

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California, )

Plaintiff, )

vs. )

Clarence Darrow, )

Defendant. )

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 21

I N D E X.

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B. N. Smith,  
Official Reporter.

AFTERNOON SESSION JUNE 11, 1912. 2 P.M.

1  
2  
3 Defendant in court with counsel.

4 THE COURT. The witness will take the stand. All parties  
5 are present, proceed.

6  
7 KURT A. DIEKELMAN,  
8 on the stand for further direct examination:  
9 MR. FREDERICKS. I have just been going over the reporter's  
10 record of a question and answer of Mr. Cooney's this morn-  
11 ing your Honor.

12 THE COURT. On what page?

13 MR. FREDERICKS. On page 1488, and it is just possible  
14 there may be a little ambiguity as to who Mr. Cooney was  
15 referring to, in lines 17 and 18 and if there is, while  
16 Mr. Cooney is here, we would like to clear it up.

17 THE COURT. You want to withdraw this witness at this time  
18 for that purpose?

19 MR. FREDERICKS. Just a moment, your Honor.

20 THE COURT. All right.

21 (Discussion.)  
22

23 P. J. COONEY,  
24 recalled by the prosecution and testified as follows:

25 BY MR. FREDERICKS. Q Mr. Cooney, I asked you this morning  
26 in regard to a conversation that you had with Mr. Darrow

1 on the evening of Saturday the 25th of November in which--  
2 just before you went to Franklin, understand? A Yes.

3 Q And you made an answer, "He explained to me, as I think  
4 I stated yesterday, these men were hostile." Who did you  
5 mean by "he"?

6 MR. ROGERS. That is very leading and suggestive. He is  
7 now stating that in relating the conversation with Mr. Darrow  
8 you said this.

9 MR. FREDERICKS. That is the way it appears here. I am  
10 willing to ask him to go over the entire conversation again.

11 MR. ROGERS. Suppose Cooney says whom he meant without  
12 being lead to it.

13 MR. FORD. The Court please, he had related before--

14 THE COURT. Objection overruled. The Court understands  
15 the situation.

16 A I meant Mr. Darrow.

17 MR. FREDERICKS. That is all.

18  
19 CROSS-EXAMINATION.

20 BY MR. ROGERS. Q You mean to say, Mr. Cooney--

21 MR. FORD. Just pardonus a moment.

22 MR. FREDERICKS. That covers the point, Mr. Rogers, you may  
23 cross-examine.

24 MR. ROGERS. Q Mr. Cooney, read that and see if you thor-  
25 oughly understand the situation: "He explained to me, as  
26 I think I stated yesterday, that these men were hostile,"

1 referring to the list given you by Franklin, doesn't it?

2 A When I talked to Mr. Darrow there wasn't any list in my  
3 hands or in his hands. That list was afterwards obtained  
4 from Franklin, what he said--

5 Q Who said? A What Mr. Darrow said was that there were  
6 some men who were hostile and to go over to Franklin and  
7 get the list. That is, in substance he said that.

8 Q You think, do you, that you meant Mr. Darrow in that state-  
9 ment or did you mean Mr. Franklin when you testified in that?

10 A Mr. Darrow did not go into details with me as to who these  
11 men were and how to approach them and so forth, as Mr.  
12 Franklin would. What he said there were some prospective  
13 jurymen that were hostile.

14 THE COURT. You haven't answered Mr. Rogers's question yet.  
15 Read the question.

16 (Last question read by the reporter.)

17 A I mean Mr. Darrow in that statement.

18 MR. ROGERS. Q Now, when you in that statement--you said  
19 "As I think I stated yesterday," don't you think you  
20 referred to Mr. Franklin by that, by what you stated concern-  
21 ing Franklin the day before? A What I said, both Mr.  
22 Franklin and Mr. Darrow made similar statements, but Mr.  
23 Franklin went more into detail about it.

24 Q Now, isn't this what you said about Mr. Darrow on yester-  
25 day, page 1474, mind you, this is the testimony of the pre-  
26 vious day: "Q Now, what was the conversation you had with

1 Darrow at that time in the Higgins Building, Saturday even-  
2 ing or afternoon? A He told me to report to Mr. Franklin  
3 that there was some work on the jury to be done." A Yes,  
4 he did say that and told me what the work was.

5 Q I will get you the other thing--it is very long in the  
6 testimony, I don't care to ask him any more questions.

7 -----

8 K U R T A. D I E K E L M A N,

9 recalled for further direct examination:

10 MR. FREDERICKS. You were at the adjournment talking about  
11 the last time when you saw Hammerstrom in Chicago and the  
12 question of a statement was referred to in your testimony.

13 Where was that conversation had with Mr. Hammerstrom?

14 A That was in one of the offices of Mr. Darrow's suite.

15 Q Now, when you left the office where did you go? A I  
16 left the office; I went back to the hotel.

17 Q And how long did you remain--do you remember what time  
18 you got back to the hotel in the day time? A Why, about  
19 2 o'clock or so.

20 Q How long did you remain at the hotel? A Why, I guess  
21 I was at the hotel a little while, and then I went out and  
22 visited some of my friends.

23 Q Well, did you meet George Home--withdraw that and start  
24 again--state whether or not Mr. Hammerstrom stopped at the  
25 same hotel with you.

26 MR. APPEL. We object to that as immaterial, hearsay, in-

1 competent, irrelevant and immaterial for any purpose what  
2 so ever, no foundation laid.

3 THE COURT. Objection overruled.

4 MR. APPEL. Exception.

5 A Not to my knowledge he did not.

6 Q Do you know who had the next room to you at the hotel?

7 MR. APPEL. We object to that upon the same grounds stated  
8 in our former objection.

9 THE COURT. Objection overruled.

10 MR. APPEL. Except.

11 A No, I do not. I forgot to mention in my conversation  
12 this morning, that the office part of it, I just recall--

13 THE COURT. Speak a little louder.

14 A Shall I--

15 MR. APPEL. We object to that as irrelevant, incompetent and  
16 immaterial, hearsay, no foundation laid, not binding upon the  
17 defendant, voluntary on the part of the witness and not called  
18 forth by any question propounded to him.

19 THE COURT. Objection overruled.

20 MR. APPEL. Exception.

21 A Mr. Hammerstrom stated to me when we were at the office,  
22 he said, "Now, the state may try to get you back from here,  
23 they have no right to get you," and he said, "If you want,  
24 we will put a body guard around you and we will give you as  
25 many men as you want and will take all the rooms around  
26 there so that if anything starts, why, we will know about

1 it," and he said, "You don't have to go back unless you  
2 want to of your own accord." I told him I didn't want any  
3 bodyguard there and I was satisfied to stay up there alone.

4 Q Do you know whether or not they put anybody around you  
5 up there at the hotel?

6 MR. APPEL. Wait a moment--I object to that on the ground it  
7 is incompetent, irrelevant and immaterial, hearsay; not  
8 binding upon the defendant, not relevant to any issue or  
9 matter concerned in this case.

10 MR. FREDERICKS. Withdraw the question.

11 Q Now, you say that afternoon you went out to some friends  
12 of yours? A Yes, sir.

13 Q State whether or not you know George Home, the police  
14 detective here of Los Angeles City? A yes, sir.

15 Q State whether or not you saw him at Chicago at that  
16 time or at any time. A No, sir, I didn't; I saw him in  
17 Kansas City.

18 Q In Kansas City? A Yes, sir.

19 Q Oh, yes. When?

20 MR. APPEL. Wait a moment--we object to that as immaterial  
21 for any purposes whatsoever, that is hearsay, not binding  
22 upon the defendant, incompetent.

23 THE COURT. I suppose it is preliminary?

24 MR. FREDERICKS. Yes.

25 THE COURT. Objection overruled.

26 MR. APPEL. We except.

1 A Shall I answer?

2 THE COURT. yes.

3 A What was the question?

4 (Question read.)

5 A I think it was about the 23rd of September.

6 Q And when did you leave Chicago for Los Angeles, coming  
7 back? A I think it was the 22nd of September.

8 Q Why did you leave Chicago at that time to come back to  
9 Los Angeles?

10 MR. APPEL. We object to that as incompetent, irrelevant and  
11 immaterial to any purposes whatsoever, hearsay, not binding  
12 upon the defendant; calling for a conclusion and opinion  
13 of the witness, for his own motives, which are not evidence  
14 in this case against this defendant, he might have been  
15 afraid of yellow fever or the small pox or anything like  
16 that, that would not throw any light upon it.

17 THE COURT. Objection overruled.

18 MR. FORD. We are not seeking to show the motives of this  
19 witness.

20 THE COURT. Objection overruled.

21 MR. APPEL. We take an exception.

22 A I met Guy Bittinger and Mr. Randolph Burns, and they told  
23 me I would be needed, as I was told before, and this was just  
24 a game to get me out of the way.

25 MR. ROGERS. Now, if your Honor please, can there be any  
26 rule of law on the face of the earth that can admit a state-

... Burns to this man?

3-P

~~2-3~~sm1

1 MR FORD: We are perfectly willing to let that be stricken  
2 out.

3 MR APPEL: We do not take any stipulation, we object to the  
4 statement, your Honor.

5 THE COURT: Assign it as error.

6 MR APPEL: As hearsay, and your Honor allowed the witness to  
7 testify to anything that might have induced him to come back  
8 to Los Angeles, whether it was words from Burns or from  
9 Bittinger, or from anyone else, it would not have made any  
10 difference. This statement has been brought here before this  
11 jury, we objected to it and the objection was overruled, and  
12 we are entitled to the benefit of whatever error there is  
13 in the record here. They knew very well what they wanted  
14 to bring out, they knew very well; they ought to have known,  
15 that this statement would have been incompetent, because  
16 someone may have told this witness--

17 MR FORD: We have asked that this answer be stricken out on  
18 the ground it is not responsive. I do not see any necessity  
19 for argument,

20 MR APPEL: After they get it in before the jury they stand  
21 up here, your Honor, after this jury is given the benefit  
22 of his statements, --

23 MR FORD: We object to that --

24 MR APPEL: They come up here, your Honor, with the avowed  
25 intention of being fair, and they say "We stipulate that  
26 that statement be stricken out." I say, it is not fair to

1 this defendant.

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2 MR FORD: This witness is not a lawyer.

3 MR APPEL: We assign that as misconduct on their part.

4 MR FORD: This witness is not a lawyer and the answer is  
5 not responsive to the question, it is hearsay and we ask  
6 that the jury be admonished not to consider statements of  
7 the witness, and at the same time that they be admonished  
8 not to consider statement of counsel commenting upon that  
9 matter. I wish to state, the only thing we are seeking  
10 to show on the part of the witness is to show that he came  
11 back --

12 THE COURT: Let him tell why he came back, if it is proper  
13 for him to tell it.

14 MR FORD: That is all we are seeking to show.

15 MR FREDERICKS: The answer is stricken out and there is  
16 nothing before the Court.

17 THE COURT: The answer has not been stricken out.

18 MR ROGERS: There is something before the Court now.

19 I --

20 THE COURT: Just a moment. I want to get that question and  
21 answer again. (Question and answer read)

22 MR ROGERS: Now, if your Honor please, --

23 MR FORD; We are willing to submit that that be stricken  
24 out.

25 THE COURT: Mr Rogers has a right to be heard.

26 MR ROGERS: After asking that question and knowing what the

1 answer was going to be, and getting the benefit of it,  
2 then they come in and they deliberately offer incompetent  
3 testimony, testimony that <sup>any</sup> lawyer that has practiced a  
4 week in a justice court knows is absolutely incompetent, for  
5 it is reversible error to leave it in, knowing, having  
6 gotten it in and gotten the benefit of it, now, they osten-  
7 tationally ask to have it stricken out. Now, there is a  
8 statement made by Guy Bittinger and one of Burns' men, and  
9 Randolph Burns, whom they deny having anything to do with  
10 this case.

11 MR FORD: The Darrow case, yes.

12 MR ROGERS: They admit their statements and conclusions as  
13 to what has happened as to some reason why certain things  
14 may have been done. If that is not absolutely detrimental,  
15 and prejudicial to the highest degree to the defendant, I  
16 never heard evidence in my life that was. Now, then,  
17 having deliberately drawn it out and having the objection  
18 overruled, and having asked for the evidence, and we must  
19 assume they knew what they were going to get, now, they  
20 move that it be stricken out. There is only one thing  
21 that can be done, possibly, to save that record at all,  
22 and that is to instruct the jury that it is not to be  
23 regarded <sup>by</sup> them as evidence, and the District Attorney's mis-  
24 conduct is to be disregarded <sup>by</sup> them in asking for such an answer  
25 as that -- it doesn't seem necessary to cite authorities,  
26 and how in the world can Mr Darrow be bound by the statement

of Randolph Burns on the streets of Kansas City?

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1 MR. FREDERICKS. We asked our question and the Court  
2 evidently thought as we thought, that the question was pro-  
3 per, we thought it was proper.

