

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Clarence Darrow, )  
 )  
 Defendant. )

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 83

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Job Harriman		6745		
Leonard Shoeber		6748	6749	
O H F Mayer,	6752	6768		

B. N. Smith,  
Official Reporter

1 AFTERNOON SESSION. August 6, 1912; 2 P.M.

2 Defendant in court with counsel.

3 THE COURT. You may proceed, Gentlemen.

4  
5 J O B H A R R I M A N ,

6 on the stand for further cross-examination.

7 MR. FORD. Q have you searched your check books, Mr.

8 Harriman, and gone over your cancelled checks? A I did.

9 Q You have in your hand the check that was paid by the

10 bank on November 28th for the sum of \$1.75? A I have.

11 MR. FORD. We offer that check in evidence as People's

12 Exhibit No. 50. You desire to look at it?

13 MR. ROGERS. No, read it.

14 MR. FORD. (Reading) "Exhibit Number 50. Los Angeles, Cal.

15 7/17/11. Number 17"--or 18, I don't know which--

16 A Looks like 18 to me--18.

17 MR. FORD. (Reading) "18. California Savings Bank of

18 Los Angeles, Pay to the Order of Messrs Cop , \$1.75

19 One and 75/100 Dollars. (Signed) Job Harriman" and

20 perforated "Paid 11-28-11." Now, have you examined your

21 check to see what--~~to~~ find the check that was paid by the

22 bank on December 5th, 1911? A That was not written until

23 after November 28th.

24 Q You have looked at the check that was paid by the bank

25 on December 5th and found it was not written until after

26 November 28th? A Yes, sir.

1 Q With regard to the ne xt check that was paid on the  
2 6th, all the subsequent checks that were paid by the bank  
3 were written after November 28th? A If I have no mistake  
4 in my checking, all of the checks written prior to November  
5 28th was paid before November 28th excepting this one, and  
6 that was paid on the 28th, as I remember it.

7 Q And all other checks that were paid by the bank were  
8 after that date, were written after that date? A As I  
9 checked it, yes, sir.

10 MR. FREDERICKS. I will ask the witness a question, with  
11 the court's permission.

12 THE COURT. There is no objection.

13 MR. FREDERICKS. Q When did you first learn, Mr. Harriman,  
14 that Bert Franklin had told any one that he saw you up in  
15 that office on the morning of the 28th?

16 MR. ROGERS- Objected to as not cross-examination, already  
17 gone into.

18 MR. FORD. Brought out by the Juror's question this morn-  
19 ing, your Honor, along that line.

20 THE COURT. Overruled.

21 MR. ROGERS. Exception.

22 A Mr. Ford, I think, told me when he called me up to talk  
23 to him just before he brought me in before the grand.

24 MR. FREDERICKS. Well--

25 MR. ROGERS. What is that answer?

26 (Last answer read by the reporter.)

1 MR. FREDERICKS. That was in this year? A Well, it was  
2 the day before I went before the grand jury and the record  
3 will show. I don't remember the date, but the transcript  
4 of the testimony before the grand jury will show. I have  
5 seen that but I don't remember the date.

6 Q I am not asking you for the date, but it was after the  
7 beginning of this year, you can be sure of that, I presume,  
8 can't you? A I think it was, but I say the record will  
9 show. I don't remember. I assume it was.

10 Q Now, it was not before the election for Mayor, was it?

11 A No, sir.

12 Q You never heard that Bert Franklin had told anybody  
13 between the 28th of November and the day when you--when the  
14 election of Mayor occurred that he had seen you up there  
15 that morning? A No, sir.

16 MR. FREDERICKS' that is all.

17 MR. ROGERS. Q You know, Mr. Harriman, don't you, that the  
18 state law forbids a savings bank to pay checks by way of  
19 overdraft?

20 MR. FORD. Objected to as irrelevant and immaterial.

21 A I do.

22 MR. FORD. There is no attempt to make an overdraft in con-  
23 nection with this case, in fact the evidence would show it  
24 would not be an overdraft.

25 THE COURT. Objection overruled.

26 MR. ROGERS. That is all.

1 MR. FREDERICKS. Q By the way, do you know Ed Nockles?

2 A Yes.

3 Q The Ed Nockles that has been here during the trial?

4 A yes.

5 Q That is the same Ed Nockles that lives in Chicago?

6 A Yes.

7 MR. FREDERICKS. That is all.

8 -----  
9 L E O N A R D S H O E B E R,

10 recalled for further cross-examination.

11 MR. FREDERICKS. Q Mr. Shoeber, this morning we were in-  
12 terrogating you in regard to the identification of the man  
13 you saw up in the Higgins Building on the morning of the  
14 27th or 28th of November. Mr. Mayer, will you kindly  
15 stand up?

16 (A gentleman stands up in the court room.)

17 Q This is the gentleman whom you saw in the District  
18 Attorney's office this morning, is it, Mr. Shoeber?

19 A Yes, sir.

20 Q Now, in what respect did the man whom you say you saw--

21 MR. ROGERS. Stand up and let us take a look at him.

22 MR. FORD. No, he doesn't have to stand up.

23 MR. ROGERS. Counsel asked him to.

24 THE COURT. Mr. Ford directed him to sit down. Go ahead,  
25 proceed.

26 MR. FREDERICKS. There will be no lack of opportunity to

1 look at him before we get through with him.

2 Q Will you state in what respect this man differs in  
3 appearance from the man you saw up in the Higgins Building  
4 on the morning of the 27th or 28th?

5 MR. ROGERS. We object to that as incompetent, irrelevant  
6 and immaterial, not cross-examination, asking for his opinion  
7 or conclusion. He can say whether this is the man or not.

8 MR. FREDERICKS. He has so stated and this is cross-  
9 examination.

10 MR. ROGERS. Oh, no, he has not said before the jury that  
11 this was not the man.

12 MR. FREDERICKS. All right. I will ask him. Is that the  
13 man you saw up there or not, Mr. Shoeber? A I think not,  
14 no, sir.

15 Q How is that? A No, sir.

16 Q Did you ever see this man before you saw him in the  
17 District Attorney's office this morning, referring to Mr.  
18 Mayer? A Not to my knowledge, no, sir; never have to my  
19 knowledge, no, sir.

20 Q How is that? A Never have to my knowledge, no, sir.

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

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23 REDIRECT EXAMINATION.

24 MR. ROGERS. Q You didn't know, did you, that Franklin  
25 has been around the Waldorff Saloon saying you were a perjurer  
26 and a liar and nothing like your seeing him up there with

1 anybody else ever happened? You didn't hear that?

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1 MR FREDERICKS: That is objected to --

2 A No, I did not, no sir --

3 MR FREDERICKS: We move to strike out the answer.

4 THE COURT: Strike it out.

5 MR FREDERICKS: That is objected to as immaterial; hearsay,  
6 and --

7 THE COURT: Objection sustained.

8 MR ROGERS: You never saw Mayer before? A Not to my  
9 knowledge, no sir.

10 Q Does he look like Joe Ford?

11 MR FORD: We object to that as calling for a conclusion  
12 of the witness.

13 THE COURT: Objection is sustained.

14 MR ROGERS: Well, does he bear any, even fanciful resem-  
15 blance, to Mr W. Joseph Ford?

16 MR FORD: We object to that on the ground it is specula-  
17 tive, calling for a conclusion of the witness.

18 THE COURT: Objection sustained.

19 MR ROGERS: Exception.

20 Q You said that the man you saw up there looked some-  
21 thing like Ford. Be kind enough to point out the differ-  
22 ence of physical resemblance, facial contour, and what-not,  
23 between Mr Mayer and Mr W. Joseph Ford.

24 MR FORD: We object to that as not direct examination,  
25 incompetent, irrelevant and immaterial, calling for a conclu-  
26 sion of the witness.



1 THE COURT: The objection is sustained.

2 MR ROGERS: Exception.

3 Q You said that the man you saw up there looked something  
4 like Mr Ford. In your judgment does Mr Mayer look any-  
5 thing like Ford? A I think not, no sir.

6 Q You made that statement before the grand jury, didn't  
7 you? A Yes sir.

8 MR FORD: Which statement.

9 MR ROGERS: That is all.

10 MR KEETCH: What statement?

11 MR ROGERS: That he looked like Mr Ford.

12 MR FREDERICKS: The defense rests?

13 MR ROGERS: Yes.

14 MR FREDERICKS: The defense rests?

15 MR ROGERS: Yes.

16  
17 O. H. F. MAYER, a witness called on behalf  
18 of the People, in rebuttal, being first duly sworn, testified  
19 as follows:

20 DIRECT EXAMINATION

21 MR FREDERICKS: What is your name? A O. H. F. Mayer.

22 Q Where do you live, Mr Mayer? A 812 West Seventeenth  
23 street.

24 Q Here in Los Angeles? A Los Angeles.

25 Q You are the same Mr Mayer that I just asked to stand up  
26 here in the court room, are you? A I am.

1 Q What business were you engaged in in November, 1911?

2 MR APPEL: We object to that as not rebuttal; incompetent.

3 A What particular time in November?

4 MR ROGERS: Wait a moment.

5 THE COURT: Wait a moment.

6 MR APPEL: It is not rebuttal; incompetent, irrelevant  
7 and immaterial. The witness Franklin testified in refer-  
8 ence to his movements, and who went with him up there in  
9 that building, and he did not claim, your Honor, at that  
10 time, that anyone went with him into the building. He  
11 told his story; he told all the circumstances of his going  
12 there, and that is a part of their case; we answered  
13 that by showing that he went up there early in the morning  
14 before Mr Darrow was there, and that he left there in com-  
15 pany with an individual.

