

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. 88

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
C W Houston,			7162	
C H Smith,	7166	7170		
J H Mellon,	7180	7181	7183	
Al. Levy,	7184	7185		
Walter Bordwell,	7214	7223	7232	7233

1 August 9, 1912, 10 o'clock A.M.

2 Defendant in court with counsel; jury called; all
3 present. Case resumed.

4
5 THE COURT: Where is the witness?

6 MR FREDERICKS: He was on the stand.

7
8 C. W. HOUSTON, on the stand for further
9 redirect examination:

10 THE COURT: You want to wait for Mr Appel?

11 MR ROGERS: No sir, go ahead.

12 THE COURT: The question before the court is one of cross-
13 examination --

14 MR FREDERICKS: Redirect.

15 THE COURT: I mean redirect examination. Perhaps better have
16 the question read, if you have it; I have the exact idea
17 in mind but perhaps not the exact words.

18 MR ROGERS: (Reading) "Now Mr Houston, you said that you
19 gained your impression in regard to this defendant, or in
20 regard to Mr Hawley, in conversations with other people as
21 well as your own personal dealings, and I will ask you to
22 name the people with whom you have in past years, who have
23 talked to you about his reputation." As I recall it, that
24 is the question under consideration.

25 THE COURT: That is the question, and I am satisfied the
26 cross-examination did not open the door of that inquiry.

1 It is precisely the same question that was given on the
2 direct examination. There is no difference in the idea in
3 saying he is acquainted with the general reputation of a
4 person and saying that he knows what people say about him.
5 Substantially the same idea. On direct examination he said
6 he knew the general reputation. The cross-examination,
7 assuming that he said -- and I believe it is admitted that
8 he did say that he knew what people said about him, that
9 is the same idea, the same question with slightly different
10 words.

11 MR FREDERICKS: I was simply asking whom he had heard talk
12 about him.

13 THE COURT: I don't think you are entitled to it for the
14 reasons stated. Objection sustained.

15 MR FREDERICKS: Well, you understand by reputation, Mr
16 Houston, I presume, that general reputation is what other
17 people say about a man?

18 MR ROGERS: Objected to as already asked and answered and
19 not redirect.

20 MR FORD: They asked definitions from the witness, the
21 very word along that line on cross-examination.

22 MR FREDERICKS: That is the only question I wish to ask, your
23 Honor.

24 THE COURT: Well, it is apparently harmless. I suppose the
25 witness understands the English language and it is simple
26 English. Answer the question. A yes.

1 MR FREDERICKS: Very well, that is all.

2 MR ROGERS: That is all.

3

4 THE COURT: Now, gentlemen, on the question of impeaching
5 witnesses, I am going to limit you. I have in mind the
6 number. You wish to be heard on it before I make that order?

7 MR FREDERICKS: I guess the Court better make the order be-
8 fore we start, we might want to choose a little.

9 THE COURT: I have changed my mind a good many times in
10 this trial, and many other trials, and my idea is that it
11 ought not to exceed three.

12 MR FREDERICKS: We have had two.

13 THE COURT: You have had two on this particular witness.
14 If that is going to work any special hardship on any one I
15 will hear you now, otherwise I will limit it to three.

16 MR ROGERS: If you think you will be better off with four
17 than with three I will bow to your desires in the matter.
18 I would rather have three and let's get shut of it.

19 THE COURT: That is the way I feel about it. I want to make
20 the announcement at this time, because it might affect the
21 calling of the next witness.

22 MR ROGERS: As far as we are concerned --

23 MR FREDERICKS: Well, we will call Mr Smith and let it go
24 at that.

25 MR ROGERS: As far as the matter or Mr Hawley's reputation
26 is concerned, of course, we telegraphed Mr Hawley, and he is

1 supposed to be in San Francisco. We didn't know this was
2 coming up, and we wired him last evening, and it is within
3 the possibilities he didn't get the wire in time to get the
4 train.

5 THE COURT: That is a matter the Court ought to be informed
6 about in regard to the witnesses who were to be here at 10
7 o'clock this morning.

8 MR ROGERS: Of course, when a man's reputation is attacked
9 in the courtroom, it is, to a certain extent, a personal
10 matter. While the attorney of the side of the litigation
11 on which he testified to whom called him is to a certain
12 extent responsible for the evidence in that behalf, yet,
13 your Honor can readily see --

14 THE COURT: You want him here if you can get him.

15 MR ROGERS: Yes sir, we want him here if we can get him.

16 I shan't detain this jury one moment beyond the immediate
17 requirements of the case, but if it can so be arranged that
18 I can get Mr Hawley here before the matter is finally dis-
19 posed of, I would like to do it, because I think it is noth-
20 ing but right and fair. We may be able to tell me some
21 things to ask and some matters that I need to know. We
22 wired him last night but we had to wire him at his business
23 address. If the wire got there fifteen minutes late he
24 would have gone home and wouldn't get it until this morning,
25 and we didn't get him at the house.

2p 1 C H A R L E S H S M I T H,

2 a witness called on behalf of the people in rebuttal,
3 being first duly sworn, testified as follows:

4
5 THE COURT. In that connection, I might say, unless it
6 appears Mr. Hawley would be here tomorrow morning, I expect
7 to continue the further hearing of this case until Monday
8 morning at 10 o'clock.

9 MR. FREDERICKS. We are going to drive along pretty fast
10 and I don't think we will last until tomorrow morning,
11 we are trying to get through.

12 MR. ROGERS. You are getting in on the short rows?

13 MR. FREDERICKS. Yes, sir, we are getting in on the short
14 rows.

15 MR. ROGERS. That is the best thing I have heard you say.

16 MR. FREDERICKS. It sounds pretty good to me, too.

17 THE COURT. In that connection, Mr. Appel, you asked about
18 the adjournment over Monday morning on account of some
19 other matters. I have looked that matter over and I will
20 state that it becomes merely a moot question, with the
21 order heretofore made, which we thought to test, that
22 has been entirely nullified by reason of the time having
23 passed, and I see nothing except to dispose of it by
24 formal motion, so I see no reason for further delay on that
25 account. I may say, Mr. Rogers, I still entertain the
26 same opinion, and I think--

1 MR. ROGERS. I am going to be, your Honor, as white as
2 your Honor has been. Your Honor has been very nice about
3 the matter and I am going to say that while I am still of
4 the opinion that what I had to say was drawn out of me
5 by Mr. Fredericks's statement that I was wasting time, and,
6 of course, I came back a little faster and a little harder
7 than I ought to, but I had him in mind instead of the
8 witness, Sir. Your Honor has been very decent about the
9 matter and we have mixed up about it and you have said
10 you didn't think I can be sent to jail, and I do not think
11 so; anyhow, I would like to tender your Honor my apology
12 and I will pay the \$50. I do not want any fuss about it.
13 Possibly I was wrong and if I was and I do finally convince
14 myself I am wrong I will tell your Honor so, but I cannot do
15 it now. Your Honor has full control of the proceedings
16 in court and if I have, or you think I have done anything
17 to interfere with the proceedings in your Honor's court
18 room, or the dignity thereof, I will apologize, and I will
19 pay the \$50.

20 THE COURT. The court appreciates your attitude, Mr. Rogers,
21 very keenly, and very highly, and I assure you the question
22 is one that is not entirely free from doubt. I realize
23 counsel would have a perfect right to make the remark he
24 had made in the course of argument as a part of his conclu-
25 sion to a jury, it having been a reply to a question brought
26 out, and it becomes a pretty close question whether it was

1 a matter brought out within the right of counsel, neverthe-
2 less, I have thought the matter over carefully, and I
3 cannot change my opinion that it was an impropriety, but
4 if I could conscientiously do it I would set aside the order,
5 but I cannot.

6 MR. ROGERS. No, I do not ask your Honor to do that. I
7 would ask you to adhere to the ruling. I will show you I
8 want to be as near right as I can about the matter. I will
9 pay the fine and if at some future time I make up my mind
10 that I was wrong I will say so, but I want to say now I did
11 not say it to you and did not say it to the witness, I did
12 say it to Mr. Fredericks, who I thought was trying to sting
13 me and I turned around with my Irish tongue and tried to
14 sting him.

15 MR. FREDERICKS: I accept your apology.

16 THE COURT. I know if Mr. Rogers had been the witness and
17 someone else had been the attorney, I think his feelings
18 would have been hurt.

19 MR. APPEL. If there is going to be a confession here all
20 around, and the weather changes a little I may pay my fine
21 of \$25.

22 MR. FREDERICKS. I have paid mine.

23 MR. ROGERS. I paid one, too.

24 THE COURT. The attitude of counsel simply confirms the
25 court's good opinion that has always existed, in spite of
26 these little matters that I have heretofore referred to as

1 sparks that flew up from time to time.

2 MR. APPEL. Sometimes this apparent stubbornness, your
3 Honor, is due to hard times.

4 THE COURT. Well, let us get along. I think we all feel
5 better now. It is understood that the impeaching witnesses
6 are limited to three.

7 MR. FREDERICKS. All right.

8

9 DIRECT EXAMINATION.

10 MR. FREDERICKS. Q State your name to the jury, please?

11 A Charles H. Smith.

12 Q Where do you live? A My residence is 1243 Irolo street,
13 Pico Heights.

14 Q What is your business? A Until the first of last June
15 I was in the grocery business.

16 Q How long have you been a resident here of Los Angeles?

17 A I came to Los Angeles 13 years ago the 27th day of last
18 January.

19 Q Do you know Charles O. Hawley? A I do, yes, sir.

20 Q How long have you known him? A I have known him three
21 years ago, sometime in May.

22 Q Do you know his general reputation in the neighborhood
23 in which he resides, I refer to the City of Los Angeles as
24 the neighborhood, for truth, honesty and integrity? A I
25 do.

26 Q Is it good or bad? A Bad.

1 MR. FREDERICKS. Take the witness.
2

3 CROSS-EXAMINATION.

4 MR. ROGERS. Q You had some differences with Mr. Hawley,
5 I take it? A What is that?

6 Q You had some differences with Mr. Hawley, I take it?

7 A Differences, do I understand you?

8 Q You understood it. A I have had some dealings with
9 him.
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1 Q Well, he went into insolvency, was forced in by a real
2 estate deal that he got into with a man named Houston, he
3 went into insolvency and could not pay his debts and has
4 not been able to get out yet, and you are one of them that
5 got stung and have not got your money yet, and probably wont
6 until he earns it, that is about the situation, isn't it?