4 THE COURT. The answer will be stricken out as not respon-  
5 sive to the question and the jury is admonished and directed  
6 to pay no attention to the answer no more than if it had  
7 not been presented here. It is improper evidence to be  
8 introduced, not responsive to the question and is to be  
9 wholly disregarded.

10 MR. FORD. There is another--

11 MR. ROGERS. My exception has been entered to the situation  
12 as it is developed, in particular that the district  
13 attorney sought the answer, to get it into the minds of the  
14 jury, from which it cannot be removed by any process of  
15 striking out.

16 MR. FORD. We object to having the counsel state what our  
17 motives were. We deny those were our motives and don't  
18 believe counsel has a right to say we expected that answer,  
19 for we did not, and didn't anticipate that answer at all, and  
20 our object was one entirely different, as your Honor can  
21 plainly see.

22 THE COURT. I think counsel for the defense has an unques-  
23 tioned right to assign error at such time and places as he  
24 may see fit.

25 MR. FREDERICKS. I don't think there is any doubt about  
26 that.

1 THE COURT. May be a little more emphatic than the situa-  
2 tion called for.

3 MR. FORD. I am simply making the point that they had no right  
4 to state as a matter <sup>of fact</sup> something that is not a matter of fact.  
5 We have no objection to their assigning it as error.

6 THE COURT. Merely their conclusion as a mental analysis,  
7 that is all. Proceed with the examination of this witness.

8 MR. FREDERICKS. Now, I withdraw the question and come up to  
9 the matter in another way.

10 Q What day of the month did you say it was you left Chicago  
11 to come back to Los Angeles? A I think it was the 22nd of  
12 September.

13 Q And what day was it that you had this conversation over  
14 in Mr. Darrow's office that you have related with Mr. Hammer-  
15 strom? A On the 21st of September.

16 Q Did you--you said you didn't see Mr. Hammerstrom again.  
17 Did you see Mr. Bibby again after this conversation over in  
18 Darrow's office before you left Chicago? A I saw no one  
19 after that.

20 Q Well, did you see Mr. Nockles again? A I saw Mr. Nockles  
21 that night when I came in the Hotel. He was sitting in the  
22 lobby.

23 Q I mean did you have any talk with him? A No, just  
24 ordinary conversation.

25 Q What time did you leave Chicago coming back to Los  
26 Angeles? A Left 8 P.M. on the 22nd, I think it was, of

1 September.

2 Q What time did you leave your hotel that day, the day  
3 that you left Chicago? A I left about 1 or 2 o'clock.  
4 I was going up to Milwaukee that afternoon, I think it  
5 was about 2 o'clock.

6 Q And went where? A I was going up to Milwaukee.

7 Q Did you go to Milwaukee? A No, I did not.

8 Q Who did you leave the hotel in company with, if anybody?

9 A Nobody.

10 Q Who did you go to the depot in company with, if anybody?

11 MR. APPEL. We object to that as immaterial, hearsay, irrele-  
12 vant and incompetent.

13 THE COURT. Overruled.

14 MR. APPEL. Exception.

15 A At the time I left?

16 MR. FREDERICKS. Yes. A With Mr. Bittinger and Mr. Barry,  
17 and several of the Burns men up there.

18 Q Did any one accompany you from Chicago down as far as  
19 Kansas City where you met George Home?

20 MR. APPEL. The same objection, incompetent, irrelevant and  
21 immaterial, hearsay, and calling for acts and declarations  
22 of parties not connected with the defendant or shown to have  
23 been connected with the defendant, not binding upon the  
24 defendant, not relevant or material to prove any issue or  
25 element of the offense wharged in the indictment.

26 THE COURT. Objection overruled.

1 MR. APPEL. Exception.

2 A Mr. Guy Bittinger.

3 MR. FREDERICKS. How far did he accompany you? A Kansas  
4 City.

5 MR. ROGERS. The same objection.

6 THE COURT. Overruled.

7 MR. ROGERS. Exception.

8 MR. FREDERICKS. Q Who, if anybody, accompanied you from  
9 Kansas City back to Los Angeles?

10 MR. APPEL. The same objection as before upon each and all  
11 of the grounds stated in our previous objections to this  
12 line of testimony.

13 THE COURT. Overruled.

14 MR. APPEL. Exception.

15 A Mr. George Home.

16 MR. FREDERICKS. Q State whether or not you came straight  
17 through to Los Angeles? A Yes, sir, I came straight through  
18 from Kansas City to Los Angeles.

19 Q Yes, that is what I asked you, I think--what I intended  
20 to. When you got to Los Angeles where did you and Mr. Home  
21 go?

22 MR. APPEL. Wait a moment--we object to that as incompetent,  
23 irrelevant and immaterial, hearsay and not material to any  
24 issue in the case, not binding upon the defendant. How  
25 can--

26 MR. FREDERICKS. I will withdraw the question and stop,

1 your Honor. Cross-examine.

2

3 CROSS-EXAMINATION.

4 MR. ROGERS. Mr Diekelman, is that the way you pronounce  
5 it? A Yes, sir.

6 Q So you were over in Albuquerque in the state of New  
7 Mexico, weren't you? A Yes, sir.

8 Q You were outside of the state of California and outside  
9 the jurisdiction of the California courts, weren't you?

10 MR. FORD. Just a moment--to that question we object upon the  
11 ground it calls for a conclusion of the witness whether or  
12 not he was outside of the jurisdiction of the California  
13 courts.

14 MR. ROGERS. Calls for his knowledge, merely.

15 THE COURT. Objection overruled.

16 A Yes, sir.

17 MR. ROGERS. Q You never have been subpoenaed in the Mc-  
18 Namara case whatsoever? A No, sir.

19 Q Now, when Mr. Hammerstrom spoke to you about giving you  
20 \$100 and your going on to Chicago, he told you then, didn't  
21 he, that you could have that \$100 and that would be the price  
22 of your ticket from Chicago back to Los Angeles any time  
23 you wanted to come? A Yes, sir.

24

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26

5-S 1 Q And that any time you wanted to leave the job in  
2 Chicago and come back to Los Angeles the money was right  
3 in your pocket in the \$100 to come with? A Yes sir.

4 Q He told you that he thought from the fact that you did  
5 not positively identify this man as Brice, that they might  
6 want to use you as a witness, did he? A Yes sir.

7 Q That the defense might want to use you as a witness;  
8 told you that over in Albuquerque, didn't he? A Yes sir.

9 Q Now, you were over there in Albuquerque; do you know  
10 whether or not there was some Burns men over there with you?

11 A No, not at the time I didn't.

12 Q Didn't know it at the time? A No sir.

13 Q But as a matter of fact you subsequently learned that  
14 over in Albuquerque you were in the hands of the Burns men?

15 A Yes sir.

16 Q Now, when you were in the hands of the Burns men over  
17 in Albuquerque, New Mexico, out of this State, Mr Hammer-  
18 strom came and got you to go to Chicago and <sup>gave</sup> you money to  
19 come from Chicago to Los Angeles, didn't he? A Yes sir.

20 Q Well, you know he wanted to get you out of the hands of  
21 the Burns men, get you somewhere where you would not be  
22 in the hands of Burns and his men?

23 MR FORD: Objected to upon the ground it calls for a con-  
24 clusion of the witness, and argumentative. That is a matter  
25 we will argue to the jury, what the motives of Mr Hammerstrom  
26 were.

1 THE COURT: A question as to what he knew about them;  
2 overruled.

3 MR FORD: Just read the question, your Honor. I think it  
4 shows --

5 THE COURT: Read the question.

6 (Last question read by the reporter)

7 MR FORD: We object upon the ground it is argumentative,  
8 calls for a conclusion of the witness and is not cross-  
9 examination. I wish to call this to your Honor's attention,  
10 that the mere use of the word "know" does not prevent it  
11 from being matter of conclusion. Your Honor knows that no  
12 man can look into your mind and see what motive animated  
13 you when you are doing a specific act. This witness cannot  
14 look into another man's mind and say that he knows that  
15 that man's motives or objects are, whatever he thinks about  
16 the subject, whatever he thinks he knows, is merely a con-  
17 clusion on his part; clearly whatever answer would be given  
18 to this would be clearly a conclusion. We have our con-  
19 clusions about that very matter, and it will be the business  
20 of this jury to draw its conclusions and we will argue that  
21 matter to the jury. Surely, this witness cannot testify as  
22 to his conclusion; all he can testify is as to what was  
23 actually said, what was actually done, and then the jury  
24 will draw the conclusion.

25 THE COURT: Overruled.

26 A Did I answer "yes" to that question?

1 MR ROGERS: I will put the question in this form: "You were  
2 over in Albuquerque in the hands of the Burns men when Mr  
3 ~~Hammerstrom came and got you to go to Chicago; told you that~~  
4 ~~he would get you a job there in your own line of work; gave~~  
5 ~~you money and told you you could come to Los Angeles when-~~  
6 ~~ever you wanted to, at any rate, you would come to Los~~  
7 ~~Angeles when they wanted you to.~~

8 MR FREDERICKS: Objected to upon the ground assuming a fact  
9 not in evidence, that he was in the hands of the Burns men.

10 THE COURT: Overruled.

11 A I didn't get that question.

12 (Last question read by the reporter)

13 A Yes.

14 MR ROGERS: Now, Mr Diekelman, even before you left Albu-  
15 querque with Hammerstrom, you notified the District Attorney  
16 by telegraph that you were going on to Chicago, didn't you?

17 A No sir.

18 Q You notified them that Hammerstrom was there, or Higgins  
19 was there? A I notified them someone was there.

20 Q Notified them that someone was there? A Yes sir.

21 Q You told the District Attorney at the very time Hammer-  
22 strom was talking to you and trying to get you out of Al-  
23 buquerque and away from the Burns men, you notified the  
24 District Attorney and you showed that very telegram that you  
25 got from the District Attorney to Hammerstrom, before you  
26 ever left Albuquerque? A No sir, I did not notify the

1 District Attorney after I had seen Mr Hammerstrom.

2 Q Didn't you show the message that you got from the

3 District Attorney to Mr Hammerstrom? A Yes sir.

4 Q Where? A In Albuquerque.

5 Q That is what I asked you. A You asked me if I  
6 notified the District Attorney after I had seen Mr Hammer-  
7 strom.

8 Q No, I don't think I have quite made myself clear.  
9 I will try to see if we understand each other. What I am  
10 getting at, first, you telegraphed the District Attorney  
11 someone was <sup>there</sup> representing the defense, did you?

12 A Before I saw Mr Hammerstrom?

13 Q Yes, before you saw Mr Hammerstrom. A Yes sir.

14 Q And the district attorney sent you an answer back,  
15 didn't he? A Yes sir.

16 Q You told Mr Hammerstrom you had telegraphed the  
17 District Attorney, didn't you? A I don't recall I did,  
18 no.

19 Q Well, you showed him the telegram you got from the  
20 District Attorney, didn't you? A Several days later.

21 Q In Albuquerque, though? A Yes.

22 Q And didn't that telegram from the District Attorney,  
23 Fredericks, to you there in Albuquerque, didn't that say  
24 that was an answer to your message to the District Attorney?

25 MR FORD: To the message of a couple of days before?

26 MR ROGERS: Yes sir.

68 1 A No, sir, that was no answer to my telegram. I didn't  
2 show Mr. Hammerstrom the answer I got from my telegram. I  
3 received that answer a couple of hours later.

4 Q What I am getting at, you told Mr. Hammerstrom that you  
5 got a wire from the district attorney and he told you not  
6 to go on to Chicago and Hammerstrom told you that was a pure  
7 bluff? A Yes.

8 Q That is it. A That is several days after he had seen  
9 me.

10 Q When you were in Chicago, when you went back to Chicago  
11 and were up at Mr. parrow's office, didn't Mr. Hammerstrom  
12 take you down into the office of Ex Mayor Dunn of Chicago?

13 A Yes, sir.

14 Q Well, he was not trying to conceal you in Chicago, was  
15 he?

16 MR. FORD. Just a moment--we object upon the ground that it is  
17 calling for a conclusion of the witness as to whether he  
18 was trying to conceal him or not.

19 THE COURT. Objections sustained.

20 MR. ROGERS. At any rate you went publicly with Mr. Hammerstrom  
21 at his request to the office of Ex-Mayor Dunn of Chicago  
22 and there talked with Mr. Dunn himself, the reform Mayor of  
23 Chicago?

24 MR. FORD. Just a moment--the reform Mayor of Chicago--I  
25 haven't a right to say anything that is not in evidence.  
26 It is simply that he went publicly, and that the office of

1 the Ex-Mayor any place is a public place, as a matter of  
2 fact it was not public.

3 MR. ROGERS. If your Honor please, that is the most  
4 scandalous conduct, telling this witness it was not public,  
5 saying to him as a matter of fact that was not public. If  
6 that is not putting <sup>it</sup> in the mouth of the witness I never  
7 heard it in a court room before. I asked him, didn't you  
8 go publicly to the office of Ex-Mayor Dunn of Chicago, in a  
9 public place. I have a right to ask him if he didn't go  
10 there and counsel has no right to tell him it is not a  
11 public place.

