 all. The objection has been sustained. You can have it  
26 read if you want it. The Court will take a recess at this

1 time of five minutes.

2 (Recess for 5 minutes.)

3 (After recess, defendant in court with counsel. Jury all  
4 present.)

5 MR. FORD. Now, to save argument, if the Court please, I  
6 want to state in advance that after all this discussion the  
7 witness' attention has probably been called to something  
8 that indicates that the entire conversation was not testified  
9 to and I will, therefore, ask him if there are any other  
10 matters concerning the conversation of Sunday the 26th with  
11 Mr. Lockwood that you have not testified to, Mr. Franklin?

12 A Yes.

13 Q Just tell the jury what it is. A The question arose  
14 as to how Mr. Lockwood could be assured of receiving his money  
15 in case he voted for acquittal. I told Mr. Lockwood that he  
16 could rest assured of receiving the money, but that I was  
17 willing to make any arrangements that suited Mr. Lockwood  
18 to guarantee the payment of that money. I suggested to him  
19 that Captain White, Captain C E White, be asked to take the  
20 money and pay it to Mr. Lockwood upon my order. He objected--  
21 pardon me--he said that he didn't wish to have anything to  
22 do with Captain White and suggested--not at that conversa-  
23 tion, no. I told him I would see him the next afternoon  
24 as I have testified to heretofore, and it would be made  
25 satisfactory to him, I thought.

26 Q Now, coming to the telephone conversation, have you  
told us all that was said over the telephone on Monday the



1 27th, about half past five in the afternoon, between you  
2 and Mr. Lockwood? A No, sir.

3 Q Tell the jury what else occurred, at that time. A I  
4 said, "Shall I bring the Big Fellow with me?", he said,  
5 "Yes."

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-Pete 1 Q Now, did you have any conversation with Mr Darrow  
2 after your visit to Mr Lockwood on Sunday, and before  
3 your telephone conversation on Monday? A Yes sir.

4 Q And at what time and at what place? A My first con-  
5 versation with Mr Darrow in regard to my conversation with  
6 Mr Lockwood on Sunday, November 26th, was about 9 o'clock  
7 in the morning of Monday, November 27th, in his office in  
8 the Higgins Building, Mr Darrow and myself being present.

9 Q What was the conversation? A I repeated to Mr Dar-  
10 row the gist of the talk I had had with Mr Lockwood,-- the  
11 exact language I used at that time I am unable to state, but  
12 I informed him that Mr Lockwood <sup>would</sup> arrive in Los Angeles the  
13 next afternoon and would call me at my office at about 4:30,  
14 4 or 4:30 o'clock P.M., and that I had agreed with Mr Lock-  
15 wood that if we could come to an understanding in regard to  
16 the security of the balance of the money to be paid, other  
17 than the first \$500, that I thought Mr Lockwood would act  
18 as a juror and follow my request as to the manner as to the  
19 way he would vote for or against acquittal. I told him  
20 that -- I requested him, rather, that during the forenoon  
21 that he get for me the sum of \$4,000, that I would see him  
22 during the noon hour and soon after adjournment of court,  
23 I think, and at that time I wished him to turn over the  
24 \$4,000 to me that I could make the negotiations with Mr  
25 Lockwood, if possible, when he rang me up in the afternoon.  
26 Mr Darrow's answer was: "I will try to get the money, if I

1 have time." I said that if we wished to continue negotia-  
2 tions it would be necessary to have the money at the noon  
3 hour, that I had made arrangements to meet Mr Lockwood  
4 before he would return to his office in the afternoon. That  
5 is all of the conversation that I had at that time that I  
6 remember at this time.

7 Q Now, did you meet him again at any time before your  
8 telephone conversation? A I did.

9 Q And at what time and place, and who was present?

10 A I met Mr Darrow some time between 12 and 2 in his  
11 office in the Higgins Building.

12 Q That was on the Monday following your conversation with  
13 Mr Lockwood? A That was on the 27th day of November, on  
14 Monday.

15 Q What was said and done between you and Mr Darrow at  
16 that time, on Monday noon?

17 MR ROGERS: The time and place.

18 Q Monday noon, at his office, in the Higgins Building,  
19 he stated -- A Between -- pardon me -- I asked Mr Darrow  
20 if he had brought the money -- that I had -- the money with  
21 him, that -- I might not attempt to repeat the exact lan-  
22 guage -- that I might conclude any negotiations that I might  
23 have with Mr Lockwood that afternoon when he called. Mr  
24 Darrow told me that he didn't have the money -- I have for-  
25 gotten his reason for not having it, but at least he told  
26 me he didn't have the money, and then I repeated again the

1 request that he get it for me that afternoon, if possible,  
2 and that I would see him some time after 5 o'clock that  
3 evening. That is the substance of the conversation as I  
4 remember it at this time.

5 Q Then you didn't see him again after that noon conver-  
6 sation until you had the telephone conversation with Mr  
7 Lockwood? A No sir, I did not.

