

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. 10

I N D E X.

Direct. Cross. Re-D. Re-C.

Bert H. Franklin,

769

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B. N. Smith,
Official Reporter.

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June 4, 1912. 10 o'clock A.M.

2 Defendant in Court with counsel. Jury called; all present.
3 Case resumed.

4

5 BERT H. FRANKLIN, on the stand for
6 further cross-examination.

7 MR ROGERS: Mr Franklin, --

8 THE COURT: Wait a moment. If you want, Mr Rogers,

9 MR ROGERS: We are both short a man. Mr Appel has my
10 record.

11 THE COURT: I think they will be here --

12 MR FREDERICES: You needn't wait for Mr Ford.

13 MR ROGERS: Mr Franklin, will you be kind enough to tell us
14 at what date you had a consultation, the first time after
15 your arrest, with Mr Davis and Mr Darrow together.

16 A I couldn't tell you the date, Mr Rogers. Shortly
17 after.

18 Q How many days after? A I don't know.

19 Q Approximate it to the best of your recollection.

20 A I never held what you might call a consultation with Mr
21 Darrow and Mr Davis, except upon one occasion that I
22 remember at the present time, what you call a consultation.
23 I have met them together.

24 Q Well, what is the first time you met them together
25 after your arrest? A I think the next day.

26 Q Where? A I think at Mr Darrow's office.

1 Q In the Higgins Building? A Yes sir.

2 Q What time in the day was it? A I don't know.

3 Q Anyone present besides yourself, Mr Davis and Mr Darrow?

4 A I think if my memory serves me correctly at this time
5 that Judge McNutt was there when I first went in.

6 Q Are you able to recall the conversation occurring at
7 that meeting? A Not at this time, no.

8 Q Or anything that was said there? A Oh, Mr Darrow,
9 yes -- Mr Darrow, I remember, asked me how Mrs Franklin
10 was taking it, what she advised me to do; what my friends
11 advised me to do; what they said about it; who they balmed,
12 words to that effect.

13 Q Anything else that he said that you remember?

14 A Well, I am not sure -- No, I don't remember now just at
15 this moment.

16 Q You remember what Mr Davis said on that occasion?

17 A Not at this time, no.

18 Q You expect to later? You say "not at this time".

19 A I may.

20 Q Well, would you be kind enough to exercise your recol-
21 lection at this time and not later?

22 MR FREDERICKS: That is objected to, may it please the
23 Court, assuming that the witness can by an act of the will
24 recall.

25 MR ROGERS: I have a right to make that assumption under his
26 statement that he may later.

1 THE COURT: Overruled.

2 A I don't remember at this time.

3 MR ROGERS: You don't remember at this time. I am asking
4 you what the significance is of "not at this time", may be.

5 A It might be possible, Mr Rogers, that you would call
6 my attention to something that I would remember after my
7 attention has been called to it; if I do I will remember it.

8 Q With that understanding we will pass to the next
9 meeting which you had with Mr Davis and Mr Darrow, and ask
10 you when that was? A I don't know.

11 Q How long after the first? A I don't know.

12 Q Where did it happen? A I don't know. I met Mr Davis
13 and Mr Darrow several times at his office. On one particular
14 time that I remember that was impressed on my mind, was the
15 14th day of January.

16 Q Before we get to the 14th day of January I want to call
17 your attention to other consultations or meetings or talks
18 with them, whatever you choose to call them. Now, the second
19 one, do you remember? A I don't remember.

20 Q You remember anything that was said by either one of
21 them on that occasion? A I don't remember a second meet-
22 ing at all at this time particularly. It is impossible for
23 me to separate them and tell what happened at any particular
24 meeting except the 14th day of January.

25 Q Is that because on the 14th day of January you started
26 making a memorandum? A No sir, it is not.

1 Q When did you start to make a memorandum?

2 A The 14th day of January.

3 Q You have been reading that memorandum from time to
4 time since? A No sir, I have not. It is not neces-
5 sary.

6 Q Didn't you say the other day on the stand you had
7 read it? A I said I had read it after Mrs Franklin had
8 written it to see if it was correct. I read each entry
9 after it was made.

10 Q I say, you read it from time to time? A No sir, I
11 have not; I have read each day's as it was written down,
12 after it was written, to see it was correct.

13 Q The journal of the day's proceeding ; those proceedings
14 might perchance be set down? A They were set down there
15 in as short manner as possible so if I wished to refresh my
16 memory, and as a protection to myself, any certain trans-
17 action I wished to allude to it. It has not at this time
18 become necessary for me to do so.

19 Q Then you cannot remember the second meeting you had
20 with Davis and Darrow; perchance you may remember the third?

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1 A I don't remember, Mr. Rogers. We might just as well
2 understand it; any particular meeting at a particular
3 date at this time that I had with Mr Darrow or Mr Davis.

4 Q Well, now-- A I remember some important conversations
5 that we had; if you want them I will give them to you.

6 Q I am going to ask you for them. I would like first
7 to get some sort of a notion, if I could, as to when those
8 conversations occurred and what was said and where they
9 occurred. A I am certain I didn't put the dates down,

10 I didn't and it is impossible during that length of time
11 for me to give you any dates as to these particular meet-
12 ings. I said I saw Mr. Darrow almost every day.

13 Q After your arrest? A Yes, most every day.

14 Q Did you ever see him alone after your arrest? A Yes,
15 sir.

16 Q Where? A In the consultation room of his office in
17 the Higgins Building.

18 Q When was that? A I don't know the date. Shortly
19 after my arrest, within a week.

20 Q Have you ever attempted to relate the conversation that
21 occurred then? A I think I have told the conversation,
22 yes, sir.

23 Q In your conversation you told that, you say? A I
24 think so. I have told the effect of it, at least.

25 Q Have you anything to add to what you said on your direct
26 examination?

1 MR. FORD. We submit, that is not a fair way to cross-
2 examine the witness, to carry in his mind what has been
3 testified to, and by him.

4 THE COURT. There is no objection before the court.

5 MR. FORD. We object to it on the ground it is not a pro-
6 per form of cross-examination.

7 THE COURT. Counsel should make their objection before
8 argument, then we know what it is. Objection overruled.

9 A Read the question. (Question read.)

10 MR. ROGERS. Q On that subject, of course I mean.

11 A Oh, you just want that subject?

12 Q yes, that subject with reference to that conversation.

13 A You don't want the conversation?

14 Q Yes, I do. I want all the conversation you had with
15 Mr. Darrow at your first meeting with him alone after your
16 arrest. A I don't know where that was. I said I

17 remembered one meeting alone with Mr. Darrow in the week
18 following my arrest.

19 Q Is that the only one you remember? A No, sir.

20 Q Then you remember more than one? A I remember more
21 than one, yes, sir.

22 Q I asked you a few moments ago if you had related the
23 conversation that occurred at that time, all your conversa-
24 tion. A You asked me if I had anything to add to it.

25 Q Yes. Have you? A I am not certain as to--I would
26 not want to testify, because I am not sure but there

1 was a statement made there at that conversation or another
2 one, if you want, I will give it to you.

3 Q Go ahead. A I don't think you want it.

4 Q You need not worry about me. Go on and tell me what the
5 truth is about this, if you can. A I can, yes, sir.

6 Q Well, try it. A All right. Now, what is it you want?

7 Q I have told you I would like to have you relate the
8 conversation you say happened with Mr. Darrow the first
9 time you met him alone after your arrest? A I don't
10 know when the first time I met him alone, I said I had a
11 conversation, I repeated it to you, Mr. Rogers, and I
12 don't intend to be pinned down to any particular time. I
13 had a conversation with Mr. Darrow in the consultation
14 room of his office the week following my arrest.

15 Q Well, we got it within a week. You cannot give us any
16 time better than a week, but, go on and relate it.

17 A I came in and Mr. Darrow said, "Good morning", I said,
18 "Good morning, Mr. Darrow." He says, "Have you talked
19 to Rogers"--pardon me,--"Mr. Davis"--pardon me.

20 Q He didn't say Rogers, then? A No, he didn't have
21 you until later. I said, "Yes," that I had. He said,
22 "Well, if the arrangements can be made for you to plead
23 guilty and get a fine I will see that you get \$3,000."
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Pete 1 Q Why didn't you relate that on your direct examination
2 when you were asked about it? A For the reason I was not
3 asked.

4 Q Weren't you asked for your conversations with Mr Dar-
5 row after your arrest? A No sir, I was not asked anything
6 about that conversation.

7 Q Weren't you asked for your conversations with Mr Dar-
8 row after your arrest? A I don't remember; I may have.
9 If it is in the record I was.

10 Q Why didn't you tell that before? A If I was asked
11 about it I told it; I think I told it before.

12 Q You think you did? A Yes sir.

13 MR FORD: That is my recollection, and counsel does not
14 state it correctly.

15 MR ROGERS: There is no use stating that, because that is
16 misconduct and a mis-statement of something that never
17 happened.

18 MR FREDERICKS: We object to counsel's statement on the
19 ground that what the witness testified to, or what questions
20 were asked him as to these questions; the record is the
21 best evidence; it is taken down here in shorthand and the
22 examination went over several days and encompasses a great
23 many pages of shorthand, and if counsel has any impeaching
24 questions to ask this witness I think in all fairness to the
25 witness he should have the matter read to him.

26 MR ROGERS: But, it is not in there; you cannot read it.

That is the great difficulty with the suggestion made by

1 counsel. I really am not expeditious enough or troublesome
2 enough to read something that is not in the record.

3 MR FORD: We object to thā question in this: It is a well
4 known fact thā the witness is not allowed to testify to
5 anything except in answer to questions put to the witness,
6 and the witness is not responsible for the questions put
7 to him by the prosecuting attorney.

8 THE COURT: The objection is good and sustained, and the
9 answer is stricken out.

10 MR ROGERS: Exception.

11 Q By Mr Rogers: Did you relate that conversation, or
12 attempt to relate it, upon your direct examination?

13 A I either related the conversation that I had with Mr
14 Darrow, or the conversation I had with Mr Davis; I don't
15 remember which. I had one with each one of them on that
16 subject.

