

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. 81

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Clarence Darrow		6625	6655	

1 AFTERNOON SESSION. August 5, 1912; 2 PM.

2 Defendant in court with counsel.

3
4 CLARENCE DARROW,

5 on the stand for further cross-examination.

6 MR. FORD. Q Did not Mr. Harrington say to you at that
7 time and place, "You know all about Mrs. Caplan; you
8 know where she is," and did you not reply, "I knew where
9 she was but not now." A Which conversation are you
10 referring to?

11 Q The conversation of-- A That you have been talking
12 about this forenoon; the same one?

13 Q Yes. A Is there anything further about that, Mr. Ford,
14 in that connection ?

15 Q No, nothing further on that occasion.

16 MR. ROGERS. I object to the question on the ground it is
17 cross-examination upon a collateral matter; incompetent,
18 irrelevant and immaterial.

19 THE COURT. Overruled.

20 A I don't remember any such conversation. I didn't
21 know where Mrs. Caplan was and I don't believe I ever did.
22 Never paid any attention to it at all.

23 MR. FORD. You had received information as to where she
24 was, did you not?

25 A I might have at that time.

26 Q You don't deny that you had such a conversation with Mr.

1 Harrington at that time and place? A I don't think I
2 had anysuch conversation.

3 MR. ROGERS. The same objection.

4 THE COURT. ^Overruled.

5 MR. ROGERS. Exception.

6 MR. FORD. Q Did you not tell or say to Mr. Harrington
7 during this conversation, "I will do anything on earth
8 for you?"

9 MR. ROGERS. Objected to as not the conversation, and the
10 connection not shown and situations, who brought it up, con-
11 versation stated not being sufficient to enable any man to
12 say; no foundation laid, and it is not cross-examination.
13 A man is entitled.

14 THE COURT. I think that objection is good. Objection sus-
15 tained.

16 MR. FORD. Q During that conversation and in connection
17 with your instructions to Mr. Harrington to refuse to testify
18 before the grand jury, did you not tell him, having in mind
19 the compliance with your wishes on his part, did you not
20 say to him, "I will do anything on earth for you?"

21 MR. ROGERS. Objected to as calling for the conclusion
22 or opinion. The question is not definite. One cannot
23 answer a question of that sort intelligently or truthfully,
24 if your Honor please, without possibly being subject to
25 a construction which he does not wish put upon his answer,
26 but if the question is read, your Honor can readily see it
is not cross-examination.

1 THE COURT. I think the same objection to this one as the
2 previous one is good. Objection sustained.

3 MR. FORD. Q Did you not, again referring to the conversa-
4 tion with Mr. Harrington, claim/^{ed}that you had with him, in
5 September, did you not say, "Why should you ever tell it;
6 you will send me to the penitentiary?"

7 MR. ROGERS. I make the same objection if your Honor please;
8 asked this morning and answered I think this morning.
9 The connection is not given and statements are not made.
10 It is in connection with something--it is not fair to ask
11 a man if he didn't say so and so in the course of a 2 or 3
12 hours conversation, didn't you have such and such senten-
13 ces interlarded, the court please, in connection with
14 something else.

15 THE COURT. I agree with you, unless the connection is
16 shown.

17 MR. FORD. I withdraw the question. I think there is some
18 merit to it. At that conversation, Mr. Darrow, did you not
19 tell Mr. Harrington to do all he could for you and not to
20 take any stand against you?

21 MR. ROGERS. The same objection.

22 A I wouldn't wonder.

23 THE COURT. Objection overruled

24 MR. ROGERS. Exception.

25 A I should think I would have; I don't remember it.

P 26 Q And did you, referring back to the remarks that he, Mr.

1 Harrington had made, in which he claimed that you had
2 shown him the money and had said that you were going to fix
3 a couple of jurors with it, did you not say to him, "Why
4 should you ever tell it?" referring to that conversation?

5 A I think you ought to give me the conversation you claim--

6 Q The one you testified to this morning. A You ^{were} refer-
7 ing back to something. Now, what is it you claim I said?
8 Give it to me connectedly so I can tell.

9 Q This whole conversation on which I examined you this
10 morning was a conversation which occurred on Friday the
11 16th day of February, 1912, and your attention has been
12 attracted to numerous questions. A What do you claim
13 preceded that?

14 Q What preceded that, yes. A What particular thing
15 preceded that, do you claim preceded that, you claim that
16 conversation, was a conversation--

17 Q I am not making any claims at all, I am simply asking the
18 question, if during that conversation, you said, referring
19 to the conversation with Mr. Harrington that he claimed
20 you had with him on the porch in September, did you not
21 say, "Why should you ever tell it?"

22 MR. ROGERS. Let us have the connection, if your Honor
23 pleases; it is objected to as not cross-examination,
24 what preceded it and what followed it is not given, it is
25 simply an isolated pickup out of a three hours conversation;
26 if a man's conversation in this court room were dissected in

1 that fashion, you picked out sentence by sentence, you
2 could convict him of murder; it is not fair, anyway, to
3 examine the witness on impeachment, let him say what pre-
4 ceded it, what followed it, and put it in a conversation,
5 when it occurred.

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1 MR FORD: After all the conversation had occurred concern-
2 ing which you gave testimony this morning, did you not say
3 to Mr Harrington, "Why should you ever tell it?"

4 MR ROGER S: The same objection; he has not put in what
5 came before it or what came after it, whether the Cap-
6 lin matter was the one referred to -- that is the last
7 thing we talked about. "Now, after all the conversation
8 that ever occurred, referring to what, and in what connec-
9 tion --" Let us have the conversation they claim it; if
10 the dictagraph is good for anything, they have a shorthand
11 reporter, and if it is not good for any thing, then it is
12 not worth anything; you cannot pick up one sentence at a
13 time that way, without connection, if your Honor please,
14 in an impeachment question; no foundation laid.

15 THE COURT: I think that is still good. Objection is sus-
16 tained.

17 Q Did you at any time during the conversation, say to
18 Mr Harrington, "You will send me to the penitentiary."

19 MR ROGERS: That has been asked and answered, I think,
20 three or four times, if your Honor please, and the connec-
21 tion is not given, the situation is not put to the witness,
22 the conversation is not stated in its connection, or what
23 might have preceded it, and what might have followed it is
24 not stated, and it is too general, altogether.

25 THE COURT: It has been asked and answered, Mr Ford. Objec-
26 tion sustained.

1 MR FORD: I did not recall it.

2 THE COURT: It has been asked and answered, not in that
3 isolated way, but it has been asked and answered in connec-
4 tion with other questions, if my memory serves me.

5 MR FORD: Did you again meet Mr Harrington at the same
6 place on Sunday, February 18th, 1912? A I met him on
7 some Sunday.

8 Q About that time? A yes.

9 Q Did you at that time ask him to take a trip out of the
10 jurisdiction of the court?

11 MR ROGERS: I object to that as not an impeaching ques-
12 tion. A I did not --

13 MR ROGERS: No foundation laid; not cross-examination;
14 they should put him in possession of his statement in con-
15 nection. That is the only way to impeach a witness.

16 THE COURT: The witness has answered the question. Do you
17 want a ruling?

18 MR ROGERS: yes, I want a ruling. You cannot impeach a
19 witness in that fashion, if your Honor pleases.

20 THE COURT: objection overruled.

21 MR ROGERS: Exception.

22 Q Did you not at that time and place say to Mr Harring-
23 ton, "I do not believe you want to testify against me, do
24 you?" A I don't know whether I did or not.

25 Q Did you not at that time and place say to him, "You do
26 not have to tell Ford anything."?

1 MR ROGERS: That is another isolated thing.

2 A Suppose I did. I don't recall any such thing, but I
3 might have; I would have said it if it had come my way.

4 Q Did you not, at that time and place, in response to Mr
5 Harrington's remark which was as follows: "I won't do
6 anything that will hurt you", say, "You don't have to
7 tell them", referring to the authorities -- "anything."

8 A Who do you mean by the "authorities"? You and Law-
9 ler?

10 Q The District Attorney's office and the federal
11 authorities -- A Well, who do you mean by the "federal
12 authorities."

13 Q United States grand jury and -- A Then, I did not --

14 Q -- and the District Attorney -- A Both. You mean
15 the United States District Attorney and the grand jury?

16 Q Yes. A Then I did not.

17 Q Did you make this remark, referring to anybody, and
18 in response to Harrington's remarks which was as follows,
19 "I won't do anything that will hurt you", did you say,
20 "You don't have to tell them anything?" A I don't know.
21 He didn't have to tell you anything.

22 Q You do not deny that you made that remark then?

23 A I said I don't know. He didn't have to tell you any-
24 thing. Now, isn't that an answer?

25 Q Did you not at this conversation on Sunday say to
26 Mr Harrington, "You know how they could get the drop on

1 you?" Harrington replying, "No." Did you not then say,
2 "Do you think they could get the conversation between us?"
3 Harrington said, "No, if there are only two of us together."
4 Did you not say, "That cinches us." Did you have such a
5 conversation in words, substance or effect?