8 Q After you had your conversation with Mr Lockwood on  
9 Monday afternoon, did you again see Mr Darrow before you  
10 went out to Mr Lockwood's house? A I did.

11 Q At what time and place, and who was present?

12 A At about 5:30 o'clock in the office of Mr Darrow in  
13 the Higgins Building in this city.

14 Q What was said and done at that time and place?

15 A I asked Mr Darrow --

16 MR ROGERS: Anybody present?

17 Q By Mr Ford: Anybody else present? A Mr Darrow and  
18 myself being present.

19 Q Anyone else present?

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1 A Not to my knowledge. I then told Mr. Darrow that I had  
2 received a telephone call from Mr. Lockwood, requesting me  
3 to call at his residence that night to--that night--I then  
4 asked him if he had gotten the money and he informed me  
5 that he had not, but if the safety deposit department of  
6 the bank, the name of which I have forgotten--was open,  
7 that the money could be procured, and/<sup>he</sup> then took down the  
8 telephone and phoned some place that I don't know anything  
9 about, and when he hung up the 'phone he told me that the  
10 safety deposit department of the bank was closed and he  
11 was unable to get the money that night. I then requested  
12 and asked if he could have the money for me in the morning.  
13 He said, "Yes", that he would guarantee--no, pardon me, he  
14 didn't use that expression--he then informed me that he  
15 would have the money at his office in the Higgins Building  
16 the next morning some time before 9 o'clock. That is about  
17 all of the conversation we had at that time I remember of--  
18 well, possibly--he asked me who was going to drive me out.  
19 I told him <sup>I</sup> intended to use the same machine that I had  
20 always used. That is about all that I remember of.

21 Q What machine had you always used up to that time, in  
22 visiting Mr. Lockwood? A It was the same machine that Mr.  
23 McKelvey had owned, it was at that time owned by Mr.  
24 Hoffman.

25 Q What next did you do that evening after talking with Mr.  
26 Darrow, on Monday evening, November 27th? A I went back

1 to my office, I called up the station where Mr. Hoffman--  
2 that Mr. Hoffman used for his calls for his machine, and  
3 requested him to come to the office with the machine and  
4 wait there until I arrived. I then left and had my dinner  
5 at the restaurant immediately above the Chamber of Commerce  
6 Building. I went back to the office and got in the machine  
7 at about 6:30 o'clock, requested the driver to drive me  
8 to east Los Angeles, which he did.

9 Q What place in East Los Angeles? A I went to the resi-  
10 dence of Captain C. E. White, I think, on Avenue 24, but I  
11 am not sure.

12 Q Had you ever talked with Captain C. E. White prior to  
13 that time in reference to this matter? A I had.

14 Q When and where was the first time you had talked to Cap-  
15 tain White about this matter? A Monday, the 27th day of  
16 November, 1911.

17 Q And what time of day? A I think in the forenoon, about  
18 11 o'clock.

19 Q And at what place? A At his place of business on north  
20 Broadway in this city.

21 Q Do you know the number of his place of business on north  
22 Broadway? A I do not. It is near the corner of Avenue 24  
23 and North Broadway, known at that time as Downey Avenue, I  
24 believe.

25 Q Just state who was present and what was said and done  
26 at that time between you and Captain White. A I went into

1 the store and met a gentleman whose name I don't know, and  
2 asked him if Captain White was there. He told me yes, he  
3 was in the back room. About that time Captain White made  
4 his appearance from the rear of the store. I said, "How  
5 do you do, Captain?" And he says, "Hello, Bert", or some  
6 thing to that effect. I says, "Captain, I would like to  
7 talk to you for a moment or two privately." He says, "All  
8 right, come in the back room." We repaired to the back room  
9 and as we sat down the same gentleman that was in the front  
10 of the store came in to where we were and Captain White  
11 introduced me to him, but his name I have forgotten--and  
12 informed me it was his partner in the jewelry business.  
13 That gentleman asked Captain White a few questions in regard  
14 to matters of business and left and went towards the front  
15 of the store. I then informed Captain White that I was  
16 working for the defense in the McNamara case and that I  
17 wished to talk with him in regard to a matter of the utmost  
18 importance and of the utmost secrecy. He assured me that I  
19 could do so and said anything I repeated to him he would  
20 keep inviolate.

21 MR. ROGERS. He would do what, please, Mr. Reporter?

22 (Last statement read.)

