

Darrow, Clarence, 1857-1938, defendant.

People of the State of California  
Plaintiff; vs. Clarence Darrow, defendant.



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*Ford  
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1 MONDAY, AUGUST 12, 1912; 10 o'clock A.M.

2 Defendant in court with counsel.

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4 THE COURT. Call the jurors.

5 (Jury polled; all present.)

6 THE COURT. Mr. Rogers and Mr. Appel are not here. Shall we  
7 wait a few minutes for them?

8 MR. DARROW. I don't think it is fair to Mr. Ford to wait.

9 THE COURT. All right; you may proceed, Mr. Ford.

10 ARGUMENT BY W. J. FORD, on behalf of People.

11 May it please the court and gentlemen of the  
12 jury: Judges ought to remember that their office is  
13 jus discere and not jus dare; to interpret law, not to make  
14 law or give law. Judges ought to be more learned than  
15 witty, more reverend than plausible, more advised than  
16 confident. Above all things, integrity is their portion  
17 and proper virtue. Above all things, integrity is their  
18 portion and proper virtue.

19 These noble sentiments were penned by one of the  
20 most brilliant minds of modern times. Francis Bacon,  
21 born in the age of Queen Elizabeth, living during the age  
22 of her successor, King James, living in the age of great  
23 achievement and noble adventure, in the age of Raleigh and  
24 of Smith, in the age of Shakespeare and the great  
25 dramatists of <sup>the</sup> Elizabethan era, born in an era of  
26 brilliant minds, was the most brilliant mind of all. As a  
student at the University of Cambridge in England, at the

1 early age of 15, he perceived that the entire system of  
2 scientific inquiry and philosophic discussion was based  
3 upon erroneous principles. He formulated a plan of  
4 investigation of the natural phenomena of this world which  
5 has changed the whole course of modern European thought.  
6 Great as a philosopher, great as a scientist, great as a  
7 statesman, he was equally great as a lawyer and a jurist.  
8 The contemporary of Sir Edward Coke, whose decisions today  
9 are scanned with reverence by modern lawyers. the decisions  
10 of Francis Bacon stand forth as models of knowledge of  
11 legal principles and lucidity of expression. Through his  
12 great legal attainments, he rose from a position of com-  
13 parative obscurity to the proudest place in England's  
14 judiciary. He became the Chancellor of the British  
15 Empire, the highest office among the judiciary of England.  
16 That he fully appreciated the grave responsibilities of  
17 that important position is illustrated by the sentiments  
18 which he expressed in this essay on Judicature. And con-  
19 cerning judges, he said, "Above all things, integrity is  
20 their portion and proper virtue."

21 And yet Lord Bacon, with his brilliant mind,  
22 his noble sentiments, plead guilty to the crime of receiving  
23 bribes before the bar of the House of Lords and was deprived  
24 of his office. When first accused of receiving money from  
25 litigants, like the defendant in this case, when he told  
26 Mr. Biddinger, "The bolder you do it, the better," like him

1 he came forward before the bar of the House of Lords and  
2 openly and boldly admitted those things which he thought  
3 he could plausibly explain away. But at length he was  
4 forced to admit that he was guilty of the charge, and he  
5 was deprived of his offices. History is filled with the  
6 examples of men like Francis Bacon, men whose minds are  
7 brilliant, whose sentiments are noble, but whose practices  
8 are ignoble.

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1 Nineteen centuries ago a member of Pilate's Court for-  
 2 sook the pomps and vanities of a worldly life to follow  
 3 the fortunes of the humble Nazarine, and to join the com-  
 4 pany of despised Galileans. So great was his integrity,  
 5 so great was his honesty, that Christ made him the treas-  
 6 urer of that little band. So great was his charity  
 7 that when Mary annointed the feet of her God, he could  
 8 not see the extravagance, <sup>to be warranted</sup> and he said "Why should not this  
 9 oil have been sold and the money given to the poor?" Not-  
 10 withstanding his great reputation for truth, notwithstand-  
 11 ing his great reputation for honesty, notwithstanding his  
 12 great reputation for integrity, his apparent love of  
 13 charity and disdain for the things of this world, he sold  
 14 his God for thirty pieces of silver.

15 At the outbreak of the revolutionary war a young captain  
 16 of militia left his home <sup>at Norwich</sup> and joined Washington's army at  
 17 Cambridge. He had a brilliant mind. He planned the inva-  
 18 sion of Canada. He planned the attacks on Crown Point. He  
 19 planned these things, and yet sectional jealousy compelled  
 20 him to give way to others. Notwithstanding, noble and un-  
 21 selfish, he followed those others in the things which he  
 22 had planned and did his duty. He was considered one of  
 23 the bravest soldiers in the American army. Time after  
 24 time his valor had saved the day in the most vigorous  
 25 struggles of the revolutionary war. It was his valor,  
 26 it was his courage, that saved the day for the Americans



1 at the first battle of Saritoga. And yet the jealousy of  
2 others compelled him, time after time, to give way to  
3 those of inferior attainments. While he was placed in  
4 command of the station at Philadelphia, he was unjustly ac-  
5 cused of many crimes. The court martial which sat upon  
6 the investigation of those crimes found that he was inno-  
7 cent. His enemies forced a reconsideration of the charges,  
8 and he was at length found guilty of several penial offenses  
9 and the noble Washington was reluctantly compelled by  
10 sentence of that court martial to reprimand him.

11 While in command at West Point, papers were discovered  
12 on the person of Major Andre which proved him guilty of  
13 and notwithstanding treason, The great reputation for truth, for honesty and  
14 integrity, for noble, patriotic and unselfish devotion  
15 to duty, the name of Benedict Arnold has become synonymous  
16 over the whole civilized world with treachery and treason.

17 History is filled with examples of men of noble char-  
18 acter, apparently of great reputation, yet those men have  
19 committed crimes. The court will instruct you in this  
20 case that you have a right to take into consideration the  
21 previous good reputation of this defendant -- and it is  
22 just that you should do so. But remember that previous  
23 good reputation is no guaranty against the commission of  
24 an offense. One of the witnesses in this case haswell  
25 expressed it, this man, Lorimer's seat mate,  
26 Billy Mason, one of the numerous politicians who have tes-

1    tified in this case, and he said --

2    MR DARROW: I want to take exception to that statement.

3    He wasn't Lorimer's seat mate.

4    MR FORD: Not important. What he said was this, that  
5    reputation is what men say about you, not what they think  
6    about you. Character is what God Almighty alone knows about  
7    you. Remember that, gentlemen, when you come to take up  
8    that phase of the case.

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3w 1           What is the chief aim of all civilized govern-  
2 ment? The preamble of the most admirable of human docu-  
3 ments, the constitution of the United States, starts off  
4 with these words, "We the people of the United States in  
5 order to form a more perfect union, establish justice,  
6 insure domestic tranquility." The very first objects  
7 for which the constitution of the United States was framed,  
8 the very first objects for which the Union was formed were  
9 to establish justice and insure domestic tranquility.  
10 Our own state constitution, in the very first section says,  
11 "All men are by nature free and independent and have certain  
12 inalienable rights, which are those of enjoying and defend-  
13 ing life and liberty, acquiring, possessing and pro-  
14 tecting property, and pursuing and obtaining safety and  
15 happiness;" the second provision of our state constitu-  
16 tion is as follows: "Government is instituted for the pro-  
17 tection and security and benefit of the people." The  
18 chief end and aim of all civilized governments is to  
19 maintain the just relations which should exist between  
20 the individuals of a commonwealth.

21           Judas Iscariot sold his God; yet Christian  
22 theologians believe that his act was necessary in order  
23 that the Scriptures might be fulfilled. They believe  
24 that Christ knew of this treason and could have guarded  
25 against it had he so desired. Benedict Arnold would have  
26 substituted for government of the people by the people,



1 government by foreign power. Undesirable as that  
2 foreign government might be, yet, after all, it would have  
3 served the most important end of government. It would  
4 have maintained the relations between the individuals of  
5 the commonwealth. It would have dispensed justice  
6 man and man.

7 The act of this defendant in this case, the  
8 act of the jury briber, is worse than all of these, for  
9 it strikes the very foundation of all government. For  
10 without courts of justice to maintain the relations  
11 between the individuals of a commonwealth, there is no  
12 government, and we might as well, gentlemen of the jury,  
13 revert at once to a state of anarchy and let the strongest  
14 prevail.

15            Now, gentlemen, the evidence in this case  
16 shows that when Mr. Biddinger arrested J. B. McNamara at  
17 Detroit, <sup>and</sup> they were on their way from Detroit to Chicago,  
18 that Brice attempted to bribe the officers who had him in  
19 custody. Upon their refusal to accept that bribe, he  
20 explained, "If you don't take it, Clarence Darrow will get  
21 it." What he meant was, if you don't give me my liberty,  
22 Clarence Darrow will procure it for me. The defendant  
23 says he did not know of the existence of J B McNamara at  
24 that time; he did not know that he would ever become an  
25 attorney in the case of People vs. J B McNamara. On that  
26 matter--

1 MR. APPEL. Your Honor, whatever McNamara may have said  
2 to Mr. Biddinger before Mr. Darrow became attorney in the  
3 case, or before showing that it was spoken by Mr. Darrow--  
4 that was all objected to in the evidence on the ground  
5 that it was inadmissible.

6 THE COURT. What is your objection?

7 MR. APPEL. We now, in order to keep up that proposition,  
8 we object to having this jury consider that statement or  
9 to have it argued to the jury. We would ask your Honor  
10 to instruct this jury not to consider it. We are entitled,  
11 your Honor, to correct any error committed by this court  
12 up to the time that this jury may take this case into  
13 their jury room for deliberation.

14 THE COURT. The objection and the assignment of error  
15 will be noted.

16 MR. DARROW. May I just add one word here, that that evidence  
17 was admitted solely to show that Biddinger was a competent  
18 witness, nothing else, and it should not be used for any-  
19 thing else.

20 MR. FREDERICKS. If you will just listen to the argument,  
21 you will see the application of it.

22 THE COURT. The objection and the assignment of error are  
23 noted. Proceed, Mr. Ford.

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1 MR FORD: Darrow says that he didn't know of the existence  
2 of J. B. McNamara. Darrow says that he didn't know that  
3 he would ever become an attorney in this case. And perhaps  
4 those statements on the part of this defendant are true.  
5 But Brice knew Darrow. Brice knew that Darrow had been  
6 for years and years <sup>the</sup> attorney for labor in all its struggles,  
7 both criminal and civil. Brice knew Darrow, and the  
8 exclamation was perfectly natural upon his part.

9 The law provides, gentlemen, that it is the duty of an  
10 attorney to defend a man accused of crime. The law pro-  
11 vides that it is the attorney's privilege to see that his  
12 client, even though his client is guilty, is not convicted  
13 except upon legal evidence, and in accordance with the  
14 established rules of law. But, to the disgrace of our civil-  
15 ization, many criminal lawyers have enlarged this privilege.  
16 They have extended it into an ~~excuse~~ excuse for committing all  
17 sorts of chicanery and fraud. He has used it as an excuse  
18 for subornation of perjury on the part of witnesses, for  
19 the bribery of judges and juries. They have taught by  
20 their acts, by their conduct, by their preaching to the  
21 criminal classes of this country, that there is no such  
22 thing as crime, as the word is generally understood. They  
23 have taught the criminal classes of these United States  
24 that there ~~are~~ are no courts of justice; that courts of justice  
25 are merely instituted by society as an instrument for making  
26 reprisals upon them; that there is warfare between society

1 and them; that the belligerent rights on both sides are  
2 equal; and that they have the right to do anything nec-  
3 essary to defeat and obstruct justice; that there is no  
4 difference between the people in jail and those out of jail,  
5 except this, that if you are in jail, it is better if you  
6 have a smart lawyer like Clarence Darrow. The conduct  
7 of these men, their success in accomplishing their pur-  
8 poses, their use of such tactics --

9 MR APPEL: Wait a minute - - wait a minute -- wait a minute.

10 MR FORD: I will stipulate that every remark I make may be  
11 deemed excepted to.

12 MR APPEL: You don't need to stipulate anything. We ob-  
13 ject to his telling this jury what some lawyers have taught,  
14 or other people have said; and we object to the statement  
15 that other people have used such means.

16 THE COURT: The objection and assignment of error will be  
17 noted.

18 MR APPEL: We ask your Honor to instruct the jury that  
19 they should not consider any statements of that kind, which  
20 are not supported by the evidence.

21 THE COURT: The court will instruct the jury --

22 MR APPEL: We shall object every time he does that.

23 THE COURT: The jury is instructed that counsel for the de-  
24 fense has made an objection that you have heard, and assigns  
25 the same as error. It has been noted. Now, the jury is  
26 instructed and admonished that if counsel for the People



1 go beyond the evidence or beyond a rational discussion of  
2 the evidence, it is your duty to disregard such state-  
3 ment and give it no consideration. It is perfectly within  
4 the province of the jury to determine what has been testi-  
5 fied to, and what is a rational deduction from that testi-  
6 mony. At any time the jury wants the testimony read, they  
7 may have it.

8 MR FORD: It is your duty, gentlemen of the jury, to use  
9 your common sense and apply it to this evidence, and if I  
10 fail to do it, disregard my statements.

11 The unfortunate Brice, the poor, deluded Brice, when  
12 he placed that bomb of dynamite that hurled twenty un-  
13 suspecting souls into eternity, knew that if he were caught,  
14 that he could get a smart lawyer, like Clarence Darrow, and  
15 he believed that Darrow could free him; and when he was ar-  
16 rested and being carried from Detroit to Chicago, he said  
17 "If you don't take this money Darrow will get it." What  
18 difference did it make whether Darrow realized --

19 MR APPEL: Wait a minute.

20 MR FORD: I can't be interrupted this way. I have been  
21 interrupted all along.

22 THE COURT: Make your statement of the exception.

23 MR APPEL: I object to that statement to the jury and as-  
24 sign it as error. It was error to have the testimony ad-  
25 mitted, and it is further error to argue it to the jury,  
26

1 and we ask the court now to instruct the jury to disre-  
2 gard that evidence and not to permit counsel to argue it.

3 THE COURT: The exception and objection have been noted.

4 The court declines to instruct the jury upon that matter.

5 MR APPEL: We except to the court not instructing the jury  
6 as requested by the defendant, and we assign that as abso-  
7 lute error.

8 THE COURT: The assignment will be noted. Proceed, Mr  
9 Ford.

10 MR FORD: It was the example of men like Darrow that caused  
11 the poor deluded wretch, J. E. McNamara, to believe  
12 that he could commit <sup>the</sup> crimes he did with safety to himself.

13 MR APPEL: Your Honor, we protest against any such state-  
14 ment as that, or the insinuation or intimation that Darrow  
15 had anything to do, or in any way instructed anyone or in-  
16 structed J. E. McNamara to commit a crime, there being no  
17 foundation here for any statement of that character.

18 THE COURT: The assignment will be noted. Proceed, Mr  
19 Ford.

20 MR APPEL: We ask the court to instruct the jury to dis-  
21 regard that statement.

22 THE COURT: The court declines to make any such instruction.

23 MR APPEL: We take exception.

24 MR FORD: Picture in your mind, if you can, gentlemen of the  
25 jury, if you can, the agonized faces of the mothers and  
26 wives and children, as they stood at the fire-lines on

1 that fateful October morning, watching that firey furnace  
2 at First and Broadway, hoping against hope that their  
3 loved ones might be saved from the awful fate that seemed  
4 insurmountable at that time. Picture, if you can, those poor  
5 creatures, hoping against hope, that at least the bodies of  
6 their loved ones might be recovered for identification and  
7 for burial. Picture if you can, the poor father, of a family,  
8 caught like a rat in a trap, praying upon his scortched  
9 knees for the safety of his little children who would be  
10 deprived of a father's care during the years they needed  
11 his guidance the most. Ah, well, for that poor doomed  
12 wretch, that he could not lift the curtain from the future  
13 and look down the vale of future years and see that the  
14 man who had poisoned the mind of poor Brice, would also  
15 some day poison the mind of his own little babbling boy,  
16 and that same little, pretty, babbling boy would be  
17 led into a life of crime and would some day dangle from  
18 the gallows because, forsooth, someone had taught, there  
19 is no such thing as crime, as the word is generally  
20 understood. Well, for that father, that he could not  
21 see his little innocent baby daughter, lured into a life  
22 of infamy and shame by some wretch who believed that there  
23 is no such thing as crime. Ah, well and truly may these  
24 little helpless children, stretch forth their hands to  
25 this defendant and say, "Give, oh, give us back our murder-  
26 ed father." Ah, well and truly may the widowed mother

1 turn to this defendant and say, "Give me back my boy."

2 MR DARROW: Is it the ruling of this court that counsel may  
3 say anything?

MR. DARROW-

4 THE COURT: No, it is not. /Where is there any foundation  
5 for that argument?

6 MR APPEL: Let us be calm about this. Where is there any  
7 foundation, any scintilla of evidence here, that Darrow  
8 was responsible for the killing of those human beings at  
9 the Times? Who said so?

10 THE COURT: Do you wish to assign it as error?

11 MR APPEL: We ask again, that counsel be admonished that he  
12 must not argue that Clarence Darrow had anything to do with  
13 this killing or this explosion at the Times. There is no  
14 evidence, and we ask your Honor to not permit counsel to  
15 argue that unless, your Honor -- I am willing to do that --  
16 unless your Honor will stretch the time for the defense, and  
17 unless we may be permitted to answer.

18 MR FORD: You are stretching it now -- taking a thing that  
19 don't belong to you.

20 THE COURT: The court will instruct the jury now. The  
21 court will give the instruction heretofore given, that if  
22 counsel for the People, should go beyond the evidence or  
23 beyond a rational discussion of the evidence, it is your  
24 duty to disregard it. But the court further instructs  
25 you that it is perfectly within the province of the jury to  
26 determine what was testified to, and the rational conclusions



1 to be drawn therefrom. Proceed with the argument, Mr Ford.

2 MR FORD: Mr Darrow has testified on the stand here that  
3 for many years he has been engaged in the most important cases  
4 involving labor, both civil and criminal. He testified  
5 that as soon as the McNamara Brothers were arrested, he was  
6 importuned by the leaders of labor to take this case. He  
7 said he was getting old and he intended to retire from the  
8 practice of law; that he thought a younger man ought to be  
9 chosen for this duty. He said he realized that it was a  
10 hard fight. He said that very soon after he went into the  
11 case he realized that these defendants were guilty.

12 MR DARROW: There is no such evidence, Mr Ford. I take ex-  
13 ception to that remark.

14 THE COURT: The exception will be noted, and the jury will  
15 bear in mind the admonition which the court has given.  
16 If any of the jurors want part of the evidence read, it may  
17 be read.

18 MR FORD: He realized, gentlemen, above all things that a  
19 long and apparently successful life in his profession, suc-  
20 cessful reputation in his profession, would be jeopardized  
21 by the loss of this case. He said that it was the last  
22 case that he would ever undertake. He realized that its loss  
23 would destroy the reputation which he had built up. He  
24 felt that he must win the case. Franklin says that in all  
25 his conversations with Darrow, Darrow had frequently said  
26 that he must win this case.

1 It is not necessary that we prove a motive for bribery. It  
2 is not necessary that a motive be proved for any crime.  
3 That is no part of the crime itself. The question be-  
4 fore you is whether the crime was committed. You can con-  
5 sider the existence of a motive merely for the purpose of  
6 indicating the probability that the defendant committed  
7 crime. If there were any doubt in this case, and you  
8 needed a motive to confirm your opinion that the defend-  
9 ant committed the offense of which he stands accused, you  
10 have here the most powerful motive, the motive of preserv-  
11 ing a reputation built up by a life-time struggle for the  
12 cause of labor. Mr Darrow knew shortly after his employ-  
13 ment that these defendants had been indicted by the  
14 grand jury. There is an exhibit in this case, indictment  
15 No. 6939, upon which appears the names of the witnesses  
16 who had testified before that grand jury, and among those  
17 names is the name of Ortie E. McManigal. The defendant,  
18 as counsel for the McNamaras, received a copy of that tes-  
19 timony which was given by those witnesses before the grand  
20 jury, and in that testimony is the testimony of Ortie  
21 E. McManigal. You remember that Mr Darrow upon the stand  
22 quibbled over the question of whether it was possible for  
23 George Behm to change the testimony of Ortie E. McManigal.  
24 He said he didn't know that Ortie E. McManigal ever testified  
25 anywhere. If he did not remember that Ortie E. McManigal  
26 testified before the grand jury, if he did not remember

1 that he had received a copy of that testimony, he did know  
2 that Ortie McManigal had confessed, that Ortie McManigal was  
3 to be a witness in the trial of the case against J. B.  
4 McNamara. He did know that Ortie McManigal was telling the  
5 truth, because he did know that his clients were guilty.  
6 And what did he do? You, gentlemen of the jury, may have  
7 wondered what a great deal of the evidence in this case  
8 had had to do with the events of the 28th day of November,  
9 1911. It has this to do with it -- before you can fully  
10 understand the occurrences of the 28th of November, you must  
11 know the nature of this case. You must know the relation  
12 of the defendant to it. You must know the things which  
13 the defendant knew at that time, in order that you may  
14 truly and really appreciate the circumstances of that day.  
15 You must know whether or not the defendant, previous to  
16 that time, had been engaged in a scheme or system of criminal  
17 action, of which incidents of the 28th of November were  
18 but a part.

19 Now, what was the very first thing that this defendant  
20 did? Now, knowing that Ortie E. McManigal was the main  
21 witness for the prosecution, knowing that they relied upon  
22 McManigal's testimony, knowing that McManigal's testimony  
23 was true, he first got Mrs Emma McManigal, Ortie's wife,  
24 and brought her to California. For what purpose? To  
25 impeach the testimony of Ortie McManigal, if necessary;  
26 to win Ortie over to the defense, if necessary. And there



1 is no other answer. Knowing that this man was telling the  
2 truth, he was endeavoring to frustrate and defeat justice,  
3 and prevent his clients from being punished, not by taking  
4 exception to the competency of their testimony in court,  
5 not by the means which the law permitted, but to do it by  
6 stretching the truth, by stretching the privilege which the  
7 law gave him into an excuse for committing crime, for  
8 bringing Mrs McManigal to California for the purpose of  
9 influencing Ortie McManigal to withhold true testimony or to  
10 give false testimony, or to impeach his testimony, which  
11 he could not have done in any other manner except by giv-  
12 ing false testimony -- all of which are crimes. What  
13 other purpose or motive was there in bringing Mrs McManigal  
14 here? Any view you take of it, he expected to have a crime  
15 committed by her, and he was responsible for her acts.

16 Now, he says that George Behm was a hired nurse, sort of  
17 a dry nurse for Mrs McManigal and her two children. George  
18 Behm was hired, according to his own story, in order that  
19 Mrs McManigal might more successfully and more effectually  
20 be able to devote her time to the cause for which she had  
21 been brought. If the defendant's own story with regard to  
22 George Behm is true, he brought George Behm here as acces-  
23 sory to the crime of Mrs McManigal. But he brought George  
24 Behm here for other purposes. If George Behm's purpose  
25 in being here was merely the innocent purpose of looking af-  
26 ter the children, if George Behm did not do or did not

1 hear or did not see anything which could be of value to  
2 the prosecution, then why, when George Behm was subpoenaed  
3 before the grand jury for the first time, why was he  
4 instructed to refuse to answer questions? They knew that  
5 Ortie McManigal was sane. They knew that Ortie McManigal's  
6 story was true. If George Behm's presence was merely  
7 that of a nurse, what could there be in his knowledge that  
8 should induce them to want to prevent him from testifying  
9 before the grand jury? The very questions asked of George  
10 Behm before the grand jury were questions concerning Mr  
11 Behm's efforts to have Ortie McManigal change his testi-  
12 mony. Those were the very first questions asked. You  
13 have the contempt proceedings before you in which those  
14 questions appear, the questions that were asked before the  
15 first grand jury, and those are the questions that Behm was  
16 instructed to refuse to answer. The first time he was in-  
17 structed to answer all questions until these defendants  
18 might look into those questions and see what they were, see  
19 what the prosecution was driving at. If there was any at-  
20 tempt on the part of George Behm to intimidate or to influence  
21 Ortie McManigal, the People had a right to bring George  
22 Behm before the grand jury, and they had a right to have  
23 him answer those questions. Any attempt to induce George  
24 Behm to withhold that information from the prosecution  
25 was committing a crime.

26 The prosecution of a criminal is not a war between

1 the criminal and the prosecution. It is not one in  
2 which the belligerent rights are equal on both sides.  
3 It is one in which the people are entitled to know all the  
4 facts in the case. And if anybody is attempting to keep  
5 out the facts, the officers of the prosecution would be false  
6 to their oath and false to their duty if they did not at-  
7 tempt to prevent such a thing from being carried out; and  
8 they had a right to question George Behm, and if George  
9 Behm had been guilty of nothing excepting as a nurse, there  
10 would have been no one to instruct him to refuse to tes-  
11 tify. The defendant admits that he instructed him to re-  
12 fuse to answer -- that is admitted -- and the evidence shows  
13 that he was interrogated in that same matter, in regard to  
14 the scheme of bribery in the case of people versus J. E.  
15 McNamara.

16 What happened after the contempt proceedings came on.  
17 They came into court, and George Behm was instructed to  
18 go back before the grand jury and answer those questions.  
19 The court held the prosecution had a right to ask them.  
20 They went back again the second time with Mr Behm, after  
21 Mr Behm had been instructed to answer every one of those  
22 questions, they went there the second time <sup>and</sup> in defiance of  
23 the court's order, and according to their own story, in-  
24 structed him to refuse to answer on the ground that they  
25 did not concern the case.  
26



1 . They admit  
 2 that. They say he was not able to remember the words  
 3 that were material, relevant and competent, and the only  
 4 words that he could remember were that it did not con-  
 5 cern the case, and so he was instructed to go there and say  
 6 it did not concern the case. Darrow says that Behm was  
 7 never instructed to give false answers to any questions.  
 8 Do you believe that poor, faithful Behm would have violat-  
 9 ed the order given to him by Mr. Darrow if he was a man of  
 10 weak mentality? If he was a man who could not understand  
 11 why did they tamper with him at all? You saw Mr. Darrow  
 12 handling Mr. Behm in this court room, and if there was ever  
 13 an index to a man's character, it was given here in court  
 14 when this defendant with his years of training, with his  
 15 brilliant mind, with his magnificent personality, toying  
 16 with poor Behm on the stand like a rat in a trap. You saw  
 17 that poor fellow upon the stand. No wonder Behm should  
 18 exclaim, "My God, this man has got me into an awful hole."  
 19 Those were the words that came from him. And he told the  
 20 truth when he said: "My God, this man has got me into an  
 21 awful hole." And he did.

22 There is only one conclusion that you can draw  
 23 from the relations between Darrow and Behm, and Darrow and  
 24 Mrs. McManigal, and that is at the very beginning he insti-  
 25 tuted a scheme and system of criminal action, and his  
 26 offenses indicate the existence of that scheme, and the

1 object of that scheme of criminal action was to prevent  
2 the due administration of the law. It was not in accordance  
3 with his legal rights as a lawyer, but was in accordance  
4 with the practice which has become such a disgrace to our  
5 civilization that it should not be tolerated, and shall not  
6 be tolerated.

7 Let us again turn to Biddinger. You know that  
8 Mr. Biddinger was present at the arrest of J. B. McNamara;  
9 you know that he took from the person of Mr. McNamara  
10 certain keys; you know that those keys fitted vaults and  
11 receptacles and rooms where dynamite was stored; you know  
12 that was an important bit of evidence. You know from your  
13 own common sense that it was necessary to use Mr. Biddinger  
14 as a witness in the case against J. B. McNamara. You have  
15 heard him testify on the stand as to the attempts to bribe  
16 him made by J. B. McNamara, and of the admissions of  
17 guilt which were made by J. B. McNamara. You know of the  
18 arrest of J. J. McNamara, and that he had taken from the  
19 person of J. J. McNamara certain keys which fitted the  
20 same vault as the keys that were taken from the person of  
21 J. B. McNamara. You know that he had to testify as a wit-  
22 ness. You know that he was in the employ of the Burhs  
23 operatives who at that time were working for the State of  
24 California and the people of Los Angeles County. What  
25 does the defendant say in regard to that matter? He says:  
26 Yes, I tried to get information from Mr. Biddinger. Did he



1 not know that if Biddinger accepted his employment that  
2 Biddinger's testimony would naturally be colored in his  
3 favor? Did he not, as a man of common sense, know, that  
4 when he tampered with Biddinger in the slightest degree  
5 that it could not fail to have the effect of influencing  
6 Biddinger's testimony, even if he never requested Biddinger  
7 not to be too hard on the boys, as Biddinger testifies he  
8 did. He knew that as a man of common sense. But he brings  
9 another proposition to you, gentlemen, right there, a pro-  
10 position that I never before heard advanced in a court of  
11 law, and that is that the defendant has a right to spy  
12 out the secrets of the prosecution because, forsooth, the  
13 prosecution has put spies in the ranks of the criminal  
14 classes. For years and years it has been necessary for  
15 the authorities in ferreting out crime to employ stool  
16 pigeons, to send detectives right into the ranks of the  
17 criminal classes, in order that they might find out what they  
18 intended to do, to frustrate their crimes before they were  
19 committed, or to punish them after they were committed.  
20 The object of that system of spies is what? The object  
21 is to insure the enforcement of the law. It has been the  
22 custom frequently, it is absolutely necessary that some  
23 of the real band of conspirators be enticed away from their  
24 allegiance and made to turn state's evidence, that some  
25 degree of leniency or clemency be extended to them, that  
26 some hopes be given to them in order to cause them to turn  
state's evidence, or to give information to the authori-

1 ties as to what their comrades in crime are doing. That  
2 is not a nice thing, to employ spies or stool pigeons, but  
3 it is necessary, and it is to be judged by the object for  
4 which it is done. Now, what does the defendant come here  
5 and say? He says: We have a right to do the same thing  
6 because the prosecution does. Is his object the same?  
7 It is not the means that is objectionable. It is the object  
8 for which the thing is done. That is the thing by  
9 which it is to be judged. A policeman pursuing a criminal  
10 has a right, if necessary, to kill that criminal. Has  
11 the criminal, when he is being pursued, the right to turn  
12 upon the policeman and kill him? Are the beligerent  
13 rights equal on both sides? Was the criminal the right to  
14 do the same as the officer is trying to do? Are the  
15 objects the same? They are not to be judged by the same  
16 standard. So when this defendant has the effrontery to  
17 stand before you and tell you that he has a right to  
18 employ spies to corrupt the agents and employes of the  
19 prosecution, you are to judge him by his object. And he  
20 had not a right to do it because those on the other side  
21 adopted the same means. It is not the means that are  
22 wrong. It is the object that is wrong, and he is to be  
23 judged by that object. So, according to his own story,  
24 when he sits here and tells you that he employed Biddinger  
25 for the purpose of finding out what information the prose-  
26 cution had, or for the purpose of finding out where the

1 traitors were in their camp, he has admitted that he was  
2 engaged in doing something that he ought not to do, and  
3 that your moral sense cannot--gentlemen of the jury, cannot  
4 stand for. Mr. Biddinger was an honest man. Mr. Biddinger  
5 when he met Mr. Turner, an employe and friend of Clarence  
6 Darrow, was requested to meet Darrow. Mr. Biddinger at once  
7 knew that Darrow did not want to see him for any good pur-  
8 pose. Mr. Biddinger at once knew that Darrow was trying to  
9 corrupt him, Biddinger, but Mr. Biddinger felt that it was  
10 his duty--and it was his duty--to see Mr. Darrow, and if  
11 Darrow attempted to do anything of that sort, to trap him,  
12 and he had a right to trap him. So he met Darrow, and  
13 Darrow made his proposition, and Turner made his proposition.  
14 "You ought to stand in with Mr. Darrow," Turner says. "I  
15 was with him in Idaho, and he spent money like water. "  
16 They appealed to the cupidity of Biddinger, but, fortunately  
17 for the prosecution in this case, Biddinger was an honest  
18 man, and he turned the moneys which he received over to  
19 the authorities at once, and made the reports as to what had  
20 been doing. Have you any right to refuse to credit the  
21 word of Mr. Biddinger? Don't his character, don't his  
22 conduct show that he is a man that is worthy of belief?  
23 Don't this defendant's own admissions corroborate Mr. Biddin-  
24 ger? And, right there, gentlemen, let me call your atten-  
25 tion to another little thing with regard to the Biddinger  
26 incident, and that is the character and conduct of this



1 defendant himself during Biddinger's testimony. Do you  
2 remember when Biddinger testified that he had met Mr. Darrow  
3 at the Hotel Alexandria in this city on August 16th, that he  
4 said: "I have here an envelope and a piece of paper," and  
5 he offered it. Mr. Darrow, mind you, was an attorney in  
6 this very case. Mr. Darrow's lips were not shut. Mr. Darrow  
7 has frequently interrupted his own counsel and shown that he  
8 will not sit silent when they are not doing things the way  
9 that he thinks they ought to be done in this case, and yet  
10 when the testimony came in, Mr. Rogers, one of the defendant's  
11 own counsel, stood up and said: "We admit that the hand-  
12 writing on that envelope is Mr. Darrow's handwriting, but  
13 we deny that Mr. Darrow gave it to Mr. Biddinger." Do you  
14 remember that? That was injected at that time for the pur-  
15 pose of influencing your testimony. And what did the  
16 defendant do?

17 MR. DARROW. Just a moment.

18 MR. FORD. He afterwards admitted that he did give that  
19 envelope to Mr. Darrow.

20 MR. DARROW. Just a moment.

21 MR. FREDERICKS. He should not interrupt him in the middle  
22 of a sentence, your Honor.

23 THE COURT. He has the right to assign an error, of course.

24 MR. DARROW. I did not mean to interrupt in the middle of  
25 a sentence. I apologize for that. If I am not mistaken,  
26 I told Mr. Rogers to pass by it, and he omitted it, and

1 there was no such statement made by Mr. Rogers. You will  
2 not find that in the record.

3 THE COURT. Proceed, Mr. Ford.

4 MR. FORD. Right there Mr. parrow told you gentlemen a  
5 lie, by his conduct. Do you remember when the little  
6 slip of newspaper was introduced and Mr. Biddinger had  
7 erroneously testified that he received it in Los Angeles,  
8 when, as a matter of fact, he received it in San Francisco,  
9 and afterwards corrected his testimony, that Mr. Rogers again  
10 arose and said: "We deny that that newspaper clipping is  
11 in the handwriting of the defendant in this case," and yet  
12 the defendant says he had not any doubt in the world but  
13 what he or Biddinger wrote it; he had no doubt but what  
14 it was written by one or the other. He knew in his heart  
15 that he had written that, and he knew that his conduct  
16 before had been a denial of that fact, and he tried to  
17 evade, as he has frequently tried to evade. the giving of  
18 a direct answer to that question. When requested to write  
19 a slip of paper for a sample he refused to do so, but  
20 after he saw that the effect of that would be bad, he wrote  
21 it.

22 MR. APPEL. We assign that as error, your Honor.

23 MR. FORD. The exhibit is here. And the exhibit shows  
24 that the writing that he wrote on the stand was written  
25 in an unnatural hand and not written freely. Why?  
26 Because he wanted to deceive you, gentlemen of the jury.

c 1           After Biddinger had testified in chief, and the  
2 defendant had a night over which to study his testimony--  
3 all of the first day he had been denying Biddinger's  
4 testimony by his conduct, his counsel had been insinuating  
5 that this was a piece of manufactured evidence.--you heard  
6 him repeat time after time: "This is manufactured  
7 evidence"--but the next morning the brilliant mind of this  
8 defendant conceived the idea that he might explain away  
9 his meetings with Biddinger, that he might boldly come in  
10 and admit that he had paid him money, and that he had made  
11 appointments with him, and that he could explain it away,  
12 and so he began to cross-examine Mr. Biddinger along those  
13 lines, asking him questions along the lines which he in-  
14 tended to admit, just the portion which he intended to  
15 admit, trying to emphasize by his cross-examination those  
16 points which he intended to admit, after he had had a night  
17 to think it over. Francis Bacon, when he was first accused  
18 of receiving money, boldly went into the House of Lords and  
19 said he did receive money from litigants, and thought  
20 he could give a plausible explanation, but he could not;  
21 and neither can this defendant, for his acts are not  
22 capable of a plausible explanation; you cannot fit a lie  
23 to the truth. And his entire story of that transaction  
24 shows that he is lying in regard to Biddinger, and you must,  
25 under the circumstances, believe Biddinger in preference to  
26 Darrow.

1 THE COURT. We will take the usual recess at this time.  
2 Gentlemen of the jury, bear in mind the admonition. Take  
3 a recess for five minutes.

4 (AFTER RECESS. Stipulated jury present.)

5 MR. FORD. Let us take up another instance, the instance  
6 of Mrs. Caplan. The defendant tells you, taking the  
7 cue from his counsel, Mr. Rogers, that he knew that Mrs.  
8 Caplan could never be used in the case of People vs McNamara,  
9 because that is the law. He did not have any ideas whatever  
10 with reference to Mrs. Caplan; no intention to use her  
11 himself, no intention to allow the people to use her; no  
12 idea that the people would even think of trying to use  
13 her. He admits that the very first code that was made  
14 up, the one in which letters were used representing names  
15 of individuals, the imperfect code that was used before the  
16 first dictionary in this case, the code that was copied by  
17 Harrington into that dictionary, he admits that that code  
18 may have been made by himself. Harrington says it was  
19 made by Darrow and handed to him, Harrington, by Darrow, and  
20 the very first letter, the letter A, referred to whom?  
21 To Flora Caplan. If they had no interest in her, if they  
22 had no intention of using her as a witness, if they had  
23 no idea that the people would be so foolish as to try to  
24 use her as a witness, how did it come that the very first  
25 letter in that code was A, and that A represented the name  
26 of Flora Caplan? He said that if he had been consulted by



1 Mr. Johannsen or Mr. Tveitmoe, or any of the friends of Mrs.  
2 Caplan, that he would have advised them to do the thing  
3 they did, to remove her away from the state of California,  
4 because she was being annoyed by Burns detectives. Gentle-  
5 men, there is no evidence in this case that she was being  
6 annoyed by Burns detectives during the year 1911. There is  
7 some slight evidence that she was brought down from San  
8 Francisco during the grand jury investigation in the  
9 latter part of 1910, after the explosion of the Times Build-  
10 ing, but there is absolutely no evidence that anyone was  
11 bothering her in 1911. The facts show that she was con-  
12 cealed in the woods with Morton, another one of  
13 their cohorts, there enjoying a vacation; that she was  
14 apporached by Miss Hitchcock, a woman employed in the  
15 District Attorney's office, and subpoenaed, and that  
16 immediately after she was subpoenaed, that she was taken  
17 to Reno, Navada, and then to the east, and that a telegram  
18 was sent from Johannsen to Harrington in which the letter  
19 A was used, referring to Flora Caplan. You saw the tele-  
20 gram in evidence. Johannsen admits that it was the truth,  
21 and whatever Johannsen admits against himself is probably  
22 the truth and that is all; the truth itself.

23 By whom was Flora Caplan taken east? By  
24 Johannsen, who the defendant in this case said he needed  
25 to have in court, and who must be excluded from the rule  
26 of court because he needed his attistance; Johannsen, who



1 had to be put upon the stand in the middle of the prose-  
2 cution's case that the ethics of Earl Rogers might be  
3 vindicated. By whom was the bill paid? By Mr. Tveitmoe,  
4 whom Darrow frequently consulted; whom Darrow needed in  
5 the court room during the trial of this case in order that  
6 he might be able to properly present the case to you,  
7 gentlemen of the jury; Tveitmoe, whom they desired to put  
8 upon the stand in order that Mr. Earl Rogers's ethics might  
9 be vindicated, but he never was put upon the stand, and his  
10 ethics, therefore, never were vindicated. These are the  
11 men who are participants with the defendant in the defense  
12 of the McNamara case. Tveitmoe, at least, is one of the  
13 man who did not dare to take the stand because he was im-  
14 plicated in the Times murder charge, or he was under  
15 indictment for transporting nitroglycerine covering the  
16 same matters, and therefore did not dare to take the stand;  
17 Tveitmoe, to whom a check was subsequently given by this  
18 defendant. But I will come to that issue in just a moment.  
19 These are the men who took Flora Caplan, and the defendant  
20 says that he did not cause it to be done; that he would  
21 have advised them to take her east if he had ever been con-  
22 sulted on that matter. That is one statement that is made,  
23 and yet later in the testimony Mr. Darrow said that he had  
24 talked with Tveitmoe and Johannsen about Flora Caplan, and  
25 that maybe he did advise them to take her east. I think  
26 the circumstances in this case show that they believed that

1 Flora Caplan would be a witness for the state; that they  
2 knew under the law that she could be introduced as a witness  
3 against J B McNamara, whatever the law might have been as  
4 to her being compelled to testify against her husband if he  
5 had been caught. They knew this fact and they took her  
6 out of the state in order that they might, by that much,  
7 at least, cripple the prosecution. Was that an act  
8 in furtherance of justice, or an act in obstruction of  
9 justice? Does it not, in connection with the other  
10 incidents in this case, show that this defendant was en-  
11 gaged in a scheme and system of criminal action to defeat  
12 and obstruct justice; that he was conspiring with Johannsen  
13 and Tveitmoe and others to do that act? What other conclu-  
14 sion can you come to in regard to that incident? And then  
15 again, with regard to Mr. Diekelman: You heard Mr. Diekelman  
16 testify upon the stand as to what he knew about J B McNamara.  
17 You knew that he had registered him at a hotel in Los  
18 Angeles the night before the Times explosion; you knew  
19 that he was a most important witness for the state; you  
20 knew that he left the state of his own volition, trying  
21 to make his livelihood, <sup>and</sup> that he kept in constant communi-  
22 cation with the District Attorney informing him of his where-  
23 abouts. The defendant charges that the Burns detectives  
24 were keeping him out of the state in order that the  
25 defense could not get him as a witness on their side of  
26 the case. The only evidence in regard to Burns detectives

1 is the admission that was made here upon the stand that  
2 Mr. Bibby had informed Mr. Diekelman--Diekelman testified  
3 to that--that Bibby afterwards told Mr. Diekelman that the  
4 men whom he thought were Burns detectives were there on  
5 some other case and had nothing to do with him, Diekelman.  
6 That is the statement that Bibby made. Whether it be true  
7 or not is a different question. But that is the only  
8 evidence in the case, that there were any Burns detectives  
9 interested in Diekelman at Albuquerque. If they were, you  
10 may be sure that they were there for the purpose of pro-  
11 tecting him against the defendant in this case, and for the  
12 purpose of causing him to return as soon as he would be  
13 needed in the case of People vs McNamara. Instead of taking  
14 him back to Los Angeles, they took him to Chicago. They  
15 paid his fare, they gave him \$100, they bribed him, and they  
16 did those things for the purpose of influencing his testi-  
17 mony and of weakening its effect; but they could not  
18 influence it when he took the witness stand. You  
19 know the Burns detectives had to take him away from the  
20 defendant and had to bring Diekelman back to California.  
21 If they were trying to keep Diekelman out of the state of  
22 California, why did they bring him back immediately, as  
23 soon as they got hold of him?

24 And another thing, Bert Hammerstrom, the  
25 defendant's own brother-in-law in this case, was the man  
26 that engineered that deal at Albuquerque, and he did not

1 dare to come back to Los Angeles. I think there is a  
2 telegram here in evidence to Ed Nockles, instructing Ed  
3 Nockles to have Hammerstrom meet Harrington at the Chief  
4 Hotel in Salt Lake City. You have seen that telegram, you  
5 have heard Mr. Harrington's testimony/<sup>that he</sup>directed Cooney to  
6 meet Hammerstrom and have Cooney take Hammerstrom back  
7 east, to stay out of California until things blew over.



1 You heard Cooney's testimony that he did meet Hammer-  
2 strom at Salt Lake City, and that they went back to Indian-  
3 apolis to see Pappaport, and that he stayed out of the  
4 state of California. The defendant in this case says  
5 that after that time Hammerstrom returned to Los Angeles  
6 and was here. If so, his whereabouts were secret and  
7 why wasn't he put upon the stand? Where is he now, if  
8 his acts are so uncertain? Why didn't he put him on the  
9 stand? Why don't he tell where he is now?  
10 He does not dare, because he knows that his brother-in-law  
11 would be punished for his crime if the prosecution got  
12 hold of him, and he knew that the things which Hammerstrom  
13 did do were a crime, and that is the answer why he did  
14 not appear before you.

15 MR APPEL: We take an exception to the remark.

16 MR FORD: You may take two of them.

17 MR APPEL: Two of them.

18 THE COURT: The exception will be noted and the assignment  
19 of error.

20 MR APPEL: Counsel says I may take two exceptions.

21 THE COURT: Counsel should not have made that remark.

22 MR APPEL: He should be taught some manners first. I ob-  
23 ject to the statement of counsel as to what Darrow knows  
24 or knew, or any statement that the prosecution would punish  
25 Mr Hammerstrom, or any statement that Mr Hammerstrom  
26 committed any crime whatsoever or at all. Especially

1 because the alleged occurrences, according to the testi-  
2 mony of the prosecution, are alleged to have occurred in  
3 New Mexico, over which --

4 MR FREDERICKS: That is correct.

5 MR APPEL: It is not a crime against the laws of the state  
6 of California. I will ask your Honor to instruct the jury  
7 that this state could not punish Mr Hammestrom for that  
8 crime.

9 THE COURT: The objection of Mr Appel, and the assignment  
10 of error, will be noted, and the court declines to give the  
11 instruction to the jury.

12 MR APPEL: We take an exception to the refusal to give  
13 the instruction.

14 MR FORB: Mr Darrow said he was employed by the American  
15 Federation of Labor, and that he was paid by the Amer-  
16 ican Federation of Labor, and there has been introduced  
17 in evidence in this case the checks which he received from  
18 the American Federation of Labor. You have learned from  
19 the evidence in this case that Mr Darrow had three bank  
20 accounts in this city, one at the Commercial National  
21 Bank, one at the First National Bank, and one at the Equi-  
22 table Savings Bank. Those checks are all in evidence,  
23 and you have looked at the endorsements, and you can see  
24 from each and every one of them that after Mr Darrow came  
25 to Los Angeles every check, with the exception of one,  
26 was deposited in a Los Angeles bank. That one check --

1 may I have that check book, Mr Smith -- that one check was  
2 dated August 23rd. An examination of the checks there will  
3 show that Darrow cashed them in Los Angeles within four or  
4 five days after their date in each case. The check of  
5 August 23rd, came to Los Angeles approximately the 27th or  
6 28th day of August, 1911.

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1 The defendant admits that he received that check by mail,  
2 and that he received it in Los Angeles, and that he  
3 probably carried it in his pocket. Why didn't he deposit  
4 it in a Los Angeles Bank? He held that check for three  
5 or four days, until the first day of September, and gave it  
6 to Mr. Tveitmoe in San Francisco. You remember that he  
7 admitted that after meeting Biddinger in San Francisco he  
8 returned to Los Angeles, and then went back again to San  
9 Francisco. He admitted that he received this check  
10 by mail, put it in his pocket and took it to San Francisco.  
11 Why didn't he deposit it in a Los Angeles bank? He says  
12 that he intended to give Mr. Tveitmoe \$10,000 to hold in  
13 trust for him, Darrow, in order that Tveitmoe might pay  
14 certain expenses which were necessary to be paid in San  
15 Francisco and yet you see from this letter they claim that  
16 Tveitmoe had \$7500 of that money left, three months later.  
17 There were pressing debts to be paid in San Francisco, and  
18 yet, according to their story, \$7500 still remained in  
19 San Francisco when Tveitmoe appeared before the grand  
20 jury.

21 MR. DARROW. I want to take an exception to that.

22 MR. APPEL. There is no evidence on that, as I remember.

23 THE COURT. It is in the province of the jury to tell what  
24 was testified to. If the jurors want the evidence read,  
25 they will say so.  
26



1 MR FORD: : Gentlemen, I did misquote the evidence.

2 It is dated August 21st, two days earlier than what I said,  
3 and the check came to Los Angeles probably the 24th or 25th  
4 or 26th day of August. Had been carried by the defendant  
5 in his pocket from that time until the 1st day of Septem-  
6 ber, 1911, at which time it was cashed in San Francisco by  
7 Tveitmoe.

8 Now, you know and Mr Darrow knew at that time that  
9 the prosecution had good reason to be on its guard against  
10 Darrow. They knew he was engaged in doing those things  
11 which no lawyer has a right to do. That he was trying to —

12 MR APPEL: We take an exception to that.

13 THE COURT: The exception will be noted.

14 MR APPEL: As not a proper comment, not testified to,  
15 and not facts which were introduced in evidence.

16 THE COURT: The exception will be noted. Proceed, Mr Ford.

17 MR FORD: They knew that Mr Darrow was corrupting every-  
18 body with whom he came in contact, even as he has corrupted  
19 some of the most respected citizens of our city, one of whom,  
20 I am sorry to say, is Lecompte Davis, and I will come to  
21 that a little later.

22 MR APPEL: We certainly take an exception to that as not  
23 being in the evidence at all, that Mr Darrow ever corrupt-  
24 ed anyone.

25 THE COURT: Exception will be noted.

26 MR APPEL: That there is any evidence and we ask now, that

1 if there is such evidence we ought to be -- our atten-  
2 tion should be called to it, in justice to ourselves, so  
3 we can respond to it, if there is anything in the record  
4 to show that Mr Darrow corrupted Mr Davis, it ought to be  
5 shown.

6 THE COURT: Counsel, I presume, will support his theory in  
7 such way as he thinks right. The court will not stop  
8 to read the testimony unless the jurors ask for it. The  
9 application of counsel for the defendant to have the evi-  
10 dence called to his attention is denied.

11 MR FORD: Mr Darrow knew that the District Attorney was  
12 using everything, using every means within his power to  
13 prevent those very acts; that he hailed Behm before the  
14 grand jury; that he hailed Harrington before the grand  
15 jury; that he had detectives everywhere in order to guard  
16 against this corruption. He knew, and the District At-  
17 torney knew, that the corrupt acts of Darrow could not be  
18 carried on without money. They knew that the District At-  
19 torney can search the banks of Los Angeles and find out  
20 where money was going, and perhaps be able to trace some  
21 of it to the corrupt purposes, and so when they had a  
22 corrupt purpose to perform, they did not deposit this  
23 check in a Los Angeles bank, but sent it out to some  
24 place where the District Attorney might never find it.  
25 In San Francisco -- it might as well have gone to  
26 Chicago, Portland, or any other place; the District Attor-

1 ney would not know where to look for it. That was the  
2 theory -- that was the reason it was sent to San Francisco.  
3 That is the reason that Tveitmoe, instead of depositing  
4 the check in the bank like an honest man would have done,  
5 and drawing out checks against it, drew it in large bills  
6 and put it in a safe deposit vault, according to the state-  
7 ments that have been produced here --

8 MR APPEL: Wait a moment, your Honor, we object --

9 MR FORD: The statement is incorrect; there is no evidence  
10 that he went to a safe deposit vault.

11 MR APPEL: There is no evidence here to that effect, and we  
12 ask the jury be instructed that there is no such evi-  
13 dence.

14 MR FREDERICKS: They are unfair in their interruptions.

15 MR APPEL: I ask your Honor where there is any evidence at  
16 all. We should not be called upon to find it in the short  
17 time we have to answer counsel, and we ask your Honor to  
18 instruct this jury that there is no such evidence.

19 THE COURT: The court admonishes the jury as before, that  
20 they are the sole judges of what the evidence shows.

21 MR FORD: Can't your Honor admonish them all at once.

22 THE COURT: Counsel has a right to make their objections,  
23 but they should be very briefly made. Proceed, Mr Ford.

24 MR FORD: There is no evidence before you gentlemen that  
25 the money went into a safe deposit vault in San Francisco.  
26 The evidence of the bank teller is that he drew money in

1 large bills, and there is evidence before you that some  
2 of those bills were thousand-dollar bills. You remember  
3 that Mr Rogers jumped the cashier and asked him if he was not  
4 talking with me outside, and it came out in the evidence  
5 that the only conversation that man had with me was in  
6 reference to Tveitmoe's testimony. Tveitmoe had testified  
7 before the grand jury that some of the bills which he drew  
8 were thousand-dollar bills, and that is the reason they  
9 didn't dare put him on the stand; that is the reason they  
10 didn't dare put him on the stand. Tveitmoe did not have  
11 to incriminate himself in regard to any other transactions.

12 When a witness takes the stand he has got to subject  
13 himself to cross-examination upon the matters concerning  
14 which he testified. When it comes down to any question of  
15 incriminating himself, he has the privilege at all times  
16 to answer on the grounds that it would incriminate himself,  
17 and they knew if Tveitmoe was put upon the stand we  
18 could not examine him about the transportation of nitro-gly-  
19 cerine; he could refuse to testify simply upon the ground  
20 it would incriminate himself and that would have ended our  
21 inquiry upon that matter.

22 The reason they didn't dare put him on the stand, he had  
23 drawn it in thousand-dollar bills, one thousand dollar bills  
24 being part of the \$4000 in this case. The cashier says it  
25 was one hundreds, five hundreds and perhaps some thousand  
26 dollar bills, and Tveitmoe admits that he got some thousand



1 dollar bills.

2 Now, as I said, the object of that was to prevent the  
3 District Attorney from discovering its whereabouts.  
4 Mr Harrington tells you out here at Darrow's home, Darrow  
5 showed him a roll of money -- I don't know whether it was  
6 money, but it looked like a roll of money, and said, "I have  
7 got \$10,000 to reach a couple of jurors with; I got it from  
8 Tveitmoe's bank." Is there any corroboration of Harring-  
9 ton on that point? If Harrington didn't say -- if Harring-  
10 ton didn't learn from this defendant that he got it from  
11 Tveitmoe's bank, how did the prosecution know where to look?  
12 Out of all of the thousands of banks in the United States,  
13 how could the prosecution have known where to look except  
14 in Tveitmoe's bank? They knew that Tveitmoe was in San  
15 Francisco and that Tveitmoe's bank was in San Francisco,  
16 and the defendant must have told Harrington where he got  
17 that money or the People would never have found it. If Mr  
18 Harrington's lips had remained sealed, that important bit of  
19 evidence might never have been discovered; and it might  
20 never have been brought before you and the precautions  
21 which the defendant took in taking it to another city, or  
22 to another city to cash, might have been effectual, and  
23 prevented its discovery. Now, there is another point in  
24 regard to that \$10,000 check. Mr Davis was asked if he  
25 had not told the Assistant District Attorney that he had  
26 examined Darrow's bank account and knew where the money

1 went, and knew that there was no money that could have  
2 gotten to Franklin for bribery of Juror Lockwood. Davis  
3 admits that he was asked by the Assistant District Attorney  
4 at that time if he knew that Mr Darrow had cashed a \$10,000  
5 check in San Francisco. He replied he did not, and he ad-  
6 mitted it upon the stand. If Davis didn't know at that  
7 time of that \$10,000, the defendant was deceiving Davis,  
8 concealing from him the fact that Davis -- or concealing  
9 from Davis the fact that he had received \$10,000 and was  
10 using it for a corrupt purpose. If it was an honest pur-  
11 pose, why should he conceal it from Davis, if he was going  
12 to use it for an honest purpose, why should he conceal  
13 this \$10,000? Why should Davis come to the District At-  
14 torney's office and try to make the District Attorney be-  
15 lieve that all the money that had been received was deposit-  
16 ed in Los Angeles Banks and could be accounted for? What  
17 was the purpose of Davis there? Either Davis had been de-  
18 ceived or Davis was trying to deceive the District Attorney.

19 Now, with regard to Mr Harrington, as I have already  
20 shown, he must have had the conversation, because the  
21 prosecution would not have been able to go to Tveitmoe's  
22 bank and look for this check in Tveitmoe's bank, if it had  
23 not been for that fact. The item was found and Mr Harring-  
24 ton's testimony upon that point was corroborated. Proceed-  
25 ings were instituted through <sup>the</sup> Indianapolis grand jury;  
26 Frank Morrison was subpoenaed and the checks obtained and

1 you have them before you.

2 MR DARROW: I object to the statement of the District  
3 Attorney, that he learned it from Mr Harrington, which is  
4 not true, or that it was instituted after that.