16 MR FREDERICKS: If counsel will only let us proceed, he  
17 is arguing the facts, and those are not the facts that are  
18 applicable at all; that is not going to be the testimony of  
19 this witness.

20 MR APPEL: It is not that; I am addressing myself to  
21 whether or not it is rebuttal.

22 THE COURT: The only question is now, what was the bus-  
23 iness of this witness.

24 MR APPEL: That would not be rebuttal, if there is nothing  
25 in reference to that matter, this gentleman has not been  
26 shown in the case anywhere from its beginning to its end.

1 his business, his calling, what he was doing, if anything,  
2 never at any time -- has not been shown in the case, either  
3 by the defense or the prosecution; his business is not  
4 applicable; it is not rebuttal to anything; and we claim  
5 that anything concerning this witness is absolutely  
6 nothing -- It isn't rebuttal. There is nothing they  
7 can ask this witness. We might as well take the posi-  
8 tion --

9 THE COURT: That may be true, but I think this is a pre-  
10 liminary question as to his business, and calling and  
11 identity; it is preliminary.

12 MR APPEL: No one said it is preliminary, your Honor.  
13 It is not under the guise of preliminary. They may intro-  
14 duce evidence -- there is absolutely nothing to call his --

15 THE COURT: Well, I think he can testify what his business  
16 is and get through with these preliminaries and let's  
17 see what is coming, and then I will hear your objection.  
18 The objection, at present, is overruled.

19 MR APPEL: We take an exception.

20 MR FREDERICKS: The latter part of November is the part  
21 the question will be directed to him. A Why, I only  
22 worked two or three days in the latter part of November  
23 for Mr Franklin doing some special work.

24 MR ROGERS: Let's hear that answer. (Last answer read  
25 by the reporter.)

26 MR FREDERICKS: Sunday, the 26th day of November, however

1 you employed?

2 MR APPEL: Wait a moment. We object upon the ground it is  
3 not a cross-examination.

4 THE COURT: Overruled.

5 MR APPEL: It isn't rebuttal. We take an exception.

6 MR FREDERICKS: Answer the question. A I was calling  
7 up several -- I believed they would be prospective jury-  
8 men, or jurymen supposed to have been drawn from the jury-  
9 box on Saturday, the 25th, and I understood at the time --

10 MR APPEL: Now, --

11 THE COURT: Don't say what you understood. State what you  
12 did. A I called up the several jurors I had lists of --

13 MR APPEL: Objected to upon the ground it is not rebuttal.

14 MR FORD: I think the witness ought to be allowed to finish  
15 his answer.

16 MR APPEL: I know. We have a right, when he said --

17 THE COURT: It seems to me, gentlemen, we might as well  
18 meet this question right now. We are getting into mat-  
19 ters that seem to savor very strongly of the case in chief.

20 MR FREDERICKS: We will come down to the morning of  
21 November 27th --

22 MR ROGERS: I would like to have the last answer stricken  
23 out; it is abandoned.

24 THE COURT: It is not finished; it is an uncompleted answer  
25 as it stands.

26 MR FREDERICKS: It is finished. (Last answer read by

1 the reporter.)

2 THE COURT: I don't think that is a complete answer.

3 Strike it out.

4 MR FREDERICKS: Well, what were you doing that morning,

5 Sunday, the 26th?

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3s 1 MR. APPEL. We object to that.

2 MR. FREDERICKS. I withdraw that. What were you doing on  
3 the morning of the 27th of November, Monday morning early.

4 MR. APPEL. Wait a moment--we object upon the ground it  
5 is not rebuttal.

6 THE COURT. Overruled.

7 MR. APPEL. We except?

8 A I met Mr. Franklin at 8:15 at the corner of Second and  
9 Spring, southeast corner.

10 MR. FREDERICKS. Q And what did you do from there?

11 MR. APPEL. Wait a moment, we object upon the ground that  
12 it is not rebuttal.

13 THE COURT. Overruled.

14 MR. APPEL. We except.

15 A Went with him to the Higgins Building, went up in the  
16 elevator, into one of the offices occupied by the lawyers  
17 who were handling the McNamara defense.

18 Q Went into one of the offices. Now, state whether or  
19 not you saw Mr. Shoeber, the watchman there that morning?

20 MR. APPEL. We object upon the ground it is not rebuttal.  
21 It is incompetent, irrelevant and hearsay and part of  
22 their case in chief.

23 THE COURT. I think it is very much their case in chief.

24 MR. FREDERICKS. No, it is not, your Honor. This night  
25 watchman, Shoeber, was a witness for the defense. Mr.  
26 Shoeber took the stand and said that on Tuesday morning,

1 the 28th he saw Mr. Franklin and a man whom he described,  
2 there in the office early, and a certain conversation ensued  
3 in which Mr. Franklin asked if he might have a private room  
4 to talk to this man for a moment. On cross-examination we  
5 showed him that he had said that might be Monday morning  
6 the 27th of November instead of the 28th. We showed him  
7 he had said that before the grand jury on cross-examination.  
8 Now, we bring this witness to show that he was with  
9 Franklin on Monday morning, the 27th, and what occurred.

10 THE COURT. I see.

11 MR. APPEL. Now, your Honor, here is the point, your Honor.  
12 It isn't rebuttal for this reason. We addressed our  
13 testimony to the morning of the 28th. Mr. Franklin testified  
14 he went there on the morning of the 28th, as we all know.  
15 Now, on cross-examination we asked Mr. Franklin whether  
16 anybody went with him to Mr. Darrow's office or to the  
17 office of the defense accompanied by any one and he said  
18 "No."

19 MR. FREDERICKS: That is on the 28th.

20 MR. APPEL. Yes, on the 28th. Now, you want to show some-  
21 one accompanied him there on the morning of the 27th.  
22 Now, we say it is not rebuttal. How would it be  
23 rebuttal? Mr. Franklin might have been accompanied by  
24 this man on the morning of the 27th to that building, but  
25 that doesn't answer the proposition that he went there on  
26 the morning of the 28th by himself. Now, here is the ques-

1 tion which I propounded to Mr. Franklin, talking about the  
2 day in question, commencing on page 1417: "Was there or  
3 was there not anybody in the room in which you say Mr.  
4 Harriman and Mr. Darrow went in, as you say, on the morning  
5 of the 28th of November?" The objection was made and the  
6 court sustained the objection. Now, persisting, trying  
7 to get on to this matter, on page 1418, I asked him the  
8 further question: "Q before Mr. Harriman came there to the  
9 room you have indicated, on the morning of November 28th,  
10 1911, had any other person been in the same room where you  
11 and Mr. Darrow were/ before Mr. Harriman arrived that you know of?"

12 MR. FORD. There is no use arguing that, Mr. Appel. We  
13 concede that Franklin testified that no one accompanied  
14 him on Tuesday, November 28th.

15 MR. APPEL. Wait a moment. Let the record speak, now, so  
16 as to illustrate whatever point we make in making the objec-  
17 tion that it is not rebuttal. Let's get the record  
18 straight. They objected to that and your Honor sustained  
19 the objection. I persisted again, and said, "Were you  
20 accompanied to that building by any one that you know of?  
21 A No, sir." On the morning of the 28th. Now, "Did you  
22 see any one there on the morning besides so and so and so  
23 on." Now, then, we have brought in Mr. Brashear here to  
24 show on the morning of the 28th that the person that he  
25 described was there with him, he was with him, and that they  
26 left together. Now, how is it rebuttal to show that man--



1 Brashear said this is not the man that was there on the  
2 morning of the 28th. He says this is not the man that  
3 was there. Now, here they bring on a witness on the stand  
4 to show that on the morning of the 27th he was there with  
5 him. Is that rebuttal of the testimony given by Franklin?  
6 Does it corroborate Franklin in any way, and if it does  
7 corroborate him, is it a part of their case in chief?  
8 It is a part which they can introduce in rebuttal? We  
9 are answering the statement of Franklin that no one accom-  
10 panied him there on the morning of the 28th. He might  
11 go on the stand and say "No, no one accompanied me on the  
12 morning of the 27th or 28th, but on the morning of the 25th  
13 and the morning of the 26th Mr. Mayer accompanied me, and  
14 that is the time Mr. Brashear saw me and him together. That  
15 would not be rebuttal because Franklin has had opportunity  
16 to say whether or not he was accompanied there on the morn-  
17 ing of the 28th by any person, and we were careful to ask  
18 Mr. Franklin that question on cross-examination for the pur-  
19 pose of laying the foundation to impeach him, Now, that  
20 closed the matter. How is the testimony of this witness  
21 that he went down there on the morning of the 27th rebuttal  
22 of what Brashear said, that on the morning of the 28th--  
23 Shoeber, I mean, said that. How is it rebuttal?