7 MR FRIDRICKS: That is objected to, that portion of it, as
8 being an attempted recital of facts, and not being a correct
9 recital of facts by any means, as the proceedings in insol-
10 vency would show, and assuming facts not in evidence in
11 this case.

12 THE COURT: You can have the question if you strike out the
13 words "being forced in by a man named Houston", I do not
14 think the evidence shows that fact.

15 MR ROGERS: If it does not, I will change the question.

16 Q Mr Hawley got into a real estate deal with a man named
17 Houston and after going through this deal and dealing with
18 Houston he went into bankruptcy and could not pay his debts
19 for a spell and has not succeeded in getting out yet, after
20 this deal he had with Mr Houston --I merely refer to that
21 as a matter of time -- and you were one of those that got
22 stung and you think his reputation is bad?

23 MR FRIDRICKS: Just a moment. We object to the question as
24 being an attempted recital of purported facts that are not
25 facts, that he went into insolvency to escape a debt of
26 \$1500, whereas the facts are entirely different, and are

1 not before this court at any event, and the petition is the
2 best evidence, and if the petition in insolvency were pro-
3 duced it would show an entirely different state of facts,
4 and that being a recital of purported facts to this witness,
5 in the guise of asking a question.

6 MR ROGERS: No, I do not understand that the real estate
7 commission only was what put him in, I understand that the
8 deal Houston got him into was what put him in, not the \$1500.

9 MR FREDERICKS: He cannot state his understandingsⁱⁿ regard
10 to the matter, they are not evidence, and in the matter of
11 Mr Hawley's insolvency, if it were put in evidence we would
12 be very willing to discuss it.

13 MR FORD: And the causes would be a conclusion on the part
14 of this witness, anyway, even if he thought he knew.

15 THE COURT: He is entitled to call for some conclusion at
16 this time.

17 MR FREDERICKS: It is the recital of the purported facts I
18 object to, this jury might forget that that was not testi-
19 mony.

20 THE COURT: Oh, I am going to assume that the jury will not
21 forget important matters in the case. Objection overruled.

22 MR KEETCH: Your Honor will allow that question as it stands?

23 MR FREDERICKS: Yes, the objection was overruled.

24 A Repeat the question, please.

25 MR ROGERS: He will read it to you.

26 (Last question read.)

1 A His reputation, to my knowledge, was bad before that.

2 Q Bad when he was appointed Fire Commissioner by Mayor

3 Alexander? A If it had not been bad he would not have got

4 fired out, would he?

5 Q He didn't get fired out. Don't you know that? Well, tell

6 me, do you know that he got fired out? A I don't know

7 whether he got fired or not, I know that he got fired off the--

8 Q Why did you say a minute ago he got fired, when you don't

9 know? You kind of want to put a bad atmosphere around it,

10 and a bad aspect around an incident that you don't know any-

11 thing about. A From the account I read in the paper I

12 should judge he got fired.

13 Q What paper did you read the account in that he got fired?

14 A The Times.

15 Q Are you sure? Are you sure he got fired? A I am sure

16 he got fired. I am sure he was let out of the fire commission.

17 Q Well then, before he got appointed Fire Commissioner, by

18 his Honor, Mayor Alexander, you knew his reputation was very

19 bad? A I was told yesterday, after I had had dealings with

20 him, I was told his reputation was bad, to look out for that

21 man.

22 Q Who told you? A Well, I have heard several make the

23 remark.

24 Q Well, who? A In fact there was Mr Allen was one.

25 Q Who was Mr Allen? A I couldn't tell you. He was a man

26 that used to room with me.

1 Q Where is he now? A I think the man is dead, if I
2 remember right.

3 Q He roomed with you? A Yes sir.

4 Q Well, give us the name of somebody who is not dead or
5 moved away, will you please? A Well, Mr Bennett.

6 Q Where is Bennett? A He lives out on Pico street.

7 Q He told you before Mr Hawley went into the Fire Board
8 he was to be looked out for? A Before he went into
9 bankruptcy.

10 Q Where does Bennett live out on Pico street?

11 A Thirteen hundred and something, I think it is.

12 Q What was his business? A Real estate.

13 Q Was he in with Houston, in this real estate deal, do you
14 know? A I do not know.

15 Q Well, state somebody else, if you can. A Mr Spiekel.

16 Q Who is Mr Spiekel? A He lives out on Pico Heights.

17 Q You think he said anything about it? A What is that?

18 Q You know he said something about it, you are testifying
19 he said something? A He told me something about Mr Hawley

20 Q That is before he went into bankruptcy? A Yes sir.

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4s 1 Q What is Mr. Spiekel's business? A He has no
2 business; he rents property out there. He owns con-
3 siderable property out there.

4 Q He is a real estate man? A No, sir, he is not; he is
5 not in the real estate business.

6 Q Anybody else you think of? A Mr. Darlington, also.

7 Q He is a lawyer, isn't he, he is kind of a lawyer? A

8 A Yes, sir.

9 Q Collector. A bill collector? A He is a lawyer and
10 collector, I believe, he is in the Wilcox Building.

11 Q You employed Darlington, didn't you? A Yes, sir.

12 Q And he was working for you? A Yes, sir.

13 Q He is the man that tried to collect your bill from
14 Hawley that went into the bankruptcy proceedings? A No,
15 sir, he didn't try to collect a bill at all.

16 Q I thought you said a moment ago that he was a bill col-
17 lector working for you? A I said he was not a bill col-
18 lector, I said I had him employed in trying to get a real
19 estate deal through that I made with Mr. Hawley.

20 Q So you had a real estate deal with Hawley? A Yes, sir.

21 Q When was that? A I started in on the fifth day of May,
22 I think along about the fifth day of May. It took me
23 about two years to get the deal in place where I wanted to
24 trade with him, and he promised to do a thing--I guess if
25 he promised me once he did fifty times, and he promised
26 to do this and say, "Mr. Smith, meet me at such a time and I

1 will return you a deed to this property," but he didn't do
2 it. I then employed Mr. Darlington. Mr. Darlington didn't
3 succeed in getting it. I had to throw up Mr. Darlington and
4 I employed Mr. Frank Allender, and in ten days from the time
5 I employed Frank Allender he got my deed.

6 Q Mr. Allender got you the deed? A Yes, sir. Mr. Hawley
7 kept promising me and he didn't do it, and I have got the
8 papers today to prove where he said he would return my
9 deed. He said he would put his up in escrow and he didn't.

10 MR. FORD. Let the witness finish his answer.

11 THE COURT. Have you finished? A No, sir, I am not finish-
12 ed. And then he came to me, he says, "Mr. Smith, I will
13 give you a written agreement if you will take--let me have
14 your deed. I have got a chance to make a turn and I
15 will stand betwixt you and all foreclosure proceedings in
16 any way, shape or form." I said, "Mr. Hawley, what have I
17 to show?" He said, "I will give you my word, I will give
18 you a written agreement to stand between you and all fore-
19 closure proceedings and expenses." I took the deed out of
20 escrow. He gave me a written agreement he would stand
21 between me and all foreclosures, which was on this pro-
22 perty, that I deeded to Mr. Hawley, of \$4,000. He did not
23 do so, consequently they foreclosed on the first mortgage and
24 I had to stand in between the first mortgage and the fore-
25 closure in order to save my home.

26 MR. ROGERS. Q Now, that was your mortgage, wasn't it?

1 A No, sir, he assumed the mortgage when I sold the place.

2 Q It was your mortgage. You made a mortgage to somebody and
3 got the money, and then he agreed to assume that mortgage--
4 two mortgages, wasn't it, a couple of them, one and two?

5 A He agreed to assume my mortgage and give me a clear deed
6 to the property and clear the property, that I had to
7 stand the expense between the foreclosure proceedings and
8 transferring the papers also.

9 Q Let me get a t your troubles with Hawley for a minute.
10 Hawley traded some property with you which property had
11 two mortgages, a first mortgage, and not being content
12 with the first mortgage you slapped a second plaster on it?

13 A No, sir, only one mortgage on it.

14 Q Only one mortgage, that is right? A Yes, sir.

15 Q All right, now. Then your mortgage-^{there} was a suit for fore-
16 closure brought and at the time the suit for foreclosure
17 was brought Mr. Hawley had agreed to stand between you and
18 harm on that foreclosure? A I had a written agreement with
19 Mr. Hawley that he assume the mortgage.

20 Q Did you pay that mortgage? A The place was sold to
21 pay the mortgage.

22 Q Well, then, Hawley lost the place? A No he didn't.

23 Q The place was sold to pay it, he finally paid it?

24 A I don,t think it was ever paid.

25 Q Well, did you ever pay it up? A No, sir, I didn't.

26 Q Well, then, you didn't pay the man that ^{you} owed, did you?

1 A The man got the property. He got the lots to pay for it.
2 Yes, sir, I had to stand between paying the balance of it.

3 Q Did you pay a cent on that balance? A I did. ⁸ and

4 Q What did you pay? A I paid nearly \$900--between/ \$900.

5 Q On the property on your mortgage? A To save the lot
6 that my house is on today.

7 Q Well, then, Hawley got in bankruptcy and couldn't pay out
8 on his real estate propositions and you got let in for \$900
9 because Hawley couldn't pay up your own mortgage, that is
10 about it? That right? You have got the property now,
11 haven't you?
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1 A I haven't got the corner property.

2 Q Well, you have got part of it now, haven't you?

3 MR FREDERICKS: That is objected to as immaterial, we can-
4 not go into ^{the} controversy who was right and who was wrong.

5 THE COURT: Objection overruled.

6 MR ROGERS: Go ahead and answer.

7 A What was the question?

8 (Question read by the reporter.)

9 MR ROGERS: You have got the other part? A I have got
10 lot 10.

11 Q Your mortgage is paid. That is to say, the corner pro-
12 perty is taken? A I had to sell that lot in order to
13 redeem this one lot.

14 Q How much was the mortgage that you originally slapped on
15 this property, you yourself? A \$4000.

16 Q Now you had a mortgage for nine hundred on the middle
17 lot, is that right? A Yes sir, on the middle lot, now,
18 of 900.

