

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.)

Clarence Darrow,)

||)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 33

I N D E X.

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1 AFTERNOON SESSION. June 20, 1913; 3 P.M.

2 -----
3 Defendant in court with counsel.

4 THE COURT. The jurors and all parties are present. You
5 may proceed with the examination of the witness.

6
7 C H A R L E S F. H U N T,

8 on the stand for further direct examination.

9 MR. FORD. I will read the answer as I understand the
10 answer to the last question is, as it remains in the
11 record: "Q--Now, with the check in your hand you may
12 state what the circumstances were of your receiving that
13 check. A--This check was presented to me on the 2nd day
14 of September. The check was not endorsed ^{by} Mr. Tveitmoe and
15 I asked that it be so endorsed. Whether Mr. Tveitmoe was
16 there at that time or not I do not know, but a little later
17 Mr. Tveitmoe endorsed the check, and while he was endorsing
18 it I think I filled out this deposit tag just as an
19 accommodation." Q You were present when Mr. Tveitmoe endorsed
20 the check, were you? A I think he did so at the counter
21 right by my desk.

22 Q And that was the 2nd of September, 1911? A Yes.

23 Q Do you know Mr. Tveitmoe's attorney, Mr. Cleveland Dam?

24 A Yes, sir.

25 Q By whom was the check first presented to you? A By
26 Mr. Dam.

1 Q What was the statement of Mr. Dam to you at that time?

2 MR. ROGERS. Objected to as hearsay, incompetent, irrelevant
3 and immaterial.

4 THE COURT. Objection overruled.

5 MR. ROGERS Exception.

6 A My recollection is he said that Mr. Tveitmoe would like
7 to get some large bills for the check--

8 MR. FORD. Just go ahead.

9 A (Continued) --I stepped down to the paying teller to see
10 if he had those large bills. He said he did not have them
11 in the cage--

12 MR. ROGERS' I move to strike it out as hearsay.

13 THE COURT. Strike out what the paying teller said.

14 MR. FORD. Q Did he have any large bills when you were
15 down there? A Apparently not.

16 Q Then what, if anything, did you do? A I asked--

17 Q Without saying what was said, state whether or not you
18 procured the large bills--just state what was done.

19 A I suggested that the check be endorsed by Mr. Tveitmoe
20 and passed to his credit, and that he draw a check for such
21 currency as he desired, which was done.

22 MR. ROGERS. I move to strike that out as hearsay, incom-
23 petent, irrelevant and immaterial.

24 MR. FORD. I think perhaps it might be capable of that
25 construction. I will clear it up by asking a couple of
26 questions, and if it is hearsay it may be stricken out.

1 THE COURT. Ask a couple of questions.

2 MR. FORD. Do you know whether or not Mr. Tveitmoe drew a
3 check? A Yes, I am pretty sure he did.

4 Q For what sum? A \$10,000.

5 Q And was any money delivered to him for the \$10,000
6 check that he drew?

7 MR. ROGERS. I make the same objection, it is hearsay, in-
8 competent and no foundation laid, irrelevant and immaterial.

9 MR. FORD. I will add the words, "if you know."

10 A Not to my personal--

11 THE COURT. Now, the objection is overruled and the form_{er}
12 motion upon which the ruling was reversed is denied.

13 MR. ROGERS. Exception.

14 MR. FORD. Turning now to the check--the check being N^o.
15 30 in Exhibit 10 which I exhibited to you this morning, the
16 check of Mr. Morrison in favor of Mr. Darrow and endorsed by
17 Tveitmoe. What was done with that check and this deposit
18 slip of \$10,000 which you testified was in your handwriting?

19 MR. ROGERS. I make the same objection as last stated.

20 THE COURT. Objection overruled.

21 MR. ROGERS. Exception.

22 A Why, it went through the regular course, going to the
23 receiving teller.

24 MR. FORD. To what receiving teller did it go?

25 MR. ROGERS. Pardon me, I move to strike that out as a
26 conclusion of the witness, irrelevant, incompetent and
immaterial and no foundation laid.

1 THE COURT. You mean the last answer?

2 MR. ROGERS. Yes, sir.

3 THE COURT. Read the last question and answer.

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

5 MR. ROGERS. Before the question I move to strike out the
6 answer on the ground that it is incompetent, irrelevant and
7 immaterial and no foundation laid.

8 THE COURT. Motion denied.

9 MR. ROGERS. Exception.

10 MR. FORD. Now, read the last question.

11 MR. ROGERS. I don't care to object all along to each of
12 these questions. May the same objection apply; if I have
13 a special objection I will state it?

14 THE COURT. That is a good saving of time. If counsel will
15 avail themselves of that method the court will use every
16 means to assist in making up the record pursuant to that
17 matter.

18 MR. ROGERS. Very well, if I may be deemed to have an
19 objection I need not state it.

20 THE COURT. Precisely, it will be so understood, the
21 same objection, the same ruling and the same exception.

22 MR. ROGERS. Very well.

23 THE COURT. To all this line of testimony.

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1 MR FORD: Read the last question, Mr Reporter.

2 (Last question read.)

3 A I see on here the initial "D"; that is Mr Dieckman.

4
5 MR ROGERS: What is the answer? (Answer read.)

6 MR FORD: Who took the check to the receiving teller, Mr
7 Dieckman? A Well, I presume I must have taken it over
8 to the receiving teller across the lobby.

9 MR ROGERS: I move to strike out the answer as a conclu-
10 sion.

11 THE COURT: Strike it out.

12 MR FORD: What is your recollection? You are not allowed
13 to state presumptions; state your best recollection.

14 A Well, my recollection is I took it over and handed it
15 in to the receiving desk, the check and the deposit slip.

16 MR ROGERS: I didn't get that answer.

17 THE COURT: Read it.

18 (Answer read.)

19 MR FORD: Do you know Mr Ledeme , in your bank? A Very
20 well.

21 Q Mr A. C. Ledeme? A Yes sir.

22 Q What position does he occupy in that bank? A Paying
23 teller.

24 Q Did you, on that morning, have any conversation with
25 Mr Ledeme in regard to this transaction or any portion
26 of it? A Only in asking him if he had any --

MR ROGERS: Pardon me --

THE COURT: Just answer yes or no

1 MR FORD: That is while Mr Tveitmoe was there in the bank?

2 A It must have been.

3 Q Did Mr Tveitmoe accompany you to Mr Ledeme's window?

4 A To the best of my recollection, yes.

5 Q What occurred there at Mr Ledeme's window?

6 MR ROGERS: We make the same objection.

7 THE COURT: Overruled.

8 MR ROGERS: Exception.

9 A I think after Mr Tveitmoe had reached the paying tell-
10 er's window and handed in his check I left, and that is
11 as far --

12 Q That is, handed which check, the check which has been
13 introduced in evidence? A No, the check which he had
14 drawn for \$10,000 against his own account.

15 Q That is the original \$10,000 check which has been
16 introduced in evidence, I understand, was deposited to the
17 credit -- A By the "original" you mean on Washington?