17 Q Did you have any more than one conversation on that
18 subject with each one of them? A Just what do you mean by
19 "each one of them"? At different times, or together?

20 Q I mean Mr Davis and Mr Darrow. A At different times,
21 or together?

22 Q Separately. A Yes sir, I think separately and to-
23 gether.

24 Q How many conversations did you have with Mr Davis
25 separately from Mr Darrow?

26 MR FREDERICKS: That is objected to, may it please the Court,

1 as misleading, unless it is shown in the question that it
2 refers to this subject.

3 MR ROGERS: It does. I am referring exclusively to this
4 subject.

5 MR FREDERICKS: My objection is withdrawn with that explana-
6 tion.

7 A Numerous conversations with him on that subject.

8 Q Where? A I think on a couple of occasions at my own
9 office, once or twice at his office, several times at Mr
10 Darrow's office.

11 Q Now, I will ask you if you didn't answer this way,
12 page 586, this is Mr Ford's question: "Q Did you have any
13 conversation at any other time with Mr Darrow in reference to
14 your case or the plea or the result of your case? A I never
15 discussed with Mr Darrow or any other person anything in re-
16 gard to my defense that would be put up for me in the
17 Superior Court, anything about my case ^{at all} /one way or the other
18 in any way, shape or form, other than this, upon one occa-
19 sion; I visited the office of Mr Darrow when he told me that
20 Mr Davis, he thought, had arranged for me to plead guilty
21 to one count in the information of attempting to bribe
22 George N Lockwood and that I would be fined the sum of
23 \$5,000 which they would pay, and that he would give it to me
24 for the protection of my family until I could build myself
25 in the community, the sum of \$3,000." Did you say that?

26 A I did.

4p

1 MR. FREDERICKS. That is objected to on the ground it is
2 not impeaching the witness' testimony in any way, shape or
3 form.

4 MR. ROGERS. We will see. Read the answer of a moment
5 ago and we will see if it is.

6 (Answers read as follows: "I came in and Mr. Darrow said
7 "Good morning", I said, "Good morning, Mr Darrow." He
8 says, "Have you talked to Rogers"--pardon me--"Mr Davis",
9 pardon me." Q He didn't say Rogers, then? A No, he
10 didn't have you until later. I said, "Yes", that I had.
11 He said, "Well, if the arrangements can be made for you
12 to plead guilty and get a fine, I will see that you get
13 \$3,000. Q Why didn't you relate that on your direct
14 examination when you were asked about it? A For the
15 reason I was not asked.")

16 MR. FREDERICKS. We submit, your Honor--

17 MR. ROGERS. What follows?

18 (Answer read by reporter.)

19 Q Now, is--

20 THE COURT. You want a ruling on this?

21 MR. FREDERICKS. The objection is--

22 THE COURT. Your objection is sustained, Captain. Fredericks,
23 I have it.

24 MR. ROGERS. Q Why was it--at this conversation I just
25 related to you was that the same one which you are referring
26 to now? A Which I did refer to a few moments ago, do you

1 mean?

2 Q Which the reporter just read? A Yes.

3 Q That is the same one you spoke of when you spoke?
4 as I have read to you from the record? A I think so, yes,
5 sir.

6 Q That is the one you referred to? A I think so.

7 Q Now, you say on several occasions that happened? A No
8 I did not.

9 Q You did not? Now, is that the only conversation you
10 ever had with Mr. Darrow alone about your defense, your
11 case, or any aspect of it?

12 MR. FREDERICKS. We objection to the question as being a
13 double question. Now, this witness has answered in regard
14 to conversations in regard to his defense; and he has
15 answered one way regarding that. That is, that certain
16 things occurred. Now, he has answered in regard to
17 conversations in regard to his pleading guilty and said
18 there were many of them, but he has the question now
19 doubled up and the answer would be absolutely unfair if
20 he attempted to answer them both. This witness has separa-
21 ted the conversations which he had in regard to his defense,
22 as he called it, and says he never had any except what he
23 has related, or perhaps said he never had any, I don't
24 remember, but in regard to his pleading guilty and Mr. Darrow
25 paying him a certain amount of money in that regard he
26 has made the statement that those were the conversations,

1 and conversations in regard to that were many, and at
2 different times, so to couple those two together and
3 say--and ask that question he has asked here makes a
4 double question out of it and is unfair to the witness.

5 THE COURT: You understand the question? A Very well,
6 I think.

7 THE COURT: All right, overruled.

8 MR. FREDERICKS: We would like to have it read. (Last
9 question read by the reporter.)

10 A I never discussed with Mr. Darrow or any other person--
11 I will answer that question my own way--I never had any
12 discussion with Mr. Darrow, Mr Rogers--Mr. Davis or any
13 other attorney in regard to my defense. I did have some
14 conversations in regard to my pleading guilty and what I
15 might possibly get.

16 MR. ROGERS: Q What I am reaching now is, is that the
17 only conversation you had with Mr. Darrow about your case,
18 about your defense or about any aspect of your case with
19 Mr. Darrow alone? A I can't answer that question the
20 way you ask it because it will be necessary to separate it;
21 I can't do it.

22 Q All right, didn't you answer it this way. I am reading
23 from your own answer, page 586. A Read the question
24 first, please, so I will know what I am answering.

25 Q All right: "Q Now, did you have any conversation at
26 any other time with Mr. Darrow in reference to your case or

1 the pleas or the results of your case? A I never dis-
2 cussed with Mr. Darrow or any other attorney in regard to
3 my defense that would be put up for me in the Superior Court,
4 anything about my case at all one way or the other, in
5 any way shape or form other than this; on one occasion
6 I visited the office of Mr. Darrow, and so forth." Now, I
7 am asking you did you ever have any other conversation than
8 the one you have attempted to relate with Mr. Darrow about
9 your case or your pleas, or anything about your case at
10 all one way or the other in any way, shape or form?

11 A You mean with him alone or in company with some other
12 person?

13 Q We will take it both ways. A Which way?

14 Q The first way, Mr. Darrow alone. A Well, Mr. Rogers,
15 that is a very very difficult question for me to answer
16 in the way you ask it.

17 Q I am asking you--just wait until I get through.

18 MR. FORD. I ask the witness be allowed to finish his
19 answer.

20 THE COURT. Go ahead. A I have a recollection of dis-
21 cussing one phase of this case and possibly what might
22 have been brought up where I tried myself--now, just a
23 moment, if you want me to repeat that conversation I will
24 try to give it to you. I don't want to do it.

25 Q I don't care what you want to do, Mr. Franklin. I am
26 asking you to answer my question. Did you or did you not,

1 that is the question and I would like to have you answer
2 it. A I think I did, yes.

3 Q You think you did. Then why in the world did you answer
4 this way, this question this way: "Q Did you have any
5 conversation at any other time with Mr. Darrow in reference
6 to the pleas or the results of your case? A I never dis-
7 cussed with Mr. Darrow or any other person anything in regard
8 to my defense that would be put up for me in the Superior
9 Court, anything about my case at all one way or the other,
10 in any way, shape or form other than this; upon one
11 occasion I visited the office of Mr. Darrow, and so forth."

12 Now, if you did have other conversations why was it
13 you made that answer?

14 MR. FORD_ Now, if the Court please, we desire that the
15 whole of that record be read to the witness. At the end
16 of that answer there were some objections made on the part
17 of counsel and the succeeding question was, did you at any
18 time discuss with the defendant, Mr. Darrow, the possibility
19 of your going to the penitentiary upon such charge.

20 THE COURT. I will give Mr. Franklin my record and let him
21 look it over.

22 MR. FORD. page 588.

23 MR. ROGERS. If your Honor please, he can answer the
24 question for the witness, of course, and of all the mis-
25 conduct that ever I saw in an attempt to give the witness
26 the answers we are getting the worst in this case, Sir, and
I except to it.

1 THE COURT: You have no objection to the witness taking
2 the record?

3 MR. ROGERS. Absolutely, no, sir. He may take your
4 record but the district attorney has no right to get up
5 here and tell the witness how to answer it, or what to say,
6 or call his attention to it.

7 THE COURT: I quite agree with you if that were true it
8 would be misconduct, but it hasn't impressed me as being such
9 a suggestion. The witness has the record of them. He
10 ought to have a clear field now in order to examine it.

11 A I don't care to read it, thank you.

12 THE COURT. All right, you are entitled to it if you need it.
13 Can you answer the question without reading it?

14 A I haven't testified to anything this morning contrary to
15 what I testified to when that examination was taken.

16 MR. ROGERS. You agree, do you, that that is all the
17 conversation you had with him about your case at all one
18 way or the other, in any way, shape or form? A About
19 the defense of my case; what my defense might be, did I
20 appear in court for trial. You understand it very well.

21 Q Anything about my case at all one way or the other?

22 A Yes, sir.

23 Q In any way, shape or form? A That is correct, in regard
24 to my defense that came before that. Read it altogether
25 and you will understand it.

26 MR. FREDERICKS. Other than this.

1 MR. ROGERS. He has answered the question, "Other than
2 this", and then you related-

3 MR. FREDERICKS There is another question goes in there
4 between that.

5 MR. ROGERS No, there isn't another question goes in
6 between.

7 MR. FREDERICKS There is an interruption there.

8 MR. ROGERS. Just one moment. Go ahead, that is all by Mr
9 Ford. That is all there is. That is not a question,
10 it is a direction.

11 MR. FORD: There is a question following that.

12 THE COURT. Well, the witness has had an opportunity to
13 consult--has had an opportunity to examine the transcript
14 of the page pointed out if he wants to. It is here any
15 time you want it, Mr. Franklin.

16 A Thank you, I don't care for it.

17 MR. ROGERS. Q Now, relate any conversation that you claim
18 occurred between yourself and Mr. Darrow other than the
19 one you have given after your arrest at which you say no one
20 was present, Mr. Darrow alone, now. A yes, sir, I will
21 relate it. I asked Mr. Darrow--you allow me to go a little
22 ahead.