12 MR. FORD. I am addressing myself to the question. The  
13 mere fact that a man walks with another man up to the office  
14 of a third man doesn't by any means make it a public per-  
15 formance; whether or not it is a public performance is a  
16 pure matter of conclusion. ~~What~~ I should have stated, in  
17 my opinion, that is not public, but it doesn't make a  
18 particle of difference, it is merely a matter of opinion  
19 whether it is public or not, a conclusion upon which we  
20 will argue to the jury.

21 MR. APPEL. That is a matter for the witness.

22 THE COURT. Overruled.

23 MR. ROGERS: Q You understand? A Answer the question?

24 Q yes, please. A Yes, sir; I did.

25 Q You didn't go in any covered hack or any carriage with  
26 the blinds pulled down to Mr. Dunn's office, did you?

1 A No, sir.

2 Q You just walked in a public way, didn't you, to Mr.  
3 Dunn's office, saw Mr. Dunn and came out after you had seen  
4 Mayor Dunn of Chicago?

5 MR. FORD. I object upon the ground it calls for a conclu-  
6 sion whether it was public or not.

7 THE COURT. Objection overruled.

8 MR. FORD. Just like to argue it just a moment.

9 THE COURT. You argued that on the last objection.

10 MR. FORD. I want to present a new argument.

11 A What was that question?

12 (Last question read by the reporter.)

13 A Yes, sir.

14 MR. ROGERS. Q Now, during--do you know who those Burns  
15 men were over in Albuquerque that were over there at the  
16 time Hammerstrom came and got you and took you to Chicago?

17 A Yes, sir.

18 Q Who were they? A Sir?

19 Q Who were they? A Sir? (Question read.) Mr. Bert  
20 Damon.

21 Q Mr. Bert Damon. Well, did Mr. Hammerstrom know or did Mr.  
22 Hammerstrom talk with you while you were over in Albu-  
23 ququerque about the Burns men being there in Albuquerque?

24 A Why, he told me at the time that there was some Burns  
25 men there and asked me if I had seen them. I said, "No."  
26 "Well," he says, "I cannot--" He wanted me to give him my

1 absolute word that I had not spoke to him or seen them or  
2 that they had seen me. I told him, "No, to my knowledge."  
3 Hesays, "I don't know what they are here for, except to see  
4 you or to watch you." So a day or so later Mr. Hammerstrom  
5 said he found out theye were not up there after me, they  
6 were up there working on some smuggling case.

7 Q Did he tell you the name of the Burna man that was there?

8 A No, sir, he did not.

9 Q At the time that you were talking to Mr. Hammerstrom did  
10 you tell Mr. Damon, the Burns man, what Mr. Hammerstrom said,  
11 in a way? A Yes, sir, I did, partially.

12 Q Well, now, at the very time Mr. Hammerstrom was talking to  
13 you about going to Chicago you were talking to the Burns  
14 man and telling him everything Mr. Hammerstrom said?

15 MR. FORD. We object to that onthe ground the preceding ques-  
16 tion itself says he did partially, and this question assumes  
17 something--

18 MR. APPEL. He is suggesting again to the witness.

19 THE COURT. Objection overruled.

20 MR. APPEL. We take exception to this constant unprofessional  
21 misconduct on the part of counsel, a system of suggesting  
22 to the witness and arguing to him.

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7-P 1 MR FORD: There is no objection before the Court and I take  
2 an exception to counsel's argument.

3 MR APPEL: I take an exception in that manner--

4 THE COURT: You have a right to assign it as error.

5 MR APPEL: We may get the record in some way and somewhere  
6 to read it.

7 Q By Mr Rogers: Now, Mr Diekelman, to just refresh your  
8 recollection a little bit about the matter, isn't it true  
9 that you took the District Attorney's wife, that is, the  
10 District Attorney's telegram up to Hammerstrom and showed  
11 it to him?

12 MR FORD: What page are you showing the witness?

13 Q By Mr Rogers: 1528, "And he said 'Well, that is just  
14 a bluff, and to scare you not to go with us, that doesn't  
15 stop you from going with us; they know better than that,  
16 they are just bluffing you so that you won't go with us.'?"

17 A Yes sir.

18 Q Well, then, Mr Hammerstrom did know while he was right  
19 there in Albuquerque you had telegraphed to the District  
20 Attorney of Los Angeles and got a message back, didn't he?  
21 Because you showed him the message?

22 MR FORD: Has that last question been answered?

23 Q By Mr Rogers: Isn't that so? A I guess he did from  
24 the presumption of that telegram.

25 MR FORD: We move that the answer be stricken out on the  
26 ground it is not responsive to the question.

1 MR FREDERICKS: The answer was, "I guess he did, from the  
2 presumption of that telegram."

3 THE COURT: Strike out the answer.

4 MR ROGERS: Exception.

5 Q That is true, isn't it, that is what I relate --

6 THE COURT: Let him answer the question. Have it reread and  
7 let him answer it.

8 (Question read)

9 MR FREDERICKS: We will further object to that on this  
10 ground: it calls for a conclusion of the witness as to  
11 what someone else knew. Now, the only way that that can be  
12 shown would be by any talk that he had with Hammerstrom  
13 prior to that time. Certainly we will get in deep water  
14 if this witness tries to say what he thinks another witness  
15 knew.

16 A I think I can answer that.

17 THE COURT: Objection overruled. The witness now says he  
18 can answer the question.

19 A I don't think he did know I had wired Mr Fredericks,  
20 because I hadn't told him so.

21 Q By Mr Rogers: Didn't you say this morning "Why, I didn't  
22 see him again until I received a wire from the District  
23 Attorney, and so I took this wire up there and showed it to  
24 him"? A Yes sir.

25 Q Now, what was in that wire?

26 MR FORD: We object to that -- well, withdraw that.

1 Q By Mr Rogers: What was in your telegram to the  
2 District Attorney you showed Hammerstrom before you ever  
3 left Albuquerque to go to Chicago? A I stated that this  
4 morning; the wire was they were trying to bunco me and  
5 Hammerstrom would be arrested on his arrival here,

6 Q And Mr Hammerstrom, when you showed him that wire,  
7 said it was a pure bluff, he was not doing anything wrong,  
8 he had a right to take you to Chicago away from the Burns  
9 men that had you in charge, didn't he?

10 MR FREDERICKS: That is objected to assuming a fact not in  
11 evidence. This witness has said at that time he didn't  
12 know there were any Burns men there, and further, this man  
13 told him afterwards these <sup>Burns</sup> men were there on some other  
14 matter, a smuggling case, though the assumption is the  
15 Burns men had this man in charge it is not based upon  
16 evidence.

17 THE COURT: Objection overruled.

18 MR APTEL: We object and we take an exception to the  
19 District Attorney saying that Hammerstrom told this man the  
20 Burns men were there on some other mission as not testified  
21 by the evidence, as being just the other way.

22 MR FREDERICKS: That is what he said.

23 THE COURT: Objection overruled. Answer the question.

24 A What is the question.

25 (Question read)

26 A No sir, he didn't mention anything about any Burns men.

1 He said it was a pure bluff and they were just "trying to  
2 keep you from going with me."

3 Q Well, then, Mr Hammerstrom did talk to you about the  
4 wire from the District Attorney that he would be arrested  
5 when he arrived in Los Angeles and that was before you had  
6 ever gone to Chicago with him, wasn't it? A Yes sir.

7 Q So, after he knew that the District Attorney was fully  
8 informed of what he was going to do and trying to do, he  
9 went on and did it? Was there any concealment about it,  
10 was there?

11 MR FREDERICKS: We object upon the ground it is argumentative.

12 THE COURT: Objection sustained.

13 Q Now, you told Mr Damon right along what was going  
14 on, didn't you? A Partially.

15 Q Well, you told Damon sufficiently to make them under-  
16 stand what Hammerstrom had said to you and what he was there  
17 for, didn't you?

18 MR FORD: We object to that as calling for a conclusion of  
19 the witness, whether it was sufficiently or not, and on the  
20 further ground it is not cross-examination, and that it is  
21 argumentative. The vice of that question is this,  
22 your Honor: as far as it's not being cross-examination,  
23 the witness is allowed to testify to certain facts; now, if  
24 they wish to show any statements made by this witness.

9-P

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26

8p 1 THE COURT . I think your objection is good on the ground it  
2 calls for a conclusion.

3 MR. ROGERS. On cross-examination one has a right to ask  
4 for conclusions, on cross-examination one has a right to ask  
5 what was in this man's mind, what he thought. This evi-  
6 dence was introduced for one purpose, to show that Mr. Darrow,  
7 through Hammerstrom and Bibby was endeavoring to secrete the  
8 witness, to take the witness away from the trial. We are  
9 showing by the answers of this witness that they had this  
10 witness themselves outside of the jurisdiction of this court  
11 in custody of private detectives who had been repudiated  
12 by them.

13 THE COURT. Mr. Rogers, just a minute. I don't think you  
14 differ a great deal with the court on the propriety of the  
15 question. If you want to ask the witness whether or not he  
16 stated the substance of the conversation, but the question  
17 in the form propounded, I think it is calling for the con-  
18 clusion of the witness.

19 MR. FREDERICKS. If it will be of any advantage to counsel,  
20 we wish to state that we have not repudiated anybody, much  
21 less the members of Mr. Burns's detective force.

22 MR. APPEL. Let us have the record here. He said in open  
23 court that Burns had nothing to do with this case.

24 MR. FREDERICKS. He has nothing to do with the case, and he  
25 has not had.

26 MR. FORD. And that is, he has nothing to do with the pro-

1 secution of this case--the fact that Mr. Burns was acting--  
2 THE COURT. There is nothing before the court.

3 MR. FORD --with the district attorney's office--

4 THE COURT. There is nothing before the court--

5 MR. FORD. --but they make statements that/<sup>we</sup>certainly ought  
6 to reply to.

7 THE COURT. I will attend to that. Gentlemen of the jury,  
8 these statements that are made by counsel will be utterly  
9 disregarded by you. They have no place in the record. The  
10 question is for the witness to answer. Mr. Reporter, will  
11 you read the question? (Question read.) Now, Mr. Rogers  
12 amended that question, better reframe it.

13 MR. ROGERS. I will reframe it.

14 BY MR. ROGERS. Q You told Mr. Damon the substance of the mat-  
15 ter of what Hammerstrom was talking to you about? A yes,  
16 sir.

17 Q Now, so far as the money that was given to you, you got  
18 your fare to Chicago, didn't you? A Yes, sir.

19 Q You got \$100 to pay your fare to come from Chicago to Los  
20 Angeles, didn't you? A Yes, sir.

21 Q And you got \$30 a week for your living expenses for one  
22 week? A Yes, sir.

23 Q And you were living at a public hotel, in a public place,  
24 weren't you? A Yes, sir.

25 Q Hotel Morrison. Where is that, in Chicago? A Clark and  
26 Madison.

1 Q On a prominent corner, isn't it?

2 A Yes, sir.

3 Q It is a prominent hotel, isn't it? A Yes, sir.

4 Q One of the most prominent corners in Chicago, was it not?

5 A Well, I don't know just the most prominent--

6 Q Well, thousands of people passing all the time, Clark  
7 and Madison, aren't they? A Yes. Well, I stopped at the  
8 place and worked there.

9 Q How far is that from the Burns agency? A I don't know.

10 Q Do you know where the Burns agency is in Chicago? A No,  
11 sir, I do not; I think I have heard it, at the First National  
12 Bank Building, or some building--I don't/<sup>know,</sup>though.

13 Q Now, when they spoke to you about going to Chicago, Mr.  
14 Diekelman, they spoke to you about getting a position there,  
15 didn't they, and they mentioned a position like a place in  
16 Rector's, didn't they? A Yes, sir, I told them I would  
17 get my own position if I wanted one.

18 Q Pardon me. What I am getting at is, they spoke to you  
19 about getting several positions? A Yes, sir.

20 Q Rector's is a famous restaurant in Chicago, a big place,  
21 where thousands of people come and go, isn't that so?

22 MR. FORD. We object to that as irrelevant and immaterial, not  
23 cross-examination, argumentative.

24 THE COURT. Objection overruled.

25 Q To conceal a witness in Rector's, right on the main floor  
26 of Rector's, you can always conceal a witness. Go ahead.

1 A What is that?

2 Q Isn't Rector's one of the big places of Chicago where  
3 thousands of people congregate every week and every day?

4 A Yes, sir.

5 Q They spoke to you about some other restaurants, you might  
6 get a job in, isn't that true? A Yes, sir.

7 Q They said that the Federation of Labor had some interest  
8 in some of those restaurants there, did they not?

9 A Yes, sir

10 Q And that they would get you a place in one of those if  
11 you wanted it.

12 A They said they wanted me to manage one of them, yes, sir.

13 Q You were not told to hide yourself out, were you?

14 MR. FORD. We object to that--

15 THE COURT. Objection overruled.

16 A No.

17 BY MR. ROGERS. Q Hammerstrom didn't come to Chicago with  
18 you, did he? A No, sir.

19 Q Bibby went to Chicago with you? A Yes, sir.

20 Q Now, when you went up to Darrow's office after you got  
21 to Chicago, you went alone, didn't you? A Yes, sir.

22 Q How long had you been in Chicago when you went up to Mr.  
23 Darrow's office? A I guess about an hour or so, just time  
24 to get a shave and had a lunch.