18 Q Yes. A Yes, deposited to the credit of Mr Tveitmoe.

19 Q And then he drew another check for \$10,000 against it?

20 A Yes sir.

21 MR FORD: Cross-examine.

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CROSS-EXAMINATION

24 MR ROGERS: Mr Hunt, Mr Tveitmoe keeps an account in your
25 bank? A yes sir.

26 Q What is the name of that account? A At the present

1 time?

2 Q What was the name on September 2nd? A 1911? O. A.
3 Tveitmoe, treasurer, Defense Fund, State Building Trades
4 Council.

5 Q That is what is called a special account, is it not,
6 not a general account? A I don't know.

7 Q Well, it bears the name of "O.A.Tveitmoe, Treasurer
8 of the Defense Fund of the State Building Trades Council"?

9 A That is as I read my own writing here.

10 MR FORD: Pardon me, I omitted to offer this in evidence.
11 I offer the deposit slip which accompanied the account at
12 that time as people's exhibit No.---

13 THE CLERK: 26.

14 MR FORD: -- 26.

15 MR ROGERS: And we object to it on the ground it is incom-
16 petent, irrelevant and immaterial, no foundation laid, not
17 sufficiently identified or connected with the defendant.

18 THE COURT: Objection overruled.

19 MR ROGERS: And an exception.

20 THE COURT: Mark it as an exhibit.

21 (Document last refer red to marked People's exhibit 26.)

22 MR ROGERS: When this check that you speak of, this Wash-
23 ington check for \$10,000 came to your bank, in whose hands
24 was it when you first saw it? A Mr Cleveland Dam.

25 Q Who is Mr Cleveland Dam? A An attorney.

26 Q An attorney for the State Building Trades Council, is

1 he not? A I don't know.

2 Q Attorney for P. H. McCarthy, mayor of San Francisco at
3 that time, was he not? A I heard so.

4 Q As a matter of fact, you know it, don't you? A No.

5 Q You know Mr Cleveland Dam was Mayor McCarthy's attorney
6 at that time? A No, I don't know that I know it.

7 Q Well, you know it as you know all public affairs of
8 San Francisco? A Yes.

9 MR FORD: We object to that on the ground he has already
10 testified he heard it, it is hearsay, but there is no ob-
11 jection to it on that ground --

12 THE COURT: Let us clear it up. Objection overruled.

13 MR ROGERS: You know it as you know all public affairs
14 in San Francisco? A Just the same, yes.

15 Q You know Mr Cleveland Dam was attorney for the State
16 Building Trades Council in the same way? A Yes.

17 Q As a matter of public and common knowledge? A Yes
18 sir.

19 Q Mr Cleveland Dam came in with the check for \$10,000 and
20 Mr Cleveland Dam didn't have an account in your bank ,
21 did he? A No sir.

1 Q You said to him that Mr. Tveitmoe had an account there
2 and it would require Mr. Tveitmoe's endorsement, didn't you?

3 A Well, my recollection is that he said that Mr. Tveitmoe
4 wanted the \$10,000.

5 Q Yes. A Although, I wouldn't be positive.

6 Q Then it was not a draft, that is, it was not a bank
7 draft or cashier's check? A No.

8 Q It was what is known as a local check? A Yes, indi-
9 vidual check, as we call it.

10 Q Individual check? A Yes.

11 Q You told him you wanted Mr. Tveitmoe's endorsement?

12 A Yes.

13 Q Did Mr. Tveitmoe come down to the bank? A He was
14 there--I don't know whether he was there at the time, any-
15 way he was there within a few moments. Whether he was
16 in the lobby at the time Mr. Dam showed it to me first or
17 not, I don't know.

18 Q Well, then, Mr. Dam and Mr. Tveitmoe were together short-
19 ly afterwards, at any rate? A Shortly afterwards; yes,
20 sir.

21 Q Then Mr. Tveitmoe endorsed it? A Yes.

22 Q With this endorsement that appears on the back of the
23 check? A Yes.

24 Q "O. A. Tveitmoe, Treasurer Defense Fund, State Building
25 Trades, Counsel"? A Yes.

26 Q Then it was deposited to Mr. Tveitmoe's account? A Yes,

1 sir .

2 Q And this deposit check that you have just recognized
3 was issued in the ordinary course of things? A Yes.

4 Q Thereupon, Mr. Tveitmoe drew his personal check for
5 \$10,000? A Correct.

6 Q This all occurred September 2nd? A That is the date
7 on the deposit tag, is it?

8 Q Yes. A Yes, September 2nd.

9 Q About three months before November 28th? A Yes.

10 MR. FORD. We object to that as a matter of calculation.

11 THE COURT. Objection sustained.

12 BY MR. ROGERS. Q Who else was there at the time Mr.
13 Cleveland Dam and Mr. Tveitmoe were there? A Why, the
14 lobby was full of people.

15 Q You were not taken into any private office? A No,
16 right out--

17 Q Came up to the window, your public window? A Yes, sir,
18 an open office right off the lobby, just a railing and my
19 desk is up against the railing, in fact, I think we talked
20 over the rail.

21 Q Talked over the rail? A Yes.

22 Q Do you remember whether there were other persons there
23 in the little group besides Mr. Cleveland Dam and Mr. Tveit-
24 moe? A I don't think so.

25 Q You would not say there were not? A Well, there were
26 a lot of people around the office.

I 1 Q There were a lot of people around the office? A Yes,
S 2 sir.

S 3 Q Did you go down to the paying teller's window with Mr.
L 4 Tveitmoe and Mr. Dam? A That is my recollection.

S 5 Q Was there any secrecy about that? A Not a bit.

S 6 Q Was there any attempt to transact this business in a
V 7 private room? A Not the least.

S 8 Q Or behind curtains or closed doors? A No, not at all.

E 9 Q And then Mr. Tveitmoe cashed the check for \$10,000?

OI 10 A Yes, sir.

II 11 Q Did he do that openly? A As far as I know.

SI 12 Q What is that? A As far as I know, I left him at the
SI 13 paying teller's.

LI 14 Q With the lobby full of people? A Yes, a long line
SI 15 up to the paying teller's.

OI 16 Q He was in the line? A Must have been.

II 17 Q How many people do you suppose were around while all
SI 18 this so-called bribe fund was being taken out of your
E 19 bank? Thirty, forty or fifty? A Yes, fifty or sixty.

E 20 Q Fifty or sixty? A In the lobby.

E 21 Q By the way, where is the London-Paris Anglo Bank?

E 22 A Anglo & London-Paris National, Mr. Rogers. Corner of
E 23 Sansome and Sutter streets.

E 24 Q That is one of the principal corners of the business
E 25 part of San Francisco, is it not? A Yes, we think so.

E 26 Q Did you see any effort at all on the part of anybody

1 to concealment or secrecy? A No.

2 Q Mr. Tveitmoe is a pretty well known man there, isn't he,
3 in San Francisco? Pretty much everybody knows Him?

4 A I think so.

5 Q And Mr. Cleveland Dam at that time was one of the best
6 known men in San Francisco? A Pretty well known man.

7 Q And a very prominent lawyer? A Yes.

8 Q Did you see the money paid over? A No, sir.

9 MR. ROGERS. That is all.

10 MR. FORD. Just a moment-- Q Mr. Cleveland Dam--Mr.

11 P.H. McCarthy was president of the State Building Trades
12 Council at that time, was he not? A I don't know.

13 Q You know that in the same way you knew-- A Yes.

14 Q --the question Mr. Rogers asked you? A The same way.

15 Q You did know that Mr. O. A. Tveitmoe was treasurer of
16 that concern in his business relations with you? A Yes.

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1 Q And Mr Cleveland Dam was known to you to be the at-
2 torney for Mr Tveitmoe? A That is right.