23 Q Go any way you like. A I saw in the newspaper that the
24 district attorney had traced the money. Now, just a moment
25 and I will tell you the whole conversation.

26 Q Go on, I am not stopping you. A And that the district

1 attorney was able to trace the money from the safety
2 deposit vault into the hands of Mr. Darrow and from that
3 into my hands, and that the money he had was marked money.
4 I asked Mr. Darrow if there was any way that money could be
5 traced and he said, "No, that money was sent directly to
6 him by Samuel Gompers."

7 Q Well, if it should not be true that any money was sent
8 directly to him by Samuel Gompers, it is most unlikely, is
9 it not, that Mr. Darrow should say such a thing? A Then
10 he told an untruth.

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with 1 Q That is the way possibly you did.

2 MR FORD: If the Court please, we object to that.

3 MR ROGERS: Just as competent as his remark.

4 MR FREDERICKS: Oh no, he is on the witness stand.

5 MR ROGERS: Yes, and I am cross-examining him. Now, is that
6 the conversation you hesitated so much to give us and you
7 didn't want to give us? A No, that is not the one.

8 Q Well, shoot the one over that you didn't want to give
9 us. A All right.

10 Q Tell us where it occurred, when and under what cir-
11 cumstances. A In the office of Mr Darrow, I asked him
12 if there was any record kept at the safety deposit depart-
13 ment of the visit that Mr Harriman might have made the morn-
14 ing that I was to be given the \$4,000. He said: "You don't
15 need to worry about that part of it, because Mr Harriman
16 took \$500 of the money he got at the same time and paid off
17 a mortgage so he could account for being at the safety
18 deposit department that morning."

19 Q And you hesitated to tell us that; now, why?

20 A I did, because I didn't want to injure Mr Darrow any
21 more than I really had to, and if the question had been
22 asked me I would have answered.

23 Q You think a conversation like that injures him?

24 A Yes sir, I do.

25 Q In your solicitude for his welfare you hesitated?

26 A I wasn't asked the question before till you asked it.

1 Q Weren't you asked if you talked to him alone and to
2 give the conversations? A Oh no, I don't think so.

3 Q Well, you are asked now; if you have got any more let's
4 hear them. A I don't recollect anything particular at
5 this time.

6 Q Well, refresh your recollection and proceed and tell
7 us any more that you have got in your mind that Darrow
8 ever said to you. A With Mr Darrow alone?

9 Q Yes, after your arrest. A I had numerous, not ex-
10 actly conversations, but numerous meetings with him in
11 which he asked me in regard to my wife and the state of
12 her mind, and the state of mind of my friends, and what
13 they had advised me to do.

14 Q Well, anything else, now, that you can give us?

15 A I don't recollect anything else just now.

16 Q Did you include those two statements that you just
17 now made about that the money came direct from Samuel
18 Gompers and that Harriman paid off a mortgage, and so forth,
19 did you include all this in your statement to the District
20 Attorney? A I either included it in my statement to the
21 District Attorney, or else told it to him afterwards; I
22 don't know which.

23 Q Isn't it a fact that the District Attorney told you
24 those things? A No, he did not.

25 Q Namely -- A And you know that he didn't.

26 Q Back up a moment until I get through with my question.

MR FORD: I object to the witness being told to "back up";

1 not a proper way to talk to a witness in court.

2 MR ROGERS: Possibly so; you needn't back up.

3 A I don't intend to, don't worry.

4 Q When you related these statements to the District
5 Attorney, did he tell you that he had traced the money
6 direct from Samuel Gompers, or did you tell him that Darrow
7 told you so? A I don't remember whether I made that
8 statement at the time I gave Mr Ford the written statement.

9 Q I am not asking you that. I am asking you when you
10 did tell the District Attorney about it? A I don't remem-
11 ber.

12 Q What is that? A I don't remember.

13 Q You don't remember whether he told you or you told him?

14 A I do, yes sir.

15 Q Now, which was it, now, that you do remember?

16 A I told him what Mr Darrow had said.

17 Q When was that that you told him? A I don't remember.

18 Q Why don't you remember? A I don't know why; state of
19 mind, I guess.

20 Q When was it that you told him that Mr Harriman --
21 Mr Darrow said to you that Mr Harriman had fixed it all up,
22 you know, so he could pay the mortgage off that morning and
23 account for his presence at the safe deposit box?

24 A I don't remember.

25 Q When was it with reference to your statement that you
26 made? A I don't remember. Afterwards, though, I might

1 have made it in that statement, but I don't think so.

2 Q Now, before you made that statement that Darrow told
3 you that, to the District Attorney, you had read one of them
4 in the newspapers? A One of what?

5 Q One of the statements in the newspaper, hadn't you?

6 A What statement is that?

7 Q That statement that Mr Darrow had received the money
8 direct from Samuel Gompers. A I never read that in the
9 paper to my recollection.

10 Q And that the bills were marked? A I remember a conver-
11 sation in regard to them being able to trace up the money,
12 but nothing to do with Mr Gompers that I recollect of at
13 this time.

14 Q You couldn't give us any sort of a notion as to when
15 it was that you told that alleged conversation about Mr
16 HErriman to the District Attorney, could you?

17 A About Mr Harriman?

18 Q Yes. A In what particular part do you mean? The con-
19 versation I had with Mr Darrow in regard to Mr Harriman?

20 Q When it was that you told the District Attorney that
21 such a conversation as you allege had happened.

22 A Repeat the conversation; I don't know what you mean.

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1 Q And the one you are talking about just now with refer-
2 ence to what Mr. Darrow stated to you about Mr. Harriman
3 having his alibi all fixed up, that is, that he was down
4 there to the bank and got the money to pay the mortgage?

5 A I don't remember, but it was about the time that it
6 appeared in the paper. I don't remember. It wasn't
7 very long, I don't think, after I was arrested.

8 Q About the time that it appeared in the paper? A I think
9 along about that time.

10 Q Any way of fixing it at all? A I was quite solicitous
11 about it myself.

12 Q Any way of fixing it at all? A No, I wouldn't attempt
13 to.

14 Q Wasn't possibly after you read it in the paper, was it?
15 A I never read it in the paper, to my knowledge now. It
16 was not necessary for me to do it.

17 Q You just spoke about it appearing in the paper. A Not, pay-
18 ing off the mortgage, I didn't say was in the paper.

19 Q What did you say was in the paper about Harriman? you
20 just referred to in your answer a moment ago?

21 MR. FORD. We object to that question as not a proper
22 question that he said he saw anything in the paper about
23 Harriman. He testified here what he saw in the paper about
24 the money being marked and he went down and asked Mr. Darrow
25 about that, and then he got that answer.

26 THE COURT. Objection sustained.

1 MR. ROGERS' Exception.

2 Q You mean to say you did not see anything about Harriman
3 in the paper? A In regard to what?

4 Q In regard to his participation in the matter and his
5 getting the money down at some bank down there, or some
6 safety deposit or other? A No, I don't remember of
7 seeing any such thing in the paper. It might have been
8 there and I might have read it.

9 Q It might have been there and you might have read it?

10 A It might have been, yes, sir.

11 Q You read it before you attempted to tell that to the
12 district attorney, didn't you? A I don't remember reading
13 it at all. I don't think that statement was ever in a
14 paper.

15 Q You said a moment ago it might have appeared and you
16 might have read it. A It might have appeared and I might
17 have read it, but I don't believe it was in the paper.

18 Q Now, is there anything else you can say Mr. Darrow said
19 to you while you and he were alone, after your arrest?

20 A Oh, I don't remember anything particularly now. The
21 conversations were along the lines--do you want me to tell?

22 Q Of course, or I wouldn't ask you. A One thing I recol-
23 lect, Mr. Darrow asked me how large the cells were at
24 San Quentin and Folsom, how the accommodations were there
25 and I explained to him to the best of my ability. I was
26 thinking of it seriously myself.

1 Q You were thinking seriously of it yourself? A yes, I
2 was.

3 Q Do you know Mr. Harschberger? A I may know him when
4 I see him. Yes, I know Mr. Harschberger, I know who you
5 mean, yes.

6 Q In the Waldorf Saloon, that is in the Chamber of Com-
7 merce Building on Broadway just below the Chamber of Com-
8 merce Building, I think, approximately the Herald office--

9 A Yes, sir.

10 Q Did you have a conversation with Mr. Harschberger then
11 within a very few days after your fine here, this \$4,000
12 fine, in which you said to Mr. Harschberger that, "Oh, that
13 didn't worry me a damn bit, I knew I was not going to go
14 up"? A No, sir--

15 Q Or words to that effect?

16 MR. FREDERICKS' Just a moment. That is objected to on the
17 ground no foundation has been laid; it is not an impeach-
18 ing question and it is not intended to impeach this witness
19 on any of the testimony he has already given, the time
20 which he has referred to as being worrying about the cells
21 was a time long before any proceedings in court and the
22 time to which the conversation is attracted is the time
23 of the proceedings in court; they are two separate and
24 distinct times and occasions and therefore, not impeaching,
25 even though he did say that, and we object to it on the
26 ground no foundation has been laid.

ete 1 MR ROGERS: I can show at all times, no difference whether
2 I am impeaching this particular matter or not, I can show
3 statements by this witness that he knew he was not going to
4 go up and he was not going to have any trouble and it was
5 all arranged. I can show any matter, whether I show it now ^{or whether} I
6 showed it yesterday.

7 MR APPEL: The witness, if your Honor please, has stated
8 that he was very solicitous of certain things; for instance,
9 he said that he felt some little care, some little worry
10 about the fact whether or not this money could be traced from
11 the safety deposit box and so on, and then he has made several
12 statements that he felt some worry about other things, and
13 upon that ground he pretends to have had some conversations
14 with Mr Darrow concerning the matters which would appear to
15 him to be important. Now, if we can show, if your Honor
16 pleases, and if this jury do believe that the witness here
17 during all of the time from the beginning of this transact-
18 ion to the very end of it, had absolutely no worry about it,
19 that, on the contrary, he knew and figured and expressed his
20 mind upon the subject that if this case didn't worry him at
21 all, that he knew he was going to be turned loose, I say ~~he~~
22 it contradicts him in that particular and we have a right to
23 show it, if your Honor please, and we can only show it by
24 such expressions as he must have made, or may have made to
25 others. We cannot, of course, go into his mind except by
26 showing his expressions in that respect.