5 MR APPEL: He cannot testify.

6 MR FREDERICKS: That is a correct deduction from the tes-  
7 timony.

8 THE COURT: The objection will be noted.

9 MR DARROW: I think counsel -- the jury ought to be admon-  
10 ished, and the jury informed that he cannot testify.

11 MR FREDERICKS: He is not testifying.

12 MR FORD: I am drawing a conclusion which I know is true  
13 from the testimony which has been introduced in this case.

14 THE COURT: Proceed.

15 MR FORD: Mr Harrington was employed by Mr Darrow early in  
16 the case. Mr Harrington was employed by Mr Darrow because  
17 he knew that Harrington could do the things that he, Dar-  
18 row, wanted done. Mr Harrington was placed in charge of  
19 the evidence on the part of the defense. The defendant has  
20 tried repeatedly throughout this case, to show you that  
21 there was some intimacy of relation between Franklin and  
22 Harrington. Harrington and Franklin denied that they  
23 were intimate friends or that they had much to do with each  
24 other. Franklin was solely and exclusively in charge of  
25 the jury end of it. Harrington was solely and exclusively  
26 in charge of the evidence end of it. There was nothing



1 in the business in which they were engaged which would  
2 cause them to come together at all for purposes of consulta-  
3 tion. Each of them reported to Mr Darrow and had nothing  
4 to do with the other so far as their business was concerned.  
5 Each of them testified that he had not been in -- Franklin  
6 had not been in Harrington's office more than two or  
7 three times, and there is no evidence that Harrington ever  
8 did go into Franklin's office, and yet they have tried  
9 to show by the evidence of their very employes that Mr Frank-  
10 lin and Mr Harrington were frequently seen together in confer-  
11 ence, yet each witness admitted that there was nothing  
12 mysterious in the conferences or their conduct which  
13 caused him to report the matter to Mr Darrow.

14 The inference which they desire you to draw was that Mr  
15 Harrington procured the money from some place and gave it  
16 to Mr Franklin. That is a matter that I will return to a  
17 little later in the argument. I wish to confine myself  
18 now to the relations of Harrington alone.

19 When Harrington was arrested in San Francisco upon the  
20 contempt proceedings, to whom did he turn at once for as-  
21 sistance? To Fremont Older, Darrow's friend, and Darrow's  
22 friend in this case. When he came to Los Angeles he at  
23 once went to Mr Darrow for Darrow's assistance, and they  
24 protected him -- instructed him not to testify, and fought  
25 out the contempt proceedings at that time.

26 Now, if Mr Harrington were in the employ of the District



1 Attorney or of the National Erector's Association, if he  
2 was being a traitor to his trust, why should the District  
3 Attorney waste his good time in pursuing contempt proceedings  
4 which were only inconveniencing their own agent in the em-  
5 ploy of the defense? It is so preposterous as hardly to  
6 be worthy of discussion; that they would waste their time  
7 on that when they had plenty of other people against whom  
8 they could institute grand jury proceedings, if they  
9 wished to discommode the defense in the McNamara case?

10 Before I leave the Tveitmoe check I want to call your at-  
11 tention also to a fact that Mr Darrow testified that the  
12 District Attorney was always starting something before the  
13 grand jury to keep us busy. He was always investigat-  
14 ing something. That was the reason why that check was  
15 taken to San Francisco to be cashed. Mr Harrington, in  
16 February of this year, returned to Los Angeles. It is in  
17 evidence before you that at that time Mr Harrington lured  
18 Mr Darrow, if you please, I use the word lured, to the Hay-  
19 ward hotel in this city. That there was a dictagraph there,  
20 and that Mr Harrington led Mr Darrow into conversations  
21 at that point and concerning the transactions in this  
22 case. Mr Darrow admits that Harrington accused him, Darrow,  
23 of having shown that money. Mr Darrow admits that Har-  
24 rington at one time said, "Oh, Darrow, Darrow, Darrow, they  
25 have got the goods on you." You remember when that ques-  
26 tion was asked Mr Darrow, how angrily he flushed. He said,

1 "I don't know and I don't care", and refused to deny that  
2 that statement was made.

3 MR DARROW: I want to except to that as not a statement of  
4 fact.

5 THE COURT: The exception will be noted.

6 MR FORD: The testimony was, "I don't know and I don't care."

7 MR DARROW: I said no such thing and there is no such tes-  
8 timony, Mr Ford.

9 MR FORD: Knowing the attitude of Mr Harrington towards him  
10 Darrow, at that time; knowing that Harrington was making  
11 false accusations against him, Barrow, he returned to that  
12 hotel time and again; not once or twice, but five or six  
13 times and had conversations with Mr Harrington at that  
14 place. Does he tell you that he was endeavoring to pre-  
15 vent Mr Harrington from giving false testimony; that he was  
16 trying to persuade him that he was testifying falsely?  
17 He has never told you that; he told you another story entire-  
18 ly. He told you that Mr Harrington was timid; that he  
19 trusted Mr Harrington at that time, and he was afraid that  
20 the District Attorney might intimidate Mr Harrington. He  
21 believed still, that Harrington was true to him; that is  
22 in the testimony of Mr Darrow himself. He believed that Mr  
23 Harrington was true to him, after Harrington had said,  
24 "Oh, Darrow, Darrow, Darrow, they have got the goods on you."  
25 After Harrington had said, "You showed me the money out there  
26 on the porch", he believed that Harrington was true to him,

1 but was afraid Harrington might be intimidated by the pro-  
2 secution. He admits here that when Mr Parrington said he  
3 didn't want to perjure himself before the grand jury, that  
4 there was only one way left, to refuse to testify. Mr Dar-  
5 row admits that he went and consulted My Davis about Harring-  
6 ton's right to refuse to testify. Are those the acts of an  
7 innocent man? Advising a man who is accusing him of  
8 crime? Mr Darrow admits that Harrington made these  
9 charges. Darrow said, yes, he said them, and I denied  
10 them. He admits that he made those charges, and yet, he  
11 goes and consults Mr Davis in order that they might find  
12 some way for Harrington to refuse to testify, and he is  
13 going back there and consulting him again, because he is  
14 afraid Harrington might be intimidated.

15 It is not in evidence in this case that Mr parrington  
16 has done anything wrong in his employment by Mr Darrow, un-  
17 less he had done something wrong he could not be intimidated  
18 and Mr Darrow knew it. Why didn't Mr Darrow produce the  
19 wrong act of Harrington here upon the stand? Mind you, I  
20 am not arguing that Mr parrington never did anything wrong.  
21 I am not holding any brief for any witness in this case;  
22 all I care about is whether the witness upon the stand  
23 spoke the truth. If he didn't speak the truth in every  
24 particular, in what particulars did he hold the truth?  
25  
26

1 I don't hold that Mr. Harrington's character is the character  
2 of a lovely man. I don't claim that he is any model for  
3 you or I or anybody else to follow. I make no such claim,  
4 but I do claim that he has spoken the truth upon the  
5 stand, and that if he ever did do anything wrong the  
6 defendant knew it and didn't dare to ask him about it.  
7 That is the case here. That is the relation of Mr. Harrington  
8 to this case. If Harrington did anything wrong the  
9 defendant is guilty himself in this case, and did not dare  
10 to ask him about it.

11 Under the court's ruling we could not introduce  
12 the dictagraph testimony without giving the defendant a  
13 copy of it. That might seem unfair to you. It would be  
14 where the rights on both sides are equal, but the rights  
15 of a criminal and the rights of the state are not equal, and  
16 the people of the state are not required to give to the  
17 defendant their ammunition, in order that the defendant  
18 may guard against it. They are not to say to the defendant,  
19 "Now, you must not tell an untrue story without having  
20 all the facts that we have." The defendant had a right,  
21 according to their view of the case, to manufacture a per-  
22 jurged defense and in the manufacture of that perjured<sup>defense</sup>/  
23 he is entitled to know what means the district attorney has  
24 of <sup>bre</sup>making up that perjured defense.

25 MR. DARROW- I object--

26 MR. APPEL. That is getting awful personal as far as I am



1 concerned. I object to that, we have any purpose--

2 MR. FORD. I haven't any reference to you. I don't know  
3 whether you disclaim to know the facts.

4 THE COURT. Counsel says he had no application to you at  
5 all.

6 MR. DARROW. I object to it. I also object to his  
7 statement that they had no right to introduce the dicta-  
8 graph because they had a right to introduce it in rebuttal  
9 and didn't. I object to it.

10 MR. FREDERICKS. That is absolutely unfair to take up our  
11 time. The court ought not to allow them to do it.

12 THE COURT. I am going to allow them to indicate the  
13 objection in the record as briefly and quickly as possible  
14 and no further.

15 MR. DARROW. I never tried to consume time anywhere in this  
16 case, and I think it is the duty of the court in  
17 case counsel is right to tell it to the jury. Now, this  
18 counsel told the jury they couldn't introduce the dicta-  
19 graph because it would give me a chance to know what was  
20 in it, so I could testify. They could have introduced it  
21 in rebuttal. I object to the statement.

22 THE COURT. The objection will be noted. The court  
23 declines to instruct the jury on the subject.

24 MR APPEL. Exception.

25 MR. FORD. We are convinced by the conduct of the defend-  
26 ant-coming back to the evidence in this case, that is what

1 he would do; he would try to make up a perjured story to  
2 fit the facts if they had any of our evidence.

3 MR. APPEL. We take an exception to that remark.

4 THE COURT. The exception will be noted. Proceed, Mr Ford.

5 MR. FORD. In addition to that we desire to hold that  
6 ammunition back. We have another admission from the  
7 defendant to serve our purpose in this case. We have  
8 sufficient to show you that he, Harrington, had the goods  
9 on this defendant, and the defendant knew it, and that was  
10 why he returned back again and again and again, and again  
11 and again, five or six times to Mr. Harrington, trying  
12 to keep Harrington from testifying.

13 Now, here is another thing. The defendant  
14 shifts from one base to another in his defense. He said  
15 that Mr. Harrington was trying to extort money from him.  
16 You know the dictagraph was there. You know that Harrington  
17 was aware of its presence in that room. Does it sound  
18 reasonable to you that Mr. Harrington would try to commit  
19 extortion when he was trying to trap Mr. Darrow? Would that  
20 be a reasonable thing for Mr. Harrington to do? Whatever  
21 he may be; whatever his relations may be to this case,  
22 he is certainly no fool. He is a lawyer, and no man with  
23 the slightest knowledge of law would absolutely nullify  
24 the effect of the dictagraph by trying to extort money  
25 from this defendant, and there is another lie nailed by the  
26 defendant's own admissions and conduct in this case upon the

1 stand. These are the things that come from the lips of  
2 the defendant himself, as wary as he may be, as skillful  
3 as he may be, as brilliant as he may be, as learned in the  
4 law as he may be, he got upon this stand and dodged every  
5 question, gave evasive answers, taking the time to think,  
6 guarded by his attorneys by objection after objection in  
7 the admission of testimony from the defendant's own lips.

8 A man perfectly able to protect himself, and then they  
9 say that <sup>the cross-examiner was</sup> trying to trick him, trying to trick this witness,  
10 who practiced law before I was born. Tried to trick him;  
11 a man perfectly able to protect himself, to ask protection  
12 against being tricked.

13 MR. DARROW. I object to that as not a statement of fact.

14 THE COURT. The objection will be noted. Mr. Ford will pro-  
15 ceed.

16 MR. FORD. Now, knowing these things, haven't we the key  
17 to the situation that arose on the 28th day of November,  
18 1911, when Franklin was arrested in the very act of bribery;  
19 when Franklin was caught giving money to Lockwood? Wouldn't  
20 you say at once that Franklin must have got that money from  
21 the defendant in this very case? Wouldn't your reason,  
22 as men of common sense, at once lead you to the conclu-  
23 sion, knowing the facts as you now do, wouldn't your common  
24 sense at once convince you that Darrow must have given the  
25 money to Franklin? All that remains to be determined now  
26 is whether or not there is sufficient legal evidence in this  
case to corrupt Mr. Franklin upon that point.



1 Mr. Golding, on your examination as a juror on  
2 voir dire, you said you had no opinion as to the guilt or  
3 innocence of this defendant. The only opinion that you had  
4 in regard to any transaction was in regard to the trans-  
5 action that occurred at Third and Los Angeles street. You  
6 said you had perhaps a slight suspicion that it might be a  
7 frame up. knowing that the circumstances might appeal to  
8 you in that matter, that it might raise such a suspicion at  
9 that time, knowing that if you heard all of the facts in  
10 this case you would see that it was not a frame up, we made  
11 no objection to your remaining upon the jury, and I want  
12 to go into the circumstances of that case at this time to  
13 show you that that was not a frameup, at least on the part  
14 of Bert Franklin. If there was a frameup on the part of  
15 anybody there were only two men who claimed that in all  
16 this world. There were only two men who knew the circum-  
17 stances of that frameup; one was Lockwood and the other  
18 was the District Attorney.

19 You remember the evidence in this case, that  
20 Mr. Lockwood was first approached by Mr. Franklin on the 14th  
21 day of November. You remember that at that time Lockwood  
22 said, "Well, I want to think it over, take it under advise-  
23 ment;" and that later he saw him in the city, and that some-  
24 where about the middle of November the facts concerning the  
25 matter were communicated to the District Attorney; that Lock-  
26 wood had turned it down; told Franklin he didn't want any-



1 thing to do with it; had turned it down and then went  
2 to the District Attorney. Mr. Lockwood said to the District  
3 Attorney, "Franklin has attempted to bribe me. I have  
4 turned him down. He is my friend but I have turned him  
5 down. Now, he is my friend and may return to me again and  
6 renew the offer, but there is one thing there Franklin  
7 told me that there was another man upon that jury whom I knew  
8 better than he did, a member of the G.A.R." Mr. Bain,  
9 and Mr. Bain had been sworn in upon that jury. Counsel  
10 tried to show that Mr. Lockwood had betrayed a friend. The  
11 circumstances in this case show that Mr. Lockwood had turned  
12 the offer down, but that Mr. Lockwood being the honest man he  
13 is, realized that he owed a duty to the state far greater  
14 than that which he owed to a friend. Mr. Lockwood himself  
15 had fought during the Civil War. He wears that same G.A.R.  
16 button and had fought for his country, felt that he still  
17 owed another duty to his country, and he communicated the  
18 facts to the District Attorney, because there was one man  
19 in that jury box who had been bribed.

20 Mr. Lockwood's face is stamped with the impress  
21 of truth and honesty by God Almighty himself. He has lived  
22 in this community for many many years. He has occupied  
23 official positions in this community, and not one word has  
24 been breathed against his character for truth, honesty and  
25 integrity.

26 The Court will instruct you that a witness must


1 be presumed to speak the truth, and Mr. Lockwood told the  
2 truth upon that stand. You cannot acquit this defendant  
3 of the charge of bribery without convicting Mr. Lockwood of  
4 the crime of perjury; You cannot do it. You have got to  
5 choose between Mr. Lockwood upon the stand and this defendant.

6 The name of Mr. Lockwood did not appear upon any  
7 venires until November 25th. Day after day, every two or  
8 three days, a venire would be drawn, 50 names more would come  
9 out of the box, and the name of Lockwood was <sup>not</sup> among them  
10 until November 25th. On November 25th the District Attorney  
11 imagined that this was the day, Saturday night; this was  
12 the time that Franklin would return to Lockwood, if he  
13 ever did return, and so the District Attorney sent his men  
14 out, his detectives out on the night of November 25th to  
15 surround Lockwood's house and gather the evidence of  
16 Franklin's crime, if he showed up.

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1 Now, if Franklin were acting in common with Mr Bockwood,  
2 if there was any community of interest between Franklin  
3 and Lockwood would the District Attorney have waited  
4 out there that evening in vain for Franklin to show up?  
5 Franklin didn't show up. Franklin didn't have the money,  
6 and Franklin didn't come out that night to Lockwood's  
7 house, and the District Attorney's men waited in vain.  
8 Weren't they doing a foolish act if the District Attorney  
9 and Mr Lockwood were conspiring together with Mr Franklin  
10 to entrap the defendant? Weren't they doing a foolish  
11 act waiting out there in the dark for that man to show up?  
12 Next day Mr Franklin came out on Sunday to see Mr Lock-  
13 wood, and there was not a single, solitary soul from the  
14 District Attorney's office present to corroborate that fact.  
15 Does that look like a frame-up on the part of Mr Lockwood  
16 or the District Attorney on that point when they didn't  
17 have a single man there to corroborate Franklin's testi-  
18 mony? And does it prove to your mind that Franklin came  
19 unknown and unsuspected to them, and that Franklin didn't  
20 know they were trying to trap him at that time?

21 Franklin, on Monday, tried to get the money from Mr Dar-  
22 row, and he didn't get it. Darrow kept putting him off  
23 until noon, and then again until evening, and that evening  
24 he told him he couldn't get the money out of the vault, because  
25 the vault had closed; they would have to wait until the  
26 next morning at half past 8. How did Franklin know that  
Job Harriman would go to the vault the next morning at  
half past 9, as Harriman himself has admitted upon the



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1 stand? Could Franklin draw aside the veil that was  
2 stretched over the acts of the next day and know that Har-  
3 riman was going to the vault on Tuesday morning at half past  
4 8? Mr Franklin had made the appointment to deliver the  
5 sum of money to Mr Lockwood on the Monday night. The Dis-  
6 trict Attorney had gone out with Mr Lockwood to his  
7 home, and they had made arrangements so Franklin would have  
8 to come out to Lockwood's house at night. They surrounded  
9 the house that night with their detectives, and they wait-  
10 ed for Franklin to come with the money. If Lockwood or the  
11 District Attorney were parties, or either of them were  
12 parties to any frame-up on the part of Franklin, why did  
13 they stay out there in the dark that night, listening to the  
14 conversation between Lockwood and Franklin? Waiting in  
15 vain for Franklin to deliver the money? What did the men  
16 who were out there think? They thought Lockwood was string-  
17 ing them; that probably he got the money and was keeping it,  
18 but he didn't get it. He didn't have it. Franklin hadn't  
19 got it from Darrow, so they couldn't deliver the money  
20 there that night. If this had occurred out there that  
21 night and that money had been delivered on Monday night,  
22 you would never have had a suspicion it was a frame-up,  
23 but yet the way in which the bribery did occur was a far  
24 cleverer scheme than to pay it out at Lockwood's house  
25 that night in the dark, because in the dark and at night,  
26 the very fact that Franklin came to the prospective jurors'



1 house would seem a suspicious circumstance in itself; it  
2 would be easy to station men around there and capture him  
3 at that time. They expected to do it, but they couldn't do  
4 it. Next day Mr Bockwood had to come to court. Mr Franklin  
5 couldn't get the money until half past 8, and Lockwood had  
6 to be in court at 9 o'clock; the order called for it.  
7 And so they made an appointment with Mr Franklin that he  
8 should meet White at quarter to 9; that White should immed-  
9 iately go down to Third and Los Angeles street and deliver  
10 the money to Lockwood, and White should hold the balance of  
11 the money as stakeholder.

12 Supposing Lockwood was true to Franklin and false to his  
13 country? Supposing Lockwood had been willing to accept  
14 this money? Lockwood was the man who had lived for many  
15 years in this community, a man of whom the District At-  
16 torney would have no suspicion; a man who could have gone  
17 into that jury box just as easily as Mr Bain did; for the  
18 same reason that he had led a long, honest life, and was  
19 above suspicion.

20 Supposing that Franklin and Lockwood had been seen at  
21 Third and Los Angeles streets? They were old friends.  
22 Lockwood could say, "Yes, I met Mr Franklin that morning  
23 as I was coming up to court; shook hands; passed the time  
24 of day and walked on." Who would have doubted his state-  
25 ment? But Franklin didn't even take that chance. He sent  
26 another man, Mr White, of whom nobody would have any sus-

1 picion. Franklin was more or less known to the people of  
2 this community as connected with the defense in this case,  
3 and he might arouse suspicion of some passer-by; some passer-  
4 by might recognize him and report to the District Attorney  
5 that they were together. He didn't even take that chance.  
6 He sent White to meet Lockwood. Lockwood, you remember,  
7 tried to get Franklin to meet him over here at the Federal  
8 Building, and Franklin said, "No, I am too well known  
9 around there." Franklin had formerly been a deputy marshal.  
10 Too many people would know him near the Federal Building,  
11 and he didn't want to take that chance. He said, "You meet  
12 me down at Third and Los Angeles street;"

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s 1 a place that is convenient to the Higgins Building, where  
2 he expected to get the money. He said, "Meet me at  
3 half past eight," the night before. He told White--Frank-  
4 lin told White that the vaults were closed and they would  
5 not be opened until half past eight, and he couldn't get  
6 the money. The same night, Monday night, he told Lockwood  
7 that the vaults were closed and he couldn't get the money  
8 until half past eight the next morning, and so made the  
9 appointments they were to meet in point of time after half  
10 past eight. Franklin is corroborated in that point by the  
11 fact that the vault did open at half past eight. Job  
12 Harriman did go to the vault at half past eight. Job  
13 Harriman says it; Hawley says it; Russell is brought in  
14 to explain away that circumstance by saying that they paid  
15 a check--or paid a note on the 29th, when they had money  
16 enough in the bank that day.

17 That \$500 that was put to Job Harriman's account  
18 that day in the bank was probably his rake off, his share  
19 for holding the money for Darrow until he was ready to  
20 use it. We know that all the appointments were made after  
21 half past eight. We know that Franklin, if he was planning  
22 it, had looked into the future, and had learned from the  
23 future that Harriman was going to go to the bank at half  
24 past eight that morning and draw some money out of his vault,  
25 and that Harriman was going to come to the office again.  
26 Franklin says he saw Harriman at the office that morning.

1 Harriman says he came to the office that morning  
2 immediately after half past eight, the same as Franklin ,  
3 but denies that he saw Franklin; denies that he saw Darrow.  
4 Denies that he brought the money, and Franklin went imme-  
5 diately from that building, went down and met White.

6 Now, the watchman has been put on the stand.  
7 That watchman denied Franklin was there that morning but he  
8 says he was there between 7 and 8 o'clock that morning--

9 MR. DARROW. At 7 o'clock.

10 MR. FORD. That he was there around 7 o'clock, the earlier  
11 the better it suits my argument. Put it at 7 o'clock if  
12 you desire. I wanted to be fair and put it a little  
13 later. Shoerber said it was about 7 o'clock. Have they  
14 made any accounting for the time that elapsed between  
15 7 o'clock and half past eight? Where was Bert Franklin?  
16 Did they interrogate him? Did they bring forward a  
17 single witness from their willing cohorts from Venice, that  
18 would swear that he saw Bert Franklin between 7 and half  
19 past eight o'clock that morning? How do they account for that  
20 fact, if he didn't get the money from a mysterious stranger  
21 early in the morning, that he made his appointment so late  
22 as 9 o'clock, and Mr. Lockwood should be in court as a juror?

23 THE COURT. It is 12 o'clock, Mr. Ford. We will take the  
24 noon recess.

25 (Jury admonished. Recess until 3 P.M.)  
26 -----



1 AFTERNOON SESSION. August 12, 1912; 2 PM.

2 Defendant in court with counsel.

3 -----

4 THE COURT. All the parties are present. You may proceed,  
5 gentlemen.

6 MR. FORD. I have hurried through the events that occurred  
7 on the morning of November 28th at Third and Los Angeles  
8 streets. As the way the thing worked out, I believe that  
9 it was the cleverest possible manner in which a bribe  
10 could be given. You remember that prior to that date the  
11 District Attorney knew that there was one man on that jury  
12 who had been bribed, Robert Bain. Remember that the  
13 District Attorney knew that Darrow was the man who was  
14 responsible for the bribing. The only evidence that  
15 he had as to either of these events was hearsay. No  
16 prosecution could be had; Bain could not be removed from  
17 the box; the attempted bribery of Lockwood by Franklin  
18 rested solely upon the word of Lockwood against Franklin.  
19 Remember that up to that time we must presume that Franklin's  
20 reputation was good, and there is not one scintilla of  
21 evidence here that <sup>Franklin's</sup> reputation was bad, and it was not.  
22 It was the word of Franklin against Lockwood, and Lockwood  
23 against Franklin. The proof that Mr. Bain had been bribed  
24 rested solely upon Franklin, upon the declaration of  
25 Franklin to Lockwood that there was another man on the  
26 jury, a member of the G.A.R. "whom you know well." The

1 testimony against Darrow was solely this. Franklin had  
2 said to Lockwood, "I will see Darrow and try to find some  
3 way to make it safe." When the money was passed from Mr.  
4 White to Mr. Lockwood, no man had seen Franklin pass the  
5 money to White. Up to that point there was no additional  
6 evidence gathered against Franklin, <sup>or</sup> until White had been  
7 arrested there was no direct and positive evidence that the  
8 money had come from Franklin to White. But White was  
9 arrested; White came through and testified, and that link  
10 was furnished. Mr. Franklin was down there in that vicinity,  
11 watching his money. He wanted to see that White would pass  
12 the money to Lockwood, as had been agreed upon. Mr Darrow  
13 was down in that vicinity watching Franklin and the money.  
14 While Mr. Franklin was there on Third street he saw Jim  
15 Campbell, an attache of the District Attorney's office, pass  
16 by. He did not apparently attach any great deal of import-  
17 ance to that event. But when he saw George Home speaking  
18 around the corner, he did attach some importance to that  
19 event. He hurried down to meet Lockwood and said, "Come,  
20 let's get away from here; let's walk up the street,"  
21 and allowed White to drop behind and get away if he could  
22 take the cue. But White did not take the cue and did not  
23 get away, and was compelled to confess. After they had  
24 gone up the street a little ways around the corner,  
25 Franklin began to realize that his friend Lockwood had  
26 betrayed him, and he immediately began to think of some way

1 to turn the tables upon Lockwood. He was going to  
2 Beat Lockwood to it. He was going to discredit Lockwood's  
3 testimony in advance.  
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1 He made up his mind to charge Lockwood with having solic-  
2 ited a bribe, and to turn Lockwood over to the first  
3 policeman he met. That is what he says, and his testimony  
4 upon that point is corroborated out of the lips of the  
5 defendant's own witnesses in this case, because Davis says  
6 that he reported to Darrow that Franklin was innocent,  
7 that Lockwood was attempting to solicit a bribe, and that  
8 Franklin intended to turn Lockwood over to a policeman.  
9 I don't believe Mr Davis' testimony upon that point is  
10 true. I believe Davis knew better than that. But some  
11 such plan was entertained by Franklin, and it was commu-  
12 nicated to Davis. Davis knew that Franklin's desire to  
13 do this thing was merely a subterfuge, to get ahead of  
14 Lockwood, to turn the tables upon Lockwood, and that was  
15 all there was to it.

16 In a few days after that event -- I have forgotten now  
17 whether it was the next day, the 29th, or whether it was  
18 on the 1st of December -- at any rate, Mrs Bain came to  
19 the District Attorney's office and told her story and  
20 an information was filed against Franklin on the Bain  
21 charge, and when Bain testified and Mrs Bain testified  
22 and White testified and Lockwood testified, and Franklin  
23 was down in that vicinity trying to save the day, to hurry  
24 Lockwood and Bain away from the scene, they had a case against  
25 Franklin, Franklin knew at that time that he was done for.  
26 If there was any frame-up in this case, it was a frame-up



1 on the part of Lockwood and the District Attorney to catch  
2 Franklin, and they caught him, they had a right to trap  
3 him, they had a right to do the things they did; and they  
4 did catch him.

5 Now, gentlemen, what defense is put up against those  
6 circumstances? They charge that Franklin was acting in  
7 collusion with Lockwood. You heard Franklin testify upon  
8 the stand. You know how bitter the feeling is that Mr  
9 Franklin showed toward Mr Lockwood. You remember what  
10 Lockwood testified at the preliminary examination; he  
11 said "Franklin told me he would see Clarence Darrow and  
12 find some way to make it safe." Franklin realized that  
13 was an indiscrete thing for him to say. He was angry,  
14 he didn't like Lockwood anyway. He went up to a newspaper  
15 man and he said, "If Lockwood says that I said that, he is  
16 a damned liar." Those are the ~~terms~~ terms he used. Here on  
17 the stand you saw how he showed his animosity against Lock-  
18 wood. There was no community of interest between those  
19 two men. Franklin admits that he made that statement  
20 to the reporters at the preliminary examination, and he  
21 says upon the witness stand that that was true. And  
22 still sore against Lockwood, he denied that Lockwood  
23 told the truth with regard to that particular expression.  
24 He denied it upon this very stand here. Evidently those  
25 two men were not friends, never have been acting in col-  
26 lusion at any time for the purpose of hurting the McNamaras

1 or for any other purpose.

2 There is not a scintilla of evidence in this case  
3 that Mr Lockwood was acting in collusion with Harrington.  
4 No such claims have ever been made by evidence or  
5 otherwise. And, in regard to the character of Mr Lock-  
6 wood, you must realize that Mr Lockwood is an honest man,  
7 and that he has told you what did occur between him and  
8 the District Attorney, and that nothing occurred between  
9 him and any other person, except the District Attorney.

10 Was there any collusion between Harrington and Franklin?  
11 Franklin was never told by Darrow where the money came  
12 from. You remember Harrington asked Mr Darrow down at  
13 the dictagraph conversation, he asked him this question,  
14 "Did you ever tell Franklin about showing me this money?"  
15 or something in substance like that, and Darrow replied,  
16 "Never in Christ's world did I." Darrow had never told  
17 Franklin where the money came from, and Franklin never  
18 testified upon the stand that Darrow had so told him.

19 MR DARROW: Your Honor, I want to object and take an excep-  
20 tion. Franklin said that I stated I got it from Sam  
21 Gompers.

22 THE COURT: Let the exception be noted.

23 MR FORD: Darrow never told Franklin he had got the money  
24 from Tveitmoer's bank in San Francisco. If Franklin  
25 and Harrington were acting in collusion, if they were  
26 framing up something by which they could get Mr Darrow,

1 how does it come that Franklin did not corroborate Har-  
2 rington on that point here on the stand? How easy it  
3 would have been to frame up testimony to say, "Mr Darrow  
4 told me he had got the money from San Francisco", or some-  
5 thing like that. But he didn't say it. The testimony of  
6 Mr Franklin and the testimony of Mr Harrington cover  
7 entirely different fields, and cover it in a perfectly  
8 natural way that must convince you that they are telling  
9 the truth.

10 Now, another thing. If Mr Franklin were in a plot to  
11 destroy the defendants, the McNamaras, in that case, or  
12 to injure this defendant, how does it come that for weeks,  
13 day after day, up until the 18th day of January, the time  
14 that he confessed to me in this case, up until that day,  
15 he had time after time and place after place, according to  
16 the defendant's own witnesses in this case, he had said  
17 that "Darrow never gave me any money. Darrow never  
18 gave me a cent. Darrow is innocent of this charge."?

19 The defendants have attempted to impeach Franklin  
20 by saying that he made statements of that character. Mr  
21 Franklin admits upon the stand that up to that date, up  
22 to that time, he was protecting Darrow, and that he did  
23 make statements along that line, although he had denied  
24 saying the precise things that were attributed to him, but  
25 he did admit he was protecting Darrow. If Franklin were  
26 in a plot to ruin Darrow, why did he protect him at that

1 time? The defendant himself has called your attention  
2 to the fact that for weeks after the arrest of Franklin  
3 the District Attorney had said, "We have no evidence against  
4 Darrow on that charge." Neither did they. They never  
5 had any evidence upon which he could be indicted or tried  
6 in this case until the 29th day of January, the date on  
7 which the indictments were returned by the grand jury.  
8 It took us weeks of patient investigation to gather this  
9 material together, in order that he might be indicted for  
10 the crime that he had committed, and prosecuted here in  
11 this court. The first absolute, necessary thing to do  
12 was to make Bert Franklin come through, before the case  
13 would be sufficient or complete to present it to you.



1c1 I do not mean to say that this case rests upon the testi-  
2 mony of Bert Franklin alone. It does not. But Franklin's  
3 testimony furnishes an explanation of all the circumstan-  
4 ces in this case, and there is no other explanation pos-  
5 sible--all the circumstances of this case except the story  
6 told by Bert Franklin, through Bert Franklin here upon the  
7 stand day after day, cross-examined by the most skillful  
8 cross-examiners that this fair city can produce. You saw  
9 him remain there unshaken in any essential detail of his  
10 testimony; he told all the circumstances of each day with  
11 a particularity of detail that would absolutely defy  
12 fabrication. No man could make up such a story upon the  
13 stand here and fit it with the circumstances as they have  
14 fit in this case; no man could have defied the cross-  
15 examination which he stood on this stand. The court will  
16 instruct you that the testimony of an accomplice ought  
17 to be viewed with distrust. The ordinary rule is that a  
18 witness is presumed to speak the truth, and you must  
19 rely upon the testimony of that witness unless there is  
20 something in his attitude, his relation to the case, his  
21 manner of testifying, or the probability of his story  
22 which destroys that presumption. That same distrust may  
23 be repelled by the fact that he has told a story that  
24 is extremely probable, by a consideration of its relation  
25 to the case, and all the circumstances in the case, by the  
26 fact that he has been corroborated in detail after detail,

1 as Franklin has in this case, and as I shall show you  
2 before I conclude. That being the case, that distrust  
3 should have been absolutely removed, and you have a right  
4 to believe that Bert Franklin has told the truth upon the  
5 stand in every essential detail, as I am sure that you must  
6 as men of ability, and your duty as jurors is to satisfy  
7 your reason as men. What you believe as men beyond a rea-  
8 sonable doubt you must also believe as jurors beyond a  
9 reasonable doubt.

10 While I am upon the subject of Franklin, you  
11 remember that he testified he had met Mr. Darrow and Mr. Davis  
12 in his office on the 14th day of January, and there had  
13 discussed some proposition to deceive the District Attorney,  
14 If Franklin were acting in collusion with the District  
15 Attorney, or with some interest inimical to the defense in  
16 this case, how was it that on the 14th day of January he  
17 plotted in that office to deceive the District Attorney?  
18 How was it that he actually attempted to deceive the District  
19 Attorney and was laughed at at the very inherent im-  
20 probability of his story? How was it that he invented some  
21 mysterious stranger whose name he did not know in order to  
22 exonerate Mr. Darrow in this case, if he were in a plot to  
23 ruin Mr. Darrow, if he were in a plot to procure the convic-  
24 tion of the defendants in the McNamara cases? How was it  
25 that he attempted to deceive them upon those dates? Can  
26 you explain it in any manner except this, that he was trying

1 to protect Mr. Darrow, and that he was loyal to Mr. Darrow up  
2 to that time? They have attempted to show that the story  
3 that was concocted to deceive the District Attorney was  
4 really the truth, and they have produced Shoeber upon the  
5 stand with his mysterious stranger. You will remember that  
6 Mr. Shoeber testified before the grand jury; that he  
7 admitted receiving Mr. Franklin up in the office, he thought  
8 it was Tuesday morning, but after consideration he guessed  
9 it was on Monday morning, and you have had here produced  
10 upon the stand Mr Mayer who testified to the identical  
11 circumstances testified to by Shoeber, and it must show,  
12 if Mayer tells the truth, that Mayer was the man who  
13 Shoeber saw, and that he saw him on Monday. A great deal  
14 of cross-examination was directed against Mr. Mayer because  
15 of the fact that he refreshed his recollection as to dates  
16 in various manners, but there is one thing that remains  
17 in Mayer's testimony, and upon which he needs no recollec-  
18 tion at all, and that is that he had worked on Saturday  
19 night and Sunday, and had reported to Mr. Franklin on Monday  
20 morning prior to the pleas of guilty, and prior to the arrest  
21 of Bert Franklin, and from the other circumstances in this  
22 case you know that the Saturday night referred to was the  
23 25th day of November, the Sunday referred to was the 26th  
24 day of November, and the Monday referred to was the 27th  
25 day of November, and there can be no possible doubt in  
26 your mind that it must have been Monday the 27th day of



1 November that Shoerber saw Mr. Mayer there, and saw Mr.  
2 Franklin there. Mayer answers the description given by  
3 Shoerber, although Shoerber, one of the lieutenants of the  
4 defense--private soldier of the defense--refused in court  
5 to identify him.

6 Mr. Mayer went up there Monday morning to get his  
7 money, and he went over afterwards to the office and gave  
8 Mrs. Franklin a receipt. She does not remember just when  
9 the receipt was given, but she said it was not made up for  
10 the purposes of this case, it was made in the ordinary  
11 course of business and was intended to show the date on which  
12 that sum was paid to Mayer by Mr. Franklin, and it absolutely  
13 fixes the date in this case. Mrs. Franklin has never been  
14 accused of any crime; Mrs. Franklin testified on this  
15 stand that after her husband had received immunity auto-  
16 matically--Mrs. Bert Franklin could not be prosecuted;  
17 Mrs. Franklin was not guilty of any crime. What motive  
18 was there for Mrs. Franklin to falsify in this case? Another  
19 thing: You remember that it was the influence of Mrs.  
20 Franklin that made Bert Franklin come through to the Dis-  
21 trict Attorney in this case. You remember that according  
22 to Franklin's own testimony, Mr. Darrow and Mr. Davis were  
23 willing to pay his fine and give him a sum of money until  
24 he could rehabilitate himself, but when he went home to his  
25 wife and told her the circumstances of it, like the true  
26 woman that she was, she said: Bert, you can take your



1 medicine if you want to, you can do what you think right as  
2 a man; if you believe that you ought to plead guilty and  
3 let Darrow go, she said, you can do so, but I will not  
4 take one dollar of that corrupt money. And it was her  
5 influence that caused him finally to come through and  
6 tell the truth to the District Attorney.

7 Just a word, in passing, about the inherent prob-  
8 ability of the story which he had told. Mr. Franklin, if  
9 he had been approached by a stranger, knowing that the Dis-  
10 trict Attorney was always starting something to keep the  
11 defense busy, knowing that the District Attorney was watching  
12 their every move, would at once suspect a trap on the part  
13 of the District Attorney. Would he take money from a man he  
14 did not know? If an offer of that sort was made, what  
15 would he do? Why, common sense tells you that he would at  
16 once report the circumstances to this defendant and receive  
17 his advice in the matter. And if he received it from some  
18 stranger, it would not be until after he had consulted with  
19 Mr. Darrow and knew it was all right so to do. And if he got  
20 it from some third party, and Mr. Darrow told him to do it,  
21 and Mr. Darrow aided and abetted and advised him and en-  
22 couraged him to do it, then Mr. Darrow would be guilty whether  
23 he personally gave the money to Franklin or not. And there  
24 would be absolutely no necessity of Franklin claiming he  
25 got the money from Mr. Darrow personally. There is absolute-  
26 ly, <sup>no</sup> motive whatever for Mr. Franklin to falsify upon the

1 stand and say he got it personally from Mr. Parrow if he  
2 got it from somebody else, because if he did get it from  
3 somebody else he certainly consulted this man before he  
4 took it. He never got it from an unknown stranger.

5 The defense in this case have shifted about  
6 from one base to another. One of the jurors in this case  
7 made an innocent inquiry about the political situation in  
8 this case. Knowing that all the defenses they had sub-  
9 mitted were unsatisfactory, they immediately  
10 jumped at the bait. They immediately tried to instil  
11 into your minds the possibility that Bert Franklin had  
12 acted for the political adversaries of Job Harriman, and  
13 this was the result of a political frameup in this city.  
14 Let us see what are the circumstances in this case.  
15 Mr. Franklin has told upon the stand that Job Harriman--  
16 that they had to wait for Job Harriman to go to the vault  
17 at half past eight. He testified that Job Harriman came  
18 into the office, saw Mr. Franklin, went into the adjoining  
19 room, and that Mr. Parrow came out and immediate<sup>ly</sup>/handed  
20 Franklin \$4,000 and he left. You remember that after the  
21 arrest of Franklin, up to the day of the pleas of guilty,  
22 you remember up until the very hour that the votes were  
23 counted in this city, that it was by no means certain that  
24 the socialists would not win out in this city. A vigorous  
25 campaign was being waged by them at that time. Was the  
26 story as told by Franklin upon the stand here ever made

public during tha vigorous campaign?

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1 What better campaign material could there possibly have  
2 been than to spring the story that Franklin has told upon  
3 the stand at that time? If there ever was a necessity  
4 for manufacturing that story, it would have been then, not  
5 now. There is no campaign on at the present time. Mr Job  
6 Harriman is not a candidate for office. Job Harriman,  
7 the man most vitally interested, says here upon the stand,  
8 he says he never heard the circumstances as told by Frank-  
9 lin here upon the stand, he never heard it from the lips of  
10 anybody inimical to the defense in this case, inimical  
11 to the Socialists in this city, he never heard it from  
12 the lips of anybody until he heard it from my lips in the  
13 office of the District Attorney three months afterwards,  
14 when he was called before the grand jury. That was the  
15 first time he had ever heard his name mixed up by anybody.  
16 Franklin had kept still all of the time. Isn't that  
17 the very best evidence that it was not a political frame-  
18 up? If the situation was framed for political purposes,  
19 why would Franklin come on here and manufacture it at  
20 this time? It is not necessary to consider Harriman guilty  
21 in this case. Mr Darrow, for his purposes of his own,  
22 may have deceived Mr Franklin about Harriman. Darrow may  
23 have wanted to make Franklin believe that Harriman was  
24 interested for some reason, and he held off until Harri-  
25 man came to the office and handed the money to Franklin  
26 at that time. It does not add anything to the strength of



1 the testimony here by implicating Mr Harriman. It is  
2 possible to reconcile the testimony about Harriman in  
3 this case with the theory of innocence, as far as Harri-  
4 man is concerned. It does not affect this case in any  
5 way, shape or form, so far as the guilt of this defend-  
6 ant is concerned. Mind you, I am not arguing that Har-  
7 riman is innocent. I believe he is guilty. I believe the  
8 circumstances in this case -- I do not know whether they  
9 are sufficient to charge him as an accomplice in this case,  
10 but I believe, from the evidence in this case, he is an  
11 accomplice in this case, but I am trying to show you at  
12 this time that there is absolutely no motive today, as  
13 far as the purposes of this case are concerned, for mix-  
14 ing up the name of Job Harriman. And why does Franklin do  
15 it, if it is not true? The only answer is that it is part  
16 of the details of what occurred at that time, and that  
17 with regard to this transaction Mr Franklin has told you  
18 everything with the same multiplicity of detail that he  
19 has told you everything else: If it had any effect at  
20 all its only effect at this time could be to weaken the  
21 testimony of Mr Franklin, because Mr Franklin would well  
22 know, and the District Attorney in this case would well  
23 know that it only furnishes an opportunity for another  
24 witness to come on the stand and contradict Franklin.  
25 But the thing was true. We had to furnish them the op-  
26 portunity to let them contradict it if they desired.

1 If it was a frame-up, the persons who were framing it  
2 would have cut that out. Because they as lawyers  
3 would know that a circumstance of that sort only furnish-  
4 ed an opportunity for another witness to deny portions of  
5 Franklin's story.

6 The circumstances of Harriman, then, were not made pub-  
7 lic. There is a motive for it now. Is Franklin telling  
8 the truth in that regard? Is he? Or was he the tool of  
9 any political combination? I don't think I ought to waste  
10 your time further on that subject.

11 Now, there is another hypothesis: was Mr Franklin the  
12 agent of the prosecution in this case? Mr Franklin  
13 went to Mr Bain and offered to give him \$400 and promised  
14 to pay him \$3600 more, and he sat in that very chair  
15 right there in back. Was the bribe to convict the Mc-  
16 Namaras? No, he was told to acquit them, and he wasn't  
17 going to get the money unless he did acquit. The \$3600  
18 additional. Mr Franklin went to Mr Smith out here at  
19 Covina and offered him \$4000 to sit as a juror in this  
20 case; to convict the McNamaras? Mr Smith testified that  
21 the \$4000 was conditioned upon this fact, that he should  
22 vote for a verdict of not guilty in the case of People  
23 vs. J. B. McNamaras. Mr Franklin went down to Third  
24 street and saw Guy Yonkin, took him into a saloon next  
25 door and offered to give him \$4000 if he would sit as a  
26 jury in the case of people vs. McNamara, and that was

1 conditioned upon one thing, that Yonkin should refuse to  
2 convict and should vote not guilty in the case of People  
3 vs. McNamara. Mr Franklin went out to John Underwood,  
4 who is now dead, and offered him a bribe, and Underwood  
5 said, "He was my friend, and he couldn't hurt the prose-  
6 cution." The offer to him was for the purpose of vot-  
7 ing not guilty. Mr Franklin went out to Krueger at The  
8 Palms and offered him \$4000 to vote not guilty.

9 Mr Franklin went to Lockwood and offered him \$4000, and  
10 you have have had the money here, to vote not guilty.  
11 Why, isn't that the most remarkable thing you ever  
12 heard of in all your life to convict a defendant, to go  
13 and bribe a juror to vote not guilty, and promise them  
14 money if they would vote not guilty. Can it be possible  
15 that any person interested in the conviction of the Mc-  
16 Namaras would ever bribe them to vote against convicting  
17 them? As Mr Appel would say, a fifteen-year-old boy would  
18 know better than that.

19 Now, Mr Franklin furnished another opportunity for  
20 contradiction upon this stand. He said when he went  
21 down and saw Mr Kreuger that Kreuger had told him that  
22 Frank Fowler had been to see him. Frank Fowler, the  
23 railroad detective. Frank Fowler, whom the defense in  
24 this case had characterized as one of our most eminent  
25 members of the bar. Frank Fowler, whom, to use one of  
26 Mr Rogers' Vernon arena terms -- Frank Fowler, concerning

1 whom Mr Rogers buncoed this court into sending a trans-  
2 cript of the testimony to, and Frank Fowler came in this  
3 court, and attempted to make a great hellabaloo to deceive  
4 you gentlemen of the jury; make believe that he was  
5 indignant and thereby avoid going onto the stand.

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1 MR. APPEL. We take an exception.

2 MR. FORD. He came in here--

3 THE COURT. Wait a minute.

4 MR. APPEL. We take an exception and object to the remarks  
5 of counsel that Mr. Rogers here or any one connected with the  
6 defense ever buffaloes this court or buncoed this court.

7 THE COURT. The exception will be noted. Proceed, Mr. Ford.

8 MR. APPEL. I think it is a reflection upon the court.

9 MR. FORD. Courts are sometimes deceived.

10 THE COURT. I think, however, it is a formal expression that  
11 might be avoided by counsel.

12 MR. FORD. Your Honor, I cannot avoid my duty to say what  
13 I believe to be the plain--

14 THE COURT. It is the form of the expression, Mr. Ford.

15 MR. FORD --facts in this case. What explanation did Mr.  
16 Fowler give as to his visit to Mr. Krueger down there?

17 By the way, Mr. Krueger was an unwilling witness. The testi-  
18 mony was dragged reluctantly from his lips upon the stand.

19 MR. Krueger was a man who had been prosecuted by the Dis-  
20 trict Attorney and had no love for the District Attorney.

21 Mr. Krueger was not anxious to aid the District Attorney in  
22 any way, shape or form. Mr. Krueger told Franklin that

23 Fowler had come to his place and laid out four matches  
24 upon the floor, each match symbolizing a thousand dollars;

25 four thousand dollars. How did it come that Fowler pre-

26 sented to Mr. Krueger the same identical proposition that had

1 been presented by Mr. Franklin?

2 MR. DARROW. We want to take an exception.

3 MR- FORD. The only inference that can be drawn--

4 MR. DARROW. We take an exception to that. Krueger said  
5 each match represented a dollar or ten dollars; he didn't  
6 say each match represented a thousand dollars; said he  
7 didn't know.

8 THE COURT. The objection and exception will be entered.  
9 Proceed, Mr. Ford.

10 MR. FORD. Mr. Krueger was an unwilling witness. He was  
11 not going to aid anybody. He had to admit to the four  
12 matches proposition, and he understood at that time well  
13 that those four matches symbolized \$4,000, and perhaps  
14 would have accepted it in this case. I don't want you  
15 gentlemen to believe that we admire the character of Mr.  
16 Krueger. All we are interested in is the truth of his  
17 statement, and we believe the truth was forced out of him;  
18 that is all I care about Krueger.

19 How did Fowler happen to go down there? He  
20 admits he saw Krueger down there on the 7th day of September.  
21 He said he was interested in a witness in the case of  
22 the railroad; he was interested in a witness by the  
23 name of Harrison; he didn't know his initials; he used  
24 to live at Santa Monica. He moved out to the Palms. He  
25 inquired of some man down there if he didn't know him; he  
26 had seen parris. He went to the billiard hall and asked

1 a man if he didn't know anything about him. Never heard  
2 of him. Fowler then went over to Krueger's and thought  
3 perhaps Krueger might know something about him. He  
4 couldn't give you any details whatever about this man  
5 Harris. Krueger said the man might have lived there, if he  
6 did he moved away. I call to your attention also another  
7 very significant fact, that was this: When Mr. Krueger  
8 was upon the stand he was not asked if Fowler hadn't come to  
9 see him in regard to this man Harris. No foundation was  
10 ever laid for impeaching Krueger by Fowler's testimony.  
11 Probably in their hearts they recognized they could not  
12 impeach a yellow dog upon Fowler's testimony, and for that  
13 reason did not lay the foundation, and the only reason they  
14 produced Fowler in this court was they were afraid his  
15 appearance would not be sufficient. They called your  
16 attention, gentlemen of the jury, to the fact he was not  
17 under subpoena then, and he should be put upon the stand,  
18 so finally they did put him upon the stand. Gentlemen,  
19 if you had a case would you hire this eminent lawyer of the  
20 bar, Mr. Fowler, to handle your business for you? Would  
21 you trust him? If not, don't trust his testimony.

22 wealthy now, there is another point in this case. Whatever  
23 interests were about bribing these jurors or hired Mr.  
24 Franklin to bribe them, were not throwing their money away.  
25 \$4000 is not a sum that people, no matter how rich they  
26 are throw away lightly. If they paid each

1 man \$500 as an earnest of good faith, that is a sum they  
2 don't throw away lightly. This money if given to a man  
3 must have been given with some expectation that he would  
4 remain on the jury. How did they ever expect to retain  
5 that man upon the jury unless the facts were told to Mr.  
6 Darrow?

7 Bain was a man whose interests were not parti-  
8 cularly in favor of the defendant. Lockwood was a man  
9 whose opinions were not particularly in favor of the  
10 defendant or the McNamaras. An examination in court of  
11 either of these men might bring forth the fact that they  
12 were hostile to the prosecution, and so they had to guard  
13 against that. They had to figure an examination in some way  
14 that would retain the bribed persons upon the jury. How  
15 could Franklin or any other person behind him ever expect  
16 to retain this man unless the facts were communicated to Mr.  
17 Darrow in order that Mr. Darrow could act accordingly?  
18 Do you suppose they went out blindly bribing everybody and  
19 taking chances on Darrow retaining them, or do you suppose,  
20 like sensible men, they told Darrow the circumstances in  
21 order that Darrow might make their money go where it would  
22 do the most good and the best for them.

23 Now, this Christian anarchist, Lincoln Steffens  
24 took the stand and testified that he had first broached the  
25 proposition of letting J.B. plead guilty and stopping all  
26 other prosecutions. That he first took up the subject



1 with Mr. Darrow on April 20th, Monday morning at breakfast.  
2 That they had labored all that week until Saturday night  
3 trying to get the authorities to accept that situation.  
4 Mr. Steffens says that the District Attorney at all times  
5 insisted on both men pleading guilty. He says that on  
6 Thursday, Friday or Saturday night, he would not be particu-  
7 lar, but he knew it was before Sunday the 26th, that the  
8 National Erectors Association and the interests in the east  
9 would not consent to a plea of guilty unless both men plead  
10 guilty, yet they were trying to act with the District At-  
11 torney to prevent the prosecution of both men and get him  
12 to accept a plea of guilty on the part of one man--

13 THE REPORTER. You said April, Mr. Ford.

14 MR. FORD. I meant November. Is it possible that the  
15 District Attorney or the National Erectors Association  
16 would interfere with a plea of guilty by framing up something  
17 on Mr. Darrow at that time?

18 Mind you, the testimony of Lincoln Steffens shows  
19 that the National Erectors Association or the interests in  
20 the east, who were interested in the prosecution of the  
21 McNamaras, that those people knew prior to the end of the  
22 week, or Sunday, November 26th, that there was a chance  
23 for both--a chance for at least J B McNamara to plead guilty.  
24 The world at large wished to know the facts; the world at  
25 large would never be convinced of the facts if these men  
26 had been sent to the gallows by reason of a jury verdict.

1 Many millions of people in the United States would have  
2 felt that the evidence, however strong, was a frameup, and  
3 that these men were innocent, and it was desirable above  
4 all things that they admit their guilt; that they confess  
5 their guilt. That was the thing that most of the world,  
6 who were interested in the prosecution; that was the thing  
7 that they were most vitally interested in, to convince the  
8 rest of the world that these men were guilty, and after the  
9 defendants themselves admitted it, is it likely that under  
10 those circumstances they would frame up a job on Darrow?  
11 Darrow was a criminal lawyer. Darrow had been a fighter  
12 all his life. You have seen his powers here in court; if  
13 they framed up a proposition against Darrow wouldn't they  
14 know that Darrow would fight all the harder? Wouldn't they  
15 know that any crime of that sort would prevent the very  
16 thing that they wanted, a plea of guilty.

17 As a matter of fact, gentlemen, the people in  
18 the east had absolutely nothing whatever to do with the  
19 question of the plea of guilty or otherwise. That was a  
20 matter that was handled by the District Attorney of this  
21 city regardless of any outside influence, as will appear  
22 from the testimony of Lincoln Steffens himself.

23 Mr. APPEL. We object to the statement of the gentleman  
24 here, that no interests nor no people in the east had any  
25 interest in the matter, and they had nothing to do with the  
26 question of their allowing or rejecting the plea of guilty,

1 on the ground it is contrary to the evidence, and there  
2 is no testimony to the contrary, and I object to the  
3 gentleman testifying to those facts before the jury while  
4 not under oath.

5 MR. FREDERICKS. That is a deduction drawn from the evidence.

6 THE COURT. I don't want any argument on the subject.

7 I don't want to hear from you Mr. Fredericks. The objection  
8 will be noted and the jury will bear in mind their admoni-  
9 tion and instruction in regard to their being the judges of  
10 what was testified to. Proceed, Mr. Ford.

11 MR. FORD. Now, what is the next step, according to the  
12 testimony of Lincoln Steffens? The man who believes that  
13 men should not be prosecuted for mere murder. You heard  
14 him say that on the stand. The man who believes that they  
15 should go free because they were guilty only of <sup>a</sup> social  
16 crime. What did he say was the next step in the case, if  
17 you can trust his testimony? He says that on Sunday, the  
18 defendants were seen by him self and Mr. Darrow and a dead  
19 man, Judge McNutt. If Judge McNutt were alive they  
20 would not testify that he was a party to the proceedings  
21 on Sunday, but he is dead, and so they can make any asser-  
22 tions they please with regard to him.

23 MR. APPEL. Wait a moment--we object to that statement as  
24 being an inference that Judge McNutt, if he were alive,  
25 would have been a witness to a fact contradicting the claims  
26 of the defense, that he was present on Sunday, one of the



1 meetings referred to in the testimony for the defense.

2 The Court. The objection will be noted. Proceed, Mr. Ford.

3 MR. FORD. Mr. Steffens says that on Sunday they saw J J  
4 McNamara and J B McNamara. That they talked to each one  
5 separately, and each one was willing to plead guilty pro-  
6 vided the other was saved, according to his own testimony,  
7 on Sunday, J J was willing to plead guilty only on the  
8 condition that J B should be saved.

9 MR. APPEL. We object to that on the ground that that  
10 is not the evidence and is contrary to the evidence.

11 MR. DARROW. Said his life should be saved.

12 THE COURT. The objection will be noted. The jury will  
13 bear in mind that they are the judges of what the witnesses  
14 testified to.

15 MR. APPEL. We object to his misstatement of the facts.

16 THE COURT. The objection is noted.

17 MR. FORD. The defense have an opportunity in this case to  
18 argue the facts in this case. If they deny that there is  
19 a transcript to support any facts concerning which I have  
20 argued, let them make them when they argue to you, and my  
21 chief, Captain Fredericks, will read you from the trans-  
22 cript, when he closes, the exact testimony on that point.  
23 I must hurry through; I haven't time to take up the refer-  
24 ences. Let them deny each time and we will make a note  
25 and it will be given to you on the closing from the transcript  
26 itself.