24 THE COURT: I understand the District Attorney is not  
25 offering it to show that this witness went to the Higgins  
26 Building with Mr. Franklin on the morning of the 28th.

1 Mr. FREDERICKS. No, sir, but the identical thing happened  
2 which Mr. Shoeber said happened, happened on the 27th in  
3 that conversation.  
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1 MR APPEL: How is that rebuttal? Might have been several  
2 times, your Honor, and yet he denies that on -- he, he  
3 denies that on the morning of the 28th he was there.  
4 Might have been every day before the morning of the 28th;  
5 might have been a whole year up to the morning of the 28th,  
6 and wouldn't be rebuttal.

7 MR ROGERS: Is this the man that looks like Joe Ford?

8 MR FREDERICKS: Now, may it please the court, this is a  
9 serious matter, and we object to this levity.

10 THE COURT: What are you referring to?

11 MR FREDERICKS: Mr Rogers' continual asking, "Is this the  
12 man that looks like Joe Ford?", smiling and smirching  
13 at the witness, attempting to inject an air of levity  
14 into a serious proceeding as this. That is what I am ob-  
15 jecting to.

16 THE COURT: I haven't heard a word from Mr Rogers.

17 MR APPEL: The witness seems to enjoy it.

18 THE COURT: I think the question --

19 MR ROGERS: He makes it a joke, and so do I, if your  
20 Honor please.

21 MR FREDERICKS: We don't think it is a joke.

22 THE COURT: There is nothing connecting with this case  
23 that is a joke, or can be so regarded or taken. It is  
24 taken very seriously by the court. I think upon the  
25 theory offered by the District Attorney, the question is  
26 competent. Objection overruled.

1 MR APPEL: We take an exception.

2 (Last question read.)

3 MR APPEL: If that is the theory, then I suppose we will  
4 have a right to show your Honor by other witnesses that  
5 on the morning of the 28th, this man was not there with  
6 Franklin, but that someone else was there, inasmuch as he  
7 is called as a witness, and as a person identifying him-  
8 self as the person going there with Mr Franklin on the 27th,  
9 and has been brought for the first time in this case; we  
10 reserve the right to do that, if it is admitted.

11 THE COURT: Whatever this opens the door to, you will be  
12 entitled to introduce evidence, of course.

13 MR APPEL: That would open it. I am simply asking the  
14 court if that would open it.

15 THE COURT: We cannot cross that bridge until we come to  
16 it. I will rule on this objection at this time.

17 MR APPEL: We didn't know whether there was a bridge to  
18 cross, in order to know whether they were burned behind us.

19 (Last question read.)

20 MR FREDERICKS: Answer the question, Mr Mayer. A I did  
21 see a man, the man that sat in this chair a few moments  
22 ago, if his man is Shoeber, I did see him there that morn-  
23 ing, the morning of the 27th.

24 Q State what occurred in the presence of that man, between  
25 you and Mr Franklin and him, on that morning, the 27th.

26 MR APPEL: We object to that as not rebuttal; no foundation

1 laid, it is hearsay, the answer of the witness referring  
2 to an occasion not testified to by the witness Shoeber,  
3 calling for a conversation and no foundation laid, the  
4 witness Shoeber not having been interrogated with refer-  
5 ence to the alleged conversation for the purpose of intro-  
6 ducing contradictory statements, or statements like the  
7 witness is called upon to relate.

8 THE COURT: Objection overruled.

9 MR APPEL: We except.

10 MR FREDERICKS: Read the question.

11 (Question read.)

12 A Why, Mr Franklin says to this Shoeber, if that is his  
13 name, that he said, "You know who I am, I believe," or  
14 something to that effect, or as much as to say, "You know me  
15 don't you"? Or, "You know who I am"? It all happened in  
16 an instant; we did not stop at all, just passed him by, this  
17 gentlemen, Shoeber was standing in the hall --

18 Q Anything said about a room?

19 MR ROGERS: Don't put it in his mouth. I object to that  
20 as leading and suggestive.

21 THE COURT: The objection is sustained.

22 MR APPEL: Not rebuttal --

23 THE COURT: On the ground it is leading and suggestive.

24 MR FREDERICKS: What further was said, if anything?

25 MR APPEL: The same objection.

26 THE COURT: Objection overruled.

1 A That is all he said.

2 Q What did you do then? A We went into the room and  
3 told Mr Franklin --

4 Q No, I don't care about the conversation, I won't  
5 ask you for the conversation after you went into the room,  
6 unless they should wish to bring it out on cross-examina-  
7 tion. You did go into the room, you say? A Yes sir.

8 Q With Mr Franklin? A Yes sir.

9 Q How long did you remain in there? A Probably 10 min-  
10 utes.

11 Q And then where did you go? A I left the building.

12 Q What did Mr Franklin do?

13 MR APPEL: We object to that on the ground it is not  
14 responsive, and it is hearsay, not in the presence of the  
15 defendant; it is not rebuttal of anything brought out by the  
16 defense.

17 THE COURT: Objection overruled.

18 MR APPEL: We except.

19 A Mr Franklin said he had an appointment with somebody  
20 there, I don't recall who --

21 MR ROGERS: What is that?

22 MR FREDERICKS: Read the answer.

23 (Last answer read.)

24 MR FREDERICKS: State whether or not you went down to the  
25 elevator alone, or whether you went with Mr Franklin?

26 MR APPEL; We object to that as leading and suggestive.

1 Why cannot the witness say --

2 THE COURT: It is and the objection is sustained on that  
3 ground.

4 MR FREDERICKS: Did anyone accompany you to the elevator?

5 A Mr Franklin went out of the office door with me,  
6 I do not believe he left the hall, where the offices were  
7 located.

8 Q How far did he go with you, if you remember?

9 A Probably 25, 30, 40 feet, something like that.

10 Q In what direction? I do not mean, north, east, or  
11 south or west -- toward the elevator? A Toward the hall  
12 leading to the elevator.

13 Q Now, state whether or not you had been working for  
14 Mr Franklin the day before?

15 MR APPEL: We object to that on the ground it has already  
16 been testified to, subject to our objection.

17 THE COURT: Already asked and answered.  
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1 MR. FREDERICKS. No, your Honor struck out the answer.

2 THE COURT. Well, if there is any doubt about it you can  
3 have the answer.

4 A I did.

5 MR. APPEL. We object on the ground it is not rebuttal.

6 THE COURT. Wait a minute.

7 MR. FREDERICKS. Q What had you been doing?

8 THE COURT. Wait a minute until we get the objection in.  
9 Your objection on the ground that it is not rebuttal is  
10 overruled and the witness is directed to answer the  
11 question.

12 A The question was?

13 MR. FREDERICKS. Q What had you been doing for Mr. Franklin  
14 the day before, Sunday the 26th? A Calling up jurors  
15 who were on that list of 50.

16 MR. APPEL. Your Honor will see they have examined him on  
17 the point they want, now they are proceeding to introduce  
18 this evidence which they undertook to introduce in their  
19 direct case, collateral to any matter testified to here  
20 by the defendant, not rebuttal. We ask that the answer  
21 be stricken out.

22 THE COURT. The motion to strike is denied.

23 MR. APPEL. We take an exception.

24 MR. FREDERICKS. Q How much had you been working for Mr.  
25 Franklin previous to that time?

26 MR. APPEL. We object to that on the ground it has already



1 been asked and answered over the objection of the  
2 defendant, not rebuttal, it is immaterial for any pur-  
3 pose whatsoever.

4 THE COURT. Objection overruled.

5 MR. APPEL. We except.

6 A At that time I worked three days, the 25th, 26th and  
7 27th.

8 Q And what was the business you had there with Mr. Franklin  
9 on the morning of the 27th?

10 MR. APPEL. We object to that on the ground it is not  
11 rebuttal, it is incompetent, irrelevant and immaterial.

12 THE COURT. The objection is sustained upon the ground it  
13 is irrelevant and immaterial.

14 MR. FREDERICKS. All right. That is all.

15  
16 CROSS-EXAMINATION.

17 MR. ROGERS. Q What did you say your name was?

18 A Mayer.

19 Q What is your front part of it? A Oscar.

20 Q And the next one? A Henry.

21 Q And the next one? A Frederick.

22 Q Oscar Henry Frederick Mayer? A That is right, sir.

23 Q Where did you come from, Mr. Mayer? A New York.

24 Q When? A Several years ago, four or five years ago.

25 Q What have you been doing around here before you went to  
26 work for Franklin? A Working.

1 Q What? A Oh, sometimes in the Tax Collector's office,  
2 sometimes in the Assessor's office, sometimes installing  
3 a system here and there.

4 Q Installing what kind of a system? A Time, of course,  
5 premium, and cash.

6 Q What is that?

7 MR. FORD. Read the answer.

8 (Last answer read.)

9 A Cash system.

10 MR. ROGERS. Q What have you been doing since the 28th  
11 day of November? A Since the 28th day of November?

12 Q Yes. A I have been working for several detective  
13 agencies.

14 Q Detective agencies, Mr. Franklin? A I have.

15 Q How long have you been working for Franklin? Since  
16 the 28th day of November? A I couldn't tell you exactly how  
17 long.

