

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California, )

Plaintiff, )

vs. )

No. 7373.

Clarence Darrow, )

Defendant. )

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REPORTERS' TRANSCRIPT.

VOL. 8

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Bert H. Franklin	545	599		

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## AFTERNOON SESSION.

2 o'clock p.m., May 31, 1912.

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

THE COURT: The jury are all present, gentlemen. Are you ready to proceed?

(Last question read by the Court).

THE COURT: The objection is overruled.

MR APPEL: We except.

THE COURT: Answer the question.

A Mr Fredericks made the remark that Mr Pridham, a member of the Board of Supervisors, was present by accident, and that he would ask him to stay.

MR FORD: Just a moment, if the Court please, I think probably my question will call for something that was not in furtherance of a conspiracy, and for that reason be inadmissible.

THE COURT: Do you want to withdraw the question and strike out the answer?

MR FORD: I think the objection of counsel is well taken. I withdraw the question.

THE COURT: All right. Strike out the answer in so far as it has been given.

MR FORD: Did you ever have a conversation with the defend-

1 ant, Mr Darrow, in reference to what had happened on the  
2 morning of the 28th of November, 1911, either at the office  
3 of the District Attorney or elsewhere?

4 MR APPEL: Wait a moment. We object upon the ground that  
5 it is incompetent, irrelevant, immaterial and hearsay; in-  
6 admissible, no foundation laid, and calling for declarations  
7 with a party after the time when those declarations are not  
8 admissible in evidence under the rule of law.

9 THE COURT: Overruled.

10 MR APPEL: We except.

11 A As to just what took place on the 28th day of November?

12 MR FORD: That is to what the question is directed to at  
13 the present time. I will withdraw that question. When did  
14 you next meet Mr Darrow after your arrest? A About 3:30  
15 o'clock p.m. on the 28th day of November, 1911.

16 Q Now, I think the last time you had seen Mr Darrow  
17 previous to that -- withdraw the question as leading. When  
18 was the last time you had seen Mr Darrow before that after-  
19 noon of the 28th? A On the morning, at about 9:15 o'clock.

20 Q Where? A On Main Street, between Second and Third, in  
21 this city.

22 Q With reference to the time of your arrest when was it?

23 A Right at the time.

24 Q Where was Mr Browne at that time, Samuel L Browne, of  
25 the District Attorney's office? A At the time of my ar-  
26 rest?

1 Q Where was Browne when Darrow came across the street  
2 and said to you, "They are onto you, Bert"? A Immediately  
3 following that he was facing me.

4 Q That is, Mr Browne immediately after that faced you?

5 A He was facing me, yes sir. I turned partially around.

6 Q Where was he when that remark was made? A I don't  
7 know. I didn't see him.

8 Q Immediately afterwards, how long a time; can you ex-  
9 press it in minutes or seconds? A About one second.

10 Q When you left Third and Main Street and came up to  
11 the office of the District Attorney -- when you left the  
12 corner of Third and Los Angeles Street, preceded up Third  
13 Street to Main and around Main to the place where you were  
14 arrested, did you at any time look back of you? A No sir,  
15 I did not.

16 Q Will you read that last question and answer?

17 (Last question and answer read by the reporter)

18 Q Did you at any time while Mr Lockwood was with you  
19 look back?

20 MR ROGERS: That has been asked and answered. He said he  
21 didn't look back at all.

22 THE COURT: Objection sustained.

23 MR FORD: Withdraw the question. Now, where was it you  
24 saw Mr Darrow in the afternoon, on the afternoon of the 28th?

25 A At my office first.

26 Q In the Chamber of Commerce Building? A Yes sir.

1 Q Who was present? A Mrs. Franklin, Mr Darrow -- I think  
2 Judge McNutt and myself. There was another person with us,  
3 but whether it was Judge McNutt or not I am not certain, but  
4 I think it was.

5 Q You don't know whether it was Judge McNutt? A No sir,  
6 I am not sure.

7 Q State what was said and done at that time between you  
8 and the defendant?

9 MR APPEL: We object to that upon the ground it is incompe-  
10 tent, irrelevant and immaterial, and hearsay and no founda-  
11 tion laid .

12 MR FREDERICKS: Declarations of the defendant, your Honor.

13 THE COURT: Overruled.

14 MR APPEL: We except.

15 A Mr Darrow asked me how I felt. I told him "all right".  
16 He asked me if I felt sore towards him, and I said "no", and  
17 he said he would see me later and left. That is about all  
18 of the conversation that took place at that time to the best  
19 of my recollection.

20 Q When next did you see Mr Darrow? A I think -- I am  
21 quite sure it was the next day.

22 Q On the day of your arrest, Mr Franklin, you was taken  
23 into -- withdraw the question -- into what Court were you  
24 taken, if any?

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26

- 3p 1 A What is the question?
- 2 MR. FORD. Read the question.
- 3 (Question read.)
- 4 A Township Justice Young, of this township.
- 5 Q State whether or not you were released at that time, and
- 6 if so, in what manner?
- 7 MR. APPEL. We object to that on the ground it is incompetent-
- 8 irrelevant and immaterial, hearsay.
- 9 MR. FORD. Merely preliminary.
- 10 THE COURT. Objection overruled.
- 11 MR. APPEL. We except.
- 12 A I was released upon a bail bond of \$10,000.
- 13 Q Bail bond? A Yes, sir, that is what I would call it.
- 14 I was released upon the depositing of \$10,000 in cash for
- 15 my appearance.
- 16 Q It was cash instead of a bond? A Bail bond, yes.
- 17 Q Who put up that \$10,000 in cash at that time?
- 18 MR. APPEL. The same objection.
- 19 THE COURT. Objection overruled.
- 20 A Le Compte Davis.
- 21 Q BY MR. FORD. In what form was that money deposited by
- 22 Mr. Davis, if you know? A It was in packages of--
- 23 Q State what it was-- A --currency.
- 24 Q Packages of currency? A Yes, sir.
- 25 Q Now, returning to the time that you met Mr. Darrow at the
- 26 Alexandria, you stated that he attracted your attention

1 to the name of Kruger? A Yes, sir.

2 Q Who lived at the Palms. Were you personally acquainted  
3 with Mr. Kruger? A Yes, sir.

4 Q How long had you known him? A A number of years--I  
5 don't remember exactly.

6 Q Had you ever discussed Mr. Kruger, either specifically or  
7 generally with Mr. Darrow at any time prior to that day?

8 MR. APPEL. We object to that as incompetent, irrelevant and  
9 immaterial; no foundation laid for the introduction of  
10 this evidence; outside of the issues, purely collateral  
11 matter.

12 MR. FORD. Mr. Kruger's name appears on the venire which has  
13 been introduced in evidence as a person whose name was drawn  
14 as a juror, your Honor.

15 THE COURT. Yes. Objection overruled.

16 MR. APPEL. We except.

17 A I had.

18 Q State when and where was the first conversation you had  
19 in reference to that subject with Mr. Darrow, and what was  
20 said?

21 MR. APPEL. Just a moment. This evidence in respect to Mr.  
22 Kruger will be deemed objected to under the same objection  
23 just made, so as not to interrupt. MR. FORD. The same as the  
24 Bain objections.

25 THE COURT. The same objection, the same ruling, and excep-  
26 tion.

1 A Read that question, please. (Question read.) I  
2 cannot name the time, but the place was at his office.

3 Q Did you at any time after your employment by Mr. Darrow  
4 meet Mr. Kruger? A Yes, sir.

5 Q When and where? A I met Mr. Kruger on two different  
6 occasions.

7 Q When was the first occasion? A At a time previous to  
8 the time on which his name appeared on the venire, I don't  
9 know the date.

10 Q When was the second occasion? A On the night in which  
11 I got the paper from Mr. Darrow.

12 Q That was the 25th of November? A 25th day of November.

13 Q 1911? A Yes, sir.

14 Q About how long previous to that night was it when you  
15 made your first visit to Mr. Kruger? A I think in the  
16 neighborhood of 15 or --about 15 days.

17 Q In the daytime or at nighttime, your first visit?

18 A In the daytime.

19 Q Who was present besides yourself and Mr. Kruger? A No-  
20 body--Oh, nobody.

21 Q I think you stated that was at his home at the Palms?

22 A Yes, sir.

23 Q State what was said and done there between you and Mr  
24 Kruger at that time. A After passing the time of day  
25 with him--

26 MR. APPEL. Wait a moment. We object to that on the ground



1 it is incompetent, irrelevant and immaterial, hearsay,  
2 no foundation laid and collateral to any issue in this case;  
3 not within the issues set forth in the indictment herein.

4 MR. FREDERICKS. That is the same objection.

5 THE COURT. I expect the time is fixed, but I haven't  
6 it in mind.

7 MR. FORD- Yes, he stated that the second visit was on the  
8 night he had received the paper from Mr. Darrow, the 25  
9 of November, and that the first visit was about 15 days  
10 prior to that, as near as he could fix it, and in the day  
11 time, at the house of the juror, Mr. Kruger, at the Palms.

ete 1 THE COURT: Yes, I think that fixes the time and place.

2 Objection overruled.

3 MR APPEL: We except.

4 A Now, what is the question?

5 MR FORD: Read the question. (Question read)

6 A After passing the time of day, I asked Mr Kruger how  
7 long he had lived at his present residence. I have for-  
th 8 gotten the length of time he told me. I asked him how he  
9 was getting along and what he was doing. He told me that  
10 he was raising a few chickens and doing farming on a small  
11 scale. I asked him if he would like to be placed in a  
12 position whereby he could better his financial condition,  
13 and he said he certainly would. I asked him if at some  
14 future date I should wish to talk with him in regard to  
15 his services upon a certain jury, if he would allow me to  
16 do so, and he said that he would. That is about all of the  
17 conversation. I told him that at a later date I might call  
18 upon him and to keep what had been said between us a secret.

19 Q Did you at any time thereafter report to Mr Darrow what  
20 had passed between yourself and Mr Kruger? A Yes sir.

21 Q When and where? A On Monday morning, to the best of  
22 my recollection.

23 Q What Monday morning? A November 26th-- 27th.

24 Q Did you at any time prior to your second visit to Mr  
25 Kruger report your first visit to Mr Darrow? A Yes sir.

26 Q When and where? A At his office, but I don't recollect

1 the time.

2 Q Fix it as near as you can. A Well, it was immediately  
3 following the day that I visited there, whenever that was,  
4 within a day or two.

5 Q Who else was present? A I don't remember.

6 Q State what was said. A I told Mr Darrow that I had  
7 visited him, repeated the conversation as I have related it  
8 here, as near as I remember. Mr Darrow asked me his dispo-  
9 sition and what I knew about him, and I told him that I  
10 questioned very much if the District Attorney would keep him  
11 if he was called upon, and told him that the detectives --  
12 but Mr Kruger had told me that the detectives from the Dis-  
13 trict Attorney's office had arrested him for running a blind  
14 pig, and Mr Fredericks would probably challenge him on that  
15 account.

16 Q What, if anything, did Mr Darrow say in reply to that?

17 A I don't remember his reply.

18 Q Now, coming down to your second visit to Mr Kruger,  
19 when was that? A On the night of the 28th day of November.

20 Q Of what day? A On the night of the 25th day of Novem-  
21 ber.

22 Q I think you said the 28th at first? A Yes sir, I did.  
23 The 25th day of November.

24 Q Which is correct? A The 25th.

25 Q That was at night. Who else was present besides your-  
26 self and Mr Kruger? A Nobody.

1 Q What was said and done between you and Mr Kruger at  
2 that time?

3 MR APPEL: Same objection as before.

4 THE COURT: Overruled.

5 MR APPEL: We except.

6 A I told Mr -- I didn't see Mr Kruger that night; he was  
7 not at home.

8 Q And your previous statement that you had seen him that  
9 night -- A Is a mistake. I went to his residence on  
10 that night but he was not at home.

11 Q Did you see him at any time after that night? A Yes sir

12 Q When and where? A The next morning.

13 Q At what time in the morning? A At about 8 o'clock.

14 Q Who else was present besides yourself and Mr Kruger?

15 A Nobody.

16 Q To fix that date, that was Sunday morning, the 26th day  
17 of November, 1911? A Yes.

18 Q And at the Palms, in Los Angeles County? A Near the  
19 Palms, yes sir.

20 Q What was said and done between you and Mr Kruger at  
21 that time?

22 MR APPEL: The same objection; incompetent, irrelevant and  
23 immaterial; no foundation laid; hearsay and collateral to  
24 any issue in this case, and without the issues in this case.

25 THE COURT: Objection overruled.

26 MR APPEL: We except.

1 A I told Mr Kruger that I had returned to take up the  
 2 matter with him that I had spoken to him about upon a pre-  
 3 vious occasion, and asked him if he would accept \$500 in  
 4 cash, with the promise of \$3500 more at the conclusion of  
 5 the McNamara case, for his vote for an acquittal of J B Mc+  
 6 Mara. In answer to that he asked me a question --

7 Q Give us the question. A He asked me if I knew a cer-  
 8 tain man, and I told him that I did.

9 Q Did he name that man?

10 MR APPEL: Wait a moment.

11 MR ROGERS: The same objection as before goes to all of this.

12 THE COURT: Objection overruled. Go ahead and answer the  
 13 question.

14 A He did.

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1 MR. FORD. What was his name? A Am I compelled to give  
2 that name, your Honor?