1           At any rate, both were willing to plead guilty.  
2 J B--there can't be any contradiction about this--at one  
3 time, the first time Steffens talked to them, each one  
4 was talked to separately, each was willing to plead guilty  
5 if the other could be saved. Each wanted to save his brother  
6 and save the cause of union labor. How J J could save  
7 the cause of union labor by pleading guilty himself I don't  
8 know. He was an official. Certainly a plea of guilty on  
9 his part could not save union labor, but that is in the  
10 testimony of Steffens. The point I am driving at, however,  
11 is an entirely different one. Mr. Steffens says that on  
12 Monday they sent Mr. Davis, Captain Fredericks's friend,  
13 to see Captain Fredericks and see what he would do on that  
14 day, and that the District Attorney told Mr. Davis and Mr.  
15 Davis reported back to Mr. Darrow that he was willing, on  
16 Monday, to accept a plea of guilty from both defendants; he  
17 was willing that J B should take a life sentence and that  
18 he was willing/<sup>JJ</sup>should take a sentence, say, of 10 years.

19           Mr. Steffens says that the District Attorney  
20 had agreed to that on Saturday, that being a week before,  
21 because somehow they had discussed that very proposition on  
22 Sunday November 26th. It had crept into the discussion  
23 somehow. He didn't remember how, but the proposition was  
24 that the district attorney was willing to let J J take a  
25 term, say, of 10 years, and to let J B take life.

26           MR. Davis and Mr. Darrow, according to this

1 testimony, called on the District Attorney again on  
2 Wednesday, and the District Attorney told them on Wednesday  
3 he was willing to let both defendants plead guilty, to let  
4 J J plead guilty and take 10 years, say, or something like  
5 that, and to let J B plead guilty and take life.

6 They had to furnish some excuse there. Steffens  
7 realized and the defendants realized that there must be  
8 some other condition made which would account for the  
9 necessity of having a conference on Thanksgiving Day. That  
10 was the fact that stared them in the face, the fact that  
11 they had conferred all day long with J B McNamara, then  
12 so in order to get J B to confess and so they had to invent  
13 a condition and they said that on Wednesday the District  
14 Attorney insisted on both men pleading guilty at once, at  
15 the same time, and that made it very hard for them to  
16 account for the necessity of arguing all day on Thanks-  
17 giving day. But the point is this, gentlemen: The District  
18 Attorney, during the week preceding Sunday, knew that Bain  
19 had been bribed; he knew that Franklin had been bribed.  
20 On Monday he knew that Lockwood had been approached by  
21 Franklin and he knew that on Monday night, and later it was  
22 postponed until Tuesday, but at that time he thought that  
23 on Monday night Bert Franklin would go out with some money  
24 to give it to Mr. Lockwood. He knew that a crime was about  
25 to be committed and yet he was willing, in the interests of  
26 justice, in the interest of ending the expense of litiga-

1 tion involved in the McNamara trial, he was willing that  
2 the crime contemplated by Bert Franklin should never be  
3 committed, and that meant that Bert Franklin could never be  
4 prosecuted.

5 On Monday he was willing that that should be  
6 done. That is the defendant's own testimony. There was  
7 nothing, absolutely nothing to prevent the defendants on  
8 Monday from putting in their plea of guilty, if they desired  
9 to so do, and remember, Mr. Steffens says Darrow the week  
10 before had insisted that there must be secrecy; there must  
11 be haste; we must do this hurriedly or there is something  
12 liable to go wrong, yet on Monday, after this had been  
13 consented to, Captain Fredericks, after Davis had made his  
14 last appeal, and his direct appeal to the very man with  
15 whom he had to deal, <sup>and</sup> had been turned down, and after they  
16 realized there was no way to get anything, they realized  
17 J J should plead guilty, and according to their own testi-  
18 mony they were willing to plead guilty, both of them,  
19 although there was urgent need for haste,  
20 they didn't do it. Davis never went back, to Fredericks  
21 that day and said "We will accept your terms."

22 Here is the District Attorney on one side,  
23 willing to forego the chance of capturing Franklin; willing  
24 that a crime, even though it was committed, should go un-  
25 punished, and yet they have the effrontery to stand here  
26 before you and to say that the District Attorney or some



1 person in the prosecution who had the same knowledge that  
2 the District Attorney had, who, if they had any interest,  
3 would certainly not be throwing any stones in the way of  
4 the District Attorney, who would certainly not interfere  
5 with the success of the negotiations for the plea of guilty,  
6 yet they have the effrontery to say that somebody else  
7 put up a job to get Darrow, when they were perfectly  
8 willing, the authorities were perfectly willing to prevent  
9 even Franklin from getting himself in the snare, in the  
10 interest of the people of this county, that the expensive  
11 litigation might be stopped, there could be a frameup by  
12 someone; something that is not true; something that this  
13 defendant knows is not true, something, that Darrow, the  
14 fighter, Darrow the gladiator of the court, would fight all  
15 the harder; the man who knew the District Attorney always  
16 started something to keep us busy. Is that explanation  
17 plausible on the part of the defense, and is there any  
18 reason for their making statements of that sort, or are  
19 they trying to deceive you? Are they slipping from one  
20 base to another to deceive you? If they are, gentlemen,  
21 you should not trust them. You should be guided by your  
22 common sense and the evidence in this case. You should not  
23 be speculating for some evidence upon which you might acquit  
24 him. Now, here is another thing. Bert Franklin on the  
25 27th day of November this year, by plea of guilty, announced  
26 to the world that he had gone over to the prosecution.



1 At that time the prosecution in open court asked the court  
2 to be lenient with Franklin; announced to the world that  
3 Franklin was to be a witness for the prosecution. There  
4 was no longer any necessity of concealing the connection  
5 between Franklin and the District Attorney, if there was  
6 any, and yet the District Attorney insisted on Franklin  
7 pleading guilty, placing the stigma of jury bribing  
8 upon himself forever, placing this disgrace upon his  
9 family. Do you imagine for one instant that if Bert  
10 Franklin was in a frameup with the prosecution that he  
11 would have allowed this stigma to be placed upon his name?  
12 It is true that he was dealt with leniently. It is true  
13 that he got more than he would have deserved otherwise.  
14 It is true that he plead guilty to a crime which he com-  
15 mitted, and knowing that it was wrong and being himself  
16 over the age of 21, he went into it with his eyes open  
17 and I can say no word by way of defense of Franklin's  
18 act in this matter, although Franklin was dealt with  
19 leniently in order that justice might be accomplished  
20 in this case; in order that <sup>the</sup> man who corrupted Franklin,  
21 in order that the man who corrupted others, in order  
22 that the man whose life and conduct and teachings were  
23 luring men whom he never knew into evil ways, in order that  
24 that man might be punished.

25 MR. DARROW. Wait a moment. I will take an exception to  
26 the language just used by Mr. Ford.

1 THE COURT. Yes, sir, the exception will be noted, proceed.  
2 MR. FORD. The District Attorney and the judge realizing  
3 the importance of this present litigation, dealt leniently  
4 with Franklin, but the fact remains that the stigma will  
5 always be upon his name. Do you think <sup>if</sup> Franklin was the  
6 tool of the prosecution in this case, that if Franklin was  
7 merely acting as a spy to trap Mr. Darrow, that if  
8 Franklin went in for the purpose of getting this  
9 defendant that he would allow this stigma to be placed  
10 upon his name?

11 Now, gentlemen, if Mr. Franklin was the agent  
12 of interests hostile to Mr. Darrow, why was it that way  
13 late in February they resorted to the imperfect device  
14 of the dictagraph, which, imperfect as it may have been, never  
15 theless something of which this defendant has been fear-  
16 fully afraid, and which has served its purpose to indicate the  
17 guilt of this defendant.

18 If Mr. Franklin or Mr. Harrington or anybody else  
19 was in the prosecution's pay to get this defendant, why  
20 could they not have managed to have witnesses present to  
21 the transactions that had occurred away earlier in the game  
22 at the very time these things were being done? Wouldn't  
23 they, if they were clearing up anything, had witnesses who  
24 saw Mr. Franklin going into the building--the Higgins  
25 Building, wouldn't they have had witnesses who saw Mr. Darrow  
26 going into the Higgins Building? Wouldn't they have had

1 witnesses so they could have corroborated Franklin as to  
2 these things? Wouldn't they have had witnesses so situated  
3 that they could have seen Franklin pass the money to White?  
4 Wouldn't they have had a world of testimony that we have  
5 not in this case? Certainly, if people were framing up some  
6 thing and spending thousands of dollars in that frame up,  
7 throwing money around and promising money to everybody,  
8 wouldn't they have hired men who would be present in an  
9 advantageous position, and who could testify in this case,  
10 and yet are not here? Isn't the very absence of such  
11 witnesses the best proof that there was no frame up?

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1 Under these circumstances isn't it reasonable to sup  
2 pose that this was the motive that actuated Franklin?  
3 That Franklin saw there was no possible loop-hole for him  
4 to escape, and that he was going to be convicted, that  
5 there was no chance for him whatever. Davis had been  
6 sent, according to Franklin's testimony, to the District  
7 Attorney, and they had asked the District Attorney to let  
8 Franklin plead guilty, and to let him pay a fine of \$5000,  
9 and go free, and say nothing about it, stop all matters.  
10 Mr Davis himself admits that he did go to the District  
11 Attorney's office. Mr Davis corroborates Franklin upon  
12 that point, that he did go to the District Attorney's  
13 office, and says that he was representing Franklin at that  
14 time. Mr Davis says that awayback in the beginning he  
15 knew that Franklin was innocent, and yet he wants Frank-  
16 lin to plead guilty. Knowing he was innocent, he wanted  
17 him to plead guilty; that he had represented to Darrow  
18 that Franklin was innocent, and yet he admits he went to  
19 the District Attorney's office and tried to get a plea of  
20 guilty accepted upon certain conditions. Do you believe  
21 that Mr Davis would permit an innocent client of his to  
22 plead guilty? Do you believe that Davis is that kind of  
23 a lawyer?

24 Franklin has been abundantly corroborated in every de-  
25 tail. There is every detail of corroboration as to what  
26 occurred in those few days prior to the 14th day of



1 January. Franklin realized he was up against it.  
2 He had heard Darrow say, when Franklin told him that the  
3 District Attorney would never accept this wild-eyed  
4 story about this unknown man, he had heard Darrow say,  
5 "If you are going to tell him about me, tell him about Job  
6 Harriman, too." He went home and told his wife, and told  
7 her about the circumstances. He consulted his friend,  
8 an attorney, George Adams, and upon Adams' advice and upon  
9 his wife's advice, but principally upon his wife's advice,  
10 he determined to tell the truth to the District Attorney.

11 There was abundant evidence in this case to lead the  
12 District Attorney to believe Franklin would not tell the  
13 truth unless he told it was Clarence Darrow.

14 Another thing. Franklin knew that the moment he took  
15 his place upon this stand, the moment he started to tes-  
16 tify upon this subject he would receive immunity. Frank-  
17 lin knew that he could not be prosecuted for any matters  
18 concerning which he gave testimony. Franklin knew that  
19 the only prosecution possible after the first words had  
20 passed his lips, that the only thing for which he could be  
21 prosecuted, would be for perjury in giving false testimony  
22 thereupon the stand. Franklin is shrewd enough, Frank-  
23 lin is sharp enough, and these defendants were advising  
24 him, Darrow and Davis, <sup>and</sup> the undoubtedly knew that the  
25 moment he was sworn, he would be immune from any punish-  
26 ment upon that subject; he knew that then he could tell

1 the whole truth with absolute impunity; that he could not  
2 be prosecuted excepting he perjured himself. There-  
3 fore, when Franklin had started to give his testimony,  
4 started out to admit that he had paid Lockwood \$4000,  
5 he was there to tell you any story he pleased about where  
6 he got the money, excepting that if he told you a false-  
7 hood, if he perjured himself, he was liable to prosecu-  
8 tion on an offense which would still be punishable by a  
9 greater punishment than the one which he had received.  
10 He knew that the moment he started he was immune from  
11 punishment, and yet he went on and told you the truth,  
12 told you that Darrow was guilty. He said here upon the  
13 stand -- and I believed him -- that he was absolutely  
14 neutral; that Darrow had been his friend. He said here,  
15 "I always considered Darrow my friend, and I say so yet  
16 to his face. He has always treated me right."

17 There is only one thing here, gentlemen, only one conclu-  
18 sion, and that is that Franklin was acting for Darrow,  
19 that the only reason he had for bribing these men was  
20 for the \$1000 he got in each case. \$5000 were laid  
21 aside for each juror -- \$4000 for the juror and \$1000  
22 for Franklin. That was the only motive he had for act-  
23 ing in this case -- no other conclusion is possible.

24 Now, what answer do they give to the facts in  
25 this case? They produce one of the defendant's employes,  
26 Mr Wolfe. They have Mr Wolfe, a Socialist of the Darrow

1 type. Wolfe takes the stand and says that he came down  
2 that morning, that he had been with Mr Darrow on that  
3 morning. Mr Wolfe says that he knows he came down that  
4 morning, because that was his custom to come down at 8  
5 o'clock; that is, to leave on the 8 o'clock car, and to ar-  
6 rive here at 8:30. He remembers that specifically,  
7 because that was his custom. Later on, when he was cor-  
8 nered, and he saw that custom was not going to be enough,  
9 he could remember positively, and he made the direct posi-  
10 tive statement that he was there at 8 o'clock, and re-  
11 membered distinctly that it was 8 o'clock. He remembered  
12 then as to a transaction of that day. Conductors, one  
13 of whom was an admirer of Wolfe, a Socialist and an admir-  
14 er of Wolfe, take the stand. They don't even know what  
15 they are called here for -- they think it is something  
16 about an accident, but they take the stand and testify that  
17 Wolfe was what is known among street car men as a late  
18 traveler, that he always came on later cars, and the man  
19 who ran on the 8 o'clock car said that Wolfe took his car  
20 only about once in a week. Yet Wolfe tries to deceive  
21 you, gentlemen of the jury, to make you believe that story  
22 and tells you that it was his custom to come down on the  
23 eight o'clock car. He forgot that he was a candidate for  
24 the council at that time, he forgot that he was probably  
25 known, that he was known to most of the people who ride  
26 in on those cars. He forgot that they had seen his pic-



1 ture , forgot that they would be able to identify him,  
2 that they would remember him. He forgot that he was one  
3 of these distinguished sort of fellows, that he was a  
4 candidate for office, and that they remembered him. Mr  
5 Wolfe testifies on the stand that he spent half an hour,  
6 nearly, in talking with Mr Darrow about the political  
7 situation. They talked about the alliance between the  
8 Good Government people and the liquor interests, just  
9 the same as Hawley and Harriman were talking, over the  
10 same situation a few blocks away in the political head-  
11 quarters. All of them talking over the situation of the  
12 alliance of the Good Government people and the liquor  
13 interests. It ~~is~~ in the testimony that there was this  
14 remarkable coincidence, that these people in both places  
15 were conversing about the alliance between the liquor  
16 interests and the Good Government people. Nowhere in  
17 Wolfe's testimony does he give you his ideas on that sub-  
18 ject, and the probability was he didn't talk with Al Levy -  
19 following the same process of reasoning that Mr Hawley  
20 adopted to come to the same conclusion, that there was  
21 an alliance between the Good Government people and the  
22 liquor people, because he had never heard it from either  
23 side, so he concluded it must be true.

24 Do you believe the story of Wolfe, under those circum-  
25 stances? There is another point involved, and I will come  
26 to that in just a moment. I want to talk about Hawley's



1 testimony first. Hawley testifies that he saw Job  
2 Harriman at 8:30 in the morning coming out of the vault  
3 of the German-American Savings Bank at Fourth and  
4 Spring streets. Harriman testifies he was down there at  
5 8:30. They talked three or four minutes on the corner  
6 of Fourth and Spring. That would make it about 8:40. Mr  
7 Hawley says that Harriman walked down Fourth street to-  
8 wards the headquarters there. Mr parriman says he got  
9 in his machine and went to his office. At any rate, we  
10 know he was in his office, from the testimony of Franklin,  
11 and from the testimony of Mr Russell. Hawley says that  
12 at 8:40 he started out to his own office across the street,  
13 and figuring the time which would be necessary for him to  
14 walk across the street, wait for the elevator, and get  
15 up to his room, he was there about 8:45. He said he had  
16 a conversation the night before with Al Levy, that there  
17 was an alliance between the Good Government forces and  
18 the liquor people, that he found it out from the Tribune  
19 editorial. Now, do you want me to read that editorial  
20 again to you? I don't think you do, but I will read it  
21 if any juror desires me to do so. But there is not a single  
22 reference in that editorial that bears the construction  
23 that he put upon it, not a single reference, and Wolfe  
24 said he did not have a conversation with them the night be-  
25 fore. But, be that as it may, <sup>after</sup> if he had been <sup>15</sup> minutes  
26 minutes with this important news, he walks over to the

1 Socialist headquarters to get Mr Harriman and discuss it  
2 with them: it took him 5 or 10 minutes to get there;  
3 5 minutes; assuming that he got there in 5 minutes. That  
4 made it 5 minutes past 9 when he arrived at the Social-  
5 ist headquarters. What happened there? The doorkeeper  
6 told him that he would go and see if Mr Harriman was in.  
7 He returned and said Mr Harriman was engaged in a con-  
8 ference, and that he would have to wait. And he said he  
9 sat down and waited 10 or 15 minutes. That made it 10  
10 or 15 minutes past 9 before he saw Harriman. They then  
11 discussed it. Wolfe says they discussed it 5 minutes.  
12 That made it 9:20. And then they discussed the liquor  
13 question and the alliance, the very question that Wolfe  
14 and Darrow were discussing down at the other place, and  
15 Harriman said: you ought to see Mr Darrow about that;  
16 Mr Darrow is from Chicago and will probably know some-  
17 thing about the political situation in Los Angeles. Mr  
18 Darrow is engaged in the trial of an important case,  
19 which will probably consume much of his time, and he will  
20 probably be able to explain it. That is 9:20. So he  
21 walks back to his office, another 5 minutes. 9:25 he  
22 is back to his office, and he picks up a phone and phones  
23 to Darrow at 9:25. Remember that Franklin was arrested on  
24 the street at 9 o'clock, and Darrow, according to his own  
25 testimony was in court a few minutes after they started to  
26 impanel the jury, a few minutes past 9, and Wolfe says

1 Darrow left the office before 9 o'clock. Who is a liar?  
2 Are these witnesses who told about the reputation of Mr  
3 Hawley upon the stand, when they said it was bad for  
4 truth, honesty or integrity -- are they lying, or is Haw-  
5 ley lying? Remember there is another thing in that very  
6 incident of that telephone conversation: Franklin says  
7 that Darrow had picked up the phone and telephoned to some  
8 place, presumably headquarters -- that was not testified  
9 to -- but they felt right there that they must not let  
10 Darrow be in communication with the socialist headquarters  
11 because that would, in a measure, corroborate Franklin's  
12 testimony, and for that reason, Hawley went back to his of-  
13 fice. They did not want to corroborate Franklin. That  
14 is the reason that they we had Hawley go back to  
15 his office instead of that place under an appointment.

16 There is another thing. Early in this case, time  
17 after time, the defendant realized that when he went down  
18 there to watch his money, to watch Bert Franklin, as  
19 Bert Franklin was watching White, he realized that the cir-  
20 cumstance of his being down there was something indicating  
21 guilt, that in connection with the other circumstances  
22 of his case, was damning against him, and he had to give  
23 an explanation. Now, he is an attorney in this case.  
24 You have heard him interrupt his counsel time after time,  
25 and yet you heard him charge in the beginning, time after  
26 time, that somebody from the District Attorney's office,



1 in order to ruin Darrow, had had him come down there by  
2 a telephone call, and that was reiterated time and  
3 again, up until the 9th of July.

4 MR DARROW: I object to that and take an exception.  
5 Nobody ever said that at any time.

6 MR FORD: You remember whether Mr Rogers said that  
7 in the presence of this defendant in this court or not.  
8 That somebody from the District Attorney's office had  
9 lured Mr Darrow down there in order that they might create  
10 a circumstances, in order that they might manufacture  
11 evidence against this defendant, and yet, this defendant  
12 knew that Mr Pawley was coming on the stand to testify that  
13 he was the man who had telephoned, and he knew -- or,  
14 ought to have known that he was going to explain his pre-  
15 sence by being upon the street near 9 o'clock, he was going  
16 down there to hold a conference about the liquor ques-  
17 tion, the alliance of the liquor people with the Good  
18 Government people, towards 9 o'clock in the morning, when  
19 it was his business to be in court. He always <sup>was</sup> in court  
20 when the jury was being selected, and as soon as Franklin  
21 was arrested he started back to court because it was  
22 time that he be in court. The incident of Franklin's  
23 arrest did not affect him in the slightest degree; it  
24 did not change his purposes at all. He just simply went  
25 back to court because it was his business to be in court.  
26 The incident of Franklin's arrest, did not



1 occupy a moment of time. If that was of no importance to  
2 Mr Darrow, why didn't he go on to Socialist headquarters.  
3 If the proposition of being in court that morning at 9  
4 o'clock was the most important business that he had, why  
5 did he tell his anonymous telephone correspondent that  
6 he would be down there and meet Job Parriman and the  
7 anonymous telephone correspondent? That was almost  
8 half past 9, Wolfe says. Why didn't he come straight  
9 up here to court? Another thing, Mr Darrow says that  
10 when he saw Franklin arrested by Mr Browne, that he knew  
11 who Mr Browne was; he knew he was an attache of the Dis-  
12 trict Attorney's office, knew he was employed by the Dis-  
13 trict Attorney as a detective; he knew that the District  
14 Attorney was always starting something before the grand  
15 jury; he did not know that Franklin had committed any  
16 crime, and did not know why Browne had arrested Franklin;  
17 all he knew was that Browne said: don't speak to him.  
18 Bert Franklin says that the defendant whispered to him:  
19 "Look out;" Bert, they are onto you, or something like  
20 that. He did not remember just exactly what it was, but  
21 he thought it was: Bert, they are onto you. The defend-  
22 ant denies that he said a word. The defendant admits that  
23 Browne said; don't speak to him; don't speak to his  
24 employe, the chief investigator. And this trained lawyer,  
25 this trained fighter, this man who had for years and years  
26 been in every celebrated case in which labor was involved,

1 been in bad fights, fighting all his life, not knowing  
2 of anything wrong that Mr Franklin had done, knowing  
3 that Bert Franklin was his chief employe, calmly-- or,  
4 tamely, rather, submits to the order of a mere attache of  
5 the District Attorney's office. If he were innocent, if  
6 he really believed the District Attorney was always  
7 starting something "to keep us busy", if he really did  
8 not know of any reason why Franklin should be arrested,  
9 would he be stunned? Would surprise be the word to use?  
10 Gentlemen, you know right there that if Darrow was the  
11 innocent man that he claims he was, that when he saw his  
12 employe, Bert Franklin, arrested, he would have walked up  
13 to Browne and said, what are you going with this man?  
14 What sort of chinanigans are you trying again? Is this  
15 some more of your grand jury tactics? He would have never  
16 let him go. He would have said right there: what is  
17 this man arrested for? Ah, he wanted time to think it  
18 over. He knew that his presence down there was a guilty  
19 circumstance. He knew he had been caught with the goods  
20 on, and he wanted time to reply, just as he took it on the  
21 witness stand right here on cross-examination. Asked  
22 some questions to which he could have given a direct  
23 answer -- there were no catch questions; there were no  
24 tricks; simply straight inquiries about the facts in this  
25 case -- and yet, when he wanted time all the time to  
26 figure out his answer. And so here he wanted time to

1 think about the situation, and he tamely submitted to  
2 Browne's command. Then what did he do? As soon as he had  
3 recovered from this stunning blow, as soon as he had re-  
4 covered his equanimity, did he rush after Browne and  
5 find out what the trouble was? You remember when we  
6 came to that point he was talking about the importance of  
7 his being in court that morning. He thought that was a  
8 matter of some importance to the District Attorney, and he  
9 thought the District Attorney was belittling the import-  
10 ance of him being in court, and so when the question was  
11 asked him: was your meeting with Browne near the Hall of  
12 Records pu rely accidental? he said, it was purely ac-  
13 cidental. He was on his way to court, and had no inter-  
14 est in Franklin. He did not rush after him to find out  
15 what was the matter. He was on his way to court. Yet  
16 he said the conversation that did occur was substantially  
17 true as related by Browne. What was that conversation?  
18 Mr Darrow, with all his cleverness, slipped a cog here.  
19 Browne says that Darrow -- volume 22, page 1661, saw him  
20 on Franklin street between Spring and New High, and  
21 he said: "My God, Browne, what is all of this? I turned  
22 to him and said, bribery. He said, isn't there anything  
23 that can be done? This is terrible." "Isn,t there any-  
24 thing that can be done?"

25 Knowing that Browne was an agent of the District  
26 Attorney, knowing that the District Attorney was starting



1 something always just "to keep us busy", he immediately  
2 accepts the word of Brown that this is true, and he  
3 said, "My God, this is terrible." "Isn't there any-  
4 thing that can be done?" If he were an honest man, if  
5 he did not know that Franklin was guilty of this crime,  
6 if he was not the man who had given <sup>him</sup> the money and led him  
7 into this trouble, is that what he would have said? Is  
8 that what the trained lawyer, who has fought here day  
9 after day in this court, would have said at that time?  
10 He would have said: what are you trying to do here?  
11 This is some more of your grand jury stunts, and would  
12 have used language that I cannot, probably, repeat in  
13 the presence of this audience. And Brown replied: I  
14 don't know of anything that can be done. You will have  
15 to see Captain Fredericks. So he said: isn't there  
16 anything you can do. I said: I cannot do anything.  
17 Darrow then said: if I had known this was going to happen,  
18 I would never have allowed it to have been done. A  
19 weak explanation, a weak admission right there that Frank-  
20 lin was probably guilty, but he wanted to deny that he  
21 had any connection with it, and he did not want to say too  
22 much about it, and so he says: "I would never have allow-  
23 ed it to be done." Then occurs the most significant  
24 thing. Browne said: Darrow, you ought to have had better  
25 sense than to hire a man like this to do that work.  
26 Did Darrow then deny that he had hired Franklin to do



1 that work? Do they say: I never hired him to commit  
2 bribery; I never hired him to commit crime? What are  
3 you insinuating against me? You notice how quick he  
4 is here to take us up on any insinuations. Did he then,  
5 when he did not have time to think, when his conscience  
6 was hurting him, when fear was uppermost in his heart, when  
7 he was guilty, did he then stand up as an honest man and  
8 say: what do you mean? I never hired Franklin to do any-  
9 thing like that. No, this is his reply; he realizes then  
10 that Browne was charging him, Darrow, with having hired  
11 Franklin to do this work, and his only statement was in  
12 reply: this is terrible. Browne said: you ought to know  
13 Franklin; and he said Franklin came to me very highly  
14 recommended by Mr McCormick and others. Browne said:  
15 Mr Darrow, I don't know what I can do. And Darrow re-  
16 plied: my God, Browne, this is terrible. You do the best  
17 you can do for us and I will take care of you. Darrow  
18 says that conversation is all right, and that is sub-  
19 stantially true as given by Browne at that time, and the  
20 only thing he could think of after Browne had said: you  
21 ought to have better sense than to hire a man like Frank-  
22 lin to do this kind of work -- the only thing he could  
23 think of was: Browne, can't you please do something  
24 for us and I will take care of you. Trying to corrupt  
25 Browne right there, as he had done with everybody else  
26 with whom he came in contact, to solicit their help and

1 appealing to their sense of cupidity, promising to do some-  
2 thing, that he would take care of him.

3 THE COURT: We will take the afternoon recess at this  
4 time, Mr Ford. Gentlemen, bear in mind the usual admo-  
5 nition. Take a recess for 15 minutes.

6 THE COURT: (After recess.) You may proceed, Mr Ford.

7 MR FORD: Mr Darrow knew when he was talking around that  
8 Franklin had always been faithful to him. Mr Darrow knew  
9 that Franklin's every report upon jurors was correct, from  
10 the standpoint of the defense in that case. He has not  
11 brought forward one untrue report. Mr Darrow knew that  
12 Franklin had bribed Bain, and that Bain was upon the jury.  
13 Mr Darrow knew that he had given a check on the 6th of  
14 October to Franklin, that Franklin had paid \$500 of that  
15 money to Mrs Bain.

16 MR DARROW: I want to take an exception to that -- to the  
17 statement that the check was given on the 6th of October.

18 MR FREDERICKS: That is the testimony of Franklin.

19 MR FORD: Darrow had dated the check the 4th of October.  
20 Darrow knew on Friday, the 6th of October, when he actually  
21 did give the check, that Franklin would need some money  
22 the next day to pay the investigators who were in his em-  
23 ploy, and it was probably not convenient for him to go  
24 to the vault where he had the money that he had got down  
25 from San Francisco, or perhaps it had not yet been brought  
26 down. At any rate, it was not convenient to get it, and

1 he felt that the \$1000 check would cover the \$500 pay-  
2 ment, and he gave him the check, but with the crooked-  
3 ness of evil minds he decided to date it the 4th of Octob-  
4 er. It may have been dated accidentally the 4th of October,  
5 but my belief is he dated it purposely the 4th of October,  
6 in order to cast some discredit upon the testimony of  
7 Franklin should it ever come to light that the sum  
8 of \$500 was going to Bain on the 6th of October. Frank-  
9 lin would not have carried that check for two days. Frank-  
10 lin did not expect to be trapped with it. If Franklin,  
11 from the evidence in this case, had received that  
12 check on the 4th of October, he would have gone and cash-  
13 ed it on the 4th of October. That is his testimony, and  
14 there is no reason for Franklin lying upon that point.  
15 But here is the point, gentlemen. Mr Franklin testified  
16 that the day before the check was given, that he had talked  
17 with Darrow, which would be the 6th of October, about Bain,  
18 that it was about time to go out and see Bain; and the de-  
19 fendant, having procured the check, and noticing that it  
20 was dated the 4th of October, produces it here to show  
21 that the money was paid before the conversation was had  
22 with Bert Franklin about Bain. When he picked up that  
23 check, why, he remembered that he dated it a day prior to  
24 his conversation about Bain, that he had dated it two  
25 days before the 6th of October, and a day before the  
26 conversation about Bain, and so he produces it here



1 here with the intent to deceive you. But you know that  
2 Franklin was not paying out his own money to Mrs Bain  
3 or to Mr Bain. Franklin was in that business solely  
4 for the money that was in it, he was not paying out money  
5 from his own pocket. He was not using this money for  
6 this purpose unless he had been directed so to do by Dar-  
7 row.

8 Now, Darrow said that after he met Browne it was im-  
9 portant that he should go to the jury room, and he got  
10 there a few minutes after the court had started in on  
11 the jury; that it was very important that he should be  
12 there all the time, he started in to do the work he had  
13 always been doing, on that day. Mr Darrow knew that the  
14 District Attorney was always bringing something before the  
15 grand jury; that the District Attorney was always doing  
16 something to hinder him; that Mr Darrow knew that his  
17 agent and employe in the jury business, Mr Franklin, had  
18 been charged with bribery. Now, what did he do when he  
19 went to the court room? What would an honest lawyer have  
20 done? An honest lawyer would have said, "Your Honor, I  
21 desire that the jury be excused in order that I may pre-  
22 sent to your Honor something that has just transpired. Our  
23 chief detective has been arrested by the District Attorney  
24 on a charge of bribery. I don't know whether that charge  
25 be true or not, but this I do know, that if it is true,  
26 that the attorneys for the defense have had nothing to do



1 with it, and we don't want our case, the case of the  
2 People of the State of California versus McNamara <sup>to</sup> be pre-  
3 judiced in any manner by these tactics. We demand an  
4 immediate investigation of these charges, and if these  
5 charges are true, we desire to be purged of them, in order  
6 that our clients' interest may not suffer. If, on the  
7 other hand, your Honor, if these charges are not true,  
8 we want the District Attorney cited into court for con-  
9 tempt of court. This is but one of a series of acts  
10 of the District Attorney which have been happening con-  
11 cerning us throughout this case. He has brought Behm be-  
12 fore the grand jury, he has brought Harrington before the  
13 grand jury. Now, he charges our chief investigator with  
14 bribery. We desire that all those charges be investi-  
15 gated at once."

16 Did he do that? No, he calmly slipped the word to  
17 Davis to go over to the jail and see Franklin. He quiet-  
18 ly wrote out a check to Davis for bail money. He wanted  
19 to conceal his own connection with it. When the reporters  
20 visited him, he didn't have the courage to say anything  
21 to them. He said, "I will have to think it over," and he  
22 didn't give them any statement of the affair until 6  
23 o'clock that night.

24 MR APPEL: We object to that and take exception to that  
25 remark. There is no evidence --

26 MR DARROW: I said I didn't remember when the reporters

1 spoke to me first.

2 THE COURT: Counsel has a right to his exception. He has  
3 taken it.

4 MR APPEL: We take exception and assign the conduct of the  
5 District Attorney in making that statement, not justifi-  
6 fied by the evidence, as error.

7 THE COURT: The objection is noted.

8 MR FORD: Mr Darrow was guilty. That is the reason he  
9 did not act as an honest lawyer would act. Mr Davis  
10 did see the District Attorney on Tuesday, the same day,  
11 about the noon hour, perhaps a little later, and wanted  
12 the charge to be filed in order that he might put up bail  
13 money. He didn't go to the District Attorney and say,  
14 "Fred, you know you and I have been friends for years.  
15 You know me and you can talk with me. I will tell you  
16 that Bert Franklin is not guilty of this offense. We  
17 would not allow a thing of that sort to be done. There  
18 is no motive for it being done. You know we have agreed  
19 to let these men plead guilty, and J.B. is willing to  
20 plead guilty if we let them, and I don't think you  
21 have got the goods on J.J. McNamara, and we won't let  
22 J. J. McNamara plead guilty. There is no reason why  
23 we should bribe the jury, why Franklin should bribe  
24 the jury. There is some terrible mistake -- you are doing  
25 wrong, or else you have allowed somebody to frame up  
26 something on you." No, he said, "When are you going to

1 file the complaint, and how much bail are you going to  
2 ask?" He went back to Darrow and got the money and  
3 put it up.

4 Again, Mrs Franklin telephoned to Darrow. She got  
5 him personally on the phone. She knew her husband had  
6 been working for this defendant. She was Bert Frank-  
7 lin's dearest and nearest friend, his wife, and she immed-  
8 iately phoned to Mr Darrow, and she says, "I want my hus-  
9 band. I want to see him right away."

10 MR DARROW: That isn't what she said at all.

11 MR FORD: Words in substance to that effect. "I want to  
12 see him right away. I want to get him out of jail."

13 Darrow says, "Go over to Gage's office. Go over to  
14 Gage's office." Mr Darrow was proposing to defend Bert  
15 Franklin. Mr Darrow says, "Meet me at Gage's office."

16 Mr Darrow says upon the stand that he didn't hire Gage  
17 for that purpose, and he qualified it in a way. Gage  
18 was hired for some purpose -- I don't know what it was,  
19 unless for some event like this, in the event of some  
20 proposition like this. At any rate, he said, "Go to  
21 Gage's office." And then Joe Scott says to Mrs Franklin,  
22 as soon as he met her, he says, "Mrs Franklin, Gage is  
23 an old-fashioned lawyer; you must speak to him personally.  
24 It is all right. It is all right, but you must retain  
25 him personally." Davis on the way from the jail says,  
26 "Mrs Franklin, Gage is an old-fashioned lawyer. You must



1 retain him personally. It is all right." She had been  
2 directed to go there by this defendant. She knew that this  
3 defendant was employing Gage, and that he would be res-  
4 ponsible for the employment of Gage; but they wanted to  
5 conceal the fact that Mr Darrow had hired Gage. They  
6 wanted to make it appear that Mrs Franklin hired Gage.  
7 They wanted to protect this defendant in every way, shape or  
8 form from any connection with Franklin.

9 Why? Because his guilty conscience feared to let one  
10 little circumstance be added to the great mass of cir-  
11 cumstances already existing in this case. He was a coward.  
12 He was afraid of himself. The man who could stand up and  
13 fight for others, when he had no personal interest in it,  
14 the man who could show his bravery in battles for others,  
15 was cowed by his own guilt, and he did not dare -- he did  
16 not know how to act like an honest man would act under  
17 such circumstances. He wanted to conceal every little  
18 iota, every little scintilla of evidence that would tend  
19 to connect him with Franklin.

20 They come forward with a new defense in this court.  
21 After all other defenses have fallen down, they bring  
22 forward a new defense, -- state of mind, and lack of  
23 motive. How much credit is testimony of that kind worth?  
24 You know the motive which has been shown here. You know  
25 the admissions which he makes are strong evidence against  
26 him. Why should not evidence of his own acts and declara-



1 tions in his own favor, be entitled to weight? There  
2 is a reason, gentlemen. There is a reason why they  
3 should not be, and the reason is that it is so easy to manufact-  
4 ure testimony of that character.

5 Suppose I conceive a grudge against a man, and I  
6 intend to murder that man, to kill him. I have been of-  
7 fended, and I desire to have my revenge. How easy it is  
8 for me to go out and tell everybody how much I admire that  
9 man, what great friends we are, what a debt of gratitude  
10 toward him I feel; and then slip up in the dark some night  
11 and kill him. If I am suspected of having done that act,  
12 why, I can bring Tom and Dick and Harry to whom I have ex-  
13 pressed my feelings, and produce it as showing my state of  
14 mind. I can show by these witnesses, who will be honest,  
15 and disinterested people, that I have made these declara-  
16 tions about how I loved that man and why it is impossible  
17 for me to have had any motive to kill him. Testimony of  
18 that sort is not credible. Now, here is another reason --

19 MR APPEL: Wait a minute. We object to his saying to the  
20 jury that he could introduce any such evidence as evidence  
21 to show lack of motive. We object to his saying that he  
22 could do such a thing as that, that the court would per-  
23 mit such evidence as that, there not being any such  
24 evidence indicated by him in his argument as having  
25 been admitted here in this case.

26 THE COURT: The objection will be noted. Proceed.

1 MR FORD: Here is another point. The very man whom  
2 I desire to injure, the very man whose life I desire to  
3 take, will be disarmed by these expressions on my part.  
4 He would not be on his guard against me. It may be that  
5 the disagreement we have had is unknown to any person but  
6 ourselves. It may be that my malice towards him is  
7 unknown even to him. But my protestations of good feelings  
8 towards him will completely disarm him, and will enable  
9 me to approach him where I can commit the deed without  
10 detection.

11 The circumstances in this case show that the District  
12 Attorney had good reason to suspect Mr Darrow. Mr Darrow  
13 knew that the District Attorney was on the job all the  
14 time, and was watching every move that Mr Darrow was doing.  
15 Mr Darrow knew that on the 19th day of September, his em-  
16 ploye, Mr Harrington, had been cited before the grand  
17 jury, there to be interrogated concerning his conduct  
18 in this very case.

19 MR DARROW: I knew that Mr Behm had been cited before the  
20 grand jury. Mr Darrow knew that the District Attorney  
21 was watching his every move. And then when Lincoln Stef-  
22 fens said, "I believe that we can get up a plea of guilty  
23 for J. B. McNamara, and allow him to escape with his  
24 life, "Darrow didn't think much of the proposition, but  
25 he thought "well, here is a pretty good scheme. I will  
26 just dally with the District Attorney, and I will make him

1 believe these men are going to plead guilty, and he will  
2 be disarmed by that, think we are throwing up the sponge,  
3 and we are ready to accept his terms. He won't watch us  
4 so close. We can slip something over on him while he is  
5 not looking. But in the event that we are detected, we  
6 can then show a lack of motive, and we can introduce that  
7 in our favor."

8 I don't say that is the fact, but I want to show you  
9 just how a keen, fertile brain like that of Mr Darrow's  
10 could jump at such a conclusion, and how he could work  
11 that to his advantage. If there is anything that is  
12 whown in this case, which you have learned about this  
13 defendant, it is that he is infinitely fertile in resource.

14 Now, Mr Steffens says that on Saturday, the District  
15 Attorney told him he would accept a plea from both persons,  
16 and that on Saturday they intended to have both J.B. and  
17 J. J. McNamara plead guilty. Mr Darrow says he kept  
18 away from Franklin at noon, and didn't see him until Sat-  
19 urday night about the investigation of the jury, because  
20 he saw no necessity of working on the jurors or investi-  
21 gating jurors -- that they intended to let the McNamaras  
22 plead guilty. Is that statement borne out by the facts  
23 of Saturday night. When he did see Franklin, did he say,  
24 "Franklin, I know you are short-handed, but do the best  
25 you can with the men you have on hand. He said, "Go and  
26 get Russell, have him come down and go through that list.



1 I will send Cooney or Fitzpatrick." He did send Cooney  
2 and Fitzpatrick. He says to Cooney, "You go and see Bert  
3 Franklin, and have Russell telephone to those jurors who  
4 are marked unfavorable. Warn them that the sheriff is  
5 coming to summons them for jury duty, so that they may  
6 evade it." Right then and there he directed Cooney to  
7 commit another crime.

8 MR ROGERS: That is absolutely a <sup>mis-</sup>statement of the evidence.  
9 There isn't an iota of testimony of any kind, as counsel  
10 well knows, that ~~was~~ Mr Darrow said anything of the  
11 kind. There is not an iota of testimony to that effect.

12 THE COURT: The objection is noted. You may proceed.

13 MR FORD: Mr Cooney so testified.

14 MR ROGERS: Mr Cooney did not so testify.

15 MR FREDERICKS: Cooney testified that Darrow said there  
16 were some men on the jury --

17 THE COURT: I will not hear argument. The exception has  
18 been taken, and has been noted.

19 MR FORD: I don't remember the exact expressions that were  
20 used by Cooney, but you can remember the effect of it.  
21 You remember that he did go to Franklin, and that he  
22 and Fitzpatrick did go out and warn the jurors who were  
23 on the list, and that jurors came into court and told  
24 you that they were warned, and you know that thing was  
25 done, and you know that those men were sent to Franklin  
26 by Darrow. Darrow says, "We wanted to conceal from Frank-



1 lin the fact that the McNamaras intended to plead guilty--  
2 didn't want too many people to know it. There was need  
3 of haste and secrecy." But he sent these other men --  
4 he didn't see Franklin, but he sent men directed to com-  
5 mit another crime while these negotiations were pending.

6 I have already told you briefly what Lincoln Steffens  
7 said about Sunday. Now, I have shown you that in my  
8 opinion these things did not occur on Sunday. My opinion  
9 is that they went and discussed the project with the boys.  
10 Darrow said he never discussed it until Sunday. Lincoln  
11 Steffens said they never discussed it with the boys until  
12 Sunday. They didn't know what the attitude of these  
13 boys would be until Sunday.

14 MR DARROW: I said it was discussed the latter part of  
15 the week -- Friday, Saturday. Steffens said we discussed  
16 it all the time.

17 MR ORD: Mr Ste ffens says in another place in the testi-  
18 mony, "I did talk privately with J. J. on Friday, and on  
19 Saturday I talked with J.J. but not J.B." At any rate,  
20 Steffens says "on Sunday we talked with them separately,  
21 Darrow and I and the dead man. Steffens says that  
22 Davis didn't know anything about it until Monday. They  
23 wanted Davis to be deceived. Davis knew that J.J. was  
24 willing to plead guilty, but they concealed <sup>from</sup> ~~to~~ him the  
25 fact that J.J. was willing to plead guilty. "We wanted  
26 him to go to the District Attorney, and make his appeal,

1 and he went to the District Attorney.

2 MR APPEL: We take exception to that as being a mis-  
3 statement of the facts.

4 THE COURT: The objection will be noted.

5 MR APPEL: Absolute misstatement of the facts, and assign  
6 that conduct in making that statement to the jury as  
7 absolute misconduct, and assign it as error.

8 THE COURT: Objection noted. Proceed.

9 MR FORD: The fact is, gentlemen, this is my deduction  
10 from the evidence now, that J.B. was the one with whom they  
11 had talked; that they did not desire to do anything even  
12 on that until they had heard from Gompers. They telegraph-  
13 ed Gompers on the 22nd, on Wednesday, they did not get any  
14 reply at all until Friday, when Mr Darrow said he got a  
15 telegram from Nockels, the telegram has been introduced  
16 here in evidence by Mr Darrow, telling him that he was com-  
17 ing. Nockels didn't get here until Monday night. Darrow  
18 didn't see him until Thursday night. I don't believe they  
19 intended to do a single thing with regard to J.B. McNamara  
20 until they had had a chance to confer with the people who  
21 were paying their fees. By that as it may, Mr Davis was  
22 sent to the District Attorney, they were turned down cold  
23 on Monday. The District Attorney said both of them had  
24 to plead guilty.

1 Gentlemen, both of them would not plead guilty. J J at  
2 that time was not willing to plead guilty. Darrow kept  
3 putting Franklin off that day waiting to hear what Davis's  
4 report would be from the District Attorney. They kept  
5 up until they came to the conclusion that they could not  
6 accept the District Attorney's offer, and then Darrow says  
7 to Franklin: I will give you the money but the vaults are  
8 closed, and Franklin was put off until the next morning.  
9 That explains the delay. You want to know why Franklin did  
10 not get the money in the first place from Darrow on Monday.  
11 It was because Darrow was afraid that Franklin  
12 might convince the District Attorney that he should take a  
13 plea of guilty from J B alone, and he was the one they were  
14 trying to save. When on Monday night he found that he could  
15 not get those terms, he decided to invest \$500. He did not  
16 take a chance on \$4,000. \$500 was all Lockwood was to get,  
17 and the rest was to be held by Captain White, and if a plea  
18 of guilty was obtained that \$3500 would be saved. They  
19 were only risking \$500 on that occasion. At any rate,  
20 Franklin was put off until the next morning at 8:30. Job  
21 Harriman did go to the vault and Job Harriman did come  
22 back from the vault to the office in the Higgins Building,  
23 and Franklin did appear upon the street in a few minutes  
24 afterwards and give the money to White, and Lockwood was  
25 bribed with that money.

26 Now, what happened? On Wednesday, Darrow and



1 Davis went up to the office of the District Attorney. They  
2 were told that time that the arrest of Franklin would not  
3 affect the negotiations; that his stand would be the same  
4 then as it always had been; that he was perfectly willing  
5 to let the negotiations go through on the same terms. They  
6 said, All right, we will have to see the boys about it.  
7 They knew then that there was no chance to do anything with  
8 the District Attorney; they knew on Monday that there was  
9 no chance to do anything with the District Attorney, that  
10 they would have to come to his terms, but the arrest of Frank-  
11 lin had changed the situation. Mr. Darrow, fearful in his  
12 heart that the Franklin bribery would be investigated to the  
13 bitter end--as it was the duty of the District Attorney to  
14 do--hoped that the pleas of guilty would stop further pro-  
15 secution; that the District Attorney might become inoculated  
16 with the virus of this new Christianity that Lincoln  
17 Steffens was spreading about, and that he would stop the  
18 prosecution of crimes where they were mere social crimes;  
19 that he would end the matter, and that Darrow might escape.  
20 Darrow was a traitor to his clients. Darrow knew that he  
21 had to do something to end the District Attorney's activi-  
22 ties, and he sacrificed J J McNamara in order to save him-  
23 self. Darrow says that the evidence in Indianapolis would  
24 be absolutely of no value in this case. He did not  
25 believe in the McNamara case it could be introduced in  
26 evidence. Then how in the name of all that is legal did he



1 ever expect the District Attorney to convict J J McNamara?  
2 What chance was there for the District Attorney to convict  
3 J J McNamara unless that evidence could be produced from the  
4 east? He knew there was absolutely no chance to do it.  
5c5 He knew that he had a fighting chance for J J McNamara.  
6 The District Attorney conceded that he had a fighting  
7 chance for J J McNamara when he allowed the sentence of  
8 J J to be made less than that of J B, notwithstanding the  
9 fact that J J McNamara was the real brains of the combination,  
10 the District Attorney allowed a smaller punishment  
11 to be inflicted upon J J. And why? Because the evidence  
12 was not as strong against J J as it was against J B;  
13 because there was a chance for J J, and this defendant  
14 knew it--this defendant knew there was a chance for J J,  
15 and this defendant never sacrificed J J until it became  
16 necessary in order to save himself. This defendant, after  
17 he had seen the District Attorney on Wednesday, after he  
18 and Davis had both seen the District Attorney together,  
19 this defendant did not know what his clients were going to  
20 do. J J had not consented to plead guilty, and he knew that  
21 the only chance left for him was to argue the matter out  
22 on Thanksgiving day, to put it up to them, and they did  
23 spend the whole of Thanksgiving day in that behalf. And the  
24 only excuse they furnished for laboring all that day is  
25 that the District Attorney had insisted that both pleading  
26 guilty together. If pleas were to be accepted by the

1 District Attorney at all, wouldn't it be natural for both  
2 to plead at the same time? Would it be likely that anything  
3 would be said about it? Did they say to the District  
4 Attorney: Look here, we are willing to let both of these  
5 men plead together, but we cannot do it together, because  
6 J B wont plead guilty unless J J is acquitted. We are  
7 going to sacrifice, we are going to deceive our client  
8 J B McNamara. It is the duty of an attorney to defend his  
9 client. It is the duty of an attorney to defend that client  
10 until the client pleads guilty of his own volition, or is  
11 convicted by a jury of his peers, and yet this defendant  
12 stands here and says to you, by way of excuse on this  
13 charge, that he was willing to deceive his client, J.B.;  
14 that he was going to deceive/<sup>him,</sup>and by false promises lead  
15 him to believe that he was saving his brother, make him  
16 plead guilty, and then afterwards fool him and let J J  
17 also plead guilty. That is what he said he was going to do  
18 in this case. He was going to deceive J B McNamara.

1 What kind of a man do you think he is if he is speaking the  
2 truth in that behalf, that he was going to deceive J B  
3 McNamara. The fact is, gentlemen of the jury, that J J  
4 McNamara represented the cause of union labor. J J Mc-  
5 Namara represented the interests that were paying Mr. Darrow.  
6 J J McNamara was not going to plead guilty if Mr. Darrow could  
7 help it, because the evidence was not sufficient to convict  
8 him in his opinion.

9 The Indianapolis evidence could not be used here  
10 at all. On Wednesday afternoon Mr. Darrow did not believe  
11 that J J would plead guilty. On Wednesday afternoon he did  
12 not believe that union labor would ever consent to the pleas  
13 of guilty. On Wednesday afternoon he was doubtful if the  
14 Judge would accede to the pleas of guilty, or adopt the  
15 District Attorney's recommendation in the matter. And what  
16 did he do? He was so extremely doubtful of that matter  
17 that he sent a telegram to Rappaport to use all means to keep  
18 out that Indiana evidence. Rappaport had telegraphed,  
19 "May I spend \$1,000 to regain Indianapolis evidence." Let  
20 me have those telegrams, Mr. Smith, please. Then, Mr. Darrow  
21 sent a telegram at 6:22 P.M. that evening--at 6:22 that  
22 telegram went over the counter of the telegraph office and  
23 was sent to Rappaport, "May spend thousand dollars for  
24 evidence." And on the following Friday, just as soon as  
25 the pleas of guilty were entered, Mr. Darrow telegraphed to  
26 Rappaport, "Do not spend that thousand dollars." He wasn't

1 any longer interested in that evidence, as soon as his  
2 clients plead guilty. He told you he was anxious to save  
3 money; that they needed money. People were coming down  
4 upon them for money, and yet here is \$7500 in Tveitmoe's  
5 bank three months later that has not been used, hard up as  
6 they are, and as much as they needed money, \$7500 they  
7 claim--

8 MR. APPEL. We take an exception to that statement on  
9 the ground that there is no evidence upon which to base  
10 that statement here in the record.

11 THE COURT. The exception will be noted. Proceed, Mr.  
12 Ford.

13 MR. APPEL. And assign the conduct of the District  
14 Attorney as misconduct.

15 THE COURT. The assignment is also noted.

16 MR. FORD. I beg the court's pardon, I have torn this  
17 telegram in handling it.

18 THE COURT. The clerk will paste it together as soon as  
19 he gets it back.

20 MR. FORD. At 3 o'clock is the clock mark on this telegram  
21 of December 1st, showing the hour it was received in that  
22 office and says, "Do not spend thousand dollars." You  
23 remember that Mr. Darrow had admitted on the stand that he  
24 sent a telegram to Rappaport, had directed that the tele-  
25 gram be sent to him December 1st, in which he said, "Do  
26 not spend that thousand dollars." He said there was no  
necessity of spending it, that they had attempted to prevent



1 the Indianapolis evidence from coming out here sometime  
2 before. He didn't remember that it was only two days before  
3 he had sent a telegram, "Spend the thousand dollars." He  
4 thought the time seemed longer than that. He thought he  
5 had ordered that money to be sent before Franklin had been  
6 arrested. He didn't see just exactly the point that the  
7 prosecution was trying to establish at that time. He ad-  
8 mitted that he stopped it at that time because they had  
9 no further use for it out here, and they didn't care what  
10 become of it. Later on he furnished another excuse.  
11 At that time he did not remember that he had sent a code  
12 telegram on the 29th of November to Rappaport, after  
13 Franklin's arrest, and he did not know that we had worked  
14 out that code, were able to interpret his telegrams, he  
15 made that admission, and it was only when driven into a  
16 corner and when he found out that the telegram had been sent  
17 to Rappaport on the 29th that he figured up his other excuse,  
18 that we were short of money.

19 veré is the mark on the telegram of the 29th,  
20 "Receiver NW 6:22 P.M. Los Angeles, Cal." After he had  
21 seen Captain Fredericks, he couldn't be sure that the  
22 terms agreed upon by him and Captain Fredericks would be  
23 carried out, and why? There was another factor in the situa-  
24 tion all the time. On Sunday, Monday, Tuesday/<sup>Wednesday</sup> and on  
25 Thursday and on Friday there was another factor that had  
26 to be consulted in this case, and that was his Honor upon the

1 bench, Judge Bordwell. Lincoln Steffens said that he had  
2 a talk with Judge Bordwell; Judge Bordwell says he is a  
3 liar. You have, in deciding the negotiations of these  
4 times, to decide by your verdict which man committed perjury  
5 on the stand, Judge Bordwell or Lincoln Steffens.

6 MR. DARROW. I want to take an exception. Lincoln Steffens  
7 says he never had any conversation with Judge Bordwell.

8 MR. FORD. Judge Bordwell denied the conversation as  
9 related upon the stand and you have got to decide, but the  
10 fact remains that it is the Judge who imposes the punish-  
11 ment. The District Attorney can make a recommendation, as  
12 he frequently does. The District Attorney can dicker, if he  
13 likes, with the attorneys for the defendant, but the judge  
14 will not do that; but when the District Attorney is  
15 handling criminal cases and counsel for the defendant come  
16 to the District Attorney and say, I will let my client plead  
17 guilty if he can get off so and so. The District Attorney  
18 says, I will recommend so and so. He says, Will you sound  
19 the judge out to see how he is disposed on the matter, whe-  
20 ther there is any probability your recommendation will be  
21 carried <sup>out,</sup> whether the judge will believe it is the wise  
22 thing or not, and so when the final day occurred that the  
23 McNamaras should plead guilty, it was arranged between the  
24 defendants in the McNamara case, that is, the attorneys and  
25 the District Attorney, that the case should go over  
26 until 2 o'clock, and meanwhile the District Attorney should

1 try to sound out the judge and see what probability there  
2 was of his following the District Attorney's recommendation  
3 in the matter.

4 They could not bargain with the judge, the  
5 District Attorney could not bargain with the judge. They  
6 had just simply to take their chances. The District Attorney  
7 did his part. The District Attorney saw from the attitude  
8 of the judge that the recommendation would have to be more  
9 than 10 years; that the judge would probably not follow  
10 10 years and probably take chances on 15, which, in his  
11 judgment, afterwards proved to be correct, and J J was  
12 sentenced to 15 years and J B for life.