18 Q Well, do the best you can, Mr. Mayer. Oh, maybe  
19 three or four months in all.

20 Q Maybe three or four months in all. Would you swear to  
21 that? A No, sir, I would not, I told you I was not posi-  
22 tive.

23 Q Well, do the best you can and tell us how long you have  
24 been working for Franklin since the 28th day of November?

25 MR. FORD. We object to that on the ground the question is  
26 answered to the witness's best recollection.

MR. ROGERS. Oh, no.

1 THE COURT. Q Have you given the best answer you can to  
2 that, Mr. Mayer? A Yes, sir.

3 MR. ROGERS. Q You cannot tell me how long you have been  
4 working for Franklin since the 28th day of November?

5 MR. FORD. We object to that on the ground the question has  
6 been answered.

7 THE COURT. Objection overruled.

8 A Probably three or four months in all.

9 Q Did you get it? Let me hear it. (Question read.)

10 A Probably three or four months in all.

11 Q Working for him now? A No, sir.

12 Q How long since you have been working for him? A Day  
13 before yesterday.

14 Q What did you quit for day before yesterday? A The  
15 particular work was at an end.

16 Q Well, then, you worked up until day before yesterday  
17 for Mr. Franklin? A Yes, sir.

18 Q For whom else have you worked since the 28th day of  
19 November, except Mr. Franklin? A Why, I have worked for the  
20 Freeman Detective Agency.

21 Q Freeman? A Freeman.

22 Q How long did you work for Mr. Freeman? A Oh, maybe  
23 two months in all, probably three months in all.

24 Q For whom else, since the 28th day of November? A Oh,  
25 odd pieces of work I got for myself.

26 Q I am asking you for whom. A For myself.

1 THE COURT. That is a little bit confusing.

2 Q MR. ROGERS. Whom were you employed by when you worked,  
3 except for Mr. Franklin and Mr. Freeman in the detective  
4 business?

5 MR. FREDERICKS. That is objected to, may it please the  
6 court, on the ground it is immaterial and not proper cross-  
7 examination; if the witness has been working for some  
8 one in some private capacity I don't think counsel should  
9 inquire into that. The only purpose of such a cross-  
10 examination is to identify the witness and to show his  
11 business and occupation and all that sort of thing, and  
12 I think it shows his relation to the case.

13 THE COURT. The objection is overruled.

14 MR. FREDERICKS. Now, then, suppose this man was hired to  
15 work for somebody and do something in the nature of the  
16 business, if he would tell who he was working for, that  
17 would give information probably to somebody that he was  
18 working against and they would know that the party he was  
19 working for had hired a detective. Now, I am only specula-  
20 ting, I don't know.

21 MR. ROGERS. All right, if counsel will admit he is  
22 sleuthing, and has been so, I don't care whom he was  
23 sleuthing for, I just want to show--

24 MR. FREDERICKS. I don't know whether that is the term to  
25 be used of the man as applying to a man who works in the  
26 detective business, there is no doubt about it, it is  
admitted.

1 THE COURT. All right, there is no controversy. It is  
2 admitted.

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1 MR ROGERS: All right. How long had you been working for  
2 Mr Franklin before the 27th day of November, Mr Mayer?

3 A I believe about two or three months, probably two  
4 months; I don't just recall.

5 Q About two months. What had you been doing? A Getting  
6 interviews from different parties who were, I guess you  
7 would call them, prospective jurors.

8 Q Did you ever wear glasses? A Not since I came to Los  
9 Angeles.

10 Q You never have worn spectacles since you appeared on  
11 the horizon of California? A No sir.

12 Q Where were you on the 27th day of September?

13 A At what time of the day?

14 Q In the morning of the day?

15 MR FREDERICKS: Of September?

16 MR ROGERS: yes. A I don't recall where I was in Septem-  
17 ber.

18 Q Where were you on the 27th day of October? A I don't  
19 recall.

20 Q Where were you on the 27th day of December?

21 A I don't recall.

22 Q Where were you on the 27th day of January? A I don't  
23 recall.

24 Q Where were you on the 27th day of August? A I don't  
25 recall.

26 Q Or of July? A I don't recall.

1 Q But your memory -- it is indellibly fixed on the  
2 tablets of your memory that on the 27th day of November  
3 you were in a certain place? eh?

4 MR FORD: We object to that, "It is indellibly fixed on  
5 the tablets of your memory " -- Read the question.

6 A Do you want me to tell you the circumstances?

7 THE COURT: It is put in the way of a question, and I see  
8 no harm in it. Objection overruled.

9 MR FREDERICKS: Go ahead and answer. A What is the  
10 question?

11 (Question read.)

12 Q Has your memory been refreshed recently on the sub-  
13 ject of the 27th of November? A Only by seeing a re-  
14 ceipt in a tailor store for the payment of money on a suit  
15 of clothes, this suit of clothes which I wore on Sunday,  
16 November 26th.

17 Q It being a unique proposition that you paid for a suit  
18 of clothes, you remembered it, is that it?

19 MR KEETCH: That is objected to.

20 THE COURT: You need not answer that question.

21 MR ROGERS: What I am asking you is: If your memory has  
22 been refreshed, revived, as it were, for the 27th day  
23 of, as it were, for the 27th of November. A It has not  
24 been refreshed only from what I read in the newspapers,  
25 and I was not a bit anxious to ally myself with either  
26 one side of the other, but somehow, it was throwed at

1 me.

2 Q Who threw it at you? A Why, I was served with a  
3 subpoena and called for the District Attorney's office.

4 Q Now, would you mind telling us how your memory was  
5 revived, as to the 27th day of November, as contradisting-  
6 uished from the 27th day of October, or the 27th day of  
7 December, Mr Mayer?

8 MR FORD: We object to that on the ground it is assuming  
9 something not in evidence. The only fact here as dis-  
10 tinguished from the 27th day of November, from the 28th  
11 day of November, Monday and Tuesday. --

12 THE COURT: Objection overruled.

13 MR FREDERICKS: Read the question.

14 (Question read.)

15 A By reading the papers.

16 MR ROGERS: What papers did you peruse in order to re-  
17 fresh your recollection, Mr Mayer? A Probably all of them.

18 Q Probably all of them, but truthfully, which? A I  
19 couldn't tell you which.

20 MR FORD: Just a moment. To that question we object as  
21 not a proper form of question addressed to a witness,  
22 "truthfully which"?

23 THE COURT: Objection sustained.

24 MR ROGERS: Well, which paper? A Oh, the Record, the  
25 Herald and Express, Times, Examiner.

26 Q Now, what did you read in the papers that refreshed



1 your recollection, Mr Mayer? A I believe I have it in my  
2 pocket, this particular little piece. Would you like to  
3 see it?

4 Q Show it. Yes, I would like to.

5 (Witness produces paper.)

6 Q You produce me a clipping. Be kind enough to show me  
7 what refreshed your recollection as to the 27th day of  
8 November, from the clipping that you now produce? Be  
9 kind enough to point out to me what refreshed your recol-  
10 lection in that regard? A Well, there is nothing right  
11 there, but I believe it said further up, mentioned the  
12 date, and the time. I was not refreshed as to the 26th,  
13 when I know I was in this office on the 27th, not on the  
14 28th, nor on the 26th, but I was on the night of the 25th.

15 Q Now, I am asking you what there is about that fugitive  
16 piece of paper that refreshes your recollection as to the  
17 27th day of November, 1911, in the year of our Lord?

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1 A Well, I noticed the name Tom Johnston and Bert Franklin  
2 and so on was published and the different things that  
3 occurred, spoke about in there that refreshed my memory,  
4 and then I went into the tailor one day and I asked him  
5 if I owed him anything and he showed me a receipt for a  
6 suit of clothes I had bought which said I had paid it  
7 on the 28th, and I knew it was 3 days before that I got the  
8 suit.

9 Q How many days before? A Might be two or three.

10 Q But any rate, you got it before you paid for them?

11 A That is the idea.

12 Q Now, what is there about this slip of paper that you  
13 have produced to me that refreshes your recollection that  
14 it was on the morning of the 27th that you accompanied  
15 Mr. Franklin up to the Higgins Building and went into the  
16 room there?

17 MR. FORD. Objected to upon the ground that the witness  
18 has already testified that it was only the occurrences  
19 which was brought back to his memory, that he didn't get  
20 the date from that but got it from another incident.

21 THE COURT. Overruled. What is your answer?

22 A Just what I read there, that is all, and in other papers,  
23 just as I stated before.

24 MR. ROGERS. Now, be kind enough to show me what you read  
25 there that refreshed your recollection that it was the 28th,  
26 just point it out to me. A I didn't say right there.

1 Q You didn't say right there? A No, sir .

2 Q What did you show me this for? A I just showed--wanted  
3 to show you why it reminded me of the way I was dressed  
4 of that particular day .

5 Q The way you were dressed? Now, you know I wasn't asking  
6 you about the way you were dressed. I was asking you  
7 about the date, the 27th. Really I didn,t care a whoop how  
8 you were dressed, but be kind enough to tell me what there  
9 is about this that gives you the date?