3 THE COURT. Well, you are to answer any questions that  
4 are presented to you, except you claim the provisions of  
5 the statute which excuses you from answering on the  
6 ground that it may incriminate you.

7 A I don't claim any such exemption.

8 THE COURT. Then you will have to answer the question.

9 A Frank Fowler.

10 Q He asked you if you knew Frank Fowler? A He did.

11 Q What did you reply? A I told him I did, and asked  
12 him why.

13 Q Give the rest of the conversation. A Well, he said  
14 that Fowler-

15 MR. APPEL. Wait a moment--we want it specially remembered,  
16 your Honor, that this is objected to on all the grounds we  
17 have stated in our previous objection to this line of  
18 testimony, and it will be considered so?

19 THE COURT. Yes, sir-

20 MR. FREDERICKS. I do not think there is any doubt about  
21 that.

22 MR. APPEL. Exception.

23 A He then asked me if Mr. Fowler and myself were working  
24 both on the same side of the case. I told him I didn't  
25 know anything about what Mr. Fowler was doing or for whom he  
26 was working, and asked him what Fowler had said to him. He

1 told me that Mr. Fowler had requested him or asked him if  
2 he would be willing to act as a juror in the McNamara  
3 case, at the same time laying down upon the stand four  
4 matches, pointing to them and as he pointed to each one  
5 he said, "A thousand dollars."

6 MR. ROGERS. We move to strike out, if your Honor please,  
7 on the ground that this is the most remarkable and unique  
8 way to damn a man without giving him his day in court or  
9 a chance to be heard about it, in the mouth of a third  
10 person, that he is a jury briber, when he is not before  
11 the court and not indicted or anything else, a man that  
12 is a member of this bar, and been one of the best men at  
13 the bar. It is scandalous.

14 MR. FREDERICKS. We deny he is the best man before the  
15 bar.

16 MR. FORD. We will connect it.

17 MR. ROGERS. You will connect nothing.

18 MR. FREDERICKS. We submit, counsel has no right to make a  
19 statement that Mr. Fowler has been one of the best men  
20 before this bar, if there is any proof to that effect, there  
21 is a proper way to introduce it; as to whether or not the  
22 testimony of the witness is admissible. as under the rules  
23 of evidence in regard to the statement that Frank Fowler  
24 made it is, of course, a different question.

25 MR. FORD. Given as part of the conversation.

26 MR. ROGERS. Let us see where we are coming, sir. Mr. Kruger

1 is not on the stand--

2 MR. FORD. He will be.

3 MR. ROGERS. Yes, I know Kruger, all about him, too.

4 Kruger is not on the stand, Fowler is not on trial, and  
5 here Frank Fowler's name comes into this court room in the  
6 third degree hearsay--I will tell you, I wouldn't stand for  
7 it if I were Frank Fowler, I think it is an outrage upon  
8 common decency and upon our system of jurisprudence,

9 if a man like Frank Fowler can be damned out of  
10 the mouth of this man without a chance to be heard.

11 MR. FORD. The witness is relating a conversation had  
12 between him and A. K. Kruger--

13 MR. ROGERS. Yes, a blind pigging dutchman.

14 MR. FORD. --and the witness is not responsible for the  
15 facts of the conversation, he is not vouching one way or  
16 the other as to the statement made to him by Kruger  
17 being true, he is simply relating the conversation, he is  
18 not seeking to damn anybody, we are not seeking to damn  
19 anybody, we are simply trying to establish the guilt or  
20 innocence of this defendant.

21 THE COURT. What has this to do with this conspiracy, any  
22 more than if he talked about the weather?

23 MR. FORD. If your Honor please, we will show that this  
24 conversation Kruger had with Fowler is related to the same  
25 matter, covering the same subject and what transpired as  
26 a result of it. We will show that, if your Honor will hear



1 the whole of the conversation without being interrupted--  
 2 I do not want to lead this witness and I do not want to be  
 3 putting myself in any unfortunate position of being accused  
 4 even of leading the witness, but if the witness is allowed  
 5 to finish his answer then should be the time to strike it  
 6 out, and he can make it without being accused of my suggest-  
 7 ing anything to anybody.

8 THE COURT. Let us dispose of this question of being  
 9 interrupted. I do not want counsel on either side to be  
 10 interrupted, and as long as I have occupied any judicial  
 11 office it has been my custom, and it will be in this case,  
 12 to hear any lawyer on either side as long as he feels that  
 13 his duty to his client or to his cause calls upon him to  
 14 present a legal point that is before the Court, and I will  
 15 not permit any personalities to be exchanged, they have  
 16 no place in this courtroom and we have no time to waste  
 17 upon them. But, as long as counsel desires to present an  
 18 objection and he feels that it is his duty to his client  
 19 or his cause requires him to present it, I am going to  
 20 permit it.

21 MR. FORD. The objection was interposed and overruled, and  
 22 the witness is answering the question, and right in the  
 23 middle of it--

24 THE COURT. And counsel has moved to strike it out.

25 MR. FORD. But the witness has not finished his answer, and  
 26 before I have an opportunity of arguing as to the relevancy

1 of the whole of that answer, which I cannot do without  
2 leading this witness and tipping him off for what I want.  
3 MR. FREDERICKS. Another thing I want to call to the  
4 Court's attention, in order that we may get the Court's  
5 views upon the subject and in order that the Court may get  
6 ours. It is possible that neither side in this contro-  
7 versy is able to be fair, we see it from our side, and  
8 what we are objecting to in this matter, and what we have  
9 objected to, and I think I can make it clear to the Court,  
10 is this: We object to counsel at a time like this making  
11 an argument in regard to Frank Fowler, for instance, using  
12 that for an illustration, and stating that Frank Fowler is  
13 one of the most reputable men at the bar, and all that.

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te 1 Now, that is not proper. We do not want to have, <sup>to</sup> get up  
2 and say that Frank Fowler is not. He is not here to try  
3 those things, and counsel should not be allowed to say  
4 those things, and if he is permitted to say **them**, what must  
5 we do? We earnestly ask the Court not to permit counsel to  
6 make statements of that kind reflecting in any way upon the  
7 credibility of witnesses or others. Now, that is our posi-  
8 tion; I think it is a fair one, because we do not want to  
9 have to reply to them, and yet, if we do not reply to them,  
10 what shape are we in?

11 THE COURT: I trust if Mr Fowler is a member of the bar, he  
12 enjoys the reputation of being a reputable member, and any  
13 witness who appears here will be presumed to be a reputable  
14 person, the presumption is that way.

15 MR FREDERICKS: Why make an argument for this man. We cannot  
16 reply to it, we cannot make an argument and say Frank Fowler  
17 is not a reputable man, and I want to be square and represent  
18 the issue fairly, we must either do that or admit what counsel  
19 says is true.

20 THE COURT: The question is whether or not the statement here  
21 as Mr Rogers has stated, is a third degree hearsay, will be  
22 allowed to remain in the record under the circumstances.

23 MR FREDERICKS: As to that, that question, of course --

24 THE COURT: The Court is not saying it is third degree testi-  
25 mony, but the Court feels that it is proper and it commends  
26 itself to the Court.

MR FREDERICKS: As to that question, that is not the point

1 I am talking about, I was talking to the point of counsel  
2 commenting on the credibility of witnesses at this time.

3 MR FORD: This witness is testifying about a conversation  
4 had between him and one Kruger, which we will contend con-  
5 stitutes a crime, and in order that the jury and the Court  
6 may understand that conversation, we deem it necessary to  
7 give the whole of that conversation, and as to what any  
8 other parties had done, as to whether it is hearsay with  
9 regard to Mr Fowler, if Mr Fowler were on trial perhaps  
10 that would be true. We are not trying Mr Fowler, however,  
11 we are introducing a conversation relating to the act of  
12 this witness as to what transpired between this witness and  
13 Mr Kruger, which is clearly competent to prove all acts and  
14 declarations of this witness and of the acts and declarations  
15 of this witness while on the stand, as your Honor has al-  
16 ready ruled, and as is the law, when it is a part of the con-  
17 spiracy of which the defendant is a member. Those acts and  
18 declarations and conversations that were set forth by this  
19 witness and in the presence of this witness, and it is com-  
20 petent evidence against this defendant,

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6s-1 and the conversation is competent to prove what trans-  
2 pired between the witness and Mr. Kruger. Now, there are  
3 two points involved here before the Court, one is as to the  
4 competency or <sup>rather the</sup> relevancy of the transaction itself. The  
5 transaction itself between this witness who is on the stand  
6 and any parties who he might seek to bribe are clearly  
7 relevant to the guilt or innocence of this defendant, which  
8 have been testified to by this witness, and we will corrob-  
9 rate it by other testimony at the proper time, that this  
10 witness was acting as the agent of this defendant. So  
11 much for the relevancy of the fact itself. Now, the fact  
12 itself being relevant the question is: Is this conversation  
13 competent to prove what the fact was? Is this conversation  
14 competent to prove what Mr. Franklin did and said on that  
15 occasion. It certainly, clearly is, and we are entitled  
16 to the whole of that conversation, no matter whom it reflects  
17 on. We are not here to be careful of the feeling of people  
18 who are not in court. We are not here to attack them  
19 unnecessarily, but we are here to bring out every fact  
20 relevant to the issues, whether they hurt anybody or not,  
21 and if counsel feels that the reputation of Mr. Fowler has  
22 been unjustly attacked; if he feels that the reputation of  
23 Mr. Fowler is in issue in this case, at the proper time,  
24 in an orderly and gentlemanly manner, he will have an  
25 opportunity to put witnesses on the stand to testify concern-  
26 ing that matter. The only question here before the Court

1 is as to this testimony itself, and I think all of our  
2 conversations, all of our objections and all of our  
3 arguments should be, as far as possible, confined to the  
4 legal question before the Court, as to the competency of  
5 this question, without traveling into outside issues and  
6 without commenting on the credibility either good or bad  
7 of either this witness or of any other party. That has  
8 got nothing to do whatever with the question at this time.  
9 There will come time when we may comment on the credibility  
10 of all the witnesses and that will be before the jury when  
11 the evidence has been here.

12 MR. ROGERS. As I hold the affirmative of the motion to  
13 strike out, permit me to say, I reiterate that the statement  
14 of Kruger that, if your Honor will pardon me, the statement  
15 of Kruger at the time that Ben Smith did something at some  
16 time or other would not be evidence. It would not in any  
17 wise harm Mr. Smith, possibly, but yet from my long friend-  
18 ship for him I would stand up here and do just what I am  
19 doing for a man that cannot be heard and is not here to  
20 protect himself. That there should not be put in the  
21 mouths of a man who is not a witness on the stand  
22 statements reflecting in that way without the man having  
23 an opportunity to be heard and being on trial and confronted  
24 by the witnesses against him. I think the hearsay in  
25 this matter is vicious.

26 THE COURT. Wherein do you expect to show that this conver-  
sation was in furtherance of the alleged conspiracy?

1 MR. Ford. We wish to show that this witness when he called  
2 on Mr. Kruger had a conversation with him--that when he  
3 called the second time, in which the juror, Mr. Kruger,  
4 informed the witness that Mr. Fowler had been to see him  
5 in this same matter, and requested him to do the same thing,  
6 and had informed him, Kruger, that whatever Franklin did  
7 was on the same side that he, Fowler, was, and to show that  
8 Kruger's conversation with Fowler along the same line as  
9 Kruger's conversation with this witness are so inter related  
10 and point to the same thing that it is necessary in order  
11 to understand the conversation which may follow, that, it is  
12 necessary to have that conversation in. Now, it may be  
13 true that the mere relation by this witness as to what Mr.  
14 Fowler did would not be competent evidence against Mr. Fowler.  
15 I don't make any such claim that it is. We don't care  
16 whether it is or not. Mr. Fowler is not an issue in this  
17 case at the present moment. Mr. Fowler is not on the stand.  
18 THE COURT. That is true, but as Mr. Rogers has suggested,  
19 the Court owes some obligation to persons who are not  
20 present.  
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1th 1 MR FORD: The Court owes such obligation to Mr Kruger in  
2 spite of all the declarations that have been made.

3 THE COURT: However, I think that Mr Fowler, if I were in  
4 Mr Fowler's place and the matter had been opened as far as  
5 it has, I would rather have it all opened and gone into.  
6 I think so far as he is concerned that I ought to order the  
7 deposition made at this time, and I will instruct the  
8 reporter to transcribe<sup>all</sup>/this evidence in reference to Mr  
9 Fowler and send him a copy of it. Motion to strike out  
10 denied.

11 MR APPEL: We except.

12 MR FORD: Read the answer as far as it has gone.

13 THE COURT: There is a question and answer that is wanted,  
14 Mr Petermichel.

15 (Last question and answer read by the reporter)

16 THE COURT: Mr Petermichel, the Court has directed all of  
17 this testimony in reference to Mr Fowler that an extra  
18 copy should be transcribed and forwarded to Mr Fowler.

19 I do not know his address, but probably you can get it!

20 MR PETERMICHEL: Very well, your Honor.

21 THE COURT: Go ahead.

22 A I asked him if Mr Fowler had paid him any money and  
23 he said no. I then asked him if he wished me to give him  
24 some money in advance, and he said no, that when the case  
25 was finished would be time enough for that. That is about  
26 all the conversation, and I left him.