13 They were not sure until Friday morning, after  
14 the District Attorney had seen Judge Fordwell, that their  
15 agreement could be carried out. Those steps had never  
16 been taken before, and they had never had any assurance  
17 that this case would be ended, and there was always a chance  
18 that the case would go on, and that chance existed on Sunday  
19 and existed on Monday before the arrest of Franklin just as  
20 well as it did after the arrest of Franklin.

21 Mr. Darrow says that after the arrest of Frank-  
22 lin he was always doubtful if the case could be settled,  
23 and yet Mr. Davis testified that they had--that he, Darrow  
24 in company with Mr. Davis, had seen the District Attorney  
25 on Wednesday, and the District Attorney had said he would  
26 be willing to do that if they could get their clients to  
accept it. Do you believe they were lying to the District



1 Attorney then or do you believe they are lying now? That  
2 is the point for you to decide in this case. By the  
3 way of passing, Mr. Steffens, do you remember that Mr. Steffens  
4 said that he did not think the McNamaras ought to be punished  
5 that they had committed a social crime. He makes a dis-  
6 tinction between a social crime and other crimes, between  
7 mere murder, as he called it, and other things that people  
8 do. Mr. Steffens admitted upon the stand that the bribery  
9 committed in defense of a person who was guilty of a social  
10 crime was of itself a social crime. It was tantamount to  
11 admitting that he didn't think that Darrow ought to be  
12 punished in this case. Mr. Steffens thought Darrow was guilty  
13 when he went to see Harry Chandler. He admits that he  
14 told Harry Chandler the prosecution ought to stop including  
15 that of Bert Franklin and Mr. Darrow. He said that Mr. Darrow  
16 had told him not to mention that fact. He says that Mr. Darrow  
17 THE COURT. Wait, let's have the exception.

18 MR. DARROW. I want to take an exception to the statement  
19 that Mr. Steffens said he thought I was guilty. He said  
20 nothing to that effect. He expressly said in answer to one  
21 of the jurors' differently from that.

22 MR. FORD. I didn't make the statement that Steffens said  
23 that. I said Steffens thought. Steffens didn't say what  
24 he thought.

25 MR. DARROW. I take an exception to his statement.

26 THE COURT. The exception is noted. Proceed, Mr. Ford.



1 MR. FORD. What Steffens says I would not place any  
2 reliance. I am satisfied that Steffens thought  
3 Darrow was guilty. Steffens thought Darrow was guilty and  
4 he said to Mr. Darrow, "You ought to make this a condition  
5 that the prosecution of Franklin and the investigation of  
6 your connection with it, that those things ought to be  
7 stopped as well as all these other transaction," and he  
8 says Mr. Darrow said, "Oh, if I am--" Mr. Darrow was  
9 astounded that he should be connected with the offense in  
10 any way, shape or form. Mr. Darrow said, "If that is the  
11 point they are making, if they are making any point about  
12 that, I owe a duty to my client", and in answer to some  
13 juror's question said he acted like an innocent man, and  
14 yet in spite of the fact that he thought he acted like an  
15 innocent man, in spite of the fact that Darrow had nothing  
16 to fear, he went to Harry Chandler and asked Harry Chandler  
17 to intercede with the District Attorney to stop any possible  
18 prosecution of Mr. Darrow, and to stop the prosecution that  
19 was then instituted against Mr. Franklin.

20 MR. DARROW. I want to object to that statement because he  
21 never directed him to stop any prosecution against him.

22 THE COURT. The objection is noted. Proceed, Mr. Ford.

23 MR. FORD. He didn't think Mr. Darrow ought to be prosecuted  
24 for bribery, he thought if bribery was committed in the  
25 sense of a social crime, entertaining that attitude in  
26 regard to bribery, don't you think that Mr. Steffens would

1 believe that it would be all right to commit a little perjury  
2 in this case to prevent Darrow from being punished for  
3 bribery in that case of bribery, he wasn't trying to  
4 prevent the punishment for mere murder in the Times case?  
5

6 Do you think he would make any distinction  
7 between the three crimes? Do you think he would hesitate  
8 to lie on this stand? Don't his attitude towards the cir-  
9 cumstances show that he did lie? A meeting was called for  
10 Wednesday night of influential business men in this community  
11 that they by their influence might back up the District  
12 Attorney in whatever they would do, and Steffens went to  
13 that meeting and begged that they let J J off, to use their  
14 influence with the District Attorney to let J J off, and  
15 they would not do it. On Wednesday, the 29th, and that  
16 meeting was called after Franklin's arrest. If they wanted  
17 to bring this influence to bear on the District Attorney,  
18 why didn't they call that meeting Monday night? They  
19 only had to sit down to the telephone and do as they had  
20 done on Wednesday morning and telephone and ask a few  
21 people to meet in Meyer Lissner's office; they could have  
22 done that on Monday as well as Wednesday.

23 Gentlemen of the jury, they had no intention on  
24 Wednesday of concluding this matter. They had no expecta-  
25 tion it could be concluded. They had no expectation it  
26 could be concluded; they had no desire, no intention to  
let J J plead guilty. On Wednesday night they tried to

1 get these business men to use their influence with the  
2 District Attorney to let J J loose and they worked all day  
3 long Thanksgiving Day, in order to arrange these pleas of  
4 guilty. Lack of motive? If the defendant had worked up  
5 himself these self-serving declarations they would not be  
6 worth that as a piece of evidence, but the fact is, out of  
7 their own mouths they have been damned, because they have  
8 manufactured evidence on the stand here with the intention  
9 to deceive you and that is not the only piece of evidence  
10 they have manufactured.

11 Mr. Pirotte, Mr. Watt and Mr. Stineman of Venice,  
12 friends of Sargeant Cavanaugh, the adherent of this  
13 defendant; Sargeant Cavanaugh, <sup>concurring,</sup> whom Harrington testified  
14 as follows:

1 Harrington said: I had a talk with Sergeant Cavanaugh  
2 about your guilt, and we both agreed you were guilty.  
3 The defendant put some impeaching questions to Mr Harring-  
4 ton about a conversation that had been held between Mr  
5 Cavanaugh and Mr Harrington. Mr Harrington says: we talked  
6 this over in the presence of Mrs Cavanaugh and we all  
7 agreed that you were guilty. Cavanaugh agreed that you were  
8 guilty. Did they dare put Cavanaugh upon the stand to  
9 deny that charge?

10 MR APPEL: Just a moment.

11 MR FORD: Did they dare put Mrs Cavanaugh --

12 MR APPEL: I object to these discussions, the agreement or  
13 opinion testified to by Mr Harrington, on the ground that  
14 it is hearsay, incompetent, irrelevant, should not have  
15 been allowed by the court, and does not tend to prove any  
16 fact against this defendant, and we have drawn an instruc-  
17 tion, your Honor --

18 THE COURT: Objection overruled. Mr Ford, proceed.

19 MR APPEL: We will assign both the conduct of the court  
20 in sustaining the objection, and also the conduct of the  
21 District Attorney in discussing a piece of evidence which  
22 has no standing in any court of justice, as evidence against  
23 the defendant --

24 THE COURT: The assignment is noted. The District Attor-  
25 ney may proceed.

26 MR FORD: Mr Parotte, Cavanaugh's underling, Mr Wattle and



1 Mr Steineman, all of them admitted that they were meet-  
2 ing Franklin for the purpose of talking Franklin into  
3 making some admissions, concerning Darrow; that they  
4 were there, and here Franklin says that he was never  
5 going to be punished, and that there never was any time  
6 when he was really going to be punished for the commis-  
7 sion of the crime on the 28th of November. And all the  
8 time he was a confederate of Mr Lockwood's, that Mr Dar-  
9 row was innocent, that Mr Darrow had never given him any  
10 money; and, remember, every one of these conversations  
11 occurred in March. Remember that on February the 27th  
12 Franklin had plead guilty, the whole world knew -- or at  
13 least, the whole of this community knew that Franklin was  
14 going to be a witness against Darrow in this case.  
15 Remember that Franklin still had one charge pending  
16 against him, for which he did not acquire immunity until he  
17 got onto this stand. Remember that Franklin, under those  
18 circumstances, according to their testimony, goes down  
19 to Venice and makes statements of that character. Franklin  
20 said that he realized that they were detectives; he thought  
21 they were trying to pump him, and that he said: well, we  
22 won't discuss the case. That was what Franklin said he  
23 told these people. Yet they have manufactured state-  
24 ments entirely at variance. Which is the most reasonable  
25 story to believe? Franklin, according to his story,  
26 that he did not want to discuss the case with them or their

1 statements about Franklin exonerating Darrow? Franklin  
2 hired to spot Darrow and ruin him; and here exonerating  
3 him. They said Franklin knew all the time he knew he  
4 was not going to be punished, he was a confederate of  
5 Lockwood's and yet Franklin was punished. It is true he  
6 did not pay any fine; it is true he was not put in  
7 jail, but he got the stigma of jury-briber placed upon his  
8 name. I am not defending Franklin's acts; Franklin's acts  
9 are not worthy of commendation in doing what he did.  
10 They are worthy of the severest condemnation. He admits  
11 it himself. He says: I was over 21. He does not blame  
12 this defendant. Franklin admits he did it for the money  
13 there was in it. He has no animosity towards Darrow, or  
14 anybody. He certainly would not go down to Venice to  
15 Darrow's friends and make statements like these that are  
16 credited to him.

17 This case reeks with perjury, this case reeks with  
18 rottenness and crime as presented to you gentlemen, by  
19 this cery defendant. It will be the duty of the District  
20 Attorney to investigate every angle of this case as he  
21 did the McNamara case.

22 MR APPEL: We certainly protest against any threats here  
23 against us or against this defendant, that it will be the  
24 duty of the District Attorney to investigate this case.  
25 We ask for some protection here, your Honor. We have  
26 been threatened enough, and threats have not intimidated

1 us to this extent, but we ask at this time that it  
2 should not be here openly and persistently stated.

3 THE COURT: The court will admonish the District Attorney  
4 that he should not make any threats against the parties  
5 conducting this case.

6 MR FORD: In order that I might present all the facts to  
7 you, gentlemen of the jury, which seem to bear out and  
8 which do bear out, beyond all reasonable doubt, this de-  
9 fendant's guilt, I have purposely refrained from citing  
10 the authorities and the evidence in the transcript.

11 If I have varied, your memory will show you in what  
12 I have varied, and I believe you will find no substantial  
13 variance. But if the defendant believes I have stated  
14 that which is not the evidence, they will have the oppor-  
15 tunity to argue that matter and call your attention to it,  
16 and the closing argument that will be presented in this  
17 case will cite you to the page of the transcript, and it  
18 will be read to you wherever they charge we have departed  
19 from the facts. We will be charged with over-zeal in  
20 this case; we will be charged with being unfair. But,  
21 gentlemen of the jury, we have, as officers of the law,  
22 presented to you, as it is our sworn duty to do, the  
23 evidence and the facts in this case in the best manner  
24 that we knew how to. We have given you all that we know  
25 about this matter that can aid you in arriving at a verdict.

26 You are sitting here in the most important and the



1 most sacred position that you will ever occupy during your  
2 whole lives, so far as your relations to the government  
3 are concerned. You are occupying the most sacred position  
4 which for the government is itself instituted. You are to  
5 pass in your judgment upon one of the most heinous of  
6 crimes, the crime of corrupting the very tribunal of which  
7 you are now a part. Witnesses may be bribed, and there  
8 is a chance on cross-examination to show the improbabil-  
9 ity of their story, the falsity of their statements, but  
10 it is in vain that evidence is produced, it is absolutely  
11 folly to produce evidence before a jury whose ears have  
12 been stopped by gold. If you find the defendant guilty in  
13 this case, if you are convinced from the evidence in this  
14 case that the defendant is guilty, you will remember that  
15 you are not punishing him. You will remember that you are  
16 not deciding what shall be done with him if he is guilty  
17 of this charge. Whatever results come to him, that will  
18 be because of his own acts and not yours. You are simply  
19 to decide the one question: is he guilty or is he not  
20 guilty? You are not to pass upon the question as to  
21 whether he is to be punished or not. I would not care  
22 to sit in his Honor's place and tear this man from his  
23 faithful wife. I would not desire to have that duty to per-  
24 form, but if I did I would have to fortify myself with  
25 the thought that way back East sits an aged mother whose  
26 sons are now occupying cells in San Quentin because of the



1 conduct of men like this man. I would have to fortify  
2 myself with the thought that the orphans --

3 MR DARROW: Just a moment. I think it is an outrage, and  
4 there is no possible excuse for the court to let it go by.  
5 What is there in this testimony that will justify that  
6 statement?

7 THE COURT: Counsel has a very broad latitude in drawing  
8 his conclusions.

9 MR DARROW: No such latitude as that. I want to object  
10 to the statement as not being founded on any evidence  
11 at all in this action, and utterly untrue and venomous  
12 and malicious and not warranted in a court of justice.

13 THE COURT: The objection will be noted in the record.

14 MR Ford, proceed.

15 MR DARROW: I take an exception to the ruling.

16 MR FORD: I would have to fortify myself with the thoughts  
17 of the fatherless children and the widowed wives and aged  
18 mothers who have been deprived of their families in that  
19 terrible catastrophe on October 1st, before I would be  
20 able to deny that mercy to the defendant which the law does  
21 allow to be extended to the defendant in some cases.

22 But, gentlemen, neither you nor I have that duty to per-  
23 form. We are here simply and solely to decide the evi-  
24 dence and the facts in this case. You will be false to  
25 your trust if for a moment you allow any other sentiment  
26 to guide you except that of the facts in this case. You

1 will be false to your trust if you sit back and say: I do  
2 not know what God Almighty alone can know. I am not able  
3 to say beyond all possible doubt that this defendant is  
4 guilty -- you will be false to your trust if you try to do  
5 that.

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1 It is your duty to remember that human justice can  
2 only be dispensed by human means. You will remember that  
3 you have to rely upon the evidence which it is possible for  
4 human beings to produce. You will have to remember that  
5 it is your duty to examine the evidence, and if, as  
6 reasoning men, you are convinced of the defendant's  
7 guilt, you should find him guilty. The question is: Are  
8 you convinced beyond a reasonable doubt. You have not the  
9 right to indulge in vague and idle fancies, to speculate  
10 on what might have occurred, or what might not, to  
11 speculate on what evidence it might be possible to intro-  
12 duce. You are to be guided by the evidence that is  
13 actually in the case, and determine from that whether or  
14 not this defendant is guilty, and if you are morally  
15 certain, if you are convinced beyond a reasonable doubt,  
16 if you are satisfied in this case to the same degree that  
17 would satisfy you in the most important concerns of your  
18 own life, if the evidence in this case produces a satis-  
19 faction in your mind upon which you would be willing to  
20 act in matters of vital interest to you, remember that is  
21 all that can ever be produced in a court of law; that mathe-  
22 matical demonstration is not possible; that we have to  
23 rely upon the moral certainty of the situation, and if we  
24 are morally certain, as you must be morally certain, of  
25 this defendant's guilt, it will be your duty to find  
26 him guilty as charged.

1           There are two counts in this indictment. One  
2 of them charges that the defendant in this case caused a  
3 bribe to <sup>be</sup> given to Lockwood, and that Lockwood was a juror,  
4 and that Lockwood was about to have brought before him for  
5 decision the case of People vs McNamara. The second count  
6 differs from the first in that it does not say that Lock-  
7 wood was a juror, but says that he was drawn as a juror,  
8 and there was a case pending before the court. A man is  
9 a juror as ~~long~~ soon as his name is upon the list. The  
10 list of jurors is made out once in each year. You were  
11 jurors before you came into this court, because your name  
12 was upon the jury list. You were not trial jurors, you  
13 had not been drawn in this particular case, you were not  
14 actively in service, you had not been impaneled to try  
15 this case, but, nevertheless, you were jurors. The question  
16 will then present itself: Was the McNamara case about to  
17 come before Mr. Lockwood for decision. You may have  
18 doubts about that matter. You may conclude that he was  
19 not summoned and therefore that the case was not about to  
20 come <sup>before</sup> /~~to~~ him for decision. If you are in that frame of  
21 mind it will be your duty to go to the second count and see  
22 if that satisfies your mind. I am not going to argue the  
23 first count at this time. I will leave that to Mr.  
24 Fredericks in closing. But, as to the second count of this  
25 indictment, there can be absolutely no possible doubt,  
26 because Mr. Lockwood's name was drawn as a juror, and the



1 case of the People vs McNamara was pending, and it is  
2 absolutely immaterial whether he had been summoned or the  
3 case was ever likely to come before him for decision.

4 Gentlemen, you have served a long time, an  
5 unusual length of time in this case. You have been kept  
6 from your homes for nearly three months. You have been  
7 kept under unusual conditions because of the very nature  
8 of this charge, as a protection to yourself as well as to  
9 the state. You are about to deliberate upon a mass of  
10 evidence that has taken nearly three months to introduce.  
11 Do your duty carefully and calmly and deliberately, as  
12 I know you will. I know that there is no man upon this  
13 jury who will obstinately cling to one opinion, but that  
14 each man will reason with his fellow jurors, and while he  
15 will, if he believes the defendant is guilty, stick to  
16 that opinion unless he is reasonably convinced otherwise,  
17 or if he believes the defendant is innocent, stick to that  
18 opinion unless he is reasonably convinced otherwise,  
19 still you will not obstinately cling to your opinions but  
20 will patiently and carefully weigh all the evidence, listen  
21 to the reasons of each other, and try to arrive at a  
22 verdict in this case. I thank you for your attention.

23 MR. APPEL. Before you finish--just a moment. The Dis-  
24 trict Attorney just told the jury that they were kept  
25 locked by reason of the nature of this case. We would  
26 like to know right now--and as protection for themselves--

1 we would like to know right now, and ask this gentleman  
2 whether your Honor didn't make the order--or whether your  
3 Honor informed him when you made the order, or when you  
4 made up your mind that this jury should be locked up,  
5 for fear that anyone should bribe them, or whether it  
6 was made for their protection. What right has he got to  
7 make that statement, your Honor. What right has he got  
8 to insinuate to this jury that we or any one else would  
9 undertake to bribe them.

10 MR. FREDERICKS. That is not a question that counsel has  
11 any right to propound.

12 MR. APPEL. I ask him, on what does he base that statement,  
13 your Honor? Your Honor sees it is not fair to any one  
14 in this case.

15 THE COURT. The Court ordered the jury to be handled as  
16 they were, because the law provided for it.

17 MR. APPEL. We ask your Honor to correct that statement  
18 of the District Attorney,

19 THE COURT. The court has stated the facts. The District  
20 Attorney, however, is entitled to draw any conclusions from  
21 the facts he desires.

22 MR. APPEL. Is he entitled to draw that conclusion from  
23 your Honor's order?

24 MR. FREDERICKS. I do not think we should engage in any  
25 controversy such as is now going on. Mr. Ford has made his  
26 argument and sat down.

1 MR. APPEL. I assign the statement of the District  
2 Attorney as maliciously false, and as tending to cause  
3 imputations upon this defendant, and we assign the conduct  
4 of the court in not saying manfully to this jury that there  
5 is no evidence upon which to base that statement, as pre-  
6 judicial to the rights of this defendant, and as unheard of  
7 in the history of jurisprudence.

8 THE COURT. The assignment will be noted in the record.  
9 The court will now adjourn until tomorrow morning.

10 MR. APPEL. Your Honor, owing to the misstatements made  
11 here, to which we have taken exceptions, we will be forced  
12 first to answer those misstatements by reading the evidence.

13 THE COURT. Do you want the court to convene at 9 o'clock?

14 MR. APPEL. Your Honor, I have no time--your Honor has  
15 curtailed our time here--and we ask your Honor not only to  
16 adjourn until 9 o'clock, but to extend the time of argument  
17 to both sides in this case that a fair presentation may be  
18 given, an equal show to both sides.

19 THE COURT. I think a fair presentation can be had in the  
20 time allotted to you. But you <sup>may</sup> have the extra hour tomorrow  
21 morning.

22 MR. APPEL. We take an exception to the limiting of our  
23 argument. - here.

24 THE COURT. The exception is noted.

25 MR. APPEL. To the disadvantage of the defendant.

26 (Whereupon, after the usual admonition of the jury,  
an adjournment was taken until Tuesday, August 13, 1912,  
at 9 o'clock A.M.)



1 AFTERNOON SESSION. August 15, 1912; 2 P.M.

2 Defendant in court with counsel.

3 THE COURT. The parties are all present. You may proceed;  
4 Captain Fredericks.

5 CLOSING ARGUMENT OF THE PROSECUTION.

6 MR. FREDERICKS. May it please the Court and gentlemen of  
7 the jury:

8 I know you are all glad to see us starting down the home  
9 stretch and getting nearly through.

10 When I asked you, or when you said at the beginning of  
11 this trial that you would not permit the oratory or personal  
12 appeal of the defendant to influence your verdict, you did  
13 not mean and I did not mean that your hearts would not be  
14 touched, and that perhaps a tear would not dim your eye  
15 when you were confronted with the unfortunate predicament  
16 in which the defendant finds himself.

17 We are all human, and Clarence Darrow is very human.  
18 Mr. Rogers warned you that I would read from the testimony  
19 partly, and that I might not quote it correctly or all of  
20 it. He, however, did not warn you to beware of any oratory  
21 on my part. You have heard all the oratory that you will  
22 hear in this trial.

23 When I said that I did not expect that you would be unmoved  
24 by the unfortunate predicament in which the defendant finds  
25 himself by the sorrow, and it is sorrow, of his position,  
26 I expected that like true American citizens, you would



1 write your verdict, even though you would have to wipe a  
2 tear drop from your eye, and you would write it according  
3 to your best judgment. I believe I can show you, if you are  
4 not already convinced, that the unfortunate and unhappy posi-  
5 tion in which this defendant now finds himself, is the  
6 result of the philosophy of life which he has expounded to  
7 you here as his philosophy, and the philosophy of life which  
8 you have seen belongs to him in this testimony. No man  
9 ever suffered punishment without sorrow, yet that does not  
10 mean he is not guilty. Clarence Darrow told you yesterday  
11 that while he had some notions in regard to the advisability  
12 of those McNamaras escaping punishment for the crime they  
13 had committed, that he would have walked from the east to  
14 the west in his bare feet to have prevented the commission  
15 of that crime.

16 gentlemen, that is not the way to prevent the commission  
17 of that crime and other similar crimes. That would be  
18 idle, sentimental and useless. The experience of the  
19 ages has taught us, yea, the handiwork of God Almighty  
20 teaches us the way to prevent wrong and crime is by punish-  
21 ment. Punishment. Oh, perhaps our hearts were moved at  
22 his position, but let me show you another position, let  
23 me take you down to old Bob Bain's house, let me show you  
24 suffering there. Let me take you, perchance, out to the  
25 little kitchen around the cook stove, where Bob Bain and  
26 his wife sit of an evening alone.

1 Let me take you down to the Post meeting of the G.A.R.,  
2 where Bob Bain used to beat his drum with pride, and show  
3 you Bob Brain sitting off in the corner. If any of his  
4 comrades care to speak to him, it is a matter of charity  
5 on their part. Let me take you down to the lodge meet-  
6 ing, perchance, that this little woman spoke of -- and I  
7 take it from her manner and her talk that those little  
8 things mean much to her, to get up in the meeting and say  
9 a few words and express her ideas -- let me take you there  
10 and show you that little woman, if she has the face at all  
11 to go to the meeting. Disgrace -- suffering -- ruin.

12 Why, my friends, gentlemen of the jury, it is not the  
13 bayonets or the bullets of outside foes that this coun-  
14 try need fear. Bob Bain, when he beat his little red  
15 drum at Shiloh and Gettysberg and the other battles of the  
16 civil war, was not afraid of that kind of an enemy, and  
17 he did not succumb to that kind of attack. And you can  
18 well imagine the proud soldier boy as he marched up Pennsyl-  
19 vania avenue at the close of that great struggle, proud  
20 of his manhood, proud of the fact that he had not been  
21 afraid, proud of the fact that he had come back from bat-  
22 tle. And through all the years that that temple  
23 of human honesty has been building since then -- 71 years of  
24 age, I believe he said he was -- <sup>through</sup> all those years he has  
25 not been afraid, and, perchance, he has not been vanquish-  
26 ed and he has not fallen. But it remains, it remains for

1 the enemy of society that has come upon us in these latter  
2 days, to tackle the old soldier. Oh, God, if they had  
3 only taken his life! What would it be -- he is nearly  
4 through.

5 Now, I say to you, my friends, that the man who tears  
6 down that temple by tempting that poor old fellow beyond  
7 his ability to resist, that the intelligence and the man  
8 who does that is the worst enemy of society, is the enemy  
9 which at all odds must be put down, must be punished, and  
10 jury-bribing must forever remain a dangerous calling.

11 Mr Steffens thought I was hard-hearted, thought I was  
12 hard-hearted, and it was no use to appeal to me. 14  
13 years I have served this county in the capacity that I now  
14 do, and I do not believe that I am hard-hearted. I believe  
15 that my heart is just as tender today as any woman's,  
16 when it comes to the suffering of my fellow man. But,  
17 mark you, it does not extend to the maudlin sympathy which  
18 protects the enemy of society, but it extends to the man  
19 or the woman who have not yet done wrong. Ah, wouldn't  
20 it be a grand thing if you could take hold of Bob Bain and  
21 his wife and turn back the hands of time for a year, and  
22 give them / <sup>their</sup> honesty and / <sup>their</sup> reputation again! Wouldn't  
23 it be a grand thing, if you could do that?

24 Well, there are other Bob Bains that may come in the  
25 years to come, and I say to you that the man who sternly  
26 punishes crime is the charitable man, is the merciful man,

1 for he saves the ones who are now happy, he saves him  
2 from misery. And if you don,t think it is misery, just  
3 try to imagine. I have seen misery in my time, but I  
4 never saw, and you will never see, any greater misery  
5 than the misery of a soul scourged, convicted before the  
6 public, and their good name taken from them, as was done  
7 in this case.

8 Oh, they were of age -- it is true -- they were of age,  
9 and they should have known better. I do not ameliorate  
10 the condition at all.



c 1 Let me give you another fact. Suppose, as an illustration,  
2 tion, that throughout a year in the United States there had  
3 been over one hundred buildings and bridges blown up by  
4 dynamite, and in all that time no one had been caught and  
5 punished; and suppose during that time a man or men were  
6 caught and were punished for that crime--and I do not mean  
7 an eye for an eye, a life for a life and a tooth for a tooth,  
8 exactly; punishment should be meted out with mercy.  
9 But, suppose they are exposed and punished, and suppose  
10 that in the year following there have been no buildings blown  
11 up, there has been no occasion where men have been blown  
12 into eternity without an instants notice. Who is the merciful  
13 man, the man who, by the strict enforcement of the law  
14 puts the fear of God into the hearts of the people, who  
15 would do that kind of a thing, and thus save the lives of  
16 hundreds of men in the next year, or a man who comes with  
17 maudling sympathy, with tears of pathos and tells you that  
18 he would turn a murderer, a dynamiter loose on parole or  
19 pardon; that he would forgive him and let him go? Why,  
20 gentlemen, about how long would it be after J B Brice, or  
21 J B McNamara would be pardoned from the State Peniten-  
22 tiary before there would be another building blown up?  
23 I don't know and you don't know, but human experience  
24 tells you what the answer would be. So I say to you, when  
25 I ask you to stand by the state, to stand by what I believe  
26 to be the right, I am not cruel but I am merciful. And you

1 say then Franklin is the dog who should be crucified.

2 Franklin is the wretch who should be made to suffer.

3 Granted; granted. Did you ever see a club swung at the

4 dog and see the dog, in blind and unthinking rage, turn

5 and bite the club? That is the dog. But the intelligence

6 of organized society reaches for the hand and the intelligence

7 that wields the club, knowing that there are other clubs,

8 there are many of them, and they may be wielded time and time

9 again by that same intelligence. I have no apology or ex-

10 cuses or pardons or forgivenesses for Franklin's act;

11 none whatever. But shall we stop there? You know--and I

12 do not need to argue it to you--you know that Franklin was

13 not using his own money. You know that Franklin was not

14 bribing that jury for any fun, for any amusement or for any

15 judgment or care that he had as to their verdict. Who

16 was Franklin? Simply a hired man. Then, my friends, and

17 gentlemen of the jury, don't you think that the part of

18 wisdom, that the part of cool, calm, sober judgment, dictates

19 to you and to me that, if possible, we must punish the man

20 who was back of Franklin, at least to the same extent that

21 Franklin has been punished?

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1 Why soak the puny pawn? Why disgrace a Franklin? Why  
2 make a felon of him and let the man back of him go? Why  
3 not, perhaps, be a little lenient on Franklin? Why not be  
4 a little easy on Franklin? Why not be a little merciful  
5 to Franklin and through him endeavor to right the whole  
6 wrong?

7 Gentlemen, if I am ever able to continue making a living,  
8 it must be in this fashion, practicing law. I don't want  
9 to go up against the power of money when I place my cases  
10 before juries. You may be litigants and you don't want to  
11 go up against the power of money -- the corrupt use of money  
12 if you are litigants. Do you intend to make jury brib-  
13 ing a safe industry? I take it not. Now, then, when we  
14 know that Franklin has bribed a jurymen, and we know that  
15 Franklin didn't use his own money, and I am not going to  
16 waste any time talking to you about anyone associated  
17 with the prosecution being interested in Franklin. We  
18 have evidence here of his bribing and trying to bribe six  
19 men. Six. Always to vote against us. Franklin said he  
20 was my friend. Well, so be it; so be it. But he was not  
21 a good enough friend that he would not try to bribe a jury  
22 against me. Now, shall we go back of Franklin or shall we  
23 stop? What is the wise thing to do? You know and I know  
24 that Franklin didn't use his own money. You know and I  
25 know that the intelligence that was back of Franklin  
26 came from the defense, for he was working for the defense



1 and every one of his acts were for the defense. Now,  
2 what are we going to do? Where are we going to look?  
3 Suppose that we have made up our minds that the interests  
4 of justice demands that the whole thing should be probed  
5 to the bottom, if possible, and all things are not possible,  
6 of course. That is possible we should find who furnished  
7 Franklin the money.

8 Now, let us look. Someone connected with the defense, cer-  
9 tainly. That circle can be drawn. Someone who was going  
10 to see these jurors as they came into the box to pass on  
11 them in court and determine whether to accept them or  
12 not. For what folly it would be to have Franklin to be  
13 out in an independent way paying out money to Eain, for  
14 instance, and not knowing that Eain was going to be able to  
15 pass and get on the jury, so we have got to eliminate every-  
16 one else and come down to the point that it must have  
17 been someone, some one of the attorneys in the case. And  
18 who? Let us look. Who was the head? We would naturally  
19 look there. They say that we wanted Clarence Darrow; I  
20 say that we want the scalp of no man. Why, how much bet-  
21 ter it would have been for us if we could have found some  
22 little fellow without the ability to turn and fight like a  
23 tiger, and put the battle that he has put up. We have  
24 troubles enough, don't worry. We are not looking for any-  
25 thing to be thrust upon us. The District Attorney's office  
26 of this great county has to grind the grist that comes



1 through day by day, week by week and year by year, and it  
2 don't have any time to go out in the highways and byways  
3 and take up cases to satisfy the grudges of any man, and  
4 why wish to tear down this beautiful temple? What value is  
5 there in it? No, my friends, gentlemen of the jury, we  
6 have simply followed the trail, that is all, and that trail  
7 we have laid before you to the best of our ability, that is  
8 all, and when I am through I am passing the responsibility  
9 over to you.

10 I may not be as eloquent and I may not be as keen a law-  
11 yer as those on the other side, but whatever humble qual-  
12 ities I have, I have given to this case my best through  
13 and with the idea that I might assist in doing justice --  
14 no more -- no less. Why, gentlemen, can you conceive a  
15 soul so base that would endeavor to fasten a crime upon an  
16 innocent man simply to satisfy the lust of anyone? And  
17 who wants Clarence Darrow? He says the National Erectors'  
18 Association wants him. I don't know whether they do or  
19 whether they don't. I don't care. I am not working for  
20 the National Erectors' Association. They have gotten  
21 in a lot of loose truck and trash here about telegrams to  
22 the National Erectors Association, and they have argued  
23 to you as though I was sending telegrams back and forth  
24 with the National Erectors Association. There isn't one  
25 scintilla of evidence to that effect. Mr Steffens said  
26 that Mr Gibbon told him that Mr Chandler had got a letter

1 or a telegram from the National Erectors Association,  
2 and that they would not consent to one of these men  
3 going free.  
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1 But the evidence is that whatever this was--and I doubt  
2 very much whether there was anything--it came on Friday  
3 of the week before Thanksgiving, that on Tuesday they had  
4 gotten their first information from me, and it was the same  
5 then that it always was--there were cases against two men  
6 and two men must plead guilty. Mr. Darrow would have you  
7 believe that he is being persecuted because he has been  
8 the friend of organized labor. Gentlemen, I claim to you  
9 that this evidence and the statements of the defendant  
10 here show that he has not been the friend to organized  
11 labor, the true friend. I claim that this evidence shows  
12 and his statements show here that I myself am a better  
13 friend to organized labor, to that portion of it at least  
14 that believes in the law, than Clarence Darrow, with his  
15 maudlin sympathy for murders and dynamiters. Who is the  
16 friend to your boy when he goes down the street and back  
17 into a little nookery where he can buy cigarettes, where  
18 he can sit and chew tobacco and hear nasty stories--the  
19 man who furnishes him the opportunity, the man who en-  
20 courages him, the man who at least excuses him, or the  
21 friend of the family who comes along and sees the boy, and  
22 takes him out and spansks him and puts him where he belongs?  
23 Who is the friend?

24 As I said in the beginning, gentlemen, no man can claim  
25 to be the friend of any organization or any society or any  
26 sect or any set unless he encourages them by his precepts,  
by his acts and by his works, in observance of the laws of

1 society, and unless he assists in punishing--as I said  
2 before, not in vengeance, not in wrath--unless he assists  
3 in punishing the wrongdoer.

4 Now, gentlemen, I want to go back a moment. We were  
5 looking now for the man who gave Franklin the money. I had  
6 attempted in my discussion of this with you to show you  
7 that that must have been some one of the attorneys for the  
8 defense. Suppose, now, without a word from Franklin, you  
9 find out that one of those attorneys back on the 5th day  
10 of June in Chicago tried to corrupt a state's witness,  
11 Biddinger, by offering him money. Suppose that you find  
12 that one of those attorneys a week later sent a man by the  
13 name of Behm, an Uncle of Ortie McManigal, out here to  
14 California to get Ortie McManigal to change the confession  
15 which he had already given, and come over onto the side of  
16 the defense. Suppose you found that one of those attorneys  
17 had been instrumental and privy to an arrangement to get  
18 Flora Caplan, an important witness for the state, three  
19 days after she was served with a subpoena, out in a devious  
20 and dark way over the mountains out of the state. Suppose  
21 you had been shown that a witness by the name of Diekelman,  
22 one of the king pins, perhaps, an identification witness  
23 of Brice and the handwriting on the night before the  
24 dynamite had been exploded, was induced to leave his place  
25 at Albuquerque, where he was staying, and to go east to  
26 Chicago by the instrumentality of one of the attorneys.  
Suppose you had found out that one of the attorneys was the



1 man who had received and was receiving at least \$200,000  
2 practically all of the money that was being raised in this  
3 case, and paying all the bills, hiring all the lawyers,  
4 detectives, and so forth. That one of these attorneys was  
5 the paymaster. Suppose he was also the chief attorney and  
6 head counsel and the director. Suppose you found that  
7 one of the checks for \$10,000 had been given to a friend of  
8 his, an associate, whom they have referred to here as being  
9 implicated in this same affair in San Francisco, out of the  
10 usual order of affairs, and that when the bills were received  
11 they were large bills. Suppose that you found out that  
12 this same attorney had felt out one of his trusted agents,  
13 one of his trusted lieutenants, found out whether he would  
14 engaged in the bribery business by suggesting to him one  
15 night that he had some money to reach some jurors with;  
16 suppose you had found out that another juror had been bribed;  
17 suppose you had found out that this same man Franklin had  
18 gone to five or six different men, whose names were on the  
19 list, and tried to get them to accept a bribe; suppose  
20 you found out that one man actually had gotten onto the jury  
21 and received money, with this same man being the chief counsel  
22 in the case; suppose you had found out without one word  
23 of testimony from Franklin--and we have it here in this con-  
24 dition, if you wish to look at it in that way--that this  
25 large sum of \$4,000 had been put up, part of it--\$3500 of it  
26 put up, and \$500 of it actually passed in Los Angeles

1 on the morning of the 28th of November; suppose you had  
2 found out that Job Harriman, one of the associates and  
3 counsel of the defense, had gone to his vault that morning,  
4 and then gone up to the office of that head counsel;  
5 suppose that transaction at the vault had been just a few  
6 minutes before the transaction down below; suppose you  
7 had found out that of all the thousands of men who might  
8 have crossed the street at the time Franklin was arrested,  
9 this same one head counsel happened to be the one who was  
10 there; and so I might go on; suppose you had all those  
11 things, without one word from Franklin, without one  
12 syllable from Franklin, where would you look for the  
13 jury briber? Where would you look for the man that furnished  
14 Franklin with the money? Why, gentlemen, it is so plain  
15 that, unless you will convict on this evidence, in my  
16 judgment, you have made jury bribing absolutely safe for all  
17 time. How are you going to get more than the one who  
18 received the money, the man through whose hands it passed,  
19 the man who gave the money, the vault open<sup>ed</sup> on the morning  
20 a few minutes before it was passed, by a man who goes up  
21 to the meeting place testified to by the accomplice? In  
22 addition to all this, in addition to the occurrences on the  
23 28th, what do you ever expect could be found against a man  
24 who wanted to bribe a jury?

25 Now, I am not asking you to make any guesses. I am not  
26 asking you to make any guesses at all. I believe that this

1 evidence is so clear, so convincing, so satisfying, that  
2 you could never rest your consciences in peace if you fail  
3 to bring in a verdict of guilty. And, so far as you and I  
4 are concerned, that is all we are concerned with.

5 Mr. Darrow has held up, in his telling and pathetic way,  
6 the gray walls of the penitentiary. You and I have nothing  
7 to do with that; absolutely nothing to do with that. It  
8 is my business to place this testimony before you. It is  
9 your business to weigh it with the testimony put in by the  
10 other side, and determine whether you think Clarence Darrow  
11 is guilty or not, and so state by your verdict, and if there  
12 is any mercy coming, if there are any considerations  
13 coming, those will be and can be attended to at the proper  
14 time by the court. We have got nothing to do <sup>with</sup> whether he is  
15 to be put on probation, pays a fine or goes to the peni-  
16 tentiary. That is not our affair. You have got burdens  
17 enough of your own to carry without trying to carry the burdens  
18 for the court.

19 Now, gentlemen, I am going through this testimony with  
20 you. I am going through it carefully. We have been a  
21 long time here. I am going to take my time to it. I am  
22 going to reach much of it, and I am going to read it fairly.  
23 There was a stack of this that you and I could not read  
24 through in three weeks if I were to attempt to read it all  
25 to you. That would be impossible.



1 But that which I do quote to you will be the truthful index  
2 and my deductions drawn therefrom, will be those given to  
3 me by my judgment.

4 And I want now again to call your attention to what I  
5 believe to be the duty of a District Attorney. You have  
6 heard a good deal about Mr Ford in the argument that I have  
7 read during the evenings. Gentlemen, I have not time to  
8 pass out bouquets and you have not time to listen to them.  
9 But I would call to your attention that the one man who has  
10 kept his poise through all this trial, who has not lost his  
11 head and been fined for contempt of court, who has always  
12 been the courteous gentleman, although the persistent ad-  
13 vocate, is that same man, Joe Ford. And I would call your  
14 attention to the matchless arguments which he has pre-  
15 sented here to this court, and I want to say to you that  
16 I believe one of the best things that I ever did in of-  
17 fice, was in securing the services of Joe Ford. Out yonder  
18 on the lawn there stands a monument to a man who earned  
19 that right by his ability and his integrity here in Los  
20 Angeles County, and I want to prophesy to you, gentlemen,  
21 that the time will come when they will put another one on  
22 the other side to this same brilliant mind, this same court-  
23 ous gentleman, Joe Ford. And it will be given in true re-  
24 ward for his merit.

25 Why, Mr Rogers -- Joe Ford referred in his argument to  
26 some witnesses that he said were perjurers, and Mr Rogers



1 came in prancing and champing at the bit, roaring and tear-  
2 ing and kicking, and charging that Joe Ford, for insinuat-  
3 ing for a moment that anyone would commit perjury in this  
4 case, where he was chief counsel. Why, please your heart,  
5 at the time the rottenest one of these witnesses were on  
6 the stand, if my memory serves me right, Mr Rogers was not  
7 in the court room at all.

8 Let me tell you a little story. There were four men on  
9 a street car. One of them, when he got on the car looked  
10 at his watch to see what time it was. When he got about  
11 to his destination, he reached for his watch, and it was  
12 gone. He saw a policeman outside and he called a police-  
13 man. He said, "I had a watch when I came in here. It  
14 is gone. There has been nobody here but these three men;  
15 one of them has stolen it." And one of the three jumped  
16 up at once and said, "You are a liar; you are a liar; you  
17 are a liar.", and the man said to the officer, "Search  
18 that man." He did, and he found his watch and a stick-pin  
19 that he had not missed.

20 Gentlemen of the jury, nobody is accusing anybody any  
21 more than they have to, and certainly we are not accusing  
22 counsel of anything. Mr Rogers also informed you that Mr  
23 Darrow had made a great bargain when he got these two murder-  
24 ers off so lightly, neither one of them being hanged at  
25 least once, when they had murdered twenty men. I suppose  
26 the inference was that if Mr Rogers had been retained in

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the prosecution until the time of trial came, that both would have been hanged, at least once. Why, gentlemen of the jury, if Mr Rogers had been retained in the prosecution until that day, there wouldn't have been enough money left in the exchequer to buy a clothesline to hang a washing on. Now, gentlemen, so much for that, and we will pass that by with Mr Appel's goat and the baby's trousers.

I made a few notes of Mr Darrow's talk as he went along. I don't know that there are any of them here that I wish to call your attention to, but I will look it over.

1 He says Franklin only approached honest men. How does  
2 he know?

3 He says we are prosecuting him because he has always  
4 stood for labor. Gentlemen, we are prosecuting him be-  
5 cause he is the center of this corruption, and this evi-  
6 dence shows it. That is why, and only why. If there is  
7 any laboring man that labors any harder than I do, I want  
8 to see the inside of his hands. I want to see the time  
9 when he goes to work in the morning and when he quits at  
10 night. I want to know if I am not a laboring man, and if  
11 I have any sympathies they are sympathies with the man who  
12 toils. But they are not a maudlin kind of sympathy.  
13 Why, I remember an attorney in one of these kind of cases  
14 said to me one time, he said, "I think we all work too  
15 hard." He says, "I believe the time is coming when no  
16 man will have to work over three hours a day." "Oh", I  
17 said, "Old Man, why work so long?" I am not one of the  
18 kind that believes in handing out any maudlin sympathy  
19 to the laboring man. He don't need it, and he don't want  
20 it. All that he needs is that the accursed leaches that  
21 have fastened themselves on the institution shall be strip-  
22 ped off, and the men themselves go on clear-eyed and  
23 clear-brained to their destiny.

24 Mr Darrow is also jump ed on because he is a poor man.  
25 Oh, I don't know -- I don't know whether he is a poor man  
26 or not. I never heard of anybody getting this sort of an

1 array of counsel without having some of the wherewithal  
 2 to scatter around them. Maybe they are only getting two  
 3 and a half a day -- I don't know. But if he has to pay  
 4 them anything, I am sorry for him -- not because they  
 5 haven't earned it, but because he gets no advantage in the  
 6 end, whether he is convicted or acquitted.

7 The central figure in the labor world, because he came  
 8 here to defend the McNamaras. Now, gentlemen, I am not  
 9 saying these things roughly, and I don't want you to think  
 10 I am. I haven't an unkind thought for this defendant. I  
 11 want to see him punished, but there is no gloating about  
 12 it, and there is no joy in it. I haven't the slightest  
 13 doubt that any lawyer capable of handling that case in the  
 14 United States would have been tickled to death to have taken  
 15 it for the same fee that Mr Darrow got, and I don't know  
 16 what it was, and I don't care. I haven't the slightest  
 17 doubt but what any lawyer capable of handling the cases  
 18 that he has handled for labor, as he calls it, would have  
 19 been tickled to death to have taken those cases that he  
 20 took for the fee there was in it and the advertising, which  
 21 brings other business, and I don't know whether he is en-  
 22 titled to any great credit for his position in that re-  
 23 gard or not, and you don't know.

24 This talk about the District Attorney's office wanting  
 25 him and not wanting Franklin to tell on any Los Angeles  
 26 man, is all nonsense. Have you seen LeCompte Davis shelt-



1 ered or protected or spared here in the cross-examination  
 2 or in the examinations and producing of testimony ? Have  
 3 you seen Job Harriman spared? We haven't said much about  
 4 Joe Scott, it is true, but you know Joe Scott didn't know  
 5 that these men were going to plead guilty, or were even  
 6 thinking about it, as Lincoln Steffens or Davis -- I have  
 7 forgotten which -- said, until Thanksgiving day; so I don't  
 8 imagine that Joe knew a great deal about it, although he  
 9 does put up quite a fine front. I wonder if Joe Scott  
 10 was in this case because of his great love for labor?  
 11 I wonder if LeCompte Davis was in it because of his great  
 12 love for labor. Shucks -- nonsense! They were in it for  
 13 their fee, to buy shoes and stockings and clothes and  
 14 meals. And there is nothing dishonorable about that,  
 15 and there is no criticism intended about it. It was a  
 16 good job. It was a good case for any lawyer who had desired  
 17 to take it and could handle it, from a financial stand-  
 18 point.

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1 I want to tell you, gentlemen, that you have listened to  
2 one of the most marvelous addresses, orations or pleas,  
3 whichever you wish to call it, ever delivered in any court  
4 room, when you listened to Mr. Darrow. Plausible, eloquent,  
5 his 35 years of training back of it, his terrific and  
6 tremendous interest in it made it indeed a wonderful plea.  
7 But that, my gentlemen, only reflects the ability of the  
8 man and has mighty little to do with his guilt or innocence.  
9 If you were to pay attention to that, it would mean that a  
10 man of his ability could commit crime all at his pleasure,  
11 and he could not be convicted for it. If you were to per-  
12 mit that to weigh in your judgment, then the bigger the  
13 rascal, the brainer the criminal, the surer he would be  
14 in his position. But you know and I know, and history  
15 teaches us that brainy men have gone wrong; that the wisest  
16 criminals have committed the most foolish blunders, and  
17 I am going to show you now by this testimony that this man,  
18 this defendant's predicament now is the result of his  
19 beliefs and the principles that he has in him.  
20 He says to you that he would have walked from the east to  
21 the west in his bare feet if he could have stopped this  
22 crime. Now, gentlemen, I am going to show you by his own  
23 words that he would have done nothing of the kind, because  
24 he knows that the only way to stop these crimes is to  
25 punish them, if he is in his right mind. He knows it and  
26 you know it. And when he said he would have stopped it and

1 yet said in the same breath he would not have punished it,  
2 I argue to you that he would not have stopped it, for it  
3 means the same thing. No, no. It is all wrong,  
4 gentlemen; it is all wrong. Lincoln Steffens called this  
5 a social crime--called the McNamara murders a social crime.  
6 This defendant said there was no hate in the mind of Brice,  
7 no desire to take life. It is in evidence in this case that  
8 he told Biddinger that he wished that Chandler had been there  
9 that night and he would have blown him so high that he never  
10 would have come down again. No hate! Why, gentlemen,  
11 that is full of hate.

12 MR. DARROW. Yes. Just a moment.

13 MR. FREDERICKS. Your point is that it was put in for another  
14 purpose.

15 MR. APPEL. No, there is no such evidence as that. It may  
16 be possible, but we have no such recollection.

17 MR. DARROW. There isn't any such evidence.

18 MR. APPEL. Furthermore, that your Honor stated that you  
19 admitted it for a particular purpose only.

20 MR. FREDERICKS. Well, it is in there. If I do not get it  
21 today I will get it tomorrow. It is there all right. And  
22 I do not intend intentionally to tell you anything is in  
23 testimony if it is not, and counsel is at liberty and you  
24 are at liberty to call my attention at any time if you  
25 think I have made a misstatement of the evidence because  
26 unless we can agree on what that is we cannot go very far,

1 and this will probably be your last opportunity to refresh  
2 your mind as to what the evidence is.

3 No hate! I tell you, the people who do that sort of  
4 thing are filled with hate--filled with hate! And there  
5 is no power under God's Heaven that will prevent them from  
6 giving vent to their hatred except fear of punishment.

7 Why, that is the logic of the world. Stick your hand in  
8 the fire, disobey the laws of nature and you are punished;  
9 disobey the laws of nature in the matters of diet, in the  
10 matter of eating, and you are punished; disobey the laws  
11 of nature in any one of a thousand ways that I could name  
12 to you and nature punishes you. Disobey the laws of your  
13 country, and society punishes you. It must. There cannot  
14 be any slipshod way. But Lincoln Steffens thought that a  
15 man like Brice could come up to a confession post somewhere  
16 and make a confession to some God, to some idea, that he  
17 had blown up the Times and killed these twenty men, and then  
18 go on his way and blow up another one and make another con-  
19 fession, and kill twenty more and make another confession.  
20 Now, gentlemen, I am going to start on the discussion of  
21 this testimony.

22 As I said before, I am going to try to be fair. I do not  
23 want anything but what is right. I do not want you to go  
24 out and make a mistake. Do not do it. Let me give you a  
25 little notion of my idea of the District Attorney. A  
26 District Attorney once had a murder case against a poor



1 Mexican, a cholo as they are called, and it was a strong  
2 case against him. He had been identified as being on the  
3 scene of a murder, and he was held to answer and taken  
4 over to the jail, and two women had identified him, and it  
5 seemed as though--it was a brutal affair--it seemed as though  
6 he was on his way to the gallows. He hadn't a dollar in  
7 the world, not a cent, not a sou, not a friend, but the  
8 court appointed a lawyer to go and interview him and  
9 defend him.

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1 The lawyer went; he could talk his language. And he came  
2 back to the District Attorney and he said: old man,  
3 you have made a mistake there. I do not believe that man  
4 is guilty. Well, the District Attorney looked at the evi-  
5 dence, and he says: it looks pretty straight. But the at-  
6 torney said: this man tells me he was down in New Mexico  
7 on the night this murder was committed; that he was a  
8 tramp, tramping the streets, tramping a railroad there,  
9 an unnamed, unnumbered and unidentified tramp. Oh, it  
10 sounded like a fairy tale; sounded like the old yarn over  
11 again. But the lawyer who knew his language said: it  
12 sounds true to me. I have got no money. I cannot send down  
13 there. So the District Attorney sent a stenographer over,  
14 and, through an interpreter, they took his statement and  
15 he told them that on this certain night when the murder was  
16 committed here in Los Angeles he was down in a little sta-  
17 tion in New Mexico, and he remembered that a tool-house  
18 had been broken open and he and another man had been taken  
19 up by the section boss and the constable for breaking into  
20 the tool-house. Well, the District Attorney took one of his  
21 detectives and got him a scrip book and gave him \$100  
22 and told him to go down there; we will just chance \$100 on  
23 that. In about ten days the operative came back with the  
24 skin all paled off his nose, and his cheek bones, and he  
25 brought back a big, red-headed section foreman with him,  
26 and he said: yes, there was a man down there; there was a

1 section-house broken open, and we took two Mexicans and  
2 locked them up over night; and it was broken open at that  
3 time. I don't know who they were. I have not seen them  
4 since. We took him over to the jail and stood up a lot of  
5 Mexicans in a line, and he said: why, there is the man.  
6 And the man was turned loose. That has always been my idea  
7 and my ideal of the duty of the District Attorney. It  
8 is true that it is in human nature when we take one side  
9 of a case, to become, perhaps, a little unfair and a little  
10 biased, if the struggle is fierce, and the counsel on the  
11 other side are able, but so far as lies within my power,  
12 that is my idea of the duty of the District Attorney.  
13 And it was with that idea in mind, of assisting you to  
14 come to a correct conclusion, that I am going to take  
15 up this testimony, and I am going to start right back  
16 in Chicago, and I am going to show you day by day, just  
17 what happened. I am going to show you how the insidious  
18 and skillful hand of this defendant entered into the brib-  
19 ing business from the beginning. I am going to show you  
20 that bribery is in his nature -- not unkindly. I am going  
21 to show you that bribery and the ideas of power of money,  
22 that money could buy anything, is in his nature. I am go-  
23 ing to show you by this testimony that those are the  
24 ideas and ideals of this man, and I am going to try to do  
25 it fairly. Money! Money! Money! That he had the  
26 notion that there was no integrity or virtue that could

1 not be bought. I am going to show you that by this tes-  
2 timony, and I am going to go over it step by step. I am  
3 going to try to be right and I am going to try to be fair.  
4 THE COURT: Gentlemen of the jury, remember the admonition  
5 heretofore given. Take a recess for 5 minutes.

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1 (After recess.)

2 MR FREDERICKS: Just before court adjourned, counsel  
3 thought that I had made a mistake in the testimony. The  
4 testimony that I was quoting at that time will be found  
5 in volume 42, page 3281. It is the testimony of Guy Biddin-  
6 ger, when he was relating what occurred when he was bringing  
7 Brice and McManigal from Detroit to Chicago. It is as fol-  
8 lows: "After we had set upon \$30,000 as the price to let  
9 him (Brice) go, he got very friendly and told me that the  
10 only thing he ever regretted out in Los Angeles, he didn't  
11 blow up that son-of-a-bitch Chandler. He wished he blew him  
12 so high they didn't find a piece of him. I asked him  
13 how it was they didn't get Chandler. He said he didn't  
14 have time. He went to a telephone booth and looked in the  
15 book to get his address, and couldn't find it. Had to  
16 get out of town too quick."

17 This is the man that Mr Darrow hopes some day will be  
18 pardoned or paroled; Brice. Those are his hopes; those  
19 are his ambitions. That is the kind of a man Mr Darrow  
20 wants turned loose on the community, because of this maudlin  
21 sympathy that he has expressed to you.

22 I might call attention again to the idea there of the  
23 power of money. The power of money even in the mind of  
24 Brice, offering this man \$30,000 if they would let him  
25 go.

26 Now, I want to talk to you a little about this man Bid-

1 dinger, that they discussed this witness that came on the  
2 stand. Biddinger, they say, I believe it developed on his  
3 cross-examination, had been a saloon-keeper in Chicago in  
4 his early days, or at least, had had some connection with  
5 a saloon. Be that as it may. I suppose one connection  
6 with a saloon is about the same as another. And I don't  
7 know that that is exactly an indication that the man is not  
8 honest. My experience in life has taught me that there  
9 are more honest men behind the bar than there are in front  
10 of it; that the fellows, as a rule, who stand behind the  
11 bar with their white apron on and handing out poison to  
12 the rest of humanity, see the evil effects of vice, and  
13 are more apt to be honest fellows than the fellows who habit  
14 ually frequent the other side of the bar. I saw habitually  
15 frequent the other side of the bar. At any rate, I think  
16 they are about an average; just about an average. So let  
17 us start with that. Is Biddinger honest? Well, he has  
18 been a sergeant of police in Chicago for about ten  
19 years. At present he is on a leave of absence and in the  
20 employ of W. J. Burns. Now, who is W. J. Burns? Mr  
21 Rogers was going to eat him alive when he took the wit-  
22 ness stand.

1 He changed his mind--he didn't do it.

2 Who is W. J. Burns? You know lawyers have a way in  
3 trying a case of speaking sneeringly and referring in a  
4 slurring way to a witness day in and day out until the  
5 jury and everybody else almost feels that that witness must  
6 be a bad fellow. But who is W. J. Burns? I suppose it is  
7 permissible to refer to history, to well known events, and  
8 I want to tell you that in my humble judgment William J.  
9 Burns has done more for the cause of civic righteousness  
10 and civic decency and civic honesty in America in the last  
11 ten years than any other one man. Now, that is my opinion  
12 of William J. Burns. Men who are continually after criminals  
13 get rocks thrown at them, get mud thrown at them, until  
14 sometimes we look at the mud and think that is the man.  
15 But I would like to know what William J. Burns ever did,  
16 in your minds as candid men, that did not indicate he  
17 was a highminded, honest, honorable man, pursuing the line  
18 of work that he seems so well cut out for. I think he has  
19 his faults, like all the rest of us, but they are not the  
20 faults of dishonesty and they are not the faults of crooked-  
21 ness, or anything of that kind. So much for Burns.