23 A Keep inviolate. I then told him that I had opened nego-  
24 tiations with George N. Lockwood, working towards the end  
25 to have him act as a jurymen, one of the jurors in the  
26 McNamara case, and that in furtherance of that I had told

1 Mr. Lockwood that I would give to him the sum of \$4,000,  
2 \$500 of which was to be paid in cash and the \$3,000--  
3 \$3,500 was to be held in trust by a mutual friend, and  
4 that I had suggested him. He says, "My God, Franklin,  
5 I wouldn't trust George Lockwood as far as I could  
6 throw a bull by the tail." Well, I said, Captain, I  
7 believe that George Lockwood is this kind of a man, that  
8 if he gives me his word that he will do a certain thing  
9 that he will do that thing, and Captain said, "If you are  
10 satisfied, why, other people should be."  
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Pete 1 I then asked him if he would be the custodian of that  
2 three thousand five hundred dollars. He said he didn't  
3 know whether he had better take that up or not, and asked  
4 me what was in it for him. I told him if he would be cus-  
5 todian of that money and pay it to Mr Lockwood upon my order  
6 that I would pay him the sum of \$100 for his trouble. And  
7 he then asked me when these transactions were to take place,  
8 and I told him I had an engagement to see Mr Lockwood in  
9 the afternoon and that I probably, unless he objected, would  
10 bring Captain Lockwood to his house that evening at about  
11 6:30 o'clock. He said that would be all right. That is the  
12 substance of the conversation as I recall it at this time.

13 MR FORD: I do not want to start any argument, the matter is  
14 not of very much importance, but if counsel do not object to  
15 my suggesting to him, <sup>I am</sup> going to suggest the name of that  
16 partner. Is that all right?

17 MR ROGERS: Yes.

18 Q By Mr Ford: The name of that partner, was it Mr A H  
19 New, was it not? Mr Franklin, or do you recall it?

20 A The name is familiar to me, but I do not know whether  
21 in that connection or not; I don't remember. I would  
22 know him if I saw him.

23 MR FORD: No harm done.

24 MR ROGERS: That is such a new proceeding, too.

25 Q By Mr Ford: Now, that conversation occurred, I believe  
26 you stated, in the morning before you had the telephone con-

1 versation? A At about 11 a.m. on the 27th day of November,  
2 1911.

3 Q Now, did you at any time report that matter to Mr Dar-  
4 row, about Captain White acting as custodian? A Yes sir,  
5 I did.

6 Q When and where was the first time you discussed that  
7 matter with Mr Darrow? A I think at his office, between  
8 12 and 2 o'clock, of November 27, 1911.

9 Q At that time, what was said between you and Mr Dar-  
10 row in reference to that subject? A I told Mr Darrow at  
11 that time that I had seen Mr White, that he was a man in  
12 whom I had the utmost confidence, and that it might become  
13 necessary to use him for a stake holder, or words to that  
14 effect -- I don't think I used the word "stakeholder".  
15 I have forgotten just the language.

16 Q What reply, if any, did Mr Darrow make to that?

17 A He asked me if I thought Cap was all right, again the  
18 second time, and I said "Yes", I thought he was.

19 Q You told Captain White, I understood you to testify,  
20 that you would bring Mr Lockwood to his house, White's  
21 house, that evening after Lockwood telephoned; is that  
22 correct? A I testified I told Mr White that I would,  
23 with his permission, bring Mr Lockwood to his house that  
24 night at about 6:30 o'clock.

25 Q Was it or was it not your attention to pay the money  
26 to Lockwood at White's house that night? A Yes sir.

1 Q Now, returning again to the evening that you arrived  
2 at White's house in the machine, did you meet Mr White  
3 there at that time, Monday evening? A Yes sir.

4 Q Did you have a conversation with him? A Yes sir.

5 Q Who else was present? A His wife, as I recall it at  
6 this time, was in the parlor of their residence when I went  
7 in, and after speaking to me a moment she left, I don't  
8 know where she went.

9 Q No one else was present at any time except the Whites  
10 during the beginning, as you testified?

11 MR ROGERS: Possibly you are going to lead.

12 MR FORD: Possibly, that is my habit; I wanted to save time.

13 Withdraw the question.

14 Q Was anyone else present? A Not while I talked to Mr  
15 White, no sir.

16 Q Just state what was said and done and indicate in your  
17 conversation during just what portion of the time Mrs White  
18 was present? A I talked to Captain White about five min-  
19 utes; about one minute of that time Mrs White was present,  
20 the first minute of my conversation.

21 Q Now, what was said while she was present? A "How do you  
22 do, Mr Franklin? I am glad to see you. How are you getting  
23 along, and how are your family?" I said: "Very nicely,  
24 thank you; and how are you?" That is about all, and she  
25 left.

26 Q After she left, what was said and done between you and

1 Captain White? A I told Captain White of the telephone  
2 that I had received from Mr Lockwood, telling him it was  
3 impossible for him to meet me that afternoon, and that I  
4 had an engagement that night to Meet Mr Lockwood at his  
5 place at Walnut Station. I asked him if he wished to go  
6 with me for a ride, and he said no, that he didn't think  
7 he cared to go. I then asked Captain White to be at --  
8 asked him if he could be at the corner of Third and Main  
9 Street/at about 15 minutes till 9 the next morning, the  
10 28th day of November, 1911. He said that he could, if I  
11 wished him to.

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15p1 Q Pardon me just a moment, Mr. Franklin. In your conver-  
2 sation with Mr. White did you mention the date of the next  
3 day? A How is that?