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Q You had already made that affidavit for the District Attorney, had you not? A Yes sir.

Q You told Mr Hammerstrom that, didn't you? A I did.

Q Before you left Albuquerque you<sup>had</sup>/made an affidavit which the District Attorney had in his possession? A Yes sir.

Q Now, when Mr Hammerstrom was in Chicago with you you went up alone to Mr Darrow's office, he wanted to get a statement out of you, did he not? A Yes sir.

Q Now, in that affidavit to the District Attorney, isn't it true you didn't positively identify Brice and McNamara? A Yes sir.

Q That is true? A Yes sir.

Q You told Hammerstrom that it was not positive, didn't you? A No, I told him it certainly looked like the man, and he says "We admit it looks like the man, but where is the real man?"

Q Didn't you say --

THE COURT: I don't think the question has been answered yet. Read the question.

(Question read)

A Yes.

Q Now, Mr Hammerstrom asked you in Chicago as to whether you had identified J B Brice as McNamara or not, and didn't you say "not positively"? A Yes sir.

Q And then wasn't some statement made about a mustache?

A Yes sir.

1 Q And then wasn't some statement made about a mustache?

2 A Yes sir.

3 Q And you said that when you saw him at one time, either  
4 at the jail or Hotel Baltimore, the man had a mustache, didn't  
5 you? A At the jail.

6 Q At the jail? A Yes.

7 Q And Hammerstrom laughingly said to you, did he not,  
8 they would have him grow a mustache and see if you could  
9 recognize the mustache? A Yes sir.

10 Q And he had one the last time you saw him? A Yes sir.

11 Q Now, aside from the fare to Chicago which Mr Hammerstrom  
12 gave you, \$44.15, and the \$100 deposited to insure your  
13 return to Los Angeles and the \$30 for that week's expenses,  
14 did Hammerstrom give you another cent? A No sir.

15 Q Did Damon ever give you any money? A No sir.

16 Q Did the Burns men? A No sir.

17 Q Or the District Attorney's office? A Not until I got  
18 through with the case.

19 Q Now, when you came back to Los Angeles from Chicago,  
20 you used the \$100, did you not, in part, that was given to  
21 you for that purpose by Mr Hammerstrom? A Yes sir.

22 Q At Albuquerque Mr Hammerstrom told you before you went  
23 East that the defendant wanted you to testify for the  
24 defense, didn't he? A Yes.

25 MR ROGERS: That is all.

26

1  
2 BY MR FREDERICKS:

3 Q Now, you say you used the \$100 given you by Mr Hammer-  
4 strom. Did you use that to buy your return, to pay for your  
5 expenses and buy your return trip to come back to Los Angeles?

6 A No sir, I did not.

7 Q Who furnished you your ticket to come back to Los Angeles?

8 MR APPEL: Wait a minute --

9 A Shall I answer?

10 THE COURT: Answer the question.

11 A The reservation was made, our reservations were made on  
12 the train.

13 MR APPEL: That is not the question, your Honor.

14 THE COURT: That is not an answer to the question. Read the  
15 question.

16  
17 A I don't know.

18 MR FREDERICKS: I will ask another one; he says he doesn't  
19 know.

20 THE COURT: Let's see if he does or not. Read the question.

21 MR APPEL: Let's see if he doesn't know.

22 THE COURT: The Court has ordered the question to be read.

23 (Question read)

24 THE COURT: What is the answer?

25 A Why, Mr Bittinger got the reservation.

26 Q By Mr Fredericks: So, you didn't use the \$100 you got

1 from Hammerstrom to come back to Los Angeles? No sir, I did  
2 not.

3 Q When did you first learn that Damon, who you met in  
4 Albuquerque, was a Burns man? A In Mr Darrow's office in  
5 Chicago.

6 Q Mr Darrow's office in Chicago? A Yes sir.

7 Q You didn't know that at all while you were in Albuquerque  
8 and he was in Albuquerque? A No sir, I did not.

9 MR ROGERS: What is that question?

10 (Question and answer read)

11 Q By Mr Fredericks: Did the Burns men, or anybody else,  
12 take you to Albuquerque? A No sir.

13 MR APPEL: We object to that as incompetent, irrelevant and  
14 immaterial, leading and suggestive, not redirect.

15 THE COURT: Objection overruled.

16 MR FREDERICKS: He has already answered it. I suppose the  
17 answer may stand?

18 THE COURT: Yes sir, the objection is overruled.

19 MR APPEL: Exception.

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10s 1 MR. FREDERICKS. Q When you left the state of California  
2 going to Arizona state whether or not the case against  
3 Darrow--or the case against McNamara had been set for trial  
4 so you could be subpoenaed, if you know?

5 MR. ROGERS. Objected to as calling for a conclusion or opin-  
6 ion, incompetent and not the best evidence.

7 THE COURT. Objection sustained.

8 MR. FREDERICKS. Q Now, counsel just said on cross-examination--  
9 asked you on cross-examination, Mr. Hammerstrong said he wanted  
10 you to testify for the defendant but he took you off to  
11 Chicago, the case against McNamara was on trial here in  
12 Los Angeles, wasn't it?

13 MR. ROGERS. We object to that whole thing as argumenta-  
14 tive, not a question at all, and merely an argument. I take  
15 an exception to its being asked in that form.

16 THE COURT. Objection sustained.

17 MR. FREDERICKS. Q You were a witness to the signature of  
18 J. B. Brice in the hotel register here in the Hotel Baltimore  
19 were you not?

20 MR. APPEL. Your Honor that is telling--we object upon the  
21 ground it is leading; it is telling the witness you this  
22 and you that.

23 MR. FREDERICKS. Withdraw the question.

24 THE COURT. Question withdrawn.

25 MR. APPEL. We ask your Honor to admonish counsel, now we  
26 deem it as a matter of right that your Honor admonish

1 counsel not to put the answers in the mouth of the witness.  
2 We ask that request because we think we are entitled to it.  
3 It is the obly way to avoid objection and repation of  
4 leading questions and we ask it for that purpose.

5 THE COURT. It is quite true that counsel for the people shoul  
6 not ask leading questions, and they have frequently done  
7 so and withdrawn the question, but those are matters that  
8 will creep out in the trial from time to time, and I see no  
9 justification for the court admonishing counsel from doing  
10 thngs that human nature will drift into more or less.

11 MR. FREDERICKS. I think the question was leading, but it  
12 was inadvertantly done.

13 THE COURT. I do not regard it as being ground for admoni-  
14 tion.

15 MR. APPEL. Then we except to the refusal of the court to  
16 admonish counsel not to lead the witness or to suggest to  
17 the witness the answers, because of the repetition of the  
18 suggestinns right along from the beginning of this trial to  
19 he present time.

20 THE COURT. Let me make the record straight. The court does  
21 not refuse to admonish counsel against asking leading ques-  
22 tions. He does say at this time as he has done so frequently  
23 before, but it/<sup>does</sup> not do so for the question just asked.

24 MR. FREDERICKS. Now, Mr. Diekelman, state whether or not  
25 you saw J. B. Brice sign his name to the register at the  
26 Hotel Baltimore? A Yes, sir.

1 MR. ROGERS. Wait a moment--

2 THE COURT. Strike out the answer for the purpose of the  
3 objection.

4 MR. ROGERS. It is not redirect--objected to on that ground,  
5 incompetent, irrelevant and immaterial.

6 MR. FREDERICKS. If it is not redirect I will ask permis-  
7 sion of the court to ask the question on direct. It is  
8 brought to my attention out of the multitude of things that  
9 witnesses testified about, and there are many witnesses, and  
10 it slipped my memory.

11 THE COURT. All right, ask it on direct.

12 MR. FREDERICKS. Now, read the question. (Last question and  
13 answer read by the reporter.)

14 THE COURT. The answer ordered stricken out will be restored,  
15 being a question asked on direct examination.

16 MR. FREDERICKS. And state whether or not you were ever  
17 requested by the district attorney to identify that signature  
18 prior to the time that you went to Albuquerque or to the  
19 Needles?

20 MR. APPEL. Now, we again ask the court to admonish the dis-  
21 trict attorney not to lead the witness and we take an excep-  
22 tion to the conduct of the district attorney in leading the  
23 witness, whether it is through forgetfulness or not, the  
24 harm is just the same, and we object to the question on the  
25 ground it is incompetent, irrelevant and hearsay and not  
26 binding upon the defendant, not showing that the defendant

1 knew anything about the conversation between the witness and  
2 the district attorney, and what information he had given the  
3 district attorney, there is absolutely no basis for the  
4 question, whatever he may have said to the district attorney  
5 is absolutely incompetent in so far as the defendant is con-  
6 cerned. The defendant's acts can only be construed in the  
7 light of what informatbn he had himself. If a man should  
8 ask another gentleman here to go out hunting just about the  
9 time he has been subpoenaed as a witness in a case, why, in  
10 order to make it responsible for that or to show whether or  
11 not he wilfully asked him to do that, to show his intention,  
12 his bad motives, anything like that, he ought to be first  
13 apprised of the fact that he knew the party was a witness.  
14 Now, all of this evidence is introduced here without there  
15 having been shown a single instance where Mr. Darrow knew  
16 anything about this witness having informed the district  
17 attorney anything of that kind. Now, isn't it most purely,  
18 unadulterated hearsay evidence?

19 MR. FORD. If the court please.

20 THE COURT. Wait a minute. I don't know whether Mr. Appel has  
21 finished or not.

22 MR. APPEL. It is the most harmful kind of evidence. We  
23 object upon the ground it is leading, suggestive, incom-  
24 petent, irrelevant, hearsay and no foundation laid for it.

25 THE COURT. Objection sustained on the ground that it is  
26 leading.

1 MR. FREDERICKS. On the ground that it is leading?

2 THE COURT. On the ground that it is leading, only.

3 MR. Ford. The point that we wanted to address the court  
4 on, we have sometimes the right to ask leading questions,  
5 and there is no law against it.

6 THE COURT. I know you have sometimes, but I don't think  
7 you have here.

8 MR. FREDERICKS. Q State whether or not you ever made any  
9 statement to the district attorney concerning the hotel  
10 register and the signature of J. B. Brice thereon.

11 MR. APPEL. The same objection as last.

12 THE COURT. Overruled.

13 MR. APPEL. We except.

14 A Yes, sir.

15 MR. Fredericks. Q What statement did you make?

16 MR. ROGERS. Objected to as hearsay. Now, if your Honor  
17 please, how can the defendant be bound by the statement of  
18 this witness to the district attorney of which there is no  
19 showing that the defendant ever heard that such a thing hap-  
20 pened, much less that he knew the contents of the conversa-  
21 tion. It is third degree hearsay.

22 MR. FREDERICKS. Well, may it please--

23 MR. ROGERS. Just in that suggestion let me suggest to your  
24 Honor, it doesn't make any difference what the witness  
25 testified to, he has said that he could not positively  
26 identify that man.

1 THE COURT. I have your point. I will hear Mr. Fredericks .

2 MR. FREDERICKS. Showing this offense, we wish to be  
3 understood as showing an attempt to improperly influence  
4 the testimony of one who was about to be called as a witness.

5 Now, the court will note from the evidence already intro-  
6 duced, that this case was set for trial at a time after this  
7 witness says he left the state, and the court will know that  
8 we could not have subpoenaed him after he left the state,  
9 therefore, we must rely on that situation which makes it a  
10 penal offense to do these acts I have referred to, that one  
11 who is about to be called as a witness or who may be called  
12 as a witness and in order to lay the foundation for that we  
13 must show that a case was pending; that has been shown.

14 We must show that an issue was joined; that has been shown  
15 by the indictment and the plea of not guilty. We must show  
16 that this witness had facts in his possession which would  
17 make him a material witness; that fact we have shown by his  
18 testimony and we must show that was communicated to the  
19 side intending to use him as a witness, and that is the  
20 purpose of this question.

21 MR. ROGERS. Your Honor please, counsel has either wittingly  
22 or unwittingly misstated the law. He has tried to say that  
23 it is a penal offense committed in this matter in getting  
24 a witness or a person known to be about to be summoned as a  
25 witness to leave the state--

26 MR. FREDERICKS. No, I did not.

1 MR. ROGERS. This witness was not <sup>the</sup> in/ state, he was in  
2 another jurisdiction.

3 MR. FREDERICKS. No, I didn't say that, Mr. Rogers.

4 MR. Ford. Prevent the witness from attending the trial.

5 MR. ROGERS. Prevent the witness from attending the trial.

6 How in the world did he prevent the witness from attending  
7 the trial when he gave him money to come to the trial?

8 That is what he says right here on this stand.

9 MR. FREDERICKS. And take him to Chicago?

10 MR. ROGERS. And take him to Chicago and get him out of the  
11 hands of the Burns agency, the biggest suborners of perjury  
12 on earth.