22 Biddinger. Burns wouldn't pick a man unless he thought  
23 he was an honest man. Now, the fact that nothing ever came  
24 of this offer of \$30,000 shows that the men who were there  
25 on the train were honest men, for if they had been dishonest  
26 how easy it would have been to have had an accidental escape,

1 and gotten at least some of that money. Here is where we  
2 learn about who McManigal was, and <sup>in</sup> discussing this evidence  
3 you must know to a certain extent who McManigal was.

4 McManigal was arrested in Detroit in May of 1911 with this  
5 man J B Brice, that is, J B McNamara. They were arrested  
6 together, and as appears from this testimony, McManigal  
7 gave up the career that he had been living and turned states  
8 evidence and made a confession. Counsel says that he was  
9 given the third degree. Counsel is drawing on his imagina-  
10 tion in that regard. He knows nothing about it, and I don't  
11 know a great deal about it, and there has been nothing brought  
12 on here, but I do not believe that he was given any more  
13 third degree than a man's own conscience presents to him  
14 when he finds he is brought up against a terrible tragedy  
15 in life, such as <sup>his</sup> capture for dynamiting. But, be that as  
16 it may, he makes his confession. That stands as one of  
17 the facts, but just what that confession was is not in  
18 evidence, and, of course, for that reason I cannot go into  
19 it in detail. But you can draw a conclusion from what is  
20 in evidence here, that is, the testimony of Biddinger about  
21 the several score of explosions in the east around about  
22 this time, and a gathering of the registers of the hotels  
23 of various cities, and using that as evidence, from that  
24 you would be entitled to conclude that McManigal was mixed  
25 up in all of those things, that his confession covered  
26 them.



1 Now, let's see. I am going to pass over the trip on the  
2 train. Just a little talk here from Brice about money  
3 again.  
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1 "After we had been en route an hour or two, McNamara said to  
2 me", said Biddinger, "'Why, you haven't got me for blowing  
3 up any safe; you have got me for that job out in Los Angeles.'  
4 Further on he says, "Do you want to make a little money? "  
5 I said, "I always want to make a little money. How much  
6 have you got?" He said: "I will give you \$2000 to let  
7 me go." So it went on up to \$30,000. You remember in  
8 the testimony it was told how it was to be done.

9 Just in passing, and before I come to Biddinger again,  
10 I have a little note about John R. Harrington. Who was  
11 John R. Harrington? You know they have thrown so much  
12 mud and so many rocks at John R. Harrington -- and he has  
13 done somethings, as the testimony shows here, that proba-  
14 bly you or I would not care to do. We would not care  
15 to go and live in a man's house, and then tell on him.  
16 I don't think I would, and I don't think you would.  
17 But that is a matter of ethics and not a matter of honesty.  
18 And I don't know whether a man's duty to the state is not  
19 greater than his duty to his friend. I don't know but  
20 what a man's duty to the state is at least as great --  
21 that is, his duty to reveal any criminal act that he knows--  
22 is at least as great as his duty to conceal the criminal  
23 acts of his friend, even though he is under his roof. I  
24 think probably, in strict ethics, he should have gotten  
25 out from under his roof, so far as that is concerned.  
26 But, at any rate, Harrington was a lawyer, or claim agent

1 in Chicago, for 15 or 16 years, and he had known Darrow  
2 there for that time, and he was employed by Mr Darrow on  
3 the 27th day of April, employed and chosen and selected.  
4 After 15 or 16 years of acquaintance, John Harrington was  
5 selected by Mr Darrow as his investigator of evidence. Now,  
6 if they want to muddy these fellows up to any great extent  
7 -- you know they are mostly their men. Harrington was  
8 their man; Franklin was their man; Old George Behm was  
9 their man; Cooney was their man; Fitzpatrick was their man;  
10 this old fellow Mayer was their man. I might name others,  
11 and I will as I go along. I am going to pick out these  
12 gentlemen, and I want more to discuss those than anything  
13 else.

14 Now, you know Darrow came out to Los Angeles late in  
15 May, and as the record shows was associated in the prosecu-  
16 tion of the case of the people vs. McNamara, as chief  
17 counsel. At that time the counsel was Rappaport, and I  
18 wish you would remember that name; Rappaport of Indianapolis,  
19 Scott, Davis, Harriman and Darrow. At that time Franklin  
20 first met Darrow, about the 1st of June.

21 Now, let us go back to Chicago with Mr Darrow, where he  
22 met Biddinger, the man whom they say is not worthy of  
23 belief, and who is not honest. Now, if Biddinger hadn't  
24 been honest, you can see by this testimony, by the testi-  
25 mony even of Mr Darrow himself, what he could have made.  
26 Probably \$5000 at any rate, if he had not been an honest

1 officer. There is no doubt about that. So when a man  
2 puts aside the opportunity to make a big bunch of money  
3 like that and to make it easy, secretly, and get away  
4 with it, what does that mean?

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1 What does it mean in life? It means that that man is honest;  
2 it means that he is honest simply because he wants to be  
3 honest, simply because honesty is his being and in his  
4 being. That is what it means. They have talked about Malcomb  
5 McLaren here. Old Mac is not very good to look at, maybe.  
6 He is not as handsome as some fellows, but he is one of  
7 God Almighty's noblest works, an honest man. How do I  
8 know he is an honest man? Gentlemen, every man who went  
9 through that fight with me in the District Attorney's office,  
10 with the shower of gold going around there, that I shall  
11 tell you about and show you, and come through that fight  
12 still my friend, still with access to the District Attorney's  
13 office, to go and come as he would, that man does not need  
14 to be proven an honest man. If Biddinger was worth \$5,000,  
15 what would Malcomb McLaren have been worth to Darrow if  
16 Malcomb McLaren had wanted to peddle his information, with  
17 the access that he has been shown here to have had to my  
18 office? I want to say to you gentlemen, McLaren has not  
19 been an issue; he has not been a witness, but I want to  
20 say and I want to say it so it will be remembered, that  
21 Malcomb McLaren has endeared himself to me by the traits  
22 of sterling honesty and integrity, by ties that will never  
23 be severed if I can help it, and if the time should ever  
24 come, as it did come that time, that I have to choose a  
25 companion to go out among a howling mob and fight for my  
26 life, when I know when I feel his back against my back, I

1 know that there is a man, the first man in God's footstool  
2 that I would choose would be old McLaren.

3 But, gentlemen, I have learned in the past year what  
4 common honesty is worth, as I never knew before, and I am  
5 going to talk more about that to you. An honest man.  
6 Honest men. It don't buy much. I suppose McLaren doesn't  
7 get very big wages. I don't remember what we paid for him,  
8 but he gets a wage that I would rather have than all the  
9 gold between heaven an earth, if the streets were paved  
10 with it. He gets a wage that comes from in here (the heart),  
11 that can enable him when he hears a knock at the door at the de  
12 dead hour of night, jerk it open and say, "Who is there?"  
13 And he is not afraid it is the sheriff. He gets the wage  
14 of independence; the wage of the knowledge of honesty.  
15 There is no bigger coward on earth than a crook. I don't  
16 care what people say about me so much, if the wrong they  
17 say my heart tells me is untrue. I can go home and go  
18 to bed and sleep at night and get up and go to work in the  
19 morning, if the accusations are untrue, and get fat on it.  
20 That is my little tribute to honesty.

21 There has been lots in this case that has not been honest,  
22 and it hasn't all been on one side or the other. I am  
23 going to discuss this evidence as I see it, as I would talk  
24 it over with you over the back yard fence, and give to it  
25 the amount of weight that I think his testimony entitles  
26 him, and say to you that this man Biddinger is honest.

1 I say to you that a man who would turn an offer like that  
2 and go at once and report to his boss wont lie when he takes  
3 the witness stand. Why, a naturally honest man would  
4 undoubtedly tell the truth, unless he had some terrific  
5 object to the contrary, and what object has Biddinger to  
6 lie? When he says that Darrow's bargain with him was not  
7 only to deliver him information about the crooked men in  
8 Darrow's own camp, but was to deliver to him the physical  
9 evidence that was going to be used to convict the McNamaras.  
10 That is what Biddinger says, and I believe when he says  
11 it that he is telling the truth. Why shouldn't he? What  
12 is it to him? He has shown himself to be honest, why  
13 should he not tell the truth? He has gone; this is only  
14 a case to him. It is true they say that he was interested  
15 and is interested in the rewards that are out for the appre-  
16 hension of the other people who were involved in the Times  
17 Dynamiting case, but that has got nothing to do with this  
18 case and I hope to Heaven if there are any rewards out,  
19 that he gets one of them. In fact, I would like to see  
20 everybody who has done honest work get some reward.

21 Now, let me give you his testimony. Biddinger states he  
22 met William Turner, a friend of Darrow's. Mr. Darrow said  
23 yesterday that he didn't remember whether Turner brought  
24 Biddinger to Darrow or not. He may have. "Well, go  
25 right--where did you go after you talked to Turner?"  
26 This was in Chicago on the 5th of June. I am going back  
and I want you gentlemen to remember this, and if it gets

1 tedious remember that we have been a long time at this  
2 and there is only one way we can solve this problem, and  
3 that is solve it by the testimony. If you get tired and  
4 find your head, as mine gets sometimes, is tired and you  
5 want to let up a while, say so and we will quit and we  
6 will take a recess, and don't hesitate to do it, because  
7 I know I have sat often and listened to a talk until  
8 after my head gets full and then they can go on for an  
9 hour and I don't get any more of it, and I suppose other  
10 people are the same.  
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1 So I want to call your attention to this testimony of  
2 Biddinger. "Now, Turner takes him in to the private room  
3 in this hotel that was near Darrow's office, and  
4 Turner says, 'I am going to leave you two men alone to  
5 get together and talk things over', and Turner left the  
6 room," and Biddinger further says, "Well, Mr Darrow asked  
7 me what I knew" -- you will notice I am skipping the  
8 questions -- "asked me what I knew about the case. I told  
9 him a little of J.B. McNamaras' conversation", referring  
10 to the conversation on the train. "He asked me if I had  
11 made an affidavit to it, and I said, no, I hadn't." Well,  
12 he said, "I wish you would forget it." He said, "For get  
13 as much as you can. Don't do the boys any harm." He said,  
14 "I am going down to Indianapolis tomorrow to see the boys  
15 and get some money, and I will take care of you."

16 Remember that expression of Darrow's, "I will take care  
17 of you". Back in Chicago on the 5th day of June, and  
18 here in Los Angeles given to Sam Browne on the 28th day  
19 of November -- "I will take care of you." It seems to  
20 permeate this man's mind and this man's moral nature, that  
21 men could be handled like chattels or someone would take  
22 care of them, if somebody would buy them.

23 "I said, 'What do you mean by take care of me.' He  
24 said, 'How would 5000 do.' I said, 'No, it is not enough,'  
25 and he said, 'You want to come to help me and I will  
26 give you 5000,' and I said, 'Well, I will see about it.'

1 We were in the room about 15 minutes."

2 What does he do? He goes and reports that at once to  
3 his chief -- not to William J. Burns, for William J.  
4 Burns was in Europe, he didn't see Burns for sometime  
5 afterwards, but he went to the head of the agency in  
6 Chicago. Now, did Darrow say at that time, "You want to  
7 forget it? Have you made an affidavit to it? You want  
8 to forget it?" Here is a witness, mark you, gentle-  
9 man, this man Biddinger was a witness, an important wit-  
10 ness, one of the ones who had made the arrest, one of  
11 the ones who had come through on the train, one of the  
12 ones who had heard the conversation, a police officer.  
13 "You want to forget it." Gentlemen, you have heard so much  
14 of crime and criminal talk here that it may be that a thing  
15 like that does not impress you. It may be that "vice" is  
16 a monster of so frightful a mein, that to be hated, needs  
17 but to be seen, but seen too oft, familiar with her face,  
18 we first endure, then pity, then -- forget about it!  
19 But that is a crime, gentlemen -- to induce a witness, to  
20 attempt to induce a witness to withhold or forget -- it  
21 is the same thing -- true testimony.

22 Crime No. 1.

23 Now, Mr Darrow is a capable, an able man. He knows that.  
24 He knows what that means. We have only one way of arriv-  
25 ing at facts, and that is by witnesses, and if the integ-  
26 rity of witnesses and jurymen can be torn down, what have

1 we got left? What have we got left. Now, that was crime  
2 No.1.

3 Biddinger met him again in his office, and here is what  
4 occurred. It was about the same time, a few days after  
5 the conversation in the Union Restaurant in Chicago.  
6 Turner was there, this man Turner, "Turner started in to  
7 tell me how liberal Mr Darrow was with everybody in Idaho."  
8 Money -- money -- money!

1 "and it was to my interest to go in with Darrow and help  
2 him win this case. Now, Mr. Biddinger said", and so  
3 forth. "So Turner told me that I was making a great mis-  
4 take not to be friendly with Darrow, not to do everything  
5 I could for him; that he was the most liberal man in the  
6 world; that he gave one man up there in Idaho \$15,000 and  
7 another \$10,000, and threw the money away like it was water  
8 up around Idaho; I was making a great mistake by not  
9 joining with him. And so I told him I would take the matter  
10 under consideration."

11 So Turner starts in and tries to shake the money bags at  
12 this man Biddinger. Turner tells him, in order to induce  
13 him, about the money, the ten or fifteen thousand dollars  
14 that had been poured out to one man alone up in Idaho.  
15 What does ten or fifteen thousand dollars mean to a poor  
16 devil who is a sargeant of police, and if he has been for  
17 ten or fifteen years, I expect he would be for ten years  
18 more, and, to guess at it, <sup>at</sup> a salary of about \$150 a month.  
19 It means a home, it means a ranch, it means a beautiful  
20 picture of quite a good deal of ease; it means temptation--  
21 temptation. Ah, gentlemen, I have always thought that that  
22 part of the Saviour's prayer which said, "Lead me not into  
23 temptation," was the mightiest part of it. Lead me not  
24 into temptation. And here we have this high minded man  
25 tempting--tempting--even to put his construction on it--  
26 tempting; shaking the money at him, \$10,000 or \$15,000.



1 That Biddinger testifies was said in the presence of Mr.  
2 Darrow. Why should Biddinger lie? What was his object?  
3 What does he care? Weigh it. Is it true? Did Darrow  
4 say it? Ah, when you come to see all the rest of this  
5 you will see now that it does not stand on one nor two nor  
6 ten men's word, but the same thread goes through it all;  
7 money! Money! Money! -- Money! Money! Money! The  
8 friend of the laboring man, the friend of the labor  
9 unions. Money! Money! Money! Why, as I said, I will  
10 show you that this defendant ~~believes~~ believes that money  
11 can do anything. Twice in Chicago, then, he committed a  
12 crime, in these conversations with Biddinger, and I will  
13 come again to Biddinger here in Los Angeles. But, let us  
14 finish up with Chicago.

15 On the 18th day of June, along about a couple of weeks  
16 after that, he commits another crime in Chicago, of the  
17 same nature, with the same lack of moral sense, with the  
18 same lack of moral ideas, with the same idea that the courts  
19 were simply shambling places.

20 George Behm. Mr. Clerk, will you let me have the letter  
21 that George Behm got from Darrow, please? Now, he has  
22 charged Behm. You nor I would place very much credit in  
23 George Behm's word, if it stood absolutely alone. He would  
24 have to tell us about what we thought the truth was or we  
25 would doubt it. You see, I am not defending George Behm.  
26 Although there must be some good in George Behm; a

1 railroad engineer for years, running a railroad train, a  
2 passenger train, I believe, a responsible position, a man  
3 of some little means, with a little farm, a man who must  
4 necessarily be of some ability.  
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1 But in view of the fact that he has admitted that he has  
2 sworn so many different ways, it is necessary that we  
3 should disregard any part of his testimony which does not  
4 match up with our ideas and with the rest of the case, and  
5 with our ideas of probability and possibility.

6 Now, if it were not for this letter written by Clarence  
7 Darrow on October 19 to George Behm in regard to this mat-  
8 ter, George's testimony might need a much more careful  
9 scrutiny, but with this letter we have about everything  
10 that we want out of George Behm's testimony. The let-  
11 ter is a confirmation of the agreement of employment of  
12 Behm to come to California, an agreement to pay him his  
13 expenses and the wages of his man, and all that sort of  
14 thing. He closes with: "I have full confidence in you,  
15 and that under no circumstances would I let you lose  
16 anything." Closes with the statement of confidence that  
17 Darrow has, as late as October, long after the Behm inci-  
18 dent had passed into history; had full confidence in Behm.  
19 Did he have confidence in Behm or was he afraid that if  
20 Behm got sore at him he could tell something which would  
21 damage him? Which was it? I do not care which. Either  
22 he did have confidence in him or else he was afraid to  
23 let him get away from him and he wanted to mollicodde him  
24 into believing that he had confidence in him. Now, Behm,  
25 as I told you before, was the uncle -- I don't know whether  
26 it appears here as the favorite uncle, or whether there was

1 any favorite uncle -- but, at any rate, the uncle of Ortie  
2 McManigal. You remember who Ortie McManigal was, and is,  
3 over here in the county jail. I am going to talk about him  
4 after a while. Behm is sent for and goes to Darrow's of-  
5 fice on the 18th day of June in Chicago -- not to his of-  
6 fice, but to his house -- on Sunday, and there are present  
7 there Behm, Harrington, Mrs McManigal and Old Man McManigal,  
8 as I understand it, the father of Ortie McManigal. He is  
9 not here, so it makes no difference. Mrs McManigal has  
10 not been here, so you have not heard her testimony. But  
11 we have the testimony of Harrington and Behm, and the tes-  
12 timony of the defendant himself, and it does not differ a  
13 great deal. The most skillful man in the world -- and  
14 this defendant comes about as near to that as anyone --  
15 endeavoring to avoid a dangerous circumstance in testi-  
16 mony, would not deny the whole conversation, would admit  
17 right up to the danger point, and then skip it, and thus,  
18 he would not contradict any more than it was absolutely  
19 necessary, and would not be contradicted any more than was  
20 absolutely necessary. Now, here is what Harrington tes-  
21 tifies to -- and I am going to talk to you more after a  
22 while about Harrington. This is the conversation: "And  
23 Mr Darrow first asked Behm if he was a labor man and  
24 associated with unions. Behm said he was. he then  
25 asked him if his sympathies were with the unions and Behm  
26 answered they were. He then asked him if he <sup>had</sup> influence



1 with Ortie McManigal. He said he did." "Influence with  
2 Ortie McManigal." Influence, mind you. You remember  
3 that Ortie McManigal was the witness whose name was on  
4 the McNamara indictment, but turned states evidence. He  
5 was the man, as I will show you, that they felt <sup>they</sup> had to get  
6 and they surely did try to get him. To do what? To swear  
7 falsely, to commit perjury. Do you suppose that Mr Darrow  
8 ever had any doubt in his mind that Ortie McManigal's con-  
9 fession was true? And don't you know that Mr Darrow knew  
10 that the testimony or confession of Ortie McManigal was  
11 the God Almighty's truth, and when he tried to get him to  
12 change that testimony, he was trying to get him to commit  
13 perjury?

1 "I was going to ask Behm, as Harrington swears, if he  
2 had any influence with McManigal. Behm said he did.  
3 Darrow asked Behm if he was willing to come out to Los  
4 Angeles and interview McManigal and try and get him over  
5 to the side of the defense."

6 That sounds like an innocent statement, to get a man  
7 to change sides. Change sides in a case, change sides  
8 in religion, change sides in society, anything of that  
9 kind doesn't amount to much. But when you ask a witness  
10 to change sides, you ask him to commit perjury.

11 "Behm said he would be glad to go but he wasn't in  
12 financial condition to do so. Darrow said he would take  
13 care of that, that he would pay his expenses and look after  
14 a man to husband his farm while he was away, so Behm said  
15 under those conditions he would be in position to go at  
16 the end of the following week. Darrow stated there that  
17 if McManigal should testify against the McNamaras that it  
18 would bring disgrace on him and his children and his family  
19 and his friends, and he told Behm that he could tell Mc  
20 Manigal that he would see he was well taken care of after  
21 he got out, and that he would get a position in Chicago."

22 That is a direct sending of a bribe through Behm to  
23 McManigal, if it is true.

24 Now, we find that when Behm got here that is about  
25 the stuff that he handed to McManigal, according to his  
26 sworn testimony, and surely he would not swear to it if it

1 wasn't so. For, why should he? Why would he swear that  
2 he had committed this crime if he had not? Why would you  
3 say, "Yes, I stole a man's purse," when you didn't.

4 "So Mr. Darrow gives Behm \$100." Money again. Behm was  
5 to start the following week, the following Sunday--that  
6 was practically the substance, and so forth.

7 Now, then, George Behm says he received a telegram at  
8 Portage, and he went up there, and he got there, and here is  
9 his testimony in regard to that event:

10 "Q--State, Mr. Behm, whether or not you had heard through  
11 public rumor and the public press and general notoriety that  
12 Ortie McManigal had made a confession of the offenses with  
13 which he was jointly charged with the McNamaras, state  
14 whether or not you had heard that and understood that at  
15 that time? A--I had."

16 So it was generally understood then at that time that  
17 McManigal had made a confession, and Darrow knew what he had  
18 said, and Behm says this:

19 "Mr. Darrow asked me if I was a union man. I told him I  
20 was. He asked me what order I belonged to. I told him I  
21 belonged to the Engineer's and the Fireman's both, and he  
22 wanted to know how it was that I could belong to both  
23 orders. I told him that I had belonged to the Engineers  
24 before the convention at Milwaukee, etc." x x x x "He asked  
25 me if I would be willing to go out there and see what I  
26 could do with my nephew in regard to changing his testimony,

1 as he says, 'you have already read of the trouble that he  
2 is in.' Q--Well, go ahead. A Well, I told him that  
3 I couldn't hardly leave home. I had to put in my crop  
4 that I had at home and he said 'Well,' he says, 'how long  
5 would it take you to put in your crop?' That is true,  
6 that part of it Mr. Darrow admits--"and he gave me \$100."

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1 Darrow said, "George, do all you can with Ortie out there  
2 to get him to come across. Well, I said, I can't do any  
3 more than to go to him and tell him what you have told me,  
4 what you will do for him, and we passed down the hall."

5 On cross-examination, or on further examination, at any  
6 rate, he said, "Darrow told me at that meeting there that  
7 if he, McManigal, came across, he would get to be a free  
8 man, that he would come back here to Chicago and he would  
9 see that he had a good job back here and that he would  
10 not be climbing around on buildings any more to make a  
11 living." Is that a bribe? Is that an inducement to get  
12 Ortie McManigal to refuse to testify for the state when  
13 they came to trial with the McNamaras? If it is, who was  
14 getting him to do it? Certainly it was.

15 Now, Mr Darrow, as I remember his testimony admits  
16 practically all that except the incriminating part, and  
17 he says that he sent George Behm out here and paid him  
18 all that money in order that George Behm might take care  
19 of Mrs McManigal, and yet George Behm didn't come to Cal-  
20 ifornia with Mrs McManigal at all, as the testimony shows.  
21 When George Behm got ready to come here to Los Angeles,  
22 he went to Chicago and Mrs McManigal had already left with  
23 Sadie McGuire, as her nurse and companion, and Behm came  
24 alone; came alone, and not with Mrs McManigal. What  
25 then, did he come for? Here we have the acknowledgment of  
26 Mr Darrow that he was going to and had paid him. What did

1 he come for? Darrow says he came to help to be with Mrs  
2 McManigal, yet we find Mrs McManigal here with a nurse  
3 from Chicago by the name of Sadie McGuire, and we find  
4 that Behm didn't come with her. Why, he same here for  
5 but the one purpose it was claimed he came here, to cajole,  
6 to coax to plead, to bribe, to beg, to induce, to threaten,  
7 to force or do anything that the ingenuity of the devilish  
8 mind could devise to get McManigal to be false to the state,  
9 to be false to the truth, and go back on the testimony  
10 or confession that he had given, and falsify in favor of  
11 the McNamaras. Is that a crime? Yes, most assuredly it is  
12 a crime to induce a witness to give false testimony, and  
13 does such a crime emanate from the brain of the high-mind-  
14 ed man? Does it? And I am going to nail that thing down  
15 in this testimony before I finish with it, and show that  
16 there is no doubt about what Behm was brought here for and  
17 who brought him. Why, Mr Darrow says that all he wanted  
18 was to find out what McManigal -- what the truth was from  
19 McManigal. Well, goodness gracious! There is his own  
20 client who could have told him what the truth was about  
21 what McManigal had testified to or had stated. Why did he  
22 have to go and get Behm to find out what the truth was  
23 from McManigal? Oh, no, no. The further proceedings  
24 along that line show that the state had to fight every  
25 step of the way against just this kind of damnable chicanery;  
26 just this kind of criminal action; fight for their very

1 lives, fight for what? Fight for the integrity of the  
2 courts; fight for a chance at a square trial; fight for a  
3 chance at unbribed witnesses; fight for a chance at un-  
4 bribed jurors; fight for a chance for witnesses who are not  
5 going to commit perjury or be taken away from them, and  
6 this is only one little step. I noticed counsel most  
7 skillfully handled all the facts in this case. He took up  
8 the chain, link by link, and as he picked up a link he  
9 said to you, "Why, gentlemen, you would not convict a man  
10 on that." No, of course you would not. Of course you  
11 would not. And then they pick up another link and they  
12 say -- and they get your attention all grafted onto that  
13 one link, and they say, "You would not convict a man on  
14 that." Of course you would not. And they pick up  
15 another link and they go all through with it, and when  
16 they have got through they have shown you that you would  
17 not convict a man on any one of those links. Of course  
18 you would not, but put them all together. Put them all  
19 together; that is what we must do.

20 Now, I am going to transfer the scene to California.  
21 Two times with Biddinger; in Chicago and one with Behm be-  
22 fore he left. Now, we will take up the criminal trail in  
23 California. Who does this man Behm go to when he comes to  
24 California? Does he go to Mrs McManigal? He goes right  
25 to Darrow's office. "I came all alone from Chicago to  
26 Los Angeles, no one came with me." And he says, "When I

1 got to Los Angeles -- Q -- Where did you go? A -- Well,  
2 around the office for a few minutes, and he asked me if  
3 I had anything in my grip, and I told him I had nothing  
4 more than my wearing apparel," and so forth. That is  
5 referring to Mr Darrow's office. I will go back.

6 "Q -- And then did you see Mr Darrow again before you  
7 left the East? A -- I did not. Q -- And when you left on  
8 the following Saturday, did anyone go with you? A -- No  
9 sir. Q -- Was anyone with you on that trip? A -- No sir.

10 Q -- And then you got to Mr Darrow's office in the Higgins  
11 Building on this evening on which you arrived there. State  
12 whether or not you saw Mr Darrow? A -- I did. Q -- Do you  
13 remember, then, of any talk with him that evening? A Noth-  
14 ing in particular, only he says, 'You got her here all  
15 right.' I says yes.' And I asked him then about  
16 what was in the valise." That is Behm's testimony.

17 Here is what Harrington says about the arrival of Behm  
18 in Los Angeles. "Q -- After you came to Los Angeles state  
19 whether or not Mr Behm came here and you met him? A -- I  
20 did. Q -- State whether or not Mr Darrow was in Los  
21 Angeles at the time Mr Behm came here? A -- Yes sir.

22 Q -- Where did you have your office with reference to  
23 Darrow's office," and so forth. "In the Higgins Building,"  
24 and so forth. And then follows a conversation: "At the  
25 time Behm came to Los Angeles had you any conversation with  
26 Behm? A -- I had. Q -- Where was that first conversation



1 and who was present? A -- Mr Behm and myself and Dar-  
2 row. Q -- What was the conversation? A -- It was with  
3 reference to Behm calling at the county jail to see McManigal  
4 Q -- About how many days after Behm had gotten here was it?  
5 A -- Within a few days, two or three days. Mr Darrow told  
6 Behm to go to the county jail and see McManigal and to do  
7 what he could to get him to come over to the side of the de-  
8 fense." That is the testimony of Harrington. Behm says,  
9 "Q -- When was the next time after that first night that  
10 you met Mr Darrow? " And he says, "It was the next or  
11 the following morning at his office. Q -- Did you have  
12 a conversation," and so forth. "Yes, he had a few words  
13 about it. He asked me if I thought I could do anything with  
14 him. I told him the only way I could do <sup>it</sup> was to go over,  
15 under his instructions, told him what he would do for him  
16 and try to get him to come across. Q -- And who was pre-  
17 sent during that conversation, if anybody? A -- There  
18 was nobody in the room when we had this talk. Q -- Then  
19 state whether or not you saw Ortie McManigal?" and so forth.  
20 Now, I am going to pass over this, or rather, I am going  
21 to make a pause right here and call your attention to another  
22 branch of the work that was going on at this same time, so  
23 that we may take everything right along with us as we go.  
24 This was June 29th, when Franklin next met Darrow in the  
25 office of Job Harriman, and Darrow engaged Franklin at that  
26 time to investigate the members of the grand jury in

1 session. Darrow told him he wanted Franklin -- what he  
2 wanted him to do and Franklin went to work on it. Per-  
3 fectly legitimate and proper; no complaint to make about  
4 it, showing that the legitimate work was going on at the  
5 same time but that underneath it all, this devilish, diabol-  
6 ical attempt to defeat the laws and prevent the punishment  
7 of guilty criminals was going on underneath, by the same  
8 man and the same thing.

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1 Now, I want to come to the visits of Behm with Ortie  
2 McManigal: "Q--When did you see Ortie McManigal? A--I  
3 saw Ortie McManigal on the 30th of June. Q--How many days  
4 was that after you landed here in Los Angeles? A--I  
5 arrived here on the 27th. That was three days."

6 Now, remember, you have got to get in to see a prisoner,  
7 especially such a prisoner as that. It is not an easy  
8 matter. So Behm buzzes around and goes down by the jail  
9 one day and Ortie sees him out of the window and calls to  
10 him and a pass is secured and Behm gets in. Now, what  
11 took place? Here is where we get the truth out of Behm.  
12 I will tell you why. In view of the fact that Behm has been  
13 what he has been and has testified as he has, let us see  
14 whether it is probable that his statement is true or not.  
15 Now, I am going to show you how this man Behm wrestled with  
16 McManigal to get him to come across; how he strove with  
17 him; how he himself admits he did; and how that work  
18 eventually got him before the grand jury. For it is only  
19 fair for you to presume from this testimony that Ortie  
20 McManigal told the prosecution what Behm was saying, and  
21 that then the prosecution, endeavoring by the only legal  
22 means they had in their power, endeavoring to stop it,  
23 summoned Behm before the grand jury. That is a fair pre-  
24 sumption. But Behm would never come out here and admit that  
25 he had committed this crime with McManigal in the jail if he  
26 had not. Now, mind you, if he had not. Assume that Behm only

1 went in there and talked about the family affairs and talked  
2 about old times, and did not try to persuade him to swear  
3 falsely--assume that. Can you figure any power in Heaven  
4 or earth that would induce him, Behm, to attempt to tell a  
5 lie and say that he was there committing a crime? Why  
6 should he? No, it is an admission against himself, <sup>it</sup> is an  
7 admission against his interest. It is an admission that  
8 hurts him and that he would not make if he did not know  
9 that we knew it was true. Now, isn't that fair logic?  
10 If there is anything unfair about it I would like to know it.  
11 If Behm went in there--I will go over it again--and only  
12 talked about innocent things, no power on earth would  
13 ever have induced Behm to perjure himself here by saying  
14 that he had committed a crime there, if he had not. So  
15 we have got to believe that when Behm says he committed a  
16 crime there in trying to induce McManigal to change his  
17 testimony, that it is the truth.

18 So surrounded and so understood, we have a right to dis-  
19 cuss now the testimony of Behm as to what occurred in that  
20 jail, and rely upon it, as long as he does not try to self-  
21 serve, as long as he does not try to avoid, as long as  
22 he does not deny his wrong act.

23 This is the first meeting: "Well, we shook hands and  
24 sat down at the table there, and we got to talking over  
25 matters and I asked him how he expected to get out of this  
26 trouble, and he told me he did not expect to get out of it;



1 he was in it and in it right. He told me that he was guilty  
2 of the deeds that were charged against him, and he was  
3 caught right, and he was glad he was caught. He said  
4 I am better off in here than I am out on the street", and  
5 so forth. "And I asked him if he would allow me to talk  
6 to him and give him a little advice that I thought I could  
7 give him, and sort of strung him out, and so forth." So  
8 he goes on in that conversation, and I will not go into  
9 that in a great deal of detail, because I am going to take  
10 up the next one; except down here, before he went out, he  
11 says; "Now, I says, Ortie, it is going to be an awful dis-  
12 grace on you and your family, and your folks back home, if  
13 you stick with this testimony that you have already given.  
14 He said: I cannot help it, Uncle George, I have got to tell  
15 the truth. I said: Darrow has sent me over here to see  
16 you to get you to come across. He told me that if you  
17 would allow him to come in here and have a talk with you that  
18 he will make you a free man from all this trouble and all  
19 that sort of stuff, and he will get you clear." Then  
20 Behm says that he goes back and reports this to Darrow, and  
21 he says: "I have told McManigal; I have done all I could.  
22 I have talked to him and told him what you will do for him  
23 if he will, come across with his testimony and change it;  
24 that they have nothing on him at all, only his testi-  
25 mony."

26 Did Behm think that up? "I told him that, I said, it

1 dont make any difference what he has already told; that  
2 could be changed. He did not need to swear to that. He  
3 could swear it was a falsehood. Well, we then kind of quit  
4 talking"--that is, Behm and Darrow--"kind of quit talking  
5 and walked out into the other room into Harriman's office,  
6 and Darrow followed him out there and then he said:

7 "George, when you go back the next time you spring this on  
8 him: You tell him if he ever comes out of this case they  
9 will indict him back in Chicago on a murder trial." Spring  
10 that on him and see if he will come across.

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1 Now, let's take the next visit. So he goes back the  
2 next day, and he has another talk with this nephew. Now,  
3 gentlemen, I want you to picture, if you can, the situa-  
4 tion over there at the county jail. Ortie McManigal,  
5 the confessed dynamiter, sick of his life of crime,  
6 no doubt, resolved that at whatever cost he would tell  
7 the truth; he would rid his soul; he would get right.  
8 Shut up in jail behind the bars, justly so, but with a  
9 firm resolution in his mind that he was going to do right.  
10 Gentlemen, I am a firm believer in the principle that the  
11 right will triumph. That has been my motto through life.  
12 I suppose I got it from Presbyterian ancestors, but I be-  
13 lieve that right will triumph, and that the right cannot be  
14 defeated by chicanery or by the most glowing and dazzling  
15 ability of any man or set of men. I believe that the simple  
16 justice and the simple right is just as large and well-  
17 developed in the mind of a man who is not brilliant as it  
18 is in a brilliant mind, and often more so. And here was  
19 this poor devil, with his eye of hope fixed on the star  
20 of right. All in God's world he had to cling to was the  
21 little ray that shone, the ray of the star of right.  
22 Perhaps not a man of much education. Ah, gentlemen, I  
23 have learned some things in the last year about humanity.  
24 I have learned of the sterling integrity that is in the  
25 breasts of some, <sup>of the</sup> poor and lowly, and of the damnable trickery  
26 that is in the minds ~~and~~ the hearts of some of the brilliant

1 of our land. And here was this poor devil, caged up like  
2 a rat in a trap, with no hope, except what might come to  
3 him from the knowledge of having done right, backed up in  
4 the corner of his cage by his uncle, sent there, as this  
5 letter shows, on the pay of Clarence Darrow, backed up in  
6 a corner and talked to like this.

7 "So I was put into a room here, and he was fetched out of  
8 his cell into the room where I was. We shook hands togeth-  
9 er, and I got a little my temper worked up a little about the  
10 way he was acting, so I began on him and I says, 'Ortie,'  
11 I says, 'You may think you are right, but you ain't. You  
12 ain't got your brains on the right side of your head.'  
13 I says, 'You want to get them in the fore part of your  
14 head, and now do business for us. Now, ' I says, 'come  
15 across and get on the side of the people that has helped  
16 you along to where you were as a laboring man, the wages  
17 that you have gained during the time that you have belong-  
18 ed to these unions,' and I told him, I says, 'If you don't  
19 you will never be a free man.' I tried to show him and  
20 picture to him how well he could come across and go back  
21 on the words he had already sworn to before the court,  
22 and Mr Darrow would take care of him and make him a free man.  
23 That is mostly my conversation."

24 Add that to the talk of the previous day about how Dar-  
25 row would take him back into Chicago and how Darrow would  
26 make him a big man, and get him a good job where he wouldn't



1 have to climb the high buildings again. Go to hell and  
2 search its bottomless pit and bring forth the devil that  
3 knows the most of torture and bring him up, horns, tail,  
4 pitchfork and all, and let him get Ortie McManigal, the  
5 poor soul that wants to do right, let him back him in a cor-  
6 ner and say, "If you don't come across, oh, if you don't  
7 come across, if you don't swear to a lie, if you don't  
8 repudiate all the decency that there is in your soul,  
9 why, we will get you on a murder charge, and you will never  
10 get free. But oh, if you do, ah, take him up into the  
11 high places and show him all the cities of the world, and  
12 say, "All these and more will I give you if you will but  
13 bow down and do this damnable thing." God in Heaven,  
14 gentlemen! And this devil from hell goes back and reports  
15 to Darrow. Do you think that Darrow didn't know what he  
16 was doing? Do you think that he was doing this, this  
17 ignorant engineer, on his own hook? Darrow, as this let-  
18 ter shows, brought him here. Darrow, who paid him -- Darrow  
19 who sent him home -- Darrow, to whose offices he was going  
20 every day -- do you think that Darrow didn't know? Ah,  
21 God, if there could be anything more -- he takes his lit-  
22 tle boy, his little boy, that, so far as this testimony  
23 shows, he has not seen yet, and he walks down the street  
24 in view of that caged man, that man who had made up his  
25 mind to do right, that man who had made up his mind to  
26 take his stand on the side of decency and government, that

1 poor, ignorant devil, who no doubt loved his child, if a  
2 dog loves its whelp -- he takes that child and comes down  
3 on the street, and McManigal, <sup>says</sup> "Oh, George, bring the boy  
4 up -- bring the boy up."

5 God! And then he comes here to you and asks for mercy.  
6 What mercy? What mercy? Ah, gentlemen, gentlemen, there  
7 is a God in Heaven. There is an idea of decency and right-  
8 eousness in the breasts of the American people. And if  
9 there were no other just cause for the punishment of this  
10 man than even his only permitting of this fellow Behm to  
11 go there with his damnable torture, then I say to you, he  
12 should be made to feel that there is a God in Israel.

13 Ah, this man of humanity; this man of sorrow; this man  
14 who believes so in his fellow man, he wants to help them --  
15 yes, he wants to help them as long as they with arms in  
16 their hands against society; but the minute they turn and  
17 get on the right side, the torture. That is the man we  
18 are talking about. I am sorry that I got too much in ear-  
19 nest, for it doesn't do any good; it doesn't help you; it  
20 is not logical. But that is the man we are talking about.  
21 That is the kind of a man we are talking about, the man  
22 that believes that you and I and every man in God's Christen-  
23 dom, as I believe this testimony shows, has got his price,  
24 or his weakness, that he can be pulled here and there and  
25 made to do what is wrong.

26 Gentlemen, I stand for a clean and decent and fair ad-

1 ministration of the law. I ask for nothing more.

2 Mrs Caplan. They said we would not want Mrs Caplan.  
3 They said we could not have used her. They said she had  
4 been hounded around by the Burns' men up in San Francisco--  
5 and what kind of testimony did you get that idea from?  
6 It was the testimony of Johannsen, the fellow that took her  
7 out of the state, the fellow that, when he got her across  
8 the border line, sent a telegram back -- to whom? Whom  
9 under Heaven would you report to? would you send your tele-  
10 gram to, after you had accomplished an act? Why, to the  
11 one that sent you to do it.

12 They say that we could not use Mrs Caplan. Well, we  
13 differ, and we had her subpoenaed and three days, two days,  
14 one day, I think, after she was subpoenaed -- mark you,  
15 not before she was subpoenaed, not a month afterwards, not  
16 a month before,

1 but immediately after she is subpoenaed by the state, out  
2 in the night, down through the hills and the hollows and the  
3 valleys, and out through the mountains and along the river,  
4 she goes in an automobile, secretly and clandestinely.

5 Why didn't she take the train, if her trip was a fair one,  
6 if she wanted to dodge Burns's men? Let me say to you that  
7 the evidence that the Burns<sup>men</sup> were bothering her is so small  
8 that I am justified in telling you that it is all rot.

9 She was down in the mountains with her friend, down in the  
10 mountains near San Jose with her friend, when the subpoena  
11 is served on her. Mark you, we can't serve a subpoena until  
12 after a case is set for trial, and as the record here  
13 shows but a few days before that the case had been set for  
14 trial, and immediately, post haste goes an agent of the  
15 state to subpoena Mrs. Caplan. They say we couldn't use  
16 her. They say they have got an instruction that a wife  
17 cannot testify against her husband. I have no quarrel with  
18 that instruction. It doesn't apply in this case and has  
19 nothing to do with this. I don't know whether the instruction  
20 will be given or not--I don't care, except that it would  
21 encumber the record. We were trying Brice; that is,  
22 McNamara. We were not trying her husband. There<sup>were</sup>/many  
23 things that she could have sworn to about Brice, even if she  
24 were the wife of Caplan,--and you have no absolute knowledge  
25 of that fact. But assuming that she was his wife,  
26



1 She was not Brice's wife. Now, who took her away? Who  
2 took her away, and why and why? Here was a case that had  
3 been pending for several months in which she might be con-  
4 sidered as a witness. Immediately after she is subpoenaed  
5 as a witness, bang! They grab her, and away she goes.  
6 Why? Why, for the same reason they tried to get Biddinger;  
7 for the same reason they tried to get McManigal; for the  
8 same reason they took Diekelman out of the way, and I will  
9 come to that later. And when Johannsen crosses the line  
10 into Nevada, he sends a telegram, there is no dispute about  
11 it. On the first or second of August he sent a telegram  
12 to who? To who? To the man who had charge of the evidence  
13 for Darrow, John R Harrington. Harrington is probably  
14 trying to put his best foot forward when he says he didn't  
15 know anything about it, but they knew mighty well that  
16 Harrington would report that to Darrow as soon as he got  
17 back. The telegram came in code that Darrow had arranged, and  
18 the first word in that prearranged code is "Flora Caplan."  
19 The letter for Flora was "A", and the telegram was a con-  
20 gratulatory telegram: "Flora is fine; all on train."  
21 Just as soon as they got over the line. Why didn't they send  
22 it back at some station where they stopped over night?  
23 Why didn't they send it back at Sacramento? Why didn't they  
24 send it back where they stayed over night before they got to  
25 Reno? Well, they waited until they got across the line and  
26 then comes back a message, and then to who? Back to the con-

1    fidential agent of Clarence Darrow. Why, I am not claiming  
2    that the hands of all of these agents of his were clean.  
3    The hands cannot be clean when the head is foul, but it is  
4    the head we are tracing it up to now, and so another of the  
5    state's witnesses is gotten. They had been working on  
6    McManigan--off goes Mrs. Caplan. You remember what a  
7    farce and folderol and foolishness there<sup>was</sup> about this man  
8    Tveitmoe and Johannsen, and how he denied--and how Mr.  
9    Rogers goes out and couldn't be in the court room because  
10   his ethics and all that stuff couldn,t stand for it;  
11   because it would hurt his ethical soul to see this man  
12   Johannsen testify on his side, because he didn't like Johann-  
13   sen; had been examining Johannsen before in another  
14   capacity, and had been interested in another capacity, and  
15   all that sort of rot, so they forced us against our objec-  
16   tion to interrupt our case in order that Tveitmoe and  
17   Johannsen might be put on the stand to tell about taking  
18   Flora Caplan away.

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1 Well, I am a modest man, and I do not claim any particu-  
2 lar credit, but we were loaded for Johannsen, and when we  
3 got through with Johannsen they had had about enough of that  
4 incident, and they quit, and then--Ah, gentlemen, that  
5 looked bad--that looked bad. They had made their big blare  
6 of trumpets here, and they were going to put those two  
7 men on to explain the high and mighty purposes of Tveitmoe  
8 and Johannsen. How did they climb out of the hole?  
9 The way to keep the other fellow from hitting you is to hit  
10 him just as hard as you can. The way to keep you gentlemen  
11 of the jury from thinking much about why Tveitmoe was not  
12 put on the stand is to raise a big hallabaloo about why we  
13 didn't put him on the stand and to explain to you all  
14 this, that and the other, that he was indicted, and all  
15 that. Well, well, let it go for what it is worth. I don't  
16 care. All we wanted out of Johannsen we got, and that  
17 was the telegram, a confirmation of the telegram. As soon  
18 as he got across the line he reported to Darrow. If they  
19 had put Tveitmoe on we would have gotten something out of  
20 him that would have looked a whole lot different, I imagine,  
21 from his grand jury testimony, about where the rest of that  
22 \$10,000 was. You know they read a part of his grand jury  
23 testimony given some months before about the \$10,000, but  
24 we would have liked to have crossexamined Mr. Tveitmoe a  
25 little bit about that \$10,000 and asked him where it was  
26 now.

1 MR. APPEL. We assign the statement of the District Attorney,  
2 that if we had put Mr. Tveitmoe on the stand he would have got  
3 a statement against us or prejudicial to us, and different  
4 from the testimony given before the grand jury, and ask the  
5 court now to instruct the jury to pay no attention to such  
6 a statement as that, as there is no evidence here upon which  
7 he can base that statement. On the contrary, we demanded  
8 of them the testimony that he gave before the grand jury,  
9 for the purpose--

10 MR. FREDERICKS. I object to the court making any such  
11 instruction, because I am deducing this conclusion from  
12 facts already in evidence, and I am not making a statement  
13 or deduction except from the facts in evidence.

14 THE COURT. The assignment is noted and the jury is instructed  
15 that they are to disregard any testimony that counsel for  
16 the People imagines might have been developed from the  
17 lips of Mr. Tveitmoe had he gone on the stand.

18 MR. FORD. Do I understand your Honor's instruction to be  
19 that we cannot draw conclusions from that?

20 THE COURT. It is directed in reference to the statement  
21 by the District Attorney that he imagines that had Mr.  
22 Tveitmoe taken the stand such testimony would have been  
23 produced, as a conclusion not warranted from any evidence  
24 in this case.

25 MR. FREDERICKS. I do not agree with the court in that at  
26 all. I think that is an absolute restriction that is im-



1 proper, but it is the court's ruling and I will take it.

2 And, gentlemen of the jury, then remember that Tveitmoe  
3 did not testify about anything here before you, pure and  
4 spotless, and we still, gentlemen, would like to know where  
5 that \$10,000 is that Tveitmoe has. We still would like to  
6 know, if it was intended to be used as Mr. Darrow says, to  
7 pay some of the expenses of the investigation, or the  
8 defense that Mr. Tveitmoe had been to in the past--we would  
9 like to know why in the name of Heaven he got big bills to  
10 do it with. We would like to know why some of those bills,  
11 at any rate, were thousand dollar bills, and I will show  
12 you there is evidence that the banker said they were.  
13 If, as Mr. Darrow says, the \$10,000 was to be given to Mr.  
14 Tveitmoe to pay for expenses--which, believe me, Rogers says  
15 he had put Tveitmoe to--I have often wondered why God  
16 Almighty had to be on earth while Rogers was around, but  
17 I suppose the Lord likes to take a holiday once in a while,  
18 and so Rogers was toddled in as a deputy runner of the  
19 universe. But these bills--these bills, these thousand  
20 dollar bills and five hundred dollar bills, just like the  
21 ones that you saw here taken from Franklin, these bills,  
22 according to Mr. Darrow, went for the purpose of paying  
23 little debts, accumulated and to accumulate, by Mr. Tveitmoe.  
24 Much of the defense was going on in San Francisco. They  
25 needed money to meet the defense in San Francisco. There  
26 were bills to be run; automobiles to be paid for, probably,

1 and witnesses to be seen, and their wages paid to them  
2 while they were away from their work, and all those little  
3 things needed to be attended to. So they get some thousand  
4 dollar bills and some five hundred dollar bills, and they  
5 take them away. Do they put them down in a callar, down  
6 in a vault, or did Darrow bring them back to Los Angeles  
7 with him, as he told John Harrington? Why, that confirms  
8 John Harrington absolutely.

9 MR. APPEL. We challenge the District Attorney to show  
10 where Harrington swore that there was a thousand dollar  
11 bill in that.

12 MR. FREDERICKS. I will show you. I will guarantee to show  
13 you.

14 MR APPEL. Show it now.

15 MR. FORD. I do not think counsel has a right to challenge  
16 counsel--

17 MR. FREDERICKS. Oh, let him challenge me.

18 MR. APPEL. It is a misstatement, and I will assign it as  
19 error. I will give him the page of that witness who  
20 said time and time again that he did not think that there  
21 was a thousand dollar bill in it, and that he told the  
22 District Attorney outside when he testified that there  
23 was not.

24 THE COURT. The error has been assigned.

25 MR. FREDERICKS. That is not so.

26 THE COURT. The <sup>assignment</sup> is in the record. The District

1 Attorney may proceed.

2 MR. FREDERICKS: There will be time in the morning to get  
3 that, just as we got the other a while ago. I won't take  
4 up your time now. I will get it for you in the morning.  
5 I find one place here in the testimony of Mr. Hunt, page 2630  
6 that Hunt says, "Check Number 30 for \$10,000 was paid to  
7 him by Cleveland Dam, with a request for large bills. The  
8 check was deposited and went through." That is one of them.  
9 I am not going to stop for it now. Large bills, so we  
10 do not have a quarrel about that; large bills. My memory  
11 is that he said thousand dollar bills. I will bring it in  
12 the morning. If it was only \$500, all right; but large  
13 bills. \$500--I am sure he said that. Now, let's see:  
14 That is the money, gentlemen, that Franklin got. There is  
15 no doubt in the world about it. The explanation about it,  
16 gentlemen, is so absurd that it shows that, at any rate, they  
17 have not told the truth about the explanation, because if  
18 that was intended to be used for that purpose, for the  
19 purpose which Mr. Darrow says he gave it to him, why did he  
20 get large bills? Tveitmoe had a bank account. He paid  
21 for the automobile that took Mrs. Caplan over the hills,  
22 with a check, as the testimony shows. So there was an expense  
23 of running a witness out of the country, one of the expenses  
24 that Tveitmoe was put to by the defense.

1 Paid by Tveitmoe, and if they had any others that were any  
2 more crooked than that, so that they didn't dare give  
3 checks for them, I wonder what they were. If they had  
4 anything that was any more crooked than this getting this  
5 witness, under subpoena, out of the state, and they were  
6 willing to chance a check on that. No, no, gentlemen,  
7 that is all nonsense. That money came down here with  
8 Clarence Darrow, and it could not--

9 MR APPEL: We are very sorry to interrupt the District  
10 Attorney, but, please, Mr Fredericks, I don't like to  
11 interrupt you, but, your Honor, the Caplan matter was  
12 the last days of July and the first days of August.

13 MR FREDERICKS: I understand all that.

14 MR APPEL: The \$10,000 check --

15 MR FREDERICKS: Was after that.

16 MR APPEL: September 2nd.

17 MR FREDERICKS: It was after that. There is no question  
18 about that. That is not the point I am making at all.  
19 The point I am making is this: that if he was willing,  
20 why did he put this in a safety deposit box or the cellar  
21 or somewhere else, instead of depositing it in the bank and  
22 drawing checks on it when he wanted to use it, if it was  
23 to be used for legitimate purposes, and I say --

24 MR APPEL: I again say, your Honor, there is no evidence  
25 he put it in a cellar or safety deposit box.

26 MR FREDERICKS: He took it away from him, and I believe



1 you are trying to interrupt me just simply to break up my  
2 argument.

3 MR APPEL: No sir. I have a right -- your Honor, there  
4 isn't a bit of evidence here where Mr Tveitmoe put that  
5 money in a safety deposit box. We asked them to produce  
6 the testimony or to put Tveitmoe on the stand and they  
7 didn't dare to.

8 THE COURT: You have assigned your error, Mr Appel.

9 MR APPEL: He cannot point his finger at me and say that  
10 I am doing this for an improper purpose, and I begged his  
11 pardon, and I asked him to pardon me for having to inter-  
12 rupt him.

13 MR FREDERICKS: All right.

14 MR APPEL: He must not assign to me any trickery, your  
15 Honor. I didn't want to do it. I wanted to treat him  
16 with respect.

17 MR FREDERICKS: Do it, then.

18 MR APPEL: I did ask you to pardon me, and I am very  
19 sorry to have to interrupt him.

20 THE COURT: Gentlemen --

21 MR APPEL: I say, your Honor, I assign his statement as  
22 unjustified by the evidence here, that Mr Tveitmoe put any  
23 money anywhere.

24 THE COURT: The assignment is noted in the record.

25 MR APPEL: They don't dare to produce the testimony.

26 THE COURT: Just a moment. I am going to instruct the

1 jury. The assignment is noted in the record. The jury  
2 is instructed that if counsel for the People go beyond  
3 the evidence, they are to disregard it.

4 MR FREDERICKS: There is no evidence that it came down with  
5 Clarence Darrow! John Harrington says Clarence Darrow  
6 told him that he got it and got it from Tveitmoe's bank.  
7 No evidence that it came down with Clarence Darrow? That  
8 is the evidence, and I draw the conclusion that it never  
9 did get into any safety deposit box. I am not claiming it  
10 did, but <sup>that</sup> I would naturally be the only thing they could  
11 claim that did happen to it, if Darrow didn't get it,  
12 and I am reminded that they did claim that in their chinane-  
13 gan about trying to get some testimony given by Tveitmoe  
14 before the grand jury here in evidence. It was such a  
15 palpable attempt to evade the putting on of the witness  
16 that I didn't pay much attention to it, and I don't care  
17 much about it, but there was something of that kind brought  
18 out before you. So much for the \$10,000 that seems to  
19 hurt. When you talk about 10,000 --

20 MR APPEL: We assign that as error.

21 THE COURT: The assignment is noted.

22 MR FREDERICKS: I remark it does hurt.

23 MR APPEL: I again assign that as error and misconduct on  
24 his part.

25 THE COURT: The assignment is noted. The District Attorney  
26 will proceed.

1 MR FREDERICKS: May it please the court, it is 5 minutes to  
2 five, and I want to start on something else.

3 THE COURT: All right. You may take an adjournment now.

4 (Jury admonished. Recess until August 16, 1912, at 10  
5 A.M.)  
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1 FRIDAY, AUGUST 16, 1912; 10 A.M.

2 Defendant in court with counsel. Jury called; All pre-  
3 sent. Argument resumed.

4 THE COURT. You may proceed, Mr. Fredericks.

5 MR. FREDERICKS. Gentlemen, I am going to try to grind  
6 through this grist just as judiciously as I can. I want  
7 to ask you--I hardly think I need to ask you, but I want  
8 to ask you, however, to weigh carefully this testimony in  
9 regard to other offenses. In my judgment it is very  
10 important. I want you to weigh each instance as it goes  
11 along, and to make up your mind as to whether you think  
12 my position or the position of the witnesses for the state  
13 are true. Whether you think the defendant did those  
14 things, as we go along, because if you don't, when it comes  
15 to the end, you will not have made up your mind on each  
16 one of those things and you will have to make a run and  
17 a jump at it, and that is the reason why I have taken  
18 these things one at a time, trying to digest each one and  
19 make up our minds on that and pass.