1 THE COURT: Objection sustained.

2 Q By Mr Rogers -- Didn't you say to Mr Harschberger, at
3 the time and place indicated, "I was not worried about it;
4 I knew all the time I was going to get off"?

5 A When was that?

6 MR FREDERICKS: Just a moment --

7 MR ROGERS: That is direct, or within a day or two, or a few
8 days after your so-called fining in the next department --

9 MR FREDERICKS: Just a moment. That is objected to --

10 Q By Mr Rogers -- you and he talking together, other
11 persons being possibly within hearing, but not participating
12 in the conversation?

13 MR FREDERICKS: That is objected to on the ground no
14 foundation has been laid, and it does not serve to impeach
15 this witness in any way on the testimony he has given, the
16 time referred to in the impeaching question being clearly
17 the time that he was brought up in court here and not the
18 time he was talking about when he was talking with Mr
19 Darrow about being worried.

20 MR ROGERS: Any statement this witness made, in the doc-
21 trine laid down by the Appellate Court and affirmed by the
22 Supreme Court, is relevant and material, and I would like
23 to read you that decision. Any statement that he made,
24 a witness of this kind, with respect to that matter, is
25 material and is relevant. Now, your Honor's attention has
26 been directed to one matter that occurs here this morning.

1 That is not the only way that I can contradict him. I can
2 contradict him about his whole line of testimony by state-
3 ments of this kind; I can contradict him by his state of
4 mind, his feeling; I can show by his own statements his
5 state of mind and feeling without even asking him about it.
6 If I can show he knew all the time he was going to get off,
7 as he said to Harschberger "I knew all the time I was going
8 to get off, I was not worried about it", what a significant
9 statement for a man to make. It indicates his state of mind,
10 his condition of mind, not only on this matter here, but upon
11 his whole condition of mind and is explaining what he did and
12 what he said.

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1 Witnesses of this kind, under the statement of the Supreme
2 Court can be interrogated concerning every statement they
3 make in the matter. I will show your Honor the exact
4 authority for it.

5 MR. FREDERICKS. The point which I will make--and I with-
6 draw the others--simply to call your attention to this
7 point, that the question is ambiguous unless the witness
8 understands and unless it is shown in the record what is
9 meant by "all the time." That is where the vice of it
10 is.

11 THE COURT. That can be followed up and cleared up. I
12 think counsel is entitled to his question.

13 A Read the question, please.

14 MR. FORD. If it is your contention that any other persons
15 are within hearing, we are entitled to have those names.

16 MR. ROGERS. All I have to show is to lay the foundation
17 to show those persons present who heard it. I don't have
18 to show everybody that heard it, but the one that heard it.

19 THE COURT. Objection overruled. You may answer the ques-
20 tion.

21 A I have asked for the reading of the question, your Honor
22 THE COURT. Read it.

23 (Question read.) A I don't think, Mr. Rogers, that I
24 ever had such a conversation with Mr. Harschberger. In fact,
25 I know I never used those words. I may have possibly have
26 used words from which he draws that inference, I don't know.

1 Q What did you say, "words from which he drew that infer-
2 ence?" A I don't say I ever said anything about it. I
3 don't remember of ever talking to Mr. Warschberger about it
4 at all. I may have done so. I met him numerous times at
5 the Waldorf Cafe at lunch.

6 Q You deny saying that? A I do not. I deny using that
7 language, yes, sir, to him or any other person.

8 Q Or in substance? A No, nor I never said anything
9 from which he could draw any such conclusion as that.

10 Q Then you deny making any statement from which he could
11 draw a conclusion of that kind? A Of that kind, yes, sir.

12 Q Why didn't you deny it a moment ago when you made the
13 statement in which you said you would not deny it? A I
14 have thought of it since that.

15 Q You have thought of it since that. Which is true,
16 what you said twenty seconds ago or what you said now?

17 A Both of them.

18 MR. FREDERICKS. That is objected to as assuming they are
19 not both true.

20 THE COURT* Objection overruled. He may explain. What is
21 the answer? A I have no explanation to make.

22 MR. FREDERICKS. He did answer it. He said they were both
23 true.

24 Q BY MR. ROGERS. Both true. One that you do deny it
25 and the other you do not. They are both true, eh?

26 A That is what you draw from what I say.

1 MR. FORD. We object to that as argumentative. Counsel
2 can argue that to the jury.

3 THE COURT. Objections sustained.

4 Q BY MR-ROGERS. Now, I was proceeding when I branched
5 off to the worrying proposition, that you vouchsafed to us,
6 I was proceeding to get your statements concerning what
7 you claimed Mr. parrow said to you and I understand you to
8 say you don't remember any more than you are giving us, is
9 that correct? A Not at this time. You might call my
10 attention to something I remember.

11 Q Now, take all the time you need to think and let us
12 hear if you have any more? A Conversations I had with
13 Mr. parrow alone, or other persons?

14 Q Alone. I will get to the conversations with other
15 persons shortly. A I don't, at this time, remember any
16 other.

17 Q Did you have a conversation with Mr. Davis alone about
18 this matter, after your arrest? A Which particular mat-
19 ter do you allude?

20 MR. FREDERICKS. That is objected to on the ground it is
21 hearsay, not cross-examination.

22 MR. FORD. If counsel seeks to lay the foundation for
23 impeachment by Mr. Davis there is a proper way to do it.

24 MR. ROGERS. Wait a minute--

25 MR. FREDERICKS. Of course, we cannot tell--

26 MR. ROGERS. Of course, you cannot, therefore, the objection

1 is not well taken at all.

2 MR. FREDERICKS. It certainly is.

3 MR-Rogers. Q Did you have a conversation with Mr. Davis
4 alone at any time since your arrest? It is preliminary?

5 MR. FREDERICKS. I will withdraw it.

6 MR. ROGERS' That is very kind of you because your objec-
7 tion is not worth the time it took to make it.

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Petel THE COURT: Gentlemen, keep out of personalities.

2 MR ROGERS: Yes sir, I am trying to.

3 A Ask that question again, or read it. Now, if you will
4 tell me to what matter you allude, I may be able to answer
5 it.

6 Q By Mr Rogers -- The same matter of your arrest, of your
7 participation in this alleged bribery in this case of yours,
8 and any aspect of it, that is what I am talking about, and
9 have been for the last hour. I will call your attention
10 to that, to your case, or any aspect of it; I am asking you
11 if you had any conversation with Mr Davis about it alone?

12 MR FORD: We object to that question on the ground it is not
13 proper cross-examination -- it is not cross-examination at
14 all. This witness was not allowed to testify on direct ex-
15 amination to conversations had with Mr Davis alone, and it
16 was not gone into by the prosecution. Now, it is not proper
17 cross-examination. Counsel, of course, can, if they desire,
18 show that this witness has made some statements to Mr Davis
19 at some time, contradicting his present testimony. If that
20 is the object of it, then we raise the additional objection
21 that no foundation has been laid as to time, place and
22 persons present, and then they can ask him if they said what
23 was said, or ask him if he said such and such a thing.

24 THE COURT: Objection overruled.

25 Q By Mr Rogers -- Did you say you had not?

26 A I don't know just what you mean. You have asked about

1 five questions in one and it is impossible for me to answer.

2 Q By Mr Rogers -- Did you have a conversation with Le
3 Comptre Davis about your case, your situation, being arrested
4 for this bribery, your situation as a defendant, or any
5 aspect of it, or about your plea, or any aspect of it,
6 anything connected with the whole matter. Now, is that
7 broad enough? A Too broad; that is the great trouble
8 with it.

9 Q Anything about it at all.

10 MR FREDERICKS: We request the Court that the witness be
11 instructed to answer that "yes" or "no", when we will ob-
12 ject to the following question.

13 THE COURT: Yes, I think that question can be answered
14 "yes" or "no", Mr Franklin.

15 A Yes.

16 Q By Mr Rogers -- Will you please relate your conversa-
17 tions with Mr Davis, after your arrest?

18 MR FREDERICKS: That is objected to, may it please the
19 Court, upon the ground it is incompetent, irrelevant and
20 immaterial; hearsay, and not cross-examination. It cer-
21 tainly is hearsay, it certainly is not cross-examination;
22 there is but one method by which the testimony of a witness
23 can be impeached by showing that he has made contradictory
24 statements and that is by asking him "Did you not at such
25 and such a time, and such and such a place, such and such
26 persons being present, say thus and so?" If he denies it

1 those who were present may be called to testify as to
2 whether he did make such a statement or not; but it is
3 absolutely hearsay to ask this witness to detail conversa-
4 tions that he had with LeComⁿte Davis. The people alone --
5 the only reason why this witness could give testimony of
6 statements which occurred in LeCom^pte Davis' presence would
7 be because this defendant was there present at the time the
8 conversation occurred, and on that theory the evidence or
9 matter was gone into on cross-examination, and I believe one
10 conversation was brought out in which Mr Davis was present;
11 but the defendant was present, and the admissibility of the
12 question depended on the presence of the defendant. The
13 people would be absolutely powerless to refute any testimony
14 of this kind if this witness were permitted to detail state-
15 ments which he had alone with Mr Davis. There is a way
16 provided by law for reaching that point, and this is not the
17 way, and would leave us absolutely powerless if this way
18 were pursued.

19 MR ROGERS: I found my position in this matter upon the
20 language of the Appellate Court: "The jury has the right
21 to believe the witness, but the defendant has the right to
22 investigate every motive, every statement, every act, and
23 everything" -- you cannot get it much broader than that --
24 "that might in every reasonable way have influenced him in
25 his testimony and to have the jury know this before passing
26 its judgment."