3 MR FORD: That is all.

4 MR ROGERS: Did you know that Mr Cleveland Dam was attor-
5 ney for Mr Tveitmoe personally, or was attorney for the
6 State Building Trades Council? A State Building Trades
7 Council, as I understand it.

8 Q For the State Building Trades Council which has jurisdic-
9 tion over the state building trades, so far as union
10 labor is concerned, of the state? A So I understand.

11 MR ROGERS: That is all:

12
13 ALFRED C. LEDEME, a witness called on behalf
14 of the prosecution, being first duly sworn, testified as
15 follows:

16 DIRECT EXAMINATION

17 MR FORD: What is your name? A Alfred C. Ledeme.

18 Q How old are you, Mr Ledeme? A 39.

19 Q Where do you live? A 1207 Schrader street, San
20 Francisco, California.

21 Q What is your occupation? A Why, paying teller of
22 the Angle & London-Paris National Bank of the same city.

23 Q That is the same bank of which Mr C. F. Hunt is vice-
24 president? A yes sir.

25 Q Did you occupy that position on the 2nd of September,
26 1911? A I did.

1 Q Do you know Mr Tveitmoe? A Yes sir.

2 Q Did he have an account with your bank to your knowl-
3 edge? A He did.

4 Q Have you looked at the books of the account, kept --
5

6 I will withdraw the question. Does that bank keep and did
7 it keep, during the year 1911, a book of account in the
8 regular course of business, showing the account of O. A.
9 Tveitmoe, treasurer of the defense fund of the State
10 Building Trades Council of California, with your bank?

11 A It did.

12 Q How big a book is that? A Well, it is about three
13 feet long, perhaps, by a foot and a half wide.

14 Q Is it a loose-leaf ledger? A No, it is not.

15 Q All bound together? A Yes sir.

16 Q Very bulky and heavy book? A It isn't very heavy;
17 inconvenient to carry around.

18 Q And that book is being used now in the bank in the
19 transaction of its business? A Not that particular book,
20 no.

21 Q I hand you two pieces of paper purporting to be a
22 transcript of account and ask you -- and which I have
23 shown to counsel for the defense; have you ever seen them
24 before? A I have.

25 Q In whose handwriting are they, if you know? A Well,
26 judging from the handwriting, I believe it is the writing

1 of transcript clerk, named Brick.

2 Q Did you at any time compare those documents with the
3 original book of account in the bank? A I did.

4 Q When was that? A When I compared this?

5 Q Yes. A That is three or four weeks ago.

6 Q State whether or not it is correct? A It is correct.

7 MR ROGERS: Just a moment. Objected to as incompetent,
8 irrelevant and immaterial, a conclusion or opinion, and
9 no foundation laid. Now, I am not asking, if your Honor
10 please, that they produce the big book. I realize how
11 practically impossible that may be to bring down the book,
12 because doubtless the book contains many accounts which
13 are in daily use, but I make the general objection, except
14 as to the production of the original book instead of
15 this.

16 THE COURT: The question at this moment, is as to whether
17 or not this ^{is a} transcript of the original, is it?

18 MR FORD: Yes, your Honor.

19 MR ROGERS: I didn't want to allow that question to go
20 without objection. I don't think it raises the point.

21 THE COURT: I don't, either. Counsel is entitled to this
22 question. Objection overruled.

23 MR ROGERS: Exception.

24 THE COURT: What is your answer?

25 MR FREDERICKS: Answer the question. (Last question read
26 by the reporter.) A It is correct.

1 MR FORD: Do you know of your own knowledge whether that
2 original book of account was kept in the year 1911,
3 in the ordinary course of business in the bank?

4 MR ROGERS: Objected to as incompetent, irrelevant and
5 immaterial, nothing to do with the issues, and no founda-
6 tion laid.

7 THE COURT: Overruled.

8 MR ROGERS: Exception.

9 A I said I did; I knew that.

10 MR FORD: And was it kept in the ordinary course of bus-
11 iness during the year 1911? A It was.

12 Q Part of the files and records of the bank? A Part
13 of the files, yes sir.

14 MR FORD: We offer the copy in evidence, secondary evidence,
15 as to the contents of the original.

16 MR ROGERS: Objected to as incompetent, irrelevant and
17 immaterial, and not within the issues, and no foundation
18 laid, and I haven't understood the witness to say that
19 the original book is in use. A No, I said it was not.

20 MR ROGERS: It was not in use? A Not at the present
21 time.

22 MR ROGERS: Then I can see no reason why, ^{if} the original is
23 not in use, why the original is not forth-coming. Very
24 often in court we let copies in because the original is
25 in use, and we don't want to stop the business of the bank.
26 Of course original accounts are running in a book, we don't

1 want to put the bank in such a position it cannot use
2 its books. If the original book is not in use, there is
3 no reason why it should not be here.

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1 MR. FORD. I understood from the witness's testimony it is
2 a very large, bulky book, although it is not actively in
3 use, but I suppose it is frequently referred to.

4 THE COURT. Ask him about that.

5 MR. FORD. Q is the book/^{ever}used during the business of the
6 bank to refer back to? A Liable to be used any time.

7 THE COURT. You want to examine him on his voir dire as
8 to that?

9 MR. ROGERS. Mr. Ledeme, it is like very book that has been
10 kept by a bank from the commencement? A Yes, sir.

11 Q There might an occasion arise when you want to look at
12 it? A Yes.

13 Q But it is not in active use? A It is not in active
14 use but it is referred to every now and then.

15 Q Like the books of 1906, you might want to look at them
16 but you think so far as that is concerned you could have
17 brought that book right here? A If it is absolutely neces-
18 sary.

19 Q It isn't such a big book that a man couldn't very
20 readily and easily handle it? A You could easily carry it.

21 MR. FORD. We ask--your Honor ruled the book is ordered
22 brought down, perhaps it can be if it is absolutely neces-
23 sary. Would it occasion any inconvenience with the bank
24 to part with that book for a month or so? A Hard to say.
25 I don't know when we will have to use it.

26 Q Liable to be tied up here for a month.

1 THE COURT. I hope not.

2 MR. FREDERICKS. If it is introduced in evidence it might
3 be tied up here longer.

4 MR. ROGERS. I might be able to solve this. Mr. Ledeme--
5 any objection to my talking with Mr. Ledeme and finding
6 out?

7 THE COURT. Go ahead.

8 MR. FORD. Go ahead.

9 MR. ROGERS. Mr. Ledeme assures me that he knows it is a
10 true copy of the original book. There is nothing left
11 off of this that is on the original book? A No.

12 MR. ROGERS. Then, of course, the objection of its compe-
13 tency on that ground would entail some trouble. The objec-
14 tion that it is incompetent, irrelevant and immaterial
15 except in that particular, that the original book, owing
16 to the circumstances explained by the witness, is not here,
17 still holds.