6 MR ROGERS: I object to that as not cross-examination.

7 MR FORD: It is a desire for secrecy at that conversa-
8 tion and worry on the part of the witness whether anybody
9 did hear it or not.

10 MR ROGERS: I get up and shut the doors lots of times when
11 there is nobody but the stenographer in my outer office.

12 THE COURT: Objection overruled.

13 A I never said anything about getting the drop on him.

14 MR FORD; Did you have the following conversation in words,
15 substance or effect, in which you said, "You know how
16 they could get the drop on us?", Harrington replies, "No".
17 You said, "Do you think they could get that conversation
18 on us?" Harrington said, "No, if there are only two of us
19 together." Did you not say that cinches us? A No,
20 what do you think that refers to?

21 Q To the substance of what it says. A I don,t know
22 what the substance is.

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38 1 Q Did you say any such things? A I don't recall any such
2 conversation.

3 Q Either in substance or effect? A I wouldn't know what
4 substance or effect would mean in connection with a certain
5 conversation.

6 Q Couldn't even guess? A No, I couldn't, could you?

7 Q Didn't Mr. Harrington say to you, "I was talking to
8 Lawlor," you replied--I withdraw that--now, did Mr. Harrington
9 say to you, "I was talking with Lawlor," I says, "Have
10 you anything on Tveitmoe; I was making him a confident.
11 He said a good deal of letters to the east," that you then
12 replied, "How did he get that?" and Harrington said, "I
13 don't know," and did you not then say, "I would not be
14 surprised if they got him, Tveitmoe."

15 MR. ROGERS. Now, if your Honor please, that is simply
16 hash, and poor hash at that. I object to it as not cross-
17 examination, not understandable; it is not even connected
18 so anybody could get anything except loose sentences which
19 illustrate the infelicity of this whole business. The
20 counsel is going along picking out one sentence out of a
21 page and asking him if that is not so. That is all he could
22 get out of his dictagraph, but if a man is going to be
23 asked if he didn't say something of that kind he ought
24 to have the connection, something that it referred to, some-
25 thing that brought it up. I don't think it is cross-
26 examination or fair, whether he may have said that thing in

1 connection with another, without being understood--

2 THE COURT. Objection sustained.

3 MR. FORD. Q Did Mr. Harrington ask you if you had told
4 anybody about the conversation that had occurred between
5 you and him on the porch at your home in September, 1911?

6 A He never mentioned porch or any such conversation. He
7 did not ask me.

8 Q Did he not say at that time and upon that subject either
9 the words, substance or effect of the following: "Did you
10 speak to anybody else? Would Davis know?" Did you not
11 reply, "Davis is all right", and did not Harrington say,
12 "Are you sure of it?" And did you not say, "Absolutely,
13 he is all right." Did not Harrington then ask you, "If
14 you had said anything to Franklin about it," and did you
15 not reply, "Never in Christ's world did I," and did you
16 not make those remarks for the purpose of assuring Mr.
17 Harrington that he could sidestep and deny that conversation,
18 and that there was no other evidence that could impeach
19 him?

20 MR. ROGERS' I object to that as a double question.

21 THE COURT. Objection sustained.

22 MR- FORD. On the ground it is a double question?

23 THE COURT. yes.

24 MR. FORD. Q Did you not at that time and place have the
25 following conversation in words, substance or effect with
26 Mr. Harrington, at which Mr. Harrington said, "Did you speak

1 to anybody else?" "Would Davis know?" Did you not
2 reply, "Davis is all right." And did not Harrington then
3 say, "Are you sure of it?" And did you not say, "Absolutely,
4 he is all right." Did not Harrington then ask you, "If
5 you had said anything to Franklin about it", and did you
6 not reply, "Never in Christ's world did I."

7 MR-ROGERS. Now, that is supposed to refer to that conversa-
8 tion on the porch, is that it?

9 MR. FORD. The question is in the English language.

10 MR. ROGERS. Well, then I don't understand English.

11 MR. FORD. I don't think you do.

12 MR. ROGERS. No, maybe not, but I use it with some
13 degree of proficiency at times.

14 THE COURT. Now, gentlemen, there must be some courtesy
15 extended from the District Attorney's office if you are
16 going to get through. No occasion for that remark.

17 MR. FORD. I think the question was asked me in an
18 insolent manner, and in an insinuating manner and for
19 that reason I simply told him that the question spoke for
20 itself and I think it is in the English language.

21 THE COURT. The question is in the ^{English} language but it isn't
22 in an insolent manner. No occasion for a remark of that
23 kind. Read the question.

24 (Last question read by the reporter.)

25 MR. ROGERS. I will leave it to anybody if you can tell
26 what is referred to there, about what Davis was all right, or

1 did you talk to Davis about what, and it is quite--

2 THE COURT. What is the ground of your objection?

3 MR. ROGERS. The question is ambiguous, unintelligible and
4 no foundation laid, incompetent, irrelevant and immaterial.

5 THE COURT. Objection sustained.

6 MR.

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1 MR FORD: Did you not, referring to the conversation that
2 Harrington claimed you had with him, and the occurrence
3 that Harrington claimed happened on the porch at your house,
4 at which time he claimed that you showed him a roll of
5 bills and said something about reaching jurors, and in that
6 connection concerning that matter, did you not have the
7 following conversation, either in words, substance or ef-
8 fect, with Mr Harrington, in which Harrington said, "Did
9 you speak to anybody else? Would Davis know?" And did
10 not you say, "Davis is all right;" and did not Harrington
11 then say, "Are you sure of it?", and did you not say, "Ab-
12 solutely, he is all right." Did not Harrington then ask
13 you, "If you had said anything to Franklin about it", and
14 did you not reply, "Never in Christ's world did I."

15 A First, Harrington never told me that I showed him any
16 bills on my porch or told him I got it to bribe a juror
17 or two jurors or any number of jurors, or to get them. I
18 have told you before what he said, that I showed him
19 some money, and told him what I had it for, and I asked
20 him where I showed it to him, and he said, either at my
21 office or my house, and I, of course, denied it immed-
22 iately, because it was not true. Now, at some part of
23 the conversation in the five or six days in which he was
24 there trying to get evidence for you, I might have said that
25 Davis was all right -- he is; and I might have said so. I
26 don't recall it. I don't recall his name being mentioned,

1 but it might have been. At some part of that conversation
2 in reference to Franklin and whether he bribed a juror or
3 tried to, I said to him that I never in my life asked Frank-
4 lin to do any such thing, and knew nothing about any such
5 thing. Now, that is the best I can do for that question.

6 Q Then you did not have the conversation that I asked
7 you in that connection?

8 MR ROGERS: You needn't answer that. Objected to as already
9 asked and answered fully; not cross-examination.

10 MR FORD: It is not a direct answer; it is simply explain-
11 ing what happened without answering this question that
12 prompted it, one way or the other.

13 MR ROGERS: A man cannot answer a question picked out sen-
14 tence by sentence,

15 THE COURT: The court regards it as a denial in substance
16 and effect.

17 MR ROGERS: Intentionally omitting questions and inten-
18 tionally omitting sentences --

19 THE COURT: Mr Rogers, there is no use of your scolding
20 about it. The court has sustained every objection you
21 have made on that ground, and will continue to do so. It
22 is unnecessary to take up time.

23 MR FORD: Did you or did you not use the language I have
24 narrated? A The court says I have answered, and I
25 think I have.

26 Q Do you remember whether you used such language or

1 not? A In my answer I said I didn't remember. I probably
2 talked with him 10 or 12 hours altogether, and I would not
3 pretend to remember my language or his or everything we
4 talked about.

5 Q Did you not tell Mr parrington on this occasion, there
6 was no chance the prosecution could get a line on this
7 private conversation, that he could deny it altogether?

8 MR ROGERS: I object to that as not cross-examination, no
9 foundation laid; incompetent, irrelevant and immaterial, the
10 language not given in proper form for impeachment; not
11 cross-examination.

12 THE COURT: Read the question.

13 (Question read.) Objection sustained.

14 Q MR FORD: Did you not say, "They cannot ask you about
15 this private conversation", and didn't Harrington reply,
16 "Suppose now -- let us assume the worst part of it; suppos-
17 ing I have seen Mr Ford; suppose Ford should ask me about
18 the money that came down from San Francisco?" And did you
19 not then and there tell him to say that he didn't know
20 anything about it?

21 MR ROGERS: We object to that as calling for a conclu-
22 sion and opinion of the witness; let them give his words if
23 he has them; no foundation laid, and not cross-examination.

24 THE COURT: Objection overruled.

25 MR ROGERS: Exception.

26 A I did not.

1 Q Didn't Mr Harrington tell you then that you expected
2 too much of a person, and did you not reply, "No, I am
3 not; that is not asking too much", and when Harrington
4 said, "What have you ever done for me that I should com-
5 promise myself in this matter?", did you not say, "I will
6 do anything on God's earth for you, John." Did you
7 have any such conversation, in words, substance or effect?