4 MR. ROGERS. He said so, and, of course, it sounded, if  
5 your Honor please, so unnatural and so much as if it were  
6 a recitation that counsel wishes, right after it, reading the  
7 last answer, "Did he mention the date of the next day in  
8 that conversation?" Of course, he didn't mention it, and  
9 the witness having said it, counsel now desires to get  
10 it out. Now, I object to the procedure as leading and  
11 suggestive.

12 MR. FORD. I would like to be heard just a moment. The  
13 witness testified, "I asked him if he could meet me the next  
14 day at about 9:15 at the corner of Third and Main, the  
15 next day, the 28th day of November, 1911." Now, I under-  
16 stood that the witness was endeavoring to designate what  
17 the next day was, I didn't for a moment contemplate that  
18 the witness was testifying that he actually said the next  
19 day--I understood the witness' remark to be simply a  
20 parenthetical remark by him to indicate to me and to the jury  
21 what the next day was. I desired, however, to have the  
22 witness to be explicit as to whether he actually said that  
23 or as to whether that was a parenthetical remark for the  
24 benefit of the Court and the jury and counsel, because I  
25 knew that counsel would argue the very thing he argues  
26 and I desired to avoid any such argument, either at this

1 time or later. I knew that counsel would discuss the  
2 unnaturalness of such a statement, I knew that counsel  
3 would attempt to construe the parenthetical remark of  
4 this witness into meaning that the witness had related  
5 and testified that he said that.

6 MR. APPEL. We object to what he knew.

7 MR. FORD. I have the floor, have I not?

8 MR. APPEL. But I am objecting, your Honor, to this state-  
9 ment of what he knew, or what we would do about it, because  
10 he naturally leaves us to answer those things and it is  
11 objectionable--

12 MR. FORD. We submit the matter to the Court.

13 MR. APPEL. --and what he thought that we would do or  
14 would not do.

15 THE COURT. I want to give you every necessary latitude  
16 to examine the witness, but within the strict rules of  
17 evidence, it seems to me, in presenting the testimony of  
18 the witness, if he has made statements that come up, what  
19 occurred in chronological order, you should ask the witness  
20 what followed, and you get the evidence.

21 MR. FORD. I am strictly within the rules. If your Honor  
22 will indicate upon what ground the objection is sustained,  
23 I will ask that the question be read.

24 THE COURT. Read the question.

25 MR. FORD. And I will state this at this time, there is no  
26 difference in rules of examination between witnesses of this

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1 kind and any other kind, excepting in this, that some-  
2 times leading and suggestive questions are permitted, but  
3 your Honor may feel under circumstances in this case with  
4 this particular witness, that your Honor will not allow me  
5 to ask him leading and suggestive questions, and that is  
6 a matter/<sup>entirely</sup> within your Honor's discretion and over which I  
7 have no quarrel. But, there is no difference in rules of  
8 examination of this kind of a witness and any other kind  
9 of a witness.

10 MR. ROGERS. In order that the question may be understood,  
11 I request that your Honor direct the reporter to read the  
12 previous answer of the witness.

13 THE COURT. Yes, read the question and answer.

14 (Last two questions and answer read.)

15 MR. FORD. I will withdraw the question, in the form it  
16 is before the Court.

17 Q BY MR. FORD. Directing your attention, Mr. Franklin, to  
18 the last words of your answer, "28th day of November,"  
19 state whether or not those were the words used by you to  
20 the witness or whether they are an explanation to the Court  
21 and jury?

22 MR. ROGERS. Huh!

23 MR. FORD. Withdraw that.

24 Q State whether or not those were the words used by you  
25 to the witness, Mr. White? A No, sir, those are my own  
26 words.

1 Q Are you endeavoring to testify with regard to that  
2 conversation verbatim or in substance?

3 MR. ROGERS. Now, if your Honor pleases, that is the most  
4 unique kind of a situation. Of course, we have all been  
5 impressed--

6 MR. FREDERICKS. Is there an objection?

7 MR. ROGERS. I am about to make one and I will make it when  
8 my good time comes.

9 MR. FREDERICKS. I suppose so.

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1 -Smith MR ROGERS: If your Honor please, a witness attempt to  
2 relate a conversation and attempt --

3 MR FREDERICKS: We object to the counsel making an argu-  
4 ment to the Court when there is no objection.

5 THE COURT: We will assume counsel is going to make an  
6 objection.

7 MR FREDERICKS: We assume that the objection shall be made  
8 first in order that we may understand what the argument is,  
9 first.