18 MR. FORD. Waiving your objection that it is secondary
19 evidence.

20 MR. APPEL. No.

21 THE COURT. Just read that objection again.

22 (Last objection of Mr. Rogers read by the reporter.)

23 MR. ROGERS. Your Honor understands what I mean by that?

24 THE COURT. I understand you are not insisting that the
25 original book be produced in court?

26 MR. ROGERS. That the original book instead of this be pro-

1 duced.

2 THE COURT. Yes.

3 MR. ROGERS. Whatever objection we may have to the original
4 book, if it were here.

5 THE COURT. And the original book is insisted upon here
6 at this time?

7 MR. ROGERS. Yes sir.

8 MR. FORD. We offer the document in evidence as People 's
9 Exhibit 27.

10 THE COURT. 27.

11 (Document here marked as Peoples's Exhibit 27.)

12 MR. ROGERS. The same objection.

13 THE COURT. Overruled.

14 MR. ROGERS. Exception.

15 BY MR. FORD. Q Just look at the beginning of that--let
16 the witness look at that a moment, Mr. Smith, please. Just
17 look at the date, I want to attract your attention to the
18 opening of the account, is all, and then let Mr. Smith
19 have it.

20 (Document handed to witness who examines same.)

21 MR. FORD. Q When was that account opened? A March 23,
22 1911.

23 Q And this transcript purports on its face to be continued
24 down to what day? A Well, this original account, November
25 26, when it was closed and reopened in the new title.

26 Q Under what was the new title? A O. A. Tveitmoe, Trustee.

1 Q And each of them you know to be correct? A I do.

2 Q Now, referring to the item of September 2nd, deposit of
3 \$10,000, will you let us have the exhibits introduced this
4 morning on Mr. Tveitmoe's account, Mr. Smith, the deposit
5 slip?

6 (Document handed to counsel by clerk.)

7 Q I attract your attention to peoples' exhibit No. 26, being
8 deposit slip of \$10,000 check. Do you recall the occasion
9 of Mr. Tveitmoe being in your bank on that date? A I do.

10 Q Just tell what was said in his presence there?

11 MR. APPEL We object to that.

12 MR. FORD. With draw the question. Q At what place did
13 you meet him? A At my window.

14 Q Who else was present? A Mr. Hunt.

15 Q Just tell what was said and done there at that time.

16 MR. APPEL We object to that as hearsay, incompetent,
17 irrelevant and immaterial; no foundation laid, calling
18 for declarations and acts of third parties not in the pre-
19 sence of the defendant, not binding upon him, without any
20 notice to him.

21 THE COURT. Objection overruled.

22 MR. APPEL We except.

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1 A Mr Hunt came to my window with Mr Tveitmoe, handed
2 me this check, and Mr Tveitmoe's, and asked me if I had
3 \$10,000 in big bills. I said I didn't think I had, but I
4 could get them out of the vault, which I did, and while
5 I was getting this currency, Mr Tveitmoe went back to Mr
6 Hunt's desk there and sat outside of the desk in the lobby
7 on a seat there, and after obtaining the currency I took
8 it in there and handed it to Mr Tveitmoe.

9 Q You said Mr Tveitmoe presented a check for \$10,000?

10 A No, I didn't say Mr Tveitmoe; I said Mr Hunt; that is
11 my recollection.

12 Q Handed you a check? A Mr Hunt handed me the check.

13 Q By whom was that check signed? A By Mr Tveitmoe --

14 MR APPEL: The check is the best evidence.

15 THE COURT: Objection sustained.

16 MR FORD: Well, when you went out and met Mr Tveitmoe in
17 the lobby near Mr Hunt's desk, did you hand him any bills?

18 A Yes, I handed him this package.

19 Q How much did you hand him? A \$10,000.

20 Q And what kind of money?

21 MR APPEL: We object to that as incompetent, irrelevant
22 and immaterial; hearsay; not binding upon the defendant;
23 no foundation laid, the defendant not being then and there
24 present; not bound by the acts and declarations of third
25 parties not in his presence.

26 THE COURT: Objection overruled.

1 MR APPEL: We except.

2 MR FREDERICKS: Read the question.

3 (Question read.) A In large bills; that is, bills
4 of 50's, 100's and 500's, to the best of my recollec-
5 tion; there may have been thousands, but I wouldn't be
6 certain.

7 MR APPEL: We move that the statement of the witness that
8 there may be "thousands" be stricken out on the ground
9 it is not evidence, mere guess-work, a mere opinion of the
10 witness, not responsive to the question.

11 MR FORD: It is his best recollection; it goes in for what
12 it is worth.

13 THE COURT: The motion to strike out is denied.

14 MR APPEL: We take an exception.

15 MR FORD: What is your best recollection as to whether or
16 not there were any thousand dollar bills in the package?

17 A Well, I think there were some, but as I say, I am not
18 positive there were one thousand dollar bills.

19 Q What is your best recollection, positive, or otherwise?

20 A Well, I am not sure about the thousand dollar bills,
21 that is all I could say.

22 Q Are you sure of the 500-dollar bills? A Yes, I am
23 sure of the 500.

24 Q What was the smallest amounts of bills, you know?

25 A There would not have been any smaller than 50's.

26 Q Was it a big package? A No, small package.

1 Q If you will illustrate to the jury how big the package
2 was? A To the best of my recollection, I don't suppose
3 it would be thicker than that (indicating).

4 MR ROGERS: How thick is that? A About 2 inches thick.

5 Q BY MR FORD: Did you see what Mr Tveitmoe did with
6 these bills? A I did not.

7 MR FORD: Cross-examine.
8

9 CROSS-EXAMINATION

10 MR ROGERS: You have a window as one of the paying tellers
11 of this bank? A Yes sir.

12 Q It is a public window, to which many people go? A Yes
13 sir.

14 Q You know Mr Tveitmoe pretty well, don't you? A Very
15 well.

16 Q Seen him lots of time? A Yes sir.

17 Q He does business at your bank? A Yes sir.

18 Q Aside from that, he is one of the best known men in
19 San Francisco? A Yes.

20 Q Do you know Cleve Dam? A Yes, I know him by sight.

21 Q Did you see him there that morning? A No, I couldn't
22 say I did.

23 Q Didn't see him there that morning? A I did not.

24 Q Did you see Mr Hunt? A Yes, at my window.

25 Q Who brought you over the check for \$10,000? A Mr
26 Hunt and Mr Tveitmoe were together.

1 Q Mr Hunt and Mr Tveitmoewere together? A Yes.

2 Q In the ordinary course of human events, when Mr Tveit-
3 moe wanted to cash a check he would come to your window?

4 A Certainly.

5 Q Have you letters over your window; that is to say,
6 do you handle a certain alphabetical list? A No sir.

7 Q Just a general list of all customers? A Just a
8 general list, yes sir.

9 Q And when Mr Hunt came over and Mr Tveitmoe came over,
10 what did Mr Hunt say? A He says, "Have you \$10,000 in big
11 bills for this check?", or words to that effect.