8 A Read that, will you? (Last question read.) I think
9 he did tell me once I was asking too much of my friends,
10 or something like that, and I think he did say once, "What
11 have you ever done for me?" Now, what is the rest of
12 that? (Last portion of question read.) I don,t think
13 he ever said anything about compromising himself in this
14 matter; he c ertainly was never asked to in any way. I
15 might have said, in connection with his fear of arrest and
16 indictment or prosecution and wasting money in California,
17 that I would do anything I could for him, which I would
18 have.

Sp 1 Q Did you not again, referring to the conversation that
2 Harrington claimed he had with you either at your house
3 or your office, did you not say, either in words, sub-
4 stance or effect the following: "The conversations you
5 and I had were together when we were alone--" didn't
6 Harrington-- A Were together when we were alone?

7 Q yes, that is the language. A Is that the language of
8 the dictagraph?

9 Q Harrington then said, "Yes, sir, I understand we were
10 alone and that they were private conversations I had with
11 you, but what obligation am I under, Darrow, that I should
12 perjure myself for," and did you not then say, "But you
13 ought to sidestep it." A No, I did not say it.

14 Q Did you not then again, at the close of the conversa-
15 tion, say to Harrington, "You wont tell anybody about this"
16 and when Harrington replied he didn't want them to know,
17 did you not then say, "I appreciate your courtesy."

18 A I don't recall any such thing. I don't see how I could
19 have appreciated his courtesy. I might have.

20 Q Did you not, on the afternoon of February 19th, at about
21 half past 2 in the afternoon--have the following conversa-
22 tion with Mr. Harrington--

23 MR. ROGERS. Is that another day, now?

24 MR. FORD. February 19th.

25 A You said before Sunday. Now, what day would this be?
26 I don't care for the date, if it is another day, that is
all I am interested in knowing.

1 Q I think that was Sunday, February 18th, and that would
2 make it February 19th, on Monday? A I don,t care, Mr. Ford,
3 just, is this another conversation, that is all?

4 Q Yes, I was asking you about Sunday and I am now asking
5 you about Monday, the last conversation you had with him.

6 A Very well, I understand it.

7 Q Did you not, at the last conversation you had with
8 Harrington at the place I have referred to in my previous
9 questions, at about half past 2, February 19, say to Har-
10 rington, "Well, I will give you \$5,000 and trust to luck.
11 Do you want me to give it to you right now?" And didn't
12 Harrington say, "No." Did you not say, "Hell, John, why
13 not take it now?" And didn't Harrington say, "Not a bit,
14 not now." Did you not then say, "Will you be here tomorrow
15 night?" Is not that the last conversation you had with
16 Harrington at the Hotel Hayward? A Are you getting all
17 the conversation there? Is that the question, is that the
18 full conversation?

19 Q Did you have that conversation in words, substance or
20 effect at the last conversation you had with him. A No.
21 Now, I will tell you what I had.

22 Q Go ahead, if you desire to. A I do.

23 Q I got all the answer I cared for. A From the very first
24 meeting, as I say, he was talking money. I was consulting
25 with my attorneys during the time, especially the latter
26 conversation, I left Mr. Rogers and Judge McNutt with the

1 understanding as to what to say. He especially spoke to
2 me about Harriman having had some extra money. I don't
3 know what he meant by it, but evidently something he had
4 not found out before, he mentioned the sum as being \$5,000.
5 I said, "Do you think you ought to have that much?"
6 He said, "Yes." I said, "All right, John," if I gave you
7 that much will you be ready to help me all you can? "
8 He says, "Yes." I says, will you take care of the State's
9 Attorney and Mr. Lawler?" He says, "Yes." I said, "Will you
10 come out here to help prepare this case?" and he said, "Yes."
11 I said, "When do you want it?" He said, "You can bring
12 it over here this evening, this afternoon." he says, "I wish
13 you would look up before you go the question of whether
14 they can make me go before the state grand jury while I
15 was brought here under Federal subpoena." I said, "All
16 right," all this excepting the Federal subpoena having been
17 previously arranged. I came back, first stopping at Mr.
18 Davis's office, and asking him to look up this question--
19 I came back to Mr. Rogers's office, placed Mr. Rogers on one
20 telephone, Judge McNutt on another, Mr. Dehm on another, and
21 a man by the name of Touhy on another, and myself on
22 another, and called him up for the purpose of telling him
23 he could not have any money, which I had determined on the
24 previous conversations, and a long time before.

1 I called up his room and could not get him and the next
2 morning I came down to the office, and Mr Rogers was then
3 away; I placed Mr Dehm on one telephone, Mr Touhy, who I
4 believe is now in San Francisco, on another, and Judge Mc-
5 Nutt on another, and I took the other, and I called him up,
6 and I said, "John, you are a witness here before the grand
7 jury, and I am under indictment, and I cannot have any
8 financial transactions with you of any kind. After you
9 get through, if I owe you any money, you will get it.
10 Don't you think that is right?", and he made some reply,
11 "Yes", or something like that, and that is all there
12 was of it.

whether

13 Q You stated that you didn't remember you were at Gage's
14 office or Franklin's office on the day of Mr Franklin's ar-
15 rest?

16 MR ROGERS: May I inquire if that is all of the conversa-
17 tion of the 19th it is proposed to inquire about?

18 MR FORD: That is all I think of right now, Mr Rogers,
19 but I may change my mind.

20 MR ROGERS: I reserve, before the witness leaves the stand
21 the right to move to strike out - A Has not this ques-
22 tion been gone into which you are asking me now? I would
23 like to get through some time. I object on that ground,
24 it has been covered.

25 THE COURT: It seems to me that is right, Mr Ford.

26 MR FORD: I have not asked him any question yet, your

1 Honor.

2 MR ROGERS: That was a couple of weeks ago he covered
3 that.

4 MR FORD: I have not asked him any question yet.

5 THE COURT: Read the question.

6 (Last question read.)

7 THE COURT: Is that a question?

8 MR ROGERS: That is objected to as not cross-examination,
9 incompetent, irrelevant and immaterial --

10 MR FORD: I was just calling his attention to that when I
11 was interrupted by counsel.

12 Q Calling your attention to that, you did, however, see Mr
13 Gage that day, did you not?

14 MR ROGERS: What date is that, please?

15 MR FORD: November 28th.

16 A I don't recall that I did; I might have.

17 Q You consulted with him frequently about Mr Franklin's
18 case up until the time of the preliminary examination?

19 A Not often. I talked with him; Mr Davis did the most
20 of the conversation with him;

21 Q You discussed the facts and the law of his case with Mr
22 Gage, as attorney of record.

23 MR ROGERS: Let me have that question. (Question read.)

24 MR ROGERS: That is objected to as calling for a conclu-
25 sion; not cross-examination, already gone into.

26 THE COURT: I don't think it has been gone into, but I

1 do not think it is cross-examination.

2 MR FORD: Showing the relation of this witness with Mr
3 Franklin.

4 THE COURT: I do not think it is cross-examination. Objec-
5 tion sustained.

6 Q You said you telegraphed Mr Gompers during the week
7 preceding the pleas of guilty? A I did.

8 Q What was your object in telegraphing Mr Gompers at that
9 time? A To have him immediately send someone here.

10 Q For what purpose? A To consult, in case the mat-
11 ter was not disposed of before he got here. He should
12 have been here on Saturday, Saturday night, at the furthest

13 Q And in case the matter was not disposed of before he
14 got here, for what purpose did you want him here? A Be-
15 cause he and the organization had been furnishing consid-
16 erable money, and I wanted to give them all the information
17 I could, although I owed them no duty.

18 Q If you owed them no duty, why was it your desire to
19 consult with them at all, for that matter?

20 MR ROGERS: We object to that as argumentative, not
21 cross-examination.

22 THE COURT: Objection overruled? A I said because they
23 had been furnishing money and I certainly would have
24 kept them fully advised if any of them had been here.

25 Q On November 24 you did send a telegram to Mr Nockels?

26 A I sent one on November 24 to Ed Nockels in Chicago.

1 Q That telegram was to the following effect, was it not:--

2 MR ROGERS: Wait a moment. That is not the way to prove
3 the contents of a message, if your Honor please; if he has
4 the message, let him show it to the witness, after having
5 shown it to us.

6 MR FORD: Did you not direct someone to send a telegram
7 to the following effect?

8 MR ROGERS: That is objected to as no way to prove a docu-
9 ment, if your Honor pleases, you cannot introduce the con-
10 tents of a document in any such fashion.

11 MR FORD: Just a moment. If we have any such document, I
12 will produce such a document.

13 MR ROGERS: Then produce it.

14 THE COURT: You will have to lay the foundation, Mr Ford,
15 in some way.

16 MR FORD: If the court will pardon me just a moment, I
17 will see if we have the telegram.

18 THE COURT: Certainly.

19 MR FORD: I will go to another subject. A I know what
20 it is, and I am willing to state it from memory or other-
21 wise.