10 THE COURT: Yes, Mr Fredericks is right.

11 MR ROGERS: Objected to on the ground it is leading and  
12 suggestive, and calling for the witness to make a certain  
13 explanation which is put into his mouth intentionally and  
14 which they desire to have him use in order to explain.  
15 A man having certain infelicities that appear in his testi-  
16 money, any man who has been listening to the testimony, if  
17 your Honor please, that has sat around the court-room for  
18 any length of time --

19 MR FORD: I ask that the jury be excused now.

20 MR ROGERS: -- knows that that testimony --

21 THE COURT: The jury will not be excused.

22 MR ROGERS: Knows that the testimony sounded like a  
23 recitation Saturday afternoon in the old red school-house.  
24 It sounded as if he were repeating everything that he had  
25 repeated over and over, time and time again. He used words  
26 that are not natural to him, apparently. We are not ob-

1 jecting to his using the words that he used in stating  
2 a truth in fact, but on the contrary, that the District  
3 Attorney has written out and got before him. Now, counsel  
4 realizes that, and having realized it ~~and~~ now just about  
5 the time everybody else in the court-room realizes it, now  
6 he seeks to explain it and account for it to the jury. He  
7 is trying to make an argument to the jury. He said, well  
8 this did sound awfully unnatural and we would like to  
9 have the witness explain it, so it won't sound so unnatural.  
10 He is trying to get into the testimony right now, leading  
11 him so, the witness is going on to relate the conversation  
12 and relate the substance of it as best he can -- no object-  
13 ion to that, but realizing just what I have said he says  
14 now, after three or four different questions, not one of  
15 which was proper, some of which he withdrew and some of  
16 which were objected to and objection sustained; now, I am  
17 using my own words, I am not attempting to relate it verbatim,  
18 I have no doubt that is true; everybody knows it is not ver-  
19 batim conversation because, of course, opinions may differ  
20 as to whether the conversation occurred that way or not,  
21 but it is apparent, if your Honor please, that he is merely  
22 attempting to get before the jury an expression of something  
23 that he realized was apparent all the time. Every man and  
24 woman in the court-room knew that this witness was reciting  
25 something, and it sounded like it, and now he is going to  
26 say -- explain why you appear to be reciting, and I contend,

1 if your Honor please, he ought not to do that. I say there  
2 is nothing objectionable about the question itself, but the  
3 question -- the whole situation is objectionable, the last  
4 five or six questions are objectionable, and this question,  
5 bearing in mind the other questions, is objectionable. Now,  
6 this witness ought to be handled just in accordance with  
7 the rules of law and merely give us a fair show.

8 THE COURT: I believe and agree ~~that~~ with you as to that  
9 part of it, but I cannot see your point in regard to this  
10 question.

11 MR ROGERS: This question I am admitting is not objection-  
12 able in its form; that question is not objectionable; it is  
13 objectionable only considered with the other questions and  
14 the purpose of it.

15 THE COURT: The witness should answer the question; objection  
16 overruled.

17 MR FREDERICKS: There is another point, your Honor.

18 THE COURT: There is nothing before the Court at this time.

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1 MR. FREDERICKS. I am going to put something before the  
2 Court. Learned counsel for the defense saw fit to say  
3 that this witness, in his judgment, was deciding something  
4 written out for him by the district attorney and submitted  
5 to him. That is the statement of counsel. Now, I am per-  
6 fectly willing to earn my bread and butter the best I know  
7 how in the practice of the profession that I have chosen  
8 for the purpose of earning my bread and butter, but I have  
9 never considered that it was necessary in doing that that  
10 I should be compelled to endure such statements as that.

11 THE COURT. I would like to have the Reporter read that  
12 statement. I did not understand it that way. I understood  
13 Mr. Rogers to say that the district attorney had the state-  
14 ment before him.

15 MR. ROGERS. Certainly. I didn't mean that Captain Freder-  
16 icks wrote it. I know he didn't because he was not in the  
17 State of California when it was done.

18 MR. FREDERICKS. That is assuming that somebody did write it?

19 MR. ROGERS. He has had a chance to see it again and look  
20 it over.

21 MR. FORD. I wish to say for the sake of counsel, and like  
22 everybody else, like every attorney, I have interrogated  
23 witnesses at various times in reference to what they know  
24 about the case. Sometime ago I took the statement of what  
25 Mr. Franklin has told me about the facts in the case in the  
26 presence of a stenographer, and to the best of my know-

1 ledge and belief he has never seen it since.

2 THE COURT. What is there before the Court?

3 MR. FREDERICKS. Nothing, your Honor.

4 MR. APPEL. I think it is a matter--

5 THE COURT. Absolutely nothing before the Court unless you  
6 want to present something.

7 MR. APPEL. There ought not to be any statement of fact--

8 THE COURT. I quite agree with you there should be no state-  
9 ment of fact, and I again admonish the jury as to this  
10 particular discussion and as to the other discussions that  
11 have taken place this morning, that the statements of  
12 counsel on either side, are not to be regarded as testimony  
13 in any way, shape or form.

14 MR. FORD. I want the question to be answered, then I will  
15 suggest another matter to the Court. Answer the question.

16 (Last question read by the reporter.)

17 A As I have said in all of my answers I don't attempt and  
18 it is impossible for me to give the exact language using.  
19 I am attempting to give the gist of all conversations  
20 that I attempt to relate. Q Now, attracting your attention  
21 to your conversation in your answer the 28th day of Novem-  
22 ber, state whether or not those were the words used by  
23 you at that time in your conversation to Mr. White?