12 Q Was Mr Darrow there? A I didn't see him.

13 Q Did you ever know Mr Darrow in your life before? A Not
14 until I came to the court room.

15 Q Not until you came to the court room? A Yes sir.

16 Q This was all on September 2nd? A Yes sir.

17 Q Pretty near three months before November 28th?

18 A Yes sir.

19 MR FORD: We object to that as a ^{mere} matter of calculation,
20 and a wrong calculation at that.

21 MR ROGERS: Pretty near three months before November 28th.
22
23
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1 MR. FORD. A month and a half.

2 THE COURT- The objection is sustained and the answer of
3 the witness is stricken out.

4 MR. ROGERS. September 28th, October 28th, November 28th.
5 Pretty near three months.

6 Q Well, this was all in the public banking room, was it not?

7 A Yes, sir.

8 Q It was not before or after hours, was it? A No, sir.

9 Q Lots of people around there in the lobby of the bank,
10 weren't there? A There were.

11 Q And when Mr. Tveitmoe asked for the bills and you went
12 to the vault to get them, Mr. Tveitmoe went and sat down in
13 the public seat, didn't he? A He did.

14 Q How many people were there there that could see Mr. Tveit-
15 moe when he was sitting out there?

16 MR. FORD. We will stipulate there were a thousand of them
17 if they had looked at them.

18 MR. ROGERS. That is very kind, and in addition to the stipula-
19 tion, in order to make it sure, I will ask the witness.

20 A Oh, perhaps a hundred.

21 Q Mr. Tveitmoe didn't sneak around behind any place and
22 conceal himself, did he? A No.

23 Q You didn't palm the \$10,000 any place and slip it to
24 him on the quiet, did you? A No, sir.

25 Q Handed it to him openly, didn't you? A Yes, sir.

26 Q It was right out there in plain sight? A It was.

1 Q Now, about that thousand dollar proposition. Out in the
2 hallway this morning after you got here you were inquired
3 of quite a number of times, weren't you, to see if there
4 were any thousand dollar bills in that package? A I was
5 what?

6 Q Didn't Mr. Ford, out here in the hallway this morning
7 or up in his office, have quite a little time trying to
8 get you to remember about a thousand dollar bill in that
9 package?

10 MR. FORD. We object to that as calling for a conclusion
11 of the witness and not tending in any wise to impeach
12 any testimony given by the witness.

13 MR. ROGERS. We want to inquire of him if Mr. Ford didn't
14 talk to him quite a little spell about that.

15 MR. FORD. Yes, I asked him quite a number of times, if
16 you want to know it.

17 THE COURT. Objection sustained.

18 MR. ROGERS. Didn't Mr. Ford ask you quite a number of
19 times about a thousand dollar bill before you went on the
20 stand? A Yes, he asked me several times, yes.

21 Q What was the use of his asking you several times, why
22 wasn't once enough?

23 MR. FORD. We object to that as calling for a conclusion
24 of the witness; irrelevant and immaterial.

25 THE COURT. Objection sustained.

26 MR. ROGERS. Q Why was it, do you know, that Mr. Ford asked

1 you several times about whether there was a thousand dollar
2 bill or not? A I don't--

3 MR. FORD. We object to that on the same ground, being
4 the same as the preceding question.

5 THE COURT. Objection sustained.

6 MR. ROGERS. Q Mr. Ledema, didn't you tell him you didn't
7 know this morning? A I did.

8 Q Why did he keep on asking you? A I told him I wasn't
9 sure, that is the words.

10 Q What was he trying to do, get you to be sure?

11 MR. FORD. We object to that as asked and answered several
12 times.

13 THE COURT. Objection sustained.

14 MR. ROGERS. Exception.

15 MR. APPEL. Exception.

16 MR. ROGERS. Now, what were the circumstances under which
17 Mr. Ford kept mentioning a thousand dollar bill to you so
18 many times when you told him you were not sure?

19 MR. FORD. We object to that as irrelevant and immaterial,
20 calling for a conclusion of the witness, not cross-examina-
21 tion, not tending in any wise to impeach any testimony given
22 by the witness at the present time.

23 MR. ROGERS. Just a moment, sir. On that matter, to a man
24 of the witness's intelligence and business foresight and
25 capacity and holding the position he does, and a man of Mr
26 Ford's education and intelligence, once ought to be enough,

1 but instead of that it appears there were interrogations
2 after interrogation--

3 MR. FORD. It doesn't appear anything of the sort, he said
4 I asked him a couple of times.

5 MR. ROGERS. --pardon me, I have the floor.

6 MR. FORD. We object to statements of that sort, and
7 an argument to the jury.

8 MR. FREDERICKS. Let us assume he asked him a thousand times.

9 THE COURT. Counsel asked for the circumstance and I
10 believe he is entitled to it.

11 MR. FORD. I will give you the exact conversation, if you
12 want it.

13 THE COURT. Answer the question.

14 Q What was the question, please?

15 (Question read by the reporter.)

16 A Merely an offhand conversation.

17 MR. ROGERS. Q Well, an offhand conversation, but under
18 what circumstances did the matter of the thousand dollar
19 bill keep coming up time and again, as you have said?

20 MR. FORD. We object to that on the ground it is assuming
21 something that is not in evidence, it didn't keep coming
22 up time and again, not cross-examination, calling for a
23 conclusion of the witness; irrelevant and immaterial.

24

25

26

1 MR ROGERS: I may assume on cross-examination, sir.

2 THE COURT: Objection overruled.

3 A What is the question? (Question read.) Well, Mr
4 Ford asked me if I remembered if there were any thousand
5 dollar bills among the package.

6 MR ROGERS: Well, how many times in all did he keep asking
7 that? A Oh, I don't suppose he asked over three times,
8 maybe. I don't ^{think} any more than that.

9 Q Well, each time you told him you didn't know, didn't
10 remember? A At each time we would be talking and, yes,
11 I told him I wasn't sure, I couldn't swear to that.

12 Q What was he trying to do, trying to get you to be
13 sure? A I don't know --

14 MR FORD: We object to that as calling for a conclusion
15 of the witness, and an insinuation; he is gaging me by his
16 own standards.

17 THE COURT: Objection sustained.

18 MR APPEL: We offer to show by the witness that Mr Ford,
19 in conversation with the witness, after having been told
20 by the witness he was not sure, that he kept mentioning the
21 fact that there may have been a thousand dollar bill
22 there. "Now, you don't remember; try to make it sure.",
23 for the purpose of suggesting to the witness a fact which
24 would not be in the mind of the witness at that time, and
25 for the purpose of impressing it upon his mind with the
26 probable expectation that the witness might perchance

say that he remembered that there might have been a thousand dollar bill.

MR FORD: Ask the witness if I ever told him --

MR APPEL: We made an offer.

MR FORD: Ask him the questions and don't judge me by your own standards. Ask the witness whether I tried to make him to get anything sure.

THE COURT: In view of the offer of counsel for the defense, the objection is overruled, and the witness is directed to answer the question.

MR FREDERICKS: The witness may state everything that was said between him and Mr Ford at that time, and that probably would cover it.

THE COURT: Yes, the entire matter is opened up.

MR ROGERS: Now, you have spoken about his referring to the thousand-dollar bill, or a thousand-dollar bill, and your saying you were not sure. You said it plainly, didn't you, you were not sure? A I did.

Q And he appeared to understand you on each occasion?

A Yes sir.