19 Q What did Hawley get out of it? A I understood he got
20 six thousand.

21 Q Where did he get it? A Mr Scudder.

22 Q You got -- how could he sell it without paying up the
23 mortgage? A I couldn't tell you. I didn't make the deal.

24 MR ROGERS: That is all.

25 MR FREDERICKS: Mr Hawley got you to take down this escrow,
26 and then you gave him a deed to the property, is that right?

1 A That is correct.

2 Q And what did he give you for the deed that you gave him?

3 A I finally got a piece of ground out at Linda Vista.

4 Q What did he give you at that time?

5 MR ROGERS: I object to that, it is very easy --

6 MR FREDERICKS: All right. That is all.

7 THE COURT: That is all.

8

9 J. H. MELLON, a witness called in behalf
10 of the prosecution, in rebuttal, being duly sworn, testified
11 as follows:

12 DIRECT EXAMINATION

13 MR FREDERICKS: What is your business? A Dentist.

14 Q Where is your office? A 308 South Main street,
15 upstairs in ^{the} Milan Hotel, corner of Third and Main.

16 Q That is the corner of Third and Main, southeast corner?

17 A Southeast corner, yes sir.

18 Q You have a great big sign put up just below the window
19 on the second floor, put up so -- on the Third street side,
20 is that correct? A Yes sir.

21 Q When was that sign put up there? A On the 29th of July.

22 Q 29th of July, what day of the week was that? A I think
23 it was about Tuesday or Wednesday.

24 MR FREDERICKS: That is all.

25

26

CROSS-EXAMINATION

1
2 MR ROGERS: I say, doctor, before you put that sign up there
3 on the middle window, did you ever try to look down and
4 see whether you could see the entrance to that agricultural
5 implement shop on Los Angeles street, just below or just
6 north of Third? A Well, I didn't, no sir, but I don't
7 think you hardly could without leaning far enough out of
8 the window to fall out.

9 Q So, really, if a man was going to lean out that window
10 sufficiently far to fall out it wouldn't make any difference
11 at all whether the sign was there or whether it was not
12 there? A Well, I will tell you, that is an old building,
13 it is built with these windows about that far in, and a
14 fellow to get out there would have to be an acrobat.

15 Q Have to be an acrobat? A Very near an acrobat.

16 Q As a matter of fact, if the sign was there it would give
17 him something to hold on to; have a better chance to do it
18 now than you would then? A No.

19 MR FORD: Just a moment, the jury was down there and saw
20 that window and they had an opportunity to --

21 THE COURT: Now, the question is answered. That disposes of
22 the matter. You want it stricken out?

23 MR ORD: I want to make a motion and I want to state my
24 reasons for making the motion. The jury was down there and
25 looked out of the window, and they could see all the sur-
26 roundings and all we put this witness on for was to show that

1 sign was not there before. What could be done or what could
2 not be done --

3 THE COURT: I think the jury have a right to know what
4 difference the sign would make. The question will be allowed.

5 MR APPEL: Your Honor instructed this jury --

6 THE COURT: You have the answer.

7 MR APPEL: Your Honor instructed this jury what they saw
8 there was not evidence, and we took an exception; precisely
9 and absolutely in violation of the case of People vs Busch,
10 in this case over which we had a strenuous fight in the
11 White case. They told you it was not evidence. Now counsel
12 is calling the attention of the jurors to what they saw there
13 as being evidence, and therefore this witness could not be
14 examined on these things on cross-examination. Now, what
15 sort of a position is this. We don't know which way the
16 wind blows. We can't tell -- sometimes they say what the
17 jury saw there is not evidence, now they claim it is evi-
18 dence. We would like to be informed, if it is evidence.

19 THE COURT: The district attorney is not responsible for
20 that instruction. The Court gave that instruction.

21 MR APPEL: Oh, I don't know how it was done. I know things
22 are done. Of course I can only guess, and if I guess wrong
23 your Honor will excuse me, but I am sometimes a pretty good
24 guesser.

25 THE COURT: All right, the answer is restored. Any other
26 questions?

1 MR ROGERS: Well, doctor, that sign you got up there you
2 put it up on the 29th of the Month? A Yes, of July.

3 Q How long have you been in that building? A Been there
4 about eight or ten months.

5 Q Do you know whether the style of the window on the
6 second floor has been changed at all? A None whatsoever.

7 Q Do you know whether instead of a revolving window it
8 was a sliding window at any time since you been around there?

9 A It has been a revolving window all the time as far as I
10 know.

11 Q So if a man testified he looked out of a revolving
12 window on the third story, there wasn't any revolving win-
13 dow there?

14 MR FREDERICKS: That is objected to as immaterial, calling
15 for a conclusion of the witness; argumentative.

16 MR ROGERS: I guess that is so. That is all.
17

18 REDIRECT EXAMINATION

19 MR FREDERICKS: Now just a moment; Doctor, did you ever
20 lean out of that window and look down to the corner to see
21 whether you could see the door of the implement building?

22 A No sir, but I have leaned out of my window, the same
23 kind of a window, but that would be harder to lean out of
24 than mine, because it is higher, because it is higher --
25 it is higher from the bottom to lean out. Mine are lower,
26 and I can lean out. I know, since we are speaking about it,
I know I happened to look over to the corner. scanned by LALAWLIBRARY

6s 1 Q Did you ever look down there to see if you could see the
2 door of the implement window? A No, sir, I have not. That
3 street
4 / when it comes this way takes a turn this way a little
5 bit. If it was on that side of the street I think you
6 would have a hard time to see it.

7 MR. ROGERS. I think it is useless to consume time, because
8 a straight - line drawn by a surveyor will fix it absolutely.

9 THE COURT. No objection.

10 MR. ROGERS. I object to it as not redirect.

11 THE COURT. Objection sustained.

12 MR. FREDERICKS. I think the matter we want to interrogate
13 the witness about is covered.

14 -----

15 A L L E V Y,

16 called as a witness on behalf of the prosecution in
17 rebuttal, being first duly sworn, testified as follows:

18 DIRECT EXAMINATION.

19 MR. FREDERICKS. Q What is your name? A Al Levy.

20 Q What is your business? A Restaurant.

21 Q Where do you reside? A Corner of 8th and Union Avenue.

22 Q How long have you lived in Los Angeles? A 25 years.

23 Q Do you know one Charles O. Hawley? A Yes, sir.

24 Q How long have you known him, about? A Oh, 2 or 3 or
25 4 years, maybe longer.

26 Q Did you ever tell him prior to the election last year,

1 city election, that there was an alliance between the
2 Liquor interests and the Goog Government party? A No,
3 sir.

4 MR. APPEL. Wait a moment--now, you wait--

5 THE COURT. Mr. Levy, the gentleman wants to object to your
6 answer. They wish to make the record, and you be careful
7 not to answer until you have given them a chance to object.

8 THE WITNESS. All right.

9 THE COURT. Want the question reread?

10 MR. APPEL. No, your Honor, I understand it. We object to
11 the question on the ground that it is incompetent, irrelevant
12 and immaterial and not the subject of contradiction, because
13 it is collateral, not a substantive fact brought out in the
14 evidence by the defense and it is not rebuttal.

15 MR. FREDERICKS. The Court will remember--

16 THE COURT. Objection overruled.

17 MR. APPEL. We take an exception.

18 MR. FREDERICKS. And the answer is restored?

19 THE COURT. Restored.

20 MR. FREDERICKS. The answer is "No, sir." Cross-examine.

21
22 CROSS-EXAMINATION.

23 MR. ROGERS. Q Did you understand, Mr. Levy, that question
24 that you were asked?

25 MR. FORD. We object to that as irrelevant and immaterial,
26 the witness is presumed to understand the English language.

1 MR. ROGERS. read it to him.

2 THE COURT. Read the question, Mr. Smith.

3 (Last question read.)

4 MR. ROGERS. Q You understood it? A Did I understand the
5 question?

6 Q Yes. A Yes, sir.

7 Q Well, now, Mr. Levy, you are not testifying that there
8 was not any such alliance, are you?

9 MR. FORD. We object to that as incompetent, irrelevant and
10 immaterial, whether there was any such alliance or not,
11 the question is, did the witness tell Mr. Pawley that there
12 was an alliance.

13 THE COURT. Objection overruled.

14 A Not being in politics at that time, sir, I had no
15 knowledge of what was transpiring at all in any way, shape
16 or form.

17 Q Now, let me ask you--I dislike to do this, but I think
18 I will have to--they had taken your license away, hadn't
19 they? A Yes, sir.

20 Q And they were not allowing you to furnish alcoholic or
21 liquid refreshments accompanying the more solid refreshments
22 for which you have such a reputation, they were not, were
23 they? Do you want me to go at it again? They were,
24 in other words, they could not serve booze, isn't that so?

25 MR. FORD. We object to that language--

26 MR. ROGERS. Mr. Levy and I have known each other for 20

1 years.

2 MR. FORD. That is not the point, let me make my objection.
3 I do not think slang is showing the proper respect to the
4 court.

5 THE COURT. The question before the court is one to be
6 answered, and that is the first question propounded, and the
7 only one before the court. Counsel cannot ask two questions
8 at the same time. You understand the question, Mr. Levy?

9 A Yes, sir, and I will have to answer that question in my
10 own way if the court will permit me.

11 THE COURT. Yes, sir.

12 A That I had nothing to do with the Third street restaurant
13 at that time at all, I was out of it, I was not in business.

14 MR. ROGERS. Q That is to say, your former partner, Mr.
15 Christopher was running it, he was interested with you for
16 a great many years, wasn't that so?

17 MR. FORD. We object to that as incompetent, irrelevant and
18 immaterial and inquiring into the witness's private
19 business which does not show his relation to the case in
20 any way, shape or form, it is immaterial.

21 THE COURT. I expect it is directed to the probability or
22 improbability of this witness having made a statement.
23 Objection overruled.

24 MR. ROGERS. I do not want to break into your private
25 affairs at all, what I want to get at is this: The place
26 was closed up for the sale of liquor? A No, sir.

1 Q That is, for a long time the license was taken away?

2 A No, sir, if you will pardon me again, that is not in
3 order.

4 Q Go ahead. A The license was taken away from me and
5 turned over to Mr. Christopher, but the sale of liquor always
6 continued in the establishment.

7 Q And when the license was taken away from you, then you
8 came back, at Mr. Alexander's direction, and resumed the
9 management of the place? A No, sir, you are mistaken.