24 A They were not.

25 MR. FORD. Now, if the Court please, before I proceed fur-  
26 ther, to ask any further questions of this witness, I want

1 to call your Honor's attention to a matter that is really  
2 not a small matter and it is not done in any spirit of  
3 criticism of counsel, but that is this: There is a time  
4 when counsel will address the jury on the value and effect  
5 of the testimony of every witness, they will discuss with  
6 the jury the effect of this witness' testimony. They  
7 will have a right at that time to claim that his answers  
8 are unnatural; that it is a frameup or a fake or any other  
9 terms that best express their methods and habits of think-  
10 ing, but this is not the time and they haven't the right,  
11 during the examination of the witness, for the purpose of  
12 disconcerting the witness or for any other purpose, or for  
13 any purpose, to influence the mind of the jury or any other  
14 persons, to discuss the effect or value of this witness'  
15 testimony, that the apparent misunderstanding of the witness  
16 or apparent truthfulness of the witness. While there is  
17 nothing before the Court I ask your Honor that the first  
18 time that occurs on either side to immediately stop the  
19 proceedings. I think as a matter of decorum in court and  
20 as a matter of respect to the Court, and the methods of  
21 procedure that your Honor ought to stop that the very next  
22 attempt that is made upon that matter. I don't desire  
23 to participate in a discussion at this time. Just  
24 simply make the statement.

25 Q Now, Mr. Franklin--

26 THE COURT. I think your comments are out of order, Mr. Ford

1 MR. FORD. Q Mr. Franklin, after having this conversation  
2 with Mr. White what did you do in the evening of November  
3 27th? A I left his residence, got in the machine and was  
4 slowly driven towards the residence of Mr. Lockwood, arriving  
5 at Mr. Lockwood's house at about 8:45 o'clock P.M.

6 Q Did you see Mr. Lockwood at that time? A I did.

7 Q Have a conversation with him? A I did.

8 Q Who was present at the time you had the conversation  
9 with him? A Nobody but Mr. Lockwood and myself, to my  
10 knowledge.

11 Q Where was the chauffeur? A He was in the machine--I  
12 don't know.

13 Q Where was he when you left him? A In his machine.

14 Q Just state what the conversation was at that time between  
15 you and Mr. Lockwood.

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Smith A Mr Lockwood said: "Bert, let's walk around towards the  
2 rear of the house." I walked with him. We walked into the  
3 immediate vicinity of his stable. Lockwood said: "Where is  
4 Darrow?" I said: "Why, George, did you think Mr Darrow was  
5 coming with me?" He said: "Yes, that is what I understood."  
6 "Well", I said, "you was mistaken; I intended to bring Captain  
7 White, but he apparently didn't wish to come." He said, "Well,  
8 Bert, what have you got to propose?" I said, -- I first  
9 proposed that we walk ~~around~~<sup>north</sup> towards the north line of Mr  
10 Lockwood's property, as he told me. At that time we walked  
11 north about seventy-five feet to what he said was the north  
12 line of his property. I then said "Well George, what con-  
13 clusion have you come to, and what do you wish to do?"  
14 "Well", he said, "I don't know; I don't know hardly what to  
15 think about it. I don't like Charley White to hold that  
16 money", and asked me if I had any objections to Henry Yonkin  
17 holding the balance of the money to be paid him later on.  
18 I said I certainly did object to Henry Yonkin having anything  
19 to do with any transaction of that kind in which I was inter-  
20 ested, and at that time asked him if he would accept another  
21 gentleman that I mentioned in place of Captain White. He  
22 said "No", that he didn't know him, and said Captain White was  
23 satisfactory to him. I said, " All right, George; be at the  
24 corner of Third and Los Angeles Street at 9 o'clock a.m.  
25 tomorrow morning and I will see you there at that time."  
26 During the last part of the conversation we were slowly



1 walking west towards the front line of his property near the  
2 road. Mr Lockwood then said, "Well, Bert, it is time for you  
3 to go", and I left after bidding him good-night.

4 Q You say that you directed him to meet you at the corner  
5 of Third and Los Angeles Streets? A I requested him to,  
6 yes sir.

7 Q Was there any other discussion had at that time with  
8 reference as to where you should meet? A Yes sir.

9 Q What was said? A He asked me to meet him in the  
10 Federal Building in this city and I told him I would not  
11 do that because I was too well known there.

12 Q Was that discussion had before or after the words  
13 ~~then~~ relating to Third and Los Angeles Street was spoken?