13 MR. FORD. We ask the court to instruct the jury to disregard  
14 that remark.

15 MR. FREDERICKS. We think a remark of that kind about the  
16 Burns agency, that they are suborners of perjury--

17 THE COURT. I was about to call Mr. Rogers's attention to  
18 that.

19 MR. ROGERS. I stand ready to submit a case I tried, with  
20 Burns men all around me and one of them with a gun on me  
21 three days while I was cross-examining. I have employed  
22 Burns men but I always pick them.

23 THE COURT. Irrespective of the truth or falsity of the state-  
24 ment or your ability to support it, it is not a proper ques-  
25 tion.

26 MR. ROGERS. Your Honor has been very considerate to me and I

1       apologize for transgressing what I consider to be the  
2       dignity of the court.   My point is this:   Mr. Fredericks  
3       has no right to suggest that it was a penal offense any  
4       more than to have that witness stay in Chicago, with Mayor  
5       Dunn knowing that he was there in a public place, at Mr.  
6       Darrow's office at a public place, at the Morrison Hotel.  
7       It was no more offense to have him there ready to come than  
8       it was to have him in Albuquerque, watched by the Burns  
9       Detective Agency.

10      MR. FREDERICKS.   It is not shown Mr. Dunn knew he was a  
11      witness.

12      THE COURT.   The question is whether or not this man can  
13      answer the question as to what he stated to the district  
14      attorney in regard to that situation.   I listened to the  
15      argument of the district attorney and it seems to me every-  
16      thing that he has contended for he has been permitted to  
17      show, but as to what statement was made privately to the  
18      district attorney I fail yet to gather from the district  
19      attorney any reason why that statement should be introduced  
20      in evidence.   If he wishes to be heard on that matter I  
21      will hear him.

22

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12-SM MR FORD: For the same reason that this witness was allowed  
2 to tell on his direct examination that he had discussed the  
3 identification of J B McNamara with the District Attorney.  
4 The object of that was not to show acts binding upon the  
5 defendant insofar as --

6 THE COURT: He has discussed a certain hearing with the  
7 District Attorney and what was said he didn't say on his  
8 direct examination, what he said about the identification.  
9 This is calling for the conversation between this witness  
10 and the District Attorney, presumably in the privacy of his  
11 office.

12 MR FORD: Let us understand the record. Perhaps your Honor  
13 is correct, even from our point of view. The record now  
14 shows that he had witnessed the signature of J B Brice in  
15 that book and could identify the book. Now, we want to  
16 show simply that was called to the attention of the Dis-  
17 trict Attorney and that this man would be needed as a witness  
18 upon that point, and if that is clearly before the Court,  
19 there would be no object in it; but I didn't think it was  
20 clearly before the Court.

21 THE COURT: Have the testimony read.

22 MR APPEL: Now, your Honor, we will take exception to the  
23 remark of the District Attorney, that the evidence intro-  
24 duced by the witness in any way, shape or manner to establish  
25 the commission of any offense by anyone concerning the process  
26 of this witness against the laws of the State of California.

1 and against any other law, and we except to the mis-  
2 statement of the law by the District Attorney in that regard.

3 THE COURT: Now, read the last few questions and answers .

4 (Testimony read as indicated)

5 THE COURT: Objection sustained.

6 MR FREDERICKS: That is the pending matter.

7 THE COURT: I think this is a good time to take a little  
8 recess.

9 (Jury admonished recess for ten minutes)

Pet 10

11 (After recess. Jury returned to court-room.)

12 THE COURT: Gentlemen, I am afraid through an oversight of  
13 the Court, that last question and answer was not taken in  
14 the presence of any reporter. Better recall the witness and  
15 ask the question overagain.

16 MR FORD: I think it is in the record on direct examination,  
17 at any rate.

18 THE COURT: Yes.

19 MR FORD: If they want it on recross, there is no objection  
20 to its being repeated.

21 MR ROGERS: It is not your Honor's oversight, it is my own;  
22 I should not have gone on.

23 THE COURT: Then it is all of us.

24

25

26

1 KURT A DIECKELMAN, recalled  
2 to the stand:

3 Q By Mr Rogers: When Mr Hammerstrom came to Albuquerque  
4 and first talked to you, didn't he say to you "I understand  
5 from your folks you intend going on to Chicago very soon"?  
6 And then didn't you reply to him, you thought probably you  
7 would go very shortly? A Yes sir.

8 MR ROGERS: That is all.

9 MR FORD: That is all.

10

11

12 JOHN F FREEMAN, a witness  
13 called in behalf of the People, being first duly sworn,  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR FORD:

17 Q What is your name? A John F Freeman.

18 Q Where do you live? A Artesis.

19 Q How long have you lived there? A Twenty-five years.

20 Q Do you hold any official position? A Constable of the  
21 township.

22 Q How long have you been constable? A A little over a  
23 year at this time.

24 Q Mr Freeman, I attract your attention to the name of  
25 a person who appears, in Exhibit 5, to have been drawn as a  
26 juror in Department 9 of the Superior Court of this County

1 on the 25th of July, Mr R. E. Dolley. Do you know him?

2 A Yes sir.

3 Q Where does he live? A Artesia.

4 Q How long has he lived there, to your knowledge?

5 A Well, five or six years, maybe longer; maybe ten. I can't  
6 say.

7 Q Were you acquainted with Mr Dolley about that date, the  
8 25th of November, 1911? A Yes sir.

9 Q That, for your information I will state, was Saturday.

10 There is no objection to my stating facts appearing from the  
11 almanac. Did you at that time, or any subsequent date,  
12 talk with anybody about Mr Dolley of his connection as a  
13 juror with the McNamara case?

14 MR APPEL: We object to that as hearsay, incompetent,  
15 irrelevant and immaterial; no foundation laid for it;  
16 collateral to any issue in this case.

17 MR FORD: Merely preliminary.

18 THE COURT: Objection overruled, and the witness is directed  
19 to answer the question "yes" or "no".

20 MR APPEL: We except.

21 A Yes sir.

22 Q When was it you held that conversation and in what  
23 manner did you have a conversation?

24 MR APPEL: Same objection.

25 THE COURT: Overruled.

26 MR APPEL: Exception.

1 A I couldn't be positive of the date.

2 Q Do you remember what day of the week it was?

3 A It was Sunday morning.

4 Q Sunday morning. Well, how was that conversation held  
5 with the person that you talked to, was it personally in  
6 your presence, or was it over the telephone? A It was  
7 over the telephone.

8 Q By the way, how near to Mr Dolley do you live?

9 A About a quarter --

10 Q Quarter of what? A Quarter of a mile.

11 Q That is a country district down there? A Yes sir.

12 Q Just state what the conversation was you held with  
13 this party over the telephone.

13-P 14 MR APPEL: We object to that as incompetent, irrelevant and  
15 immaterial for any purposes, no connection has been shown  
16 between the defendant and the said conversation; it is  
17 hearsay, not been identified in any way, shape or manner  
18 with the conversation testified to here by another witness.

19 MR FORD: It will be. I do not care to lead the witness.

20 THE COURT: Objection overruled.

21 MR APPEL: We except.

22 A What was the question?

23 Q By Mr Ford: Just state what that conversation was.

24 A Well, I was called over the 'phone by somebody, I didn't  
25 know who, nor I don't know yet, never did know, wanted me to  
26 tell Mr Dolley that he had been drawn on the jury, that I

1 think, as well as -- he says, "Yesterday", something like  
2 that, and "if he doesn't want to serve on that jury, tell  
3 him to go to the beach for a day or two". He says he is  
4 "a <sup>very</sup> good friend" of mine". I says, "Who is this", or  
5 something like that, and he hung up on me and didn't tell  
6 me his name.

7 Q By Mr Ford: Did you communicate the message to Mr  
8 Dolley? A I think it was on Monday --

9 MR APPEL: Wait a moment --

10 THE COURT: WAIT a moment.

11 MR APPEL: We object to that as incompetent, irrelevant and  
12 immaterial, hearsay, no foundation laid.

13 THE COURT: Objection overruled.

14 MR APPEL: We except.

15 MR FORD: Just answer "yes" or "no", that is all.

16 A Yes.

17

18 CROSS-EXAMINATION

19 BY MR APPEL:

20 Q Mr Frecman, you have resided down at Norwalk for a  
21 great many years? A Yes sir.

22 Q Twenty-five or thirty years, more or les, huh?

23 A Yes sir.

24 Q And you have held official positions there about courts  
25 and places? A Yes.

26 Q I think you were a Justice of the Peace once?

1 A No, I was constable of the township for years, you know.

2 Q Oh, constable? A Yes sir.

3 Q Well, you have succeeded yourself several times?

4 A Yes sir.

5 Q Now, this man that called you up, what kind of a voice  
6 did he have? A Why, I didn't pay any attention at all,

7 I didn't recognize the voice over the telephone.

8 Q I understand. Well, you know whether it was a woman's  
9 voice or not? A No, it was not a woman's.

10 Q It was a man's voice? A Yes sir.

11 Q Well, was it a very deep voice, one of these deep basso  
12 voices, or how was it? A Well, not to the best of my  
13 recollection, but I paid so little attention to it and had  
14 forgotten the thing.

15 Q What time in the morning was it when he called you up?

16 A Well, I think it was -- I should say somewhere along  
17 about 8 o'clock.

18 Q After breakfast, I suppose? A Yes sir, I think so,  
19 as well as I remember.

20 Q You were down at the store at the time? A No, no, I  
21 was at home.

22 Q At your house? A Yes sir.

23 Q And what time did you see the juror Dolley? A I think  
24 it was Monday morning, as well as I remember.

25 Q Oh, yes. You saw him Monday morning? A Yes.

26 Q And you told him that? A Yes sir.

1 MR APPEL: That is all.

2 MR FREDERICKS: That is all.

3

4

5 R E D O L L E Y, a witness called on  
6 behalf of the People, being first duly sworn, testified as  
7 follows:

8

DIRECT EXAMINATION

9 BY MR FORD:

10 Q What is your name? A R.E. Dolley, Roland Everett  
11 Dolley.

12 Q Where do you live, Mr Dolley? A Artesia.

13 Q State whether or not on or about the 26th day of  
14 November, Sunday, 1911, you were summonsed as a juror in  
15 the case of People vs J B McNamara --

16 MR APPEL: We object to that as not being the best evidence.

17 Q Withdraw the question. State whether or not you are  
18 the R E Dolley who was subpoenaed on that day as a juror in  
19 the case of People vs J B McNamara? A Yes sir, I am.

20 Q Do you know Mr Freeman, the constable at Artesia?

21 A Yes sir.

22 Q Have you a telephone in your house, Mr Dolley?

23 A I have not.

24 Q Had you during the month of November, 1911? A No sir

25 Q Did Mr Freeman, on or about the time you were summonsed  
26 as a juror, deliver any message to you concerning a telephone

1 conversation that he, Mr Freeman, had with some person  
2 claiming to be a friend of yours?

3 MR APPEL: We object to that on the ground it is incompetent,  
4 irrelevant and immaterial, hearsay, no foundation laid.

5 THE COURT: Objection overruled.

6 MR APPEL: Exception.

7 A Mr Freeman --

8 MR FORD: That calls for a "yes" or a "no" answer. I am not  
9 asking you what the communication was, just whether or not  
10 you had such a communication? A I did, on Monday morning,  
11 after I had been summoned.

12 MR FORD: Cross-examine.

13 MR APPEL: No questions.

14 THE COURT: That is all.

15

16

17 W. A. S A C K E T T, a witness called  
18 on behalf of the People, being first duly sworn, testified  
19 as follows:

20 DIRECT EXAMINATION

21 BY MR FORD:

22 Q What is your name? A W.A. Sackett.

23 Q What is your first name, Mr Sackett? A William.

24 Q Where do you reside? A Artesia.

25 Q How long have you resided there? A Forty-two -- three  
26 years.

1 Q Do you know the constable -- I beg your pardon --  
2 I attract your attention to Exhibit 5, introduced in this  
3 case, Mr Sackett, in which the name of William A Sackett  
4 was drawn as a juror on November 25, 1911, as a juror in  
5 the case of People vs J B McNamara, in Judge Bordwell's  
6 Court, Department 9 of this court. Are you the same William  
7 A Sackett? A Yes sir.

8 MR APPEL: Wait a minute, now, --

14-P 9 MR FORD: The answer may be stricken out pending the object-  
10 ion.

11 MR APPEL: We object to that on the ground it is incompetent,  
12 irrelevant, immaterial; calling for a conclusion or opinion  
13 of the witness, he not having had anything to do with the  
14 actual drawing of the jury, how can he determine in his own  
15 mind whether or not those who selected the jurgr, William  
16 A Sackett, meant him or not, unless he is a mind reader.

Sm 17 THE COURT: I think that objection is well taken.

18 MR FORD: As to the witness' own identity? I withdraw the  
19 question, the Court has stricken it out. Is there any other  
20 William A Sackett living in Artesia? A Sir?