22 MR ROGERS: Let us see what it was.

23 MR FORD: I will go to another subject while Mr Keetch
24 is looking for that telegram.

25 Q I show you a document which I have shown your counsel;
26 it is in cipher, Mr Darrow, so I will repeat to you the

1 interpretation. Mr Rogers will follow me and see that I
2 do so correctly. "Have Bert Hammerstrom meet Harrington
3 chief Hotel Salt Lake Friday afternoon. Wire answer."

4 Did you, on or about October 4, 1911, direct that such a
5 telegram be forwarded to Mr Nöckles at Chicago?

6 THE WITNESS: I object to it on the ground that it has
7 no reference to anything that is in evidence in this case.

8 MR FORD: You have testified to the hammerstrom incident.

9 THE WITNESS: yes, but was it at this time? Repeat
10 that again, will you please?

11 MR FORD: Did you, on or about October 4, 1911, direct a tel-
12 egram to be sent to Mr Nockels at Chicago, and the sub-
13 stance of the telegram being as follows: "Have Bert
14 Hammerstrom --" ad "meet Hafrington" F "chief hotel
15 salt Lake Friday afternoon. Wire answer. Signed C.S.
16 Dafrow, Charge C. S. Darrow."?

7p 1 A I don't remember it, I might have. I do not think that
2 has any reference to the other matter: I think the other
3 matter was earlier, but I am not certain about that.

4 Q You recall it was the latter part of September that Mr.
5 Hammerstrom met Diekelman at Albuquerque? A I was not
6 sure. I think it was earlier. I did instruct that word
7 be sent him to wait at Salt Lake City, as I said before,
8 until you people got over talking about this matter. If
9 this refers to it, that is probably right, but I do not
10 recall the telegram.

11 Q You do recall having sent such a telegram in sub-
12 stance, or ordered it? A I do not. I do not recall Mr.
13 warrington being sent there or this telegram, but it might
14 have been.

15 Q You paid-- A or it might have been sent by Mr. Harring-
16 ton. If that is the fact you are after, there is no
17 question about the fact.

18 Q I am very well satisfied. May I inquire, Mr. Rogers,
19 if I gave you a copy of the telegram of November 24th to
20 Nockles?

21 THE WITNESS. We have one there, I know. There is one
22 there. If you are satisfied with that wording, I am,
23 just assume it.

24 Q Did you direct that a telegram be sent to Mr. Nockles
25 on November 24th as follows: "Care of Chicago Federation
26 of Labor, 277 La Salle street, Chicago. Take the first

1 train, wire me train and route, charge Darrow, C.S.Darrow,"
2 and the answer? "My rēcollection is that I did, I know I
3 sent substantially that telegram and about that date, on that
4 date I will say.

5 Q You did not meet Mr. Nockles, however, until Tuesday,
6 November 28th, is that correct? A Just a minute before
7 you go to that, if you please. That was sent in answer
8 to one from him which was sent by him in answer to one
9 from me to Mr. Gompers. I wired Gompers on the 22nd to send
10 somebody immediately on the first train, mentioning Nockles'
11 name and four or five others, and some way that was delayed;
12 on the 23rd or 24th I got a wire from Mr Nockles asking if
13 he should come and I said come immediately.

14 Q You did not see him until Tuesday? A I did not, his
15 train was late.

16 Q you did not see him until after Franklin's arrest?

17 A He got here Monday night.

18 MR. ROGERS. That is the night before the arrest?

19 A That is the night before the arrest.

20 MR. FORD. But you didn't see him until Tuesday the next
21 day? A No, his train was late. I think he got in about
22 11 o'clock.

23 Q Did you on the next day discuss with him the proposition
24 to have J B plead guilty? A I don't recall. We went over
25 everything connected with the case.

26 Q Did he at that time, pursuant to any directions from

1 you or in pursuance of that conversation with you, write to
2 Mr. Gompers concerning the matter? A I don't remember,
3 he probably--not concerning that--he probably wrote to
4 him about the whole matter. What he wrote I don't know.

5 Q Mr. Darrow, you did not take this case because of any
6 personal interest for J B or J J McNamara; you had never
7 heard of them before? A I never had--yes, possibly I
8 might have seen J J. He says I did one time when I spoke
9 at Indianapolis, but I don't recall him.

10 Q The only reason you took the case was because it in-
11 volved Union Labor as an organization? A That was the main
12 reason.

13 Q And you knew that Mr. Gompers and Mr. Nockles and the
14 officials of Union Labor were defending this case, because
15 it involved the cause of Union Labor? A Yes.

16 Q And that was the reason they were paying you? A Yes.

17 Q And you knew that they might have objections to the
18 entering of the pleas of guilty, for the reason that it
19 might reflect upon Union Labor? A Yes, now, let me explain.

20 I also knew that no man would have a right to employ me to
21 defend someone else for their life or their liberty, and
22 dictate any terms to me whatever as to the duty I owed my
23 client, and I so stated; so did Judge McNutt; It
24 wouldn't have made any difference if the whole world was
25 against me, I would have done what they wanted, and what I
26 thought was right.

MR. ROGERS. Who for?

1 THE WITNESS. My client.

2 MR. FORD. Q You said the other day you didn't believe the
3 evidence which had been gathered in Indianapolis would be
4 admissible here in Los Angeles? A I did.

5 Q You knew that the prosecution would be unable to connect
6 J J McNamara with the explosion of the Times Building or
7 with the blowing up of the Llewellyn Iron Works without
8 that evidence, did you not? A What evidence do you refer
9 to?

10 Q The so-called Indianapolis evidence. A If you mean
11 dynamite in Jones's barn or dynamite in the vault, as you
12 people alleged, you had proof of, I didn't think it had
13 anything to do whatever with their case.

14 Q Was there any portion of the Indianapolis evidence which
15 you believed that the prosecution had to have in order to
16 connect J J McNamara with the blowing up of the Los Angeles
17 Times or the blowing up of the Llewellyn Iron Works?

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1 A I didn't know what might be contained in letters or
2 telegrams, or whether you had to have any of it.

3 Q Then, you knew that that was the only possible evidence
4 that the People could have which would connect J. J. with
5 those crimes? A What do you mean?

6 Q J. J. McNamara with the blowing up of the Llewellyn
7 Iron Works or the Times Building? A You mean letters
8 or telegrams?

9 Q Yes. A I didn't know it was the only possible evi-
10 dence.

11 Q Did you know of any other evidence which would con-
12 nect them? A I had heard of other evidence.

13 Q Of what character?

14 MR ROGERS: That is objected to as not cross-examination;
15 too broad and too general a subject; already gone into,
16 if your Honor please.

17 MR FORD: No, not touched on. A I think it is privi-
18 leged, too, whatever I know about that.

19 THE COURT: I don't think it is cross-examination.

20 MR FORD: Mr Darrow, if you did not know what the incrimi-
21 nating nature of any evidence in Indianapolis was, and
22 ~~had~~ did not know of any other evidence against J. J. ~~Mc~~
23 Namara, why did you permit him to plead guilty to the
24 charge of blowing up the Llweellyn Iron Works? A Well,
25 Mr Ford, before I got through with my investigations I
26 was thoroughly satisfied that they had a very close case

1 against J. J., as to the Times Building, and that after
2 J. B. had been convicted and hung, as I fully believed
3 he would be on the trial, it would be the next thing to
4 impossible to save J.J.'s life whether the case was con-
5 vincing or not. I also believed that they had a very
6 strong case against him on the Llewellyn Iron Works, and
7 I didn't know but some other places, and I believed it
8 was better for him to plead guilty and take that sentence ,
9 and I so advised him, and he believed, it, too; he was
10 very willing to do it.

11 Q Upon what other evidence -- upon what evidence did you
12 form the conclusion that they had a strong case against
13 J. J. McNamara upon the Times Building, if, as you say,
14 you did not regard the Indianapolis evidence, the dynamite
15 and so forth, as convincing, and you didn't know anything
16 about the contents of any letters and telegrams, excepting
17 the bare possibility they might be incriminating?

18 MR ROGERS: If your Honor please, I object to the question
19 as not cross-examination. Of course, if --

20 THE COURT: Objection sustained.

21 MR FORD: That is all.

22
23 REDIRECT EXAMINATION

24 MR ROGERS: Mr Darrow, I call your attention to those
25 two telegrams -- A Better get me four, Mr Rogers.

26 Q Those that have been introduced in evidence already.

1 MR FORD: We wanted to furnish you any originals that you
2 desire.

3 THE WITNESS: May I ask you if you have any more about
4 that date with Rappaport?

5 MR FORD: Of what date?

6 THE WITNESS: October or November, especially November?

7 MR FORD: We have given all the telegrams we have be-
8 tween you and Rappaport.

9 THE COURT: Mr Darrow; you can confer with your counsel
10 outside of the record.

11 (Witness leaves witness stand and confers with counsel.)