10 Q Well, you are now interested in it? A I am working
11 there.

12 Q What I want to ask is this, Mr. Levy: When they took
13 that license away they made an attack on you personally,
14 didn't they, whether it was justified or not people may
15 differ, I do not think it was, neither do a good many of
16 your friends, but there was an attack made on you per-
17 sonally and they took the license away and they turned it
18 over to L J Christopher and then after Alexander's election
19 the license was restored, isn't that so, and you were per-
20 mitted to go back into the place? A No, you have got that
21 wrong, Mr. Rogers.

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1 Q Wasn't it true about John Brink -- A I don't know
2 anything about John Brink, but you are mistaken.

3 Q Isn't it the fact they took John Brink's license away
4 from him and John Brink had his license restored after
5 election?

6 MR FORD: We object to that --

7 THE COURT: That is getting outside of that, you are examin-
8 ing into his own place --

9 MR APPEL: We can lay the foundation for this, we can show,
10 your Honor, that two restaurants together, John Brink and
11 Levy's place, were not selling liquor and they were, like
12 other gentlemen interested in public things like that, they
13 were keeping their eyes open as to what was going to happen,
14 and election time is a pretty good time, especially these
15 days, a good time to find out whether there may be a chance
16 to resume a license provided they joined the band.

17 THE COURT: Well, the court is giving you a broad leeway
18 as to this particular place.

19 MR FREDERICKS: I think, your Honor, there is no question
20 pending, and even if they wish to show what they say they
21 do, it would be immaterial, because here are people who are
22 in that --

23 THE COURT: The court has stated they will not be allowed
24 to show it, except this particular place in which Mr Levy
25 says he was at one time interested and which bears his name.

26 MR FREDERICKS: The question at issue is whether Mr Levy

1 ever told Mr Hawley that there was an alliance between the
2 liquor interests and the Good Government party.

3 THE COURT: Precisely.

4 MR ROGERS: Now, Mr Levy, you know perfectly well, don't
5 you, that there was a deal fixed up about, oh, say a week
6 or ten days before the last city election, whereby the so-
7 called liquor interests got in behind the band wagon, Mr
8 Alexander's, don't you? You know that, don't you?

9 A Positively not, sir.

10 Q You don't know it? A No sir.

11 Q You didn't even hear it?

12 MR FREDRICKS: That is objected to as incompetent, irrele-
13 vant, immaterial, already answered.

14 MR ROGERS: Don't you know the word went down the line, in
15 political phrase, and political meaning, the word went down
16 the line about ten days before election to get behind Alex-
17 ander?

18 MR FREDRICKS: We object to that upon the ground it has
19 already been answered, positively.

20 THE COURT: Objection overruled. Answer the question.

21 A I do not, positively, know there was any such word
22 passed down the line, sir.

23 Q You don't know there was? A No sir, positively not.

24 Q Now, did you ever have a conversation with Mr Harriman,
25 yourself, preliminary to that election?

26 MR FORD: We object to that as irrelevant, immaterial.

1 THE COURT: Objection overruled.

2 A I was introduced to Mr Job Harriman.

3 Q Well, subsequent to the introduction did you and Mr
4 Harriman have a conversation about whether or not if you,
5 among others could be restored to favor and the liquor inter-
6 ests properly taken care of in the event Mr Harriman was
7 elected, that possibly there might be some support from the
8 liquor interests of Mr Harriman? Didn't you have some con-
9 sultation like that? I am not giving you the exact words,
10 but the purport of it, with Mr Harriman?

11 MR FREDERICKS: That would be immaterial under the issue,
12 and we therefore object to it upon that ground. The ques-
13 tion is not whether there was an alliance between the liquor
14 interests and Mr Harriman --

15 MR FORD: The question is not whether there was an
16 alliance between Mr Alexander and the liquor interests, the
17 question is, did this witness tell Mr Hawley?

18 THE COURT: Objection sustained, on that ground.

19 MR ROGERS: I purpose to show by that question there was an
20 effort made along about ten days before election by not
21 only what is known as the liquor interests, the Royal Arch
22 and people of that kind, to make a deal with Harriman, and
23 they could not make it, so they went and made it with Alex-
24 ander. I think anybody who knows anything about political
25 history knows that those matters had to come, as politics
26 ordinarily go, possibly with a lid on, a little bit, and I

1 purpose to show Mr L^evy had a consultation with Mr Harriman
2 and made some inquiries as to Mr Harriman's attitude which
3 he would assume in the event he was elected Mayor, and there
4 not geing a satisfactory agreement made, or arrangement
5 perfected, they got in behind the other band wagon. We
6 have alā been in politics a little ourselves.

7 THE COURT: What is this, a foundation for impeachment?

8 MR ROGERS: No sir.

9 MR FREDERICKS: That does not connect at all.

10 MR APPPL: He said he was not in politics and we want to
11 show he was in politics.

12 THE COURT: Yes, upon that theory you can have it.

13 MR FORD: We would like to be heard. This witness may not
14 be in politics, yet he may have been exercising the fran-
15 chise which every voter has a right to do -- I don't know
16 whether he saw Mr Harriman or not, but he is entitled to
17 express his personal views, and if he asked Mr warriman
18 what these views were on the liquor question that would not
19 prove there was an alliance between the Good Government
20 forces and the inquor interests generally, and it is too
21 remote, so remote as to be absolutely immaterial, no
22 relevancy whatever, and it is certainly not cross-
23 examination, and it is certainly going mighty far afield for
24 the purpose of attacking the witness' testimony that he
25 never had a conversation with Mr Hawley in which he said
26 there was an alliance between the liquor interests and the
Good Government people on Monday, eight days before the

1 election. Monday the 27th of November.

2 THE COURT: I think the question is proper, and let us have
3 it.

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8p 1 MR. APPEL. We have a right to rebuttal and we have a right
2 to show he was a participant in that arrangement.

3 THE COURT. I have decided your way, Mr. Appel, go ahead.
4 Read the question.

5 (Last question read.)

6 A The nature of the conversation I had with Mr. Job
7 Harriman at that time, I do not positively remember.

8 Q Well, now, let me refresh your recollection. Don't
9 you remember asking or calling Mr. Harriman into your
10 restaurant, Mr. Levy, and asking him what position he was
11 going to take as Mayor, just about this time, just a few
12 days before this November 28th, just before this time,
13 asking him what his position would be with respect to the
14 liquor interests, and among others, your matter, and he told
15 you he would not answer you privately but would publish his
16 views in a signed statement in a paper, don't you remember
17 that?

18 MR. FREDERICKS. That is objected to on the ground it is
19 absolutely incompetent, irrelevant and immaterial for any
20 purposes whatsoever. May it please the court, here is a
21 man running for office talking to another man who has a
22 vote, and it seems to me that it is, in view of the fact of
23 the previous answers of the witness, that the question is
24 absolutely immaterial.

25 THE COURT. This is not asked for the purpose of impeach-
26 ment or laying the foundation for impeachment.

1 MR. ROGERS. He has stated he was not in politics and that
2 is the reason he did not make any such statement and I am
3 showing now that this grounds or his premise or the
4 reason volunteered by himself for his position and view are
5 without foundation, that he was in politics, and connected
6 in politics at that time.

7 MR. FREDERICKS. He didn't qualify his statement that he
8 never had such a conversation with Mr. Hawley in any way,
9 shape or form with the statement that he was not in politics
10 at that time.

11 MR. APPEL. He gave that as a reason why he did not.

12 MR. FREDERICKS. No, he didn't give that as a reason, he
13 stated that as a fact, in answering another question.

14 MR. APPEL. I know he gave that as to one of the reasons,
15 if a man says, "I was not in politics, I was not concerned
16 in those questions," and we go on and show he was in politics,
17 and we show they did talk to one another about the subject,
18 that will show he was interested in the subject, there we
19 commence to shade down his statement a little bit, and then
20 if we bring others to show he had a conference with other
21 liquor men and that the word went around--we can probably
22 put some waiters on the stand at his own place, he passed the
23 word, "Now, switch over to Alexander," then we show it and
24 we shade that down a little and after a while we will show
25 up that in fact he was doing the work, a restaurant that is
26 more interested in making money out of booze than out of

1 salads, for years and years, that depends on the great
2 amount of liquor sold there--

3 MR. FREDERICKS. What has that got to do with the question?

4 MR. APPEL. It would not be likely that the man at the
5 head of it, the man, that his name belonged to the Christo-
6 phers place, known as Levy's Great Restaurant, would not
7 he be likely to take some interest in anything that would
8 touch the business, whether lawfully or unlawfully, whether
9 legally or illegally, that is not the question, that is not
10 the question, anything that would show the fact, and
11 naturally Mr. Levy and his place would naturally interest
12 him, and to say he would not be interested in politics, we
13 touch his pocket and touch his business, and that on the
14 face of it is somewhat shady, and therefore we have a right
15 to go into that.

16 MR. FORD. I want to correct the statement made by the Court
17 and also counsel for the defendant. I may have misunder-
18 stood the court, but it was made by counsel for defendant.
19 The witness was asked one question as to whether or not he
20 had a conversation and he answered he did not, and later
21 on he was asked this question, "Did you not know as a fact
22 that the Good Government forces had made an alliance with the
23 Liquor people?" And he said, "I don't know that, I was
24 not interested in politics at that time," and he answered
25 that he was not in politics in reply to the question as
26 to his knowledge as to whether or not there was a combina-

1 tion between the liquor interests and Alexander, but did
2 not reply or qualify his answer to Mr. Hawley, and we want
3 to object further to the present question, your Honor, on the
4 ground no foundation has been laid showing that Mr. Levy
5 was at the restaurant at that time and in control of the
6 restaurant at any time between August and the 20th of
7 December.

8 THE COURT. Now, gentlemen, let us not get into a matter
9 of discussing this question any further. The Court has
10 already ruled and will continue to rule that so far as
11 this witness's relation to the institution that bears
12 his name, the connection that he may or may not have had,
13 that the evidence should show the political situation, is
14 competent evidence here. I am satisfied that is the correct
15 rule and you can have that ruling and take any advantage of
16 it, but it seems to me we are consuming unnecessary time
17 in arguing an objection to each and every question along
18 that line. I am satisfied the ruling is correct. Objection
19 overruled. Answer the question.

20 MR. ROGERS. He will read it for you.

21 (Question read.)