21 Was there any other William A Sackett living in Artesia  
22 on the 25th, 26th or 27th days of November, 1911?

23 A I have a son by that name.

24 Q William A. Sackett? How old is he? A Thirty.

25 Q Did you appear as a juror in Judge Bordwell's Court  
26 during the month of 1911?

1 MR APPEL: We object to that as incompetent, irrelevant and  
2 immaterial for any purpose whatsoever, whether he appeared  
3 or not.

4 MR FORD: Merely preliminary, to show identity.

5 THE COURT: Objection overruled.

6 MR APPEL: Exception.

7 MR FORD: Answer the question.

8 A What was the question?

9 (Last question read by the reporter)

10 MR FORD: During the month of November, 1911? A Yes sir.

11 Q Do you know Mr Brain, the Deputy Sheriff of this County?

12 A Well, I don't know whether I do or not.

13 Q Do you know D. Lamar? A No sir.

14 Q Did you receive from any person any summons to come into  
15 court in Judge Bordwell's Court, Department 9, of the  
16 Superior Court of this County in November, 1911?

17 MR APPEL: Wait a moment. We object upon the ground that  
18 the witness is the best evidence.

19 MR FORD: Whether he received it or not?

20 MR APPEL: Yes.

21 THE COURT: Objection overruled.

22 MR APPEL: Exception.

23 A I did.

24 MR FORD: And you did appear in answer to that summons?

25 A Yes sir.

26 Q About the time -- have you a telephone, or did you have

1 a telephone at that time in your home? A Yes sir.

2 Q About the time you were summoned as a juror in Judge  
3 Bordwell's Court, did you receive a telephone message from  
4 anybody in reference to the fact that you were about to be  
5 summonsed?

6 MR APPEL: Wait a moment. We object upon the ground it is  
7 incompetent, irrelevant and immaterial for any purpose  
8 whatsoever; it is hearsay.

9 THE COURT: Objection overruled.

10 MR APPEL: Exception.

11 MR FORD: Answer the question.

12 A I did, in the morning before I was subpoenaed in the  
13 evening.

14 Q On what day did you have that conversation over the  
15 telephone? A On the 26th of November.

16 Q What day of the week was that? A It was on Sunday  
17 morning.

18 Q About what time? A Well, I will say between 7 and  
19 12, somewhere in the forepart of the day.  
the hour

20 Q You don't remember ~~whether~~ any closer than that M

21 A No.

22 Q What was said by that person to you over the telephone?

23 MR APPEL: Wait a moment. We object to that upon the ground  
24 it is incompetent, irrelevant and immaterial, hearsay and  
25 no foundation laid for the testimony.

26 THE COURT: Overruled.

1 A I got a telephone message in the morning, I don't know  
2 by who, but that I would be subpoenaed during the day to be  
3 here as a juror, and if I didn't want to set on the case, for  
4 me to get up and get out of the way.

5 Q You say you don't know who this party was?

6 A I did not, no sir.

7 Q Did he say anything about whom he was? A No sir, only  
8 that he was a friend of mine.

9 MR FORD: That is all.

10

11

CROSS-EXAMINATION

12 MR APPEL: Isn't it a fact the man who 'phoned to you talked  
13 to you about beets? A He didn't mention them, if he did.

14 Q You had beets, didn't you? A Not at that time of the  
15 year.

16 Q Well, you raise beets? A Sometimes.

17 Q Well, didn't he ask you if you had beets? A If he  
18 did I didn't hear him.

19 Q Can you hear pretty well? A Generally speaking, I can.

20 Q Well, you recognized his voice as a friend of yours?

21 A No sir, I did not.

22 Q Well, he said he was a friend of yours? A That is  
23 all I know.

24 Q You've got a good many friends, haven't you?

25 A I hope so.

26 Q You lived down there in Artesia for about 33 years,

1 haven't you? A Yes, for forty-three of them.

2 Q Forty-three years? A Yes sir.

3 Q He told you to get up and get out, did he? A Yes sir.

4 Q Well, you didn't do it? A No sir, I didn't.

5 MR APPEL: Well, that is all.

6 ---o---

15Sm

8 C. E. W H I T E, a witness  
9 called on behalf of the prosecution, being first duly sworn,  
10 testified as follows:

11 DIRECT EXAMINATION

12 MR FREDERICKS: State your name to the jury. A C.E. White.

13 Q Where do you live? A 2814 North Workman Street, this  
14 city.

15 Q How long have you lived there, in the city, say?

16 A In the city, oh, about twenty-five years.

17 Q Do you know Bert Franklin? A I do. I have known him  
18 nine or ten years.

19 Q Do you know Mr Lockwood? A I do. I have known  
20 him about the same length of time.

21 Q Were you ever associated with those two men in any way  
22 in business, or labor, or work? A Not in business, but  
23 I was associated with them when I was in charge of the  
24 county jail.

25 Q And what was their capacity at that time? A Mr  
26 Franklin was the outside criminal deputy. Mr Lockwood was

1 a guard under me for four years.

2 Q Do you remember last fall when the case of the People  
3 vs McNamara and others was on trial? A Yes sir.

4 Q State whether or not you ever had a conversation with  
5 Bert Franklin about that time in regard to the McNamara  
6 case? A I did so have, yes sir.

7 Q Do you remember when you had the first conversation with  
8 him in regard to this case? A I believe it was on  
9 November 28th, last year.

10 Q Well, what day of the week was it? A Monday.

11 Q Monday? A Yes.

12 Q Well, I think the calendar says Monday was the 27th?

13 A Well, it might have been the 27th; I am not positive  
14 as to the date.

15 Q It was Monday, anyhow? A Yes.

16 Q Where did you see him first? A At my place of  
17 business.

18 Q And where is your place of business? A Well, at that  
19 time it was 2217 North Broadway.

20 Q Los Angeles? A Yes.

21 Q And what business, Captain? A I was then a jeweller.

22 Q State what time of the day did you see Franklin first  
23 that day? A I am not able to state the exact hour. It  
24 was between 11 a.m. and 1 p.m.

25 Q And who was present when you first met him? A When I  
26 first met him my partner was present.

1 Q What is his name? A A.H. New.

2 Q How long had it been since you had seen Franklin before  
3 that, about? A I couldn't tell you, I don't know.

4 Q Well, months, weeks, or -- A Oh, it might have  
5 been weeks.

6 Q Did you have a conversation with Mr Frankling at that  
7 time in regard to the McNamara case? A Yes sir.

8 Q Who was present when you had that conversation with  
9 him? A No one.

10 Q Whereabouts was the conversation held? A It was  
11 held in the rear room of the store that we use as a work  
12 room.

13 Q State to the jury the conversation, Mr White, as near  
14 as you remember in substance?

15 MR APPEL: We object to that upon the ground that it is  
16 incompetent, irrelevant and immaterial for any purpose, no  
17 foundation laid, doesn't tend to prove any issue in this  
18 case.

19 THE COURT: Objection overruled.

20 MR APPEL: Exception.

21 A When Mr Franklin entered the store he said to me,  
22 "Cap, I would like a private talk with you." I said, "Very  
23 well", and led the way to this room that I have described  
24 as the work room. When we were seated, Mr Franklin said  
25 "Can I talk to you in perfect confidence, and talk straight?"  
26 I said "Yes". He then said, "For some time past I have

1 been employed by counsel for the defense in the McNamara  
2 case investigating jurors, and while so employed I have been  
3 in close touch with the attorneys and have learned enough  
4 to thoroughly convince me that the McNamaras are innocent.  
5 The District Attorney is spending thousands of dollars of  
6 the people's money, and using every means in his power to  
7 secure a jury that will convict, and we are using the same  
8 tactics." He said "There is an old friend of ours on the  
9 panel who will be called as a"-- or rather "be drawn as a  
10 regular juror tomorrow." Said, "I have had several  
11 talks with him and have convinced him that the McNamaras  
12 are innocent, and I have also talked with him along finan-  
13 cial lines and satisfied him that three or four thousand  
14 dollars in his old age will come in handy." "Now", he  
15 said, "Captain, I am going to give you an opportunity to do  
16 two old friends a good turn." Then I said to him, "Who is  
17 this friend who you spoke of, and what do you wish me to  
18 do?" He said, "Our friend is George Lockwood, and we wish  
19 you to hold \$3500 until the end of this trial and turn it  
20 over to him when the jury bring in a verdict of acquittal  
21 or disagree." I then asked him if he had had a conversation  
22 with Lockwood respecting -- that is, concerning me in this  
23 capacity, and he said, "Yes, I have had several talks with  
24 him". He said, "We both trust you and wish you to act."  
25 I asked him if he had brought the money with him. He said  
26 "No, but what time will you be home this evening?" I told him

1 at 6:30, and he said, "I will call on you at your home about  
2 that time and bring the money, and later in the evening  
3 Lockwood will call to see that you have it." That was  
4 practically all that transpired at that time.

5 Q When did you see him next? A That same evening at my  
6 home.

7 Q Who was present then? A No one, at any time during  
8 the conversation.

9 Q What was the conversation?

10 MR APPEL: The same objection as before.

11 THE COURT: Overruled.

12 MR APPEL: Except.

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16s 1 A He stated that he had not brought the money for the reason  
2 that he had reached the bank or safe deposit too late to  
3 draw it, that he was then on his way to Lockwood's home.  
4 Asked me to accompany him and I declined. He then said he  
5 would make an appointment with Lockwood where we could see  
6 him next morning and asked me to meet him, Franklin, the  
7 next morning at a quarter before 9 at Third and Main  
8 Streets, that was all.

9 Q Well, did you see Franklin again--you didn't see him  
10 again that day? A No, sir.

11 Q Did you see him the next day on the 28th of November?

12 A Yes, sir.

13 Q Where and when? A At Third and Main streets.

14 Q And when? A At a few minutes before 9 in the morning.

15 Q What occurred and what was said and done between you and  
16 him at that time and place? A Franklin stated to me that  
17 he had arranged to meet Lockwood there,--for us to meet Lock-  
18 wood at 9 o'clock at Third and Los Angeles streets. He  
19 handed me a small roll of bills about the size of my  
20 finger, and on the way to--to Third and Los Angeles streets,  
21 he instructed me to pay Lockwood that morning \$500 from the  
22 amount that he had given me.

23 MR. ROGERS. May I have that last read?

24 (Answer read.)

25 BY MR. FREDERICKS: Q When you first met Franklin that  
26 morning on Main street, where did you go first? A We

1 walked north on main street, I don't know just what dis-  
2 tance--we stepped into a saloon and there was where the  
3 money was handed me.

4 Q Give the rest of the conversation on the way from there  
5 on, if you have not given it all. You said he gave you  
6 \$500? A No.

7 Q Go ahead and say what you said, I will not attempt to--

8 A I said that Franklin instructed me while on the way to  
9 Third and Los Angeles street to give Lockwood \$500 that  
10 morning, that is all I can remember of the conversation.

11 Q How much money did he give you? A I was not sure at  
12 that time, later on it will develop.

13 Q How much? A He gave me \$4,000.

14 Q And did he say anything further in regard to the 3500?

15 A Not at that time; no, sir.

16 Q Well, at any time, at any time before you met Lockwood?

17 A I have already reported what Franklin wished me to do  
18 with the \$3500.

19 Q I know. What did he tell you. Did he tell you anything  
20 at that time as to what you were to do with the 3500?

21 A No, sir.

22 Q we did not? A No, sir.

23 Q And where did you go then? A We walked east on Third  
24 on the north side of Third street until we came to Third and  
25 Los Angeles, I stopped on the northwest corner and Franklin  
26 passed diagonally across the street to the southeast cor-

1 ner. I presently saw Mr. Lockwood coming north.

2 Q From which direction-- A North on Los Angeles street  
3 from the direction of Fourth. He was--Mr. Lockwood was on the  
4 east side of the street, he crossed Third street and I  
5 crossed Los Angeles street and we met on the northeast  
6 corner. Mr. Lockwood said, "Good morning, Cap, what is new?"  
7 I said, "Nothing new, except that a mutual friend has placed  
8 \$3500 in my hands to be delivered to you conditionally."  
9 He says, "What are the conditions?" I said, "The conditions  
10 as made by Franklin is that the money is--that the amount is  
11 to be given you when the jury in the McNamara case bring  
12 in a verdict of acquittal or disagreed." He says, "That is  
13 right." I said, "Further," Franklin has instructed me to  
14 pay you \$500 this morning." I asked him if he were willing  
15 to receive it and he said, "Yes," and I gave him the amount.  
16 There was then a question as to how much remained in my  
17 possession. I stepped to one side and counted the money  
18 remaining and found there was \$3500 and I so reported to Mr.  
19 Lockwood and stated I would turn it over to him on Franklin's  
20 order. He demurred to receiving the money on Franklin's  
21 order and I referred him to Franklin to settle that point.  
22 We then crossed Los Angeles street to the northwest corner,  
23 where Franklin was standing, and Mr. Lockwood and Franklin  
24 engaged in conversations a moment or two. What the conver-  
25 sation was I either did not hear or don't remember now.  
26 We then started north on Third Street and when near the

1 corner of Third and Main I was approached by a detective,  
2 who requested me to accompany him to the district attorney's  
3 office.