10 MR. FREDERICKS. That is objected to, if the court please.  
11 The witness has answered. It is a matter of a suit of  
12 clothes, when he paid for them the next day that he had  
13 of at the time.

14 MR. ROGERS. Q Now, further about Col. Tom Johnston being  
15 mentioned in this paper that reminded you that you were  
16 up there on the 27th, Mr. Mayer? A Why, I recall being  
17 in Mr. Franklin's office one day when Col. Tom Johnston  
18 came in there and asked for Mr. Franklin. Told him that he  
19 was out and he said that he would like to see him right  
20 away on important business.

21 Q Was that on the 27th? A I don't recall just when that  
22 was.

23 Q Well, is your memory any better as to the event of your  
24 going up there to the office on the 27th than it is as to the  
25 time that Col. Tom Johnston came in there? A Yes, sir.

26 Q There is a distinction in your memory there? A Yes, sir.

1 Q It works better on the morning of the 27th than it did  
2 as to Col Tom Johnston's arrival? A Yes, sir.

3 Q Do you know why? A Why, because I paid no particular  
4 attention to the entire proceedings after the 27th.

5 Q What is that you said? read the answer.

6 (Last answer read by the reporter.)

7 Q You didn't pay any attention to the entire proceedings  
8 after the 27th? A Other than writing him--

9 Q Why didn't you pay attention to the entire proceedings  
10 after the 27th? A I had nothing to gain from it one  
11 way or the other.

12 Q The only thing you pay attention to is something you have  
13 to gain from, is that the idea? A Certainly.

14 Q Got something to gain from your paying attention to the  
15 morning of the 27th? A No, sir.

16 Q Then you paid attention to that because you had some-  
17 thing to gain from it? A No, sir, it recalled the way I  
18 was dressed.

19 Q Then your sartorial appearance is what gave you the  
20 cue where you were on the morning of the 27th, so?

21 A Yes, sir.

22 Q If you hadn't been dressed that way you wouldn't have  
23 remembered it? A Probably not.

24 Q Now, if you had not been dressed just exactly so on the  
25 morning of the 27th you wouldn't remember that it was  
26 there on the morning of the 27th that you appeared on the

1 scene?

2 MR. FORD. We object to that as speculative.

3 THE COURT. Objection overruled.

4 A Could I hear the question again?

5 MR. ROGERS. Yes, sir, he will read it to you.

6 (Last question read by the reporter.)

7 A Probably not.

8 Q You would not? A Probably not.

9 Q Well, now, have you got the suit of clothes with you  
10 that reminded you of the 27th? A Yes, sir, I have got it on.

11 Q Let me look at it. What is there about this that  
12 reminds you of the 27th?

13 MR. FORD. Objected to on the ground it is frivolous and  
14 not cross-examination.

15 THE COURT. In view of the witness's testimony I don't  
16 regard it as frivolous.

17 A Because it is black.

18 MR. ROGERS. The black means the 27th? A Probably.

19 Q Have you got the date marks on the inside pockets?

20 A No, sir.

21 Q You know a tailor puts his mark on the inside when he  
22 turns it out. Have you got one of those? A No, sir.

23 You want to look?

24 Q No, I will take your word for it. Now, it being  
25 black and you being dressed in black, you think it is the  
26 27th? A I know it.

1 Q You know it because it is black, and if you hadn't been  
2 dressed in that black suit of clothes you wouldn't have  
3 known it was the 27th? A Probably not.

4 Q Well, now, referring again to this clipping that you  
5 have produced, Mr. Mayer, what attracted your attention par-  
6 ticularly is that it is--it is the description of the  
7 mysterious man. You recogniz<sup>ed</sup>/it yourself as a mysterious  
8 man, did you? "As told by defendant witnesses, small, dark,  
9 weight 125 to 135 pounds, about 5 feet 6 inches in height,  
10 smooth shaven, and attired in black clothes." Is that what  
11 struck you, was it? A Yes, sr.

12 Q And you recognized yourself as being the man, that  
13 mysterious man? A Not exactly mysterious. I have been here  
14 all the time.

15 Q Did you realize that that was the description that Mr  
16 Franklin gave to Col Tom Johnston and that that which you  
17 now told me is the statement of what Col Tom Johnston said  
18 that Franklin told him? A I would like to hear that  
19 question again.

20 MR. ROGERS. Yes, he will read it to you.

21 (Last question read by the reporter.)

22 A I didn't know who made the statement, I didn't think--

23 Q Did you tear that out of the paper yourself, Mr. Mayer?

24 A Why, I believe I did.

25 Q And to whom did you first show it? A To myself.

26 Q And after you had perused it yourself, to whom did you  
next show it?

1 A I don't believe I have showed it to anyone else, this  
2 particular piece, might be the folks in the house, my folks.  
3 I am sure of that.

4 Q You didn't carry it in your black suit, the 27th suit,  
5 you know, from that day until now? A No sir, I believe  
6 this is just in the paper a few days ago; maybe a week ago,  
7 maybe two weeks ago.

8 Q Why, Colonel Tom Johnston testified about six weeks  
9 ago. A I don't remember Colonel Tom Johnston testifying.

10 MR FORD: I move that it be stricken out, assuming some-  
11 thing that was not in evidence. The witness said that  
12 he didn't know in what connection it appeared in the news-  
13 paper or whose language it was. All he noticed was the  
14 description given in the paper.

15 THE COURT: Do you want that answer stricken out?

16 MR FORD: yes, your Honor.

17 THE COURT: Motion to strike denied.

18 MR ROGERS: Now, Mr Mayer, to whom did you first communi-  
19 cate the fact that you were up there on the 27th with your  
20 black suit of clothes, your 27th suit? A I believe to my  
21 brother.

22 Q What is your brother's name? A Mayer is the last name.

23 Q I understand so. What is the rest of it? A Chauncey  
24 is his first name.

25 Q What is his business? A Why, he is in the wholesale  
26 gent's furnishing business. He just works by the day.

1 Q To whom did you next communicate this information that  
2 you were the man that were up there on the 27th with your  
3 black suit of clothes? A Probably to my mother or father,  
4 somebody that might have been in the house.

5 Q Well, let us leave out family matters, if you don't  
6 mind. To whom did you next communicate it? A I don't  
7 recall showing it to anybody else.

8 Q I am not asking you about showing it. I am asking you  
9 to whom you communicated the information that you were the  
10 man that was up there on the 27th in your black suit of  
11 clothes? A I don't recall of communicating it to any-  
12 body else.

13 Q Until you went on the stand, Mr Mayer? A Until I  
14 was brought to the District Attorney's office.

15 Q How did you come to be brought to the District Attor-  
16 ney's office; do you know?

17 MR FORD: If he knows.

18 THE COURT: Objection overruled.

19 A Through telephoning.

20 MR ROGERS: Did you say you were telephoned to? A Through  
21 the telephone.

22 Q Who telephoned you? A I don't recall.

23 Q You don't recall? A I don't. The telephone didn't  
24 come to me directly. There was word left at the house  
25 telling me I was wanted at the District Attorney's office,  
26 for what reason I did not know.



1 Q So you came up there and told them? A I don't believe  
2 I said anything about it.

3 Q Had you seen Franklin between the 28th day of November  
4 and your appearance upon the witness stand?

5 MR FORD: Objected to upon the ground it has already been  
6 asked and answered. Said he worked for three or four  
7 months for Franklin.

8 THE COURT: Objection sustained.

9 MR ROGERS: Had you seen Franklin and talk to him about  
10 this matter, between the 28th day of November, and the pre-  
11 sent moment? A About this mysterious man in black?

12 Q No, about you?

13 MR FREDERICKS: I suppose by this matter, counsel means  
14 the question of his being up there on the 27th of November?

15 MR ROGERS: No, I don't mean anything except what my ques-  
16 tion implies.

17 MR FREDERICKS: Unless it is specific, I don't see how the  
18 witness can understand it; I don't.

19 THE COURT: Do you understand the question? A I do  
20 not.

21 MR ROGERS: Have you seen Bert H. Franklin between the 28th  
22 day of November and the present moment, in which your  
23 appearance up there on the 27th was mentioned? A yes  
24 sir, while working for him out on Fiftieth street, he ask-  
25 ed me if I could recognize certain markings on certain pap-  
26 ers which he said he had, that I did not see, and I told

1 him I didn't know as I didn't see them, but if he would  
2 show them to me I would try and recognize them, but I  
3 have never seen them.

4 Q You told him you would do the best you could?

5 A I would try to recognize them if I possibly could.

6 Q I am referring to the fact that you were the mysterious  
7 man that were up there on the 27th; I am asking you if  
8 Franklin ever talked to you about that.

9 MR FREDERICKS: We object to the question, may it please  
10 the court. He was the mysterious man may confuse the  
11 witness. No objection to the question if it is -- as to  
12 whether he had a conversation with Franklin about being  
13 up there on the 27th.

14 THE COURT: I think the question might well eliminate the  
15 word "mysterious", but it is harmless.

16 MR ROGERS: He has announced himself, has furnished me with  
17 the paper that says so.

18 MR FREDERICKS: You can't tell how a witness is going to  
19 speak. He may answer the whole thing on the ground that  
20 there was nothing said about a mysterious man.