12 THE COURT: All right. Proceed, gentlemen.

13 MR ROGERS: I call your attention first to the tele-
14 grams, Mr Darrow, that were sent to Mr Rappaport. Your
15 attention was called to one of November 29th, in which
16 you are made to say that Mr Rappaport could spend \$1000 if
17 necessary. I will ask you if that was the first telegram
18 sent about remuneration or spending money, to Mr Rappaport?

19 MR FORD: Objected to upon the ground that it is not re-
20 direct. The witness has not been examined as to the ques-
21 tion of remuneration from Mr Rappaport, but only upon
22 the question of remuneration for one special purpose, to-
23 wit, the regaining of the Indianapolis evidence. He has
24 testified here that Mr Rappaport was the attorney in all
25 matters back there connected with the case, and there may
26 have been numerous other matters, and it is not redirect

1 examination, unless it is confined to this specific mat-
2 ter, of course; if confined to that, we have no objec-
3 tion to the question.

4 THE COURT: Objection overruled.

5 A There were a number of telegrams and several letters.

6 MR ROGERS: The first telegram they have furnished us is
7 the September 26th telegram; that is the first one they
8 have given us showing --

9 MR FORD: September 26th?

10 MR ROGERS: yes. September 26th, 1911. I will ask you if
11 you sent such a telegram as that away along before Novem-
12 ber 29th? A yes. Perhaps I ought to explain a little,
13 to keep inside the record, Mr Ford.

14 MR FORD: Go ahead.

15 MR ROGERS: yes, explain it in your own way.

16 MR FREDERICKS: Might it not be first read, if it is going
17 to be used, so the jury may understand the explanation?

18 A It was not exactly in explanation of this, but the trans-
19 action.

20 MR ROGERS: Before we introduce the telegram, you may ex-
21 plain the transaction in your own way, and give us your
22 reasons for sending the telegram and calling for the tele-
23 gram, you being familiar with them all, and in your own way,
24 state what the circumstances were and the situation.

25 A The books and documents amongst other things, had been
26 taken from the office of the organization. They were first

1 taken by the state court, an order was made impounding
2 them, first, in the state court. We had a great deal of
3 correspondence, and some telegrams in reference to it,
4 and in reference to getting money for Mr Rappaport for
5 his services, either through me or through Washington.
6 The state court ordered the property either returned to the
7 organization or kept there, instead of being sent to Los
8 Angeles. Later than that, Judge Anderson of the United
9 States ordered his officers to go down and get it, in spite
10 of the decision of the state court, which they did: I had
11 correspondence and by wire and by letter, in reference
12 to the evidence while it was in the state ^{court} and while it
13 was in the hands of the federal court; I can't now re-
14 call just the date in which Judge Anderson ordered it into
15 the custody of the Federal Court.

1 First, we endeavored through them to keep it in the hands
2 of the State court, and to have it turned over to the
3 organization. Next, after Judge Anderson had ordered it
4 into the Federal court, an effort was made to still get
5 it back, which was probably by appeal to the ^{Circuit} Court of
6 Appeals, although I didn't have charge of it, and wouldn't
7 say just how it was done. Now, when the date the last
8 matter was taken I can't say, but many telegrams and
9 many letters passed concerning it.

10 Q Well, you have a telegram there of the 26th? A Septem-
11 ber 26th, Mr. Rogers.

12 Q In reference to it-- A You want to read it?

13 Q Yes, you may read it, I suppose. A "Los Angeles,
14 September 26, 1911. Leo M. Rappaport, Law Building,
15 Indianapolis, Indiana. No order known on Marion County
16 of record or request. KNow you need money for purpose
17 stated and I will guarantee it and will wire Washington
18 about it and probability of evidence taken before November
19 10th, F will be out in two weeks. Will answer questions
20 promptly hereafter. Darrow. Charge C S Darrow."

21 Q This is nothing but a copy and I assume the record is
22 sufficient without it.

23 MR. FORD. We are not making any objections.

24 MR. FREDERICKS. Who was F?

25 THE COURT. You want that makred as an exhibit?

26 MR. ROGERS. It is merely a copy they gave us.

1 MR. FORD. There is one part of that telegram in code,
2 "F", I think we ought to put that in English before it is
3 admitted. The witness sent it, he can tell who "F" was.

4 MR. ROGERS. Q Who was "F"? A I don't recall who that was.

5 MR. FORD. Wasn't that Harrington? A I really don't know.
6 I didn't recall that Harrington was going out then, but
7 he might have been intending to.

8 MR. FORD. Harrington is F in the little dictionary code.

9 MR. ROGERS. Q Now, did you further on October 3rd send a
10 telegram to Mr. Rappaport, that is before November 29th, on
11 October 23rd, did you send a telegram like this, being
12 in English--

13 MR. FORD. Just a moment--

14 MR. ROGERS. October 3rd--

15 MR. FORD. I can find it right here. Go ahead.

16 THE WITNESS. Shall I read it into the record?

17 MR. FORD. Go ahead.

18 A (Reading) "Los Angeles, Cal. October 3, 1911, Leo M.
19 Rappaport, Law Building, Indianapolis, Ind., Will stand
20 good for expenses needed there this case. Have wired
21 Washington. C.S.Darrow. Charge."

22 MR. ROGERS. Q Then October 3rd you agreed to stand good
23 for some money? A Yes.

24 MR. FORD. That is the only one of October 3rd you have?

25 MR. ROGERS. No, I have another but it doesn't seem to
26 relate to money matters. That is all I was speaking

1 about. A I want to add there that I did wire Washington.

2 MR. FREDERICKS' October 3rd there is another one there.

3 MR. ROGERS. This is in English.

4 MR. FREDERICKS. In cipher.

5 MR. ROGERS. You didn't introduce it, I don't know whether
6 the translation is correct or not.

7 MR. FORD. You have the code, you can compare it very
8 easily. We have given you all our codes.

9 MR. FREDERICKS. You have the translation, you have it
10 written out there--our translation.

11 MR. ROGERS. Q Did you send that telegram on October 3rd,
12 or do you know anything about it? A I don't recall, but
13 very likely I did.

14 Q It is in cipher, do you remember sending it? A I don't
15 remember it, I don't know who it refers to.

16 MR. FREDERICKS. Show him the English of it.

17 MR. ROGERS. There is the English translation of it.

18 MR. FORD. He says he recalls it I suppose by the English
19 translation.

20 A I really don't. I will read it if you want me to.

21 MR. FORD. Go ahead.

22 A (Reading) "Keep all there until defense requires."

23 I think it refers to some witness, but I wouldn't swear to
24 that. I don't recall what it refers to.

25 MR. ROGERS. Now, when you sent a telegram on November
26 29th that he might spend a thousand dollars if necessary to

1 what did you refer, explain fully the circumstances of
2 sending that telegram on the 29th, the day subsequent
3 to Franklin's arrest and the subsequent telegram of
4 December 1st countermanding it. A Yes, I received a
5 wire which I believe has been introduced here, hasn't it?
6 from Mr. Kappaport? You put it in, asking for a thousand
7 dollars for the purpose of regaining evidence which was
8 this matter upon which we had our former correspondence.
9 In the meantime I know some money had been sent from Washing-
10 ton, but I don't know how much, and I wired him back on the
11 29th he could spend a thousand dollars if needed, in answer
12 to that telegram. On December 1st I sent the wire that has
13 been given in evidence here, not to spend it. I wanted to
14 keep what money I had if I could, for the purpose of closing
15 up here. Now, I had in the first place, I had promised it
16 previously and thought they needed it. In the second place
17 the telegram which I sent on November 29th was sent on
18 Wednesday the day after Mr. Franklin was arrested, at a
19 time when there was no certainty that the previous arrangement
20 made would go through. Nobody could tell-- we hoped so, and
21 I was interested then in getting the evidence myself, as
22 well as having the evidence in the office of the structural
23 iron workers. The telegram on December 1st was after the
24 plea of guilty was entered, and that is to this case here--
25 and I could have no interest in the evidence, and wanted to
26 save the money.

1 Q On the 29th at the time you sent that wire the day
2 after Franklin's arrest, did you know then whether or not
3 your previously arranged agreements would be carried out,
4 owing to Franklin's arrest or not? A I did. We spent
5 every minute of time, day and night, to have it carried out.
6 I believed it would be; I was not sure.

7 Q Now, Mr Darrow, I call your attention to your statement
8 that you had the 28th -- you already had made up your
9 mind to have your clients plead guilty, and you were sat-
10 isfied, so far as your own mind was concerned, that
11 everything was arranged. Now, state whether or not the ar-
12 rest of Franklin on the 28th, in any way, affected your
13 state of mind with regard to the certainty of your belief,
14 whether you still believed it was sure or not, as you did
15 before.

16 MR FORD: Objected to upon the ground it calls for a
17 conclusion of the witness.

18 MR FREDERICKS: Been already answered.

19 MR ROGERS: Oh, a man can give a conclusion, who is a de-
20 fendant --

21 MR FREDERICKS: The last statement he made was an answer
22 to that.

23 MR FORD: On the further ground, it is not redirect examina-
24 tion. He testified to that matter on direct examination.