1 Q Do you know Frank Fowler? A Very well, yes sir.

2 Q How long have you known him? A About eighteen years.

3 Q Did you know what his business was at that time?

4 A At what time? Q 1911?

5 MR ROGERS: May I ask counsel, with your Honor's permission,  
6 if he is going to prove Mr Fowler's general reputation by  
7 this witness?

8 MR FORD: No.

9 MR ROGERS: Then it is absolutely immaterial and incompetent.

10 MR FORD: I don't care enough about it. Withdraw the ques-  
11 tion.

12 THE COURT: Question withdrawn, Mr Ford?

13 MR FORD: Withdrawn, your Honor. Did you report the  
14 result of this second visit to Mr Darrow?

15 MR APPEL: Wait a moment. We object to that on the grounds  
16 incompetent,  
17 it is irrelevant and immaterial, outside of the issues, no  
18 foundation laid and it is collateral and hearsay.

19 THE COURT: Overruled.

20 MR APPEL : We except.

21 A Yes sir.

22 Q By Mr Ford: When and where? A At his office, I think,  
23 on Monday morning.

24 Q What date? A November 27th.

25 Q 1911? A Yes sir.

26 Q What did you say to Mr Darrow about that visit to Mr  
Kruger's house?

1 MR APPEL: Same objection.

2 THE COURT: Overruled.

3 MR APPEL: Exception.

4 A I told Mr Darrow that Mr Kruger had been seen by some  
5 other person.

6 MR FORD: Did you mention the name of that other person to  
7 Mr Darrow? A I did not, no sir, and that I thought we  
8 should be careful and not have two men seeing the same man.

9 Q What, if anything, did Mr Darrow reply to that?

10 A I don't think that he answered it.

11 Q What further conversation took place at that time?

12 A I don't remember anything at that particular time.

13 Q Do you remember any conversation in reference to that  
14 matter at any subsequent date? A Yes.

15 Q When and where? A After my arrest.

16 Q How long after? A Within a day or two, I don't remember

17 Q And at what place? A Mr Darrow's office.

18 Q In the Higgins Building? A Yes sir.

19 Q Who was present? A Nobody, but Mr Darrow and myself.

20 Q What was said in that regard?

21 MR APPEL: Wait a moment. We object to that upon the ground  
22 it is incompetent, irrelevant and immaterial, hearsay and  
23 conversations concerning the matter not <sup>affecting</sup> ~~within~~ the issues of  
24 this case, not affecting the defendant in any way, shape or  
25 manner.

26 THE COURT: Overruled.

MR APPEL: Exception.

1 A Mr Darrow said that he had not, I think, resisted a  
2 challenge of the District Attorney against Mr Kruger but had  
3 allowed him to go; that in his opinion he was too ignorant  
4 a man to sit on the jury.

5 Q Anything further said on that occasion?

6 A I don't think so.

7 Q Was that all the conversation on your part as well as  
8 in reference to Mr Kruger?

9 A All that I remember of, yes sir.

10 Q What other subjects did you discuss at that same time  
11 and place, if any? A Not just at that time, but a few  
12 minutes -- oh, at that time? I don't remember.

13 Q What were you going to say? A I don't remember.  
14 I was thinking about another time. I don't remember what was  
15 said at that time other than that.

16 Q What other jurors did you approach, if any, during  
17 the trial of the case of the People vs J B McNamara?

18 MR APPEL: Wait a moment. We object to that upon the ground  
19 it is incompetent, irrelevant and immaterial for any pur-  
20 pose whatsoever in this case; outside of the issues; no  
21 foundation laid.

22 THE COURT: Overruled.

23 A If your Honor please, these men are all friends of  
24 mine and I regret very much if I am compelled to mention  
25 their names, because they did not under any circumstances  
26 accept my proposal, and turned it down cold; and I don't

1 like to report their names, as each one of them is a  
2 personal friend of mine. It is putting me in a very, very  
3 embarrassing position under the circumstances.

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1 MR. FORD. Well, we regret it as much as the witness, if  
2 the Court please. I don't think it is a reflection on  
3 those that turned it down. Answer the question, we would  
4 ask.

5 THE COURT. I think it is your duty to answer the question,  
6 Mr. Franklin.

7 A I want the Court to understand that I do it under pro-  
8 test. If I am compelled to answer it I will do so, other-  
9 wise I will not do so. One of them is Guy Yonkin, cigar  
10 business in this city. One of them is Frank Smith of  
11 Covina. One of them is John S. Underwood, an iron worker  
12 of this city. I don't remember any others just now.

13 Q When did you call upon Frank Smith of Covina? A The  
14 day in which his name--the same day.

15 MR. ROGERS. Wait a moment. Do I understand that the  
16 question is fully answered. I don't want any misunder-  
17 standing about it, if your Honor please. If he has  
18 mentioned three names and given those three names publicity,  
19 if he has fully answered the question to which we objected,  
20 for which our objection was overruled, he has fully answered,  
21 I would like to know it. If <sup>not</sup> I believe he was interrupted  
22 in the middle of his answer.

23 THE COURT. Have you fully answered your question, Mr.  
24 Franklin? A As near as I can recall at this time.

25 THE COURT. All right.

26 MR. FORD. Now, if the Court please-- A I might at a

1 later date remember another name but I don't at the  
2 present time.

3 MR. FORD. No harm is being done but I certainly don't  
4 want counsel--I don't think counsel has a right to inter-  
5 rupt our examination in that manner. If counsel thinks  
6 or suspects the question has not been fully answered, he  
7 has a right oncross-examination to go into that matter.

8 Q When did you first--

9 MR. ROGERS. I objected, your Honor please, according to  
10 my understanding the witness was interrupted, and that  
11 being so I was left in the dark as to whether the question  
12 was fully answered and for information I interrupted.

13 THE COURT. Go on.

14 Q BY MR. FORD. When did you first call on Frank Smith of  
15 Covina? A I think on the same day on which his name was  
16 drawn as a juryman--as a vanireman.

17 Q At what place did you call upon him? A At his residence  
18 in Covina? A When I went in the house Mrs- Smith was  
19 present.

20 Q Just state what was said and done between you and Mr--  
21 was Mrs- Smith present during the entire conversation?

22 A No, sir, just for a moment. I was introduced to her and  
23 she left and we went in the front room.

24 Q State what was said and done between you and Mr. Frank  
25 Smith in the front room at that time?

26 MR. APPEL. Just a moment. We object to that upon the

1 ground it is incompetent, irrelevant and immaterial, and  
2 hearsay and not binding upon the defendant; no foundation  
3 laid for the introduction for this evidence; outside of  
4 the issues and collateral to any issue in this case.

5 MR. FREDERICKS. The same objection I understand on the  
6 ground that it is other offenses. The Court has been  
7 ruling, that is the case.

8 THE COURT. But this is a little different.

9 MR. FORD. Exactly like the Bain incident.

10 MR. FREDERICKS. Exactly the same as the Bain or the  
11 Lockwood--or the Bain or the Kruger, the actions of this  
12 defendant, you know, are material part of the arrangement,  
13 not the action of the juror.

14 THE COURT. I think you are entitled to bring it in if  
15 you deem it is necessary.

16 MR. FREDERICKS. Oh, I think it is, your Honor. I haven't  
17 any doubt about it.

18 THE COURT. Overruled.

19 MR. APPEL. Exception.

20 A What is the question?

21 MR. FORD. Q State what was said and done between you and  
22 Mr. Frank Smith in the front room at that time? A I asked  
23 Mr. Smith if he was willing to listen to a proposition  
24 whereby he would be in a position to get a sum--get the  
25 sum of \$4,000, and he said he was. I then told him that  
26 I was working for the defense in the McNamara case and that

1 his name had been drawn as a juryman, and that I would  
2 like to have him act as a juryman in that case. His  
3 answer was, "Bert, you haven't got money enough nor can  
4 you command money enough to get me to act in any such  
5 way, and I don't want you to ever propose it or say a  
6 thing about it to me again." And I left.

7 Q Did you report that transaction to the defendant, Clarence  
8 Darrow? A I did not. I just — I told Mr Darrow to let Mr  
9 Smith alone.

10 Q When did you first call on Guy Yonkin? A I think the  
11 day that his name appeared on the list.

12 Q And at what place? A At his place of business on  
13 Third street between Spring and Broadway.

14 Q What business is Mr. Yonkin in? A Cigar business.

15 Q What time of the day? A I don't remember.

16 Q What was said and done between you and Mr. Yonkin at  
17 that time?  
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1 Mr. APPEL. Wait a moment--we object upon the ground that  
2 it is incompetent, irrelevant and immaterial; no founda-  
3 tion laid. It is hearsay, collateral to any issue in this  
4 case and not binding upon the def\_endant and no founda-  
5 tion laid tending in any way to connect the defendant with  
6 the transaction about to be related by the witness.

7 MR. FREDERICKS. I think, your Honor, we had better abrogate  
8 our stipulation and have these objections considered. I see  
9 counsel wishes to make them quite often and we really don't  
10 save much time and takes more attention on our part knowing  
11 that that is the stipulation in existence, and as long as  
12 it doesn't save any time I think on our part we better  
13 abrogate the stipulation and let counsel when he wishes  
14 to object.

15 THE COURT. You withdraw the stipulation?

16 MR. ROGERS. I didn't know that we were working under a  
17 stipulation.

18 MR. FREDERICKS. Yes.

19 MR. ROGERS. I thought that was according to the Court's  
20 orders. I didn't know that there was a stipulation, but  
21 the Court has ordered where there is any special ground  
22 of objection outside of the general line of objection it  
23 might be nothing but right to call the Court's attention  
24 to it.

25 MR. FREDERICKS. I think we had better abrogate the stipula-  
26 tion.

1 MR. Appel. We didn't ask for any stipulation. We asked  
2 the Court if it be deemed--this is a new man and an entirely  
3 new matter. I always start in with an objection so the  
4 record may be straight.

5 THE COURT' I understand the situation as much as the  
6 defense. They were acting as to the Court's order and  
7 pursuant to stipulation, because counsel for the district  
8 attorney certainly did acquiesce in the proposition, that  
9 means a stipulation, but here is new matter and I think it  
10 is a matter of proper pertinence to save time.

11 MR. FREDERICKS. I think, your Honor, it will be easier for  
12 all of us if that stipulation be abrogated. If there  
13 isn't one there is no harm done.

14 THE COURT. The order as heretofore made will stand. You  
15 may proceed.

16 MR. FORD. I think counsel has an objection before the  
17 Court, haven't you.

18 THE COURT' The objection has been made and I intended to  
19 overrule it. If I didn't, I do it now.

20 MR. FORD. Perhaps your Honor did.

21 A What was the question.

22 Q What was said and done between you and Guy Yonkin at  
23 that time and place? A I asked Guy to go with me to the  
24 bar room next door, that I wanted to talk with him a few  
25 moments. We went into the barroom, went in the rear and  
26 sat down in a seat. I asked him if he was willing to make

1 a little easy money. He said he didn't know, that it  
2 depended entirely on what it was. I asked him if he had  
3 been served with a summons to appear as a jurymen, I  
4 think he said he had not, and he said he hoped he would not  
5 be. Now, that is my remembrance of it. I told him that  
6 I would like very much to have him act as one of the jurors  
7 in the McNamara case and he said that would be impossible  
8 as he was tied up in his business, he was there alone,  
9 it would be impossible for him to get away. I then told  
10 him I could put him in a position to make the sum of \$4,000  
11 and he asked me what he was to do and I told him to vote  
12 for an acquittal, and he said under no circumstances would  
13 he consider any proposition of that kind, the danger was  
14 too great and he would not listen to any proposition  
15 whereby he would serve as a jurymen under such circumstance  
16 and that if he was called as a jurymen he would certainly  
17 ask to be excused.

18 Q When did you first call on John Underwood? A The day  
19 that his name appeared upon the list.

20 Q And at what place? A At his place of business.

21 Q Where is that? A The southeastern part of the city,  
22 I have forgotten the address at the present time.  
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1 Q What was said between you and Mr Underwood on that  
2 occasion?

3 MR APPEL: We object to that on the ground it is incompetent,  
4 irrelevant, immaterial, hearsay, collateral to any issue in  
5 this case and not binding upon the defendant; no foundation  
6 laid, no evidence in any manner to show that the defendant  
7 is bound by the declarations about which the witness is  
8 interrogated.

9 THE COURT: Objection overruled.

10 MR APPEL: We except.

11 Q By Mr Ford: What was said between you on that occasion?

12 A I asked Mr Underwood in regard to his business, how  
13 long he had been at that location, and he told me but a short  
14 time, he said that his men were all off on a strike and he  
15 was having a hard time generally, that it was necessary for  
16 him to stay at his place of business, that in fact he had  
17 not any men working at all, that he was doing all of the  
18 work himself. I asked him if he would consider a proposition  
19 to serve upon the McNamara Jury, and he said he would not  
20 under any circumstances, that he would not listen to it.  
21 I told him that I thought I could make it worth his while,  
22 and he said that no person could get him to serve upon the  
23 jury under such circumstances, and I congratulated him upon  
24 the stand that he took and left him.

25 Q Did you make any report of either the Underwood or  
26 Yonkin incidents to Mr Darrow? A I don't think I did, other

1 than to say --

2 MR APPEL: Wait a moment. The question is answered by  
3 "yes" or "no", and with the explanation you have made --

4 MR FORD: He has already answered "No", and he is trying  
5 to qualify that.

6 MR APPEL: I understand that, and I object to any declara-  
7 tions made by the witness to Mr Darrow in respect to any of  
8 those matters on the ground it is immaterial, hearsay, in-  
9 competent, no foundation laid.