21 MR APPEL: He may answer the other way.

22 MR ROGERS: He has recognized himself by the description.  
23 This is the description of the mysterious man that is in the  
24 paper you gave me, you know. Answer it, please. A Never  
25 before I was at the District Attorney's office for the  
26 first time I was telephoned to.

1 Q Was Franklin up there at the District Attorney's of-  
2 fice when you got there? A N<sup>o</sup> sir, he was not.

3 Q Was he there while you were there? A He was up  
4 there the other day while I was there waiting for Mr  
5 McLaren.

6 Q Oh, Mr McLaren, this gentleman here? A Yes sir.

7 Q The Burns man? A I don't know if he is a Burns man or  
8 not.

9 Q Is he the man that first brought it to your attention  
10 that you were there on the morning of the 27th? A No sir.

11 Q Did Mr Franklin see you before you went to the Dis-  
12 trict Attorney's office? A No sir.

13 Q Did he see you up there? A Yes sir.

14 Q Is he the one that talked with you? A He talked to  
15 me, yes.

16 Q About this matter of your being up there on the 27th,  
17 huh? A Yes.

18 MR FREDERICKS: Let the witness state what he did say.

19 MR ROGERS: What was the answer? Let him finish.

20 (Answer read by the reporter.) A I believe he asked me  
21 if I could recall I was a certain morning, the 27th,  
22 probably.

23 Q And you recalled it did you? A Yes sir.

24 Q Immediately? A Yes sir.

25 Q You knew just where you were on the morning of the  
26 27th immediately upon Mr Franklin asking you? A No sir,

1 I had read it in the paper before.

2 Q Now, is this all you had read in the paper which you  
3 have not shown me? A No sir, I read a great deal more.

4 Q What else did you read?  
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1 A Whatever was on the rest of the sheet of that paper there  
2 and probably some more.

3 Q Well, tell me did you read any more besides what was  
4 in the paper from which you took this piece that you have  
5 given me? A Yes, sir, I read what was on that page, that  
6 entire page, and probably the other newspaper that had  
7 the same kind of thing.

8 Q Tell me whether you did or not, do you know whether you  
9 did or not? A If I read any other papers?

10 Q Yes. A I did.

11 Q What other paper did you read? A The Times and  
12 Examiner and Herald and Express.

13 Q Now, what did you read in the Times? A I don't recall  
14 just exactly what it said in the Times.

15 Q I didn't ask for you to be exact. What did you read  
16 in the Times?

17 MR. FREDERICKS. Objected to upon the ground it is immaterial  
18 what he read in the Times. Not directed towards any par-  
19 ticular thing.

20 MR. APPEL. He said he refreshed his memory from what he  
21 read in the paper.

22 THE COURT. Objection sustained.

23 MR. APPEL. We except.

24 MR. ROGERS. Q What did you read in the Examiner?

25 MR. FREDERICKS. Objected to upon the ground the question  
26 has been fully covered by question and answers with this  
witness.

1 MR. FORD. The witness testified he knew of his own memory  
2 and from the fact he bought a suit of clothes--

3 MR. APPEL. He never mentioned his own memory.

4 THE COURT. The objection taken is not good. Objection  
5 overruled.

6 MR. APPEL. I wish to correct the statement of counsel, the  
7 witness never said he remembered from his own memory. He  
8 said he refreshed his memory from what he read in the papers  
9 and counsel is trying to mislead.

10 MR. FREDERICKS. Both sides have had their turn.

11 MR. APPEL. It say it is so.

12 MR. FORD. I say it isn't.

13 MR. APPEL. I say it is so and I will have occasion to show  
14 to the jury he has done that repeatedly. I think I have  
15 marked it fifty times where he has attempted to misstate  
16 the evidence.

17 THE COURT. The court has overruled the objection.

18 MR. ROGERS. Q Can you answer me or don't you know what  
19 the question is? A I don't recall what the question is.

20 (Last question read by the reporter.)

21 A I don't recall just what I read in the Examiner.

22 Q I don't ask you for just what you read. The sum and  
23 substance of it, the purport of it. A Something about

24 a man on the 27th, probably the 28th I read about it, I

25 don't recall just exactly what I read.

26 Q And in the Times what did you read? A Probably the

1 same thing.

2 Q And What in the Tribune? A Probably the same thing.

3 Q probably the same thing, you remember it perfectly?

4 A No, sir, I do not.

5 Q And it at once occurred to you that owing to your  
6 black suit of clothes and the fact you had been to your  
7 tailors that you were the man, so? A yes, sir, but I  
8 didn't go around and tell anybody that I was.

9 Q You didn,t go around and tell anybody that you were.  
10 You waited for them to dig you up, is that right?

11 A I believe that is it .

12 Q Now, you know Shoher's description of the man is that  
13 he looked like Joe Ford. Will you be kind enough to step  
14 down here beside Mr. Ford and let's see if you look like  
15 Joe Ford.

16 MR. FREDERICKS. That is objected to as immaterial

17 THE COURT. Objection sustained.

18 MR. ROGERS. Q As a matter of fact, don,t you know that  
19 Mr. Franklin the day after Shoerber's testimony was around  
20 the Waldorf Saloon saying to everybody that he could talk  
21 to that it was all a lie and perjury, that he was never  
22 up there at 7 o'clock inthe morning with anybody at any  
23 time whatever, and that he dug you up as an alibi afterwards

24 MR. FREDERICKS. That is objected to as immaterial.

25 MR. ROGERS. Well, produce Franklin and let's see.

26 THE COURT. Objection sustained.

1 MR. ROGERS. Were you around the Waldorf with Franklin  
2 after Shoeber testified?

3 MR. FREDERICKS. Objected to upon the ground it is  
4 immaterial.

5 THE COURT. Overruled.

6 A I don,t know when Shoeber testified.

7 Q Well, we will give you the date. Were you around the  
8 Waldorf--you know where that is, don,t you? A yes, sir.

9 Q Were you around the Waldorf with Franklin on July 12th?

10 A I do not recall.

11 Q Were you around there onthe 13th of July? A I do not  
12 think so, maybe.

13 Q You do not think so? A Maybe I was, I couldn,t say.

14 Q When was it you were there?

15 MR. FREDERICKS. That is objected to, may it please the  
16 court, as assuming a fact not in evidence. The witness  
17 has never testified he was there.

18 MR. APPEL. Yes, he said so.

19 MR. ROGERS. I will change that a little bit. Q You have  
20 been around the Waldorf with Franklin a lot of times, haven't  
21 you?

22 MR. FORD. We would like to be heard onthat. We object to  
23 that on the ground it is incompetent, irrelevant and  
24 immaterial and the witness cannot be impeached by incidents  
25 or specific conduct by showing that he frequented some  
26 saloon near Mr. Rogers's office.



1 MR. APPEL. That is not the purpose.

2 MR. FORD- If it is for the purpose of laying the foundation  
3 for having made a statement on his part contradictory  
4 of his present evidence, it should be confined to some state-  
5 ment made by himself.

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1 Now, then, they have asked a question they know is abso-  
2 lutely irrelevant, about Franklin's declarations. I don't  
3 believe he made such declarations.

4 MR ROGERS: I know he did.

5 MR APPEL: We take an exception.

6 MR ROGERS: I know he did, of my own knowledge.

7 MR FREDERICKS: What is the use of such ridiculous proceed-  
8 ings?

9 MR ROGERS: Then, Mr Ford better not say he does not be-  
10 lieve it.

11 MR FREDERICKS: Mr Rogers started it.

12 THE COURT: No, you are wrong, Captain. Mr Ford start ed  
13 it by saying he did not believe any such statement.

14 MR FORD: I do not, your Honor.

15 MR FREDERICKS: Then the statement was made by somebody  
16 before, or it was Mr Rogers --

17 THE COURT: He has a right to propound a question.

18 MR FORD: I have a right to disbelieve anything not put  
19 in here in evidence in the proper method.

20 THE COURT: If you want to be heard on the law of your ob-  
21 jection, I will hear you, but I will not hear you discuss  
22 the question of whether or not the question propounded <sup>by</sup> the  
23 defense is in good faith or not.

24 MR FORD: I have not stated anything about the good faith  
25 of this question. I simply said this: that there is no  
26 ground whatever for the asking of this witness whether or

1 not he appeared in a certain saloon where Mr Franklin  
2 was since the 28th day of November, or since the 12th  
3 or 13th day of July, that the only way he can impeach this  
4 witness is by showing that this witness made a contradictory  
5 statement.

6 THE COURT: What is the ground of your objection, Mr Ford?

7 MR FORD: That it is not cross-examination, does not in  
8 anywise tend to impeach any statement made by the witness,  
9 and no foundation laid for asking the question, incompe-  
10 tent, irrelevant and immaterial for any purpose, calling  
11 for hearsay testimony, calling for the acts and declara-  
12 tions of other persons not in anywise affecting the char-  
13 acter of his testimony.