14 A Before that.

15 Q By whom was the meeting place at Third and Los Angeles  
16 Street suggested? A By myself.

17 Q Did you report this visit at any time to Mr Darrow?

18 A I did.

19 Q When -- just pardon me a moment -- after leaving Lock-  
20 wood's house where did you go? A I came home.

21 Q When did you next meet Mr Darrow? A The next morning  
22 at about 8:45 o'clock -- 8:40.

23 Q And at what place? A At his office in the Higgins  
24 Building, this city.

25 Q Who else was present? A Mr Darrow and myself were  
26 the only ones present.

1 Q State what was said and done at that time? A I asked  
2 Mr Darrow if he had gotten the money; that I had made ar-  
3 rangements to meet Captain White at Third and Main Streets  
4 and turn over to him the sum agreed upon; made arrangements  
5 to meet him at 8:45. He said that he had not at that time  
6 received the money, but that he would ring Job up and find  
7 out what time he would be at the office with the money.

8 MR ROGERS: Ring up who?

9 A Job. I then said, "It is almost time for me to meet  
10 with Captain White", and it was necessary to act quickly.  
11 He then took down the 'phone and rang up somebody unknown  
12 to me, I don't know who it was he spoke to, but after hang-  
13 ing it up he said, "Job will be here in about ten minutes".  
14 As I recall it at this time, that is all the conversation  
15 we had at that time.

16 Q Did you hear what Mr Darrow said in the telephone?

17 A Yes.

18 Q Just repeat that. A He asked if Job was there, and  
19 then hung up the 'phone.

20 Q What next occurred? A In about five minutes Mr Harri-  
21 man came into the office of Mr Darrow with his overcoat on  
22 his left arm. He said, "Good morning, Franklin; good morning  
23 Mr Darrow", and walked with Mr Darrow into the room immediate-  
24 ly adjoining on the north.

25 Q How long did they remain in there? A In about ten  
26 seconds Mr Darrow came out and handed me a roll of bills, a

1 small roll, and said -- I don't think he made any remark  
2 at that time at all; just handed me the money, is my recol-  
3 lection of it.

4 Q What did you do? A I immediately left the office,  
5 went to the elevator, looked to see how much money there  
6 was in the roll, and held it in my hand and went down the  
7 elevator.

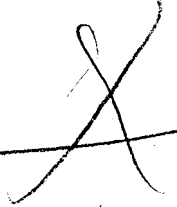
8 Q How much --

9 MR ROGERS: Read that last answer. (Last answer read by  
10 the reporter)

11 MR FORD: How much money was there in that roll?

12 A \$4,000.

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19s 1 Q And in what kind of money--I am not asking you for  
2 denominations, just generally whether it was gold, silver  
3 or currency? A Currency.

4 Q Do you remember the denominations? A I think so, yes,  
5 sir.

6 Q What were they? A One one thousand dollar bill and  
7 six five hundred dollar bills, to the best of my recollec-  
8 tion.

9 Q What next did you do after going down in the elevator?  
10 A I went to the corner of Second and Main street, turned  
11 south on the west side of Main to near the corner of Third  
12 and Main where I met Captain White.

13 Q Did you at that time--state what was said and done  
14 between you and Captain White at that time, if anything.

15 A I said, "Good morning, Captain". He answered me, "Good  
16 morning, Bert." I said, "Captain, I have the money." He  
17 answered and said that that was a poor place to hand it  
18 to him and requested that I go with him into a saloon  
19 immediately north of there, which we did.

20 Q What saloon? A I don't know. I never had been in  
21 there before, that I remember.

22 Q On what street is the saloon? A On Main Street, just  
23 north of Third.

24 Q On which side of the street? A The west side of the  
25 street.

26 Q On the west side, you said? A Yes, sir.

1 Q What occurred in the saloon between you and Captain  
2 White? A We walked up to the bar and I asked Captain  
3 what he would have to drink--

4 Q Well-- A Well--I will give it all to you if you want  
5 it.

6 Q Go ahead and give it all. A He said, "Whiskey", and  
7 we both drank whiskey, and while the drinks were being  
8 prepared I handed him the roll of money.

9 Q Did you at that time have any conversation in reference  
10 to the money or your negotiations? A Not at that  
11 moment, no, sir. Later on.

12 Q What was next said and done? A We left the saloon and  
13 I walked with the Captain to the corner of Third and Main  
14 and during the interim of time that we were walking there  
15 I told him to pay to Mr. Lockwood \$500 in money, keeping \$350  
16 to be paid to him at a later date on my order. He said,  
17 "All right, Bert, I will do the best I can.", or words  
18 to that effect, and left me.

19 Q Did you tell him where Lockwood was? A I did.

20 Q What did you tell him in reference to that subject?

21 A I told him that he had agreed to be at Third and Los  
22 Angeles street at about 9 o'clock.

23 Q Where did you go? A I walked about 75 feet behind Cap-  
24 tain White east on Third Street towards Los Angeles, and  
25 Captain White walked to the east side--northeast corner  
26 of Third and Los Angeles street, and I crossed in a south-

1 easterly direction towards the southeast corner of Third  
2 and Los Angeles street.