22 A I do not remember that conversation.

23 Q MR. ROGERS. You would not say it did not happen, Mr.
24 Levy? A Sir?

25 Q You would not say it did not happen, would you? A I
26 would not like to say that it did happen. The only time

1 that I can remember seeing Mr. ^HHarriman in my place was
2 when he was brought in] by Mr. Hawley and introduced by Mr.
3 Hawley to me.

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1 Q Upon this subject wasn't it, wasn't the conversation
2 upon this very subject? A I don't really remember, I
3 don't think it was.

4 Q What was the conversation on? A I couldn't tell you ,
5 sir.

6 Q You couldn't tell? A I couldn't tell you.

7 Q Then Hawley brought Harriman in there, and you knew
8 Harriman was running for Mayor? A Certainly.

9 Q And you didn't know what you talked about? A Oh, I
10 don't remember.

11 Q Don't you remember that the matter of the future of
12 your place, that is the place bearing your name and the
13 future of yourself, connected with it, was the subject of
14 discussion there between Mr Hawley and Mr Harriman and
15 yourself? A More than likely it might have been.

16 Q Now, Mayor Alexander had said then, had he not, to your
17 knowledge, that is, it had been so reported to you, that
18 Mayor Alexander had said before that time that the place
19 could not be run if you had any personal connection with it?

20 A Well, I was not up at the meeting of the Board of
21 Police Commissioners, so I don't know.

22 Q Put isn't it a fact that you retired from your place
23 ostensibly, at least, under the directions of the Mayor, and
24 to your knowledge -- I don't say you were there and heard it,
25 but to your knowledge said that the place could not run if
26 you had personal connection with it?

1 MR FORD: If the court please, the witness has already
2 testified that the license was taken away and that covers
3 the subject.

4 MR FREDERICKS: A long time before.

5 THE COURT: Objection overruled.

6 MR APPEL: It has been running just the same.

7 MR ROGERS: The court overrules the objection. Answer the
8 question. A Well, when the license was revoked for me I
9 was supposed to retire and get out, which at that time I did.

10 Q Well now, since Mayor Alexander came back you have been
11 in charge, haven't you?

12 MR FREDERICKS: That is objected to on the ground it is
13 immaterial.

14 THE COURT: Objection overruled.

15 MR FREDERICKS: Long after this affair.

16 MR ROGERS: Possibly the witness might be permitted to
17 answer, we all know Mr Levy is quite capable of under-
18 standing and answering for himself.

19 MR FREDERICKS: I am talking to the Court.

20 MR ROGERS: Without any assistance --

21 MR FORD: We are not trying to assist him, we are trying
22 to exclude what we think is immaterial testimony.

23 THE COURT: You are quite right in making your objection.

24 MR FORD: I do not likw to be scolded for making it.

25 MR ROGERS: Would you like to have the question read?

26 A Yes sir.

1 MR ROGERS: Read it.

2 (Question read.)

3 A Since Mayor Alexander went into the office the last
4 time I have been back.

5 Q Yes. A Yes sir, I have been back, but I went back
6 without asking anybody.

7 Q Well, you didn't have to, it was so thoroughly under-
8 stood there was no necessity for asking, isn't that true?

9 MR FREDERICKS: That is objected to as immaterial, incompe-
10 tent, irrelevant, fully answered/

11 THE COURT: Objection overruled.

12 MR FREDERICKS: How can a man say it was fully understood?

13 Well, all right --

14 MR FORD: Answer the question. Read the question.

15 (Question read.) A I never had any understanding in
16 any manner, shape or form, with Mayor Alexander in my whole
17 life.

18 MR ROGERS: Mr Levy, you didn't have to have, did you?

19 You knew perfectly well that after the deal you made with
20 him you were going to be allowed to run that restaurant
21 again and you never saw him and didn't have to see him,

22 you went back and took charge? A In answer to that, I want
23 you to distinctly understand there was never any under-
24 standing between Mayor Alexander and myself.

25 THE COURT: Will you want more than two or three minutes?

26 MR ROGERS: No, just one or two questions more.

1 Q Isn't it true, that after Mayor Alexander had taken
2 away your license you secured in the Moose, a lodge periodi-
3 cal, the publication of an article denouncing Mayor Alex-
4 ander for taking away your license?

5 MR FORD: We object to any question being asked the witness
6 about any document, until the document is shown.

7 MR APPFL: Let us finish the question.

8 MR FORD: We object to the question being asked.

9 THE COURT: Let us get the question.

10 MR ROGERS: It is not a matter of the contents of the
11 article.

12 MR FORD: It is a matter your Honor has ruled, no question
13 may be asked concerning a document, that is the law.

14 THE COURT: It cannot be answered, it can be asked; and then
15 we can determine concerning the document.

16 MR ROGERS? And after securing the publication of an article,
17 I don't state its contents, but simply say to you it was an
18 article denouncing Mayor Alexander, for taking away your
19 license, you went to the publishers of the Moose and told
20 them to let go on Alexander and not to hammer him any
21 further.

22 MR FORD: We object to that upon the ground the document
23 has not been shown to counsel.

24 MR WREDFRICKS: Also the time is indefinite, does not state
25 the time and circumstance, does not tend in any way to im-
26 peach the witness, no foundation laid.

1 THE COURT: The time ought to be at least approximated.

2 MR. ROGERS: Now, the time when the article was published,
3 of course, was immediately after the revocation of your
4 license, or within a couple of weeks, but the time I refer
5 to when you went to them and told them to let go on him was
6 on or about the 25th day of November, 1911.

7 MR. FORD: Your Honor please, we object to any questions
8 being asked this witness concerning the publication of an
9 article on the ground no foundation has been laid, the
10 article has not been shown to us; on the further ground
11 that the foundation as to time, place, and persons present
12 has not been laid, and further, on the ground it is an
13 attempt to lay the foundation for impeachment upon an
14 irrelevant and immaterial subject and a matter concerning
15 which testimony in sur-rebuttal cannot be given, being purely
16 collateral.

17 THE COURT: I am awfully glad to have your endorsement of
18 yesterday's ruling on that subject.

19 MR. FORD: Your Honor, I endorse it insofar as the matter is
20 merely collateral, I do not endorse it and do not think it
21 is the law, notwithstanding your Honor's ruling.

22 THE COURT: I thought you had endorsed it.

23 MR. WREDFERICKS: It is the law in this case and we endorse
24 the law in this case.

25 THE COURT: I do not think, however, that this calls for
26 the contents of a written document, but calls for a fact

1 concerning his procurement of certain policies in that paper.

2 MR. FORD: If the Court please, the very question contains
3 this: "Didn't you publish an article, the contents of which
4 was denunciatory of Mayor Alexander?" And then, "Didn't you
5 stop that denouncement?"

6 THE COURT: Let us see if the question is that. Let me get
7 that.

8 MR. FORD: The very question assumes it denounces him.

9 THE COURT: Let me get that.

10 MR. ROGERS: I ought not to object to producing the article,
11 because it bears me out in some way.

12 MR. FORD: That is the best way.

13 THE COURT: I guess, under the circumstances, you better pro-
14 duce it. Gentlemen of the jury, bearing in mind your admon-
15 ition we will take a recess of five minutes.

16 MR. FREDERICKS: I have another witness who has adjourned
17 court to come here.

18 MR. ROGERS: I do not think I will finish for five minutes.

19 THE COURT: The jury want a recess. We will take a recess
20 for five minutes.

21 (After recess.)

22 (Last question read by the reporter.)

23 MR. FREDERICKS: I think that objection was sustained to
24 that, wasn't it, on the ground the article itself was the
25 best evidence?

26 THE COURT: Yes.

1 MR ROGERS: Mr Levy, you know for a fact that John Prink's
2 license was taken away from him and that he supported Mr
3 Harriman up until approximately the 28th day of November or
4 the 27th day of November, and then he commenced to support
5 Mr Alexander? Not only got his license back after election,
6 but established a new and more elegant place on Spring
7 street in addition to getting his original license back?

8 MR FREDERICKS: Objected to upon the ground it is immater-
9 ial and hearsay.

10 THE COURT: Objection sustained.

11 MR ROGERS: Well now, you knew Mr Hawley, didn't you, at this
12 time? A Yes sir.

13 Q Well, you saw him with Mr Harriman along about this
14 time, didn't you? A Yes sir.

15 Q You saw Mr Harriman more than once? A I don't remember
16 whether I saw the gentleman either once or twice.

17 Q You saw Mr Hawley; he used to patronize your place from
18 time to time? A Yes sir.

19 Q You were in there occasionally? A In and out.

20 Q You used to talk with people that you know, make your-
21 self pleasant and agreeable, as a rule? A Always tried to.

22 Q Well now, are you right sure there wasn't something you
23 said, no matter what it may have been, the words of it,
24 are you right sure there wasn't something that was said
25 to this effect, that you thought you would be right after
26 election?

1 MR FREDERICKS: To Mr Hawley?

2 MR ROGERS: To Mr Hawley? A I don't think so.

3 Q Well, didn't you tell quite a number of people?

4 A No sir.

5 Q Well, some of those whom you could trust?

6 MR FORD: We object to that as irrelevant and immaterial.

7 MR ROGERS: Tell them you thought you would be all right
8 after election, along about this time Mr Levy?

9 MR FORD: Objected to upon the ground it is incompetent,
10 irrelevant and immaterial, and further it is attempting to
11 impeach the witness by a statement alleged to have been
12 made without laying the foundation at the time or place
13 and persons present. The person to whom it was said, to
14 which the witness is entitled to know.

15 THE COURT: Objection overruled. A At that time I con-
16 sidered a silent tongue was the wisest head; the less I
17 said was the easiest remedy.

18 MR ROGERS: But you kind of slipped it around among your
19 friends, didn't you, that after -- along about the 27th day
20 of November -- 26th day of November, that you would be per-
21 fectly satisfied if they could find it reconcilable with
22 their consciences to vote for Alexander, that you thought
23 you were all right on that, as you subsequently proved to be?

24 MR FORD: Objected to upon the ground it is incompetent,
25 irrelevant and immaterial, and not cross-examination; at-
26 tempting to cross-examine the witness upon an immaterial

1 matter; attempting to impeach him upon an immaterial matter;
2 attempting to impeach him without laying any foundation as
3 to time, place and persons present.