4 Q Do you know who that detective was? A I do not.

5 Q Do you know George Home? A I do not know George Home.  
6 I might know his face, but not by name.

7 Q What else was said to you when you were placed under  
8 arrest?

9 MR. APPEL. We object to that on the ground it is incompetent,  
10 irrelevant and immaterial, hearsay, not binding upon the  
11 defendant, not admissible.

12 THE COURT. Objection overruled.

13 MR. FREDERICKS. I am not sure but what the objection is  
14 correct, it was after the witness was arrested.

15 THE COURT. Do you wish to withdraw the question?

16 MR. FREDERICKS. I want to think about it a minute. Let  
17 me have the question. (Question read.) It is probably  
18 not--I don't want to be understood as admitting that it is  
19 not admissible, but I am in a little doubt about it and I  
20 will withdraw it and will consider it further.

21 Q Where did you go then, if anywhere, and with whom?

22 MR. APPEL. Object to that, to any acts of this witness and  
23 of any other persons after the arrest, upon the ground  
24 that they are incompetent, irrelevant and immaterial for  
25 any purposes and inadmissible for any purpose whatsoever,  
26 not binding upon the def\_endant.

1 MR. Ford. We are not offering now any further acts on the  
2 part of this defendant, unless they were in furtherance  
3 of the conspiracy they were not admissible, but we are  
4 seeking to trace some money he had on him, and it is only  
5 preliminary to that.

6 THE COURT. Objection overruled.

7 MR. APPEL. We take an exception.

8 A What is the question, please? (Question read) I went  
9 with the detective to the district attorney's office.

10 Q And state whether you saw Franklin and Lockwood again  
11 before you got to the district attorney's office?

12 A The detective and myself took a street car and we passed  
13 Franklin and Lockwood on Main street, well, some distance  
14 from Third, I cannot tell just what.

15 Q State whether or not you saw Franklin again that day,  
16 Franklin and Lockwood? A I saw Franklin and Lockwood again  
17 that day in the district attorney's office.

18 Q And how soon after your arrest? A I cannot state.

19 Q What did you do with the \$3500 that you had that Mr.  
20 Franklin gave you and that you had left after you gave  
21 Lockwood the \$500? A You mean what eventually became of  
22 it as far as I am concerned?

23 Q As far as you know, yes. A I turned it over to the  
24 district attorney at his request.

25 Q At that time? A At that time.

26 Q And at that place? A In the district attorney's office,

1 yes, sir.

2 Q Do you know who all was present at the time you turned  
3 this money over?

4 MR. APPEL. Wait a moment. We object to any conduct on the  
5 part of any of the persons then and there present or what  
6 transpired in the district attorney's office other than  
7 what the witness has already testified to.

8 MR. FREDERICKS. Withdraw the question for the present.

9 Q This \$500 that you gave to Mr. Lockwood, in what sort of  
10 money was it, in what denominations? A It was in one bill.

11 Q And the \$3500 that you turned over in the district attor-  
12 ney's office was in what bills, in what kind of money and  
13 denominations? A If I remember correctly, there were  
14 five \$500 bills and one \$1000 bill.

15 Q Did you see the \$500 bill that you had given to Lockwood  
16 afterwards?

17 MR. APPEL. Wait a moment--we object to that on the ground  
18 it is incompetent, irrelevant and immaterial for any pur-  
19 pose.

20 MR. FORD. Identification of money.

21 THE COURT. Objection overruled.

22 MR. APPEL. We except.

23 A I saw that \$500 bill when Mr. Lockwood passed it over to  
24 the District attorney.

25 Q At what time and place? A I will qualify that statement.  
26 I saw a \$500 bill. At the district attorney's office, at the

1 same time that I turned over the amount I had.

2 Q Who was present when you turned over this \$3500 to the  
3 district attorney, if you know?

4 MR. APPEL. We object to that on the ground it is incompetent,  
5 irrelevant and immaterial for any purpose, the conduct of  
6 any of the parties named, or any other person in the dis-  
7 trict attorney's office is inadmissible for any purpose  
8 whatsoever after the alleged arrest of Mr. Franklin and the  
9 witness in question, your Honor.

10 MR. FORD. Identifying the presence of the persons when the  
11 money was turned over, it was not offered for his conduct.

12 THE COURT. Objection overruled.

13 MR. APPEL. We take an exception.

14 A From positive knowledge I can name but one person, and  
15 that is Supervisor Pridham.

16 MR. ROGERS. The answer is "Supervisor Pridham"?

17 A Pridham.

18 BY MR. FREDERICKS. Q How many people were present, approx-  
19 imately, if you know?

20 MR. APPEL. We object to that upon the same grounds stated.

21 THE COURT. Objection overruled.

22 MR. APPEL. Exception.

23 A It is impossible for me to state; several people.

24 Q Had you ever talked to anybody else about this matter,  
25 except Mr. Franklin, up to the time when you were arrested?

26 MR. APPEL. We object to that on the ground it is incom-

1 petent, irrelevant and immaterial for any purpose, calling  
2 evidently for negative testimony that is never permissible,  
3 and substantive testimony of any fact; it is hearsay, not  
4 binding upon any person.

5 MR. FORD. That is a new rule, that negative testimony is  
6 not admissible.

7 THE COURT. Objection overruled.

8 MR. APPEL. Exception.

9 A I had talked with nobody.

10 Q When did you first tell the facts which you have just  
11 narrated here? and to whom?

12 MR. Appel. We object upon the ground it is incompetent,  
13 irrelevant and immaterial and calling for hearsay evidence  
14 not binding upon the defendant.

15 MR. FREDERICKS. Withdraw the question.

16 THE COURT. Question withdrawn.

17 MR. FREDERICKS. Cross-examine.

18  
19 CROSS-EXAMINATION.

20 MR. ROGERS. Q Captain White, you had known Lockwood a  
21 good many years, hadn't you? A Yes, sir.

22 Q How many years had you known him altogether? A Altogeth-  
23 er I had known him somewhere between 9 and 10 years.

24 Q Been rather closely associated with him at times?

25 A Yes, sir.

26 Q At the time Franklin broached to you the subject of brib-  
ing Lockwood, did you say to Franklin, "My God, Bert, I

1 would not trust George Lockwood as far as I could throw a  
2 bull by the tail? A To the best of my recollection I  
3 said nothing of the kind.

4 Q Nothing in substance or purport at all, Captain?

5 A No, sir.

6 Q Now, let me see if I can give you the time. I am  
7 referring to the time oneither of the two visits that  
8 Franklin made you out at your place of business in past  
9 Los Angeles. A Did you say either of the two visits?

10 Q Yes. A He was there but once.

11 Q Wasn't Franklin at your place--he was at your place of  
12 business once and your home once, that is correct? A Yes.

13 Q Now, these two places, either one of them, if you want  
14 to call it that way, did you make any such statement as that  
15 that I gave you? A No, sir.

16 Q "My God, Franklin, I would not trust George Lockwood as  
17 far as I could throw a bull by the tail?" A I did not.

18 Q Now, did you say that to Franklin at any time during  
19 the course of this matter? A No, sir.

20 Q You say you had known Lockwood 9 or 10 years, maybe more,  
21 had been associated with him being in the same office together  
22 had you not? A Yes, sir.

23 Q Attached to the same office? A Attached to the same  
24 office.

25 Q Had you known him before that at all, before he came  
26 into the sheriff's office? A No, sir.

1 Q Have you kept up your acquaintance with him, Captain,  
2 after that time, after you left the sheriff's office?

3 A I would see him once in a while , not often.

4 Q You had always been on pretty good terms with Franklin,  
5 had you not? A Yes, sir .

6 Q How long had you known Franklin? A About the same  
7 length of time, 9 or 10 years.

8 Q Did you know Franklin before he went in the sheriff's  
9 office? A No, sir.

10 Q His business was what you call outside criminal deputy .  
11 Will you be kind enough to explain to us what you mean by  
12 that, what his duties were. A Why he had charge of the  
13 looking up of criminals for the sheriff's office?

14 Q And looking up evidence to convict them? A Exactly.

15 Q When Franklin first came out and broached this subject  
16 to you he came out in an automobile, didn't he? A Yes .

17 Q Came in the daytime? A Oh, I don't know how he came when  
18 he first came .

19 Q Well, at any rate, he came inthe daytime? A Yes .

20 Q Sometime around the middle of the day, wasn't it, about  
21 the noon hour, between 11 and 1 say? A yes .

22 Q And when he first came to your place of business your  
23 partner Mr. New was there?

24 A Yes, sir .

25 Q Franklin spoke to New first before he spoke to you,  
26 didn't he? A Correct.

1 Q As a matter of fact when Franklin said to you, "I want  
2 to talk to you privately", you left New in the store, or  
3 did you not, and you two went back somewhere? A That is  
4 correct.

5 Q Now, when Franklin came out to the house, when he came  
6 out to see you on the second occasion you know how he came  
7 then? A He said that he came with an automobile.

8 Q Did he see any one besides yourself or members of your  
9 family? A My wife answered the bell and left Mr. Franklin  
10 in the front part of the house as he came to me.

11 Q Did you ever see Mr. Darrow in your life until you saw  
12 him in the court room after this trial commenced?

13 A Well, as a matter of fact I have never seen Mr. Darrow  
14 in the court room until just now.

15 Q Did you ever see Mr. Darrow anywhere? A Yes, I have  
16 seen him--I saw him in the corridor of the Hall of Justice.

17 Q When was that? A Oh, I don't know when, it was during  
18 one of the days of this trial.

19 Q You mean of this trial where he is the defendant? A Of  
20 this trial.

21 Q Then you never saw Mr. Darrow in your life until after  
22 this trial commenced, the one we are now in? A That is cor-  
23 rect.

24 Q And you have never had a word with him in your life?

25 A No, sir.

26 Q Nor he with you? A No, sir.

1 Q The man that--now, with all due respect, Captain, the  
2 man that got you into this scrape was Franklin, was it?

3 A Oh, I presume so.

4 Q He wanted you to go out to Lockwood's house? A Asked  
5 me to go.

6 Q Asked you to go to Lockwood's house. When was that?

7 A Well, that was the night of the 27th, Monday, November  
8 27th, we will say.

9 Q What did he say then to you? A With reference to what,  
10 exactly?

11 Q With reference to going out to Lockwood's house? A Simply  
12 stated that he was on his way to Lockwood's house with an  
13 automobile and asked me to go with him.

14 Q Well, you didn't want to go? A I didn't want to go and  
15 I didn't go.

16 Q How long before that occasion had you seen Lockwood?

17 A I couldn't state.

18 Q Had you kept any sort of acquaintance with Lockwood or  
19 intimacy with him after you left the sheriff's office?

20 A Not particularly, no.

21 Q Meet him on occasion, I take it, as you happened to?

22 A That is right.

23 Q Then when you would not go out to see Lockwood or go out  
24 to see Lockwood--go out to Lockwood's house, Franklin left  
25 you, did he, and told you where he was going, whether he  
26 was going on out to Lockwood's or not? A He said he was

1 on his way there.

2 Q I call your attention to the place you met Franklin the  
3 next morning. Where was that first where you met him?

4 A Met him right near the corner of Third and Main.

5 Q Would you be able to say which way from the corner?

6 A I think so.

7 Q Try it and give us your best recollection. A We will  
8 say a few feet north of the corner.

9 Q And would that be on Main street? A On Main, yes.

10 Q And on which side, can you tell me? A On the west  
11 side of Main.

12 Q Did you have a conversation there on the street? A If we  
13 did I don't remember what it was. There was very little  
14 said.

15 Q Then you walked north, did you not, on Main street to a  
16 saloon? A Yes.

17 Q Do you remember who suggested going in the saloon?

18 A No, sir, I couldn't say.

19 Q Sort of by mutual consent? A Naturally.

20 Q And you remember whether it was the first saloon north of  
21 the corner or any one of the several saloons that might be  
22 along that street? A I think it would be quite naturally  
23 it would be the first one.

24 Q Well, now, would your recollection serve you as to whe-  
25 ther Franklin suggested going in there to pass the money or  
26 whether you did or whether the subject was mentioned?

1 A I have no recollection as to who suggested it.

2 Q Well, you went in there and when you got in did you pur-  
3 chase a little refreshment there? A Well, I can only  
4 speak for myself.

5 Q Well, that is what I am asking you to do.

6 A I confess to having drank a very small beer there.

7 Q Mr. Franklin didn't drink a small beer? A I couldn't  
8 tell you, Mr. Rogers what Mr. Franklin drank.

9 Q At any rate, you took a drink? A Yes.

10 Q When you got inside and took your drink then Franklin  
11 handed you this roll of bills? A Yes, sir.

12 Q Was any one else in the saloon? A Yes, there were  
13 two or three people there.

14 Q Two of three people there. Was the bartender engaged  
15 in his business? A Yes, sir.

16 Q Do you remember whether there was more than one bartender  
17 behind the bar? A I couldn't state.

18 Q Well, you walked straight to the saloon, walked inside,  
19 had your drink and the money was passed in the presence of  
20 at least three or four people? A Well, it was passed in  
21 their presence, still I doubt very much if any one saw it  
22 passed.