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1 Now, if this witness who has seen fit to relate
 2 conversations with Mr. Darrow also had conversations with
 3 Mr. Davis, who has been brought into this matter by the
 4 witness, we have a right to those conversations. Before
 5 I can introduce Mr. Davis, if your Honor please, to contra-
 6 dict him, I must lay the foundation by saying to the
 7 witness: "Did you not say thus and so at ^{such} and such a time
 8 and such and such persons present?" That I must do if
 9 I am going to lay my foundation, but I have a right with
 10 this kind of a witness to investigate everything he said,
 11 everything he talked about, everything he tried to do, and
 12 here is Mr. Davis, who was appearing for him at the time,
 13 his lawyer, to whom he would be likely to talk, and I want
 14 to know what he said to Mr. Davis, then, if I see anything
 15 worth contradicting I will lay the foundation and put Mr.
 16 Davis on, that is my right; I have a right to come and
 17 say, "Did you go and talk to Chief Justice Beatty of the
 18 Supreme Court? What did you say to him about this matter?"
 19 Most assuredly.

20 MR. FORD. If the court please, counsel has a perfect right
 21 to inquire into everything affecting this witness, his
 22 conduct, his relation to the case--the question raised here
 23 was not the particular thing about his having received
 24 immunity--they have a right to go into all those matters,
 25 but there is a way provided by law for that. You cannot
 26 go out at random and ask him if he had conversations with

1 every Tom, Dick and Harry in the universe without direct-
2 ing the mind of the witness to it, and without giving the
3 prosecution an opportunity to see the relevancy of it.
4 Your Honor is not going to permit evidence to go into this
5 court unless there is at least some apparent relevancy
6 between the question that is being asked and the guilt
7 and innocence of the defendant and the relation of this
8 witness to the case. Now, I cannot see any apparent
9 relevancy whatever in a lot of particular conversations
10 between this witness and Mr. Davis. If, on direct examina-
11 tion, he had testified concerning certain conversations and
12 they wanted to go into that, the relevancy would be at once
13 apparent and if they desired to cross-examine along that
14 line it would be proper. This witness was asked about
15 certain conversations between himself, the defendant and Mr.
16 Davis and if they desire to go into that matter it is per-
17 fectly proper, if this witness has at any time said anything
18 to Mr. Davis contrary to what he has now testified, they can
19 say, "Mr. Franklin, didn't you on such and such a date have
20 a conversation with Mr. Davis, you and he being alone, or
21 there being other persons present--" as the case may be--
22 "in which you said Mr. Darrow was not guilty" or anything
23 else they want to bring in, then the prosecution could
24 see the relevancy of it and to that class of question
25 we would have no objection and could not have any objection
26 under the law, but this is ^{certainly} not cross-examination, irrele-

1 levant, incompetent and immaterial and hearsay.

2 THE COURT This is an investigation of motives.

3 MR. FORD. Absolutely an investigation of motives. They
4 have a right to investigate motives, but in their investi-
5 gation of motives they must confine themselves to the
6 legal way of ascertaining it and I have just suggested
7 that counsel will say anything he may have said, something
8 to Mr. Davis inconsistent with his testimony, if so, it
9 will be by way of impeaching him and he can show he had a
10 conversation impeaching his other testimony. We desire
11 to add that no proper foundation has been laid to this
12 question.

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1 MR. FREDERICKS. The rule is first laid, first holds abso-
2 lutely there is only one way.

3 THE COURT. I do not understand that counsel is laying
4 the foundation for impeachment at this time at all. If he
5 were doing that your objection would undoubtedly be good.

6 MR. FORD. He stated, your Honor that he wants to investigate
7 the motives that Mr. Davis was, his attorney, and this
8 calls forth that he said things to Mr. Davis, insinuating
9 that he has said things to Mr. Davis that is inconsistent
10 with his present testimony. Now, it is an impeaching
11 statement. part of his statement made by the witness at
12 sometime that is inconsistent with the present testimony.
13 All it can be in the world is an impeaching statement, accord-
14 ing to counsel's own reasoning, and if that is so, going
15 into this examination of this witness concerning conversa-
16 tions of Mr. Davis, is absolutely relevant, and we will admit
17 it, but it is not competent in its present form, and no foun-
18 dation laid and upon those grounds our objection is based.

19 THE COURT. Objection overruled.

20 A I wish to ask the Court a question before I answer
21 that, as a matter of law, as a defendant or lawyer--
22 yes, when a defendant talks to his attorney about any
23 phase of his case can he stand upon his rights and refuse
24 to discuss what he discussed with his attorney?

25 THE COURT. You have a right, under Section 1881 of the
26 Code of Civil procedure of this state, to decline to answer

1 any question upon the ground that it may incriminate
2 you.

3 A That is not the section I mean.

4 MR. FORD. privileged communication is what the witness
5 means between attorney and client.

6 A Mr. Davis at that time was acting as my attorney, and I
7 want to know whether I am compelled to testify here to
8 anything that I may or may not have said to him, and I
9 will state here I will absolutely refuse to allow Mr.
10 Davis to take the stand and I will not release him from
11 any confidence between him and I.

12 MR. ROGERS. You claim the privilege, then?

13 A I claim that privilege at this time. I may change it.

14 Q You claim it at this time? A yes, sir.

15 Q Very well, now, if your Honor please, the witness has
16 claimed that privilege and I am ready to meet it. I have
17 sent for the authorities, I sent for them five minutes ago
18 and I think they will be here in five or ten minutes. Your
19 honor will take the usual morning recess I will have them
20 here.

21 THE COURT. Gentlemen of the jury, bearing in mind the usual
22 admonition we will take a recess for five minutes.

23 (After recess. Defendant in court with counsel.)

24 THE COURT. The jury are present.

25 MR. ROGERS. Addressing myself to the privilege claimed by
26 the witness, I call your Honor's attention to the case of

1 People vs Gallagher, found in the 42nd NorthWestern
2 Reporter, and I read from page 1064: (Reading) Charles²
3 Flowers, an attorney, was examined as a witness on
4 behalf of the defendant and so forth--" now proceeding
5 to the law of the matter: (Reading) "Counsel for the res-
6 pondent contended first that the privilege of declining
7 to answer is not a privilege of the attorney but of the
8 client, and that Conveyeau having turned State evidence
9 and attempted to convict others by proof also convicting
10 himself, must be deemed thereby to have waived the privileges
11 which permit him to withhold anything, and therefore, Mr.
12 Flowers should have been compelled by the Court to give
13 in evidence such parts of the communication of respondent
14 to him, while he was his attorney, as the defense desired,
15 or the whole of it, if demanded by either side. Second,
16 The statements of Conveyeau to Flowers as to who with
17 himself committed the burglary, could, under no circum-
18 stances, be considered privileged, as the privilege exists
19 for lawful purposes only."
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1 THE COURT. Are we not anticipating a question that is
2 not up at this time? The witness, as I understand it, has
3 claimed the privilege of the section of the Code of Civil
4 Procedure stated, 1881, as to his attorney. His attorney
5 is not yet on the stand and may not be here.

6 MR. ROGERS. But I have a right to interrogate him.

7 THE COURT. I do not understand he has claimed it as a
8 personal privilege. Are you claiming it as a personal pri-
9 vilege in declining to act yourself?

10 A Yes, sir.

11 MR. ROGERS. (Reading) Conveyeau went on the stand
12 and testified he had a conversation with Mr. Flowers in the
13 jail. This was in answer to a question put to him by the
14 defense on cross-examination--"

15 MR. FORD. There is no dispute between us and counsel
16 on that point.

17 THE COURT. I don,t see there can be any question about it.

18 MR. FORD. The only point we made is the question has
19 already been ruled upon.

20 THE COURT. I will read to the witness the provisions of the
21 Code of Civil Procedure.

22 MR. ROGERS. If I may state just where I stand on this
23 matter, is that the witness by going on the stand has
24 waived every privilege and he may be interrogated, and I
25 stand ready with numerous authorities.

26 THE COURT. I don,t think there is any question about that

1 point. I did not understand until he said so this moment
2 that he was claiming that privilege as a personal privi-
3 lege, and that he would not release his attorney, the
4 statement as I understood he made, but he has changed it.
5 Mr. Franklin, under your statement, it is my duty to inform
6 you, as you have requested, that the law on the subject is
7 found in sub division 2 of Section 1881 of the Code of
8 Civil Procedure of this state which reads as follows:

9 (Reading) Section 1881. Persons cannot be examined in
10 certain relations. There are particular relations in
11 which it is the policy of the law to encourage confidence
12 and to preserve it inviolate; therefore, a person cannot
13 be examined as a witness in the following cases: -- husband
14 and wife. An attorney cannot, without the consent of his
15 client, be examined as to any communication made by the
16 client to him, or his advice given thereon in the course
17 of professional employment; nor can an attorney's sec-
18 retary, stenographer or clerk be examined, without the
19 consent of his employer, concerning any fact, the knowledge
20 of which has been acquired in such capacity." This you
21 will observe does not under existing circumstances protect
22 you or enable you to avoid the duty of answering the ques-
23 tion.

24 A I am not, your Honor. Don't misunderstand me. I am not
25 asking for any protection. I have nothing to conceal.

26 THE COURT. What may happen if Mr. Davis, your attorney,

1 should take the stand is another matter and the Court
2 does not rule upon that, but at the present time it is your
3 duty to answer any proper questions that are put to you, and
4 I think the question presented is a proper one.

5 A Read the question, please.

6 (Last question read by the reporter.)