25 THE COURT: Yes, he testified to that upon subject, but I
26 think that this question was properly brought out on redirect

1 Objection overruled.

2 A I was much more concerned as to whether we could carry
3 through our arrangement after that time, and was never
4 sure until we had done it. I believed we would accomplish
5 it.

6 MR ROGERS: Now, I call your attention to another matter --
7 you have been -- your mind has been directed to the fact
8 that you did not ask Franklin where he got the money and
9 you did not talk much with Franklin after his arrest,,
10 and you stated on your cross-examination that you were
11 afraid of him; you didn't know what to make of it --
12 in your own way you may explain why it was that you did
13 not inquire of Franklin or talk with Franklin, even
14 very much -- talked with him a little, in fact, and left
15 him to talk with his attorneys rather than yourself?

16 MR FORD: Objected to as not redirect examination, calling
17 for a conclusion of the witness, a statement of purposes
18 which would be self-serving declarations, if he made any
19 statement at that time in regard to it.

20 THE COURT: Objection overruled. A Until the date of my
21 clients were settled on December 1st, I paid scarcely no
22 attention personally to the Franklin matter. It was of
23 very minor importance. Someone else was attending to it.
24 When I did have time to seriously think of it, I didn't
25 know whether this was some betrayal by him or others; whether
26 it was done by some zealous friend, seeking to serve a

1 cause, as they supposed, whether it was a plot or a trap,
2 I couldn't tell. I was suspicious of Franklin. I knew if
3 he would betray me once he would twice or any number of times,
4 and I have practiced long enough to know the influence of
5 a threat of the penitentiary on a man --

6 MR FORD: If the court please, we object to the witness'
7 statements as to his conclusions and argumentative and
8 not responsive to the question that is before the court.

9 THE COURT: I think it is. Objection overruled.

10 A And I feared just what has happened, that he would be
11 offered his liberty to turn me over, and I did not want to
12 go near him and I kept away from him as much as I could.
13 I think anybody would under the circumstances.

14 MR FORD: We move that the last part of the witness'
15 answer, "I think anybody would under the circumstances",
16 be stricken out as not responsive to the question.

17 THE COURT: Strike it out.

18 MR ROGERS: My redirect, if your Honor please, will be
19 very short, and I would ask to have a short recess at this
20 time.

21 THE COURT:" yes. It is almost time for the regular af-
22 ternoon recess. Gentlemen of the jury, bear in mind your
23 former admonition. The court will take a recess for 15
24 minutes at this time.

25 (After recess.)

26 MR ROGERS: Now, Mr Darrow, calling your attention to the

1 payment by Mr Davis of Franklin after his arrest of money
2 due him. Explain that, in your own way. A Mr Franklin
3 told me that he had practically received nothing; that
4 he had not paid out in expenses; he told Mr Davis the same
5 thing. If this work had been honestly performed, I would
6 have considered that what I gave him, including \$1000 ,
7 was no more than right; I did not want any civil procedure
8 or any difficulty of that sort with Mr Franklin; I thought,
9 assuming the services were right, it was not unreasonable
10 and I paid it or directed it to be paid.

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1 Q Was there any reference whatever made at the time you
2 paid him what he claimed was due him for work, was any
3 reference whatever made to his testimony or what he would
4 do or any statement concerning it whatever? A Nothing at
5 all, I never asked him at any time for such a thing and
6 made no reference to it.

7 Q You stated you didn't want any civil proceedings. What
8 did you mean by that? A I did not want to be sued for
9 \$1,000, and I did not know that it was unreasonable.

10 Q How many persons, according to your understanding, were
11 interested, either directly or indirectly in the success
12 of the McNamara case, otherwise than financially?

13 MR. FORD. We object to that as irrelevant and immaterial
14 and not redirect examination. He was not asked any ques-
15 tion on cross-examination about the number of people
16 interested in the McNamara case.

17 THE COURT. One of the jurors made some inquiry along that
18 line.

19 MR. FREDERICKS. It refers to that inquiry?

20 MR. ROGERS. Yes.

21 THE COURT. Yes, I presume that needs some clearing up and
22 this is directed to that.

23 MR. ROGERS. Yes, that is what I mean, what I mean by that
24 is--

25 MR. FORD. I had forgotten the incident.

26 MR. ROGERS. What I am referring to, Mr. Darrow, is people

1 who are interested, either directly or personally or
2 indirectly because of the belief in the cause of matters of
3 that sort, aside from the two million that you spoke of
4 that were likely to contribute. A There were probably
5 20, 25 or 30 who were employed in the case; there were
6 perhaps 12 or 15 or more against whom threats had been made
7 and evidence sought.

8 Q Threats of what? A Connection; there were, there was
9 all organized and most unorganized labor in the United
10 States who were deeply and vitally interested in it; and
11 many people who did not belong to labor on our side who
12 regarded this whole thing as an incident in the great class
13 struggle.

14 Q Well, do you know how many people were subsequently
15 indicted from Indianapolis for participation in the matter?

16 A In the matter of transporting dynamite I think 50--
17 MR. FORD. To that question we object on the ground it is
18 incompetent, irrelevant and immaterial; the only object
19 of this, your Honor, would be to show that perhaps some of
20 these other people might have been instrumental in procuring
21 a bribe to be given, when counsel has here time after time
22 over and over again, from the beginning of the case,
23 expressed as their defense and have intimated and stated
24 they would prove that this money came from the National
25 Erectors Association, and that it was a frameup on the part
26 of the National Erectors Association through Harrington and

1 Frankliñ to cast some odium on this defendant, therefore,
2 an inquiry as to what other persons were implicated in
3 some dynamiting plots or indictment at Indianapolis, would
4 not be consistent with that defense; it is not redirect
5 examination, incompetent, irrelevant and immaterial and on
6 that ground we object.

7 THE COURT. Objection overruled.

8 A there were 54, as I recall it, indicted in Indianapolis,
9 and quite a number here, including the McNamaras, who were
10 reindicted; On the other side there were the Erectors
11 Association, the Steel Trust, Burns Agency and numerous
12 detectives of the State's Attorney's office, and of the
13 Burns agency and a number of people in our own employ who
14 were in theirs.

15 MR. ROGERS. That is all, unless the jury has some questions.

16 JUROR GOLDING. I want to ask some questions. The
17 realization of the vital importance of this case and out
18 of only a sense of fairness, I want to ask a simple little
19 question, whether that note of Mr. Harriman's the clerk has
20 over there is an exhibit from the defendant, as I remember
21 it, bears the unexplained date of November 23rd in red
22 ink.

23 MR. FREDERICKS. Let the juror have it, as far as we are
24 concerned.

25 A A note of Mr. Harriman?

26 JUROR GOLDING. A note of Mr. Harriman's, a note that is

1 executed at El Monte, as I remember it, on a real estate
2 transaction and was not forced to be paid, and there was
3 an urgent demand made on Mr. Harriman to pay on the 27th or
4 28th of November.

5 THE COURT. You mean his promissory note?

6 A Gracious, that has passed out of my head. Let me see
7 what it is, let me see the note. Excuse me a minute. I do
8 not recall that incident at all.

9 MR. ROGERS. I don't know that Mr. Darrow possibly could
10 explain it, we could recall Harriman, if you desire. Is
11 that the note?

12 MR. DARROW. Oh, now I know.

13 THE COURT. Is that the note you wanted, Mr. Golding?

14 JUROR GOLDING. Yes, I see a date here, of November 23rd,
15 1911.

16 MR. DEHM. That is when it was due.

17 MR. FREDERICKS. Maybe we had better find out, if we can,
18 what that is, Mr. Golding.

19 JUROR GOLDING. Of course, I do not want to open up anything
20 here; we have been sitting here very patiently in this
21 case for two or three months, some of us are conserving
22 every ounce of energy that is in us--

23 MR. ROGERS. I think that is when the bank received it for
24 collection.

25 JUROR GOLDING. I just wanted to know if it was an ordinary
26 business transaction in that demand of Mr. Harriman of the

1 payment on this particular date.

2 THE COURT. I understand, Mr. Darrow, you don't know about
3 that date? A No.

4 JUROR GOLDING- I want to get into Mr. Darrow's state of
5 mind, if I can, at the present moment.

6 MR. ROGERS. Ask Mr. Darrow anything you may wish.

7 A Let me see the note, please. (Witness examines same.)

8 MR. ROGERS. Q Mr. Darrow, did you ever see that note until
9 it was produced in court? A I never did. It might be
10 that was demanded at that time on account of Harriman's
11 campaign. I see it was 23 days overdue--no, a month and
12 3 days overdue. I never knew anything about it and gave
13 him no money for it. I know Mr. Harriman will be glad--
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1 MR GOLDING: I don't know whether that November 23rd,
2 whether that is the date the note became into possession
3 of the First National Bank, or came into the possession
4 at a discount or premium or anything about that, either.