4 THE COURT: I think we are getting pretty far afield on that
5 question, gentlemen. Objection sustained.

6 MR ROGERS: When we get into politics we are very rarely
7 able to prove directness. One of the elements of politics,
8 particularly municipal politics, and particularly the branch
9 of municipal politics that relates to liquor licenses, we
10 are almost never able to arrive at it directly. We have to
11 do it kind of as it is originally done, by getting under
12 cover a little bit. I suppose if your Honor sustains the
13 objection I can put it in another way.

14 THE COURT: Objection sustained.

15 MR ROGERS: Well, what did you talk with Hawley about, anyhow,
16 along about that time?

17 MR FREDERICKS: Objected to upon the ground that it assumes
18 a fact not in evidence.

19 THE COURT: Objection overruled.

20 A What did I talk to Mr Hawley about?

21 MR ROGERS: Along about that time, when he brought Harriman
22 in and other times along about then? A I couldn't really
23 tell you any of the conversation.

24 Q Well, the matter uppermost in your mind at the time you
25 used to converse with Harriman and Hawley was getting your
26 license matter straightened out, wasn't it? A Well, I don't

1 know.

2 Q Well, that was the matter? A Might be that Mr Hawley
3 may have suggested to me, for all I can remember.

4 Q Maybe he might? A Maybe he might.

5 Q And when he might have suggested to you that maybe you
6 could get your license back if you supported Harriman,
7 and then when he found you were not going to, and that you
8 were going to get your license back the other way, you
9 don't think he got it in his head that maybe you had made a
10 little deal, too?

11 MR FREDERICKS: That is objected to as assuming a fact not
12 in evidence, that he ever got his license back or that he
13 didn't support Harriman.

14 MR ROGERS: I don't mean get his license back. I mean
15 getting permission to go back there and have charge of his
16 place.

17 MR FORD: Objected to upon the further ground it calls for
18 a conclusion, on the part of this witness, what Hawley might
19 have thought.

20 THE COURT: I think it is. Objection sustained.

21 MR DARROW: That is the only question in it. What Mr Hawley
22 thought. No claim that this man ever made any direct state-
23 ment to Mr Hawley.

24 MR FORD: Hawley said so.

25 MR DARROW: Hawley didn't say so.

26 THE COURT: How can this witness testify as to what Mr Hawley
thought?

1 MR DARROW: The question is whether anything was said from
2 which he might draw the inference. There is no claim that
3 this witness made any direct statement to Mr Hawley.

4 THE COURT: I don't think this witness can testify to what
5 Mr Hawley may have thought or may not have thought.

6 MR ROGERS: Now, Mr Levy, you kind of supported Harriman
7 for awhile, and then the last six or eight days in the cam-
8 paign you supported Alexander, isn't that so?

9 MR FREDERICKS: Objected to upon the ground it is immaterial,
10 incompetent and unfair.

11 MR ROGERS: I don't want to be unfair. Why unfair?

12 MR FREDERICKS: Unfair to require Mr Levy to state who he
13 supported. We have an Australian ballot for the purpose
14 of permitting a man to vote for whom his conscience dic-
15 tates, and not to be trammelled or exposed in any way to any-
16 one else.

17 THE COURT: Objection overruled.

18 MR FORD: The election law provides he shall not be interro-
19 gated.

20 THE COURT: The question doesn't ask him how he voted; asks
21 him who he supported.

22 MR ROGERS: Answer it, Mr Levy. A Why it is six of one
23 and half a dozen of another. I stated before I didn't mix in
24 politics. I don't remember whether I told any of my friends
25 who I was going to support or who I was not going to support.

26 Q You don't know that you did? A I didn't think I did.

1 in fact I am almost positive I didn't.

2 Q - Did some of those who were representing you do it?

3 MR FORD: We object to that as calling for hearsay, incompe-
4 tent, irrelevant and immaterial, and not cross-examination.

5 MR FREDERICKS: Assuming that anyone represented him.

6 THE COURT: Objection sustained.

7 MR ROGERS: Isn't it a fact that you contributed indirectly,
8 not directly, but indirectly some money to the fund which
9 was subsequently used for the election of Mayor Alexander?

10 MR FORD: Objected to as incompetent, irrelevant and
11 immaterial and not cross-examination.

12 THE COURT: Objection overruled. A Not one solitary cent.

13 MR ROGERS: Didn't the place down there contribute to the
14 fund of the Royal Arch, which fund was used for the election
15 of Mayor Alexander on election day.

16 MR FREDERICKS: That is not a fair question. Which fund was
17 used, is a statement of Mr Rogers, and the question to the
18 witness is, "didn't your place contribute to the Royal Arch".
19 We object to the question upon the ground it is compound.

20 THE COURT: Objection overruled. Answer the question.

21 A We are members of the Royal Arch, have been for many
22 years. What they do with the money I do not know.

23 MR ROGERS: You know the Royal Arch supported Mayor Alexan-
24 der the last six days, don't you, Mr Levy, and it did not
25 support him before the last six days?

26 MR FREDERICKS: Objected to upon the ground that it has
already been answered. He says, What the Royal Arch did LIBRARY

1 I do not know.

2 THE COURT: Objection overruled.

3 A What is that question again?

4 (Last question read by the reporter.)

5 A I don't know anything what the Royal Arch did, before
6 or afterwards, sir.

7 MR ROGERS: Weren't you in consultation with Tom Thompson
8 and Charley Last and Tom Rulo along about that time?

9 MR FREDERICKS: Objected to upon the ground that it is
10 indefinite and immaterial.

11 MR ROGERS: Tom Rulo is a district deputy of the Royal Arch.
12 Tom Thompson is what you might call President of the Royal
13 Arch and General Last is a big gun in the Royal Arch.

14 MR FREDERICKS: Those may be statements of counsel; not
15 evidence, it is not material.

16 THE COURT: Objection overruled.

17 MR FORD: The Court please, this witness has already testi-
18 fied he didn't know what the Royal Arch was doing.

19 MR APPEL: He was in consultation with them.

20 MR FREDERICKS: He might have been in consultation with them
21 about the price of beer.

22 THE COURT: Counsel has a right to know, under the circum-
23 stances presented here.

24 A The question, I understand, is that I was in consulta-
25 tion with those four gentlemen that you mention?

26 I was not.

1 MR ROGERS: Or any of them? A I was not, sir.

2 Q . Not during the last part of the campaign at all?

3 A No, sir.

4 Q Nor any part of the campaign? A Nor any part of the
5 campaign.

6 MR ROGERS: That is all.

7 MR FREDERICKS: That is all.

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9 THE COURT: While we are waiting, as the time of argument
10 is approaching, I have instructed the bailiff in view of
11 the fact that a number of members of the local bar of this
12 city have signified a desire to be present, that the seats
13 within the rail during the argument will be entirely set
14 aside for the attorneys. They have been used by friends
15 of the defendant, but the lawyers of the city have some
16 rights in the courtroom that must be regarded. Now the
17 defendant has any friends he wants to be present, as he has
18 had at different times, that requires more additional
19 reserved seats for that purpose, they will be procured.
20 His friends will be taken care of in that way.

21 MR APPEL: Any members of our families are to be excluded,
22 your Honor?

23 THE COURT: No sir, members of your family will be given a
24 seat in the regular audience room.

25 MR DARROW: Your Honor, I had a conversation with you a while
26 ago and on the strength of that I gave out some tickets.

1 THE COURT: And those people will all be taken care of with
2 those extra reserved seats.

3 MR ROGERS: No chance of all being seated, any how. If
4 one-tenth of the people come that want to come --

5 THE COURT: I feel that the seats belong to the lawyers,
6 they have called for it and have asked for it and requested
7 it be reserved. I think it is only proper to recognize
8 the rights of the bar.

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1 H O N. W A L T E R B O R D W E L L,
2 called as a witness on behalf of the prosecution in
3 rebuttal, having been firstly duly sworn, testified as follows

4 DIRECT EXAMINATION.

5 MR. FREDERICKS: Q State your name? A Walter Bordwell.

6 Q Where do you live? A In Los Angeles, California.

7 Q What is your occupation? A I am one of the 12
8 Judges of the Superior Court of the State of California in
9 the County of Los Angeles.

10 Q State whether or not you were the judge who presided
11 over the McNamara case on the trial last year? A I am.

12 Q Did you during that trial meet a man by the name of
13 Lincoln Steffens? I do not mean meet him for the first
14 time but did you meet him? A I did.

15 Q You remember--the record shows here, Judge, that the
16 pleas of guilty were entered in the case of J B and
17 J J McNamara on December 1st, which was Friday, the day
18 following Thanksgiving. Calling that to your attention,
19 when did you first see Mr. Steffens in the court room or
20 anywhere in Los Angeles prior to that time? A On Thursday
21 the 23rd day of November, 1911.

22 Q Just one week before Thanksgiving? A Yes, sir.

23 Q And state whether or not--state how many times you saw
24 him to converse with him before the 1st of November--1st of
25 December? A Three times.

26 Q And was one of them the 23rd, November 23rd, Thursday?

1 A yes, sir .

2 Q When was the next time? A The following day .

3 Q And when was the next time? A It was the fore part of
4 the following week .

5 Q Monday, Tuesday or Wednesday? A yes, sir .

6 Q Did you at any time discuss with Lincoln Steffens the
7 question of the McNamaras pleading guilty?

8 MR. ROGERS. That is objected to as not having the proper
9 foundation laid, incompetent, irrelevant and immaterial and
10 not rebuttal. If it is impeachment, Mr. Steffens was en-
11 titled to have the language, the time, circumstances and
12 persons present presented to him, and as nearly as may be,
13 entitled to have an impeaching question put to him. This
14 is merely collateral, if your Honor please, so far as the
15 rebuttal is concerned, and so far as the defendant is con-
16 cerned. Collateral to the main issue, and they having
17 interrogated him upon it in cross-examination of Mr. Steffens
18 they are bound by his answers, unless it is under the
19 most--under the widest stretch of the rule, unless it be
20 by way of impeachment, when the impeachment must be estab-
21 lished the foundation must be shown.

22 MR. FORD. If the court please--

23 THE COURT. Objection overruled.

24 MR. ROGERS. Exception .

25 MR. FREDERICKS. Read the question .

26 (Last question read by the reporter.)