7 MR. FORD. To that question I don't think we have yet
8 interposed an objection. Our objection is that no founda-
9 tion has been laid as to time, place and persons present.
10 Well, possibly, as to persons present, because they are
11 to Mr. Davis alone--as to time and place, in order that we
12 may be apprised--we are entitled to that in order that we
13 may know to what it relates, in order that we may be able
14 to look into the extraneous matters, and on the further
15 ground that it is not cross-examination, and we have no
16 means of determining whether the conversations which the
17 answer necessarily contains are impeaching questions or
18 contradict in any way the testimony given by the witness
19 at this time. Now, clearly does not, an examination in
20 regard to matters that he has been examined on in chief,
21 he has not at any time testified to conversations had between
22 himself and Mr. Davis, his attorney alone. We did not go
23 into that matter, I don't think we had any right to go
24 into that matter, and as far as cross-examination is con-
25 cerned, Section 2048--

26 MR. ROGERS. This was all gone into.

1 MR. FORD. I am going to argue it on this question.

2 The opposite party may cross-examine a witness as to any
3 facts stated in the direct examination or connected there-
4 with, and in so doing may put leading questions, but if
5 he examines him as to other matters, such examination is
6 to be subject to the same rules as direct examination.
7 Now, he is examining him on matters entirely outside of
8 the cross-examination or direct examination and ~~it~~ there-
9 fore it is not cross-examination. It is entirely new matter.
10 It may be that counsel desires to show by this witness some
11 transaction between himself and Mr. Davis which are incon-
12 sistent. If they are, clearly, we are entitled to have
13 him lay the foundation. They are subject to the same
14 rules of any other direct examination of their own witness,
15 if they had him on the stand, and we are entitled to know
16 the conversation, its place, persons present, and I think
17 in addition to that we are entitled to know the particular
18 conversation that they want to seek to prove. Let them
19 ask him just whether such and such a conversation did not
20 occur, such as they expect to prove of Mr. Davis, if they
21 expect to prove it.

22 THE COURT. The objection is overruled. Answer the question.

23 A Now, what particular conversation is it that you want?

24 MR. ROGERS. Q Start at the first one.

25 MR. FREDERICKS. We object to that question on the further
26 ground, may it please the Court, that it is too general,
that it is incompetent, irrelevant and immaterial, and that

1 it is not cross-examination.

2 THE COURT. Overruled.

3 A The first conversation I had with Mr. Davis subsequent
4 to my arrest--

5 MR. FREDERICKS' I would like to add to that that it is
6 hearsay.

7 THE COURT' Overruled.

8 A --was in the Jailer's office at the City Jail. He
9 called there with Mrs. Franklin and the first question he
10 asked me was, "We were waiting for you to 'phone us, why
11 didn't you 'phone?" And I answered his question--this
12 was about two hours after my arrest, I think, an hour,
13 an hour and a half--I told him that I was satisfied that
14 somebody would come sooner or later.

15 MR. ROGERS. Q Proceed further.

16 A He said for me not to be impatient, that they would get
17 me into court as soon as possible and put up my bond. I
18 told him that if such arrangements were made that I would
19 like to have a cash bond. He said that he thought that
20 they were preparing the complaint and that it would be
21 filed in the Justice Court shortly, and that he would be
22 there and see that I was released upon bond. I thanked
23 him and he left.

24 MR. FREDERICKS. We move to strike out all that part of the
25 conversation which refers to what Mr. Davis said as being
26 hearsay.

THE COURT. Motion to strike out is denied.

1 A The next conversation that I had with Mr. Davis was at
2 the north end of the county court house after I had been
3 brought there for the purpose of arraignment before Judge
4 Young. He told me that whatever I did, my greatest duty,
5 words to that effect, was to keep my mouth shut and not
6 to talk to anybody, not to talk to the reporters or anybody,
7 especially a stranger. I told him that that was unnecessary.

MR. ROGERS:

8 Q That was what?

9 A That was unnecessary.

10 Q You knew that was a common instruction given by every
11 lawyer to his client? A Yes, sir. You gave me that in-
12 struction one time.

13 Q Thought it was good advice? A yes, sir, and I followed
14 it. I thought of that the first thing after I was arrested.

15 Q And the next conversation? A The next conversation--

16 Q You don't mean I gave it to you in this matter? A Oh
17 no, Mr. Rogers.

18 Q Some other thing? Yes, just a general conversation we
19 had, nothing particular.

20 Q Go ahead. A The next conversation that I have any
21 recollection of was, I think a day or two following that,
22 I am not sure, but it was the next day. He came to my
23 office and told me that he had made arrangements, or attempted
24 to make arrangements, and that virtually he would do so for
25 me to plead guilty for attempting to bribe George Lockwood,
26 and that that would mean a fine of \$5,000 or one year in the

1 penitentiary or both, and that he thought he could get
2 me off with a fine--that he would work to that end, and he
3 said at that time he would see that I was paid a sufficient
4 sum, I think he mentioned a thousand dollars, at that time,
5 so I would have something to live on until I had lived down
6 what I had done.

7 Q Previous to that statement you do not remember to have
8 had any conversation with Mr. Davis other than the one you
9 have given? A Previous to this last conversation?

10 Q Yes. A Except the two I have given.

11 Q Did you at first say to Mr. Davis in either one of these
12 conversations or at any place or at any time that this man
13 had solicited a bribe from you and you tried to catch him,
14 or words to that effect, or that in substance or purport?

15 A yes, sir .

16 Q Where was that? A I am not sure but I think it was
17 in the office of Mr. Gage.

18 Q I said previous to this statement that you have just
19 related what Mr. Davis said? A No, I don't think I made
20 any such statement to him before that day.

21 Q You don't think you did? A No.

22 Q Have any talk about whether you were guilty or innocent
23 with Mr. Davis? A No, sir.

24 Q Did he ask you anything about it? A No, sir.

25 Q Did he say anything to you as to whether you had done it
26 or whether you had not done it? A No, sir, it was not

1 necessary, I don't think.

2 Q Never mind whether it was necessary or not: I am asking
3 you if it so happened? A No, sir.

4 Q Did not say anything to Mr. Davis about whether you had
5 done it or whether--or what the circumstances were sur-
6 rounding it? A That is not what you asked me before.
7 You asked me what Mr. Davis had said.

8 Q What did you say? I did ask you if you had any conver-
9 sation. A I told Mr. Davis he had come to my office and
10 solicited a bribe.

11 Q When was that? A That I told him that? Oh, very
12 shortly after it happened.

13 Q Go ahead and relate the rest of that conversation.

14 MR. FORD: Pardon me, at which place was this? I didn't
15 get the answer. I didn't understand which conversation
16 this last remark was made by the witness to Mr. Davis.

17 (Last question and answer read by the reporter.)

18 MR. ROGERS: Q Can you give us any better view of that,
19 any better view of the day than that? A It was shortly
20 after my arrest, Mr. Rogers.

21 Q Was it before this conversation that you have spoken
22 about? A Which one?

23 Q The last one that you have related, namely, where you
24 say Davis talked to you about a fine, and so forth?

25 A I am not sure. I don't think so, it might have been.

26 Q Will you say it was or was not before that conversation?

1 A I wont say either one.

2 Q What is your recollection about it? A I don't remember.

3 Q You remember whether it was before or after you were
4 released from jail? A After.

5 Q You remember whether it was before or after your arraigh-
6 ment up here in the north end of the court house? A I
7 think afterwards.

8 Q Think it was after this conversation that you have
9 spoken about with Davis, was it? A That is not the one
10 you asked me about.

11 Q Was that before that-- A Wait until I get through.

12 Q Go ahead and get through. pardon me for interrupting
13 you. A The last conversation I had with him that I
14 related was at my office.

15 Q How long after your arraignment then? A I don't
16 remember.

17 Q Was it the next conversation after your arraignment?

18 A I don,t remember.

19 Q was it a week, a month or ten days, two hours or what?

20 A I don,t remember. Shortly after. I think within three
21 or four days.

22 Q Now, was it the next conversation after your release on
23 bail? A No, sir.

24 Q What conversation happened before you had that conversa-
25 tion with Davis after your release on bail? A Conversa-
26 tion in my office, I think, happened before this conversa-

1 tion I had with Mr. Davis .

2 Q What conversation happened in your office before this
3 conversation with Mr. Davis? A I am not sure that it
4 happened, but I think the conversation I had in the office
5 was before I related this to Mr. Davis .

6 Q You mean to tell me that Davis said he was making arrange-
7 ments for you to plead guilty and take a fine before you
8 told him that Lockwood had come to your office and solicited
9 a bribe? A I think he did. I think he not only did that
10 but I think he told me why, but I am not so sure, and I don't
11 want to testify to it. He did at another time.

12 Q Now, do you mean to say that Davis told you before you
13 ever told him that Lockwood had come to solicit a bribe
14 that he was making arrangements for you to plead guilty?

15 A Read that question again.

16 (Last question read by the reporter.) A I am quite
17 sure that he did, yes, sir .

18 Q When was it that you told him that Lockwood had solicited
19 a bribe? A I don't remember, shortly after my arrest,
20 within a few days, I think.

21 Q Relate the rest of the conversation and what occurred
22 at that time in which you told Mr. Davis that Lockwood had
23 come to you to solicit a bribe.

24 MR. FORD. Object upon the ground the foundation as to
25 place has not been laid, persons present.

26 MR. ROGERS. I did the best I could for him.

1 MR. FORD. You haven't asked the place yet for this next
2 conversation.

3 THE COURT. Read the question.

4 (Last question read by the reporter.)

5 THE COURT. Objection overruled.

6 A Read that question.

7 (Last question read by the reporter.)

8 MR. FORD. If the Court will pardon me, I may have misunder-
9 stood the testimony of the witness, but I understood the
10 witness to testify that at one time in the office of Gage he
11 had told about Lockwood soliciting a bribe. I understood
12 to Mr. Davis, and then in answer to counsel's questions
13 that there was another time previous to that that he had
14 told that to Davis, but I am not sure, but I just wanted
15 to get right on it as to whether this is a conversation that
16 occurred in Gage's office.

17 THE COURT. You want the record read?

18 MR. FORD. I don't think the record will clear it up.

19 THE COURT. It will have to be cleared up by questions by
20 you or Mr. Rogers.

21 MR. FORD. That is the vice of the questions that are
22 being followed in court--the point we are trying to make
23 we are certainly entitled to know where the conversation is.
24 This was a matter not brought out by us and we are entitled
25 to know just exactly at what place and as near the time
26 as can be fixed that the conversation occurred- Now, the

1 record, apparently, is not clear as to whether there were
2 two conversations, one in Gage's office and one at another
3 place or whether this conversation he is now relating was
4 one in Gage's office. I haven't made any objection, I just--
5 MR. ROGERS. He started to relate a conversation and I am
6 asking him to relate the rest of it, that is all there is
7 to the question.