10 THE COURT: Objection overruled.

11 MR APPEL: Except.

12 THE COURT: Proceed with your answer.

13 A Other than to say <sup>that</sup> those two men would ask to be excused.

14 Q By Mr Ford: Now, when was this second conversation  
15 you had with Mr Darrow after your arrest?

16 MR APPEL: The witness has already stated --

17 MR FORD: No, he stated the first and I dropped him after  
18 the second conversation and took up some other matters.

19 A At his office.

20 Q By Mr Ford: And how long after your arrest? A I think  
21 the next day.

22 Q Who was present? A I think Mr Davis.

23 Q State what was said and done on that occasion?

24 MR APPEL: Wait a moment. We object to that as incompetent,  
25 irrelevant and immaterial, no foundation laid; it is hearsay,  
26 your Honor; this objection which I have made I make it more

1 upon the proposition that it is not what everybody says in  
2 the presence of the defendant that binds the defendant, the  
3 declarations made to a defendant can only be given when those  
4 explanations or those statements will bring out the conduct  
5 of the defendant with reference to matters stated in evidence.  
6 Now, the Supreme Court has said that that is hearsay, unless  
7 the foundation is laid. Now, I might report to your Honor  
8 that I killed John Doe, but if you didn't say anything or  
9 didn't act with reference to it, you could not be bound by  
10 that. Of course, if you sent me out -- your Honor can see  
11 that a good many of these declarations have been allowed to  
12 go in in that way, and I just wish to remind your Honor,  
13 be fair, of the rule of the Supreme Court with reference to  
14 that.

15 THE COURT: Objection overruled.

16 MR APPEL: We except.

17 A The only conversation I remember upon that day was as  
18 to the affect of my arrest upon my wife and family, as to  
19 how they took it, and also as to how it affected my friends.

20 Q By Mr Ford: In order to direct your attention to a  
21 specific matter, I will ask you if you ever at any time  
22 discussed -- you can answer "yes" or "no" -- discussed with  
23 Mr. Darrow the circumstances of the arrest at Third and Main  
24 Street, on the 28th day of November, 1911.

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1 MR. APPEL. I object to that on the ground that it is  
2 incompetent, irrelevant, hearsay. The rule is strict  
3 that a mere recital of what has occurred by a co-conspira-  
4 tor is not evidence against the co-conspirator, not bind-  
5 ing upon the def\_endant on trial, and no foundation laid;  
6 immaterial.

7 THE COURT. Objection overruled.

8 MR. Appel. We except.

9 MR. FREDERICKS. I would like to hear that objection read  
10 again. (Objection by Mr. Appel read.)

11 THE COURT. Answer the question.

12 A I do not think, Mr. Ford, that I ever had any conversa-  
13 tion with Mr. Darrow in regard to the manner or in anything  
14 else in regard to my arrest on Main street between Second  
15 and Third, the actual arrest itself.

16 THE COURT. Gentlemen of the Jury, bear in mind the admoni-  
17 tion heretofore given you. We will take a recess for ten  
18 minutes.

19 (After recess.) Jury returned <sup>to</sup>/court room.)

20 BERT H. FRANKLIN, resumes the  
21 stand and direct examination continued.

22 THE COURT. You may proceed, Gentlemen.

23 MR. FORD. Read the last question and answer.

24 (Last question and answer read.)

25 Q BY MR. FORD. Did you have any conversation with the  
26 defendant in regard to the incident, in general? A Yes.

1 Q When and where was the first conversation in reference  
2 to that matter? A It was at his office, but I cannot  
3 tell you the time.

4 Q About when? A Within a very few days, following my  
5 arrest.

6 Q Who was present? A I don't think there was any one pre-  
7 sent, except Mr. Darrow and myself.

8 Q What was said?

9 MR. APPEL. We object to that as incompetent, irrelevant and  
10 immaterial for any purpose of this case, hearsay.

11 THE COURT. Overruled.

12 MR. APPEL. Exception.

13 A Mr. Darrow said at that time that Mr. Davis had received  
14 a telephone message that I was about to get in trouble and  
15 that he better notify me.

16 MR. FORD. Did he say from what place that telephone  
17 message was received?

18 MR. ROGERS. I think that is leading, if your Honor please.  
19 Let the witness tell the story.

20 THE COURT. Objection sustained.

21 MR. FORD. Give all the conversation as you remember it.

22 A Well, Mr. Ford, I want to be perfectly fair, not only with  
23 the prosecution in this case but with Mr. Darrow who is on  
24 trial, and while I told you a certain thing I am a little  
25 inclined at this time to believe that I was mistaken and  
26 that it was not Mr. Darrow who told me in regard to who



1 sent the message.

2 Q Just state what Mr. Darrow told you, to your best recol-  
3 lection, at the present time, regardless of what you said  
4 on any occasion. A Mr. Darrow said that is how he happened  
5 to be there.

6 Q What did he say in reference to that matter? A Well,  
7 I will give you all the conversations I remember it. I  
8 told Mr. Darrow if he had not happened to be at that par-  
9 ticular place at that particular time that I thought I  
10 could have turned the tables on Mr. Lockwood, who was a  
11 traitor to me, and put him in the position that I after-  
12 wards was placed in myself; that it was my intention to  
13 turn Mr. Lockwood over to the officer at Second and Main  
14 and charge him with taking and accepting a bribe in the  
15 McNamara<sup>case</sup> to give his verdict for guilty, and I said if  
16 you had not happened to be at that particular place my  
17 arrest would not have taken place until after I could have  
18 pulled off my stunt at Second and Main.

19 Q When did you conclude that Mr. Lockwood had turned  
20 traitor to you?

21 MR. APPEL. Wait a moment--we object upon the ground it is  
22 incompetent, irrelevant and immaterial and not binding  
23 upon the defendant.

24 MR. FORD. It is a fact that he did conclude and upon his  
25 conclusion formed a certain intention which he expressed  
26 to Mr. Darrow, and while he is not allowed at the present

1 time--

2 THE COURT. You needn't argue it. I think under the show-  
3 ing he should answer. Objection overruled.

4 MR. APPEL. Exception.

5 (Last question read by the reporter.)

6 A At the very moment that I saw detective Home at Third  
7 and Los Angeles street.

8 Q MR. FORD. Did you see any other detectives there at  
9 that time or in that vicinity? A Before that I had seen  
10 Mr. Campbell of the District attorney's office.

11 Q Now, returning to the conversation with Mr. Darrow, was  
12 that the beginning of the conversation, your statement  
13 of that matter? A Yes, sir.

14 Q What followed next in the conversation? A He then  
15 told me that Mr. Davis told him--

16 MR. APPEL. Subject to the same objection and the same  
17 ruling?

18 THE COURT Yes, sir.

19 A (Continuing)--that he had received a message that I  
20 was about to get into trouble and that he better notify  
21 me and that Mr. Davis had come to him and told him and that  
22 he was doing the best he could to help me out, or words  
23 to that effect. I don't remember.

24 MR. FORD. Anything further said at that conversation with  
25 reference to that matter? A I told him I thought it  
26 was too bad that he happened to be there.

1 Q Anything else? A Not to my recollection, no, sir.

2 Q Anything else on any subject at that conversation con-  
3 nected with the case, of course? A I don't think there  
4 is anything else.

5 Q Now, did you have any conversation at any other time  
6 with Mr. Darrow in reference to your case, or the pleas  
7 or results of your case?

8 MR. APPEL. Wait a moment--we object to that as immaterial,  
9 hearsy, incompetent and irrelevant and no foundation laid.

10 THE COURT. Overruled.

11 MR. APPEL. We except.

12 A I never discussed with Mr. Darrow or any other person  
13 anything in regard to my defense that would be put up for  
14 me in the Superior Court, anything about my case at all  
15 one way or the other in any way shape or form other than  
16 this--

17 Q Just a moment--go ahead. A Upon one occasion I visited  
18 the office of Mr. Darrow when he told me that Mr. Davis,  
19 he thought, had arranged for me to plead guilty to one  
20 count in the information of attempting to bribe George W.  
21 Lockwood, and that I would be fined the sum of \$5,000,  
22 which they would pay, and that he would give to me for  
23 the protection of my family until I could rebuild myself  
24 in the community, the sum of \$3,000. I told Mr. Darrow  
25 that if a plea of guilty of attempting to bribe Mr. Lockwood  
26 would be accepted and the other counts in the information

1 dismissed, and my family taken care of as I thought they  
2 should be, as he had stated, that I would accept it.

3 Q Did you at any time discuss with the defendant, Mr.  
4 Darrow, the possibility of your going to the penitentiary  
5 upon such a charge?

6 MR. APPEL. Wait a moment--we object upon the ground that  
7 it is incompetent, irrelevant and immaterial, hearsay and  
8 no foundation laid.

9 THE COURT\_ What has this to do with the furtherance  
10 of the conspiracy?

11 MR. FORD\* It isn't in furtherance of the conspiracy, it is  
12 acts showing guilty knowledge and guilt on the part of  
13 this defendant, and his efforts to save himself from the  
14 results--attempting to conceal his participation in the  
15 crime with the witness. It is not on the theory of a con-  
16 spiracy at the present.

17 THE COURT\* Well, read the question.

18 MR. ROGERS .You cannot prove <sup>it by the</sup> declarations of this witness,  
19 that is all. Very easy to prove it that way.

20 MR. FRDERICKS. Now, is that a fair comment to make, your  
21 Honor?

22 MR. ROGERS. Cannot prove it by declarations of a coconspira-  
23 tor after the cessation of the object.

24 THE COURT- Read the question.

25 (Last question read by the reporter.)

26 A Yes, sir--pardon me.

1 THE COURT. Answer the question.

2 MR. APPEL. Exception.

3 A Yes, sir.

4 MR. FORD. Q When and where? A I think upon at least  
5 three separate occasions.

6 Q Well, now, the first time that matter was broached by the  
7 defendant when was that and where? A At his office, to  
8 the best of my recollection, in the Higgins Building.

9 Q Was it before or after your preliminary examination?

10 A It was after my preliminary examination.

11 Q You had two preliminary examinations, one on the Lock-  
12 wood incident and one on the Bain incident. A It was  
13 after both of them.

14 Q About how long after the second one? A Oh, I should  
15 say it was a matter of two weeks or three, perhaps.

16 Q And at what place? A His office in the Higgins Building.

17 Q Who else was present besides yourself and the defendant,  
18 if any one? A Mr. Davis.

19 Q What was said at that time and place?

20 MR. APPEL. We object upon the ground, incompetent, irrele-  
21 vant and immaterial for any purpose, and hearsay and no  
22 foundation laid.

23 THE COURT. Overruled.

24 MR. APPEL. We except.

25 A May I say what Mr. Davis said or just what I said to Mr.  
26 Darrow?

1 MR. FORD If what Mr. Davis said was in the presence of the  
2 defendant, give the entire conversation.

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1 A Mr Davis told me that he had serious doubts as to  
 2 whether his plans for my plea of guilty and fine would be  
 3 accepted by the District Attorney. I asked him at that time  
 4 what would be the best procedure in case the District at-  
 5 torney did not accept it. He told me -- Mr Davis I am speak-  
 6 ing of now -- that he would not concede his defeat along that  
 7 line; that he was going to do everything he could to get me  
 8 out on a plea, as stated before, but in case that couldn't  
 9 be done, that in his opinion it would be better if arrange-  
 10 ments could be made and I would enter a plea of guilty, and  
 11 ask for probation. He said at that time -- Mr Davis --  
 12 turned to Mr Darrow and said, "Mr Darrow, we will --" no, --  
 13 he said, "We will agree if that takes place to give you the  
 14 sum that you would have been fined, namely \$5,000, together  
 15 with the \$3,000 promised before, won't we Mr Darrow?" to  
 16 which Mr Darrow made no response.

17 Q What else, if anything, occurred at that time?

18 A I said at that time that <sup>with</sup> Mr Gage as my counsel, I had  
 19 absolutely no fear of conviction and that I was ready to go  
 20 to trial at any time; and Mr Davis said that he would look  
 21 into the matter and let me know at a later date. That is  
 22 about all the conversation at that time that I remember of.

23 Q Now, then, when was the next conversation with the  
 24 defendant, Mr Darrow, and where?

25 MR ROGERS: I move to strike out the conversation, if your  
 26 Honor please, upon the ground -- I won't make the motion  
 to strike out; let it stand.

1 THE COURT: Go ahead.

2 A I don't think -- I think I visited Mr Darrow on an  
3 average of about three times a week, and upon all those oc-  
4 casions I think about the only questions he asked me was  
5 how my wife took it, and what my wife advised me to do, and  
6 also my friends. I told him that Mrs Franklin told me that  
7 it was --

8 MR APPEL: This is subject to the objection, your Honor,  
9 that it is hearsay and immaterial, no foundation laid;  
10 incompetent, irrelevant to any purpose whatsoever.

11 THE COURT: Yes sir. Objection overruled.

12 MR APPEL: Except.

13 A (Continuing) -- that it was my duty, under all cir-  
14 cumstances, to not to draw Mr Darrow into the mud that I had  
15 made.