Q Do you know why he kept referring to the subject again? A No, I have no idea.

MR FORD: That is objected to -- just a moment --

Answer the question. Go ahead. A I did. I had no idea.

MR ROGERS: You just kept right on saying you were not sure?

A I said I was not sure.

1 Q You didn't ever say, when he kept asking you, that
2 you were sure, did you? A No sir.

3 Q Now, did he ask you as many times about whether there
4 were fifties in it, as he did about the thousand? A I
5 wouldn't be certain. He asked me what sized bills there
6 were, and I told him there were fifties and hundreds, I
7 believed, and five-hundreds, and perhaps one thousand,
8 I was not sure about the thousand. Those were the words I
9 used.

10 Q Do you know who makes up these packages? A Well, dif-
11 ferent people in the bank, receiving tellers, for instance .

12 Q And where did you get this package? A From the
13 vault-keeper, out of the vault.

14 Q Did you give a receipt for it? A No sir.

15 Q Was the package numbered in any way? A No sir.

16 Q Does the vault-keeper keep a memorandum? A He keeps
17 a memorandum of currency, yes, as a whole.

18 Q So that he can keep his accounts straight, but not
19 individual packages? A No, not the individual pack-
20 ages, no.

21 Q So when you went back to him and asked him for \$10,000,
22 did you give him anything so as to keep his vault account
23 s traight? A Nothing at all.

24 Q And when you went out with the package, did you go out-
25 side your window and come out to where Mr Tveitmoe was,
26 or did you call Mr Tveitmoe up to the desk? A No, I went

1 around myself to where Mr Tveitmoe was sitting.

2 Q You went around to where Mr Tveitmoe was sitting?

3 A Yes sir.

4 Q Did you count it out to him? A No sir.

5 Q Did it have a wrapper on it? A yes sir.

6 Q And what did Tveitmoe do? A I handed it to him.

7 I don't know what he did after I gave it to him.

8 Q Did you talk with him at all? A No sir, not at
9 all.

10 Q Now, this check that Mr Tveitmoe gave, that was at your
11 window, and you put it among your checks for the day?

12 A Yes sir.
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1 Q When was Mr. Tveitmoe's account made up after that?
2 A Well, the statements are made up every month.
3 Q Well, did that check remain there during that month?
4 A I should suppose so.
5 Q Went your account show? A That went show when the
6 statement was rendered. That is an account in general from
7 the time it is opened until it is closed.
8 Q You have no recollection of his coming back after that
9 check, very shortly and getting his account made up?
10 A No, I haven't.
11 Q To come to it again, there wasn't the slightest conceal-
12 ment about this whole transaction? A Not a bit.
13 Q Not a bit? A Not a bit.
14 Q You don't know how many fifties there were in the pack-
15 age? A No.
16 Q Or how many hundreds? A No.
17 Q Or how many five hundreds? A No.
18 Q You didn't make up the package? A I don't think so,
19 but I may have made it up at some previous time.
20 Q You wouldn't recognize it? A I might if I saw the
21 wrapper.
22 Q You don't know whether there was any fifties or hundreds
23 in it? A I believe there were, to the best of my recol-
24 lection.
25 Q That is to say, did you run over the bills to see.
26 A I counted them.

1 Q You counted them? A I certainly would before I would
2 hand it over.

3 Q You didn't trust the wrapper exactly? A No. To the
4 best of my recollection I must have counted it.

5 Q To the best of your recollection you must have counted
6 it? A I must have.

7 Q And it does impress you that you do recall fifties,
8 hundreds, five hundreds? A I believe I would swear there
9 were fifties. I believe there were fifties. I know there
10 was five hundreds, I remember that.

11 Q Do you recall making any note of the transaction at all?

12 A Well, I made my entries in my book.

13 Q That is your teller's book? A My teller's book, yes.

14 Q Well, you have--Mr. Tveitmoe has been at your window
15 many times before? A Yes.

16 Q Got bills before? A Yes.

17 Q Cashed checks before? A Yes.

18 Q And since, I guess? A And since.

19 Q Well, from March until November--March 1911 until
20 November 1911 that account showed considerable activity?

21 A Those are the transactions right here.

22 Q \$25,000 passed through the account? A Yes.

23 Q Whether those checks were paid over the counter or paid
24 through the clearing house you don't remember? A No, I
25 couldn't say.

26 Q Sometimes Mr. Tveitmoe cashed checks at the window and

1 sometimes the checks came through the clearing house?

2 A I presume so.

3 Q Now, from November until January the account shows
4 some activity, about \$6738 from November to January?

5 A Whatever that shows.

6 MR. ROGERS. That is all.

7 MR. FREDERICKS That is all.

8 A JUROR. May I ask a question? I would like to ask him
9 how many five hundred dollars were in the package?

10 A I couldn't say how many.

11 THE JUROR. That is all.

12 MR. FORD. Did you ever meet me any time or place other
13 than in the hall? A No, sir.

14 Q Did I ever drill you on what you were to say? A Not
15 a bit.

16 Q Did I say to you at any time what you were to say?

17 A Not a bit.

18 Q Did I do anything other than ask you questions concern-
19 ing this transaction? A Not at all.

20 Q How many times did you say I asked you about the thousand
21 dollar bill? A Two or three times I believe.

22 Q The first question I asked you was ^{what} denomination the
23 bills were? A Yes.

24 Q How thick the package was? A Yes.

25 Q And what the denominations were? A Yes.

26 Q And when you said you were not sure there was any thousand

1 dollar bills I repeated you were not sure? A Yes.

2 Q I told you that it was too bad Mr. Tveitmoe didn't
3 take the stand then you wouldn't have been called at all?

4 MR. ROGERS. Mr. Tveitmoe was called to the stand and
5 counsel didn't dare ask him a question.

6 MR. FORD. You put up the bluff about ethics.

7 MR. APPEL. We take an exception to the remarks that Mr.
8 Rogers put up here any bluff of any kind and we assign
9 that statement as error and we ask your Honor to instruct
10 the jury to pay absolutely no attention and place no
11 credence upon the statement of counsel.

12 MR. FREDERICKS. That he put up a bluff?

13 MR. APPEL. Now, we again--

14 MR. FREDERICKS. That is the point you make to be admonished
15 about.

16 MR. APPEL. Now, you heard the English language.

17 MR. FREDERICKS. I didn't know that was the English lan-
18 guage.

19 MR. APPEL. I don't talk Cherokee. If you don't know you
20 ought to go to school.

21 THE COURT. Mr. Appel, I will instruct the jury as you have
22 requested. Gentlemen of the jury, you will bear in
23 mind the admonition the court has heretofore given you,
24 and bear it in mind again at this time, the statement of
25 facts or purported facts made by the counsel referred to by
26 Mr. Appel, is to be disregarded and given no attention by you.