20 It is important for you to know that when the 28th day  
21 of November came, that the defendant in this case was a man  
22 who had a plan and a custom of doing this sort of thing.  
23 It is important for you to know that, and you don't want  
24 to guess at it, and you want to know that, and you want to  
25 be sure of it, because as I told you in the beginning,  
26 there is no use of talking to intelligent men about anybody



1 else having been interested in trying to bribe this jury,  
2 except some of the attorneys who were in court actually  
3 passing on the question of whether the man was going to  
4 sit or not. It is utter folly to assume for one moment  
5 that any one else could have been wasting their good money,  
6 not knowing whether, finally, when the man that was  
7 bought, came into the jury box, whether the defendants'  
8 attorneys, not knowing anything about the arrangement, should  
9 throw him out. That is utter folly. That is against all  
10 reason. So I say to you the matter narrows itself down  
11 to some one of those attorneys who must have been handling  
12 the money. And as I told you in the beginning they said  
13 that the prosecution had intimated that if there was any  
14 local attorneys Franklin needn't turn them up.

15 Gentlemen, I don't believe anything of the kind, and  
16 this evidence here does not show anything of the kind, and  
17 as I go on and discuss this evidence and try to discuss it  
18 fairly, you will see that we are not shielding any one of  
19 the attorneys in this city. They have told you that Mr.  
20 Davis is a friend or was a friend of mine, and I tell you  
21 that if he is or if he was my own brother, in my judgment it  
22 would make not one particle of difference, except that it  
23 might make my heart more sad and my duty more onerous,  
24 and that is all, and that is exactly the way you would  
25 look at it as jurors, with your oath and your sworn duty  
26 to the state.

1 I claim no monument to my virtue in that regard, for  
2 I claim that every honest citizen would look at the thing  
3 in just that way .  
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1 Now, as I said in the beginning, I am going to try and  
2 discuss these witnesses and their testimony fairly. I  
3 don't think that all the witnesses who have appeared on the  
4 other side of this case have sworn falsely, and I am not  
5 sure that all of the witnesses who have appeared on our side  
6 of the case have told all the truth. I am going to try to  
7 look each one square in the face and slough off what does  
8 not appear to be right and leave what appears to be true.  
9 I don't think that all these newspaper boys who came here  
10 and swore to statements that they said Franklin had made  
11 at the time that he, Franklin, was in the toils in defense  
12 of Darrow, I don't think those men committed wilful perjury.  
13 I don't think any of them did. Neither do I think that  
14 Mr Franklin committed wilful perjury when he said he didn't  
15 say those things. As to whether he said them or whether  
16 he did not say them, is a matter of very little importance.  
17 As a matter of fact, if I were building a case I would pre-  
18 fer that Franklin had said those things, that Franklin had  
19 admitted that he said those things at those times. For  
20 that is just the attitude that his whole conduct shows  
21 he was taking, the attitude of standing between Darrow and  
22 the law, the attitude of protecting the man that gave him  
23 the money. That was the attitude that he was taking. His  
24 whole course was filled with that. And what folly it  
25 would be for us to permit him to deny it and deny that he  
26 said these things, when, as a matter of fact, his whole

1 conduct showed that that was his attitude and the whole  
2 case is built on the idea that that was his attitude.

3 But I believe that Franklin believes that he did not  
4 say those things to the newspaper men, and I think that  
5 the newspaper men believe that he did, and I think that  
6 Franklin, in that technical way of answering that he has,  
7 led them to believe that he was saying them, when probably  
8 he felt that he was not saying them. But it makes no dif-  
9 ference one way or the other. I think it is true that if  
10 he had said anything on the subject at that time he would  
11 have said that Darrow had nothing to do with it.

12 Now, I do think that this testimony shows beyond a doubt  
13 that those Venice witnesses were perjurers and were not  
14 telling the truth. You notice how skillfully they are  
15 tucked away -- I wonder if I can find them -- in among  
16 the newspaper men. Here is one of them here. Here is  
17 a newspaper man. Here is another one away up here, and  
18 here is another man, and I don't know where the other  
19 one is, but he is tucked away somewhere. The three of  
20 them are not put together. They were not put on the stand  
21 together, either. The idea was to mix them in, those  
22 men who made the statement impeaching Franklin at another  
23 time, at a time when Franklin had plead guilty, at a time  
24 when Franklin had been before the grand jury, at a time  
25 when Franklin had confessed. That is a different propo-  
26 sition altogether. That is an entirely different story,



1 and I do not believe they spoke the truth. As to whether  
2 Dick Warner told the truth or not, I don't know. I would  
3 not attempt to judge him. We all know Silver Dick.

4 Silver Dick said that Franklin said he was going to win  
5 that case, and that there was an angle to it that the at-  
6 torneys didn't know anything about. And so there was.

1 What did the attorneys know about what he was doing?

2 No, no one of them knew, in my judgment, even what he was  
3 trying to do, except Darrow, and Darrow did not know the  
4 details of it. He did not tell Darrow every street corner  
5 that he turned, and every angle that he twisted; he did  
6 not tell Darrow all these things. He was out doing this  
7 job, and Darrow was furnishing the money, and he was fur-  
8 nishing the brains and ingenuity, and taking a part of the  
9 risk. But I do not believe, and I have thought a long time  
10 over this, gentlemen, you can well be assured, as to whether  
11 Davis knew about this or not. And I am going to refer  
12 to that later. But you can well be assured that I have  
13 thought of it and thought of it long and carefully, and  
14 that I would not charge my fellow man with the commission  
15 or the knowledge of a crime unless I have good grounds to  
16 base it on. I would be just as careful of the man I suspect,  
17 unless I felt I knew, as I would be of the man against whom  
18 I have no suspicion. But I will talk about Mr. Davis later.

19 I think that Mr. Wolfe was simply a cry of Wolfe, Wolfe,  
20 when there was no Wolfe. That is all there is to it.  
21 And that this other man, this man whose reputation was not  
22 strong enough here in the city to make a very great im-  
23 pression on the citizenship, I take it. We are limited to  
24 three witnesses that his reputation was bad--bad--bad!--  
25 Hawley was his name, and I will talk about him later. I do  
26 not think he told the truth. I do not think Wolfe told

1 the truth, and I do not think these three fellows at  
2 Venice told the truth.

3 Now, we will come to a discussion of the testimony of the  
4 defendant himself. I have always maintained, and I main-  
5 tain now, that the testimony of a defendant in his own  
6 behalf helps the jury mighty little, for this reason: If he  
7 intended to plead guilty, if he intended to admit his crime,  
8 he would not be on trial; he would have plead guilty. But  
9 if he intends to deny his crime and fight, and try to beat  
10 the case, his testimony is going to be just the same,  
11 whether he is guilty or whether he is innocent, for if he is  
12 innocent he is going to say I did not do it, isn't he, and  
13 if he is guilty he is going to say, I did not do it?  
14 Whether he is guilty or whether he is <sup>not</sup> guilty, he is going to  
15 say the same thing, I did not do it. And if he is wise  
16 and skilful and has had years of experience, he is going  
17 to say that I did not do it, whether he did it or whether  
18 he did not, in such a skilful way that you cannot look back  
19 of his eyes and tell whether he is telling the truth or not.  
20 I know there are people who claim they can look at a man's  
21 face and tell whether he is telling the truth or not. I  
22 have been looking in men's faces for years and trying to  
23 determine that question, and perhaps in 7 out of 10 you can  
24 make a fair guess. But in the other three you cannot tell  
25 anything about it--you cannot tell anything about it. They  
26 can look just as innocent when they are guilty. Take a woman

1 like Mrs. Bain or a man like old Bob Bain, and set him down  
2 and catechize him or her for a while, you could probably  
3 see how their mind was working. Take a man like Clarence  
4 Darrow, and set him down and catechize him for a while,  
5 you couldn't tell, if he wanted to deceive you, whether he  
6 was doing it or not. That is simply a matter of skill and  
7 experience. Now, as I said before, I want to ask you to  
8 pay close attention to these other crimes, to these evidences  
9 of other crimes, so that you will feel when we have gone  
10 through with them that they are proven.

11 We talked to you about Behm, George Behm yesterday.  
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1 About his actions here with McManigal, about what he was  
2 trying to get McManigal to do and why and who brought him  
3 here. I made an incident out of that and then went on to  
4 San Francisco and took up the Caplan matter. You remember  
5 the testimony shows that Harrington had been up there dur-  
6 ing the time that Behm was down here with McManigal in  
7 jail.

8 Now, I am going back here and I am trying to take these  
9 things chronologically so you will see, week by week  
10 and month by month the terrific battle of the state was being  
11 put up against here. Now, I am going back to the incident of  
12 Behm before the grand jury, and I want to discuss that a  
13 little while. I am not going to take up your time with  
14 reading the questions that were asked him. You remember he  
15 was brought before the grand jury -- I am using a copy  
16 here, but it will be found to be correct with that intro-  
17 duced in evidence.

18 The 31st day of July was the day he was brought before  
19 the grand jury. Why? Now, the state is not a supine  
20 and a weak and powerless thing. It is organized to fight  
21 the battles of society. It is organized for the purpose  
22 of protecting society against crime and criminals, and  
23 to do so it has proper and legitimate weapons put into its  
24 hands for that purpose, and the grand jury is one of them.  
25 Now, it is fair to assume that after the three or four at-  
26 tempts that Behm had made on McManigal, that after Behm

1 had walked by the jail there and McManigal had shaken the  
2 bars of his cell at the sight of seeing him walking down the  
3 street with his boy that he wanted to see, it is well that  
4 you can imagine, that you can conclude, rather, that Mc-  
5 Manigal had told the state all these things; that McManigal  
6 had told the state officers of what was being done, and it  
7 is fair that you could conclude that no man under God's  
8 Heaven was calculated to withstand forever such tempta-  
9 tions, such importunity as that, and it is well that you  
10 could assume that the state was then compelled to act and  
11 to act in a proper manner through its proper officers,  
12 the grand jury, and bring this man Behm before the grand jur  
13 to account for what he had been doing, and to stop it, and  
14 so Behm is brought before the grand jury.

15 Now, if Behm had been brought out here by this defend-  
16 ant, as he says, for the sole purpose of being a nurse or  
17 the care-taker of Mrs McManigal, and if his visits to the  
18 county jail had only been the courteous visit of an uncle  
19 to a nephew, there would have been no reason under Heaven  
20 why Behm should not have answered the grand jury's every  
21 question, would there? "Yes, I went over and talked to  
22 McManigal. Yes. We talked about the old home folks. Yes,  
23 we talked about the old days, and how we used to pitch hay  
24 and all that sort of thing. Yes, we talked about the  
25 friends and relatives and told the whole thing." No  
26 reason in the world, but what does he do? As this record

1 shows you, that has been introduced here, when he is  
2 haled before that grand jury he refused to answer as to  
3 what he had been doing over there with McManigal. He re-  
4 fused to answer as to who brought him out here. He refused  
5 to answer as to why he was brought out here. He refused  
6 to answer all questions. Why, gentlemen, that at once  
7 brands him as having done just exactly what his testimony  
8 now shows he did do. Trying to induce Ortie McManigal to  
9 commit perjury, but the teeth are not all gone out of the  
10 weapons of the state, so he is cited for contempt of  
11 court to compel him to answer these lawful and proper  
12 questions, and then he is up against it. Then, he has  
13 got to talk.

14 Now, gentlemen, I claim that no honest man in an honest  
15 transaction need fear to talk about that transaction to  
16 the grand jury at any time. I am not afraid of the grand  
17 jury; you are not afraid of the grand jury. Let them bring  
18 you before the grand jury. Let them bring me before the  
19 grand jury and ask me what I did on such a day and ask me  
20 what you did on such a day and such a day and such a day.  
21 You have no fear; your actions have been honest, and if you  
22 can refresh your memory you will tell them; why not?  
23 But he would not tell them what he had been doing over there  
24 with McManigal. He would not tell them who brought him  
25 out here. So the list of questions are put in an affidavit  
26 and served on him, which he takes, and he is ordered to come

1 into court and answer those questions or show cause why  
2 he should not.

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1 And then he is up against it. Then he has got to frame some-  
2 thing. I am not going into all the ramifications of this  
3 question. You remember there was a big book of them. But  
4 the salient part of it is this. He denied, when he was  
5 next brought before the grand jury and compelled to answer,  
6 he denied that he had tried to induce McManigal to change  
7 his testimony and to come over onto the side of the defense.  
8 He denied that he had tried to get McManigal to commit  
9 perjury. Why, then, does he now come here and admit that  
10 he did try to get him to commit perjury, unless that is the  
11 truth? If it is true that he did not try to get McManigal  
12 to commit perjury, if that is what happened, if that is the  
13 truth, why would he not stick to it? Why should he not  
14 stay with it? Why should he stultify his soul by coming  
15 in and admitting to you and admitting to the world that he  
16 committed perjury, if he did not?

17 Now, as to who got him to commit that perjury, the defendant  
18 says that if he is guilty of that then LeCompte Davis is  
19 also guilty of it. Well, so mote it be. He says so.  
20 I say that he is guilty of it, and if the defendant says  
21 if he is guilty of it LeCompte Davis is also guilty of it,  
22 that is a matter that will be or can be and should be and  
23 probably has been--I don't know,--attended to, or will be  
24 attended to; at any rate, it is not before the court now,  
25 and it is not before you now. LeCompte Davis certainly  
26 has not been spared exposure in this matter, and if there

1 is technical evidence sufficient to bring about the arrest  
2 and the prosecution of LeCompte Davis for that offense, then  
3 that should be done. But it is not being done now. That  
4 is not what we are discussing now. It is a very subtle  
5 and easy thing for one man in the toils to say, "Well, there  
6 is another fellow who did the same thing, and you can't  
7 punish me. I did it--yes, and he did it, but if you are not  
8 going to punish him you can't punish me." Well, we are  
9 not trying even Darrow for that crime. We are simply showing  
10 it as one of the criminal acts which he committed in this  
11 long conspiracy to defeat justice.

12 So much for the grand jury episode here with Behm. And  
13 then Behm goes back. Behm goes back. After the grand  
14 jury got through with Behm he thought it was about time to  
15 quit that sort of thing, and Behm goes back to railroading.  
16 He goes back. And after he has been back a long time he  
17 tries to get his money, what he claims is his due, out of  
18 the defendant for bringing him here, and he says the defendant  
19 doesn't give it to him. He says the defendant holds it out  
20 on him. We can't go into that matter and thresh that  
21 out. Behm has as good a right to believe that Darrow did  
22 not pay him enough as Darrow has to say that he did pay him  
23 enough. At any rate, Darrow wrote him this letter, dated  
24 October 19th: "Mr. Harrington handed me your letter, and I  
25 do not understand how you can get at your result. You are  
26 right in saying that we figured on \$451, which should cover

1 your time and expenses. I paid you \$100 some weeks before  
2 you came, and gave you \$251 when you left, and sent you \$100,  
3 etc." And then he ends up: "Of course, you know that  
4 I have full confidence in you and that under no circumstances  
5 would I let you lose anything that was your due. You also  
6 know how hard up we are, etc."

7 After Behm had been before that grand jury and had  
8 denied to them what he was doing with McManigal, don't  
9 you think he went back and told Darrow what he had said to  
10 the grand jury? Maybe he didn't--maybe he didn't. But, as  
11 reasonable men, as reasonable men, don't you suppose he went  
12 back and told Darrow that he had denied/ally, and that Darrow  
13 writes him and says: "You have my full confidende," a  
14 month or so after.

1 Now, there was a legal and a proper side to this Doc-  
2 tor Jekyll and Mr Hyde game. Let us see about this time  
3 what was being done out in the open, as it were. It was  
4 not really in the open, but proper and legitimate.

5 On August 9, which was about this time, Franklin at  
6 Darrow's office is employed by Darrow to investigate mem-  
7 bers of the trial jury. You remember he had been employed  
8 less than a month before to investigate the members of the  
9 grand jury, which was then in session. Darrow said he  
10 wanted to find out the apparent, age, religion, national-  
11 ity, feeling toward union labor, opinion in regard to the  
12 Times explosion, guilt of the McNamaras, financial condi-  
13 tion, and so forth, of each one of the 1600 or 1700 names  
14 in the jury box. Now, I am not making any particular quar-  
15 rel with him for that. That was out in the open. That  
16 was not specially improper, and I make no claim that it  
17 was. That is what Franklin was hired to do, mind you, and  
18 he was hired to do it by Darrow, and he was paid by Dar-  
19 row, and he reported to Darrow and to others, but he re-  
20 ported to Darrow. That is a big job, the investigation of  
21 1600 men. It means, as you have seen by testimony here,  
22 the going out and finding out by asking a man's neighbor  
23 whether he is in favor of union labor, or whether he has  
24 ever said anything against Union labor; it means finding  
25 out whether he had an opinion as to how the Times was  
26 blown up, and all that. One man could probably run around



1 and see two or three in a day. If he had good luck he might  
2 see more. But probably he would be able to see less.  
3 So you see it is a big job to see 1500 men. That being  
4 on the 9th of August, and the trial opening on the 11th or  
5 12th of October, that was a big job. Franklin undertook  
6 the job and went to work at it. That is the job that  
7 brings Franklin in touch with the jury. In that job he  
8 looksover the list day by day and week by week, and he  
9 scans them, and he finds out the ones that he knows among  
10 them, and so Franklin was employed and working in that  
11 field and so far as this testimony shows, and so far as  
12 I will claim, working honestly and committing no crime  
13 during August.

14 Now, let us have another little instance. Let us  
15 drop back. Let us have another little instance that  
16 happens in August. Let us see if there was a week went  
17 by that this man was not committing some crime in this  
18 case -- that this defendant was not committing some crime  
19 in this case in order to defeat justice.

20 Biddinger comes to California. Biddinger, the man whom  
21 this testimony shows, if it shows anything under God's  
22 Heaven, the man whom this testimony shows to be an honest  
23 man -- Biddinger comes to California and meets Darrow, and  
24 he had talked with him back in Chicago; he meets him  
25 down in the Alexandria hotel, whether by his appointment  
26 or Darrow's I don't remember, and it makes no difference,

1 so far as I know. What transpired? Let Biddinger tell  
2 it.

3 "Q -- Now, when you met Mr Darrow here in Los Angeles  
4 on the 15th of August, what time of the day was it you met  
5 him first? A -- About 8 o'clock in the morning. Q -- At  
6 the time you met him here in the Alexandria, who was pre-  
7 sent? A -- just Mr Darrow and myself. He wanted to know  
8 what evidence we had against the McNamaras, and where the  
9 evidence was kept, and whether I had been able to get hold  
10 of any evidence for him."

11 Get hold of any evidence. What do you mean by evidence?  
12 Why, you mean the things that are admitted in evidence.  
13 That was asked him afterwards. The things that were ad-  
14 mitted in evidence, the books, clocks and the keys, and all  
15 that sort of thing. That is called evidence.

16 "I told him that I had the keys that I had taken off of  
17 J. J. McNamara when I searched him at police headquarters  
18 in Indianapolis; they were the same duplicates of keys  
19 McNamara had when he had been arrested in Detroit."

20 That is Brice. "He says, 'That is a damned strong piece  
21 of evidence against him. I wish you could get hold of that.'  
22 I said, 'I have already got hold of it. I have hold of  
23 27 or 28 hotel registers. I have one register where J.J.  
24 McNamara signed for his brother, as J. E. Brice, at a road-  
25 house outside of Indianapolis at a dinner, and J.J. McNamara's  
26 own hand writing.' He said, 'Can you get hold of that?'

1 I says, 'yes.' He asked me how I would get possession of  
2 or get hold of it and I said I was the only one Mr Burns  
3 would trust, and he was going to send me out.' He wanted  
4 to know if I could not arrange for a couple of his boys to  
5 hit me on the head when I got on the train and take it  
6 away from me.. I said, 'I will see. I will let you know  
7 when I am going out with the evidence.' He said, 'I  
8 will bring up some money tomorrow.' I said, 'All right,  
9 how much will you bring?' And he says, 'I will bring  
10 down \$1000.' So we parted and made an appointment to  
11 meet at 8 o'clock."

12 Now, is Biddinger manufacturing that? Let us look it  
13 square in the face. Let us not sidetrack it, let us not  
14 dodge it. Is Biddinger manufacturing that, or did Darrow  
15 say it? Were those keys damned important evidence? Was  
16 that register showing the two McNamaras registered together  
17 one of them under the name of Brice, the name that he had  
18 committed this crime under -- was that important evidence?  
19 And did Darrow want it? And did he want to destroy it,  
20 or get it away from the prosecution? Biddinger says he  
21 did. Biddinger swears he did. Now, why? Why would not  
22 Biddinger go on about his business back in Chicago, or  
23 wherever it may be, and attend to his business and live his  
24 life, and all that sort of thing, and not come out here,  
25 away to California and swear to a lie? What for? What in-  
26 ducement? If you haven't seen that Biddinger is an hon-



1 est man, we will right in this instance, right in this in-  
2 stance. Darrow wanted to get possession of those things.  
3 Do you suppose it would take any stretch of the imagina-  
4 tion for you to imagine that the prosecution prized those  
5 things? Why, not for our gain; nothing to us as men, but  
6 as officers of the state, don't you know how much they  
7 meant to us? Don't you know how much they meant to him if  
8 we did not have them? He says right there in that connec-  
9 tion, "I will bring you down some money tomorrow." Oh,  
10 that was getting awfully close -- that was getting awfully  
11 good. He promised \$1000. But the next day, being care-  
12 ful, and not stingy, but just careful, he brings him down  
13 \$500 and tries that on him. Now, Biddinger did not have  
14 to tell anybody, did he, about this conversation with Dar-  
15 row? Biddinger did not ever have to fill his end of the  
16 bargain. Couldn't Biddinger -- I will leave it to you --  
17 couldn't Biddinger have taken that 500, good, hard dollars  
18 and slipped it down in his vest pocket and gone on working  
19 for Burns, gone on working for the prosecution, said noth-  
20 ing about it and told Darrow, "Well, I cannot do it; they  
21 are watching me too close", or something; "I cannot do it",  
22 and keep that \$500? \$500 is good; \$500 is worth \$500  
23 and \$500 feels good if it is honest, in the pocket in  
24 any man. And if this fellow had wanted to be dishonest,  
25 if there was one yellow streak in him anywhere, if there  
26 was one crooked hair in his head, he would have kept that



1 \$500 and said nothing to Burns or the District Attorney,  
2 or anybody else, and he would have kept that same \$200 that  
3 he got up there, and he would string this man Darrow along  
4 a little further, because Darrow could never have told it.  
5 Darrow could never have told it. Darrow would have to kept  
6 it to himself. And, mark you, Biddinger would not have  
7 betrayed the state, either. Biddinger could have gone on  
8 and given him testimony. And suppose -- ah, suppose Mr  
9 Biddinger comes and takes the stand in the McNamara case  
10 and Darrow cross-examines him after that, after Darrow had  
11 given him the \$500 and Biddinger starts in to swearing about  
12 the conversation with the McNamaras and about the keys,  
13 and all that sort of stuff.

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1 Why, Darrow would have stood there taking in anything he  
2 said. Darrow would not dare get up and say, "Didn't I give  
3 you \$500? What is the matter with you? " Or would Darrow  
4 have done the other thing? No, No. That 500 or \$700 was  
5 Biddinger's to have and to hold and to keep, if he wanted to  
6 be just the least bit shady. He could have had it without  
7 intentionally violating the law, perhaps, if he had not  
8 intended to deliver the goods to this defendant, and yet  
9 Biddinger would not be just a little bit shady. I want to  
10 tell you, my friend, there is in the human soul and the  
11 human heart a prevailing influence of honesty in most of us,  
12 nearly all of us, and we wont do these things. I know some  
13 people cannot understand that. They cannot understand that.  
14 They think that all they have got to show that a man, that he  
15 had a chance to steal. Well, there is many a chance to steal  
16 that comes that nobody knows anything about. There is many  
17 a chance to be crooked that comes that nobody knows anything  
18 about, and a man don't ask any credit for turning it down.  
19 Why, you turn it down because it is in your nature to turn  
20 it down. You turn it down because you are built that way.  
21 You turn it down because God Almighty made you in his  
22 own image, in knowledge, righteousness and truth, and you  
23 have not departed from it. That is why you turn it down, and  
24 that is why Biddinger turned it down, and when Biddinger  
25 turned that down he wrote across the sky, where every man  
26 could see it for all time, his record and his reputation and

1 his character for honesty, and I say to you when Biddinger  
2 comes here and states to you that this man wanted/<sup>him</sup>to give  
3 him, the defendant, these important pieces of evidence, and  
4 that he was trying to buy them, that he committed a crime,  
5 one of these series of crimes that shows the character of the  
6 man; that shows that he believes that every man has his  
7 price.

8 MR. ROGERS. Just a moment. I trust I am right in saying  
9 that your Honor will instruct the jury that all evidence  
10 of so-called other offenses, if so they may be denominated,  
11 are not allowed to go before this jury to show the character  
12 of the defendant.

13 MR. FREDERICKS. That is correct, I understand the point.

14 MR. ROGERS. And I think counsel ought not to argue that it  
15 does show his character.

16 THE COURT. Captain Fredericks says he understands the point.

17 MR. FREDERICKS. Counsel is correct, that is the law. That  
18 is the purpose of it, the purpose of introducing this evidence  
19 is to show that this defendant was engaged in a system, and  
20 that this is a part of the system, not, of course, to show  
21 his character, that can be only shown by calling witnesses  
22 and say what is his reputation, is it good or bad? It is  
23 good. Why? But you get my idea just the same. You get the  
24 idea just the same. The man who would do this with Biddinger  
25 this is a link; this is a part; this is the power of  
26 Money that he was using systematically. This shows that

1 his system was born of the blood, that all men had their  
2 price. This shows the system existed; this shows the plan,  
3 the core of the idea, and all, and it shows it so plain that  
4 you don't need Franklin to tell you when he is caught down  
5 there on the street with \$4,000 bribing a jury man, it  
6 shows it so plain that this is another step in this system,  
7 that you don't need Franklin to tell you that Darrow is the  
8 man that did that. Why, you know it just as well as you  
9 know a link in the chain, when you have seen a dozen other  
10 links all along the line--

11 MR. ROGERS. Pardon me, but as his statement is a reiteration  
12 of his former statement, that you could deduce from the fact  
13 a man, perchance, might have committed other offenses, he  
14 is likely to have committed another one. I don't think a  
15 man could draw any other conclusion from his statements.  
16 He has just told me he knows what the law is, and I think he  
17 ought not to argue that, as the court has just said he would  
18 instruct the jury they cannot draw that deduction.

19 MR. FREDERICKS. Now, counsel cannot make an argument. If he  
20 wants to take an exception, take it.

21 THE COURT. Do you wish to take an exception?

22 MR. ROGERS. Yes, I do note an exception. I call your  
23 Honor's attention to the fact that your Honor has an in-  
24 struction of which I have just spoken.

25 THE COURT. Yes, sir; under Captain Fredericks' avowal, if  
26 he has made any statement, it is an inadvertence, and the



1 jury are instructed to disregard it.

2 MR. FREDERICKS. I am now talking inside of those instruc-  
3 tions that you are going to read. The court will instruct  
4 you as to the purposes of the introduction of the evidence  
5 of other crimes. Well, the court doesn't need to instruct  
6 you in that; your good sense will tell you what the pur-  
7 pose is, and what it is and what it means.

8 Now, then, do you see any system, do you see any similarity  
9 do you see anything in the Biddinger incident that looks  
10 like all the other incidents? Step by step we will go along  
11 until, I say to you, when we are through, you would think a  
12 man was an insane man, you would think Franklin was an  
13 insane man or a liar, you would not believe him for a  
14 minute, if you tried to put this job off on any one else.

15 Now, so much for that. Is Biddinger an honest man?  
16 Was Darrow trying to bribe him? Oh, the power of memory is  
17 a weak thread. It won't stand the weight of very many  
18 green backs hung on it. How easy it is to forget just what  
19 the conversation was, if your forgetter is plastered over  
20 with hundred dollar bills! How easy it is to forget!

21 I wonder, if Biddinger had been what Darrow thought he was,  
22 I wonder where the state would have gotten off when they put  
23 dependence in Biddinger? I wonder what his testimony would  
24 have looked like after he had <sup>gone</sup> through the mill with Darrow  
25 for a month or so. I wonder what it would have looked like.  
26 Why, they say to you that old Bob Bain said he didn't intend-

1 that if the evidence showed that the defendant was guilty  
2 he was going to find him guilty even though he did take the  
3 money. Do you suppose that any prosecution under Heaven  
4 could ever have made Bob Bain think the defendant guilty under  
5 those circumstances? Don't you think that old Bob  
6 would have seen a doubt? Why, he would have started into  
7 that investigation with the idea of picking a flaw, a fault,  
8 with every piece of testimony that the prosecution put in.  
9 He would pick the flaw in it. And with every piece of  
10 testimony that the defense put in he would have glossed it  
11 over and made it look good and swallowed it. And when he  
12 got through Bob Bain, if the defendant himself, McNamara,  
13 had taken the stand, and admitted his guilt, old Bob would  
14 have still thought he was lying and that there was some  
15 trick about it. It is like some people nowadays, they  
16 have said that they don't believe the McNamaras blew up  
17 the Times--they think it was blown up by gas--even after they  
18 have plead guilty. You could no more have made a witness  
19 out of Biddinger under those circumstances than you could  
20 have made an honest juror out of Bain under those circum-  
21 stances. That is why we must have men when they take their  
22 place in the box who have no predilections, <sup>who have</sup> /no opinions,  
23 whose minds are fair, who have no prejudice, whose minds  
24 are unbiased, who are not trying to pick a hole here or  
25 fill a hole there, but who will patiently look at all the  
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1 evidence that comes in and weigh it without prejudice,  
2 without feeling and without fear.

3 I made some reference yesterday to the \$10,000 episode  
4 and Mr. Appel did not quite agree with me on what the testimony  
5 was--and that is not to be wondered at. Now, he was right,  
6 and I was right. He was wrong and I was wrong; but I  
7 think that between the two of us he was a little more right  
8 than I was about the \$10,000. I am going to make this  
9 admission, because I must quote this testimony right to  
10 you. My memory is only the memory of a man, and while I  
11 think I have a good memory for testimony, a remarkably good  
12 memory for testimony for some reason or other, still I may  
13 not get it right. Now, I thought there was something in  
14 here about that thousand dollar bill, and I will tell you  
15 what it was. Here is what it was. It was a question  
16 asked of Mr. Ledeme, the cashier. It will be found in the  
17 transcript, Volume 33, page 2652. "Q--What kind of money?  
18 A--In large bills. That is, bills of fifties, hundreds,  
19 five hundreds, to the best of my recollection. There may have  
20 been thousands, but I wouldn't be certain."  
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1 There is the testimony -- "There may have been thousands  
2 but I wouldn't be certain." I knew I had the impression  
3 of thousands. Now, Mr Darrow attempts to make an innocent  
4 transaction of this; but, oh, ~~what~~ a sorry attempt it is  
5 even for such an able man as he is. I will tell you,  
6 gentlemen, when you start in to manufacture something to  
7 fit in with the truth, you have got a job cut out for you  
8 that takes an able man to fill. Now, you remember the tes-  
9 timony of Mr Darrow in that regard. Mr Darrow said that  
10 Tveitmoe had asked him to reimburse him for money that he  
11 had already expended, and Darrow says, "I told him I  
12 couldn't do it at that time, that I hadn't the money, but  
13 I would do what I could when the money came in to var-  
14 rant it. I was in San Francisco and gave him one of these  
15 checks for \$10,000. He asked me to give it to him on the  
16 money he had expended."

17 Further along he says: "I told him" -- Tveitmoe -- "that  
18 he could take this and it could be used for the purposes  
19 of this case" -- that is, the McNamara case -- "whatever  
20 investigation was needed there, or expense of witnesses  
21 was needed there, or if we had to maintain witnesses pre-  
22 ceding the trial and during the trial, and that if I could  
23 get any more he should have it, etc".

24 That is the purpose which Mr Darrow says he gave this  
25 money to Tveitmoe for. Let's see what Mr Hunt says. Mr  
26 Hunt was one of the bankers. Hunt says: "Check No.30,



1 is the check in question, exhibit 10-A, for \$10,000, was  
2 presented to him by Cleveland Dam, Tveitmoe's attorney, with  
3 a request for large bills, and the check was deposited  
4 and went through, and so forth, with a request for large  
5 bills. "

6 Mr Ledeone says, "Q-- At what place did you meet him?

7 A -- At my window. Mr Hunt came to my window and Mr  
8 Tveitmoe handed me this check and asked me if I had  
9 \$10,000 in big bills."

10 So it is undisputed that this man Tveitmoe was re-  
11 questing big bills. And he says, "Ledeone says, ' I paid  
12 him in large bills, that is, bills of fifties, hundreds,  
13 five-hundreds,' to the best of my recollection. There may  
14 have been thousands, but I wouldn't be certain.'"

15 Big bills! Now, he says, "I wouldn't be certain of  
16 the thousands." So, for the purposes of this that we  
17 are talking about just now, we will say five-hundreds. Now,  
18 what good would five-hundreds, a bunch of five-hundreds, be  
19 to Tveitmoe, under the circumstances shown here in the tes-  
20 timony of the defendant?

21 MR DARROW: May I interrupt you a moment? You didn't  
22 state my testimony in full.

23 MR FREDERICKS: I don't have to state it in full. I read  
24 what I wanted. I stated it fairly.

25 MR DARROW: Oh, no.

26 MR FREDERICKS: yes, I did. You make your objection.

1 MR APPEL: The testimony of the cashier was that there was  
2 fifties and hundreds and five-hundreds and there may have  
3 been thousands, but he wouldn't be certain.

4 MR FREDERICKS: That is what I read.

5 MR APPEL: The testimony of Mr Darrow should be fully  
6 stated, or substantially in full. I don't wish to inter-  
7 rupt counsel, but it is an important point, and your Honor  
8 will be kind enough to pardon us for the interruption.

9 MR DARROW: I want him to add the further statement which  
10 he will find right there, that if there was any left he  
11 could apply it on what he had already expended himself.

12 MR FREDERICKS: That is what I read -- that is all there  
13 is. You can take your exception, and I don't believe it  
14 is in good faith.

15 MR DARROW: I take an exception to that.

16 MR FREDERICKS: I do not think the objection is made in  
17 good faith, because it does not differ materially from  
18 what I said. It is just exactly what I have said. It  
19 does not add to and does not detract one iota from what  
20 I have said. There may have been thousands. There were  
21 five-hundreds, and I want to say to you, what was Tveitmoe  
22 going to do with five-hundreds in the settling of his  
23 little bills there for witnesses and one thing and another?  
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1       Gentlemen, that is the money that we have got right  
2 here in court, if there is any dependence in human testimony  
3 or human judgment, and when Ledemoe said, "There may have  
4 been thousands," there was at least one thousand, and that  
5 one thousand is the one thousand that the clerk has got in  
6 his envelope right now.

7       Why, gentlemen, how do you suppose--stretch your imagina-  
8 tion a while now and use your judgment, and how do you  
9 suppose the District Attorney knew where to go to find  
10 that this defendant had cashed a check for \$10,000 and that  
11 bills had been taken out for it? How do you suppose, with  
12 all the thousands of banks that there are in the United  
13 States and up and down this coast, <sup>that</sup> are accessible to the  
14 defendant in this case? How do you suppose we knew where  
15 to go to find that fact? Why, to start out without some  
16 knowledge would be just exactly like looking for a needle  
17 in a hay stack. Is it not a fair argument to say to you  
18 that you should remember what John Harrington said when he  
19 said, "I told the prosecution just about Christmas time that  
20 Darrow told me he got this money out of Tveitmoe's bank."

21 MR. APPEL. We take exception to that. There is no  
22 evidence that John Harrington ever said he told the prosecu-  
23 tion that.

24 THE COURT. The objection will be noted. The jury will  
25 remember the testimony. I think, Captain, Fredericks,  
26 this is a good time for the morning recess.

1 (Jury admonished and recess taken.)

2 (AFTER RECESS.)

3 THE COURT. You may proceed, Captain Fredericks.

4 MR. FREDERICKS. Just at recess I had stated that the  
5 evidence here shows that John Harrington about Christmas  
6 time told for the first time the prosecution about Darrow's  
7 having told him that he got this money, \$10,000, I think  
8 it was, from Tveitmoe's bank in San Francisco. Counsel for  
9 the defense said that that was not the evidence. I say that  
10 it is the evidence, and you will remember. You will remem-  
11 ber that Harrington testified that after he had finished  
12 his work for Darrow and quit and started back to Chicago,  
13 that he was stopped in Albuquerque by a United States grand  
14 jury subpoena and brought back here, and he says that when he  
15 was brought back here that time is the time when he told  
16 that Darrow had told him about getting the money from  
17 Tveitmoe's bank in San Francisco. Now, then, the very fact  
18 that we are able to go to that bank and find such a check and  
19 find that cash had been taken out, doesn't that show that  
20 when John Harrington tells you that Darrow tried to feel  
21 him out on this proposition, and told him he had \$10,000  
22 from Tveitmoe's bank, doesn't that show that John Harrington  
23 told the truth? Why, just as plain as reason; just as  
24 clear as the crystal sunlight. It shows that John R  
25 Harrington, what little he did know about that, told it,  
26 and what he told was the truth. It is in evidence here



1 that these checks were gotten by the Indianapolis grand jury  
2 by having this man Morrison, who issued the checks, brought  
3 from Washington City to Indianapolis, and there he was  
4 made to turn over these checks and this check book to the  
5 United States grand jury at Indianapolis, and that is the  
6 way it came here.

7 MR. DARROW. I object to that statement, your Honor. There  
8 is no such evidence.

9 MR. FREDERICKS. That is the evidence. Take your exception  
10 and let it go at that.

11 MR. DARROW. There is no evidence in this case to that effect  
12 It was from John Harrington's statement--

13 THE COURT. You object to the statement and assign it as  
14 error, do you?

15 MR. DARROW. Yes.

16 MR. FREDERICKS. I object to counsel being permitted to make  
17 an argument at this time. He has had three days.

18 THE COURT. There will be no argument.

19 MR. FREDERICKS. That is argument, your Honor, and I do not  
20 want to be interrupted this way. They have had three days.  
21 If they wish to correct me on any point, I gladly welcome  
22 the interruption.

23 MR. DARROW. That is what I was trying to do.

24 MR. FREDERICKS. Then let them quit this matter of arguing.

25 I say to you that it is a conclusion that any reasonable  
26 man would draw, that when John Harrington says in evidence

1 here, told this prosecution that Darrow had told him where  
2 this money came from, that it is a matter--and it is also  
3 in evidence that this man Morrison was brought before the  
4 grand jury at Indianapolis--it is a matter of fair deduc-  
5 tion that it was done at the request of the District  
6 Attorney's office here to get possession of that check.  
7 That is not a statement of testimony; that is a deduction  
8 from testimony, and it is a fair and reasonable one.

9 I say to you that this testimony shows that there is no  
10 way on God's green earth that we could have found out what  
11 bank to look in. Why, that check, when it came into the  
12 hands of the authorities in Indianapolis, looked just like  
13 any other check. It was a check for \$10,000. We would  
14 have been running all over the earth. No, gentlemen, it  
15 shows that John Harrington spoke the truth, and that John  
16 Harrington gave an honest statement, and it shows that  
17 John Harrington, whatever may have been his faults or  
18 ethics, whatever may have been his timidity of manner and  
19 cowardice, as counsel says, whatever it may have been, it  
20 shows that John Harrington has got some honesty in his  
21 carcass. It shows that John Harrington will not be a party  
22 to jury bribing.

1 That is what it shows. It shows that John Harrington will  
2 not protect a man in bribing a jury, even though he has  
3 eater and slept under his roof. And I maintain, gentlemen,  
4 that that is nothing against John Harrington. I maintain  
5 that it is the duty which a man owes to the state to re-  
6 veal. Why, if John Harrington had wanted to lie about  
7 this, if John Harrington had wanted to tell a lie, if he  
8 had wanted to implicate this defendant wrongfully and un-  
9 truthfully, don't you believe he would have had a dozen  
10 different statements out of him? Don't you believe he  
11 would have had them every day in the year? Don't you  
12 believe he would have come down here with two statements,  
13 incriminating statements, one way back in September and  
14 another on the morning of the 28th. Don't you believe he  
15 would have come in here and had Darrow say, "yes, I gave  
16 Franklin that money"? Don't you believe he would have  
17 come in here if he had been untruthful, if he had wanted  
18 to soak Darrow, don't you believe he would have told a lie  
19 that would have stung harder than the ones he told?  
20 Why, gentlemen, the very smooth and the very decency, the  
21 very lack of roughness, the very lack of an attempt to hurt  
22 in his testimony shows that what there is of it is the  
23 truth, and I don't care what they may say about John Har-  
24 rington. Mr Darrow says he was a coward. I wonder if he  
25 learned that Harrington was a coward when Harrington was ar-  
26 rested on contempt of court and brought up here on the

1 charge of tampering with a witness? I wonder if then Har-  
2 rington refused to go on with the job? I wonder if then  
3 that occurred? I wonder if that is how and why Mr Darrow  
4 says Mr Harrington is a coward?

5 Well, gentlemen, some people may say it is cowardice to  
6 refuse to violate the laws of the state, and others may  
7 give other reasons for a man refusing to violate the laws  
8 of the state, and I am not going to say that a man who  
9 does not go out and commit a crime is a coward, and that is  
10 the only reason why men commit crime, not in a thousand  
11 years.

12 Now, I want to talk to you about Dickelman. In re-  
13 gard to other offenses, and you may use them and you may  
14 consider them. The court will instruct you that testi-  
15 mony has been introduced by the prosecution, which it is  
16 claimed to show the commission of other criminal acts,  
17 or offenses by the defendant, similar to those charged in  
18 the indictment. I charge you that this evidence as to the  
19 commission of other offenses by the defendant was admitted  
20 for the sole purpose of proving guilty intent, motive, guilty  
21 knowledge, scheme or system of criminal action or design or  
22 plan on the part of the defendant. And it is to be consider-  
23 ed by you for that purpose.

24 MR DARROW: I want to take an exception to reading an in-  
25 struction to the jury.

26 THE COURT: The exception will be noted. Let me have the



1 instruction.

2 MR FREDERICKS: That is just my copy. I am through with  
3 it.

4 THE COURT: The exception will be noted.

5 MR FREDERICKS: Now, then, how are you going to consider  
6 these other offenses? Oh, the defense would like to dis-  
7 abuse your minds altogether of the idea of these other  
8 offenses. The defense would like to have you forget about  
9 these other offenses, but, gentlemen, you cannot forget about  
10 them. They are part and parcel of this great case. They  
11 show the system, the design, the intent, the guilty knowledge  
12 of this defendant.

13 Now, let's take <sup>the</sup> Dickelman matter. They say that in  
14 this case if Darrow is guilty, then LeCompte Davis is  
15 guilty, but let us see. I hold no brief for LeCompte Davis  
16 and I shall not spare him, neither shall I unjustly accuse  
17 him. Let us see. Whose brother-in-law went to Albuquer-  
18 que? Davis'? No. When Dickelman is taken out of Albuquer-  
19 que and back to Chicago, to whose office is he taken?  
20 Davis'? No. Whose friends does he meet back there?  
21 Nockels and Hammersrom. Davis'? No. But if it  
22 would show for one instant that LeCompte Davis had done  
23 the criminal acts in this matter I would not shield him,  
24 not for one moment, not for one instant. Why should I?  
25 I think more of my own peace of mind, of my own knowledge of  
26 an honest attempt to do my duty. I think more of my own

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1 composure, and the fact that I can go home and sleep  
2 at nights, than I do of the friendship of anybody, for I  
3 have got to live with myself, and if I take a canker in my  
4 conscience and try to carry it around with me, it will  
5 drive me to misery sooner or later. Put it on that self-  
6 ish ground, if you want. It is a selfish ground, but I  
7 will not shield any man in the commission of crime, no mat-  
8 ter what I think of him. Why should I.

9 Dickelman. You remember Dickelman as he came on the  
10 stand here. Not a very strong-looking fellow. A hotel  
11 clerk. Testifies that he was the hotel clerk in the  
12 Baltimore hotel here in Los Angeles  
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1 who registered a man by the name of J B Brice on the night  
2 the Times was blown up, who identified the signature of the  
3 man who was taken over to jail here when J B McNamara  
4 was arrested, and asked whether that was the man, and they  
5 say he didn't identify him. I say he did. Here is what  
6 he said: "Q State whether or not--" quoting from volume  
7 20, page 1576: "Q State whether or not you informed the  
8 District Attorney after you had seen J B McNamara over in the  
9 county jail, that he was the same man whom you had seen  
10 on the night or the day previous to the Times explosion  
11 at the Hotel Baltimore here in Los Angeles? A Why, I  
12 identified him almost as positively as I could under the  
13 circumstances." And again over on transcript 21, 1573,  
14 he said: "I told him, (Hammerstrom) it certainly looked  
15 like the man." That was Hammerstrom back in Chicago.

16 Now, gentlemen, a case is not built up by one witness.  
17 This man identifies the signature. This man said, I  
18 believe, practically--I believe this McNamara is the man.  
19 Now, suppose--suppose that he was the only link that we  
20 had to connect McNamara with his presence here in Los  
21 Angeles? Suppose that signature down there on the hotel  
22 register was the only thing to connect McNamara, the man  
23 we had in jail, and show he was in Los Angeles when the  
24 Times was blown up? What is this little hotel clerk worth?

25 Now, gentlemen, the state cannot keep a hotel and keep  
26 witnesses from June until away along in the fall. They

1 must go along about their business and earn their living,  
2 and as soon as the case is set they were put under subpoena,  
3 but the testimony in this case shows that before this  
4 case was set and before Diekelman could be put under subpoena  
5 he had been taken out of the state. Not surreptitiously ,  
6 not trying to get away from us . He testified that he was  
7 communicating right along with the District Attorney and  
8 telling him where he was, and that he was agreeing that  
9 he would be here, and all that sort of thing.

10 Now, gentlemen, if Biddinger was worth \$500 or \$5000  
11 to parrow, what do you think little Diekelman was worth  
12 to him? Do you think that it was not a pretty good thing  
13 that little Diekelman should be left alone; that little  
14 Diekelman should be in a position where he could not be  
15 tempted? How did we know how much temptation little Diekel-  
16 man could stand?



1 And finally he goes to Albuquerque, and they say here that  
2 a Burns man appeared in Albuquerque. They say he was there  
3 on another matter. They say they found out afterwards  
4 he was there on a smuggling business. That is the tes-  
5 timony. But assume that he was there, as they would have  
6 you assume -- assume he was there watching this little wit-  
7 ness, keeping his eye on him, why, Dickelman says he never  
8 knew he was a Burns man, he never knew he was watching  
9 him, he never knew anything about his connections or his  
10 intentions. That is what Dickelman says in his testimony.

11 Now, you have got little Dickelman down in Albuquerque--  
12 the man above all men -- why, gentlemen, what was he worth  
13 to them, if they were willing to do those things? And  
14 remember, it is but fair to assume that in September,  
15 when the Dickelman matter came along, the prosecution knew  
16 of the Behm matter, George Behm matter, that the prosecu-  
17 tion knew of the Biddinger matter, that the prosecution  
18 knew of Mrs Caplan's flight, and assume then, if you will,  
19 that the prosecution must have been on their guard, and that  
20 the prosecution must have known of the dangerous posi-  
21 tion it was in with regard to this witness. Now, Dickel-  
22 man goes down there, and Mr Darrow says that he wanted  
23 to send down there and interview Dickelman to find out  
24 whether Brice was the man that was down at the hotel.  
25 Ah, he says that Hammerstrom was to find out whether  
26 Brice was the man that was down at the hotel. Brice was

1 here in the county jail, Brice was Darrow's client.

2 It seems to me it would have been a much shorter route  
3 for Mr Darrow to have asked Brice whether he was really  
4 down there or not. Ah, no, that is not what they wanted.  
5 Let me show you how this testimony reads.

6 Well, Dickelman didn't understand it all, and yet  
7 the little fellow appears to be honest, appeared to feel  
8 that there was something wrong about it, although he did  
9 want to take the bait, although he did take the bait to a  
10 certain extent, although he did go to Chicago and not  
11 here to Los Angeles, where the case was on trial, not in  
12 Chicago.

13 Ah, gentlemen, what was the action of the prosecution?  
14 George Home testified that he went back to Chicago and  
15 that he brought Dickelman back, not to Kansas City, not to  
16 Pittsburg, not to New York, but he brought him back to  
17 Los Angeles County, where the prosecution wanted him.  
18 And let me tell you, you can well imagine that it was a  
19 pretty good piece of work for Mr Home under the circumstance:  
20 without a subpoena, to get Dickelman back, and it shows  
21 that Dickelman had wakened up to the situation that he  
22 was in back there in Chicago. They were putting men  
23 around him, in rooms around him, he says, to keep people  
24 from bothering him. Ah, Mr Dickelman, you are lucky--  
25 you are a lucky dog -- that you came back to Los Angeles  
26 to testify!

1 Now, gentlemen, let me just show you how they worked on  
2 little Dickelman. He was down there in Albuquerque in  
3 charge of a restaurant when Hammerstrom, the brother-in-law  
4 of Mr Darrow came down, and Hammerstrom says: we have  
5 looked all over the country for you. The prosecution are  
6 trying to keep you away from us and we have had a hard time  
7 to locate you, and we finally got word where you were  
8 through your mother up in San Francisco. So he told me  
9 that I was practically on their side of the case, and that  
10 I was really their witness, and if I hadn't been subpoenaed  
11 that I would never be wanted by the state --

12 You know these people don't come right out and hit  
13 you on the head with a club. They are nice and delicate  
14 and gentle, and they simply slide you over on their side.  
15 And there is a big restaurant in Chicago that needs a  
16 manager;

1 and Darrow has lots of influence with the unions and the  
2 restaurants there, and you would just be the man to be the  
3 manager of that big restaurant, Mr. Diekelman. You are our  
4 witness, Mr. Diekelman, and not the witness of the state.

5 Of course, you cannot go at a stranger and say, "Come  
6 here, old man; we don't want you to testify with the other  
7 fellows. We will give you a job. Come on with us."  
8 No they have got to coash him along, smooth him along,  
9 get him along, but get him. With all thy getting, get him.

10 "Because I was not their witness, so I told him I didn't  
11 know about that. I told him I promised to appear there, and  
12 promised Mr. Fredericks that I would be there, and they said  
13 they wanted me, and he asked me if I had been subpoenaed, and  
14 I said No, at the time, and he said, well, they will never  
15 call you. I will have to wait and see. And he says, I under  
16 stand from your folks that you intend going to Chicago  
17 shortly, and so he asked me how I would like to take the  
18 trip. And so he goes on. It takes time to read it all.  
19 I thought I would read it to you. Let me give you a little  
20 restaurant business, just as an indication of the methods  
21 of this high minded defendant.

22 "He said, Hammerstrom, he asked me if I knew the Rectors  
23 Restaurants in Chicago. I said Yes. He said, 'Well, I  
24 think Mr. Darrow is interested in that,' and he said, 'How  
25 would you like to be assistant manager in that? I said it  
26 would be pretty nice, but I did not think I could hold it;



1 it is too big a job for me. He said, 'Well, we can fix that  
2 all right.' I said, I didn't think I would care to try it.  
3 So he asked me if I would not like to consider going with  
4 him to Chicago, if I had any objection to going. I told  
5 him I would like to have him wait a few weeks, and, I  
6 said, 'You can go to Chicago and if I find I am not wanted  
7 I can come on your side then, if I am favorable to your  
8 side.'"

9 Diekelman didn't know what a valuable witness he was.

10 "'Well, it is a matter we are in a big hurry about,'  
11 says Hammerstrom, 'and I am up here, and I have got to  
12 get through with you so if you can give me an answer I want  
13 you to come with me. I have to go to Chicago and come back  
14 on important business.' So I told him I would not consider  
15 anything at that time; I would wait."

16 And then he sends a telegram to the District Attorney  
17 at Los Angeles and tells him about this; and Bibby comes  
18 in on the scene, and then they offer him \$30 a week, and  
19 they gave him the first dollar. \$30 a week whether he worked  
20 or whether he did not work, and they gave him the first 30.  
21 Oh, they gave him the money to come back to Los Angeles with  
22 --oh, sure. But you know he testified he did not use it to  
23 come back to Los Angeles with and I hope he has got it yet.  
24 They gave him money. Money! Money! Oh, money! I almost  
25 hate it since I have been through the experiences of that  
26 case, and I want to tell you I almost hate it. Money!

1 Why, money!

2 And they took little Diekelman back to Chicago, this  
3 high minded man, who only wants to do what is right for the  
4 poor' workingman, he takes little Diekelman back to Chicago,  
5 and George Howe of Los Angeles, of the Los Angeles City  
6 Detective Department has to go back there to get him, and  
7 as good luck would have it for all of us, he got him.

8 And then a telegram goes along the line. Cooney goes back  
9 east with instructions to tell Hammerstrom: "Do not come  
10 back to Los Angeles for a while; do not come back until  
11 this blows over." Why, if there was nothing wrong about it  
12 --why not come back to Los Angeles? Why not? No, no; it is  
13 just one part and parcel of the whole thing from beginning  
14 to end.

15 I could talk to you about that Diekelman business for  
16 an hour and tell you something interesting every minute  
17 of it, as it is brought out here in the testimony, I have  
18 no doubt. But you remember it. I do not need to take  
19 your time on it. You remember Diekelman, and you remember  
20 the incidents, and you remember how they went there and how  
21 they took him away. Now, suppose, gentlemen--where would we  
22 have been without Diekelman when we tried to prove that  
23 J J McNamara was in Los Angeles, that J B McNamara was  
24 in Los Angeles under the name of Brice at the time the Times  
25 blew up? Oh, he was their witness, was he? Well, there  
26 is one thing he was absolutely sure of, and that was the

1 signature of Brice, that he saw Brice make the signature.

2 It is in evidence here that we had 70 or 80 registers from  
3 all over the country, and it does not take any very big  
4 stretch of the imagination, or do violence to your judgment,  
5 to assume that if we only had the signature we would be  
6 able to prove it, if we could get only proof that he wrote  
7 this one. But with little Diekelman running a restaurant  
8 back in Chicago, out of the reach of our subpoena, a good  
9 job at \$30 a week and nothing to do, where would we be?  
10 If Biddinger was worth \$500 or \$5000, if McManigal was worth  
11 all the trial and trouble, and all the crime that was done  
12 to get him over, if Caplan was worth getting out of the  
13 state, and all that, what was little Diekelman worth?  
14 And you bet they did not waste any time getting him back  
15 to Chicago, back to Darrow's office, back to Nockles, two  
16 or three thousand miles away from where his testimony  
17 would be needed. Oh, yes, they could bring him back, or  
18 he could come back. Yes, that is true. He could--maybe.  
19 Maybe he would not want to come back.

20 Now, gentlemen, I have not used one word of the testimony  
21 of Bert Franklin so far, not one word, and yet I have shown  
22 you a chain of crime--crime fastened absolutely onto this  
23 defendant of a similar nature, intended to defeat justice  
24 and prevent the honest and proper trial of the McNamara  
25 case, just such a crime as bribing a jury would be, and  
26 all of the time I have been talking about Diekelman and  
Biddinger Franklin was out with his men making this investi-

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1 gation.

2 Now, Mr. Clerk, have you the check of Mr. Darrow and the  
3 deposit slip of Bert Franklin on October 6th?

4 Now, I am going to talk to you a little about Franklin,  
5 and I am going to show you this case without one word  
6 from Franklin; or, I am going to show you that the truth  
7 was hedged him in on one side and on the other that he had  
8 to tell the truth; that there was no way out of it, because  
9 it had to appeal to a reasonable man and reasonable men.

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1 Bert Franklin says that he went to Darrow's office, he  
2 had had a little preliminary talk with him the day before,  
3 that he had talked to him a little before, about the men  
4 that he knew personally on the jury -- and, of course, he  
5 could not reach anybody that he did not know personally  
6 with a proposition of this kind, and very few of them, and  
7 he had had a little talk with him; he had talked with him  
8 about Bain prior to that time. I am going to talk now about  
9 the 6th day of October; that he had talked to him about  
10 Bain a little prior to that time, and that on the 6th of  
11 October he went into Darrow's office, talked to him about  
12 getting Bain, and Darrow gave him a check for \$1000.