16 Q What did he say about that? A I beg your pardon?

17 Q What, if any, reply did he make to that? A He said  
18 she was a brave woman, or words to that effect; I also told  
19 him I had talked to my son, and he asked me his age and I  
20 told him twenty-two years, and that he had told me words of  
21 the very same thing, and that I felt that way about it my-  
22 self and that he had nothing to worry about from me.

23 Q When next did you discuss the subject with Mr Darrow  
24 about your, the possibility of your being sent to the peni-  
25 tentiary? A On the 14th day of January, 1912.

26 Q At what place? A At the office of LeCompte Davis in



1 the city, in the Bryson Block.

2 Q That is in the Bryson Building, corner of Second and  
3 Spring Street? A It is in his partner's office, not in  
4 his private office.

5 Q Who was present at that time? A Mr Darrow, Mr Davis  
6 and myself.

7 Q State what occurred at that time? A We met there by  
8 appointment and the discussion went along the line --

9 MR APPEL: (Interrupting) -- We interpose the same object-  
10 ion interposed before, incompetent, irrelevant and immater-  
11 ial.

12 THE COURT: Objection overruled.

13 MR APPEL: We except.

14 A (Continuing) -- was along the line as to a statement  
15 that I might possibly make to Mr Ford.

16 MR FORD: Pardon me, just a moment. I think the answer of  
17 the witness is in the form of a conclusion, which counsel  
18 may later on move to strike out, and to avoid that I will  
19 ask you to state what was said and done without stating  
20 your conclusion, as to being along the line --

21 A Well, it is very difficult to --

22 Q Give it in substance.

23 MR ROGERS: I would suggest that it be said what person  
24 said each thing, whether it was Mr Davis or Mr Franklin.

25 THE COURT: Oh, yes.

26 A Mr Davis said that ~~he thought~~ if we did, if I could

1 convince Mr Ford that there had been another party who  
2 acted as a go-between between Mr Darrows and myself and give  
3 a description of that man and where he claimed to be from,  
4 and the name that he gave, that Mr Ford might believe a  
5 statement of that kind and it would relieve me a great deal  
6 and relieve Mr Darrow from any complicity for the reason  
7 that it would leave him entirely out of the matter; and then  
8 I suggested, in fact told Mr Davis, that Mr Ford never would  
9 believe a story of that kind, that it would be the same old  
10 story of the boy stealing a bicycle and saying he bought it  
11 from somebody and didn't know who it was. I then suggested  
12 that inasmuch -- I said that this man told me that he came  
13 from Mr Darrow and gave me that assurance. Mr Darrow then  
14 spoke up for the first time I remember of, and said "If you  
15 mention my name I want you also to tell what you know about  
16 Job Harriman". Mr Davis turning to Mr Darrow resented that,  
17 and they had a heated argument in regard to it.

18 Q Just tell what was said?

19 A Mr Davis said he thought that was a very unfair thing  
20 to say, and I said that from the way I was standing, and  
21 standing between Mr Darrow, that it was a very, a very poor  
22 statement for him to make, implicating another party, or  
23 words to that effect. We then discussed the question as  
24 to my pleading guilty and taking my medicine. I told Mr  
25 Davis that if he could assure me that I would not get over  
26 two years in the penitentiary that I would plead guilty and

1 say nothing, and he told me he would let me know in a day  
2 or two, and I left.

3 Q When next did you see the defendant and discuss this  
4 same matter? A To the best of my recollection after this  
5 time I had never spoken to Clarence Darrow but on one occa-  
6 sion.

7 Q When was that? A As I was leaving the office of Mr  
8 Davis in the Bryson Block.

9 Q How long after this conversation of the 14th of January,  
10 1912? A I cannot tell you, but if you will allow me to  
11 refer to a memorandum I will tell you exactly when it was.

12 Q Was the memorandum made by you? A Dictated by me,  
13 yes sir, not written by me but dictated by me.

14 Q At the time the transaction occurred? A Immediately  
15 after, that night.

16 Q Kept by you in your possession ever since that time,  
17 this memorandum? A No, it has not.

18 Q Where have you kept it? A I will state, so that you  
19 will understand exactly what it is, I have kept a diary  
20 ever since the 14th of January, of all my movements for my  
21 own protection. That diary has been dictated to Mrs Frank-  
22 lin and she wrote it in a book and transcribed it on the  
23 machine, and I have it in my pocket.

24 Q We have no objection to your refreshing your recol-  
25 lection. Go ahead.

26 MR ROGERS: You know the rule to that, if your Honor please,

1 and we call for the enforcement of it.

2 MR FREDERICKS: This is a refreshing of recollection in re-  
3 gard to a date.

4 Q By Mr Ford: Did you look at this memorandum after it  
5 was transcribed, Mr Franklin? A I have read every word  
6 of it, yes sir, I did; and compared it with the book.

7 Q Well, with reference to the entry itself, the date of  
8 its entry, how long after it was entered did you look at  
9 it? A Well, Mr Ford, as I dictated when I wished to Mrs  
10 Franklin, she wrote the day and date and then followed it  
11 with what I gave her; I saw her write it.

1 Q When did you begin to keep this diary? A The 14th  
2 day of January.

3 Q 1913? A Yes, sir.

4 Q After it was written--I want to get at your custom--  
5 now, after it was written did you examine it to see if  
6 it was correctly entered? A No, sir, I did not. I have  
7 read every word in that book and know it is correct, two  
8 or three days have passed, perhaps, before I read it.

9 Q You did look at this particular entry to which you  
10 refer within two or three days after it was written?

11 A Yes, sir, all of them.

12 Q You can use it.

13 MR. ROGERS. The rule is called for.

14 MR. FREDERICKS. We submit the testimony brings the matter  
15 within the rule.

16 MR. ROGERS. The rule is, where the witness refreshes his  
17 recollection from a memorandum it shall be shown to opposing  
18 counsel, who may, if they desire, cross-examine him upon it.

19 THE COURT. You have that right.

20 MR. ROGERS. I simply call for the enforcement of the rule.

21 Q BY THE COURT. Yes, Where is this memorandum?

22 A In my pocket.

23 Q You may produce it. A When I find it I will show it  
24 to you.

25 MR. FREDERICKS. We are only referring to this portion,  
26 referring to that day.

1 MR. ROGERS. The answer will make the whole diary perti-  
2 nent- He says he kept it for a purpose and that is the rule,  
3 it makes the whole diary--

4 MR. FORD. Withdraw the question for the time being, and I  
5 will see if I can reach this in some other way.

6 Q BY MR. FORD. Mr. Franklin, the time at which you spoke to  
7 Mr. Darrow, do you fix it by reference to some other date or  
8 some other event, rather? A It was after--I am unable to  
9 fix that date.

10 MR. FORD. I will leave that for a moment. Q About how  
11 long after the 14th of January? A I think it was some-  
12 time during January, but I am not sure as to that.

13 Q Between the 14th and 31st of January? A I think so;  
14 I wouldn't state positively.

15 Q At what place did you see Mr. Darrow? A As I was  
16 getting out the elevator in the Bryson Block, at the north  
17 west corner of Second and Spring streets.

18 Q Who was present besides yourself and Mr. Darrow? A Per-  
19 haps ten or twelve people, I don't know as I know any of  
20 them.

21 Q Were they with you or passers by? A Passersby.

22 Q Was any one within hearing distance that you know of?

23 A That is a matter purely of opinion, but I should say  
24 that the way he said it at least 10 people could have  
25 heard it.

26 Q Did anyone else besides yourself and Mr Darrow participate

1 in the conversation? A No, sir.

2 Q What was said and done on that occasion between you and  
3 Mr. Darrow?

4 Mr. Appel. We object upon the ground it is incompetent,  
5 irrelevant, hearsay and no foundation laid, not relating  
6 to any issue in this case.

7 THE COURT. Overruled.

8 ME. APPEL. Exception.

9 A The only thing he said to me was, "Did you see that  
10 party? And I, now knowing who he meant, said, "You  
11 better go up and speak to Davis," "I didn't know anything  
12 about who he meant.

13 MR. FORD. Q Was that all the conversation you had?

14 A That was all, yes, sir, and I passed on.

15 MR. FORD. Any motion to make in regard to it?

16 MR. APPEL. We have our objection.

17 MR. FORD. Q You are acquainted with assistant district at-  
18 torney Ford? A Yes, sir.

19 Q When did you first meet him in reference to this case  
20 after your arrest? A I first met Mr. Ford on the afternoon  
21 of my arrest, about three hours after my arrest--four or  
22 five hours, perhaps.

23 Q. When did you first meet him to discuss--I withdraw the  
24 question. Q Did you ever discuss the case with him?

25 MR. APPEL. Wait a moment, the same objection.

26 THE COURT. Objection overruled.

MR. APPEL. We make it more specific, your Honor. We object

1 upon the ground it is incompetent, irrelevant and immaterial  
2 and hearsay, and no foundation laid.

3 THE COURT. Overruled.

4 MR. APPEL. Exception.

5 MR. FORD. I withdraw the question.

6 THE COURT. The question is withdrawn.

7 MR. FORD. Q All you have testified to occurred in the  
8 City of Los Angeles, County of Los Angeles, State of Cali-  
9 fornia? A Yes, sir.

10 MR. FORD. Cross-examine.

11

12

CROSS-EXAMINATION.

13 MR. ROGERS. Q You have known Mr. Lockwood how many years?

14 A About 12 years.

15 Q He has been a friend of yours? A Yes, sir, I always  
16 considered him so.

17 Q You told Mr. Darrow that if he had not showed up on the  
18 scene at that unfortunate moment that you would have pulled  
19 off your stunt of turning Lockwood over to the police and  
20 charging him with extortion, did you? A I did not say  
21 that.

22 Q What did you say? A I didn't say anything about stunt.

23 Q Let me have the record--go ahead; you didn't say any-  
24 thing about stunt? A No, sir.

25 Q What did you say, then? A I told Mr. Darrow that if  
26 he had not appeared upon the scene at that time, that par-



1 ticular moment--that inopportune moment, if you please,  
2 that I would have turned Mr. Lockwood over to the police at  
3 the corner of Second and Main, and charged him with accept-  
4 ing a bribe in the McNamara case.

5 Q So that was your first attempt to get out of your crime  
6 by charging somebody else, was it? A Yes, sir, that was  
7 my first attempt and only attempt.

8 Q That is the first time you tried to get out of it or  
9 shoulder the crime onto someone else, isn't that true?

10 A I did that--yes, sir, I did that, Mr. Rogers, after I  
11 had found that Mr. Lockwood had turned traitor to me, a man  
12 who had been his friend for years and I was playing even.

13 Q And you thought that in order to play even that you were  
14 justified in sending a man to the penitentiary? A I  
15 don't think there would have been any danger of Mr. Lockwood  
16 ever entering the doors of the penitentiary.

17 Q Well, you would have charged him with it and sworn to  
18 it, wouldn't you? A I would have sworn--yes, sir, that  
19 he had been offered a bribe--that he told me he had  
20 accepted the \$500.

21 Q Then your idea was that you would turn him over to the  
22 police and send him up to punishment to escape it your-  
23 self? A I never thought he would ever be punished, it  
24 never entered my mind and hasn't yet.

25 Q But you thought you would start it in that direction,  
26 anyhow? A I was doing the very best I could to get out

1 of the scrape that I was in.

2 Q And still are, is that so? A I will answer that ques-  
3 tion and say to you, Mr. Rogers, that I am now doing what  
4 I consider the best thing for my wife and family that I  
5 have sworn to protect, and I am going to continue to do it.

6 Q Mr. Franklin, you told Mr. Darrow that Mr. Lockwood was a  
7 man of sterling integrity, did you not? A I did, yes, sir.

8 Q At the same time you thought that he would accept money  
9 to perjure himself? A No, sir, I did not.

10 Q Well, you thought that he would accept money to go on  
11 the jury and vote according to the money? A No, sir, I  
12 did not.

13 Q You said, didn't you, that he was a man of sterling  
14 integrity and yet you thought you could buy him? A I  
15 thought that I would try it. I told you upon the direct  
16 examination, Mr. Rogers, that I told Mr. Darrow, and I  
17 repeat it, that if Mr. Lockwood did not wish to accept the  
18 bribe that he would come out like a man and say so, and  
19 that would be all there would be to it, on account of our  
20 friendship.

21 Q If you didn't think he would take it why did you go to  
22 him and offer it? A I took a chance.

23 Q If you didn't think he would take it and go on the jury  
24 why did you take a chance? A I wanted him if I could get  
25 him, because I knew if Mr. Lockwood gave me his word that  
26 he would go on that jury and vote for an acquittal or that  
he would stay there until hell froze over until he did it.

1 Q And you thought you could buy him to do that? A I  
2 thought I would try.

3 Q Well, you wouldn't try a thing you didn't think you had  
4 a chance to do? A Oh, I have, yes.

5 Q As a matter of fact, you went to Mr. Lockwood for the  
6 purpose of buying him and having at least the expectation  
7 that you could? A I thought I could ask him. I didn't  
8 think that he would take it. I never thought he would  
9 take it and I was much surprised when he agreed to it.

10 Q And you thought that he was a man of sterling integrity?

11 A I did, yes, sir.

12 Q And you thought that nevertheless that there was a  
13 chance that he was a man of such sterling integrity, that  
14 he would take money to perjure himself? A Every man has  
15 his weak point and I thought perhaps that might be Mr. Lock-  
16 wood's, and I took the chance.