14 MR APPEL: We want to ask him if since Mr Shoerber here  
15 testified, say between the 13th day of July or the 12th  
16 day of July and a reasonable time thereafter, whether or  
17 not he, in company with Mr Franklin visited upon divers oc-  
18 casions, the Waldorf. Now, we are not saying about their  
19 taking a drink together, or going into any apartment of  
20 the Waldorf that is a part of Mr Franklin's office, we  
21 are not claiming that, but we are simply asking whether  
22 or not he was there. Now, if we want to ask him, if  
23 we have him or if we ever get him inside or outside or by  
24 the cigar store, or wherever they blacken boots or anything  
25 like that, we want to ask him whether or not in his pre-  
26 sence Mr Franklin said it was a lie, that he had never been

1 up there into this office in the Higgins Building at any  
2 time ever, from the beginning of the world to the present  
3 time at 7 or 8 o'clock in the morning with anyone, and we  
4 want to ask him whether or not he stood over there and de-  
5 nied that statement. Now, that is good grounds for con-  
6 tradiction.

7 MR FREDERICKS: Contradiction of whom?

8 MR APPEL: Here is a man says, knowing he has been there,  
9 if it is true,-- I am not discussing the truth or vera-  
10 city of the witness -- if it is true, he and Franklin must  
11 have been together, if he is testifying to the truth.  
12 Now, if Franklin stands up to the world and says, "I nev-  
13 er was there at any time or place; it is a darned lie",  
14 and this man says, "Amen" to it, it contradicts his pre-  
15 sent testimony, he approves by acquiescence, he approves  
16 the statement contradictory of this, he makes a statement,  
17 a contradiction.

18 MR FREDERICKS: Withdraw the objection. Go ahead and  
19 answer the question.

20 THE COURT: All right.

21 MR APPEL: That is all right. We want to show it and  
22 it is cross-examination.

23 MR FREDERICKS: No.

24 THE COURT: What is the answer?

25 A I would like to have the question read.

26 THE COURT: Read it.

1 (Question read.)

2 A He has probably come in there while I was in or else  
3 probably I have come in while he was in. I doubt very  
4 much if I ever went in with him, maybe I did.

5 MR ROGERS: Well, I am not particular about the means of  
6 entrance, or how you happened to be there. What I am par-  
7 ticularly anxious about is whether or not you were there  
8 with him on numerous occasions.

9 MR FREDERICKS: That is objected to --

10 Q Be kind enough to tell us about that.

11 MR FORD: They have to direct his attention to some par-  
12 ticular time and place.

13 THE COURT: I think he has answered that question.

14 MR FREDERICKS: He says he was there on some occasions.

15 THE COURT: He says he was there, in the last answer.

16 MR ROGERS: Now, whether you came in with Franklin,  
17 whether you preceded him or he prece ded you, be kind  
18 enough to say whether you were there approximately along  
19 about the 12th or 13th of July. Now, think it over. That  
20 is the day after it appeared in the papers that Shoerber  
21 testified. Think it over.

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1lp 1 A I have not been in the Waldorf since July 12th at no  
2 time with Mr. Franklin.

3 Q Are you sure? A I would not be positive, but I don't  
4 believe I have seen Mr. Franklin in the Waldorf for quite  
5 some time.

6 Q Were you there about that place, in the immediate vicinity  
7 on the 12th or 13th of July? A Of July?

8 Q Yes. A Probably.

9 Q Probably. Where? A I couldn't tell you, I don't  
10 know if I was there, I am not positive.

11 Q Where did you see Mr. Franklin about that time?

12 A I don't recall seeing Mr. Franklin on the 12th.

13 Q Or the 13th? A I don't recall.

14 Q Will you say you did not? A No, I could not.

15 Q You will not then swear you did not see Mr. Franklin  
16 the 12th or 13th? A No, sir.

17 MR. FREDERICKS. We object to that as immaterial, not  
18 cross-examination.

19 THE COURT. Objection overruled.

20 MR. ROGERS. Q Were you working for him? A On the 12th  
21 of July?

22 Q yes, or the 13th of July, thereabouts? A No, sir.

23 Q For whom were you working?

24 MR. FREDERICKS. We object to that as immaterial.

25 THE COURT. Objection overruled.

26 Q Was the 12th on a Saturday or Sunday?

1 Q I don't know, and I don't care. A I do not either.

2 Q I am talking about the day that Shoerber testified.

3 MR. FORD. The witness is entitled to a matter of calendar  
4 information.

5 MR. ROGERS. All right, you are very proficient with  
6 calendars, I don't know what it was.

7 MR. FREDERICKS. It seems to me we are wasting a lot of  
8 good time--

9 MR. ROGERS. No, we are just showing up a perjurer, we are  
10 not wasting time when we do that.

11 THE COURT. Wait a minute--

12 MR. FREDERICKS. Wait a minute. If your Honor pleases--

13 MR. ROGERS. You need not say I amwasting time--

14 THE COURT. Wait a minute, now. It is impossible for  
15 this matter to be passed; Mr. Rogers, are you aware of the  
16 remark you just made?

17 MR. ROGERS. yes, sir, I am and I stand by it, sir.

18 Captain Fredericks said I was wasting time and I said,  
19 "No, sir, I am showing up a perjurer." I stand by it too.

20 THE COURT. You say that with the witness here onthe  
21 stand?

22 MR. ROGERS. Yes, sir, in<sup>answer to</sup> what he said to me, and I will  
23 say it when I stand out there and argue to this jury, sir.

24 THE COURT. You have some rights when you stand out  
25 before the jury that you do not have with a witness on the  
26 stand. This witness is here on the stand.

1 MR. ROGERS. I understand and I call him so to his face.  
2 I never say anything to a man's back I don't say to him.

3 THE COURT. And you seriously insist upon your right to use  
4 that term to a witness on the stand?

5 MR. ROGERS. Absolutely, sir, in response to what he said  
6 when he said I was wasting time.

7 MR. FREDERICKS. The statement was an objection.

8 MR. ROGERS. If he had not said it I would not.

9 MR. FORD. I call your Honor's attention to Section 2220 of  
10 the Code of Civil Procedure.

11 MR. ROGERS. What have you got to do with it?

12 MR. APPEL. What has he got to do with it, your Honor?

13 MR. FREDERICKS. Nothing.

14 MR. APPEL. Do they want to prosecute every one of counsel  
15 on the defense here?

16 MR. FORD. I addressed the court.

17 MR. APPEL. He has nothing to do with the prosecutions here.

18 THE COURT. No, they have nothing to do with it here. Mr.  
19 Mr. Rogers, the Court exceedingly regrets to have to take  
20 drastic action in this matter on the conditions that exist  
21 here this afternoon, but it is impossible to conduct a  
22 court and have witnesses come here and have the protection  
23 they are entitled to, with any kind of decorum, any kind of  
24 regularity and permit any attorney, no matter under what  
25 circumstances, to refer to a witness in that way upon the  
26 stand. I do not believe you mean it, and yet you have



1 insisted upon repeating it here three times.

2 MR. ROGERS. Does your Honor mean, that I did not, that  
3 I am not convinced that he is not telling the truth?

4 THE COURT I do not think, Mr. Rogers, you mean to assert  
5 that you have any right or there is any propriety in your  
6 making the remarks that you did of and concerning a witness  
7 while here on the stand.

8 MR. ROGERS. Only in reply to the District Attorney, sir,  
9 who said I was wasting time.

10 MR. FREDERICKS - That was my objection made to the court,  
11 your Honor.

12 MR. ROGERS. That is not an objection. There is only one  
13 objection, irrelevant, incompetent and immaterial and not  
14 cross-examination.

15 MR. FREDERICKS. And having been fully gone into.

16 MR. ROGERS. Counsel attributed to me that I was wasting  
17 time and I said I was showing up a perjurer, I was  
18 examining a witness whom I believed to be so.

19 THE COURT The court is exceedingly reluctant to take  
20 drastic action in a matter of this kind, but witnesses must  
21 be protected and if they are not protected in court during  
22 examination it will very soon come they would take the law  
23 into their own hands and protect themselves.

24 MR. APPEL. They try to do it right in court.

25 THE COURT We would have a condition here that cannot be  
26 permitted.

1 MR. APPEL. Only in court--

2 THE COURT. The matter cannot pass, Mr. Rogers was  
3 examining a witness, counsel for the prosecution objected  
4 on the ground that it was a waste of time--that is not a  
5 legal objection, it is not a proper objection, and the  
6 impropriety of such an objection I will take up a little  
7 later--

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1 but, irrespective of that, it did not justify the remarks  
2 made by Mr Rogers, namely, that he was showing up a per-  
3 jurer; that is not a remark that counsel can ever make of  
4 and concerning a witness while he is on the stand. The  
5 latitude of counsel to argue such a proposition to a jury  
6 at a later time is a very different matter, but it does  
7 not exist and cannot be permitted while the witness is  
8 here on the stand.