1 MR FORD: I would like to have an admonition in regard to
2 Mr Roger's statement.

3 THE COURT: I confess, I didn't hear it.

4 MR APPEL: He said they put a witness on the stand and
5 didn't dare to ask him a question.

6 THE COURT: Any statement of facts made by Mr Rogers you
7 will likewise disregard them.

8

9 JOHN R. HARRINGTON, a witness called on
10 behalf of the prosecution, being first duly sworn, tes-
11 tified as follows:

12 DIRECT EXAMINATION

13 MR FREDERICKS: What is your name? A John R. Harrington.

14 Q Where do you live? A Chicago, Illinois.

15 Q About how old are you? A About 48 or '9.

16 Q How long have you lived in Chicago, about? A About
17 26 years.

18 Q What is your business? A I am a lawyer.

19 Q Have you any other occupation? A No sir.

20 Q Mr Harrington, do you know Mr Darrow, the defendant
21 in this case? A Yes sir.

22 Q How long have you known him? A About 15 or 16 years.

23 Q State whether or not you were employed by him in the
24 case of the People vs. McNamara? A I was.

25 Q And about when were you employed? A On the 27th of
26 April, 1911.

1 Q And where were you when you were employed by him?

2 A In Chicago.

3 Q At the time you were employed, state what was said be-
4 tween you and Mr Darrow in regard to your employment,
5 that is, the terms of it; what you were to do, and so
6 forth.

7 MR APPEL: Wait a moment. We object upon the ground it is
8 incompetent, irrelevant and immaterial for any purpose
9 whatsoever; no foundation laid; doesn't tend to prove any
10 issue or fact in this case.

11 THE COURT: Objection overruled.

12 A I was employed to interview witnesses; to look up tes-
13 timony in the case.

14 MR FREDERICKS: The case of People versus McNamara.

15 A Yes.

16 Q And, Mr Harrington, state whether or not you went to
17 work in that employment, and if so, when?

18 MR APPEL: Wait a moment. It is immaterial for any
19 purpose, not admissible; that the relations of attorney and
20 client have not been established, that the witness is
21 incompetent to testify in reference to matters concerning
22 and within the employment under section 1881 of the code
23 of Civil Procedure of the state of California.

24 MR FORD: If the court please, the testimony is not that
25 he was employed as Mr Darrow's attorney, or that he was
26 employed by Mr Darrow as attorney in the case of People

1 versus J. B. ^mMcNamara, and he is not testifying to any
2 confidential communications made to him, but he is tes-
3 tifying to transactions and communications between himself
4 and the defendant. He was not the defendant's attorney.
5 There is no testimony of that kind.

6 MR APPEL: And the obligations and the oath on the part of
7 an attorney to keep sacred the secrets of his client,
8 not only extend to those which are connected with him,
9 and co-counsel, but even extends to the clerks of the at-
10 torney and so on, but there is no one here at this time
11 to have waived the privilege which the law requires shall
12 be extended to the client.

13 MR FREDERICKS: May it please the court, this witness
14 has not stated that he was employed as an attorney. He
15 said his business was that of an attorney. He has stated
16 he was employed by Mr Darrow to look up evidence in the Mc-
17 Namara case, an investigator.

18 MR APPEL: Even then, your Honor, if he acts as assistant
19 of the attorney for the McNamaras, he is no more under
20 duty here to disclose whatever he knew in reference to the
21 matter than he had acted for attorney. The fact of the
22 matter, he was employed in that case, he says, as one of
23 the attorneys of the McNamaras.

24 MR FREDERICKS: Oh, no, he didn't.

25 MR APPEL: And as a lawyer, and even if he were not, if he
26 was acting as a mere clerk, as a boy to carry messages

1 from the office anywhere in assistance of the attorney
2 for the McNamaras, he will not be permitted to testify
3 unless that privilege is waived by the client. Now, the
4 code is very plain upon that.

5 THE COURT: I have it.

6 MR FORD: Is your Honor looking at 1322?

7 THE COURT: No, I am looking at 1881, subdivision 2.

8 (Reading.) That is the section upon which you based your
9 objection?
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1 MR. APPEL. Then your Honor will see that whatever com-
2 munication is made by me as an attorney of any individual
3 to my clerk, my employe, is a communication of the client.
4 It is a matter which is in trust; he does business through
5 me: That doesn't mean that it must be communicated directly,
6 but indirectly, in any way, anything that happened.

7 THE COURT. I think, Mr. Appel, your point would be invulner-
8 able if the McNamaras were on trial here.

9 MR. FORD. That is the point.

10 MR. APPEL. The point is, your Honor, if Mr. Darrow were
11 on the stand, he could not be examined concerning communica-
12 tions made, or any information he learned in the course of
13 the employment while acting as attorney for the McNamaras.
14 Now, the clerk of Mr. Darrow could not be examined, the assis-
15 tant of Mr. Darrow could not be examined, any one connected
16 in the employment or assisting Mr. Darrow in the discharge
17 of his duty as attorney cannot be examined. The decisions
18 are that secrecy goes as to any information, acts or
19 declarations or anything of that kind.

20 MR. FREDERICKS. How about Mr. Franklin, Keene Fitzpatrick and
21 all those other witnesses who were employed by Mr. Darrow?

22 MR. APPEL. We made the objection at that time and that
23 objection was overruled, although we didn't argue it. We
24 do make it now.

25 MR. FORD. I think the point is just exactly--

26 MR. APPEL. Will you be kind enough to read back his testi-

1 mony. I had in mind the testimony he was employed as
2 an attorney.

3 THE COURT. Read the testimony.

4 (Testimony in regard to employment of the witness was
5 read by the reporter.)

6 MR. ROGERS. He said he was an attorney-at-law.

7 MR. FREDERICKS. A man who happens to be an attorney at
8 law is not barred from taking other occupations.

9 THE COURT. He stated in his testimony, Captain Fredericks,
10 that he had no other occupation.

11 MR. FREDERICKS. That he had perhaps no other general
12 occupation but in his answer here he says he was employed
13 in another capacity, entirely different capacity.

14 MR. FORD. Simply for the sake of the argument, if he was
15 an attorney, the communications between him and Mr. Darrow
16 are not the communications between attorney and client,
17 or will protect even as to those matters, the communication
18 between attorney and client in so far as they are legal
19 communications. A man cannot conspire with another merely
20 because he is an attorney and then protect those relations
21 upon that ground. They are relations between attorney and
22 client, and that the conversations were or communications
23 from attorney to client. A client comes into the office of
24 an attorney and tells him of some past misconduct on the
25 part of him, the client, that is the communication which
26 will protect, but if the client comes into an attorney and

1 seeks to enter into a scheme with the attorney by which
2 he and his attorney shall do something that the law does
3 not recognize as legal, that is no longer a confidential
4 communication protected by the law. It is not a com-
5 munication made to him as an attorney but is merely a
6 relation that exists or a communication from one man to
7 another. Now, in this case whatever might have been
8 said to Mr. Harrington by his client J. B. McNamara would
9 be protected; whatever might have been said to him by Mr.
10 Darrow would not be protected, particularly if Mr. Darrow
11 asked him to do something which was not legal. It would
12 not be a communication from attorney--from client to
13 attorney. Mr. Darrow employed him but that doesn't make him
14 Mr. Darrow's attorney. He was employed in the case of
15 People against J. B. McNamara.

16 THE COURT. I think that was a clear statement and there
17 is no question but what your point is fully understood.
18 There is a nice distinction here, there is no doubt but
19 what Mr. Appel's point would be an invulnerable one if
20 this was--if the McNamara case was on trial. This is a
21 little different and I would like to inquire of Mr. Appel
22 if he has any authorities directly in point?