8 MR. FORD. Our objection is that the time and place has
9 not been fixed.

10 THE COURT. I will ask the witness where did that conver-
11 sation take place?

12 A Between Mr. Davis and myself?

13 THE COURT. The one you were testifying about?

14 A I stated before that I thought it was in the office of
15 Mr. Gage but I was not sure.

16 THE COURT. Go on and answer Mr. Rogers' question.

17 A Mr. Rogers asked me who was there--

18 MR. FORD. Mr. Rogers?

19 A Mr. Davis asked who was there. I told him that my wife
20 and daughter, I think I said my daughter or son, I am not
21 sure which.

22 MR. ROGERS. Q Anything else, that is, you told Davis
23 when he asked you who was there when Lockwood solicited a
24 bribe you told him that your wife and daughter and possibly
25 your son was there? A No, I said my daughter or son,
26 I don't know which, I don't remember now which I told

1 him.

2 Q You told Davis that when Lockwood solicited the bribe your
3 wife and either your daughter or your son were there?

4 A When he came in, yes.

5 Q What else did you tell Davis at that time? A I think
6 Mr. Davis asked me if my wife and daughter or son, which-
7 ever it might have been, overheard the conversation. I
8 told him that they were in the other room, that I didn't know.

9 Q All right, go ahead. A I think that is about all.

10 Q That is all the conversation? A I think so, that one.

11 Q Did you say what Lockwood said to you or you said to
12 him? A I don't think so, no, sir.

13 Q How you happened to be on the street or how Lockwood
14 happened to come to your office? A No.

15 Q Didn't tell anything about that at that time? A No,
16 sir.

17 Q In that conversation? A No, sir, I don't think I did
18 at any other time either.

19 Q Did you tell him you tried to catch Lockwood? A Not
20 except at the time I was arrested.

21 Q Did you tell him that at the time you were arrested?

22 A I told him afterwards, yes, at the time I got arrested
23 I tried to trap him and get him up to the corner, yes, sir.

24 Q When did you tell Davis that? A I don't remember.

25 Q Well, approximate it; tell us where it came in reference
26 to these other conversations. A We had dozens of conver-

1 sations. I can't segregate them, I don't remember.

2 Q Did you ever tell Mr. Davis where you got the money?

3 A No, he never asked me.

4 Q Did you ever tell him anything about it? A No, I
5 never did.

6 Q Did he ask you? A No.

7 Q Then you say, do you, that Mr. Davis never in any wise
8 asked you where you got the money that you say was paid to
9 White and part of it to Lockwood? A No, sir I don't
10 think Mr. Davis ever asked me that question.

11 Q Did you tell him without his asking questions anything
12 upon that subject at any time or place? A No, he was
13 acting between Mr. Parrow and myself. Now, just a moment--

14 Q You answer my question. A I am going to answer the
15 question. Without volunteering, I will get around to that,
16 how he was acting. A I think I have.

17 MR. FORD. The witness started to finish his answer.

18 A I did not.

19 MR. FORD. Finish your answer. A Mr. Davis was acting
20 between Mr. Parrow and myself but I don't think it was
21 necessary for him to ask me or me to tell him what had
22 happened.

23 MR. ROGERS. I move to strike out the answer and ask for
24 an answer to my question, not responsive, and a conclusion
25 of the witness. A A A conclusion as to a fact.

26 MR. ROGERS. Never mind about that, I am talking to the

1 Court.

2 THE COURT. Strike out the answer.

3 MR. ROGERS. Please answer my question.

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

5 Q You mean to say-- A Yes, I mean to say I am quite
6 positive that I did not either volunteer it or did he
7 ask it. That is my recollection at this time.

8 Q Did you tell Mr. Davis when he asked you at any conversa-
9 tion or at any place or at any time when he asked you where
10 you got the money that you got it from the Chicago man?

11 A No, sir.

12 Q You did not? A No, sir- Mr. Davis told us that.

13 Q Mr. Davis told you that? A Yes, sir.

14 Q Now, that is where I want it. A Not a Chicago man, but
15 there was a man going between Mr. Darrow and myself.

16 Q Where was that and when was it that Mr. Davis told you?

17 A He told me it once or twice when we were alone and we
18 talked and discussed it at the time, on the 14th day of
19 January, when Mr. Darrow was present.

20 Q Once or twice alone, when first alone? A I don't
21 remember.

22 Q Where? A I don't remember; I think at his own office.

23 Q Anybody present? A I don't--no, sir. On one occasion
24 there was, on the 14th of January, 3:30 in the afternoon.

25 Q I am talking about the two times now you said--did he
26 tell you two or three times, did he tell you that?

1 A Yes, sir, that is right.

2 Q Give me the first time he told you that. A Don't
3 remember.

4 Q How long was it after you were arrested? A I don't
5 remember.

6 Q How long was it after you were released on bail?

7 A I don't remember.

8 Q You remember where it was? A I think in his office.

9 Q You remember whether it was in the first conversation or
10 consultation you had in his office or a subsequent one?

11 A Oh, I never held any consultation particularly with
12 Mr. Davis.

13 Q Well, call it a conversation. A I would drop up there
14 occasionally to see him.

15 Q On what occasion was it, the second, third, fourth or
16 tenth? A I don't remember.

17 Q Had you been up there many times before he told you to
18 say that, or did he tell you to say that at first?

19 A Oh, it was quite a while after my arrest.

20 Q Then you had had numerous conversations before that,
21 before he told you that? A About this particular subject?

22 Q Yes, where you say Davis told you to say that, that is
23 what I am driving at? A Not numerous; I said two or
24 three times.

25 Q Two or three times before Davis told you to say that
26 you had had conversations with him? A Oh, yes, I think I

1 had; oh, yes, other conversations not relating to that
2 matter.

3 Q Did you tell Mr. Davis in Mr. Darrow's presence or at any
4 other time or place that Mr. Darrow ever gave you one five
5 cent piece for a dishonest purpose or for any unlawful pur-
6 pose whatever? A No, Mr. Rogers; I never told any other
7 living soul on God Almighty's Footstool. I didn't have
8 to, and up to that time--the time I plead guilty I was
9 saying I was innocent myself. Why should I try--

10 Q Let me have that answer.

11 (Last answer read by the reporter.)

12 MR. FREDERICKS. We ask that the question be read again.

13 THE COURT. Read the question. (Last question read by the
14 reporter.)

15 MR. FORD. I move the latter part of the answer be stricken
16 out as not responsive to the question.

17 MR. ROGERS. Now, let me have that answer.

18 (Last answer read by the reporter.)

19 Q At the time of your preliminary examination of Mr. Bain--
20 at the time of your preliminary examination on the charge of
21 bribing Bain, did you see Mr. Timmons of the Examiner who
22 sits there? A I did.

23 Q Did you see Mr. White of the Express? A Point him
24 out and I will tell you.

25 Q He is not here. Did you see Mr. Dunn of the Herald
26 sitting here? A I think I did; yes, sir.

1 Q Did you see Mr. Jones of the Tribune sitting here?

2 A I think I did; yes, sir.

3 Q Did you see Mr. Bernard? A I don't know him.

4 Q Did you see Mr.-- a gentleman that represents the Associated
5 Press Pearson of the Associated Press? A I saw the
6 gentlemen that said he represented the associated Press,
7 yes, sir.

8 Q At that time that Mr. Lockwood was testifying that, you
9 have mentioned Mr. Darrow's name, didn't you get up from
10 your place in that room and go over to these men sitting
11 here voluntarily and say to them that Mr. Darrow never gave
12 you any money for the corruption of jurors, that it was
13 a damned lie?

14 MR. FREDERICKS. Just a moment, Mr. Witness.

15 MR. ROGERS. Q Or words to that effect, that he was one
16 of the best men you ever knew in your life and that he
17 had never given you any corrupt money in his life, or
18 words to that effect?

19 MR. Fredericks. That is objected to upon the ground
20 that it is an attempt to make something appear by this
21 testimony which is not correct and which has not been
22 testified to, and therefore it is incompetent, irrelevant
23 and immaterial and not cross-examination and hearsay and
24 no foundation laid, and I call your Honor's attention to
25 this fact, the line of questioning which has led up to
26 this has been: Did you ever tell Davis that Darrow gave
you any money, that is the question.

1 MR FREDERICKS: The question was answered "No, I didn't tell
2 him that Darrow gave me any money and I never --", and the
3 witness went further and said "I never told a living soul
4 that Darrow gave me money for this act"; that is, for this
5 unlawful purpose.

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Pete 1 Now, that is not a statement on the part of this witness
2 that Darrow didn't give him money, it is a statement that he
3 never told anybody that Darrow did give him money. Now, if
4 counsel is going to attempt to impeach him by the statement
5 that he is purported to have made that Darrow didn't give
6 him money, which is an entirely different proposition. One
7 time he says: "I never told anybody Darrow gave me money",
8 but that does not say that Darrow never did give me any
9 money, and does not state he ever told anybody that Darrow
10 didn't give him money, but only that he never told anybody
11 that Darrow did give him money.

12 THE COURT: Objection overruled. Answer the question.

13 A Now, Mr Rogers, if you will pay strict attention I will
14 try to tell you just what happened.

15 Q By Mr Rogers -- Answer the question. A I am going to.

16 Q Answer the question as to whether you did or did not say
17 that in substance or purport? A Do you want me to answer
18 "yes" or "no"?