5 A I don't know, Mr Golding. It is transferred to the
6 First National Bank of Los Angeles, but there is no date
7 on the note on the transfer -- it is transferred to them.

8 JUROR GOLDING: The evidance shows, Mr Darrow, that de-
9 mand was made by the First National Bank on Mr Harriman
10 on the 27th and he went down to the vault and got the money to
11 take up to the office to send his clerk over to deposit it
12 to pay that note? A That is it.

13 JUROR GOLDING: That was early in the morning and at the
14 same time the janitor saw Mr Franklin around the offices
15 according to his testimony. A No, the janitor testified
16 that he saw Franklin there about 7 o'clock in the morning.

17 MR FORD: We object to the witness repeating that.

18 JUROR GOLDING: To the clerk on the 28th.

19 THE WITNESS: On the 28th of November.

20 JUROR:GOLDING: I mean to say, the morning Mr Harriman
21 gave his clerk \$500 to go over and pay this demand.

22 THE WITNESS: Mr Harriman says he was at the vault when
23 it opened at half past 8 in the morning and got that money
24 and paid it to his clerk.

25 JUROR GOLDING: Well, that proposition nevercrossed --
26 you say you have been trying to figure howc certain X's y's

1 z's and certain occurrences bearing on what happened down
2 at Third and Los Angeles -- this proposition never cross-
3 ed your mind.

4 THE COURT: I do not think, Mr Golding, it is proper to
5 go now into a discussion with the witness as to these
6 matters. You can ask him any question of fact that would
7 call for any facts within his knowledge.

8 MR FREDERICKS: He is asking him as to his frame of
9 mind.

10 THE WITNESS: As to whether there was any connection between
11 the payment at that time and the thing happening at that
12 time?

13 JUROR GOLDING: Yes; it happened on the same day, 7 or 8
14 days after the compromise of the McNamara case had started,
15 whether it was an ordinary business transaction or semi-
16 business, and semi-political transaction, or whether there
17 was anything to it, to the coincidence, as I have relat-
18 ed it, that occurred? A I don't believe I ever
19 thought of it. Might have been political partly, and might
20 have been -- it might have had connection here. In thinking
21 of it, I confess I had not. I would have liked to. I see
22 what you mean. It hadn't been considered by me, Mr Golding.

23 MR ROGERS: Before we go along, I have sent for Mr Harriman,
24 if you please. Mr Harriman will not be in his office
25 until 4:30. The bank telephoned up the information --
26 send a subpoena for that clerk that marked it.

1 MR FORD: There is one question I neglected to ask on cross-
2 examination.

3 MR ROGERS: Mr Golding is asking a question.

4 THE COURT: Go ahead, Mr Golding.

5 JUROR GOLDING: Mr Lockwood informed the District Attorneys
6 office that Franklin was trying to bribe him and Mr Browne
7 was down at Third and Los Angeles to arrest somebody, and
8 the time you came across the street, assuming that you was
9 crossing the street to get on the other side, why wasn't
10 you arrested at that time? A It was given out for weeks
11 by the District Attorney's office that there was no evi-
12 dence against me whatever. As late as just before Christmas.
13 You will find it in the copies of the Record, the Daily
14 Record, the Express and a number of other papers. I
15 don't believe anybody ever thought I was there for any pur-
16 pose of assisting in any bribery.

17 MR FREDERICKS: of course, that is your own conclusion, Mr
18 Darrow. A Part of it is. What was in the newspaper is
19 not a conclusion.

20 MR FREDERICKS: Whether we had sufficient evidence
21 against you at that time would be another question.

22 A I should suppose they would have arrested me at that
23 time if they wanted me, especially as Lockwood said they
24 expected me up to his house the night before, referred to
25 as the "Big one".

26 JUROR GOLDING: That is all.

1 MR FORD: If you are through there is one question I want
2 to ask on cross-examination that I overlooked.

3 THE COURT: Go ahead.

4 MR FORD: You heard Mr Hawley testify on the stand? A I
5 did.

6 Q When did you last hear from him previous to his going
7 on the stand? A I had some conversation with Mr Harri-
8 man about it several times, not long before he went on the
9 stand.

10 MR FORD: And prior to Mr Harriman going on the stand? A I
11 think so. Now, let me see -- how close together they testi-
12 fied -- that is my remembrance about it.

13 Q You had never discussed that subject with Mr Hawley
14 previous to the actual trial of this case? A I think
15 not. Mr Harriman had, however, I think.

16 Q Did you discuss it with Mr Harriman before the trial of
17 this case? A Yes, I discussed the question of who it was
18 called me to his office.

19 Q When did you discuss that first with Mr Harriman?

20 A I think within a comparatively short time after the
21 incident, but I am not certain that I did discuss it with
22 him.

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1 Q Within a week or two? A I wouldn't say that, I don't
2 know exactly.

3 Q Did you discuss it with him prior to the indictment
4 being returned against you? A I believe I did.

5 Q You knew then, when the trial began, that Mr. Hawley
6 was the man who had telephoned you that morning?

7 MR. ROGERS. What is that?

8 A When this trial began?

9 MR. FORD. Yes.

10 A I don't recall just when I knew it.

11 Q But you knew it before this trial began? A I am not
12 exactly certain--I am not certain of the exact date when
13 I discovered it.

14 Q I mean to say you discussed it with Mr. Harriman a few
15 weeks after the incident happened? A I discussed the
16 question of him calling me.

17 Q And Harriman told you? A You mean really--

18 Q yes.

18 A I am not certain about that. I asked him to look it up.

19 Q He told you before this trial began who it was? A I
20 think so, at least about that time.

21 MR. FORD. All right, that is all.

22 JUROR WILLIAMS. I would like to ask a question. Mr. Darrow
23 you mentioned that money was sent from the east shortly
24 before the McNamaras plead guilty and that you never
25 received it? A Yes.

26 Q How did it happen that you didn't receive it? A Money
was sent on the 29th or the 30th and I suppose when they

1 learned of the plea of guilty they ordered it stopped
2 in transit.

3 Q On that account? A On account of the plea of guilty,
4 they probably thought they would save it, or, of course,
5 they were greatly surprised at it, and they just thought
6 they would save it.

7 Q Haven't you heard from them since regarding that? A Yes,
8 that was the reason.

9 Q That was the reason they gave? A Yes, that they had
10 no right to pay it out for anything except the defense of
11 the case.

12 Q Has Mr. Franklin ever asked for any more money since
13 Mr. Davis paid him the last thousand dollars? A He has not.

14 JUROR WILLIAMS. That is all.

15 MR. FREDERICKS. Q In regard to the money that was
16 sent you, Mr. Darrow, from Washington, this last draft you
17 received but remittance was stopped at the bank? A No, I
18 didn't receive it. I think it must have been stopped in the
19 post office, in the postal department somewhere.

20 Q Well, that last check is in the book? A In the book.

21 Q It was never cashed? A Never cashed and never received.
22 I think it is dated November 30th, isn't it?

23 MR. FORD. It is in the book, it has never been introduced
24 in evidence. If you desire to introduce it--

25 A No.

26 MR. ROGERS. You know this witness we subpoenaed to stay

1 here in case we needed him, he is gone.

2 MR. FORD. Probably we can stipulate. Tell us what you want
3 to put in.

4 MR. ROGERS. The check just shows it was cancelled December
5 1st.

6 MR. FREDERICKS. Dated December 1st.

7 MR. FORD. You wish to introduce that check, Mr. Rogers?

8 MR. ROGERS. Well, where is Mr. Flather?

9 MR. FORD. I don't know.

10 MR. ROGERS. Produce Mr. Flather and we will introduce it
11 in a minute.

12 MR. DARROW. Is that all?

13 MR. ROGERS. I think so.

14 JUROR COPECK. Just what were the final terms of agreement
15 with the District Attorney's office in the settlement of the
16 McNamara case. I speak in particular on the prosecutions?

17 A You mean after Thanksgiving Day, or the day they plead
18 guilty?

19 Q Well, the final arrangement with the District Attorney's
20 office, to have them plead guilty, J B to take life and
21 J J 10 years, and with regard to other actions that were
22 pending, they were to be dropped? A All other prosecutions
23 should be dropped.

24 MR. FREDERICKS. Against the two men, J B and J J, is that
25 what you mean?

26 A And against Caplan. You said as to Schmidtie, he was a

1 reckless kind of a fellow, of course, if he should turn
2 up in Los Angeles or somewhere in this vicinity you would
3 probably have to arrest him and place him on trial, but
4 everybody that was looking for him should be called off and
5 there should be no further prosecutions or indictments.

6 MR. FREDERICKS Did I say that to you?

7 A You said it in my presence to Mr. Davis.

8 Q Did ^{not} I say, Mr. Darrow, that I was not in the detective
9 business, and that if Schmidtie or Caplan were found that
10 they would be prosecuted, but undoubtedly, in view of the
11 fact that J B had not ^{been} hung, they would not be in any
12 danger of losing their lives? A You did say something
13 like that. I tell you now, because it is partly what you
14 said; you said that Schmidtie was a reckless kind of a
15 fellow, if he turned up here you would probably have to prose-
16 cute him, and that if he or Caplan ever did have to come
17 to trial on that account or any other, you would be satis-
18 fied with a term of years, but that you would call off every
19 effort to catch them by detectives, and you thought Burns
20 would not pay any more attention to it because he was no
21 longer under salary or employment?