1 A Prior to their plea, do you mean?

2 Q Prior to their plea? A I did not.

3 Q Where was the first meeting you had with him on the
4 23rd? A In the court room in this building, immediately
5 southerly of the room we are now in, on the same floor as
6 this.

7 Q During the intermission or noon recess sometime?

8 A 12 o'clock, as court adjourned.

9 Q Was anything said by either of you at that time in
10 regard to the McNamaras pleading guilty? A No, sir.

11 MR. APPEL. Wait a moment?

12 A I beg your pardon.

13 THE COURT. Strike out the answer.

14 MR. APPEL. We object upon the ground it is incompetent,
15 irrelevant and immaterial; it is an attempt to contradict
16 the witness Steffens on a collateral matter, and it is not
17 binding upon the defendant, as to what conversations his
18 Honor had with Lincoln Steffens, not in the presence of the
19 defendant; a matter which was introduced on a part of the
20 defense in so far as the actions of Mr. Steffens was only
21 for the purpose of showing the state of mind of the defend-
22 ant at a period of time when it was claimed by the prosecu-
23 tion that he had a propensity and motive for committing
24 a crime; the declarations of Mr. Steffens were only put
25 in evidence as explanatory of his action, and simply showing
26 what communications he made to the defendant; communications

1 and acts of Mr Steffens, that acted upon the mind of the
2 defendant; that in other respects any declarations made
3 by Mr. Steffens or by his Honor, Judge Fordwell, to him,
4 are hearsay. That whether it was a fact that they discussed
5 the matter in question involving the question here is
6 immaterial; it is only what Steffens reported to Mr. Darrow
7 that is material, therefore, it is collateral to any issue
8 in this case and not rebuttal. It is an attempt to impeach
9 or contradict a witness upon a collateral matter, therefore,
10 it is improper to admit the evidence. Should not be
11 admitted.

12 THE COURT. Objection overruled. The answer is restored.

13 MR. DARROW. In addition to that, your Honor, the question
14 has already been answered. This witness said that he had
15 no talk with him about it before they plead guilty.

16 MR. FREDERICKS. We are now going into details. Now, the
17 next time--that meeting was in the court room? A Yes, sir.

18 Q At adjournment? A yes, sir.

19 Q The next time you met him was where? A The following
20 day, I went to luncheon with him at the Nadeau Cafe.

21 Q And had lunch with him? A Yes, sir.

22 Q Was the question-- that was Friday the 24th of November?

23 A Yes, sir.

24 Q Was the question of the McNamaras pleading guilty dis-
25 cussed by either of you at that time?

26 MR. Appel. Wait a moment--we object to that upon each and

1 all of the grounds stated in our objection to the last
2 objection made before, and for each and all of the
3 reasons stated insaid objection, without repeating the
4 same.

5 THE COURT. It will be so understood. Objection overruled.
6 MR. Appel. We take an exception.

7 A Read the question.

8 (Last question read by the reporter.)

9 A It was not.

10 MR. FREDERICKS. Q The next meeting you had with him
11 was either Monday, Tuesday or Wednesday of the next week,
12 you say? A Yes, sir.

13 Q Where was that meeting? A In my chambers.

14 Q Here in the Hall of Records? A Yes, sir, the chambers
15 adjoining the court room in which the case was being
16 tried and to which I referred a moment ago. The meeting
17 really took place--it was in the chambers, yes, that is so.

18 Q Have you any--are you able to say whether it was Monday,
19 Tuesday or Wednesday? A Not without unqualified assurance.

20 Q Do you remember Tuesday whether there was any court that
21 day or not, or that morning? A There was court that
22 morning but no session in the McNamara case. The time
23 from 9 until 11 o'clock of that morning, or possibly a little
24 was occupied by the court in hearing excuses offered by
25 veniremen, who had been summoned to appear that morning
26 at 9 o'clock to act as jurors.

1 Q I believe the record shows and has been introduced
2 in evidence here, there was a session of court in the after-
3 noon? A My recollection is that there was, yes, sir.

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1 Q Very well, then. A If it is permissible, I am
2 inclined to qualify my answer in some degree as to which
3 of those days. I think that incident took place, by stating
4 one of the days on which I am satisfied it did not take
5 place, as I now think it over.

6 Q What day was that? A Tuesday.

7 Q Then it was either Monday or Wednesday? A Yes sir.

8 Q That conversation you say was in your chambers?

9 A Yes sir.

10 Q What did he say and what did you say?

11 MR DARROW: Your Honor, to that we object. This question
12 could only be for the impeachment of Mr Steffens, and the
13 exact question must be put to him the same as any other
14 witness. It must be very evident, a conversation which
15 might be injurious or might not between a third person and
16 this witness could not possibly be introduced. He could
17 only be impeached, if there is an exact foundation put to
18 Steffens, and then that question must be put to this witness,
19 the same way.

20 MR ROGERS: Wait a moment, let's put that objection in a
21 legal way.

22 MR APPEL: We object to the question and to the evidence
23 sought to be introduced by the question on the ground it
24 is incompetent, irrelevant and immaterial and hearsay,
25 and not rebuttal, and attempting to contradict, if at all,
26 the witness Steffens, upon a collateral matter; not binding

1 upon the defendant, and it is an attempt to introduce hearsay
2 evidence against this defendant, and if it is for the pur-
3 pose of impeachment, the time, place and circumstances,
4 and the exact language used in the conversation, is not
5 called to the attention of Mr Steffens on the witness stand,
6 therefore no foundation has been laid, if it is an attempt
7 to impeach him, or contradict him on anything testified to.

8 MR FORD: Now if the Court please, section 2051, provides
9 for one method --

10 MR APPEL: Wait a moment. The foundation also lacks -- the
11 foundation is also lacking in that it does not appear from
12 the conversation or from the evidence or from the question,
13 that anything that was said between Judge Bordwell, if at all
14 upon the day mentioned in question, was ever communicated
15 to the defendant, or that he acted upon that or in reference
16 to it; that there is no evidence here upon the part of Mr
17 Steffens or any one, that this communication -- conversa-
18 tion between him and Judge Bordwell upon that day was ever
19 communicated to the defendant, therefore it would be im-
20 material in any event at any stage of the case, either for
21 or against him.

22 THE COURT: Objection overruled.

23 MR APPEL: Take an exception.

24 A Read the question. (Last question read by reporter.)

25 A When I came back, at the expiration of the luncheon
26 period of that day, I found him just outside of the room

1 that I was occupying then as my private chambers. He
2 accosted me there and requested permission to speak with me,
3 and I admitted him in to the room. He said there was a
4 matter he wished to speak to me about, and I told him it was
5 2 o'clock and I should convene court at once, and he would
6 have to speak very quickly. It was 2 o'clock. He said he
7 had been talking to Meyer Lissner and Tom Gibbon and some
8 others about settling this case without the loss of life,
9 and dismissing all others. He got that far and I stopped
10 him. Told him he couldn't talk to me about the matter.
11 He said that he realized that he probably ought not to
12 do so, it was a delicate matter, arose to his feet and
13 started for the door, inquiring, however, if he might come
14 back again, and I said no, he couldn't. He left then.

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Alp 1 Q And did you have any other conversation with him or
2 conversations with him on that or any other subject than
3 you have narrated here, prior to the time when these two
4 men had plead guilty? A I did not.

5 MR. FREDERICKS. Cross-examine.
6

7 CROSS-EXAMINATION.

8 MR. ROGERS. Q Did you ever meet him down at your club?

9 A Not prior to the first of December.

10 Q Did you ever meet him at the Alexandria? A Not prior
11 to the first of December.

12 Q I am not asking you that, sir, I am asking you if you ever
13 met him at your club or if you ever met him at the Alexandria.

14 MR. FREDERICKS. Then I object to it on the ground it is
15 not cross-examination.

16 MR. ROGERS. Why shut me off?

17 MR. FREDERICKS. Because the only matter I asked this
18 witness about was the time up to the time that these
19 men plead guilty, after that it is a matter of no interest.

20 MR. ROGERS. Possibly it would even test his recollection.

21 THE COURT. Objection sustained.

22 MR. APPEL. Why, your Honor, let us not cite authorities,
23 let us cite the incident of Mr. Darrow being upon the stand
24 and he was allowed the other side to ask him whether or
25 not at any time or place than that mentioned by Harrington
26 in his direct examination, whether or not Mr. Darrow and he
had had conversations at the Hayward concerning the subject,

1 subsequent to that conversation which Mr. Darrow denied.

2 Now Judge Bordwell is upon the stand. I don't know any-
3 thing about the evidence, but if Judge Bordwell made any
4 declarations subsequent to the first day of December, any
5 where else in which he ever made any admission that he had
6 had some conversation with Mr. Steffens prior to the first
7 day of December, isn't it cross-examination.

8 THE COURT. Is that your purpose in asking?

9 MR. APPEL. I imagine it, I don't know, your Honor.

10 MR. ROGERS. It is at least preliminary.

11 MR. APPEL. I don't know, but I imagine that would be the
12 only object.

13 THE COURT. It might be preliminary to such a statement, I
14 grant you, upon that theory you can have the question,
15 but the examination in chief was confined to three
16 different conversations.

17 MR. FREDERICKS. And confined to a time--

18 THE COURT. And, of course, the cross-examination as cross-
19 examination must be confined to these three examinations,
20 unless for the purpose indicated. Read the question.

21 (~~Last two~~ questions and answer read.)

22 A I did.

23 Q How many times did you meet him at the California Club?

24 A Once.

25 Q And how many times did you meet him at the Alexandria
26 hotel? A Once.

1 Q Did you see, before it was published, any portion of
2 his article relating the facts and circumstances of the
3 plea of guilty? A He read it to me.

4 Q Did you suggest alterations and corrections therein?

5 A I did.

6 Q I show you Defendant's Exhibit N, and I will ask
7 you if that is the article which he showed you or read
8 you and in which you suggested alterations or corrections?

9 MR. FREDERICKS. That is a published article, I suppose?

10 MR. ROGERS. Yes, that is the one I read.

11 MR. FORD. What exhibit is it?

12 MR. ROGERS. N, I think.

13 THE COURT. I presume it will be necessary for the witness
14 to read that over before answering the question. It lacks
15 a moment of adjournment.

16 A If that is the article which appeared in the Express the
17 following day--

18 MR. ROGERS. It has been so testified.

19 A I am prepared to answer the question.

20 MR. ROGERS. Yes, sir, it has been so testified.

21 MR. FREDERICKS. It is.

22 A Read the question again.

23 (Question read.)