19 Q Yes. A No.

20 Q You further --

21 MR FREDERICKS: Now, your Honor, the witness has a right to
22 explain the answer if he wishes to.

23 THE COURT: Do you wish to explain your answer?

24 A I would like to tell what happened.

25 MR ROGERS: I will get at what happened very shortly.

26 MR FORD: I think the witness has a right to explain his
answer.

1 THE COURT: The Court has informed the witness if he has any
2 proper explanation to the answer he may make it.

3 MR APPEL: He said he didn't say that in substance or to that
4 effect.

5 A No, I didn't say that.

6 MR APPEL: Now, he says he may have said something else, he
7 may have said something else that is not material, may have
8 talked about the weather or something else, and the only
9 point on which we have a right to interrogate him is upon that
10 which
11 is material and which would prove to contradict the witness.
12 He might have said a great deal more, but the question is
13 whether in that conversation, now, whatever it was, did he
14 not make this particular statement and the answer of the
15 witness is perfectly clear.

16 THE COURT: Then there is nothing to argue, and the witness
17 has not indicated any desire to explain his answer; the Court
18 has informed him he had that right and he has shown no dis-
19 position to.

20 MR FORD: If the Court will pardon me just a moment, this
21 witness has indicated in his examination, because he believed
22 Mr Rogers is technical he must be technical and answer the
23 question precisely the way it is put. I think he has indi-
24 cated he has a desire to modify -- not exactly to modify, but
25 to qualify that "no". He answered "no"; That he didn't
26 say those precise things. Now, if the witness has in mind
anything similar to that and desires to explain the circum-

1 stances under which he said it, desires to explain it, in
2 order that it might not be contorted by counsel later on,
3 he has a right to make that explanation.

4 MR ROGERS: No. I have a right to interrogate him first
5 as to that conversation and put it as I have it, it is put
6 to me -- I have it in different ways. Of course, as is
7 natural with three or four different witnesses. I have
8 three or four different forms of the conversation and I have
9 a right to put it to him before he can go on and say what he
10 did say.

11 THE COURT: The witness has shown no inclination whatever
12 to make an explanation.

13 Q By Mr Rogers-- I will call your attention to another
14 reporter, and I will return to this incident in the court-
15 room later. Do you know Mr D V Nicholson, reporter for the
16 Examiner? A Yes sir.

17 Q He was here on yesterday, he was not here today.

18 A I saw him.

19 Q Do you know him? A Yes sir, very well.

20 Q Did you have a conversation with him after your arrest,
21 sometime about December 15, one at your house and one at
22 your office? A No. He attempted to talk to me, but he
23 didn't have that --

24 Q At the conversation at your house, you and he being
25 present, did you say to Mr Nicholson that Mr Darrow never
26 gave you any money to bribe any jurors and never knew any-
thing about any bribery of jurors at any time? A No sir.

-Pete 1 MR FORD: We object to that on the ground no foundation is
2 laid, that the time has not been stated when this was,
3 whether it was before he plead guilty or after the preliminary
4 or some other time.

5 THE COURT: I think you will have to approximate that time.

6 MR ROGERS: About December 15th, I read there; the question
7 shows it.

8 THE COURT: Very well. Objection overruled.

9 Q Did you so say? A No sir, nor any words to that
10 effect, or anything from which he can draw any conclusion
11 of that kind, Mr Ford -- Mr Rogers -- anything in any way,
12 shape or form.

13 Q At your office in the Chamber of Commerce Building,
14 did you tell Mr Nicholson, of the Examiner, practically the
15 same words in substance or effect, that Mr Darrow never gave
16 you any money to bribe any jurors, he never knew anything
17 about any bribery of jurors at any time? A No sir, I
18 never discussed my case with Mr Nicholson or any other report-
19 er in the city of Los Angeles in any ^{way} shape or form. --

20 Q Now, do you know -- A -- except the conversation we
21 had at my preliminary examination, the only statement I ever
22 made to him, and I made that trying to protect this man here.

23 Q What is that? A It is in the record.

24 Q All right. Let us read it. (Question read)

25 A Meaning Mr Darrow.

26 Q The only conversation you ever had with Mr Nicholson
was at the preliminary examination? A No sir. I said the

1 only conversation I had with any reporter in regard to my
2 case where I gave any statement at all was at that time you
3 alluded to a few minutes ago.

4 Q Do you know J L Bernard, of the Express or Tribune?

5 A Bernard?

6 Q Yes. A Possibly. Is he here?

7 Q No, he is not here.

8 A A little fat fellow?

9 Q He has been here every day. Yes. I doubt if he will
10 admit that himself, but you might call him short and in-
11 clined to be stout.

12 A Short but not sweet. I think I know him, yes sir.

13 Q Did you say to him at any time or place after your
14 arrest, that Mr Darrow never gave you one dollar or any money
15 to bribe any juror and never knew anything about the bribery
16 of any jurors at any time?

17 MR FREDERICKS: That is objected to on the ground that no
18 foundation has been laid, the time, place and persons
19 present ; evidently an impeaching question.

20 MR ROGERS: He says he never had any, now, I can use his own
21 words; he has laid the foundation.

22 MR FORD: We are entitled to it. We have some rights.

23 THE COURT: Objection sustained.

24 Q By Mr Rogers: Do you know John Drain?

25 A Very well, yes sir.

26 Q I will lay the foundation and place -- this Bernard

1 conversation I asked you about was at about the time of
2 your preliminary hearing, ~~sk~~ somewhere in the vicinity of^{the}
3 Court House, somewhere in that neighborhood, probably in
4 the court house itself?

5 MR FREDERICKS: We object to that on the ground a sufficient
6 foundation has not been laid.

7 MR ROGERS: That is all ~~we~~^I can get ; naturally, you can see
8 one cannot --

9 THE COURT: Objection overruled.

10 Q By Mr Rogers: Answer the question. A What is the
11 question.

12 Q Have you told Mr Bernard that? A No sir. And the
13 best evidence I didn't is the fact it never was published
14 in the paper.

15 Q Never mind about your best evidence; please say
16 whether you did or not, and don't argue with me.

17 A I did not.

18 Q Very well. A Or anything to that effect.

19 Q Do you know John Drain? A Very well, yes sir.

20 Q You used to work -- A For him.

21 Q For him? A Yes sir.

22 Q Did you ever meet Mr Drain in the Majestic Saloon,
23 next to the old Majestic Saloon, next to the Lyceum Theater
24 on Spring Street, at any time?

25 A I met him outside and we went in.

26 Q You met him outside and you went in? A Yes sir.

- Petel 1 Q Do you remember talking to him there about this case?
- 2 A When?
- 3 Q This was after your arrest and before your plea of
- 4 guilty? A Yes sir, I remember it.
- 5 Q You remember it? A Yes sir.
- 6 Q Do you remember of F M Nichols being there? A Yes sir.
- 7 MR FORD: That is kind of very indefinite, it is a period of
- 8 three or four months.
- 9 MR ROGERS: It was shortly after the arrest, I cannot give
- 10 the date. He knows the incident? A Yes sir, I think it
- 11 was within ten days.
- 12 Q Within ten days? A I think so, yes sir.
- 13 Q Now, did this conversation occur in the presence of
- 14 Mr John Drain, Mr F M Nichols, Mr Frank E Dominguez, you
- 15 invited them all to enter the saloon to have a drink?
- 16 A Is that part of the conversation?
- 17 Q The part about invit ing them to enter^a and have a drink
- 18 is, ~~and~~ part of the conversation, the substance and purport
- 19 of it. A All right.
- 20 Q It so happened, did it? A I don't know.
- 21 Q "You are not ashamed to take a drink with me, are you?"
- 22 A Wait until I answer that part of the question.
- 23 Q All right. A I remember we went in, I don't remem-
- 24 ber I invited them or not.
- 25 Q And you said to John Drain, "You are not ashamed to
- 26 drink with me, are you?" whereupon Drain said: "You know

1 I don't drink anything but buttermilk", and he, Franklin,
2 replied: "That is a good enough drink, take that if you want"
3 and you went in. Do you remember that?

4 A I remember we went in to drink, I question the butter-
5 milk story very much.

6 Q About John Drain? A Yes sir.

7 Q You know that John Drain has not drunk anything but
8 buttermilk for some years?

9 MR FORD: We object to that as immaterial, not in any wise
10 throwing any light on the guilt or innocence of this def-
11 endant.

12 MR ROGERS: You get decisions from me, you know.

13 Q Isn't it true you said after some preliminary questions
14 "I never received a dishonest dollar from Darrow, he never
15 knew anything connected with this matter, he is too good a
16 man to do anything of that kind, he was most kind hearted,
17 generous, and the best man I ever knew in my life and
18 wouldn't stand for any corruption or dirty work, and he
19 never gave me a dollar for any corrupt purposes in the world."
20 Did you say that in the presence of those people?

21 A No sir, I didn't. I said part of that, but not all
22 of it.

23 Q What part did you say? A Mr Dominguez said to me:
24 "Bert, nobody every accused you of having \$4,000 to give to
25 a jury". I said "No, I don't think they did." And, well,
26 he said "If you did what you are charged with you got the

1 money from Darrow". I said "Mr Dominguez, don't mix Mr
2 Darrow up in this matter, Mr Darrow is one of the kindest
3 and best men I ever worked for", and I repeat it now to
4 his face, he treated me splendidly and I have no complaint
5 to make.

6 Q And didn't you say that Mr Darrow never gave you --
7 didn't you say in that connection you wouldn't stand for
8 any corruption and dirty work and he never gave you a
9 dollar? A I did not.

10 Q For any corrupt purpose? A I did not. Why should I?

11 A I didn't ask you why you should. Did you?

12 A No, I did not.

13 Q You remember the incident? A Yes, and all of you know
14 I did not.

15 Q Don't answer me that way; I know you did.

16 MR FREDERICKS: I don't believe he did anything of the kind,
17 if he is going to testify --

18 MR ROGERS: I will take John Drain's word for it before
19 his any minute.

20 MR FREDERICKS: He is not testifying.

21 MR ROGERS: He will testify.

22 THE COURT: Gentlemen, of the jury, you will disregard the
23 statements of purported facts made by counsel. At this time
24 we are about to adjourn and you will bear in mind the former
25 admonitions not to talk about this case and let no one talk
26 to you about it, don't form or express any opinion until the
matter is submitted to you. The Court will now adjourn until

1 two o'clock this afternoon.

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3 (Here the Court took an adjournment until 2 P.M.)

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