17 Q You thought that if your old friend of years and a man of  
18 sterling integrity got \$4,000 dangled in front of him that  
19 you could induce him to commit perjury, am I right? A Yes  
20 I thought I could do that; that I could try it.

21 Q And yet you thought him a man of sterling integrity?

22 A I did.

23 Q What kind of moral sense have you when you think a man  
24 of sterling integrity will take a bribe to sell his  
25 soul?

26 MR. FORD. Just a moment--object to that upon the ground that

1 it is argumentative and an insult to the witness and not  
2 cross-examination.  
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1 MR ROGERS: Might as well settle this right at once, your  
2 Honor please, with reference to the decision under which I  
3 am proceeding. If your Honor will permit me to read it, I  
4 will read it.

5 THE COURT: Yes sir.

6 MR FORD: I suggest the decision be committed to the Court  
7 with the page.

8 MR FREDERICKS: While we are waiting let's have the ques-  
9 tion read again.

10 THE COURT: Read the question. (Last question read by the  
11 reporter)

12 MR FREDERICKS: We object upon the ground that it calls for  
13 a --

14 MR ROGERS: The R. Ruef case, California Appellate 18th --

15 MR FREDERICKS: Let me get the objection in. That it calls  
16 for a conclusion of the witness as to matters not pertaining  
17 to the case; and that it calls for a conclusion of the wit-  
18 ness; that it is incompetent, irrelevant and immaterial, and  
19 that it is not cross-examination, what kind of a sense have  
20 you, that is the inquiry of this witness.

21 MR FORD: What is the citation.

22 MR ROGERS: I have sent for one other citation, but this is  
23 a leading case which has been referred to numerous times, and  
24 is the foundation of all literature upon this subject. I read  
25 from People vs Williams, 18th Cal. The decision com-  
26 mences at page 187, and I read from page 191: "It has been

1 observed that this witness occupied a very critical and  
 2 suspicious position. He had already announced his own in-  
 3 famy, and that he was guilty of one of the darkest offenses  
 4 in the catalog of human crime. It is not unreasonable to  
 5 suppose, from his occupying the witness stand, that strong  
 6 motives actuated him to prove the defendant to be guilty of  
 7 this offense, and to palliate as much as possible his own  
 8 guilt. The law to present immunity from crimes permits(such  
 9 men to be witnesses, but with the same solicitude for the  
 10 protection of the citizen, watches with jealous scrutiny  
 11 the testimony. It will not permit any citizen to be con-  
 12 victed solely by the testimony of the accomplice, but  
 13 prefers a corroboration of his statements upon independent  
 14 sources. The utmost latitude of cross-examination justified  
 15 by the law in any case should be extended to the testimony  
 16 of such a witness. The Court should permit him to be thor-  
 17 oughly sifted ."

18 MR FREDERICKS: In order to save time I will withdraw the  
 19 objection.

20 MR ROGERS: Yes, I think so.

21 MR FREDERICKS: The matter is not of sufficient importance  
 22 to take up the time.

23 THE COURT: Objection withdrawn. Read the question.

24 (Last question read by the reporter)

25 A Mr Rogers, I am not here to testify to my moral sense.  
 26 I am here to testify to exactly what took place, and I want

perhaps,  
1 to do so to the best of my ability. I have not got the moral  
2 that I should have  
sense, or I would not have done what I did.

3 MR ROGERS: Now, Mr Franklin, you said a moment ago that  
4 every man has his weak point. What you really meant to say  
5 was that every man has his price? A I did not.

6 Q Well then, in Lockwood's case you thought he had his  
7 price? A I didn't think so, no sir.

8 Q You meant to say that; you didn't think he would take  
9 your \$4,000 when you said you would go out and offer it to  
10 him? A I didn't think he would, no sir, and I told Mr  
11 Darrow I didn't think he would.

12 Q To come down, you wouldn't have gone to him at all and  
13 exposed yourself as a jury briber to your intimate friend  
14 unless you thought there was some chance of his taking it?

15 A I went there to Mr Lockwood's because I believed at  
16 that time that he was a man that would stand by a friend and  
17 not do what he has done to me; run me into a trap. That is  
18 what I went for; -that is what I thought.

19 Q Well, assume for the sake of the argument, just for the  
20 moment -- A Yes.

21 Q --just for the moment, assume for the sake of the argu-  
22 ment that you did think he would not run you into a trap or  
23 expose you -- A Yes sir.

24 Q Please answer my question. You did think there was a  
25 strong chance of his taking the money? A No sir, I did not.

26 Q Well, you did think there was a chance, then?

1 A No sir, I did not.

2 Q What did you go out for? A To see if he would take it.

3 Q You exposed yourself to a crime when you didn't think  
4 he would do it? A I went there to make an offer and for  
5 him to either accept or reject it, as he saw fit.

6 Q You knew you were committing a crime? A I did, yes sir.

7 Q Why was it, then, without any chance of success, without  
8 any thought you could succeed, you committed the crime? Do  
9 you think we will believe that? A I don't know what you may  
10 be able to believe, Mr Rogers; that is what I did.

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1 Q Now, let's see, you are getting something for your  
2 testimony? A I am not.

3 Q You are getting immunity for your testimony, aren't  
4 you? A I have never been offered immunity and I never  
5 have asked it.

6 Q You know, don't you, that Section 1324 of the Penal  
7 Code provides that when you walked on that witness stand  
8 and testified they can never prosecute you? A I under-  
9 stand what that section is, yes, sir.

10 Q You went on the stand believing that, didn't you? A It  
11 never entered my mind.

12 MR. FREDERICKS. Just a moment, the questions are coming  
13 so rapidly. We object to the question before the last one  
14 on the ground that it assumes something not in evidence,  
15 that you could never be prosecuted. The witness could be  
16 prosecuted for perjury if he committed it.

17 MR. ROGERS. Well, he wouldn't be prosecuted, that is  
18 certain.

19 MR. FREDERICKS. He certainly would if he committed it.

20 A And there isn't any chance that I would.

21 THE COURT. Overruled.

22 MR. ROGERS. Q You know that the moment you took that  
23 stand you became immune from further prosecution? A I  
24 know the law is this, Mr. Rogers. That where a witness  
25 takes the stand and testifies to some act of his own for  
26 which he might have been prosecuted, that unless that Sec-

1 tion is read it automatically acts and he is immune from  
2 punishment.

3 Q So you do know you are immune, right now? A I do,  
4 yes, sir.

5 Q And when you went onthat stand you knew you became  
6 immune? A I never thought of it when I went on the stand.  
7 I had before.

8 Q You had before? A Well, it was in your mind before you  
9 went on the stand that you were going to be immune from  
10 punishment when you stepped onthere and started talking?

11 A If I hadn't known so I wouldn't have gone.

12 Q Then you went on there to get immunity to save yourself?

13 A No, sir.

14 Q Well, you got immunity for going on? A Automatically,  
15 yes, sir.

16 Q Automatically or otherwise you got immunity now, haven't  
17 you, you know it.? A You are a lawyer, you know, I don't.

18 Q You know it too? A I think that is correct, yes, sir.

19 Q The other day, since this case started, when that  
20 case was pending against you the other day, you went in  
21 there and had it continued on your own motion, didn't you?

22 A I did, yes, sir.

23 Q Until July 15th? A Yes, sir.

24 Q So you could go onthis stand and testify and get rid of  
25 it, didn't you?

26 MR. FREDERICKS. That is objected to as immaterial and not

1 cross-examination, impossible of being answered. A man  
2 could not be on trial in there and on the witness stand  
3 in here.

4 THE COURT: Objection overruled.

5 A I said at that time, Mr. Rogers, to Judge McCormick that  
6 the defendant was in Court and was ready for trial but I  
7 was willing to wait the disposition of the case by the dis-  
8 trict attorney.

9 Q BY MR. ROGERS: Were you ready for trial? A Yes, sir.

10 Q Did you have witnesses? A No, sir.

11 Q Did you have a lawyer? A No, sir, I didn't need any.

12 Q You knew that they were not going to try you that morn-  
13 ing? A I did not; no, sir.

14 Q As a matter of fact, do you mean to tell us you didn't  
15 know you were not going to trial in there? A I did not,  
16 no, sir.

17 Q What were you going to do if you had been tried?

18 A The best I could with the intellect I have.

19 Q Plead Not Guilty, I suppose? A I had already plead  
20 Not Guilty.

21 Q Going to stand by it, then that you were not guilty  
22 if you went to trial? A I would if I had gone to trial.

23 Q You would have said you were not guilty? A You bet,  
24 I would have staid with it too.

25 Q But, seeing you got in here and got immunity then you  
26 changed what you would/<sup>have</sup>said in there three days ago, in

1 order to get immunity, isn't that so? A Nothing of the  
2 kind, Mr. Rogers; no, sir.

3 Q You told me a moment ago if you had gone to trial in  
4 there two or three days ago you would have stuck by the  
5 fact that you were not guilty, didn't you? A The only  
6 way, Mr. Rogers, I could go to trial would be to plead  
7 Not Guilty and stay with it and go to trial.

8 Q Not Guilty and stay with it? A Sure, or there would be  
9 no trial if I plead guilty.

10 Q And stay with it, didn't you say? A Yes.

11 Q You mean by that, stay right through to the end? A Yes  
12 sir, if I had gone to trial I would have stuck right to  
13 the end.

14 Q You couldn't say you were ready? A Yes, sir.

15 Q Seeing you didn't go to trial in there the other morn-  
16 ing you came in here and pleaded guilty and got immunity?

17 A I didn't come in here, I was brought in here.

18 Q You walked in here alone didn't you? A I did, yes, sir,  
19 in answer to an order of court.

20 Q You came in here and plead guilty on the stand after  
21 saying three days ago you were not guilty and were going  
22 to stand by it?

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Pete 1 A I didn't plead guilty, I told my story in as simple  
2 a way as I could as to all of my acts.

3 Q Now, let me see what has happened since three days  
4 ago when you were saying you were ready for trial and were  
5 going to stand up to the proposition that you were not  
6 guilty all the way through; what has happened between then  
7 and yesterday, or day before yesterday? A What has happened  
8 since day before yesterday, you mean?

9 Q Yes, to change your mind and heart. A The day before  
10 day before yesterday I was called as a witness in this case.  
a day,

11 Q All right. I missed it. Well, we will say the day  
12 before the day before yesterday, then. A I had been  
13 called as a witness <sup>have</sup> and/testified; since that time nothing has  
14 happened.

15 Q Then it would not have been true in the other Department  
16 that you were not guilty when you said that you were going to  
17 stay with it, it would not have been true, would it?

18 A I would not have plead guilty in that Department; no sir,  
19 it would not have been true.

20 Q And you were going to put it over if you could?

21 A You bet, yes sir.

22 Q Unless you got immunity? A No sir, nothing of that  
23 kind entered my mind.

24 Q Unless you were allowed to come on the stand here and  
25 testify? A No sir, I had already been summonsed as a witness  
26 in this case.

1 Q Isn't it true you expected to be a witness in this case  
2 when you were in the court-room the other day, and knew you  
3 were going to be? A I knew I would necessarily be called,  
4 at least; I knew I had been subpoenaed.

5 Q You made a statement to the District Attorney, a long  
6 statement before that case ever came up in that other  
7 Department a few days ago, didn't you? A Yes sir.

8 Q And signed it? A Yes sir, and that statement would  
9 not be good in court.

10 Q What? A It would not be worth the paper it was  
11 written on in court if I went to trial.

12 Q It would not be? A No.

13 Q Why not? A Because it would be contrary to law.

14 MR FREDERICKS: That is objected to as incompetent, irrelevant  
15 and immaterial --

16 Q Contrary to what law --

17 MR FREDERICKS: -- Wait a moment, until I get my objection in.  
18 We are getting into a discussion here of what this new witness  
19 may know about law that does not seem to throw any light on  
20 his inclinations or intentions, and it certainly seems to me  
21 it is taking up a lot of time and it is not cross-examination.  
22 The issue has been pretty thoroughly gone into as to this  
23 witness' status by the cross-examiner; now, as to what he  
24 knows about the law, it is bringing in academic questions to  
25 this witness and getting his answers as to what he thinks the  
26 law is or is not, and I think, with all due respect, this

1 witness is entitled to fair treatment and we are not  
2 getting anything, so I object to the question on the ground  
3 it is not cross-examination.

4 MR ROGERS: I take an exception to the comment on the testi-  
5 mony "we are not getting anything"; if that is not worse  
6 than anything I have stated in this court-room, or my col-  
7 league, either, I am very much mistaken.

8 MR FORD: We are not getting anything but a conclusion of  
9 the witness.

10 MR FREDERICKS: I mean we are not getting anything when we  
11 get his opinion of the law.

12 MR ROGERS: His knowledge of the law, not for the sake of  
13 our own instruction, but for the sake of seeing what his  
14 mental condition is and what his beliefs and motives are.

15 THE COURT: Objection overruled.

16 A Read the question.

17 (Question read)

18 A Contrary to the law of the State of California, which  
19 says that a man may come in court and plead guilty and change  
20 his plea at a future date, and any statement made, sworn to  
21 or otherwise, he can come in court and go to trial and that  
22 statement cannot be used against him only under certain cir-  
23 cumstances.