22 Q That was on December 1st? A No.

23 Q When was that? You didn't see me Thanksgiving Day?

24 A It was either Wednesday, which would be the 29th, or
25 December 1st.

26 Q Why, Mr. Darrow, don't you remember Mr. Davis saying that

1 he telephoned out to my house at 2 o'clock on Thanksgiving
2 day and that I told him then that unless those two men,
3 both of them, were willing to plead guilty that he
4 needn't come to seeme, and doesn't that call to your mind
5 that there could have been no arrangement prior to that
6 time with me that the two were going to plead guilty?
7 A I think I said before that I was inclined to think that
8 that conversation was December 1st, but it might have been
9 two days before or the day before Thanksgiving, I wasn't
10 quite certain.

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1 ANOTHER JUROR: Mr Copeck's question has not been fully
2 answered to me. I would like to know if that would not
3 include you and everybody else? A Oh, no. Nobody ever
4 heard me ask for anything to include me or anybody connect-
5 ed with jury bribery, or anybody claimed to be connected
6 with jury bribing, and I especially stipulated to Mr Stef-
7 fens, that if anybody thought I had anything to do with it
8 that they could explicitly state that under those circum-
9 stances would I have anybody deal for me.

10 JUROR COPECK: That is not my question. A I didn't think
11 it was.

12 MR FORD: Mr Darrow, this telegram that was sent to Rappa-
13 port on November 29th, telling him that he might spend
14 \$1000 if necessary to regain Indianapolis evidence, bears
15 the legion here, received N.W. November 29th, Los
16 Angeles, Cal., 6:22 P.M. Was that the time that you sent
17 the telegram that evening? A I don't know. I might have
18 dictated it in the middle of the afternoon. Probably dictat-
19 ed it in my office or directed in my office, I
20 don't know what time of day it was.

21 Q The middle of the afternoon you were in court, weren't
22 you? A I probably was in court until sometime in the
23 afternoon. I might have sent it any time -- it was sent
24 in reply to his, and if his shows, why, it might have
25 been done at noon; I couldn't tell when. This shows proba-
26 bly the time it was received at the office, but it was done.

1 undoubtedly before that time because the office scarcely
2 could have been open for business at that time this was
3 dictated.

4 MR ROGERS: Before we branch off, let's finish with Mr
5 Copeck's question.

6 MR FORD: I beg your pardon. I thought he was through.
7 If he is not, I will wait.

8 MR ROGERS: Mr Copeck asked you, Mr Darrow, what the terms
9 of the agreement were as finally reached with reference
10 to other prosecutions. Now, what was that understanding
11 if you haven't fully explained, if you have any more you can
12 give us on that subject. A I think I have fully explained
13 it. There were to be no further indictments or prosecu-
14 tions, and the matter of Schmitty and Caplin was left, as
15 I said.

16 Q That if they showed up here and got arrested, they would
17 have to be prosecuted, of course, but there wasn't going
18 to be any unusual efforts to find them? A Wouldn't look
19 for them. If anything happened to them, though, they would
20 have a term of years.

21 Q Now, what about the prosecution in the federal courts;
22 was that included at all? A The federal prosecutions
23 did not begin here until after the plea of guilty, that
24 was started immediately on that.

25 Q The federal prosecutions began after this settlement?

26 A Yes, they had begun in Indianapolis, however, and that

1 was not included or nothing was said about them. That
2 was not for the Times business; it was for the transporta-
3 tion of dynamite.

4 MR FREDERICKS: Hadn't they already begun here? A No,
5 not as far as I can recall, or believe.

6 Q In regard to the matter as to whether the bribery cases
7 were discussed in the talk with me, Mr Darrow, you didn't
8 see me at all on Thanksgiving day? A I did not.

9 Q Mr Davis did? A Yes.

10 Q And reported to you? A Yes.

11 Q Did he report to you anything that I said in regard
12 to the bribery cases? A He did not.

13 Q On the day before, on Wednesday, you say you had a
14 talk with me? A I didn't say I did.

15 Q Well, did you? A I did on Wednesday or on Friday.
16 I don't think I had on both.

17 Q Well, as I refreshed your memory that Mr Davis stated
18 that on Thursday afternoon, I told him that he needn't
19 come and see me any more unless both were willing to
20 plead guilty, and in view of the fact that the conversa-
21 tion with you dealt with both men pleading guilty, don't
22 you think that it is pretty conclusive --- isn't it pret-
23 ty conclusive in your mind my conversation with you was on
24 December the 1st? A Well, Mr Fredericks; I don't recall
25 that Mr Davis ever said that he couldn't come to see you
26 unless both men would plead guilty. That was said before

1 that time, and I understood it and agreed to it. The ques-
2 tion on Wednesday was whether they should both plead guilty
3 together, as I have repeatedly stated, and Mr Davis has
4 stated, and Mr Steffens.

5 Q You mean to say that Mr Davis -- that you had ever any
6 statement from me or that you had ever made any statement to
7 me prior to Thanksgiving Day that J. J. McNamara was will-
8 ing to plead guilty?

9 MR ROGERS: I object to that as already gone into, your
10 Honor please. I don't think Captain Fredericks ought to
11 cross-examine in this method.

12 MR FREDERICKS: No, I think so, too.

13 MR ROGERS: I am perfectly willing if there is anything
14 you can reach, you may cross-examine. If there is anything
15 that has not been gone into I think Captain Fredericks can
16 cross-examine, but I don't think you ought to go over the
17 same ground.

18 MR FREDERICKS: I don't want to cover the same ground, but
19 I want it to be thoroughly understood. As long as there
20 is no dispute about the conversation with Mr Davis and my-
21 self over the telephone on Thursday afternoon, I suppose
22 I can rest, that is all.

23 MR FORD: I want to come back to that telegram you have in
24 your hand. Referring to People's exhibit No.44, a tele-
25 gram to you on the 29th of November, from Rappaport, asking
26 you if he could spend a thousand dollars to regain Indian-

1 apolis evidence. A Yes.

2 Q I call your attention to a portion of the legion, 12:31
3 P.M., and the time of filing marked 12:30 P.M., you are
4 familiar enough with telegrams to know that indicates the
5 time the telegram was received at this office? A I have
6 no doubt about that.

7 Q This is a telegram that was filed in Indianapolis indi-
8 cating that it was filed in Indianap@lis at half past 12,
9 at that time? A Does that indicate half past 12?

10 Q yes. A That would be half past 10. perhaps that is
11 right.

12 Q The telegram was received while you were in court,
13 and you would not see it until noontime when you went back
14 to your office. A Does it show when it was received?

15 Q This is not the Los Angeles telegram. A No one can
16 tell when a telegram was received by the time it was sent.
17 Might guess at it.

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1 Q Well, it was not filed in that office until that time?

2 MR. ROGERS. I don't suppose he knows anything about it.

3 I object to that as not cross-examination.

4 THE COURT. Objection sustained.

5 MR. FORD. We probably can get the telegraph operator
6 here. I thought I would do it to save time.

7 THE COURT. Is that all?

8 MR. ROGERS. Unless some other jurors have a question.
9 That is all.

10 MR. FREDERICKS. Your Honor, we have asked Mr. Steffens
11 be ordered to return here for a little further cross-
12 examination. Mr. Steffens is not our witness and we don't
13 seem to be able to get him.

14 MR. ROGERS. He was at Mr. Lissner's office. I saw him
15 on the street the other night, a few moments, and he said
16 he was going to San Francisco and would be back directly.
17 That was when we adjourned at the end of the week--whether
18 he has gotten back--that was after we had adjourned to go
19 over until Monday.

20 MR. FREDERICKS. Did you tell him I wanted him or the
21 court wanted him?

22 MR. ROGERS. I did. He is in town. Mr. Geisler just tells
23 me he is in town and you have excellent detectives, you
24 just find him. I wouldn't guarantee to do it. I will do
25 the best I can to help you.

26 MR. FREDERICKS. I don't know whether we have any that are

1 capable of finding him or not.

2 THE COURT. Anything further, Mr. Rogers?

3 MR. ROGERS. We sent for the banker, the man that can
4 explain what Mr. Golding wants to know about it, I don't
5 know whether he has got here or not.

6 MR. DARROW. I think we might adjourn until morning.

7 THE COURT. You can put him on any time.

8 MR. ROGERS. We are about through.

9 THE COURT. All right, we will adjourn until 10 o'clock
10 tomorrow morning.

11 MR. ROGERS. It wont take us but half an hour or maybe
12 15 minutes.

13 (Jury admonished. recess until 10 o'clock A.M.
14 August 6, 1912.)

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