24 A It is.

25 MR. ROGERS. Q Were the corrections and alterations which
26 you suggested made? A They were not.

1 Q They were not. Where was that that it was shown
2 you, at the Alexandria or at the California Club?

3 MR. FREDERICKS. That is objected to upon the ground it
4 is assumed it was ever shown to him. He says it was
5 read to him.

6 Q I beg your pardon, I misused the word, read to you?

7 A At the California Club.

8 Q Was it in process of preparation then or completed?

9 A It was completed.

10 Q Was Mr. Steffens at the California Club at your request?

11 A No.

12 Q Was he at your room at your invitation or request?

13 A After he came to the club I invited him to my room.

14 Q After he came to the club you invited him to your
15 room, and when was that? A That was about half past nine,
16 Friday evening, December 1, 1911.

17 Q When was it you met him at the Alexandria? A Monday
18 morning.

19 Q The succeeding Monday morning? A Yes, sir, that would
20 be the 4th day of December, 1911.

21 Q You went there to see him, didn't you? A No, sir.

22 Q Did you have it in mind you would see him when you
23 went there? A No, except as a possibility.

24 Q As a possibility. Well, then, having it in your mind
25 as a possibility, that you might see him, you went to the
26 Alexandria? A No, sir.

1 Q Did you have other business there? A I was passing by
2 there and went in.

3 Q For what purpose? A Just to go through the lobby,
4 thinking perhaps I might meet the gentleman.

5 Q In hopes you might meet the gentleman, then you had
6 it in view to see him when you passed through the lobby?

7 A If I should happen to meet him, yes.

A2p 8 Q And you did happen to meet him? A I did.

9 Q Did you go to his room? A I did not.

10 Q Where was your conversation with Mr. Steffens when
11 you happened through the lobby of the Alexandria and chanced
12 upon him, if I may so say? A Read the question.

13 (Question read.)

14 A In the lobby of the Alexandria.

15 Q Any person there present besides you two, I mean not
16 the passersby or those who stand about there, but those
17 who were present at the conversation itself? A No person.

18 Q Who was with him at the California Club when you saw
19 him and invited him to your room? A No person.

20 Q Was he there as a guest of any one that you knew?

21 A No, sir.

22 Q And when you say you invited him to your room, you mean
23 your lodging quarters, do you not? A Yes, sir.

24 Q Did you know he was going to be in the club? A Yes,
25 sir.

26 Q How did you know? A He telephoned ^{me} ~~she~~ was coming.

1 Q And thereupon you met him in the guest quarters of your
2 club and took him to your private room? A Yes, sir.

3 Q What time did he telephone you he was coming? A Tele-
4 phoned me first about half past five and then again
5 about half past eight or a quarter of nine.

6 Q The subject under consideration at the California Club
7 was the matter of the article which he had prepared, con-
8 cerning the McNamaras? A It was.

9 Q Anything else? A No, not specifically; incidentally
10 probably some matters were talked about.

11 Q What was the first time that you met him, were you intro-
12 duced to him or he to you, rather? A No, sir.

13 Q Did he seek your acquaintance? A No, sir.

14 Q Did you seek his? A I sought his. I sought to meet
15 him at that time, I knew him before.

16 Q You sought to meet him, you called him up to your bench
17 or into your chambers? A No, I spoke to Mr. parrow and asked
18 him where Steffense was and he says, "He is right here."
19 I says, "Bring him up", and he brought him to me at the
20 chambers door in the court room, by the jury box.

21 Q Then the second meeting that you have spoken of, was
22 that where you went down to the Nadeau and took what
23 they call luncheon down there? A I took a luncheon.

24 Q I was merely joshing the restaurant, I had occasion to
25 take luncheon there myself, but what I was getting at was,
26 at whose invitation or suggestion was it, your going down

1 there to therestaurant? A At the suggestion and invitation
2 of Mr. Steffens .

3 Q You were his guest, then, on that occasion? A yes, sir ;
4 I was .

5 Q Was the McNamara case or any aspect of it, by any per-
6 adventure, referred to during that luncheon? A I think it
7 was .

8 MR. ROGERS. Unless I have some other or further questions
9 to be asked, in which case I will notify Judge Bordwell,
10 that is all.

11 THE COURT. That is all.

12 MR. ROGERS. Just one question, sir. Q I call your at-
13 tention to the Evening Herald of Friday, December 1st.

14 MR. FORD. Is that in evidence?

15 MR. ROGERS. No, I showed it to Captain Fredericks.

16 MR. FREDERICKS. What part of it do you want to call his
17 attention to? Part of the article there that counsel
18 has is erased.

19 MR. ROGERS. Not part of the article, not at all--

20 THE COURT. Is this outside of the record, gentlemen?

21 MR. ROGERS. Yes, we were joking about it.

22 Q Did you write that interview with Mr. Fredericks headed,
23 "We have known this two weeks," dated December 1st, 1911?

24 MR. FREDERICKS. That is objected to as incompetent, irre-
25 levant and immaterial, not cross-examination, and an assump-
26 tion that it was an interview, which is very violent and not

1 in evidence.

2 MR. FORD. And an incorrect interview.

3 MR. ROGERS. Preliminary, entirely.

4 MR. FREDERICKS. It is called an interview with me and I
5 claim it is not an interview with me, at least, it doesn't
6 appear here to have been one.

7 THE COURT. Objection sustained.

8 MR. ROGERS. Q Did that interview, headed as I have
9 indicated, "We have known this two weeks, says Fredericks "
10 did that ever come to your observation either before you
11 saw Mr. Steffens on the first or during that evening?

12 MR. FREDERICKS. We object to that on the ground it is not
13 cross-examination, immaterial, hearsay, no foundation laid.

14 MR. FORD. An attempt to impeach the witness by an incorrect
15 report of what somebody else did not say.

16 MR. ROGERS. Incorrect report--

17 MR. FREDERICKS. Yes, it is. I wrote right across the
18 report, "It is not correct."

19 MR. ROGERS. Not until--

20 THE COURT. Let us see, gentlemen, ^{if} this is cross-examination
21 Read the question.

22 (Question read.)

23 MR. ROGERS. It is cross-examination as to what happened
24 that evening.

25 THE COURT. It is cross-examination as to what happened that
26 evening. I think it is proper. Objection overruled.

1 A I don't remember that I noticed it, I might have done
2 so.

3 MR. ROGERS. Q Isn't it a fact, at the time that Mr.
4 Steffens came there with that article prepared and read to
5 you on the night of December 1st, that he had the evening
6 papers and that this interview with Mr. Fredericks was dis-
7 cussed between you and referred to?

8 MR. FREDERICKS. That is objected to--

9 A This was neither referred to--

10 MR. FREDERICKS. --that is objected to as assuming that
11 it is an interview with Mr. Fredericks when it is not an
12 interview with Mr. Fredericks.

13 MR. APPEL. Purports to be.

14 THE COURT. Does the question say what it purports to be?

15 MR. FORD. I suggest to counsel that he hold the paper in
16 a way that the jury cannot look at it until it is intro-
17 duced.

18 MR. ROGERS. I will tell you what I will do, I will put
19 it under my coat.

20 MR. FORD. Just a little bit of care, you know.

21 THE COURT. Objection sustained upon the ground stated
22 by Captain Fredericks.

23 MR. ROGERS. What is that?

24 THE COURT. Assuming that the interview referred to was an
25 interview. You can have the question if you want to say,
26 "Purported interview." The way it is here, it is an inter-

1 view.

2 MR. ROGERS. Possibly he would not mind going on the
3 stand and testifying about it.

4 MR. FORD. There is no necessity until there is some
5 evidence there was such an interview.

6 MR. APPEL. You have told in the presence of the jury
7 it was not.

8 THECOURT. gentlemen, it is after 12 o'clock and Judge
9 Bordwell has court at 2. I suggest that you ask any fur-
10 ther questions.

11 MR. ROGERS. I do not think I will ask him anything
12 further, your Honor.

13
14 REDIRECT EXAMINATION .

15 MR. FREDERICKS. Q Just one question. Mr. Rogers asked
16 you if you discussed at this luncheon, if the McNamara
17 case was discussed between you and Mr. Steffens and you said
18 it was. He didn't ask you what was said and I now ask
19 you what was said. A He did not ask me if it was dis-
20 cussed and I didn't say it was.

21 Q Was any reference made to it? A The question Mr
22 Rogers put to me, as I recall it, was whether or not by
23 any peradventure the McNamara case was referred to and I
24 said I thought it was.

25 Q You said it was. What was the reference?

26 MR. ROGERS. It is not redirect.

1 MR. APPEL. It is not redirect. The only object of the
2 witness being put upon the stand is to show what the ques-
3 tions propounded to him purport to be--

4 THE COURT. Objection overruled.

5 MR. APPEL. Let us put our formal objection. We object
6 on the ground it is not redirect, hearsay, it is not
7 rebuttal, upon the further ground if it is intended as
8 rebuttal it is rebuttal on a collateral matter and an
9 immaterial matter where rebuttal testimony is inadmissible,
10 and on the furtherground that no foundation has been laid
11 for the introduction of that statement.

12 THE COURT. Objection overruled.

13 MR. APPEL. We except.

14 A Mr. Darrow referred--

15 MR. FREDERICKS. Q Mr. Steffens, you mean? A Mr. Steffens
16 said, in substance, "This case must be rather trying on
17 you, a good many ramifications to it?" I said, "No,
18 neither, I do not find it very trying. To me the case is
19 nothing different from any other case, it is just the same
20 as any other murder case, that is all there is to it. "
21 nothing else was said about the case at that time.

22 MR. FREDERICKS. That is all.

23
24 RE-CROSS-EXAMINATION.

25 MR. ROGERS. Q You mean to say, Judge Bordwell, that you
26 told him that the McNamara case presented no difficulties

1 and it was not hard to try, that all the aspects of it
2 were easy and it came and went out just like an ordinary
3 law suit? A Not at all, Mr. Rogers, and I didn't so
4 express myself to Mr. Steffens and he didn't so understand
5 me.

6 MR. ROGERS. That is all.

7 THE COURT. That is all. (Jury admonished.) The court
8 will now adjourn until 2 o'clock this afternoon.

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