24 Q Well, then, you were ready the other morning with that  
25 statement in the possession of the District Attorney, sub-  
26 scribed and sworn to by you as the truth, to come in there and

1 go before the jury and say what you had said, the statement  
2 was not true? A Mr Rogers, there is no use in you and I  
3 quibbling. I <sup>was</sup> ~~am~~ satisfied Mr Ford was busy in this court and  
4 it would be impossible for him to try the case.

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Op 1 Q Why don't you answer my question? You said you were  
2 ready to go to trial and intending to go to trial if they  
3 called for you? A Yes, sir.

4 Q Now, I am asking you the question, which I just gave you,  
5 with that in view. A Well, what is the question?

6 MR. ROGERS. Read it, Mr. Reporter.)

7 (Question read.)

8 MR. FREDERICKS. He has answered that.

9 (Answer read.)

10 MR. FREDERICKS- We submit that is an answer and a compre-  
11 hensive anser.

12 THE COURT. I think the witness can make a better answer  
13 than that, and counsel is entitled to it.

14 A Shall I answer the question, your Honor?

15 THE COURT. Yes.

16 A As I understand the law, Mr. Rogers, and that was in my  
17 mind at that time and has been at all times since I made  
18 that statement, that at any time I was ready to go to trial  
19 that statement could not be used in court against me at  
20 all.

21 Q And you could testify-- A And I still think so.

22 Q - - and testify to the direct contrary of it and they  
23 couldn't use it against you? A I don't think they could,  
24 I may be mistaken. I am not a lawyer.

25 Q In other words, you thought you could go on the stand the  
26 other morning and testify to the contrary to what you had

1 sworn to before the district attorney, and they couldn't  
2 use it against you? A As I understand the law, and  
3 you know it better than I, the defendant hasn't got to  
4 take the stand and testify to anything if he doesn't wish  
5 to.

6 MR. FREDERICKS. Don't you see, your Honor, that we are  
7 getting into a discussion of law?

8 MR. ROGERS. We are getting the witness' mind pretty well.

9 Q I will return to this subject of immunity a little later  
10 with you and during the short time I have, I want to take  
11 up another matter with you. Will you let me have that  
12 bank book, please? (Clerk produces bank book and hands  
13 same to counsel.)

14 MR. FREDERICKS. Is that the one that was introduced only  
15 for identification?

16 MR. ROGERS. Yes.

17 MR. FREDERICKS. You understand it has not been introduced  
18 in evidence, and I don't know whether counsel has an objec-  
19 tion to its introduction or not.

20 MR. APPEL. It was testified to in reference.

21 Q BY MR. ROGERS. Is that your bank book on the First  
22 National Bank of Los Angeles--may I have a piece of chalk--  
23 THE COURT. You are now showing the document offered by the  
24 prosecution as Exhibit 8 for identification?

25 MR. ROGERS. I don't know, sir, it makes no difference what  
26 it is, as far as the identification is, <sup>concerned</sup> because I do not

1 have to rely on it.

2 THE COURT\_ You have to refer to it, as showing it to the  
3 witness.

4 MR. FREDERICKS So that we can identify it.

5 THE COURT. Let your record show that the witness is  
6 shown the document marked people's exhibit 8 for identifi-  
7 cation in this case.

8 BY MR. ROGERS. Q Is that so? A Yes, sir, that is my bank  
9 book, yes, sir.

10 Q The one which you had copied all your deposits in that  
11 bank, the First National Bank? A Yes, sir.

12 Q Did you have any other bank of deposit in those days?  
13 A I did not, no, sir.

14 Q Now, will you look that over and see if those memoranda  
15 of deposits there are correct? A I cannot tell, I couldn't  
16 tell that.

17 Q Well, tell us to the best of your knowledge.

18 MR. FORD. We object to that on the ground the witness has  
19 answered in the same way on direct examination as on cross-  
20 examination. They objected to its introduction at the  
21 time we offered it and we object to it at the present time  
22 on the ground it is not the best evidence, and our only  
23 reason, I might state frankly is, I have not compared it  
24 with the original records of the bank to see whether it  
25 contains all the various items or whether they are correct-  
26 ly stated.

1 MR. ROGERS. It doesn't make any difference, on cross-  
2 examination.

3 THE COURT. If the witness can answer whether or not those  
4 are the correct entries--

5 MR. FREDERICKS. The witness has answered he didn't know.

6 THE COURT. Is that your answer, Mr. Franklin?

7 A I will state to the best of my knowledge and belief  
8 that is a correct entry of money I deposited in the First  
9 National Bank between August 19, 1911, and October 23,  
10 1911.

11 Q BY MR. ROGERS- And the dates are approximately correct  
12 on there? A I don't know; I presume they must be.

13 Q Now, I call your attention to the various items of  
14 deposit up until the 30th of September, 1911, and ask you  
15 from whom you obtained the various sums from, down as  
16 far as the thousand dollars.

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1 MR FORD: To that we object on the ground it is not cross-  
2 examination and this witness has not been examined on that  
3 subject.

4 MR ROGERS: Well, for Heaven's sake, with an accomplice, if  
5 your Honor please.

6 MR FORD: Withdraw the objection, go to it.

7 MR ROGERS: I have a right to go into everything connected  
8 with it.

9 MR FORD: I withdraw the objection to save time; go ahead.

10 A The first entry shows \$365 on Aug 19, 1911.

11 MR FORD: Pardon me, Mr Rogers; do you wish to offer the  
12 book?

13 MR ROGERS: I may after a bit, I am proceeding in my own  
14 way to get at it thoroughly first. Go ahead.

15 MR FORD: That is all right.

16 A That money is the balance of \$500 given me by Clarence  
17 S. Darrow, I think two days previous.

18 Q All right, sir. A The next entry as shown in the  
19 book --

20 Q Pardon me, just a moment, sir; that is August 19th?

21 A August 19th.

22 MR FORD: Just a moment. I'll object to counsel putting any  
23 figures upon that blackboard unless he offers the book itself  
24 in evidence, or any entries from the book, too.

25 MR APPEL: We may want to make a total and ask a question  
26 based upon that.

MR ROGERS: We want to make some totals of it.

1 MR FORD: Very well, offer the book and then you can make  
2 your totals and offer them.

3 MR ROGERS: I will offer the book when I get ready, if your  
4 Honor please, and I am not ready.

5 MR FORD: We object to the cross-examination<sup>on the book</sup>/on the ground  
6 it has not been introduced in evidence, on the ground the  
7 witness has given no testimony of the various items in that  
8 book. If counsel desires to enter on the examination of  
9 the entries in that book we have no objection; if they desire  
10 to offer the book in evidence we have no objection whatso-  
11 ever, if they want to go through all the items and total  
12 them up. I simply state that for the sake of showing  
13 we are not technical in it, but we do object to any cross-  
14 examination of the witness in relation to the items con-  
15 tained in that book on the ground that he did not on direct  
16 examination testify to it, therefore it is not cross-  
17 examination.

18 MR APPEL: We have a right to go into everything.

19 MR ROGERS: Would your Honor like to hear the case of  
20 People against Schmitz on the subject? I suppose counsel  
21 is getting ready to withdraw his objection, but I will read  
22 a little of it. (Reading) -- "The witness Ruef was jointly  
23 accused of the alleged crime for which the defendant was  
24 being tried. Not only this, but he had confessed it and  
25 pleaded guilty to it. After having done all these things,  
26 and having confessed himself guilty of a felony, he turned

1 and took the witness stand against one who had been his  
2 friend -- at least his political friend. He not only con-  
3 fessed himself a criminal, but went upon the stand to assist  
4 in convicting his co-defendant of the alleged crime of which  
5 he had pleaded guilty. His conduct had been such that under  
6 the plain provisions of the penal code his evidence was  
7 branded so the defendant could not be convicted upon it  
8 without corroborative testimony. Then was it not fair and  
9 just to defendant, in order to investigate and arrive at  
10 the truth, that the reasons, motives and surroundings of  
11 the witness should be laid bare. He had changed his  
12 plea of 'not guilty' to one of 'guilty', and his attitude  
13 of friendship to defendant to that of a witness aiding and  
14 assisting the prosecution. If he had been promised complete  
15 immunity, did ~~he~~ not the defendant have the right to lay the  
16 facts before the jury so that they might determine the weight  
17 to give his evidence? If he had, in another case, before any  
18 promise had been made to him, sworn to facts inconsistent  
19 with his present testimony, was that no concern of the defend-  
20 ant? The jury had the right to believe the witness Ruff, but  
21 the defense had the right to investigate every motive, every  
22 statement, every act, and everything that might in any  
23 reasonable way have influenced him in his testimony, and to  
24 have the jury know this before passing its judgment. In such  
25 cases it is elementary that the broadest scope should be al-  
26 lowed in the cross-examination of the witness.

te 1 It is provided in the Code of Civil Procedure, Section 1844,  
2 that the presumption that a witness speaks the truth may be  
3 'repelled' by the manner in which he testifies by the char-  
4 acter of his testimony, or by evidence affecting his char-  
5 acter, for truth, honesty or integrity, or his motives, or  
6 by contradictory evidence, and the jury are the exclusive  
7 judges of his credibility. It is further laid down in the  
8 Code that the testimony of an accomplice ought to be viewed  
9 with distrust." Speaking of the narrowing of the exam-  
10 ination of the accomplice. Now, if your Honor please, I have  
11 here a book which he says he believes to be his bank account,  
12 in that book that has the entry of \$1,000 which they claim  
13 was the origina of certain bribe money. That being true,  
14 if they hadn't put that book in at all, and that book were  
15 not in existence, I could walk up to that blackboard and ask  
16 that witness to tell me where he got very dollar that went  
17 into that bank, out of which he says he got this money,  
18 every statement, every act of his, that we had reason to  
19 think would throw any light on him we could bring to bear on  
20 him, and I have a right to go into this bank-book and all  
21 about it; I don't have to introduce it in evidence before I  
22 do it.

23 MR FORD: If the Court please, we have no objection whatever  
24 to counsel going into the examination of this witness in  
25 every respect; he has a right to find out his entire relation  
26 with this case; he has a right to ask this witness concerning



1 any transactions that the witness can remember; he has a  
2 right to cross-examine him in regard to all those matters,  
3 but he has not a right to require the witness and try to  
4 procure the witness to testify from a memorandum not made by  
5 the defendant, from a memorandum concerning which the defend-  
6 ant says he has no knowledge, from a memorandum which he said  
7 on direct examination he had never looked at -- the witness,  
8 I mean to say -- he had presented the bank-book, and they  
9 objected, and properly so -- I am not complaining on that  
10 ruling at all, but I do object to their cross-examin<sup>ing</sup> him  
11 now concerning the bank-book in which the entries -- we have  
12 no way of, and I don't know at the present time whether the  
13 entries are correct or not, personally I have not compared  
14 them with evidence which we will introduce ourselves later  
15 on in a proper way and with the proper foundation, but we do  
16 object to the witness being interrogated from the memorandum  
17 not made by himself and concerning the correctness of which  
18 he doesn't know anything.

19 THE COURT: He stated, to the best of his knowledge and be-  
20 lief they are correct.

21 MR FORD: Yes, and he has stated on the other hand that he  
22 has no knowledge and belief. To be true, I suppose, I per-  
23 haps may have some opinion, --

24 THE COURT: I think counsel has a right to find out how  
25 much knowledge he has on that subject. Objection overruled.

26 MR FORD: We object to the memorandum being shown to the

1 witness and the witness refreshing his recollection from any  
2 entries on that book until it is offered in evidence.

3 MR APPEL: This is his book.

4 THE COURT: I have ruled with you.

5 MR APPEL: It is a contract between him and the bank, he is  
6 a party to it, and he is the owner to it.

7 MR ROGERS: Read the question, please.

8 (Question and answer read)

ete 9 Q By Mr Rogers: Then the next deposit you made in the  
10 bank was September 5, 1911, wasn't it, of \$500? A The book  
11 so shows, yes sir.

12 MR FORD: I object to counsel using the blackboard at this  
13 time and making entries and manufacturing -- I don't mean to  
14 be accusing him of anything improper, but of preparing Ex-  
15 hibits for this jury which have not been introduced in court.  
16 Now, that is a very subtle way of making arguments to the  
17 jury.

18 THE COURT: Counsel has stated he intends to offer this  
19 book in evidence.

20 MR FORD: But he is not putting the blackboard in evidence,  
21 he is putting something in court which has no place in court.  
22 If he desires to make an argument of his case, let him do so,  
23 if he desires to argue it before the jury orally, let him do  
24 so; but I object to the use of the blackboard at this time,  
25 and to his executing any figures upon it. I do not think it  
26 is proper evidence, and I do not think counsel has any right

1 whatever to use that blackboard and make figures upon it.

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34s 1 MR. ROGERS. It might be well to observe, if your Honor  
2 please, this is a small book.

3 THE COURT. Objection overruled.

4 MR. FORD. The book hasn't been introduced in evidence.  
5 The entries themselves are not introduced in evidence, and  
6 yet here is something being put up here as an exhibit  
7 which counsel, when the case is through, is at liberty to  
8 erase or do what he pleases with. It is not an exhibit  
9 in court and I object to it being put in the position where  
10 it may be looked at by the jurors on the blackboard before  
11 this book is introduced in evidence, and even then I don't  
12 believe it is proper.

13 MR. APPEL. Let the chalk and blackboard and figures go  
14 in evidence.

15 MR. FORD. This is a serious matter, your Honor, and I would  
16 like to submit authorities on the matter and I believe I  
17 can submit authorities on the matter. It is now a quarter  
18 of five and I think if you take an adjournment until tomorrow  
19 morning I will submit authorities on that matter.