9 MR ROGERS: If your Honor pleases --

10 THE COURT: I will hear you, Mr Rogers.

11 MR ROGERS: We all, who have practiced at this bar some years  
12 in criminal cases remember Judge Smith, the best criminal  
13 judge that ever sat in this county; no man who has succeed-  
14 ed him was worthy of unlatching his shoes as knowing any-  
15 thing about criminal law; there was a lawyer on the stand  
16 once in a case of the People against Alford, charged with  
17 Killing Hunter, prosecuted, I think, by distinguished  
18 counsel; I thought that that lawyer was not telling the  
19 truth; I caught him in what was not true, and I asked him,  
20 "When did you perjure yourself; then or now"? Counsel  
21 asked as your Honor has indicated that the word be not  
22 used. I use English if I may -- I insisted upon the word  
23 and Judge Smith permitted me not only to use it, but to  
24 argue it at that time. I am willing to stand by Judge  
25 Smith's ruling.

26 THE COURT: I shall be the last one to criticize the

1 ruling under those conditions, but this is a very different  
2 situation.

3 MR ROGERS: I cannot see it, sir, be that as it may.

4 THE COURT: I cannot let the matter pass. It is a most  
5 serious violation of my sense of the proprieties in a court  
6 of justice; it is not even said in the form of a ques-  
7 tion that might under some extraordinary circumstances,  
8 such as you have cited, be permitted.

9 MR ROGERS: And I said the same things then as I have said  
10 now, that I believed as a reason for my asking the ques-  
11 tion, I believed the witness to be a perjurer and I had  
12 nothing to take back, and Judge Smith, the best criminal  
13 judge that ever sat on this bench or anybody's else'  
14 bench. I am willing to take what your Honor gives me,  
15 but I have nothing to take back.

16 MR APPEL: Your Honor, will you permit me a question?  
17 Whether your Honor is proceeding under section 1209 of  
18 the Code of Civil Procedure?

19 THE COURT: Yes sir, and sections following it. I am  
20 about to do so. I want to act with perfect deliberation  
21 in this matter, but I deem that I must act in the matter.  
22 The witness Mayer is on the stand, Mr Rogers is inter-  
23 rogating him, Captain Fredericks, of the District At-  
24 torney's office, objects on the ground that the ques-  
25 tion is a waste of time, an objection which he ought  
26 not to make, but Mr Rogers' replied it was not a waste of

1 time he was showing up a perjurer, a conclusion upon his  
2 part that he had no right to draw while the witness was on  
3 the stand, and under the circumstances. Mr Rogers was  
4 given an opportunity to withdraw the statement and de-  
5 clined to do it, on the contrary, repeated it. This  
6 conduct on his part the court is compelled to find and  
7 does find to be an unlawful interference with the pro-  
8 cess and proceedings of this court and constitutes a con-  
9 tempt of court. The Court regards it as a serious con-  
10 tempt of court, particularly in view of the fact that Mr  
11 Rogers has again repeated the statement, and for this con-  
12 tempt Mr Rogers is fined the sum of \$50 --

13 MR ROGERS: (Interrupting.) Your Honor had better send me  
14 to jail, sir. I won't pay the fine. I believe I am right.

15 THE COURT: The court has not yet finished. As an alter-  
16 native Mr Rogers will be committed to the county jail for  
17 the period of five days.

18 MR ROGERS: I take your five days. Get me a habeas corpus.  
19 I surrender myself now to the sheriff.

20 MR APPEL: Wait a minute. On the part of defendant, your  
21 Honor, the defendant takes an exception and objects to the  
22 order of the court adjudging leading counsel for the de-  
23 fendant guilty of contempt upon the matter stated in the  
24 order, and a recital of the facts upon which the order is  
25 made, for the reason and upon the ground that the facts  
26 as stated in the order, are not in violation of any

1 subdivision of section 1209 of the Code of Civil Procedure of  
2 the State of California, and upon the further ground that  
3 there is no particular subdivision of said section mention-  
4 ed in the order upon which said order adjudging Mr Rogers  
5 guilty of contempt has been named by the court, that the  
6 particular subdivision of section 1209 or any part thereof  
7 has not been specified by the court in its order;

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13p 1 and upon the ground and for the reason that the order of the  
2 court, being then and there void, and the facts not being  
3 in violation of any provision of Section 1209 of the Code  
4 of Civil Procedure, that the adjudging of leading counsel  
5 in this case guilty of contempt of court is to the dis-  
6 advantage and prejudices the substantial rights of the  
7 defendant here; that the defendant is entitled to be  
8 represented by counsel untrammelled and without threats  
9 and without coercion of either him or his counsel, and the  
10 defendant at this time objects to proceeding until he has  
11 been restored to that same position that he occupied before  
12 the order adjudging Mr. Rogers guilty of contempt was made;  
13 that he is deprived of his constitutional right to be  
14 represented by counsel at all stages of this case, without  
15 any coercion or any threat; that the court had no right to  
16 make this judgment adjudging Mr. Rogers guilty of contempt  
17 of court during the course of the trial and while Mr. Rogers  
18 was in the performance of his duty as an attorney in open  
19 court, and Mr. Rogers has charge of the trial of this case and  
20 everything connected with it.

21 THE COURT. Gentlemen of the jury, bear in mind your usual  
22 admonition. We will take a recess at this time for 10  
23 minutes.

24 MR. APPEL. Your Honor, what is going to be done? The  
25 defendant insists upon some disposition being made of our  
26 objection.

1 THE COURT. The objection is overruled and the trial will  
2 proceed.

3 MR. APPEL. We take an exception.

4 (AFTER RECESS.)

5 MR. DARROW. If the Court please, I don't know whether that  
6 order is to go into immediate effect. Counsel has not  
7 finished this cross-examination. I think the matter could  
8 be postponed for a short time without losing whatever  
9 effect it has.

10 THE COURT. The Court has no objection to that at all, Mr.  
11 Darrow. There seems to be a difference of opinion, which  
12 I assume is an honest difference of opinion between the  
13 Court and counsel, as to their rights here, and there is  
14 a time when that can be settled.

15 MR. APPEL. Your honor ordered him committed while he was  
16 in court. The code says that no attorney while attending  
17 court in the actual performance of his duty nor a witness  
18 can be arrested and committed.

19 THE COURT. Well, I am not making any change in the order.  
20 I am listening to Mr. Darrow's remarks here.

21 MR. DARROW. I would suggest, Mr. Appel better discuss this  
22 matter, whether he wants the matter postponed. Of course,  
23 I am in a position--I don't care to take much stand in it,  
24 but prefer not to go on myself. There is a way out, I  
25 suggest, if it is agreeable to counsel.

26 MR. APPEL. Well, your Honor, Mr. Rogers seems to take the



1 same view I take of the matter, any commitment made  
2 by the court of an attorney while in the actual progress  
3 of the case is void, and that he should be turned over  
4 into the custody of the officers, and that unless the  
5 entire order is set aside ~~order~~ adjudging him guilty, and  
6 which is a part of the commitment, he cannot go on in the  
7 case.

8 THE COURT. Well--

9 MR. APPEL. Of course, if your Honor makes an order that  
10 we shall go on, of course, we will have to do it naturally.  
11 We will stand on the proposition that this defendant has  
12 been deprived of his counsel during the progress of the  
13 case.

14 THE COURT. The court will not vacate or set aside the  
15 order.

16 MR. APPEL. What does your Honor order, we shall proceed?

17 THE COURT. Just a moment. Mr. Rogers is in the next room,  
18 I believe?

19 MR. DEHM. Yes, sir.

20 THE COURT. Tell him to come in. Mr. Rogers, the court  
21 will not vacate or set aside the order but in view of the  
22 circumstances presenting themselves here at this time in  
23 the midst of the cross-examination, and in view of the fact  
24 that it appears that the matter arose, as I assume, to be  
25 an honest difference between counsel and the court as to  
26 the rights of counsel in a matter of this kind, I will modify

1 the order to this extent, that the fine will remain fixed  
2 at the sum of \$50, the alternative being instead of  
3 committment for 5 full days, Mr. Rogers will be committed  
4 to the custody of the sheriff and sent to jail until  
5 9 o'clock tomorrow morning. The court will proceed to  
6 adjourn at this time. I don't want there to be any mistake  
7 about the court's position in this matter. The court is  
8 emphatically and positive of the opinion that no attorney  
9 has a right under any circumstances to use the language  
10 used and claimed to be right by Mr. Rogers in this court room  
11 while the witness is on the stand, conceding the right on  
12 proper occasions on argument, but Mr. Rogers having  
13 deliberately referred to the witness while hewas a witness  
14 on the stand, as indicated by the order, Mr. Fredericks  
15 having objected upon the ground that the question was a  
16 waste of time , Mr. Rogers having responded it was not a  
17 waste of time, but he was showing up a perjurer, was in  
18 the opinion of this court guilty of contempt of court, and  
19 a distinct violation of the Section of the Code quoted,  
20 that is to say Subdivision<sup>9</sup> 1209, Code of Civil Procedure,  
21 "Being an unlawful interference with the progress or proceed-  
22 ings of this court," the court finds Mr. Rogers guilty of  
23 contempt of court and fixes the penalty at the sum of \$50  
24 and as an alternative to be committed to the county jail  
25 of Los Angeles County from this time until 9 o'clock tomorrow  
26 morning. In view of the circumstances the court will take

1 a recess until 10 o'clock tomorrow morning. (Jury  
2 admonished.)

3 (Recess until 10 o'clock August 7, 1912.)  
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