13 "He then asked me what I thought about Mr Bain, and <sup>I</sup>ask-  
14 ed if he wished me to see Mr Bain along that line and he  
15 said yes. He asked me if I thought I could get him. I  
16 told him that I thought I could; that Mr Bain was the  
17 kind of a man if he did not want to go in that way he  
18 would come out and tell me so, and that would be all  
19 there would be to it. He said, all right, I will give you  
20 a check for \$1000; and he turned to his desk and wrote  
21 the check and handed it to me and I left the office."

22 Bert Franklin says that was on the 6th. The check comes  
23 in here dated the 4th. Now, gentlemen shows that it was  
24 cashed at the bank on the 6th. I do not care whether it  
25 was given to him on the 4th and he has forgotten the  
26 date, or whether Mr Darrow intentionally or accidentally

1 put a wrong date on it. I do not care a snap of my finger  
2 when that check was dated; that makes no difference.  
3 The real matter worth considering is: when did Franklin  
4 cash it? When did Franklin get the money on it? And  
5 the check itself shows that he got it on the 6th day of  
6 October. The check shows that it went through the bank  
7 that day. The bank cashier or teller says that it was pre-  
8 sented on that day, that it was Darrow's check, and he  
9 remembers it. The deposit slip at that time shows that  
10 he deposited \$1000 on that day.

1 The check shows that it was deposited on that day, and  
2 that there was no other deposit on that day except that  
3 \$1000, therefore, that shows absolutely and conclusively --  
4 that is, to Franklin's account -- that that check of a  
5 thousand dollars was deposited by Franklin on the 6th day  
6 of October, and \$500 of it was taken out.

7 MR KEETCH: The check is in the clerk's hands to show.

8 MR FREDERICKS: Well, I don't know whether there is any  
9 doubt about the facts in that matter or not. If there are,  
10 we will get the check. Then, suppose we adjourn and come  
11 back a little before 2 -- half past 1.

12 THE COURT: All right. Half past 1.  
13

14 Thereupon the jury was duly admonished and a recess  
15 taken until 1:30 o'clock P.M.  
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1 AFTERNOON SESSION. Friday, August 16, 1912.

2 1:30 P.M.

3 Defendant in court with counsel.

4 THE COURT. You may proceed, Captain Fredericks.

5 MR. FREDERICKS. Have you those exhibits? Lay those right  
6 out there where I can get them.

7 Before I start on that, gentlemen, I want to call your  
8 attention to another incident. The defense claims that  
9 a great many of our witnesses are scoundrels. They say that  
10 Harrington is a scoundrel, that Franklin is a scoundrel,  
11 that Behm is a scoundrel, that Cooney isn't much good, that  
12 Fitzpatrick is a bad one, that Mayer is another bad one.  
13 Well, suppose they are. What was Darrow doing in this great  
14 case with a bunch of scoundrels? He hired them. He selected  
15 them. He paid them. They reported to him. They were his  
16 men. If he was hiring a bunch of scoundrels, why was he  
17 doing it?

18 Now, I want to talk to you about the Bain case, and I  
19 want to talk to you about as much of this testimony as  
20 possible without asking you to reply on the testimony of  
21 Franklin. But before I leave this thought that I had here,  
22 that I had given you before, about all these men, I would  
23 call your attention to the fact that the court will instruct  
24 you that even though some of these witnesses may have been  
25 accomplices with Darrow in other crimes, that that does  
26 not make them accomplices in the crime under investigation.



1 The court will instruct the jury that although it may appear  
2 in evidence that a witness or witnesses who have testified  
3 in this case may have been accomplices of the defendant in  
4 some other transaction, if such should appear in evidence,  
5 yet, nevertheless, unless you find from the evidence that  
6 such witness or witnesses were accomplices with the  
7 defendant in the commission of the particular offense for  
8 which the defendant is now on trial, to wit, the bribery  
9 of Lockwood, then, I charge you that the evidence of such  
10 witness or witnesses does not require the corroboration  
11 mentioned in these instructions concerning accomplices,  
12 the corroboration required as to the testimony of accom-  
13 plices applies only to accomplices in the crime charged  
14 in the case on trial.

15 MR. ROGERS. Do I understand your Honor has given that  
16 instruction?

17 MR. FREDERICKS. No, but will.

18 MR. ROGERS. It is not the law, and I don't think the  
19 court will give it.

20 MR. FREDERICKS. The court has informed us that he would  
21 give that instruction. I sent to find out.

22 THE COURT. Counsel is assuming that the court will give  
23 that instruction.

24 MR. ROGERS. He said the court will give it. If the court  
25 follows the law the court will not give it, as I understand  
26 it.

1 MR. FREDERICKS. Then if the court doesn't give it, I  
2 simply come out wrong.

3 THE COURT. Go ahead.

4 MR. ROGERS. I take exception to the reading of instruc-  
5 tions that are not settled.

6 MR. FREDERICKS- All right. Now, let us talk about the  
7 Bain incident without using the testimony of Franklin.  
8 Do you doubt for one moment that Bain was bribed?  
9 Can any reasonable man for one moment need any argument  
10 on that subject, that old Bob Bain was bribed; that old  
11 Bob Bain was given this \$300, given for the purpose of  
12 influencing his vote, and that he was promised \$3500 more  
13 if he would vote for acquittal? Now, there is no use in  
14 my taking your time in arguing that question.

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1 Now, there is no use in my taking your time arguing that.  
2 Bain admits it. Mrs Bain does so, also. Every word  
3 of their testimony cuts a chunk out of their soul. They  
4 would not give it unless it was true. They say that on  
5 the 6th day of October, which was about the time that  
6 Bain was summoned to be on the jury, and a few days after  
7 his name was drawn to be on the jury, and a few days be-  
8 fore he was required to appear in court as a juror -- Mrs  
9 Bain and Bob Bain say that on that day, the 6th day of Oc-  
10 tober, Franklin gave them this \$400; that he promised them  
11 on that day and said he intended to give them on that day  
12 \$500. That was on the 6th day of October. Now, then  
13 where did Franklin get that money, the \$500 that he promised?  
14 In the afternoon of the 6th he went out and took this mat-  
15 ter up first with Mrs Bain. They can say that it is  
16 ridiculous and that it is insane and is crazy, and all  
17 that, to go and do a thing in that way, and yet that is  
18 the way it was done; and if you are going to bribe a man  
19 or a woman, you have got to bribe them; if you are going  
20 to reach them, you have got to reach them, and you have got  
21 to talk to them, and I am not an authority on jury bribing,  
22 but I have no doubt that that is about as careful a way as  
23 that very dangerous thing could be done. Franklin tried  
24 the woman first. Bain was his old acquaintance -- his old  
25 friend, probably. That was in the afternoon of the day  
26 of the 6th. In the morning of that day Franklin went out

1 to the house and there was nobody at home. He went out there  
2 with the idea -- leaving his testimony out, but arguing  
3 from others -- he went out then, evidently, with the idea  
4 of giving them \$500, didn't he? In order to go out there  
5 with that idea in his mind, he must have been prepared  
6 with the \$500. Now, when I say to you that it does not make  
7 any difference this check is dated on the 4th or the 6th,  
8 I mean just what I say. It is not when the check is dated  
9 that counts, for there might be some mistake about that,  
10 and I do not care to bother to clear it up, because it is  
11 immaterial whether it was given on the 4th, 5th or 6th, or  
12 whether it was wrongly dated intentionally or wrongly  
13 dated accidentally. That makes no difference about  
14 that. The point then is when did Franklin get money on it;  
15 not when did he get money, but when did he get the money  
16 on that check? Here on the back is the date when the check  
17 went to the clearing house, the 6th. Here on the deposit  
18 slip of Franklin is the day when he deposited it, the 6th;  
19 a thousand dollars. A thousand dollars. Here is the day  
20 it went through the clearing house. Now, am I right? Now,  
21 then, where is the check? Now, I don't care so much about  
22 when that check was dated, although it is dated on the 6th,  
23 but it is when it is cashed that counts, and it is a part  
24 of this transaction as testified to by the teller. It is  
25 dated on the 6th, and so Franklin takes this check, makes  
26 out this deposit slip -- this check of Darrow's -- makes



1 out this deposit slip, takes it to the bank, that is, one  
2 check for 500 and draws out 500 of that money. He draws it  
3 in cash, and he draws it in bills, as the teller says.  
4 The teller says they were big bills. The bills that were  
5 given to Mrs Bain were twenties. The teller says he thinks  
6 there were fifties, or probably more. Mrs Bain's bills are  
7 twenties. There is a discrepancy; there is a difference  
8 as to those bills, but the teller undoubtedly was mistaken,  
9 It has been a year since he talked, possibly, about those  
10 bills. He thought he remembered they were \$100 or \$50  
11 bills, but, as a matter of fact, that very day we see  
12 Franklin going out to this house and handing over \$400 in  
13 bills -- in cash.

14 Now, what did <sup>he</sup> do, if that is not this money, and if he  
15 did get big bills? What was he doing with those big  
16 bills, and how did he dispose of them, and what did he want  
17 with them?

18 No, gentlemen, this is all one transaction. It is all  
19 one affair. There is no if's and and's about it. Mrs  
20 Bain got twenties and it is twenties that Franklin got from  
21 the bank, and the bank cashier is mistaken when he thinks  
22 they were fifties or hundreds. Now, that is all there is  
23 to that, or it may be that he did get fifties and hund-  
24 reds and changed them somewhere, because he asked Mrs Bain  
25 out there at the house if she could change a one-hundred-  
26 dollar bill, and it may be that he had then \$100 at that

1 time. At any rate he had this money, undoubtedly, in his  
2 pocket. This money that he got from Darrow, in his pocket,  
3 when he was out there talking to Mrs Bain in the afternoon,  
4 and this check, as it shows, had gone through the clear-  
5 ing house that day, was evidently given sometime in the  
6 morning. The mere fact that there is a difference in  
7 the memory of this bank teller as to the size of the bills,  
8 whether they are twenties or fifties, is not a matter upon  
9 which you can hang any great amount of importance in any  
10 affair of life, whatever. If they were thousand dollar  
11 bills or five-hundred-dollar bills, there would be a trans-  
12 action that might impress you, but if they are fifties  
13 or twenties, there isn't enough difference between fifties  
14 and twenties to impress a cashier passing that kind of  
15 money out every day over the counter, so that even Franklin  
16 on the day that he got that \$500, that he got the \$500 from  
17 Darrow, what was he going to use \$500 in cash for, if it  
18 was in one-hundred-dollar bills to pay help with it?  
19 That would be a foolish thing to do. A man employing help  
20 would pay his help mostly in checks, naturally a man employ-  
21 ing help would pay them at the end of the week, and their  
22 bills, none of them would come to fifty dollars.

1 I do not imagine that any of the men working for Franklin  
2 would get that \$50 bill for his work at the end of the  
3 week. They are not fifty dollar men who do that kind of  
4 work.

5 MR. ROGERS. Just a moment--there is not one iota of  
6 evidence, notwithstanding that your witness said that  
7 his books was at your disposal; there is not an  
8 iota of evidence to justify the statement that the men did  
9 not earn \$50 a week.

10 MR. FREDERICKS\_ I do not say there is. I am simply  
11 arguing on the probabilities of life.

12 MR. ROGERS. I take an exception to it.

13 THE COURT. The exception is noted.

14 MR. FREDERICKS. If that does not appeal to your judgment,  
15 that a man out and doing this shoe and heel work on the  
16 street and making these investigations would get \$50 a  
17 week, if it does not appeal to you that that is a figure  
18 wage, then it would be reasonable to expect that any one  
19 of them would get, then disregard it, but \$50 a week,  
20 gentlemen, is \$200 a month. I doubt very much if your  
21 experience in life will lead you to conclude that the men  
22 who were running around for Franklin were getting \$200<sup>a month</sup> or  
23 that Franklin would have any use for a fifty dollar bill  
24 in the payment of his help. And, if this is an innocent  
25 transaction that is all it could be used for, for the pay-  
26 ment of his help. No, sir, we are driven back to the con-

1 conclusion that Mr. Young, the bank teller, is mistaken.  
2 That is all there is about it. That is a fair, square and  
3 reasonable proposition.

4 Now, then, Mr. Franklin takes this money, talks to Mrs.  
5 Bain about it, gets her to agree, then she tackles Bob,  
6 then Franklin goes out that night; Franklin's testimony  
7 as to what he did corresponds absolutely with theirs.  
8 It dovetails just as only truth can dovetail with truth.  
9 He goes out there. He gives Bob Bain \$ 400 and tells him  
10 that he has not the other hundred and will give it to him  
11 later; that he has used it in some way. Now, then, that  
12 is the 6th; that is the day that he got \$500 from Darrow;  
13 that is the day that he needed \$500 and that is the day  
14 that he used \$500, the very very day.

15 A JUROR. May I ask a question here?

16 MR. FREDERICKS. Yes.

17 A JUROR- I would like to know when the money was paid by  
18 Franklin to Darrow after the 6th? What date was the money  
19 paid? I do not remember what day?

20 MR. FREDERICKS. All right. I will look that up. You want  
21 me to give you the date when money was paid by Darrow to  
22 Franklin after the 6th?

23 THE JUROR. Yes.

24 MR. FREDERICKS. I do not know that that would help us much,  
25 for this reason, that we do not know exactly the number of  
26 men he was employing from time to time, and the money that



1 was coming to him and that he was using from time to time.  
2 He says that he had a settlement with Darrow in December, and  
3 there was then a balance.

4 A JUROR. The 16th.

5 MR. FREDERICKS. Have you a memorandum of that payment?

6 Well, I don't know.

7 MR. ROGERS. On the 16th of October there was \$500--after  
8 the 6th, and then again of \$500 on the 23rd.

9 MR. FREDERICKS. That is what his bank book shows.

10 THE COURT. That bank book is in evidence and the jury can  
11 consult it if they want to.

12 MR. FREDERICKS. That does not help us a great deal, because  
13 I don't know what his necessities were or what he was using  
14 the money for.

15 Now, we will take that proposition. Bain gets that  
16 money. Bain is bribed. On the 11th or 12th or 13th, or  
17 whenever the date is set--I have forgotten the day--Bain  
18 comes up into the jury, into the court room. His name is  
19 drawn from the box and he takes his seat here, over there  
20 in the corner, I think he sat somewhere. Mr. Darrow starts  
21 to examine him and examines him. He is examined by both  
22 sides, trying to find out whether he is a fair juror,  
23 weighing Bob Bain, looking into his soul as far as you can,  
24 investigating him as far as you can from his talk, listen-  
25 ing to him, then determining after that whether to keep  
26 him or not. Now, all that time Bob Bain has got that \$400.

1 We don't know it. Who knows it? He has got that \$400  
2 given to him in order that he may be favorable to the  
3 defense. Now, if the men who are examining him, who  
4 are finally going to determine whether to keep him or not,  
5 if the man who is in charge of that, whose word is final  
6 on that, does not know that Bain has agreed to stand with  
7 them, does not know that he has taken money for that  
8 purpose, what an awful business transaction that would be!  
9 What an absolutely futile thing it would be to go and give  
10 Bob Bain that money and then not let Darrow know that he had  
11 been fixed, and take the chance of Darrow throwing him off?  
12 What an absolutely absurd thing that would be--an absolute  
13 impossibility. Logic won't stand for any other interpretation  
14 than that Darrow knew. Why, Franklin knew it--Franklin  
15 knew it. All well and good. Do you suppose that Darrow,  
16 if he didn't like Bain's looks--now, Darrow says that they  
17 got together. All right, let's say that they got together,  
18 all the heads of those attorneys all together and we are  
19 talking over Bob Bain. He has been examined--now, will we  
20 keep him? Will we keep him or will we let him go?  
21 Darrow says that they had those consultations with Franklin,  
22 and that Franklin was present. Franklin was a detective,  
23 Franklin was an investigator, Franklin was not a lawyer;  
24 Franklin's judgment would not be considered to amount to a  
25 great deal unless he told the lawyers here on what he based  
26 his judgment. Do you suppose that if Franklin had said, "Now,

1 Darrow, you keep him all right--I am sure he is all right--  
2 keep him, Franklin knowing all the time that he had given  
3 Bain \$400 and promised him \$3500 more, all the time as they  
4 sit there with their heads together Franklin knows this  
5 and he tells Darrow, "You keep him," but he don't tell  
6 him why. Why, it is absurd, absolutely ridiculous. Do you  
7 suppose Darrow wouldn't say, "I want to know why.  
8 Why do you say to keep him? Why do you want me to keep  
9 him?" There sits Franklin. He is Darrow's hired man. He  
10 is getting paid by Darrow right along. He is reporting  
11 to Mr. Darrow. He is working for Darrow day by day, day  
12 by day and night by night all this time, working striving,  
13 working and reporting, working for Darrow,

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1 using Darrow's time, using Darrow's money for his automobiles,  
2 using Darrow's money for his hired men, expending all that  
3 money, and Darrow don't know what he is doing. Franklin  
4 is keeping it to himself. Franklin won't let him know.  
5 Gentlemen, Franklin is shown by this testimony to have  
6 been the confidential agent of Darrow, to have been very  
7 confidential with him, and do you suppose for one minute  
8 that Franklin would risk that \$400 that he had paid Bob  
9 Bain and let the chance of their putting Bob Bain off  
10 the jury without his telling Darrow what he had done, even  
11 though Darrow didn't know it before? It is absurd -- it is  
12 ridiculous.

13 Now, gentlemen, in the name of reason, the name of reason,  
14 can there be anything clearer or plainer than that? If  
15 you won't convict a man on testimony of that kind, then  
16 you have made jury-bribing safe for all time. For  
17 there can be and never will be presented to a jury more  
18 clear, more convincing evidence of a man's guilt than  
19 that. The man who got the money, the man who actually  
20 passed the examination, the man who had agreed to be for  
21 the defense, the man who had been bought to be for the de-  
22 fense, the man who had gotten his money for it, the man  
23 who was examined by the defendant, the man in charge of  
24 the case and his word final, and they assume that if any-  
25 body a stranger, did that thing. No sir. I am not going  
26 to suppose that there lives on earth twelve men who would



1 be so unreasonable, not for one moment.

2 The little matter as to difference in bills as to  
3 whether they were twenties or whether they were fifties,  
4 is to infinitesimal as to amount to nothing absolutely.  
5 Simply the memory of a bank teller after a year, and you  
6 can not grab a hold of a little thing and lay down on it,  
7 and say that settles it; that settles it; I won't go any  
8 further; that settles it. You have got to take it altogether.  
9 You have got to be reasonable men. You have got to  
10 reason things out in a reasonable light that will stand  
11 reason and stand your conscience in future years, and you  
12 know that a bank cashier cannot remember exactly whether  
13 bills were twenties or whether they were fifties when his  
14 attention is called to it a year after or nearly a year  
15 after. He gives you his impression, and I believe it is  
16 an honest impression.

17 JUROR WILLIAMS: There are a few of the facts I would  
18 like to have read again from the record. The record  
19 handed to the defense by Mr Franklin on Mr Bain as a  
20 juror.

21 MR FREDERICKS: Was that introduced?

22 JUROR: It was read to the jury, and Mrs Bain's testimony  
23 with regard to the subscription for the Examiner, and Mr  
24 Young's testimony with regard to the bills handed out  
25 in the bank.

26 MR ROGERS: So far as the record handed on Mr Bain is con-

1 cerned, my understanding is that it was not Mr Franklin's  
2 personal report, as I remember it.

3 MR FREDERICKS: Simply a report by one of his men that came  
4 through on August 18th.


5 MR ROGERS: The report on Bain, testimony of Young and tes-  
6 timony of Mrs Bain with thference to the subscription to  
7 the Examiner.

8 THE COURT: That will be read a little later, Mr Williams.

9 MR FREDERICKS: I remember what Mrs Bain said in regard  
10 to the subscription. You mean in regard to money, don't  
11 you? She asked about the subscription and Franklin says, --  
12 now, I don't know whether it was a fifty or a hundred-  
13 dollar bill. Do you wish to know whether it was a fifty  
14 or a hundred?

15 JUROR: WILLIAMS: Yes; just exactly what she said.

16 MR FREDERICKS: Mrs Bain said that Franklin said, I want  
17 to talk to you anyway, so I allowed him to come in and  
18 got a receipt book, and he said, let me make it out. Now,  
19 the receipt book there evidently refers to the Examiner.  
20 "He said, let me make it out for nine dollars for a years'  
21 subscription. " I said, now, this affair is settled, and  
22 he says, yes. He says, all but the money, he said. You  
23 want some money? I said, yes, that is very essential. He  
24 smiled and I said - - he asked me if I had change for a  
25 hundred-dollar bill or a fifty, I wouldn't say, possbve  
26 which it was. I laughed, and I said, no, I have not."



1 That is what you want. Do you want any more?

2 JUROR WILLIAMS: That is all.

3 MR FREDERICKS: What was the other you wanted? Young?  
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1 "Franklin drew \$100 against the deposit and received therefor  
2 \$500 in big bills."

3 But there is no doubt about it. He said that he thought  
4 the bills were either fifties or hundreds.

5 MR. ROGERS. No, he did not say that. He said that there  
6 were no twenties.

7 MR. FREDERICKS. Yes, I am going to that too. He said  
8 there were no twenties.

9 MR. ROGERS. They were not twenties.

10 MR. FREDERICKS. I think that there were no twenties is  
11 the same as they were not twenties. That is what Mr. Young  
12 said; that is what Mrs. Bain said. There is no contro-  
13 versy about it whatever. The point is that he did get  
14 \$500 of Darrow's money in cash that day out of the bank.  
15 Now, as to whether when he went out that afternoon he did  
16 take bills as the bank cashier thinks he gave him, and the  
17 fact that Mrs. Bains says he asked to change a fifty or a  
18 hundred, would indicate that he did--that would be the  
19 indication that he did--the fact remains that he appeared  
20 there that night with 400 in twenties. Now, that fact  
21 remains. My notion of the thing is that the bank cashier  
22 was mistaken. It is possible that Franklin took his big  
23 bills, as a matter of precaution, and that the bank cashier  
24 was not mistaken, and Franklin took his big bills as a  
25 matter of precaution and got them changed into smaller  
26 bills. There is no testimony to that effect.

MR. ROGERS. There is testimony by Franklin that he did not



1 do that; that he took the identical money that he got at  
2 the bank out there and paid it over.

3 MR. FREDERICKS. There is no occasion for your breaking  
4 into my argument. I am going to be fair.

5 MR. ROGERS. I want the testimony.

6 MR. FREDERICKS. You are getting the testimony. Why,  
7 do you suppose I would stand up here and deceive this jury?  
8 They would know it in a minute. I say there is that dis-  
9 crepancy and there is just as much discrepancy as that in  
10 every true story that you ever heard since the beginning of  
11 time, just as that contained in the Gospel of Saint Matthew  
12 and the Gospel of Saint Mark in describing the same thing.  
13 I don't know just exactly how that occurred; you don't  
14 know. If I knew I would be glad to tell you. But I main-  
15 tain that it is not material, that it makes no difference,  
16 that it is a small matter of memory, and somebody has forgot-  
17 ten something in regard to that transaction. That is all  
18 there is to it. Now, that is the Bain transaction.

19 A JUROR. Is there anything in the evidence that Mrs. Bain  
20 had the money?

21 MR. FREDERICKS. Yes, there is.

22 THE JUROR. What was the testimony? The prosecution got  
23 back \$300 of that \$400.

24 MR. ROGERS. He testified it was the same money that he  
25 used.

26 MR. FREDERICKS. Exactly. She said she received twenties,

1 and the prosecution got back twenties, and the testimony  
2 is that she did receive twenties. There is no controversy  
3 about that. She did receive twenties. I don't think there  
4 is any doubt but what that exact money is the money that she  
5 turned in. I do not think there is any question about that.  
6 I am sure it must be so. But that bunch of twenties was  
7 given to her by Franklin.

8 Now, whether the bank cashier was mis taken or whether  
9 Franklin has forgotten and did change that money, I don't  
10 know and I do not pretend to say, but I do pretend to say,  
11 gentlemen, that that is too small a matter to take into  
12 consideration, and disbelieve the entire Bain transaction  
13 because the other ear marks to it fasten it indelibly upon  
14 this defend ant, fasten it indelibly upon Franklin, the  
15 \$500 that he got that very day--that very day of all days  
16 in the world, the \$500 that he took in cash out of the thous-  
17 and dollar check.

18 Now, this was a small payment. Bain was not wise enough,  
19 perhaps, to make him put up \$3500 in somebody's hands. He  
20 was not wise enough to do that. Bain was taking a foolish  
21 chance, if he wanted to get that \$3500, I have no doubt. It  
22 was not a big transaction, and it did not call for the use  
23 of any amount of big money. So far as the money of it  
24 was concerned, it was not a big transaction.

25 Now, if the Bain incident were all that we had to consider  
26 it might be of some moment,

1 But we find Franklin over and over again doing identi-  
2 cally the same thing with others, trying identiaally the  
3 same thing with others, doing this on a wholesale scale,  
4 you may say, doing it on Darrow's time, doing it when he  
5 was Darrow's confidential agent; and we have proved that  
6 not by Franklin's admission, but by the testimony of Eain,  
7 of Lockwood, or Yonkin, or Smith, o f Kruger -- and Under-  
8 sood is dead. There were six men here that he had gone to  
9 and tried to get all six of them to stand for acquittal in  
10 this case. Five of them have come here to testify to it.  
11 Five of them have said that he came to them and tried  
12 to bribe them, and they did not accept the bribe.  
13 Lockwood's case is a little different and I will come to  
14 it.

15 Now, with such a wholesale proposition as that going on,  
16 would it be reasonable to suppose for one moment that the  
17 attorney could sit there and not know anything about it,  
18 that Franklin was going up and down the earth doing this  
19 for some third party, and Darrow not know about it?

20 There is another idea, gentlemen. If there was a  
21 third party in it that Darrow doesn't know anything about,  
22 why doesn't Franklin tell on the real man? Why <sup>not</sup> tell on  
23 the real man, the other man, if you would have it so?  
24 Why not tell the truth, if this is not the truth? There  
25 is only one reason for it -- there is only one reason for  
26 it. The story of Franklin has got to match up with reason,

1 with judgment, has got to match up with common sense, has  
2 got to match up with the other things in the case. That  
3 is what it means. And Franklin could no more tell a story  
4 of that kind and have you or anybody else believe it than  
5 he could grow wings and fly. Why, you would scout it at  
6 once. Suppose he told you that a stranger came to him,  
7 a sharp man like Franklin, a man he didn't know, and offered  
8 him \$4000 to commit a crime with. Why, is there any doubt  
9 but Franklin would think that somebody was laying a trap for  
10 him? Men don't talk about those things to strangers, men  
11 don't talk about those things to chance acquaintances, and  
12 strangers don't pass over \$4000 to strangers, either. Why,  
13 it won't do at all.

14 And we are going right through this and will show you ,  
15 time after time that Darrow was the man that was doing  
16 this sort of thing, Darrow was the man who sent Cooney  
17 over to Franklin -- Cooney who had never worked for Frank-  
18 lin before. Now, we will come to that after a while.  
19 Let me give you just a little resume of the busy life of  
20 a jury-briber during the fortnight in November. This man  
21 is working for Darrow, paid by Darrow, using Darrow's auto-  
22 mobile, getting his money from him, reporting to him. On  
23 November 2nd, he called on Underwood and tried to bribe him.  
24 on November 4th, he first called on Lockwood and made an  
25 appointment to meet him in town. On November 8th, he called  
26 on Smith in Covina. On November 8th, Mr Bain was sworn as



1 a juror; on that same day Mrs Bain called down at Franklin's  
2 office and talked to him, that a stranger, a strange man  
3 had spoken to her. On November 8th, the same day, Lockwood  
4 telephoned him from town and made arrangements to meet him  
5 the next day. On November 9th he met Lockwood in his office  
6 He had a long talk with him and tried to bribe him. Novem-  
7 ber 12th he called again at Lockwood's house, and Lockwood  
8 told him he wouldn't engage in the matter. About November  
9 12th, he called on Kruger, and on November 18th, he tried  
10 to bribe Guy Yonkin. All of those things between November  
11 2nd and November 18th, and all of those things on Darrow's  
12 time, and all of those things while he was <sup>in</sup> Darrow's employ,  
13 working for Darrow, and Darrow didn't know what he was do-  
14 ing! Why, it is absurd, absolutely absurd, gentlemen --  
15 absolutely absurd.

16 Now, let us take up some of the incidents as they came  
17 along. The Bain matter we have passed, and Bain has gone  
18 down and come into court, the trial has started and Bain has  
19 been examined and is seated in the box, not yet sworn.  
20 Now, we will come to the 4th day of November, when he first  
21 called on Lockwood. He called on Lockwood. He says he  
22 had a conversation with Darrow in his office about Lockwood  
23 just a few days before. On November 4th, he had talked  
24 to Darrow about Lockwood, and told him his views about  
25 Lockwood, and so forth. On November 4th, he drives by  
26 Lockwood's house out at Baldwin Park, and he stops. Lockwood

1 was his acquaintance, Lockwood had been a deputy sheriff  
2 with him, and Lockwood was on the jury. There was a con-  
3 nection there. There was something worth while. So he  
4 stops. He talks with Lockwood. Lockwood doesn't talk  
5 about anything particularly that time, but says that he  
6 will be in town in a day or two and when he comes to town  
7 he will call him up. The conversation was about a lot of  
8 things, innocent -- nothing said about what Franklin wanted  
9 with him, so far as the evidence shows, and it is probably  
10 correct that Lockwood hadn't the least idea of what Franklin  
11 wanted with him.

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1 He stepped in there about 9 o'clock in the evening as he  
2 was going by. Lockwood's testimony in that regard and  
3 Franklin's testimony absolutely coincide. Then the court  
4 work was going on. The next incident that we have of  
5 Franklin after the Bain and the calling on Lockwood, the  
6 next criminal incident is the calling on Frank Smith.  
7 I will not read you what Franklin testified, it is prac-  
8 tically the same that Smith testified, so let's see what  
9 Smith testified: "Well, he came out and said could he  
10 approach me or talk to me." This was the 8th of November.  
11 "And I says, 'What is it?' And he started in and he said  
12 I was to be drawn on the jury, and he asked me if any  
13 inducement would make me stick, and he went on and said  
14 how was 3,000. He was talking to me about that. He went  
15 up to four." And you will find through it all that is the  
16 figure, four. "I said 'there ain't no use, because you  
17 haven't got enough money to buy me.' Q Well, what further  
18 was said? A Well, he wanted me to be drawn and try to  
19 stay on the jury. Q And what if you did stay on the jury?  
20 A Then he said there would be 4,000 in it, maybe more. I  
21 told him there was no use. Q Under what condition, what  
22 were you to do? A Well, I would acquit the McNamaras."  
23 Smith says on cross-examination, after Franklin learned his  
24 opinion, he asked him to keep secret, and so far as we did  
25 know he did keep secret; not, I think, by reason of any  
26 care that he had for Franklin, but because he didn't want

1 anybody to know that Franklin would dare do such a thing  
2 as that. Probably that is the more reasonable explanation.

3 Franklin says in regard to Smith that he told Darrow to  
4 let him alone, he would probably ask to get off the jury.  
5 That is November 8th. Let us follow this man along and  
6 see the trail he is making, and see if he could be making  
7 that kind of a trail for anybody else except Darrow. On  
8 the same day he has a conversation with Mrs. Bain. Bain  
9 has gotten on the jury. Bain was sworn that day, and he  
10 relates that conversation when she went down in his office,  
11 she was getting nervous, Bain had been sworn in. She was  
12 getting afraid, womanlike, and some man had talked to her  
13 and she was fearful, and she went down and talked to Frank-  
14 lin, and Franklin told her not to talk to anybody. Franklin  
15 had told her therefore not to spend any money; Franklin  
16 had told her all those things that a man would naturally  
17 caution a person about under the circumstances, and she  
18 went down and Franklin told her not to talk to anybody and  
19 not to even speak to him when they met on the street.  
20 Their testimony agrees along that line. That is the same  
21 day that he is out with Smith, taking up a part of his time.  
22 Smith is another part of his time. The 4th with Lockwood,  
23 another part of his time. That same day Lockwood telephoned  
24 in and he makes an appointment to meet him the next day,  
25 and he meets him the next day. Franklin also says that  
26 about that time--no, it is a little later that he visited



1 Krueger. We will take that up then a little later. I  
2 will take Krueger up here, because I may not have it  
3 tabbed. About that time, as near as I can figure it from  
4 his testimony, it would be along about the 12th, however,  
5 that he first went down and had a talk with Krueger. Krueger  
6 was another man he knew, all of that on Darrow's time; all  
7 of that while working for Darrow; all of that on Darrow's  
8 pay; all of that time included. And automobiles probably  
9 paid for and all that sort of thing, because you cannot  
10 scoot around in these automobiles where you hire them  
11 from the rent service for two bits an hour, you cannot  
12 do that, it counts up pretty high. Your experience will  
13 tell you about what the automobile would be for November  
14 8th, running out to Covina and back, and for November 12th,  
15 running down to Krueger's and back again; on the 12th going  
16 out to Lockwood's and all that sort of thing. Darrow paying  
17 for all this and doesn't know anything about it, or is  
18 somebody else? Tut, tut.

19 MR. ROGERS. Wait a moment. We don't have any reply, your  
20 Honor please--

21 MR. FREDERICKS. Just say what you want to and don't take  
22 up my time with apologies. Go ahead. What is it? I don't  
23 want you to take up my time. It isn't fair for you.

24 MR. ROGERS. Your Honor please, I desire to call attention  
25 to the fact that counsel has said all the time Darrow was  
26 paying these automobile bills. It was not so. Darrow did

1 not pay his automobile bills. Mr. Franklin paid his own  
2 automobile bills.

3 MR. FREDERICKS. Of course.

4 MR. ROGERS. What he did was done for the defense and not  
5 for Mr. parrow or anybody else.

6 MR. FREDERICKS. All right, I don't mean--

7 MR. ROGERS. I will just take a little time right here to  
8 say I want to be courteous and brief as I can and counsel  
9 ought not to interrupt.

10 MR. FREDERICKS. I thought you were through. What is the  
11 difference between Darrow paying Franklin's expenses and  
12 sending an automobile<sup>bill</sup> to Darrow. That is tweedle de and  
13 tweedle dum. That is what that means.

14 MR. DARROW. I want to take an exception. None of this  
15 work was done for me.

16 MR. FREDERICKS. Now, testify some more.

17 MR. DARROW. It was done just as much for me as every lawyer  
18 in the case, all done for the defense.

19 THE COURT. The objection and the exception will be noted.

20 MR. DARROW. I never saw an automobile, as the evidence  
21 shows, or an automobile bill.

22 MR. FREDERICKS. Oh, no, you didn't pay the bills. You did  
23 pay the bills due Franklin two months after he was arrested  
24 in December, something over a thousand dollars for expenses  
25 and services.

26 MR. DARROW. Did I?

1 MR. FREDERICKS. You say you did.

2 MR. DARROW. I did not.

3 MR. FREDERICKS. Then let us talk about Krueger. Krueger  
4 lives at the Palms.

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1 They did not waste any money on Kruger, because that was  
2 a pretty good gamble that Kruger would not <sup>get</sup> go through.  
3 But he was there, his name was on the list, and if he could  
4 get through, why, so much to the good -- so much to the  
5 good. He would have been a good one for them if he had  
6 gone through; no doubt in the world of that. So he goes  
7 down and tries to get Kruger, but, mark you this, he does  
8 not give Kruger any money.

9 I would like these interruptions stopped.

10 THE COURT: There are no interruptions.

11 MR FREDERICKS: I can hear counsel talking.

12 MR ROGERS: You have got me beat, because I could not.

13 MR DARROW: I object to the statement, your Honor. The  
14 evidence is that Mr Kruger offered to --

15 MR FREDERICKS: I am going to cover all that. I just started  
16 on that. Oh, I will tell the testimony, don't worry  
17 about that.

18 MR DARROW: We have a right to correct you if you do not.

19 MR FREDERICKS: Yes, but do not interrupt me until you  
20 see that I am not being fair.

21 They did not give Kruger any money. I do not care about  
22 the offer and the talk and all that sort of thing. That  
23 does not count. You can go up and talk about what you are  
24 going to do, and I will give you so and so, and wouldn't  
25 you like to have it, and all that sort of thing, but I  
26 wonder what would have happened if old Kruger would have



1 said: sure, give me \$500 of that now. I suppose Franklin  
2 would have said, well I left my check-book at home. That  
3 will be all right, Kruger, we will fix that up all right .  
4 The next time I am down we will fix that up; there will be  
5 no trouble about that. That I figure is about the dialo-  
6 gue that would have occurred. But Kruger says, no, I don't  
7 want it now, I don't want it now. And he does not get it,  
8 and would not have gotten it, if he had said he wanted it,  
9 not a bean of it, because they knew it was too risky;  
10 they knew that Kruger could not pass the District Attorney's  
11 examination. They knew that the District Attorney would  
12 not have wasted a peremptory on him if necessary. But  
13 still, they took a chance. Kruger was pretty safe, and  
14 they were not risking much. They would get him if they  
15 could, and if they could it would be just so much velvet.  
16 All of this, and Darrow not know anything about it!  
17 Tut-tut.

18 Now, we come to the conversation with Lockwood on the  
19 9th, down in his office, that Darrow was not interested  
20 in. This man who was making his living, and Darrow was his  
21 pay-master, and Darrow was giving him his money, and the  
22 money was coming out through Darrow, and possibly Darrow  
23 was having to account to somebody -- I don't know -- for  
24 his expenditures; this man, who was getting his money from  
25 Darrow sits down in his office, and he spends quite a  
26 while talking to Lockwood. I do not need to go over that

1 testimony with you unless you ask for it. But you will  
2 remember that the testimony of Lockwood and the testimony  
3 of Franklin on the stand, absolutely coincide, word for  
4 word, almost nothing left out from one that was left out  
5 from another; just a little bit, just a few little words  
6 that do not amount to much. But the general substance is  
7 the same.

8 Lockwood; George Lockwood. George Lockwood, I wonder  
9 if you were tempted that day. You are an old man, George  
10 Lockwood, and you have not laid up much; a little; got a  
11 little farm. But, George Lockwood, I wonder if you were  
12 tempted that day. You told him you would think it over.  
13 Ah, gentlemen, there is nothing wrong about the man who is  
14 tempted, but it is a glorious thing to the man who goes  
15 and fights it out with his own soul and comes out and says:  
16 I won't; I am going to be honest; I don't want it; I  
17 won't take it. I don't know. This testimony does not  
18 show, as I remember it, whether Lockwood was tempted or  
19 not, whether Lockwood really felt inclined to do this  
20 damnable thing or not, but certain it is when George  
21 Lockwood came to think it over, and Franklin came to him  
22 the next day, which was the 12th, again on Darrow's time,  
23 Darrow's hired man again, comes to him in an automobile  
24 on the 12th, and Lockwood says: no, I won't do it; I won't  
25 do it. Dismisses the subject. But Franklin leaves it with  
26 a little string to it. Well, he says, George, if you ever

1 change your mind, let me know. Well, let me tell you some-  
2 thing, gentlemen. It is the honesty and the integrity  
3 of George Lockwood, as you will see in viewing this tes-  
4 timony, that blew up the McNamara case; the honesty and  
5 the integrity, as you will see in viewing this testimony,  
6 of George Lockwood, that made the mark. I claim no astute-  
7 ness, I claim no greater ability than the ordinary man.  
8 I am not able to see behind men's eyeballs and know what  
9 they are thinking about. George Lockwood came, as he  
10 says, and told me what Franklin was doing. I then knew, as  
11 his testimony shows that, sitting down there on the jury,  
12 was old Bob Bain bought, sold and tied against us. When did  
13 Lockwood come. He does not remember exactly. But he  
14 says a few days after Sunday, and Sunday was the 12th.  
15 Unless you wish me to show you <sup>how</sup> the testimony of Lockwood  
16 and Franklin agree in this matter, I will not take the  
17 time to read it. But on the 12th, this is the day that  
18 Lockwood turned Franklin's offer down.

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1 And in two or three days--let's see, possibly Tuesday--  
2 Lockwood comes to the District Attorney's office and  
3 tells him.

4 All this time the fight is going on down in court.

5 All this time jury panel after jury panel is being issued.

6 All this time the big jury wheel is turning and the clerk  
7 can go out and go in, and the names of the jurors are being  
8 drawn, and they are being summoned all over the county.

9 The lawyers sitting there, sweating, working, endeavoring  
10 to get a jury, all this time and all of these days, and  
11 planted back there all this time is Bob Bain. And then  
12 Lockwood comes and tells the story, tells the story about  
13 the other man that Franklin says is on the jury who will be  
14 with him, the other man whom he knows and knows better than  
15 he knows Franklin, and the only one he knew was Bain.

16 That was probably from his testimony about the 14th-- the  
17 12th was Sunday, Monday the 13th and Tuesday would be the  
18 14th. It might from his testimony have been the 15th, because  
19 he says, "Early in the week," and Wednesday might be considered  
20 to be early in the week, as it is the middle of the  
21 week.

22 Now, gentlemen, think over the situation. Think what  
23 we were up against when Lockwood came and told that story.  
24 Every day the wheel was turning. Every day when we would  
25 come and sit and look that jury over perhaps our eyes would  
26 light on Bob Bain. And what to do? What to do? Every day



1 the attorneys were examining the jurors, every day they  
2 were working over the case. Lockwood says when he told  
3 his story the District Attorney told him to go back home and  
4 wait. And all that week, possibly, as the record shows  
5 here, every day the wheel was turning and we were looking  
6 to see whether Lockwood's name would come out. In a day  
7 or two more the wheel would be turned and we would look  
8 to see. Whom could you tell? Where could you go for  
9 advice? Whom could you trust? Remember the District Attor-  
10 ney knew at that time, as this evidence shows, of all these  
11 other things that I have narrated to you. Whom could you  
12 trust? Could you say that your own official family was  
13 honest? Could you say that they, some one of them, had not  
14 fallen or would not gossip?

15 And still the wheel turns, and still Franklin works, and  
16 on the 18th, which was 4 days probably after Lockwood came  
17 to me, we find Franklin again, this time by the testimony of  
18 Yonkin, the young man down on Broadway, still at the same  
19 old game. These things are all plain now. We are looking  
20 now at this thing with the lid off. All we could know then  
21 was that if this man Franklin had bribed Bain, and was trying  
22 to bribe Lockwood, that there must be others, there might  
23 be more of them on there that we didn't know anything about.  
24 All we could do would be to imagine, all we could do would  
25 be to guess, all we could do would be to think that Franklin  
26 was active right along. And he was, as the evidence shows

1 --down trying to get another one, and so on the 18th  
2 Yonkin says he tried him.

3 It is just about two weeks, according to the record,  
4 from the time when Lockwood first revealed this matter to  
5 the District Attorney, that Franklin was actually caught.  
6 He was caught on the 28th, which was Tuesday, and  
7 probably Tuesday the 14th was the day that Lockwood first  
8 revealed the matter. For two weeks then almost--because  
9 his name came out on the 25th--we were waiting for Lock-  
10 wood's name to come out, to see what Franklin would do,  
11 to see what move he would make. There we had--we knew that  
12 Lockwood would tell us--I say "we"--I. Now, gentlemen,  
13 is it reasonable to suppose that in all that time, with  
14 all that work going on, this defendant didn't know what  
15 was being done? Certainly not. You don't wish me to read  
16 you the testimony of Yonkin. You remember it. You don't  
17 wish me to read you the testimony of Smith. You remember  
18 it. The testimony of Underwood, of course, is gone for  
19 ever.

20 Now, I am going to come up briefly to the scenes of the  
21 week before Thanksgiving and the week when these men plead  
22 guilty. Mr. Darrow tells you that he had given up this  
23 case. I am going to show you by this testimony that that  
24 is not true, and I wish you to remember that the deductions  
25 that I shall draw here are the deductions from the testimony  
26 that is given. I will show you by the testimony itself, not

1 from any testimony of mine, that when Davis said on Wednesday  
2 before Thanksgiving that I had agreed to a bargain, I will  
3 show you by the testimony itself that that is not true.  
4 By their own testimony and their own acts. I have never  
5 yet and don't think I ever will take the position of witness  
6 and attorney in a case, unless I should be the defendant  
7 myself, but it is not necessary that I should testify to  
8 you as to what these facts were, and there debar myself from  
9 arguing the case or participating in it further. It is not  
10 necessary, because I can show you by the testimony of Davis  
11 and Steffens and others that has been introduced here, that  
12 there was not any thought of letting J J McNamara, the head  
13 of the great big union, plead guilty, until Thanksgiving day,  
14 and I will show you that just as plainly as day.

15 Now, I am going to take up the events of that period and  
16 I am going to go over it step by step. Let me give you one  
17 little idea to start with. On Sunday, when they say--  
18 when parrow says he had given up we find him sending the  
19 night before, sending Cooney over to Franklin to get some  
20 hostile jurors out of the way. We find how many crimes  
21 committed on that Sunday? One by Franklin when he went  
22 down and tried to get Krueger. Another by Franklin when he  
23 went out and tried to get Lockwood. Two. Another by  
24 Cooney when he tried to get Elliott, and warn Elliott.  
25 Another one when they tried to warn Sackett, and another  
26 one when they tried to warn Dolly. That is five that I can



1 think of right off hand.

2 Now, then, gentlemen, on Sunday that is what was going  
3 on. Does that look much like giving up the case? Now, I  
4 will tell you just what that situation was, and then take  
5 a recess and I will show it to you from the testimony.

6 That situation was this, and remember I am telling it  
7 to you from the testimony, for I would not pretend to stand  
8 here and testify myself without giving counsel an oppor-  
9 tunity to cross-examine me. I will show you from this testi-  
10 mony that it is true that on Monday Lincoln Steffens tried  
11 to start something to get us to let go of J J McNamara and  
12 accept a plea of guilty from J B, That he started on  
13 Monday from Steffens. I will show you of Steffens that  
14 day coming to me, on Tuesday, and was turned down, and that  
15 he got a reply back at that time the same as he always got,  
16 "There are cases against two men; two men must plead  
17 guilty." I will show you that they tried to get Chandler  
18 to come to me. There was no committee meeting in this  
19 matter, I will show you, until Wednesday, the night before  
20 Thanksgiving, the day after Franklin had been caught, and  
21 I will show you by this testimony that they tried to get  
22 Chandler to come to me to persuade me to let J J McNamara  
23 go. I will show you by this testimony that their one idea  
24 in this whole matter was to save the curse from union  
25 labor and to save J J McNamara, not because he was J J  
26 McNamara, but because he was the secretary, and treasurer of



1 the great International Iron Workers Union. That is what  
2 they were trying to do. That is all Lincoln Steffens, with  
3 his sloppy palaver was trying to inject into me in this  
4 roundabout way. They wanted me to take this one man, this  
5 pawn, this fellow, this hired man, this fellow Brice,  
6 the brother, the actual dynamiter and punish him, and then  
7 say, Oh, Labor Unions had nothing to do with it. He is  
8 some crazy fellow, he is some crazy fanatic that got mad and  
9 he wanted to do that for the purpose of saving J J McNamara  
10 and helping of the unions.  
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1 They wanted to do it to keep the curse off of labor unionism,  
2 as they called it. I say the blessing for labor unionism  
3 if there has ever come to labor unionism since the begin-  
4 ning of time any blessing, it is this blessing of exposure,  
5 I don't know what it is, but according to their view at  
6 that time that is what they wanted to do. They wanted to  
7 do that, and they tried it on me, and they got that answer  
8 back. Why, gentlemen, I haven't the slightest doubt  
9 in the world that that would have been a splendid thing  
10 for them to have tried at any stage in the proceedings.  
11 I don't know whether they had gotten an intimation that  
12 Bob Bain was not going to stay put or not. I don't know  
13 whether they feared they were not going to make jury-brib-  
14 ing stick or not. They had tried several, and they had  
15 not made much headway. They had one, got Bob Bain on and  
16 maybe they got a hint that Bob was not going to stick by  
17 it, be that as it may. That would have been a good thing  
18 for them and they would have been willing to do it to  
19 let J.J. go and let J.B. plead guilty, and let J.J. go,  
20 and let the whole proposition go, and catch this measley  
21 little dynamiter. That is what I will show they were trying  
22 to do, and they thought perhaps they could make it stick.  
23 It might be there were some mushy people down town who  
24 thought that would be a good job. Remember, that it was  
25 their proposition; not mine.

1 Steffens says he went to Meyer Lissner Monday, and on  
2 Monday this typewritten thing that has been shown you was  
3 written out, before they had ever said anybody to me to  
4 let J. E. plead guilty and let all the rest off. That was  
5 their proposition from the beginning. I think

6 And they did think that they could put that through,  
7 probably. I think this fellow Steffens is so unable to  
8 carry correct information that he probably peddled back  
9 to them the idea that ~~that~~ could be done. On Wednesday  
10 Davis says he talked to me in a joshing way, or I talked  
11 to him in a bantering way about this case. He had never  
12 heard of it. Well, now, if Davis had not heard of this  
13 important thing going on, Davis was not very close to the  
14 inside and did not know a great deal about what Darrow was  
15 doing. But on Wednesday I told it to Davis, and he did not  
16 think I was serious enough in the matter to report it at  
17 all until Thursday, when they had sent for Older. If there  
18 is any doubt about these dates, I want to go right to the  
19 record for them, because they are important. They had sent  
20 a telegram on Tuesday, the 22nd for Fremont Older  
21 to come down here, and talk it over. Talk what over?  
22 Not to talk over the proposition of J.J. McNamara and J.E.  
23 pleading guilty. That was not it, because on Thursday, it  
24 fell on them for the first time by Davis' testimony, as  
25 he says, and by Davis' statement after Older was here, that  
26 I was going to demand both of them. So when Older was sent

1 for, when Gompers was sent for -- and Darrow says that  
2 on that day, Thursday, the 23rd, he had already before  
3 he talked to Davis, had already sent to Gompers or sent  
4 a man out -- so that when Older and Gompers were sent for,  
5 the idea that was being worked on then was simply accept-  
6 ing a plea against J.B., and letting J.J. go, up to Thurs-  
7 day. That is what these men were brought here for, to  
8 see whether they would stand for that. Of course, the pro-  
9 secution did not know anything about what they were doing.  
10 But we get it in the testimony now.

11 So, starting there, and when they sent for Gompers, and  
12 Nockels afterwards responded -- and, by the way, has not  
13 been here; you have not heard his testimony in regard to  
14 the matter, but from others it appears that he did get  
15 here sometime afterwards -- when these men were sent for  
16 there was no proposition under consideration at all, except  
17 the one proposition of getting J.J. McNamara off at the  
18 sacrifice of J.B. That is the proposition.

19 MR DARROW: I want to correct that. Nockels was wired to  
20 first.

21 MR FREDERICKS: All right. It don't make any difference.  
22 That is not what I said. You say you sent to Gompers before  
23 Thursday to send a representative here.

24 MR FORD: Harrington wired Gompers.

25 MR FREDERICKS: Well, I don't care. Nockels came as their  
26 representative. I don't care when Nockels came.



1 MR DARROW: He was not wired to by me.

2 MR FREDERICKS: That is what you said. Eliminate Nockels.

3 I don't care anything about it. When you sent to Gompers  
4 to send a representative here. That was before Thursady,  
5 before Davis told them that they could not put that propo-  
6 sition through, so all of their gathering of their clans,  
7 if they gathered any, were gathered with the idea: should  
8 they throw J.B. to the wolves, as they call it, to get  
9 J.J. off, and save the curse from union labor? Now, that  
10 is the proposition.

11 If the court will take a recess now, I will take up  
12 another subject.

13 THE COURT: Bearing in mind the usual admonition, gentlemen  
14 of the jury, we will take a recess for 15 minutes.

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1 After recess.)

2 MR FREDERICKS: Now, gentlemen, I am going to take these  
3 negotiations, so-called -- and I say "so-called" advisedly,  
4 too -- you know what Davis said when I talked to him about  
5 it on Wednesday in a bantering way -- I am going to take  
6 them up until Saturday night, and I am going to leave them  
7 and take up the Lockwood bribery, and then take them up  
8 again after that.

9 Now, let us imagine what was the situation with the de-  
10 fense in regard to the Lockwood incident during the week  
11 that Fremont Older was here, say. Franklin had had his talk  
12 with Lockwood. Lockwood had apparently considered the mat-  
13 ter, and he had gone out to see Lockwood on Sunday, the 12th,  
14 and Lockwood had turned it down; so that while there was  
15 a string left on it, enough to make Franklin come and see  
16 him again on the proposition, Lockwood had turned it down  
17 to Franklin. Of course, you must assume that Franklin had  
18 an idea that he could come again to Lockwood if his name  
19 ever came out of the box. It had been swinging in there for  
20 a long time. So that was the situation with regard to  
21 Lockwood during this week that Older was here. And remember  
22 that on Thursday they had gathered their clans, or Older --  
23 if you can call him a clan; -- with the idea of getting  
24 J.B.McNamara off on a plea of guilty, and letting J.J.  
25 go scot free. And remember they found out then that that  
26 could not be done; that the District Attorney would not

1 stand for it. Now, they say that just as soon as they  
2 found out that the District Attorney would not stand for  
3 it, why, they said, "Oh, well, then, let's throw J.B.  
4 to the wolves." Gentlemen, there was as much difference  
5 between J.J. McNamara pleading guilty and J.B. McNamara  
6 pleading guilty in the fight that they were making, the  
7 fight that was being financed by the American Federation of  
8 Labor to the tune of \$200,000 that you have already heard  
9 about -- there was just as much difference between one of  
10 those men pleading guilty and both of them pleading guilty  
11 as there was between Heaven and earth. The idea of saying,  
12 "Well, if we can't get one, we will throw the other one in",  
13 is preposterous and absurd, because the throwing in of the  
14 other one meant the throwing in of union labor -- that is  
15 what it meant -- and that is what they would not do.

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1c1 And when they say to you that on Saturday or Sunday they  
2 had any idea of letting J J go I say to you that is not  
3 true and that is not borne out by the testimony or by human  
4 experience.

5 Now, remember that they had always gotten one statement  
6 back from the District Attorney from the beginning to the  
7 end; there never was any change, there never could have been  
8 any change. Remember that they had tried to get this one  
9 man off, this man J J off scot free. No man puts all his  
10 apples in one basket. Clarence Darrow did not put all  
11 his bait on one hook. Even from their own testimony, that  
12 on Sunday they had agreed to come up and let J J go,  
13 even from their own testimony they were only going to let  
14 him go on a condition, and that condition was one that  
15 they knew nothing about the fulfillment of until the  
16 judge had been seen on Friday after Thanksgiving, for  
17 they said--Davis said, and said that flatly, that if the  
18 judge would not consent to take my recommendation that they  
19 would go on and try the case. There was the name of  
20 Lockwood that came out of that box on Saturday. Lockwood  
21 that they knew about; Lockwood that Franklin had talked  
22 to and reported to Darrow about; Lockwood that Franklin  
23 believed still that he could get, and Lockwood that  
24 Franklin went out to see on Sunday, and then Lockwood,  
25 under the instructions, as he says, of the District  
26 Attorney, took him on and let him think that he could be



1 bribed.

2 Now, what are they going to do? They have been trying  
3 here from the 11th or 12th of October until the 25th of  
4 November to get a jury. They had gotten one man on there,  
5 Bob, Bain, but one man does not want to stand out alone  
6 on a proposition of that kind, maybe, and it is better to  
7 have two or three, and they wanted to get another one, and  
8 they felt that they could get Lockwood, perhaps. At least,  
9 Franklin went out on Sunday and saw him and found out that  
10 he could get him. Now, the train was moving. Lockwood was  
11 going. The opportunity was passing and what shall we do?  
12 What shall Darrow do? Shall we go on and complete the  
13 arrangement with Lockwood, or shall we let Lockwood go and  
14 take a chance on being able to pull through the negotiations  
15 that he says he had already pending? Or shall we make  
16 certain of both? Shall we not risk either, rather, by  
17 taking a chance of \$500, and that is all that they took a  
18 chance to lose on Lockwood, only \$500; and it was not  
19 Darrow's money, either. Shall they take a chance?  
20 It was not his own personal money. Shall we take a chance  
21 of \$500 on Lockwood, who is going into that box, and thus  
22 make conviction absolutely impossible, or shall they let  
23 the opportunity go? It was passing; it was passing; it  
24 would be too late on Tuesday. Lockwood would report up here  
25 on Tuesday. If nothing was done with him,--and he was a  
26 fine specimen for them if they could have landed him, a

1 man who was said to be a friend of the District Attorney,  
2 a man of good repute, a man who looked good, a man who  
3 would pass the District Attorney's examination all right;  
4 a man who would not be quibbled about; a prize. Shall  
5 they pass it up or shall they take a chance?