23 Q Where did Franklin have the money when he came into the  
24 saloon, do you know? A I couldn't tell you.

25 Q Did he go into his pocket for it when he got it to give  
26 it to you? A I couldn't tell you, Mr. Rogers.

1 Q You were not watching? A No.

2 Q Was there a mirror back of the bar in that saloon?

3 A I think so; I am not positive as to that.

4 Q Then was there any conversation at that place at that  
5 time there in the saloon? A I don't remember.

6 Q Then where did you go from the saloon? A We walked  
7 back to the corner of Third and Main, went directly to  
8 Third and Los Angeles.

9 Q Did you go together to Third and Los Angeles? A Yes,  
10 sir.

11 Q Side by side? A Yes, sir.

12 Q Did you separate and go on different sides of the street?

13 A No, sir.

14 Q But walked accompanying each other down the street?

15 A Yes, sir.

16 Q When you got to Third and Los Angeles did you separate?

17 A Yes, sir.

18 Q Where did Franklin go? A He went to the southeast cor-  
19 ner of Third and Los Angeles.

20 Q Now, did he go up by the corner down towards Wall  
21 Street? A Yes.

22 Q That is about the first thing he did was to walk over the  
23 other side and then down the street? A I couldn't state  
24 it was the first thing he did, but, however, I saw him  
25 going down Third towards Wall.

26 Q Did you see him turn around and come back? A No, I

1 didn't see him do that.

2 Q Now, during that conversation, I mean during that happen-  
3 ing down at Third and Los Angeles street at any time did  
4 Franklin and Lockwood leave you, that is, leave your imme-  
5 diate presence and hearing and have a talk between them-  
6 selves? A Yes, well I think I was the one who left them.

7 Q Well, be that as it may, the parties separated? A Yes,  
8 they had a talk between themselves. Now, whether I overheard  
9 whether I heard any of that conversation is more than I  
10 can state. It was relative, I believe, to turning this  
11 money over to Lockwood on Franklin's order, I think that  
12 was the bone of contention.

13 Q I will get to that matter shortly, but what I am getting  
14 at is that fact you and Franklin went over there and then  
15 Franklin walked directly to the southeast corner of the street

16 A Yes.

17 Q Then Lockwood came by, didn't he? A Yes.

18 Q Then you had a little talk with Lockwood in which there  
19 was some controversy between you and Lockwood as to what  
20 the exchange was? A yes, sir.

21 Q Thereupon Franklin and Lockwood had a talk between them-  
22 selves on that subject? A No, not until Lockwood and I were  
23 through and we had passed over to the other corner of the  
24 street where Franklin stood.

25 Q Then you and Lockwood were through and had finished  
26 up what you and Lockwood were doing together before Frank-

1 lin and Lockwood talked about this agreement? A That is  
2 correct.

3 Q Then after Franklin and Lockwood had talked about this  
4 agreement that the money was to be turned over by you  
5 without Franklin's order, upon the happening of certain  
6 events, then what did you do? A Then the three of us  
7 walked on Third towards Main.

8 Q Up towards Main? A Yes.

9 Q Now, do you know that before Franklin and Lockwood met  
10 there together on this occasion, when you and Lockwood  
11 came up to him on the northwest corner there at the saloon,  
12 do you know that before that time Franklin already had  
13 seen and spoken to two detectives, George Home and James  
14 Campbell?

15 MR. FREDERICKS. That is objected to as assuming a fact  
16 not in evidence.

17 MR. ROGERS. It is in evidence, if your Honor please.

18 MR. FREDERICKS. Well, it don't make any difference.

19 MR. ROGERS. I am asking him if he knew it.

20 MR. FREDERICKS You can ask him if it is a fact.

21 THE COURT. Overruled.

22 A I did not so know; no, sir.

23 Q You didn't see Jim Campbell down there meet Franklin  
24 while Franklin was walking down from Los Angeles street  
25 towards Wall on the south side of/<sup>Third</sup> street, did you?

26 A I did not.

1 Q You did not see Jim Campbell speak to Franklin as the  
2 two passed, while you and Lockwood were there over on the  
3 other side and Franklin had left you and gone down to that  
4 corner? A I did not.

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20-Fl Q Would you have passed the money if you had known  
2 that Franklin had already spoken to Jim Campbell and seen  
3 George Home, before you did it?

4 MR FREDERICKS: We object to that as calling for a con-  
5 clusion of the witness, speculative.

6 MR ROGERS: Well, this witness, if your Honor please, is an  
7 accomplice.

8 MR FREDERICKS: What this witness would know, yes.

9 MR ROGERS: And he is subject to cross-examination. I am  
10 trying to be as kindly as I can, but I have the right to  
11 cross-examine an accomplice, as the law indicates.

12 MR FREDERICKS: As to whether he would know under certain  
13 circumstances --

14 THE COURT: It is a mere speculative question.

15 MR ROGERS: I believe that, if your Honor please, but every  
16 act, and every motive and statement --

17 THE COURT: I am doubtful about it, and I will resolve the  
18 doubt in your favor. Objection overruled. Read the question.  
19 (Question read). Can you answer that question?

20 A Yes, I can answer it. I hardly think I would have  
21 passed the money.

22 A JUROR: What is the answer?

23 (Answer read)

24 Q By Mr Rogers: You knew Jim Campbell, didn't you, Mr  
25 White? A I knew Jim Campbell, yes sir.

26 Q You knew Jim Campbell was a detective for the District

1 Attorney's office? A Yes sir.

2 Q You knew George Home , didn't you? A No, I did  
3 not.

4 Q Didn't you know him by sight, police detective Home ?

5 A Not as George Home.

6 Q Not as George Home. You did know he was a police  
7 detective, though, didn't you? A Yes.

8 Q That is, you knew him by sight as a police detective,  
9 but you cannot detail his name; that is about it?

10 A Yes sir, that is the size of it.

11 Q Pardon me, if I ask you to speak a little louder. "That  
12 is about the size of it", you said? A Yes.

13 Q When you handed this \$500 bill to Lockwood, did you see  
14 him drop it on the street? A I did not. If I did see him  
15 I paid no attention to it.

16 Q In addition to these two detectives that were thereabouts,  
17 one of them even speaking to Franklin before this, in  
18 addition to these two detectives, <sup>did you know</sup> that there was another one  
19 riding up on a motorcycle just at the time that this money  
20 was being passed? A I don't remember, Mr Rogers, of  
21 seeing anyone on a motorcycle in that neighborhood.

22 Q I didn't get it.

23 (Answer read)

24 Q When you passed over a \$500 bill to Mr Lockwood, did he  
25 say anything to you about the size of the bill? A It is  
26 possible that he did, Mr Rogers, but if so, I cannot remember

1 about it.

2 Q Did he say anything to you about the difficulty of  
3 getting rid of a bill of that size, and that the passing of  
4 it would be decidedly out of the way, it ought to have been  
5 twos and fives? A I don't remember.

6 Q Did he see the money that was in the \$3500 roll? A No.

7 Q Did you tell him what was in it, aside from \$3500?

8 A No.

9 Q How did he know there was a thousand dollar bill in  
10 that roll?

11 MR FORD: A pure <sup>conclusion</sup> ~~conclusion~~ of the witness -- how he knew it, --

12 MR ROGERS: Let the witness answer, without his suggestion.

13 THE COURT: m Counsel has the right to object.

14 MR FORD: I have a right to object. I object on the ground  
15 that it calls for a conclusion how Lockwood could know any-  
16 thing.

17 THE COURT: Objection overruled.

18 A I have no means of knowing.

19 Q By Mr Rogers; You didn't tell him, did you? A No sir.

20 Q And you didn't show it to him? A He may have seen  
21 that roll of bills, I showed him the roll of bills, but not  
22 the individual bills.

23 Q Not the individual bills? A No.

24 Q Captain White, you said you had been arrested and there  
25 has been no prosecution against you, has there? A Not that  
26 I am aware of.

1 Q You were released from arrest shortly, were you not,  
2 up there at the District Attorney's office? A Yes sir.

3 Q As soon as you got up there and turned over some bills  
4 you walked out, didn't you? A After a time, yes.

5 Q I beg your pardon? A After a time.

6 Q <sup>After</sup>How long, if you please? A I couldn't say <sup>positively</sup>/how long  
7 I was in the District Attorney's office.

8 Q I am not asking you to positively, what I want is your  
9 best recollection. A Well, it may be anywhere from  
10 half an hour to an hour and a half.

11 Q Well, you were not in custody during that time, were you,  
12 you were merely there in the office with a lot of other  
13 people?

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

16 MR ROGERS: A man knows whether he believes himself to be  
17 in custody or not.

18 THE COURT: Objection overruled.

19 A Why, it is hard for me to state whether I considered  
20 myself in custody or not.

21 Q By Mr Rogers: Well, at any rate, in a half an hour  
22 to an hour and a half you went out, went out without being  
23 in custody, didn't you? A Yes sir.

24 Q Went on about your business? A Yes sir.

25 Q You never have been in custody since? A No sir.

26 Q Never have been complained against, or indicted, have

1 you? A No sir.

2 Q Never have been in a Justice Court to be tried?

3 A No.

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2lp 1 Q Or to be examined, and never had been tried in the  
2 Superior Court? A No.

3 Q Well, now, Mr. White, when you were to meet Franklin he  
4 said Third and Main, didn't he? A Yes, that is right,  
5 Third and Main.

6 Q And also told you that Lockwood was to be met and the  
7 money passed at Third and Los Angeles, didn't he? A Yes,  
8 sir.

9 Q Now, Mr. White, you knew, didn't you, that Third and Main  
10 is about as populous a corner as there is in the city, taking  
11 it all around there, didn't you? A Well, I didn't know  
12 that, no.

13 Q Didn't you know that? Can you mention any corner of the  
14 city where there is really more, where there are more people  
15 passing? A I have not looked that matter up at all.

16 Q But you do know as a matter of fact,--you did know at  
17 that time it was a very populous corner? A More or less,  
18 yes.

19 Q You knew, didn't you, that Third and Los Angeles is a  
20 populous corner too at that time of the day, where there  
21 are all those wholesale houses? A It was not extremely  
22 populous at that hour.

23 Q Lots of buggies and horses and wagons and cars? A Very  
24 few.

25 Q At 9 o'clock in the morning? A Yes, sir, on that parti-  
26 cular morning.

1 Q You have been down there often, haven't you, before?

2 A No.

3 Q Do you know anything about why Third and Los Angeles  
4 Street was picked rather than some other street? A No,  
5 sir.

6 Q Did you know anything about the way the streets come in  
7 there together, for instance, Los Angeles coming in on the  
8 north side into Third at one angle, on the south side into  
9 Third at another angle and the streets being of different  
10 widths, Third west being narrower than Third east of Los  
11 Angeles, and all that? Do you know anything about the  
12 matter, the way those corners were situated? A No, sir,  
13 I don't .

14 Q Did it occur to <sup>you</sup> that corner was picked because there was  
15 not a corner there that could not be seen for two blocks  
16 up each street on account of the peculiar way the streets  
17 come in?

18 MR. FREDERICKS' Object to that upon the ground it is argu-  
19 mentative.

20 THE COURT: <sup>Objection</sup> / Q overruled.

21 A No, sir, it never so occurred to me.

22 Q It didn't occur to you? A No.

23 Q Did it occur to you that Third and Main was picked because  
24 Third street comes in at a particular angle there into Main  
25 on the west side and on the east side at another angle and  
26 that you can see that corner better from any sort of a

1 position than you can on a square corner? A No.

2 Q It didn't occur to you, did it? A No, sir.

3 Q Do you know why Franklin picked those two corners that  
4 way? A I do not.

5 Q Mr. White, were you going to get any compensation for  
6 this--

7 MR. FOR. For which?

8 Q I hesitated about what you call it to Mr. White, I am  
9 trying to be nice and easy--did you get any compensation?

10 MR. FORD. You mean for his acts down there at Third and  
11 Los Angeles?

12 Q Yes. Were you? A Mr. Franklin,--I suppose I can answer  
13 this in my own way?

14 THE COURT. Yes, answer it in your own way.

15 A Mr. Franklin at one time at one of the interviews, and I  
16 think at the first, stated that my financial interests would  
17 not suffer if I would consent to act for them, but as to  
18 any amount being promised, any specific amount being promised  
19 or agreed upon, I have no recollection.

20 Q Did Mr. Franklin agree to give you \$100, specify the  
21 sum? A Not that I can recollect.

22 Q Did you agree to take \$100? A Not that I can recollect.

23 Q Well, Mr. White, you are using your best recollection,  
24 aren't you? A I certainly am.

25 Q And remember everything that is possible for you to  
26 remember? A Yes, sir.

1 THE COURT. It is almost adjourning time.

2 (Jury admonished. recess until 10 o'clock June  
3 12, 1912.)  
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