20 MR. ROGERS. If your Honor desires merely a word of explana  
21 tion, I think I may set at rest--every witness may make a  
22 diagram, every bookkeeper--anybody of that sort may step  
23 up to the blackboard and make his figures. Your Honor has  
24 tried a great many water cases, more than I ever heard of  
25 and in this case there has been figures placed on the board  
26 so the jury may see it. Only one can see it at a time.

1 Mr. Ritter can see it. If I give it to Mr. Ritter Mr.  
2 Blanchard can't see it and I am just putting the figures  
3 on the board because I desire to make some conclusion  
4 from it.

5 THE COURT. I doubt if I have got the point of the prose-  
6 cution's objection. I want to get your point fully.  
7 I don't quite see the point you are making .

8 MR. FORD. The book itself is not in evidence. If there  
9 is anything that the witness can illustrate by going to  
10 the blackboard and drawing it, all right, but Mr. Rogers  
11 has not been sworn; is not a witness in this case, he is  
12 not testifying and yet here he is making marks on the  
13 blackboard and making marks concerning testimony and concern-  
14 ing documents which have not been introduced in evidence  
15 and he is not a witness drawing a diagram in order to  
16 illustrate the witness' testimony, but he is drawing  
17 marks on the blackboard. Suppose I interrogated this  
18 witness concerning an entirely different matter not cover-  
19 ing figures. Suppose there were one or two questions and  
20 answers which I considered of importance and I desired this  
21 jury to retain in their memory. I could get up and go  
22 to the blackboard and say, Now, Mr. Franklin, didn't you meet  
23 Mr. Darrow on such and such a day? All right, put on the  
24 blackboard witness met Darrow on such and such a date, and  
25 have that remain before the jury for the purpose of making  
26 an argument before the time for argument comes, and for

1 the purpose of illustrating documents that have not been  
2 introduced in evidence. Your Honor has tried cases in  
3 which the witnesses have frequently gone to the blackboard  
4 and drawn diagrams to illustrate things; have made differ-  
5 ent things for the information of the Court upon the black-  
6 board, because their testimony without it was not intelligible  
7 and in order to illustrate and render intelligible their  
8 testimony witnesses were permitted to do so, but I don't  
9 believe that your Honor has ever on any occasion seen an  
10 attorney start up and attempt himself to illustrate and  
11 to argue the testimony of the witness as he goes along  
12 by drawing upon the blackboard and when he went introduce  
13 the document itself in evidence.

14 MR. ROGERS. I have a particular reason for not introducing  
15 the document just at the moment, but I will introduce it  
16 later if it proves to be correct.

17 MR. FORD. That is the very point I am objecting to. He  
18 wants to put the argument there and if it pleases him  
19 as a good argument it will be there whether it is  
20 correct or not.

21 MR. APPEL. What counsel means, Mr. Rogers is consuming too  
22 much talk. If the talk conforms with what is on the  
23 blackboard no harm can come.

24 MR. FREDERICKS. Introduce it then.

25 MR. ROGERS. If your Honor has the slightest doubt about it  
26 I can show you numerous authorities.

1 THE COURT. I think Mr. Rogers has the right to proceed  
2 in the manner he is proceeding. Overruled.

3 MR. ROGERS. That was on the 5th day of September, 1911,  
4 I believe you said?

5 MR. FORD. I didn't get the question and answer. I don't  
6 know what he is referring to. (Last question read by the  
7 reporter.)

8 MR. DEHM. \$500.00.

9 MR. ROGERS. He testified that as having been deposited on  
10 that date.

11 MR. FORD. We object upon the ground that no foundation  
12 has been laid showing that the witness knows that item to  
13 be correct of his own knowledge and a part from the  
14 entry in the book, that the book was not made by him nor  
15 under his direction; that he did not compare it at the  
16 time and no foundation has been laid showing he compared  
17 it at the time, that he knows the transaction is correct.  
18 Further, it isn't the best evidence and that it is not  
19 cross-examination. It calls for a conclusion of the witness  
20 at this time, based upon a document which he supposes is  
21 correct or which to the best of his knowledge and belief  
22 is correct, but concerning which he has no actual recol-  
23 lection.

24 THE COURT. Overruled.

25 MR. ROGERS. Where did you get that \$500.00 A Before  
26 we proceed any further, Mr. Rogers, I think you have mistaken

1 the date in that first amount, 8-11, it should be 8-19

2 MR. ROGERS. 8-19 is right.

3 A Where did I get that \$500?-

4 Q Yes. A From Clarence Darrow by check.

5 Q Now, is the first amount \$500, out of which you deposited  
6 \$365, where did you get that? A From Mr. Darrow.

7 Q And how? A By check.

8 Q Do you remember on what bank? A I do not. I know  
9 where I cashed it.

10 Q Where did you cash it? A The First National Bank  
11 in this city.

12 Q You took out a certain amount and deposited the remain-  
13 der? A I took out all of it and put it in my pocket and  
14 kept it two days. I think I received that money about  
15 two days before that time.

16 Q Now, the next amount you deposited was how much?

17 A September 11th, \$250.00.

18 MR. FREDERICKS. Is that the third amount?

19 MR. ROGERS. That is the third amount. Q Now, the fourth  
20 amount, where did you get that? A I think from Mr.

21 Harriman. Mr. Harriman gave me a check for it, if my recol-  
22 lection serves me correctly testifying from memory.

23 Q Now, what is the next amount that you received?

24 MR. FORD. Well, just a moment--did you put that last one  
25 on the blackboard?

26 MR. ROGERS. I did, \$250.00.



1 MR. FORD. I don't understand the hieroglyphic out to the  
2 right, is that an H?

3 MR. FREDERICKS. Those two dates are the same, 9-11, 9-11?

4 MR. ROGERS. 9-5 and 9-11.

5 MR. FORD. Now, I ask that counsel offer those three entries  
6 on this blackboard in evidence at the present time.

7 MR. ROGERS. Nothing doing just yet.

8 MR. FORD. Then I ask that the blackboard be turned in  
9 such a way that it cannot be viewed by the jury until it is  
10 offered in evidence, facing them.

11 THE COURT. I cannot see any objection to it.

12 MR. FORD. My objection, it is argument for some purpose  
13 that I don't at the present time understand and not under-  
14 standing it I certainly object to it. I cannot see the  
15 relevancy of it. I might be lacking in some way but I can't  
16 help it and we are entitled to have it taken out of view  
17 of the jury until its relevancy appears.

18 THE COURT. Go ahead, let's find out what counsel is  
19 driving at. Probably find out in time.

20 MR. FORD. He has made three or four incorrect entries as  
21 to dates. I don't know whether the significance lies in  
22 the amount or in the dates, I will be frank about it.

23 The Court denies our request to have it removed?

24 THE COURT. Yes, sir.

25 MR. ROGERS. The next amount? A September 14, \$52.70.

26 I did not get that from Mr. Darrow or anybody connected with

1 the McNamara case even in the slightest way.

2 Q All right, we will leave that out, then.

3 MR. FREDERICKS. Now, may it please the Court, there are  
4 three numbers up there and the dates have been changed  
5 several times since.

6 MR. ROGERS. Do you want an adjournment at this time, is  
7 that the object? If it is, if they are trying to kill  
8 time on me I will be glad to adjourn to accommodate coun-  
9 sel.

10 MR. FREDERICKS. We would like to have the witness compare  
11 and see if they are actually correct in the book.

12 A The first entry August 19th.

13 Q Is that 19th or 9th? A 19th.

14 The next September 5th, that is correct. The next is  
15 September 11th, correct. Item \$250.00.

16 MR. ROGERS. Now, the next item you said you did not get  
17 from Mr. Darrow, \$52.70. Now, the next deposit that you  
18 have there, what is that? A September 15th, \$250.

19 Q Did you get that from Mr. Darrow? A Not personally.

20 Q From the McNamara case? A Yes, sir.

21 Q Who gave it to you? A Marie Anglin who was my stenogra-  
22 pher, brought it to me from Mr. Darrow.

23 Q Whose check was it? A Clarence S. Darrow's.

24 Q His check? A Signed as Trustee, yes, sir.

25

26

Smith 1 Q That makes two items of \$250. Now, the next item if  
2 you please, the 18th is it? A Just a moment. I received  
3 it about that time, \$50 from LeComte Davis, his personal  
4 check; but whether that is that check or not I don't know.  
5 I am inclined to think, though, that it is.

6 Q That is your best recollection? A At this time, yes.

7 Q The next one, please? A The next item is September 21,  
8 a deposit of \$530, \$500 of which was the personal -- rather  
9 the check of Mr Darrow paid to me.

10 Q Where did you get the other thirty? A I don't remember  
MR FREDERICKS:

11 Q Now we object, may it please the Court, to counsel  
12 writing down on the board there because it doesn't appear  
13 that he is writing down what is in the book, he is writing  
14 down some other figures for some other purpose.

15 MR ROGERS: Just like any diagram. I think you can reach  
16 what I am after now. I am setting out the McNamara funds  
17 out of his private account and from whom he got them, and  
18 as soon as I get ready then I will tell you -- I will ask  
19 the witness and that will demonstrate it all; but I don't  
20 purpose to do it now for various reasons.

21 THE COURT: Proceed.

22 MR FREDERICKS: Then shall we understand counsel is endeavor-  
23 ing to get from this witness all the money he got <sup>from</sup> for the  
24 McNamara defense, whether it is in that bank-book or some-  
25 where else?

26 THE COURT: That is his statement.

1 MR FREDERICKS: All right.

2 A The next item that appears in this bank-book of money  
3 received from Mr Darrow is on September 30, \$500. The next  
4 item appears --

MR ROGERS:

5 There are three more items in there of 45, 25 and 75;  
6 20th, 25th and 30th; were they gotten from the McNamara defense  
7 or anybody connected with it outside matters entirely?

8 A That matter of \$75 I am not sure about, but I don't  
9 think I got it from him; I think I got that from somebody  
10 else.

11 Q Couldn't be sure about it? A I am very positive, yes  
12 sir.

13 Q Now the next item you got was how much? A \$500 on  
14 September 30th.

15 Q I have that down. Now the next item. A October 6th.

16 Q \$1,000? A Yes sir.

17 Q The next item. A October 16th, I think, this \$500.

18 Q And the 23rd, is that from the McNamara defense at all?

19 A No sir.

20 Q That is an item of \$30? A Yes sir.

21 Q Then, out of that account -- there is another one here,

22 Q Now in the book here, <sup>appears</sup> ~~is~~ a pencil memorandum on  
23 the ~~20th~~ <sup>28th</sup> under the heading 28th, \$500; who put that in?

24 A I did.

25 Q Well, why didn't the banker put it in; do you remember?  
26 Didn't you have your book with you? A I didn't deposit that

1 amount; that was <sup>cash and</sup> ~~^~~ I made that at the time when I received  
2 it.

3 Q When did you make that entry? A The date that I got it.

4 Q Then it is not -- it was not deposited in the bank, was  
5 it? A No sir.

6 Q But merely put down there as an item received? A Yes  
7 sir.

8 Q October what? A 28th, 1911.

9 Q How much was that? A \$500.

10 Q Now is there any other cash received from Mr Darrow  
11 or from anybody connected with the McNamara defense?

12 A Oh yes. Q When, the amount and the date?

13 A On the 28th day of November, 1911, I received from Mr  
14 Darrow the sum of \$4,000.

15 Q You know I am not talking about that. We dispute that  
16 altogether. A You asked me the question.

17 Q The amount you got in these items ~~xxx~~ <sup>along</sup> here --

18 MR FORD: The amount he got in these items along there is  
19 there.

20 MR ROGERS: Like these items along here.

21 THE COURT: Let the witness answer the question.

22 MR ROGERS: I am not asking about that, but I will put that  
23 down. You say on November 28th \$4,000 -- November 28th, was  
24 it? A Yes sir.

25 Q All right. That is the amount you say you received  
26 from Mr Darrow? A That is what I say, and it is what I  
received.

1 Q Go ahead and tell me any other item than that.

2 A I don't remember any other moneys at this time. It may  
3 be I got more, though.

4 Q Now, did you receive any along about the middle of  
5 October in cash? A In cash? Q Yes. A Yes, on  
6 October 28th.

7 Q Well, is that what you mean in your direct testimony  
8 as being the middle of October? A Well, it was sometime  
9 along between the middle and last of October that I got  
10 \$500 from Mr Darrow.

11 Q And is that the same amount that you have a memorandum  
12 of there in the book? A I don't know.

13 Q Well, did you receive \$500 at any other time than  
14 the 28th in cash? A I received from Mr Darrow at one time--  
15 whether that is this entry or not I couldn't say -- \$500 which  
16 was ~~a~~ the personal check of LeComte Davis, and the rest was cash--  
17 what that date is I am unable to say .

18 Q Is that what you referred to in your direct testimony?

19 A About what? Q About \$500 that you received from him  
20 in cash, that item of which LeComte Davis' check was a part.

21 MR FORD: I don't think he said anything in his direct  
22 testimony -- I don't remember anything about it.

23 MR ROGERS: If you don't, then we will have to read it  
24 to you, then.

25 THE COURT: We will adjourn at this time until tomorrow  
26 morning.

(Jury admonished. Recess until 9:30 a.m. June 1, 1912.)