3 Q State what you saw and heard there at that time; what  
4 occurred? A I stood there a few moments, walked east  
5 on Third Street toward Wall, where I met a gentleman from  
6 the office of the district attorney, Mr. Campbell, detective,  
7 I believe, in his office. I said, "Good Morning, Jim."  
8 He said, "How do you do, Bert;" and walked on. I walked  
9 about fifty feet farther and turned around and stood there  
10 until I saw Mr. Campbell pass the center of the block between  
11 Main and Los Angeles streets, when I turned and walked  
12 back--rather I walked back towards Third and Los Angeles,  
13 crossing the street west, going east about fifty feet on  
14 Third street from Los Angeles on the south side of the  
15 street, I crossed over and about that time saw Mr. Home, a  
16 detective from the police station. I walked straight  
17 across the street and into a rear entrance of a saloon at  
18 the northwest corner of Third and Los Angeles, coming out  
19 quickly and looking to the corner I saw Mr. Home looking  
20 around the corner in that direction. I stood there for a  
21 few moments when Captain White and Mr. Lockwood came towards  
22 me from the east side of the street, coming up to Mr. Captain  
23 White said, "Bert, it is all right." And I said, "Good morn-  
24 ing, George; how do you do?" and shook hands with him.  
25 I then said, "George, you and I had better take a walk  
26 west from Third Street"--pardon me--"you and I had better

1 take a short walk. " We then walked west on Main street,  
2 leaving Captain White there to Third and Main, turned north  
3 on Main street towards Second. During that time I asked  
4 him if he had received the money and he said that he had.

5 MR. APPEL. Just a moment.

6 MR. FORD. I don,t know what right counsel has to stop the  
7 witness unless he wants to object.

8 MR. ROGERS. We have every right in the world to stop a  
9 witness if we desire to make an objection.

10 MR. APPEL. We object to the testimony on the ground it is  
11 incompetent, irrelevant and immaterial and not permissible  
12 under the rules.

13 MR. FORD. In answer to the question what occurred he  
14 stated--

15 THE COURT. Overruled.

16 MR. APPEL. We ask that it be stricken out on the same  
17 ground as stated.

18 THE COURT. Motion to strike denied.

19 MR. Appel. Exception.

20 MR. FORD. Pardon me just a moment. Q You said you were  
21 going west on Main? A I said I went west on Third Street  
22 to Main and turned north on Main towards Second.

23 Q Main street runs north and south? A I believe so.

24 Q Now, go ahead.

25

26

Smith A Went a little over half way from Third to Second on  
2 Main Street, and I stopped and turned partially around --

3 MR APPEL: Wait a moment, we object to the evidence of  
4 any act of his or any other act or declaration of anyone  
5 else except the acts and declarations of the defendant,  
6 upon the ground that they are incompetent, irrelevant,  
7 immaterial and hearsay.

8 THE COURT: Objection overruled.

9 MR FORD: Go ahead. A And at that time Mr Browne, from  
10 the District Attorney's office, placed me under arrest.

11 Q Did you see the defendant at that time? A I did.

12 Q Where was he? A Coming across Main Street in a  
13 southeasterly direction.

14 Q Did you have any conversation with him at that time?

15 A I did not.

16 Q Was anything said on the part of either one of you to  
17 the other? A Yes, the defendant made a statement.

18 Q What did he say? A I don't remember his exact lan-  
19 guage.

20 Q Well, in substance then. A I think he said, "Bert,  
21 they are onto you". I made no reply.

22 MR APPEL: Wait a moment.

23 MR FORD: What was next done or said; state what occurred?

24 A I walked with Mr Campbell to the office of the District  
25 Attorney.

26 Q Who? A Mr Campbell, to the office of the District  
Attorney.



1 Q When you got to the District Attorney's office what  
2 occurred?

3 MR APPEL: Wait a moment. We object to this upon the ground  
4 that it is incompetent, irrelevant and immaterial, no founda-  
5 tion laid and hearsay.

6 THE COURT: I am not going to go into that at this time.  
7 The reporter can read the question when Court convenes at  
8 2 o'clock. It is very necessary that the noon adjournments  
9 be very prompt.

10 MR FREDERICKS: I just ask that the name of the witness be  
11 called so that the Sheriff may be instructed to look for him  
12 during the noon hour, and if he cannot be found I may ask  
13 for the next one. Harry Skillan. Mr Clerk, you have the  
14 name.

15 THE COURT: Call the name.

16 THE CLERK: F F Skillan -- H F Skillan.

17 THE COURT: Mr Skillan not present?

18 MR FREDERICKS: We ask that a bench warrant be issued.

19 THE COURT: I am asking the sheriff. Apparently he is not  
20 present.

21 MR FREDERICKS: We ask that a bench warrante be issued for  
22 him and put in the hands of the sheriff.

23 THE COURT: The sheriff reports that he is not here. The  
24 subpoenae is regularly returned, is it?

25 THE CLERK: Yes sir.

26 THE COURT: Let the bench warrant issue and witness brought

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before the Court forthwith.  
(Jury admonished. Recess until 2 P.M.)

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