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1 Shall they pass it up or shall they risk \$500 on it?  
2 We don't have but one string to our bow in this life.  
3 We try to get through one way, we try to get through another  
4 way. We try to get through another, perhaps, and out of the  
5 multitude of our tryings, we will find some way, and so,  
6 with Darrow in this case. He didn't base everything on  
7 one man. He didn't base everything on one throw. I say  
8 to you that this evidence shows that he had another man  
9 out trying to bribe jurors besides Franklin that Franklin  
10 didn't know anything about. Frank Fowler. That is what  
11 this evidence shows just as plain as day. He said he didn't  
12 know Frank Fowler, and yet he admits that Frank Fowler  
13 helped him get this jury. Strange! Strange! Strange!  
14 Isn't it strange? Shows the connection between Darrow and  
15 Frank Fowler. It don't go very far. It don't go very far,  
16 perhaps, but it goes far enough to show you that Darrow had  
17 other hooks out; had other lines out; had devious ways,  
18 and he didn't trust it all to one pitch of a coin. Just  
19 remember this idea, that the opportunity to draw this man  
20 Lockwood on the jury was passing just as the hands of the  
21 clock were turned; just like taking a train. You cannot  
22 make up your mind whether you want to go to another town  
23 or whether you don't, but the trains go today. Without  
24 making up your mind on it, you have got to get the train  
25 that goes. So it was with Lockwood. He was coming into  
26 court. He was going into court, probably, so far as they

1 knew he was going on the jury, and they had talked to him.  
2 Franklin had talked to him. What was going to be the ef-  
3 fect of that? Either they must get him, and naturally get  
4 him and keep him close to them or he might be an awful  
5 dangerous man on that jury if he got on there. He might  
6 talk. He might when he came to take his examination on  
7 that jury, he was going to have to take it because he was  
8 coming up here on Tuesday and sure as there was a sun rising  
9 on Tuesday that man Lockwood would have to be examined by  
10 both sides and the court as to his qualifications.

11 Suppose now, when Lockwood came to take the stand and he  
12 had been approached by Franklin, Franklin knew it. Frank-  
13 lin told it to Darrow. He turned him down. Now, then,  
14 what sort of a situation are you in? What sort of a situa-  
15 tion is the defense in with this man Lockwood coming in  
16 that situation into that jury? Why, gentlemen, it meant  
17 taking an awful chance, a chance that no man would take if  
18 he could better it or change it. Something must be done  
19 with Lockwood. He must either be gotten one way or another,  
20 and so Franklin goes out to see him again on Sunday. Frank-  
21 lin went to see Kruger on Sunday also. Lockwood's name  
22 came out of the box Saturday. The defendant says about  
23 11 o'clock. I don't remember, but assume that is correct.  
24 You remember that the record shows that on the day before  
25 that, Friday, a panel had been drawn of 40 or 50 men,  
26 and you remember that the testimony shows that it was



1 Franklin's business to go out and hunt up those when  
2 the panel was drawn and report on them and report on those  
3 who had not already been reported on and so forth.  
4 That panel drawn on Friday, it is fair to assume, was keep-  
5 ing Franklin out, Friday and Saturday, and it is fair to  
6 assume he was out working on that Friday and Saturday,  
7 and that is why he didn't get the Saturday panel until  
8 Saturday night. Now, let me tell you --

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P2s 1 MR. DARROW. Just excuse me, I think you are surely mis-  
2 taken when you said a panel was drawn on Friday and Saturday.

3 MR. FREDERICKS. I am sure of it, absolutely sure of it.  
4 I can find it here.

5 MR. DARROW. Why, it couldn't be.

6 MR. FREDERICKS. Why, sure. I don't care a great deal  
7 about it one way or the other.

8 MR. DARROW. It could not have been drawn.

9 MR. FREDERICKS. Let Ford look it up and we will pass it  
10 until he finds it. I don't care a great deal about it, but  
11 the point is this: Mr. Darrow, if he had given up this  
12 fight, why let all these expenses go on on Sunday?

13 He says there was nothing else to do--he had to do it.  
14 Somebody might hear about it and it would spoil it--some-  
15 thing might come out. And so the case might have to be  
16 tried.

17 So you see at that time there was always something  
18 contingent, something that might happen which would make it  
19 necessary that the case would probably have to be tried,  
20 or a possibility that it would have to be tried.

21 Now, then, on Saturday night, Saturday night at the  
22 Alexandria Hotel, Darrow has the list, and he says it was  
23 marked. Darrow himself admits it was marked. A list of  
24 jurors marked--marked by whom? Marked why? Why was  
25 the trouble taken to go through that list--and gentlemen  
26 you must remember that there was a list of 1700 names, a

1 great big book--you have seen the report book here. I don't  
2 know whether it was introduced in evidence or not, but  
3 you have seen the report book here, a great big book, and  
4 it would take some time to go through that list and mark it.  
5 If nothing was going to be done anyfurther, why not have  
6 taken the list and stuck it in your pocket, and said when  
7 Franklin came in that night, "Oh, well, I have looked it  
8 over--it is all right--it is pretty good. Don't bother  
9 about it, don't bother--take it easy tomorrow. We have  
10 other work to do--we are very busy, we have other names  
11 anyhow."

12 Oh, no. The very opposite of that course is pursued.  
13 Some new activity is taken up that was never taken up  
14 before. This man Cooney, Darrow's man, who never before  
15 had been sent to Franklin, is found by Darrow  
16 and Darrow says to Cooney, "Go and report to Franklin  
17 and get someone else"--Fitzpatrick, I believe--"to go with  
18 you and help him out. He has some work to do."

19 MR. ROGERS. Let us settle up this matter about that venire  
20 proposition. I am going by the numbers. Number 11 which  
21 is the venire returnable on the 28th, the one upon which  
22 Lockwood's name appears, was drawn on the 25th. The next  
23 preceding venire, marked here Number 10, was drawn on the  
24 22nd.

25 MR. FREDERICKS \* Well, my memory is that a jury was drawn  
26 on Friday, but if I am not correct on that, forget it.

1 I understand--I say, forget it if I am not correct, and it  
2 appears not to be correct; at least, you are the judges of  
3 their testimony, and I do not care to contend for it in the  
4 face of what counsel says--let Mr. Ford look further.

5 Now, then, Cooney is Darrow's own man, working on his  
6 end, the Harrington end, not attached to Franklin's end, but  
7 Cooney is sent by Darrow to help Franklin out. Some heavy  
8 and especially hard work to do, eh? Cooney is sent by  
9 Darrow, as Cooney swears, to get some hostile jurors out  
10 of the way. That is Cooney's testimony absolutely--let  
11 us have no question about it. If there is any question  
12 about it I will read it. Cooney says Darrow told him to go  
13 and report to Franklin, that there were some jurors there  
14 that were hostile, and he told him to go Saturday night,  
15 the testimony shows that they went and reported to Franklin  
16 and Franklin gave them a list of what to do on Sunday.  
17 There you get Darrow's close relation, close confidential  
18 relation with Franklin--talking about the jury list, getting  
19 all of those things together, sending men over, telling  
20 him there were men there that were hostile, to help get  
21 them off, and you get absolutely the close contact and  
22 connection between Darrow and Franklin there.

23 Now, then, he goes. Does Darrow know what he is going  
24 to do? You know, gentlemen, it is not a nice thing to do  
25 that sort of a thing. It is not a lawful thing to do that  
26 sort of a thing--go out and try to prevent a man getting on



1 the jury, and to go out and call him up on the telephone, if  
2 you have heard he is going to be hostile, and tell him to  
3 get out of the way. Nobody wanted to get on that jury, it is  
4 reasonable to suppose. It was going to take a long time,  
5 it was going to take a long time to keep people away from  
6 their work, to keep people away from their business. Do  
7 you suppose that Darrow wasn't taking a big chance in doing  
8 that wrongful act on Sunday?

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1 There Cooney testifies to his being directly sent to get  
2 some hostile men off that jury, to get them away, and the  
3 facts bear it out, bear it out absolutely, show that he did  
4 do it, show that he went on that Sunday -- he and Fitzpatrick  
5 together went down to Compton, went to a telephone exchange,  
6 called up Mr Elliott, the banker, and told him -- we get  
7 this from the testimony of Elliott, the banker, -- told  
8 him that he was going to be called on the jury and if he  
9 did not want to serve to get out of the way. But they went  
10 over and did the same with Sackett, and did the same thing  
11 with Dolly, and all these three men came here to testi-  
12 fy to it. Well, now, then, that is taking quite a chance.  
13 That is taking quite a chance, if a case is all over, to  
14 send this man over there, this man Cooney, that had never  
15 been sent there before, to work for Franklin. On Saturday  
16 night, according to the testimony of both Kruger -- no,  
17 according to the testimony of Franklin alone; and this is  
18 about the first time I have referred to the testimony of  
19 Franklin alone -- Franklin went down to Kruger's to see  
20 Kruger, whose name was on that list. Now, on the other side  
21 what was the District Attorney doing? He had  
22 seen that Lockwood's name had come out, too. He was seeing  
23 two sides of a game here, and you can well imagine, from  
24 this testimony, that he was wondering what in the world  
25 these fellows were trying to do, trying to bribe jurymen  
26 here on one side that he had gotten from Lockwood, and the

1 other side talking to him about one of these men pleading  
2 guilty. You can well imagine that an ordinary man would  
3 wonder what under the sun they were trying to do, and  
4 might suspect, probably, that they were trying to put him  
5 to sleep, simply trying to put him to sleep in order that  
6 they might get all they wanted on the jury. But I think  
7 the better understanding of it is that they were simply  
8 working two strings to their bow. Always willing and de-  
9 lighted and glad to have gotten J.F. off if J.B. would  
10 not have to lose his life, always glad to do that, and this  
11 fellow Steffens thinking maybe it could be done. But Dar-  
12 row, finding that it could not be done, and girding up his  
13 loins again and starting into the battle with all the vigor  
14 and force on Sunday. Brown of the District Attorney's of-  
15 fice was called in then for the first time and sent out to  
16 Lockwood's house. Why, it is reasonable to suppose that  
17 we suspected the first thing Franklin would do when he got  
18 that list would be to break for Lockwood. We did not know,  
19 of course, that he had another man or two on his string;  
20 that he was going to Kruger. So Browne takes two or  
21 three detectives and goes out Saturday night and watches  
22 Lockwood's house, but Franklin goes down to Kruger's and  
23 finds no one at home. Then the next day is Sunday --  
24 let me tell you, you cannot follow these sleuths. If you  
25 try to follow one of these wise fellows, you would last  
26 just about that long. They step into a doorway every so

1 often and see who goes by, or they get into an automobile  
2 and whisk and they are gone. You could not follow Frank-  
3 lin. To save your life you could not follow Franklin with-  
4 out getting caught at it, anyhow. So, on Sunday, Franklin  
5 gets out to Lockwood's house without anybody there to watch  
6 for him, and he has the conversation with Lockwood which  
7 both have narrated practically the same, and he offers him  
8 then a bigger sum. He had only offered him \$2000 before.  
9 Now, he offers him the full amount. I suppose probably  
10 Franklin was getting \$5000, as he says, and all he could  
11 save out of that was Franklin's. But finally he puts it  
12 up to the top notch, \$4000, where he puts it with all of  
13 them. I don't know who would get the saving. I don't  
14 care.

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R2c1 That is simply a matter of bargaining, like buying potatoes,  
2 anyway .

3 Franklin goes out then on Sunday to Lockwood's house.  
4 There was nobody there to watch him and he makes his  
5 proposition and Lockwood, under the instructions of the  
6 District Attorney, or the advice of the District Attorney, as  
7 he has told you, takes him on. Then Franklin comes  
8 back and tells Darrow on Monday morning what he has done  
9 about Lockwood. Now, then, you are up against a proposition  
10 there. Lockwood has been tampered with; Lockwood has  
11 been talked to; Lockwood is coming into that court  
12 room door on Monday morning, just as sure as the sun rises.  
13 I do not care if they have agreed that both J J and J B  
14 should plead guilty, and that they both should be hung,  
15 that they would have to play that string of Lockwood's  
16 out if it only took \$500 to play it out anyway. And so on  
17 Monday what happens?

18 I find the evidence is--I don't know as it is material--  
19 that there was a jury drawn on the 23rd to appear Friday the  
20 24th, and there was no court that day, and there was none  
21 Saturday, and the matter went over with a full jury. There  
22 was quite a bunch there.

23 Now, let us see on Monday. Mr. Davis tells you--and  
24 Davis has to help out a little here--I think Davis's memory  
25 has just slipped a cog or two. Davis told you that old  
26 Judge McNutt, who is now dead, and aside from my desire to

1 see any one live, I wish he was not. It seems to me, as  
2 I have listened to this testimony, that a whole lot of  
3 things happened when Judge McNutt was not around that  
4 would not have happened when Judge McNutt was around, if  
5 Judge McNutt had been here to tell about it, but that  
6 be as it may, Davis says he went over Sunday night and  
7 judge McNutt told him that both of these men were willing  
8 to plead guilty.

9 Now, let us see about this. They had to send to Older  
10 and Gompers when they felt that one of them was going  
11 to plead guilty, the pawn, the poor puppet, the dynamiter,  
12 when they thought he was the one that was going to plead  
13 guilty and sent to Older and Gompers to get their advice  
14 on it, and yet they took the responsibility among them-  
15 selves--parrow takes the responsibility himself for  
16 throwing J J to the wolves as they call it, for throwing the  
17 American Federation of Labor to the bad, he takes that  
18 responsibility himself. Not in a thousand years. Not in a  
19 thousand years! On Monday Davis says he did know that  
20 J J would plead guilty if he had to. Well, Steffens says  
21 he didn't. Here is Davis's testimony, taken from the 68th  
22 transcript, 5587. Davis testified: "I went up there to the  
23 District Attorney sometime on Monday and I said what was  
24 this proposition you told me that had been made to you."  
25 referring to me. "And hey that is the District Attorney,  
26 related the same proposition and I said, the boys never would

1 plead guilty and let the judge fix the sentence of John  
2 unless they knew the judge's idea as to what that sentence  
3 would be."

4 "Q When he said that he told to you the same proposition he  
5 had stated before, what was that? A That Jim would have  
6 to take life and J J would have to take a term of years,  
7 and that the judge would have to fix it." Something  
8 that they were never willing to do under their own testimony  
9 and under this testimony right here. Then he says that he  
10 knew at that time that J J was willing to plead guilty, but  
11 he would not tell it to me. Let's see what this babe  
12 in the woods, Steffens, says about it. Here is what Steffens  
13 says--

14 MR. APPEL. Just a moment--with your permission, Mr. Freder-  
15 icks.

16 MR. FREDERICKS. Yes.

17 MR. APPEL. We insist that it is not right for Mr. Fredericks  
18 to just quote one statement of Mr. Davis's. I think he  
19 will find Mr. Davis said to him, "What do you mean by a term  
20 of years?" That he said to him, "Ten years." Right there  
21 in that connection. He left that entirely out.

22 MR. FREDERICKS. That is not the point that I am making at  
23 all. The point that I made there was that he said he would  
24 never let them plead guilty if the judge was to fix the  
25 sentence, and I said the judge would have to fix the sen-  
26 tence, and that I suggested ten years.

Now, then, he goes back and he said he reported this to

1 Darrow on Monday. This was on Monday the 27th, mind you,  
2 the day that Franklin was going to Darrow and telling him  
3 about Lockwood, that they could now get Lockwood and they  
4 were wondering what to do, I imagine, and here is what  
5 Steffens says, quoting from 65, 5262 and on down further:  
6 "A--This was the conversation, I think, Monday morning, or  
7 Monday sometime. Mr. Davis came back and reported that he  
8 had seen Captain Fredericks, and that Captain Fredericks  
9 was asking in addition to J B taking life, J J should take  
10 a sentence. I don't remember just what it was. I have an  
11 impression that it was ten years. I remember Darrow and I  
12 separately--" here is the point, "I remember Darrow and I,  
13 separately from Davis, who didn't know all the plans, you  
14 know at this moment--Mr. Davis didn't know that Darrow was  
15 willing to consent to have J J go too. Mr. Darrow and I  
16 talked this over, and felt that what Davis reported confirmed  
17 what I had been reporting, out of the dark, so to speak."

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1 "Mr Rogers -- What did Mr Darrow say when Mr Davis report-  
2 ed what the District Attorney had said to him on that Mon-  
3 day? A -- As I remember it, he told Davis that he would  
4 not let J.J. go, and he told me to go out and make a fight  
5 and say to everybody," and so forth. On Monday Steffens  
6 says that Davis came back and that Davis didn't know all  
7 the plans. That Davis was not on the inside and didn't know  
8 that J.J. -- that Darrow was willing to have J.J. plead  
9 guilty. So says Steffens. Well, Davis says he did know  
10 it. Well, he didn't know it because that is why Frank-  
11 lin had to run back and forth on that Monday and see Darrow.  
12 You remember that when Franklin first came to Darrow that  
13 morning, Darrow said that he would see if he could give him  
14 the money. You remember that at 10 o'clock, sometime be-  
15 tween 11 and 1, as the testimony shows, Franklin went over  
16 to see if he could get Cap White to act and hold this money.  
17 You remember that he came back and talked to Darrow about  
18 it, and still Darrow didn't have the money. You remember  
19 that he told Darrow he wanted it that night, because he had  
20 said that he had told Lockwood -- that he had arranged  
21 with Lockwood to call him up and come to his office. You  
22 remember still, Darrow was shilly-shallying, still undecided,  
23 still didn't give him the money. Why, he had sent Davis --  
24 Davis says Darrow sent him that day up to the District  
25 Attorney's office to find out what the last word was about  
26 J.J., and when they came back and Davis told him that

1 J. J. would have to go, he made up his mind he would have to  
2 play the game a little further, at any rate, and he told  
3 Franklin, "I will give you the money the next morning, "  
4 and he was there to give it.

5 Now, what was Lockwood doing on Friday? He came in  
6 on the train and called the District Attorney up on the  
7 phone, as he says, and, fearful of coming to the office  
8 for fear he would be seen, was directed to go out to his  
9 house, and there told him of what Franklin had done with  
10 him the day before, and the conversation and arrangements  
11 that had been made. And then Browne is sent for and told  
12 about it. The conversation is not gone into there very  
13 generally, for it would be hearsay, but Browne is sent for  
14 to come <sup>out</sup> to the District Attorney's house, and then  
15 Browne leaves and goes and gets his men, and the District  
16 Attorney takes Lockwood in his automobile and takes him  
17 out, out into his own country, so that if Franklin wanted  
18 him he would have to go to his country for him. Franklin  
19 wanted to get him into his office. Ah, these fellows are  
20 foxy. He goes out there for another reason, goes out  
21 there so that there would be a record made of the tele-  
22 phone message to Franklin, in order to get corroboration  
23 and cinch Franklin and close the case on him, and he tele-  
24 phones to him -- leaves Los Angeles and goes to El Monte  
25 and telephones in to Franklin and tells Franklin that he  
26 can't come to town that afternoon, and that if he wants to

1 see him he will have to come out to his house, and Franklin  
2 telephones back and says, "All right", and asks shall he  
3 bring the big one? on Sunday, they had been talking about  
4 Cap White. Franklin evidently referred to Cap White,  
5 who is a big one physically, as you saw him here on the  
6 stand. Lockwood says, "Yes", thinking that he meant Dar-  
7 row, because Lockwood said that on Sunday Franklin had  
8 talked to him, and told him that he would talk to Darrow  
9 and ask him how they could make it safe. But reason  
10 would tell you that Darrow wasn't going out there. And  
11 then Lockwood goes, and they get Constable Hicks out there  
12 so as to have another witness of the bribing, they go  
13 to the District Attorney, and the District Attorney takes  
14 Lockwood and Hicks out and leaves them there, just as Browne  
15 comes up with his men.

16 Now, counsel made an effort to show that there was a  
17 great scheme to get Darrow out there that night. That is  
18 all nonsense, because the testimony shows that Browne left  
19 and got his men and went out there before this telephone  
20 business started, must have started out there, before this  
21 telephone message was ever received or ever talked about.  
22 And there they planted themselves around the house there  
23 that night, trying to catch Franklin in this nefarious bus-  
24 iness, and he comes out. But he has not brought the money  
25 yet, and so the deal doesn't come off, but the men are plant-  
26 ed all around in order to catch them, and another appoint-

1 ment is made, and the appointment is made for the city of  
2 Los Angeles on the public streets of Los Angeles, and  
3 if there has been any argument here that it would be  
4 foolish to think of passing money on a public street, I  
5 will guarantee to meet any man on any of the public avenues  
6 or streets of this city, if I am not suspected and pass  
7 him a roll of five or six bills anywhere on the streets,  
8 and it would be safer to do it there than it could be done  
9 on to top of Mt Lowe or on the top of a tree or on the top  
10 of a house.

11 Lockwood had to be here the next morning -- you have  
12 got to figure on that. The clock keeps moving, and Lock-  
13 wood had to be here the next morning. Franklin knew it,  
14 and so Franklin arranged with White the day before to meet  
15 him at a certain place, any one place would have been as  
16 good as another, and White was going to get the money.

17 Well, if there is any doubt about the sincerity of that  
18 whole transaction, all you had to do was to look at the  
19 face, the putty face of poor old Cap White. You had to  
20 look at him swallow and catch his breath while he was  
21 trying to tell his story, which corroborated Franklin in  
22 every important particular except one. There was a difference  
23 in their testimony as to how much White was to get out of  
24 it, but that is immaterial. And so these men from the Dis-  
25 trict Attorney's office get back at midnight, come back be-  
26 tween 1 and 2 o'clock, and the plans are laid for the next



1 day down here at 9 o'clock.

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Ulc 1 I want to tell you, gentlemen, that if it had been laid  
2 in a rooming house it would have been a snap to catch them  
3 all, for you could have planted men here and there to look  
4 through transoms, or through keyholes, and all that sort  
5 of thing, but where are you going to hide detectives out on  
6 the street that they wont be seen? Where are you going  
7 to hide them that they wont be seen down on the street?  
8 And the transaction came off just as it has been narrated  
9 here. I do not intend to take up your time going into  
10 the details of that transaction. If you are not convinced  
11 by the testimony that you have heard here of the absolute  
12 correctness and sincerity of that, then all the talk/<sup>ing</sup> that  
13 I could do would have no effect whatever.

14 I will call your attention to just one discrepancy  
15 in that, and that is that Franklin's testimony does not  
16 agree in all particulars with the testimony of all the  
17 others, and I will tell you in my judgment why--and it  
18 does not make a great amount of difference one way or the  
19 other. We get our memory from our ability to pay attention  
20 to what is going on. Franklin that morning was struck a  
21 terrific blow. Imagine, if you can,--and I only want you to  
22 imagine it for a while, for I would not want you to leave  
23 you for long in that situation--imagine Mr. Franklin, 40 to  
24 45 years old, going on his way through life, known all over  
25 this country, known all over Los Angeles, having his friends,  
26 his lodges and so forth, engaged in this that he knew was an

1 unlawful and dangerous and penitentiary offense, when he  
2 first saw Jim Campbell down there that morning. You can  
3 well imagine that his heart gave a thump. While Jim  
4 Campbell was likely to be anywhere, the deal had been  
5 started, and he stands and watches it. He was innocent  
6 enough, and Jim goes out of sight. Browne is down at the  
7 corner. Jim and Browne had gone down on the street car and  
8 passed the corner of Third and Los Angeles in the street  
9 car, and then got off on the other side, and after the deal  
10 was pulled off, as it has been narrated here by Lockwood  
11 and White and Home and Ong and Browne--after the deal was  
12 pulled off--I do not believe that Franklin saw George Home  
13 until that time. He says he did but I claim that he did not,  
14 that the shock to his mind at that time was so great that  
15 he could not remember accurately as these other men do  
16 who were only performing the ordinary--although exciting  
17 --but the things that they were hired to do and were not in  
18 any danger or there was no occasion for any shock. But when  
19 he first sees George Home there that morning--he had seen  
20 Jim Campbell before--his mind was working on that thing.  
21 Oh, he said to Lockwood and White: "Don't look around;  
22 don't look around. The sons-of-bitches." Oh, gentlemen,  
23 that is when his heart began to flutter. Then is when the  
24 blood went to his head. Then is when he realized that the  
25 trick was up; they had him in a trap; they had him and  
26 they had him good and plenty. And he turned to Lockwood and

1 he said: "Be on the square with me", or "Are you on the  
2 square with me?" or something to that effect, and Lockwood  
3 gave him another jolt when he told him that there was  
4 somebody out around his house that night. There was a  
5 condition of mind there at that moment that was absolutely  
6 calculated to destroy a memory, a keen memory, at any rate,  
7 of the succession of events, and he may think he saw George  
8 Home twice, but I don't believe he did. Whether he did or  
9 whether he did not, it does not make a great amount of dif-  
10 ference. But I am sure he did not.

11 Now, we come up to the actual occurrences that connect  
12 this defendant with this offense. What was Franklin doing  
13 down there, anyhow? Why didn't he stay away from there and  
14 give the money to White and let White go on and do the job?  
15 \$4,000 is a whole lot of money. It is a whole lot of money  
16 to trust to a fellow that is engaged in the commission of a  
17 crime like that, that nobody can tell about, and that you  
18 cannot make him give back. Franklin was watching his money  
19 to see that the deal came off, and remember that had to  
20 be reported to somebody pretty quick, because Lockwood was  
21 going to come into court at 9 o'clock or a little after, and  
22 somebody had to know whether it was all right or not.



1 Somebody had to know it and had to know it right. He  
2 was watching his money and he was watching to see  
3 whether the deal came off or not, so he could run up and  
4 report it at once to Clarence Darrow. And Clarence  
5 Darrow was watching his money and was wanting to know  
6 whether the deal was coming off all right, because he had  
7 to be up in court there at 9 o'clock and he had to pass,  
8 in a measure, at least, on the examination of George Lock-  
9 wood, and he wanted to know what was going to happen and  
10 going to be prepared.

11 MR. DARROW \_ We object to that statement, your Honor, that  
12 I had to pass on George Lockwood.

13 MR. FREDERICKS \_ Well, the judge had to pass on it.

14 MR. DARROW. I would not have known anything about it.

15 MR. APPEL. We take an exception to the District Attorney's  
16 remarks, that Lockwood had to be in court at 9 o'clock that  
17 morning, because the evidence is uncontradicted that he had  
18 never been summoned as a juror .

19 MR. FREDERICKS. It does not make any difference.

20 MR. APPEL. It does not make a difference. He is mistaken  
21 in the fact that he had to be there in court at 9 o'clock  
22 that morning.

23 THE COURT. The exception is noted. The jury are the exclu-  
24 sive judges of the testimony.

25 MR. FREDERICKS. Now, listen, I will cover that.

26 MR. APPEL. He had not been summoned, and the record shows it.

1 THE COURT Proceed, Captain Fredericks.

2 MR. FREDERICKS He did have to be there that morning.

3 Franklin told him ~~that~~ his name was on the list. Franklin  
4 did not know he had not been summoned; Darrow did not know  
5 he hadn't been summoned, and he was going to be there  
6 anyhow, he told Franklin that he would be there. The mere  
7 fact of having a paper served on him didn't make any dif-  
8 ference. He was going to be there. Darrow did not know  
9 that he did not have any paper served on him, did he?  
10 If he did how did he find it out?

11 MR. DARROW. The record of the sheriff shows that the man  
12 was out of the county and has never been served.

13 MR. FREDERICKS Did Darrow know that?

14 MR. DARROW. It is a public record.

15 MR. FREDERICKS. It was not a public record until after it  
16 was filed in court here on the 28th day of November.

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1 MR APPEL: Just a moment. When it was filed it became a  
2 record. It cannot be contradicted by the statement of  
3 the District Attorney.

4 MR FREDERICKS: That don't ring true to me, those interrup-  
5 tion s and objections.

6 MR APPEL: We want to state to the court it was a public  
7 record. It was a public record from the time it left the  
8 care of --

9 MR FREDERICKS: Those in terruptions don't ring true to me.  
10 You are not doing that for a lawful purpose.

11 MR APPEL: They do to any honest man.

12 THE COURT: The objection and exception is noted.

13 MR FREDERICKS: I maintain to you that Darrow didn't know  
14 but what he had to be here, and he did have to be here and  
15 Lockwood knew his name was on that. He was going to be  
16 here and Franklin told him he was going to be here, and  
17 Darrow had to know about it, and Darrow wanted to know,  
18 what to do and what attitude to take when he saw George  
19 Lockwood come in that door.

20 MR DARROW: Captain Fredericks knows perfectly well that  
21 the lawyers would not have to pass on that for two weeks.  
22 It isn't fair.

23 MR FRIEDE ICKS: It isn't fair for you to take up my time.

24 MR DARROW: It is fair when you are stating something that  
25 is not true.

26 MR APPEL: We take an exception to his saying that Darrow

1 knew he had to be there at 9 o'clock, because there isn't  
2 any evidence of that fact.

3 MR FREDERICKS: Gentlemen of the jury, if I sat on a jury  
4 and saw a prosecuting attorney badgered and bothered in  
5 this way, I would come to one conclusion, and one only,  
6 if there wasn't any evidence in the case, and that is that  
7 they were afraid to hear what he had to say in his  
8 closing argument.

9 MR ROGERS: With all due respect, we take an exception, be-  
10 cause we are not badgering. We are merely calling at-  
11 tention to the record because we cannot reply and when the  
12 record --

13 MR FREDERICKS: Say what you want to say and don't take up  
14 my time.

15 MR ROGERS: The record is being misquoted, and is as fol-  
16 lows: George Lockwood left county year and a half ago.  
17 Not served. That is the record.

18 MR FREDERICKS: yes, that is the record. There is no doubt  
19 about that, but there is no doubt about the fact that  
20 George N. Lockwood's name was drawn from the box, and that  
21 he had not left the county, and that Franklin told him to  
22 be here, and that his name would come out, and he was going  
23 to be here, served or no served. I don't know how that  
24 got on there, and I don't care. It doesn't stop the truth,  
25 and you know it doesn't stop the truth, you know what the  
26 facts are. And so Darrow had to know that morning. He didn't



1 have to pass on his qualifications, that was done by the  
2 judge, but yet, I conclude from this testimony and from  
3 all of it and from common sense and common judgment that  
4 Darrow wanted to know before George Lockwood came into that  
5 court that morning what was going to happen. He wanted to  
6 know before he saw George Lockwood entered those doors,  
7 whether George Lockwood was going to say anything about  
8 what Franklin had been talking about or not. In addition  
9 to that he wanted to know whether Franklin was playing  
10 square with that \$4000, and he was down there watching to  
11 find out.

12 Why, this poppycock story about going over to head-  
13 quarters! I wish I had time to sit down and read that  
14 editorial which this man Hawley says called his attention  
15 to the fact that there was an alliance between the Liquor  
16 interests and the Good Government Organization, and therein  
17 Clarence Darrow from Chicago should be called in to tell  
18 them what to do, advise us. Yet, Clarence Darrow says he  
19 always wanted to be in court. Oh, shucks! Nonsense!  
20 Well, you don't expect that Darrow is going to tell you  
21 what he was really there for. Let me tell you, gentlemen,  
22 of all the men in all the world who might have been <sup>there</sup> at  
23 that particular time, isn't it strange that as the officer  
24 of the law put his hands upon the felon Franklin, that  
25 felon's boss, Darrow, should come right up and stand by his  
26 side. Isn't it a remarkable circumstance? Can logic or

1 tears or wails or fears convince you that Clarence Darrow  
2 was there by accident and mere accident? Ah, non-  
3 sense, nonsense! Absurd! Why, gentlemen, if there was  
4 absolutely nothing else in this case, if you would go out  
5 from here and tell your own souls in two weeks from now that  
6 Franklin was arrested caught bribing a juror just around  
7 the corner a few hundred yards from Darrow was standing  
8 when he was arrested, that just around the corner two or  
9 three minutes before, four thousand dollars had been passed--  
10 passed for what purpose? Passed in the case on trial in  
11 which Darrow was chief counsel, and that Franklin had  
12 finally admitted that Darrow gave him the money, why, if you  
13 ever tried to satisfy your souls two weeks after the glamour  
14 of his oratory had left you, that that man was not guilty,  
15 you would have an awful job to do it. You couldn't do it.  
16 You couldn't do it, in the light of day. Why, look at it,  
17 gentlemen. What was the business that was being pulled  
18 off down there at Third and Los Angeles? Business in  
19 which the chief counsel of the McNamaras was interested,  
20 wasn't it? Strange then, that he should have been just  
21 about in that locality and you have seen the scene and  
22 you know how far away it is. The strangest thing  
23 that of all times and in all the world in all the months  
24 that he has been here, that that one time at a little  
25 less than 9 in the morning, should have been the one time  
26 that he chose to make a crossing there, and that that one

1 time of all times in the world, should have been the one  
2 time that Franklin was there being arrested. Strange  
3 that such a coincidence should happen innocently. Why,  
4 gentlemen, it is preposterous. It is absolutely absurd.  
5 It corroborates Franklin absolutely. Why, without Frank-  
6 lin's testimony at once you would say, "Well, that looks  
7 mighty close to Darrow. What is he doing down there?  
8 Court is in session up here. It is after 9 o'clock, why  
9 isn't he up here. He says he belongs here; he says he  
10 is always here generally; why isn't he? Why is it he is  
11 running off down there? Strange that he should happen  
12 to be there just at that time." You will never be able to  
13 explain that to your own conscience on any ground of inno-  
14 cence, and it absolutely satisfies reason in every  
15 particular without anything else.

16 Now, the idea, remember, that Darrow was not risking any  
17 \$4000 there, don't get that into your head. Darrow was  
18 risking just \$500, because the bargain with Lockwood was  
19 that if he didn't vote for an acquittal, and he couldn't  
20 vote for an acquittal, if the case was dismissed, or if  
21 the men plead guilty, if he didn't vote for acquittal, the  
22 \$3500 was to come back, so he was only risking \$500, that  
23 is all, unless you call it a risk to put it in the hands of  
24 White. There might be some element of risk there, but that  
25 is not an element of risk that we can consider here.

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lw 1 Darrow says in his argument to you that that is an argument  
2 of his innocence, because if he had known that was going  
3 to come off he wouldn't have been there. Gentlemen, how  
4 absurd! Suppose now that he had not been there; supposing  
5 he had been over on Figueroa street; supposing he had been  
6 in San Francisco; then he would argue to you, "Why, I  
7 wasn't there. I was over on Figueroa street. I was in  
8 San Francisco, so of course I had nothing to do with it--  
9 I wasn't there when this man was arrested. I wasn't around  
10 the corner just a few minutes after the bribe was passed--  
11 I didn't know anything about it." He would have made  
12 the same argument, and there would have been the <sup>same</sup> fallacy.

13 Ah, gentlemen, take it together with all the things in  
14 this case, it is an absolute absurdity. It is an absolute  
15 waste of time to argue anything else.

16 And what is his conduct? Now, you may say that one man  
17 wouldn't act like another, that is true--that is true.  
18 One man would not act like another. Darrow saw Browne  
19 coming down the street right after Franklin. Here comes  
20 Franklin and Lockwood, here comes Browne right after him.  
21 Here is Darrow coming across the street, and it is quite  
22 possible that just as he got about the middle of the street  
23 and saw Browne, Browne saw him, and he turns and goes back  
24 --he turns and goes back. It is very reasonable to suppose  
25 that Browne, the skilled detective, saw Darrow as quick as  
26 Darrow saw him, and that their eyes met, there was no going



1 back and he got to Franklin just in time to warn him that  
2 they are onto him, because he saw Browne right back of him  
3 and he knew they were onto him. And what does he do?

4 What does he do?

5 Let us assume that he is an innocent man going down the  
6 street, accidentally meeting one of his employes, and that  
7 employe meets him and he meets other employes just as he  
8 is put under arrest. Now, it is not necessary to create any  
9 scene--he didn't create any scene when he talked with Browne  
10 down here on Franklin street afterwards, did he? It was  
11 not necessary to do anything of the kind. But, let me tell  
12 you, there was another shock that came that morning.

13 Franklin had gotten his terrific shock just a few minutes  
14 before, when he saw George Home, and he got it again just  
15 that minute when Browne took him up. But there fell on  
16 Clarence Darrow at that minute a terrific shock, a terrible  
17 blow. My God! the lights went out. Think of it! 56  
18 years old, a skilled attorney, the head counsel in the Mc-  
19 Namara case, caught right there, when he knew, when he  
20 knew just what had happened, when he knew that Franklin had  
21 left him only a few minutes before with the money, when he  
22 knew that the jig was up and he didn't know just how close  
23 he was to it himself. What a shock--oh, what a terrific  
24 shock!

25 And what would a man do? Back off. Back off. Back  
26 off until he could catch his breath, until he could get his

1 thought, until he could catch his senses. Ah, if he had  
2 been an innocent man, why, there would have been no fear  
3 there, there would have been no apprehension there. Do  
4 you think he would have obeyed Browne? No. Why, if he  
5 had been an innocent man he would have said something  
6 different, something absolutely conclusive--would have  
7 said, "Why, Browne, what does this mean, Old Man? What  
8 does it mean here? What are you fellows doing? You don't  
9 mean to tell me you are arresting Franklin? You are joking.  
10 What do you mean by this?" Or he would have fallen into  
11 a rage, one or the other, or there would have been some  
12 question asked. There would have been some conduct that  
13 would have been natural to innocence. No man is going to  
14 see his hired man, his close confidential agent, grabbed  
15 up on the street and back off, back off, and turn and go  
16 away without a word, without a sound, without a syllable.  
17 Are you going to believe that that was the act of an  
18 innocent man? Why, no--no.

19 And then he turns. He says he doesn't follow them.  
20 He says he doesn't come for the purpose of following them,  
21 but he accidentally meets Browne as Browne is coming in the  
22 court house. Let me read you what he said to Browne.  
23 Browne says he wrote it down. Browne says, "I went up to  
24 the District Attorney's office,"--and he wrote it down what  
25 Darrow said. Here is what Darrow, this innocent man--  
26 oh, no, you can't hook up this with innocence--this is what

1 Darrow says: "My God, I wouldn't have had this happen for  
2 the world"--and he wouldn't; if he had known it was going  
3 to happen this way--"I never would have allowed it to be  
4 done"--and he wouldn't, not if it was going to happen that  
5 way. "Isn't there anything that you can do? This is  
6 terrible." "Oh, and it was. He had had a few minutes to  
7 think. "This is terrible." Browne said, "I said you will  
8 have to talk to Captain Fredericks. Darrow then said,  
9 'Browne, this is terrible. For God's sake, can't you do  
10 anything for"--for--"for us." For us. Not for Franklin--  
11 for us. "Can't you do anything for us?"

12 "I answered, 'You ought to have known better than employ  
13 a man like Franklin, he is always drunk. I don't know what  
14 I can do for you.' Darrow says, 'He came to me highly  
15 recommended by Mr. McCormick and others.' He said, 'Browne  
16 do the best you can, and I will take care of you'. I said,  
17 'Mr. Darrow, you will have to take a big smoke,' and I turned  
18 and left."

19 "Browne, do the best you can and I will take care of you."  
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1 Take care of whom? Take care of my detective? Take  
2 care of the man who was working for the prosecution?  
3 Take care of Browne? "I will take care of you." Can't  
4 you do anything for us?" That, gentlemen, is the same  
5 old idea, that permeates this man's talk and this testi-  
6 mony from beginning to end; it is the idea that he could  
7 get men to do things and shove them around like pawns and  
8 he would take care of them. He was going to take care of  
9 Biddinger. He was going to take care of Browne. Gentle-  
10 ment. What is that, if it is anything? What is that offer  
11 to Browne? What is it? If it is anything, isn't it a  
12 direct bribe to Browne? Suppose Browne had gone a step  
13 further then, and said: Darrow, what do you mean by taking  
14 care of me? Ah, what answer do you suppose he would have  
15 gotten? What answer do you suppose he would have got-  
16 ten? "I will take care of you" is a general statement.  
17 Innocent! Oh, shaw! Why, gentlemen, there is not an iota  
18 of innocent thought in the whole thing.

19 I am not going to take up your time in going over the con-  
20 versations that Franklin narrates he had with Darrow up  
21 in his office on Monday when he was trying to get this money  
22 and Darrow was holding off. I am not going to bother to  
23 go into the conversations that he says he had with Dar-  
24 row on the morning that he gave him the money. But let me  
25 tell you one thing, if Franklin had been framing a  
26 lie on this thing he would not have put Job Parriman into it;



1 he would not have put Job Harriman into it. He would  
2 not have put two men into it to swear against him. He  
3 would have put Darrow into it alone. That is another cir-  
4 cumstance. Isn't it strange, isn't it passing strange that  
5 this happened down on Main street just about long enough aft-  
6 er Job Harriman had been to his vault to get up to his  
7 office, and for Franklin to meet him, and Franklin get  
8 down and go where he did and do what he did? You can  
9 trace it all back, minute by minute, and you will find  
10 that it will connect exactly with Job Harriman's time at  
11 the vault. Did Franklin know that Job Harriman went to  
12 the vault that morning? Was Franklin doing this for poli-  
13 tics? It was not while politics were going on. Nobody  
14 told Franklin that Job Harriman had anything to do with it  
15 while politics were going on, Oh, no, there is nothing  
16 of that kind in it, gentlemen. How did Franklin know that  
17 Job Harriman was going to his vault that morning? Why,  
18 gentlemen, you cannot put aside all these circumstances and  
19 say: we won't believe him. You cannot do that. True,  
20 Job Harriman puts up a pretty good reason for going there  
21 that morning. But why, of all the mornings -- that note  
22 had been presented to his office, as the records on the  
23 notes show, a notice had been sent to his office on the  
24 25rd, and a messenger had come again on the 27th, and  
25 the bank teller, the bank's cashier at the note window,  
26 says that on Monday -- Job Harriman's secretary came there

1 on Monday with a check to pay that note, and the note was  
2 out. Now, of course, in the great raft of business that  
3 comes before a teller in a bank, the teller might possibly  
4 be mistaken.

5 MR DARROW: I want to object to that, because the bank  
6 teller swears on cross-examination ~~that~~ he didn't remember.

7 MR FREDERICKS: He doesn't say anything of the kind. You  
8 remember the testimony. He brought it out clear and strong  
9 that he remembered, and he said the name of the bank that  
10 the check was on. I asked him the name of the bank that  
11 the check was on that was presented to him Monday morning  
12 and he gave the name of the same bank that Harriman's  
13 money was in. I have forgotten the name of the bank.

14 But what of it? Men might be mistaken about those things,  
15 and it does not make a great amount of difference one way  
16 or the other, whether he was or whether he was not.

17 A teller in a bank might be mistaken about <sup>the</sup> when a check was  
18 brought there. I do not believe he was. He says he was  
19 not. Let it go at that. He may have been. The fact is  
20 that he chose that morning, that morning to pay the note.  
21 You know this alibi does not hang together very well, for  
22 it appeared on cross-examination here that when the 500  
23 was deposited, there was enough money in the bank to pay  
24 the note, and it could have been paid that day. But that  
25 does not make a great amount of difference one way or  
26 the other. The fact remains that Job Harriman went to his

1 vault that morning.

2 Now, I am not going into details on that. Mr Ford went  
3 over it with you, and you will see that it is absolutely  
4 demonstrated by his calculation that he could not possibly  
5 have sent this 'phone to Mr Darrow until half past nine.  
6 Mr Hawley's testimony is a complete fabrication from be-  
7 ginning to end. Why is it a complete fabrication?  
8 Why didn't they ask Job Harriman when he was on the stand--  
9 why didn't they ask Job Harriman if he had had a talk with  
10 Hawley that morning? They did not ask him that. Not one  
11 scintilla of testimony did they get out of Job Harriman  
12 about Job Harriman's having a talk with Hawley that morn-  
13 ing; not a word. Why? Because it is so dangerous to try  
14 and match a lie in with anyone else's testimony. That is  
15 why they did not ask Harriman those questions. Not a word  
16 did they ask Harriman as to whether he had seen Hawley  
17 that morning.

18 Now, on all this talk about a lack of motive. Davis  
19 says, in transcript 69, page 5602, that if it had been left  
20 entirely to the judge we certainly would not have done so;  
21 we would have gone on and tried the case, certainly.  
22 When did he know they were not going on and try the case?  
23 When did he know that the Judge would listen to the recom-  
24 mendation of the District Attorney? Why, after all this  
25 affair was over; after it was all over; he didn't know.  
26 They were simply playing safe, that is all, and I asked him

1 if he did not know that Judge Bordwell was a strange judge  
2 in criminal practice, and if I had not told him that I did  
3 not know what he would do, and that he knew as well as I did  
4 and he said yes.

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1 And nobody knew until that Friday morning whether the  
2 case would have to go on and be tried with that jury or not,  
3 and if this Franklin and Lockwood episode had not have  
4 come up, if Lockwood had been what they thought he was,  
5 and had taken the bait and had taken the money, and slid  
6 through and been examined as we were examining jurors all  
7 Tuesday afternoon and Wednesday--Thursday was a holiday,  
8 and he had gone on through, there would have been a mighty  
9 short show for any compromise or any dickering about anybody  
10 pleading guilty, in my judgment.

11 Steffens says, transcript 67, page 5369: "We were  
12 always afraid during the negotiations that it would leak  
13 out and the case would have to be tried." I haven't quoted  
14 that verbatim, but that is the substance of it. Steffens  
15 says in his article, and I would like that article, Mr.  
16 Smith, if you will give it to me. It is on several sheets of  
17 paper pasted on. Steffens says in his article, published  
18 December 2nd: "If the judge's sentence did not correspond  
19 to the District Attorney's representation the case would  
20 go on."

21 Now, Davis says, and I could get this in the book, but  
22 I want to hurry, but if you are in doubt about it I will  
23 get it. Davis testified here that he and I had agreed on  
24 Wednesday that both these men were going to plead guilty.  
25 Now, I am going to tell you why that is not true by this  
26 testimony without testifying about it myself at all. Davis

1 says that they had told me on Wednesday, the Wednesday before  
2 Thanksgiving, that J J was willing to plead guilty. I  
3 say this testimony shows absolutely that he did not tell me  
4 anything of the kind. Yea, Lincoln Steffens got together  
5 and arranged a meeting of business men down here that night,  
6 Wednesday night, and Lincoln Steffens testifies that was the  
7 first committee meeting they had had, and Lincoln Steffens  
8 says that he labored with them that night, Wednesday night,  
9 to get them to come to me to accept a plea from J B and let  
10 J J go, and he says he did it with all the force he had, and  
11 that he never for one moment intimated that it was possible  
12 that J J would plead guilty Wednesday night down there at  
13 the meeting of the business men, that he thought he was  
14 going to come and talk to me so that J J would not plead  
15 guilty, and Davis tried to make you believe that he had  
16 told me personally on that afternoon that they would. Why,  
17 what a fool notion to send Steffens down there to make a  
18 plea on a proposition of that kind, on something that they  
19 had already given up and told me so. How absurd, and yea,  
20 there is another reason why you may know without me saying  
21 one word of testimony that they never gave up J J until  
22 Thanksgiving day and that they gave him up then in order to  
23 end this whole business, and quiet it down, and that is the  
24 telephone message that LeCompte Davis said he had with me  
25 at 2 o'clock Thanksgiving afternoon. Davis called me  
26 up then and he had forgotten about that until I brought it

1 to his attention and I said to him, as the testimony shows,  
2 and as he admits, that he asked me if he could come out  
3 that night and see me, Thanksgiving night. I said to him,  
4 "There is no use in your coming, Davis, unless they are both  
5 willing to plead guilty." Now, in order to get around  
6 that idea they say, Oh, they were both willing to plead  
7 guilty but they were not both willing to plead guilty at  
8 the same time. Ah, shucks, rot! What difference does  
9 it make whether they plead guilty at the same time or at  
10 another time? You know what an absolute absurdity that is,  
11 so they both plead guilty. What difference does it make  
12 whether they plead guilty together or separately? They  
13 couldn't, of course, then bunco me into getting a light  
14 sentence, or bunco the court into getting a light sentence  
15 on J B unless they had a plea of guilty of J J, and there  
16 is many a day passes between the plea and the sentence, and  
17 they were going to deceive, they say, to deceive their own  
18 clients.

19 Now, then, Steffens knew why,  
20 He gave it to the world and the whole world knew that these  
21 men never agreed to plead guilty until Thanksgiving Day.  
22 What was all that wrestling over there, and all that fuss  
23 and all that striving, and all that pleading on Thanksgiving  
24 day if it was not to get them to plead guilty and to get J J,  
25 and here is Steffens account of it, which has been intro-  
26 duced in evidence which he wrote on Friday night: "All that



1 need be said now in regard to the occurrence at the jail  
2 is that Jim, that is J B, who had consented four or five days  
3 before to plead guilty himself, and I think that is cor-  
4 rect, objected to his brother Joe doing the same thing.

5 J J was willing. He, J J, gave his consent after five or  
6 ten minutes talk, and I sat with Jim while the lawyers  
7 talked to Joe." He gave his consent after five or ten  
8 minutes talk. Talk about what happened over there Thanks-  
9 giving Day and say there was no intention--I don't know that  
10 there is any use of taking a great deal of time about that,  
11 for under their own admission it don't make a great deal of  
12 difference, for under their own admission the case would  
13 have to go on unless the terms I recommenced were acceded to  
14 by the judge, and they never knew whether they would be  
15 acceded to or not.

16 Gentlemen, I am purposely cutting out a great many things  
17 here, because I think they are not necessary. You have  
18 heard this testimony. I have gone over here in detail  
19 just about twenty crimes that the evidence in this case  
20 shows that this defendant committed, and I am not going to  
21 take up your time further with this matter. I am going to  
22 let you get these instructions and go out and settle this  
23 matter. I have shown you 22 separate and distinct crimes.  
24 There is one that I didn't refer to here that I see now.  
25 It is the running off of the witness Skillan. Skillan was  
26 not brought on the stand. Harrington testified--



1 MR. DARROW · There is no evidence in this record anywhere  
2 that Skillan was a witness or knew anything about it.

3 MR. FREDERICKS. Harrington testified that Darrow told him  
4 about giving a man named Skillan a hundred dollars to get  
5 away and that he was a witness. There hasn't been much  
6 about that and I have not referred to it particularly  
7 because it hasn't been gone into, and Skillan was not  
8 gotten, but there is that much in the testimony and they  
9 count up 22.

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## CRIMES COMMITTED.

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2 Crime No. 1. On June 5th, the endeavor to corrupt Bidding-  
3 er in Chicago.

4 Crime No.2. On June 18th, the employment of Behm to come to  
5 Los Angeles and induce McManigal a State's witness, to re-  
6 pudiate his confession.

7 Crime No.3. Beginning June 27th, the advising and en-  
8 couraging of Behm in Los Angeles in the attempt to cor-  
9 rupt State's witness McManigal.

10 Crime No.4. On August 1st, advising and encouraging the  
11 running out of the state of State's witness Flora Caplan.

12 Crime No.5. August 14th, coaching Behm in his testimony  
13 before the Grand Jury.

14 Crime No.6. Attempt to corrupt Biddinger in Los Angeles  
15 at the Alexandria Hote, August 15th.

16 Crime No.7. August 21st, or 22nd, again attempting to  
17 corrupt Biddinger in San Francisco.

18 Crime No.8. September 2nd, securing of \$10,000 in bills  
19 to be used for the crime of jury bribing.

20 Crime No.9. The Dickelmann affair, about September  
21 20th.

22 Crime No. 10. October 1st, the running off of witness  
23 Skillen.

24 All of these established without one word from Franklin,  
25 who had been at work all this time gathering information  
26 about the jury. When the selection of the jury became more

- 1 important than the matters of evidence, Franklin and  
2 his work came to the front, and then came  
3 Crime No.11. The bribing of Robert Bain, October 6th.  
4 Crime No.12. November 2nd, the attempt to bribe Underwood.  
5 Crime No.13. November 4th, the beginning of the crime  
6 of attempting to bribe Lockwood, which was completed as a  
7 separate crime on November 9th.  
8 Crime No.14. This was afterwards renewed by the commis-  
9 sion of another crime in attempting to bribe Lockwood,  
10 November 25th to 28th.  
11 Crime No.15. November 8th, the crime of attempting to bribe  
12 Frank Smith of Covina.  
13 Crime No.16. November 8th, in the advice, assistance and  
14 encouragement given to Mrs Bain.  
15 Crime No.17. November 12th, the first visit in the at-  
16 tempt to bribe Krueger.  
17 Crime No.18. The attempt to bribe Yonkin, November 18th.  
18 Crime No.19. The final attempt to bribe Krueger, Sunday,  
19 November 26th.  
20 Crime No.20. November 26th, the attempt on the part of  
21 Cooney to have juror Elliott, the banker of Compton,  
22 avoid jury summons.  
23 Crime No.21. November 26th, the attempt to have juror Sackett  
24 of Artesia avoid jury summons.  
25 Crime No.22. November 26th, the attempt to have juror  
26 R. E. Dolley of Norwalk avoid jury service.

1 And practically all of them brought before you by the  
2 testimony of others than Franklin -- Franklin's testimony  
3 simply of its own weight, that is all.

4 Now, gentlemen, I am not going to talk to you further.  
5 I am going to leave this with you. This is your affair  
6 from now on. As I said it to you in the beginning, if  
7 you want to make jury-bribing a safe industry, then  
8 acquit this man on this testimony, for you will never  
9 again -- no other jury will ever, in my judgment, have  
10 submitted to them a stronger case of this most damnable  
11 crime. Think of it, gentlemen! With all the witnesses  
12 who have come here, with all of them right out of their own  
13 camp, who have come here to tell this story of corruption!  
14 If sympathy for Clarence Darrow weighs more with you  
15 than the desire to blot out this damnable thing, then let  
16 him go. But let me call your attention to the fact that  
17 history tells us that George Washington wept when he  
18 signed the death warrant of Major Andre. But he signed it,  
19 nevertheless. Now, in God's name, be men; in God's name,  
20 be strong men. In the name of the state and in the name of  
21 decency, don't let us have this snakey monster crawl its  
22 filthy length through our courts of justice and coil itself  
23 up in our jury box. Don't let us have it. Why, gentlemen,  
24 don't let us tear down the statue of Justitia on the court  
25 house and erect there the head of a serpeant. Don't do it,  
26 simply because its scales are bright and it is beautiful.



1 don't do it, my friends, but obey your consciences in  
2 this matter.

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Last 1 Don't let sympathy lead you. I do not care what punishment  
c 2 is meted out to this man; he should get the same that  
3 Franklin got. What an absolute absurdity and travesty  
4 on justice it would be to punish the instrument, the hired  
5 man, and let the other fellow go free. Do not do it, gentle-  
6 men; in the name of Heaven, do not do it. Do not do it.  
7 You cannot reconcile it with your consciences, you cannot  
8 live with your consciences if you go out and do a thing  
9 like this. Do not do it. Go and vote this man guilty, as  
10 this evidence shows him to be, and if, by reason of his  
11 age, if by reason of anything else under Heaven--for which  
12 I cannot see any reason--he is entitled to any courtesy or  
13 any clemency, let the court extend it to him. But say  
14 by your verdict, Gentlemen, that you believe that he did  
15 this thing. It is nothing to me personally. I have no  
16 more interest in this than you have. As I said before, I  
17 must make my living in the courts, and I want to go up  
18 against honest jurors. I want to go up against an honest  
19 court. What is it we have left in America if we have not  
20 got our courts? Where can we go if the accursed power of  
21 money is going to reach into the courts and meet us there  
22 and thwart us there, and drag our witnesses away, and drag  
23 our jurors out--where is it going to end? What have we  
24 got left?

25 Gentlemen, I leave it with you and your God--and your  
26 God. You cannot make any mistake when you find Clarence Darro

1 guilty of this crime. And if you do not, I tell you the  
2 result of that verdict will not end in your lifetime and  
3 mine.

4 I thank you.

5 (Whereupon, after the usual admonition to the jury, a  
6 recess was taken until 8 o'clock A.M. August 17, 1912.)

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