23 MR. APPEL. If your Honor permits us to bring authorities
24 we can do so.

25 MR. ROGERS. We can bring up the matter any time your
26 Honor might fix.

1 THE COURT: There is one California case that I have in
2 mind, but cannot recall it at this moment. I think we
3 will take a recess and just see what that is.

4 MR APPEL: I will take this ground, so your Honor will
5 understand it: that if I, as attorney for anyone, have
6 any knowledge, learned any knowledge of any fact, or if
7 my clerk in the office learns any fact in the course
8 of my clerk's business with me when I am treating any
9 business of a client of mine, if she is called, or if I
10 am called in a proceeding wherein my client is not a party
11 at all, that is your Honor's point -- and I am asked con-
12 cerning any fact that I have learned while in the course
13 of employment and communicated to me from any source in
14 the course of my employment, I say I cannot be examined,
15 notwithstanding that my clien is not a party to the suit.

16 MR ROGERS: With your Honor's permission, if your Honor
17 pleases, may I ask one question on the voir dire which
18 will conduce to your Honor's understanding?

19 THE COURT: All right.

20 MR ROGERS: Mr Harrington, did you, on occasion, talk
21 with the McNamaras in jail? A yes sir.

22 Q About their case? A Yes sir.

23 Q Did they talk with you from time to time about the
24 facts of their case? A Yes sir.

25 Q And you with them? A And I with them.

26 Q And that was since they came here to Lds Angeles?

1 A Yes sir.

2 Q And up until the time of the -- pretty nearly the time
3 of the conclusion of the case? A Yes sir.

4 MR ROGERS: Now, if your Honor please, this matter,
5 involves not only the general ruling upon this case but
6 also does it involve a question in which all lawyers are
7 interested, and I don't care, if your Honor please, to be
8 sneered at in that connection, and, if your Honor please --

9 THE COURT: What are you referring to?

10 MR ROGERS: I am referring to the sneer that I got from
11 Mr Ford at that time when I said, that all lawyers were
12 interested in it.

13 THE COURT: I supposed you were addressing the court, Mr
14 Rogers. I wasn't paying any attention to Mr Ford.

15 MR ROGERS: I was sneered at from that side. I don't like
16 it.

17 MR FREDERICKS: I think that was a smile.

18 MR ROGERS: It might have been a smile, but it was too
19 audible.

20 THE COURT: The court is treating your argument very
21 seriously.

22 MR ROGERS: If your Honor thought I referred to your Honor,
23 I didn't refer to the sneer from the court, but from here.
24 If your Honor will allow me a suggestion, it might be
25 a matter we should argue -- we didn't expect the witness
26 to be called at this time. We haven't the authorities

1 here. If there is any other witness they can call and
2 take up the time, we will get the authorities and be pre-
3 pared to argue it at some other time.

4 MR FREDERICKS: There is no other witness we can put on at
5 this time.

6 THE COURT: There is one California case I want to examine
7 for my own information before I rule on this matter. I
8 can't state it at this time. I can in a very few minutes.
9 I think we will take a recess for a few minutes and be pre-
10 pared to discuss the matter on convening court.

11 (Jury admonished. Recess for 10 minutes.)

12 (After recess. Jury returned into court room.)

13
14 JOHN R. HARRINGTON, on the stand.

15 THE COURT: Read the question, Mr Reporter.

16 THE REPORTER: 2 Mr Smith has the last question and I will
17 get it, your Honor.

18 THE COURT: You say you want to ask some further
19 questions?

20 MR ROGERS: yes sir.

21 THE COURT: Very well.

22 MR ROGERS: Mr Harrington, when called before the grand
23 jury, did you not refuse to answer upon the ground you
24 were an attorney at law and that your information was pri-
25 vileged?

26 MR FREDERICKS: That is objected to as incompetent, irre-

1 relevant and immaterial; the question then being before
2 the grand jury, being a different matter.

3 THE COURT: I think you will have to fix the question
4 on the matter that is pending before the grand jury; that
5 is all-important here.

6 MR FREDERICKS: And even if he did refuse, that wouldn't
7 settle this question.

8 MR ROGERS: It would indicate the state of mind of the wit-
9 ness, and what he believed himself to be.

10 THE COURT: The objection is sustained on the ground it
11 does not fix the matter that was under investigation.

12 MR ROGERS: When the Darrow matter, we will say -- I cannot
13 get any closer to it than that -- was under investigation,
14 did you not refuse to testify upon the ground you were an
15 attorney at law, and your information was privileged
16 as being an attorney at law and counsellor?

17 MR FORB.: We object to that on the ground it is assuming
18 a thing not a fact, that this witness ever appeared before
19 the grand jury when this matter was under investigation;
20 he never did appear.

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1 THE COURT. Let him say so.

2 MR. FORD. If they will refer to the record they will see
3 he did not appear.

4 THE COURT. Let the witness say so, if he knows whether
5 he did or not.

6 MR. FORD. Let him ask him that question.

7 We object on the ground there is no foundation
8 laid.

9 THE COURT. If you insist on the objection, objection is
10 sustained .

11 MR- ROGERS. Exception.

12 Q When you were called before the Federal Grand Jury with
13 reference to the dynamiting cases, so-called, in which the
14 McNamaras, among others, were interested, did you not
15 there refuse to testify upon the ground that you were
16 an attorney at law and that your information was privileged?

17 MR. FORD. We object to that on the ground no foundation
18 has been laid as to the time, place and persons present and
19 in what Federal Grand Jury.

20 MR. FREDERICKS. There is a further objection to the ques-
21 tion, it is not the same, the attorneys for the McNamaras
22 being entirely a different thing from an attorney for Mr.
23 Darrow.

24 THE COURT. Yes. That question, I think there can be no
25 question --if the McNamaras were on trial here, that this
26 witness could not testify--I am assuming that for the

1 purpose of this discussion at this time.

2 MR. ROGERS: Your Honor is entitled to the record, if
3 your Honor pleases, I think, that Mr. Darrow being attorney
4 for the McNamaras and the McNamara matter being under
5 investigation before the grand jury, we would be entitled
6 to the general answer as to whether he did not refuse to
7 answer any questions concerning the McNamara matter upon
8 the ground he was an attorney at law and that his informa-
9 tion was privileged. I think we are entitled to the
10 information. It might not be sufficient for your Honor
11 to rule, but, nevertheless, the information should be in
12 the record.

13 THE COURTS I cannot see its pertinency to this issue at
14 all, Mr. Rogers, Well, perhaps it is very remotely.

15 MR. FORD. No foundation has been laid, at any rate, to
16 show when he appeared.

17 THE COURT. Yes, you will have to ask if he was there and
18 when.

19 MR. ROGERS. We take an exception.

20 Q Did you appear before the Federal Grand Jury during
21 this year in the Federal Building here in Los Angeles
22 while the dynamiting cases relative to the McNamaras, among
23 others, were under investigation?

24 A I appeared before the Federal Grand Jury, but I cannot
25 state what was under investigation there at the time.

26 Q Did you refuse to testify at that time upon the ground

1 that you were an attorney for the McNamaras, an attorney at
2 law and that your information and knowledge was privileged?
3 MR. FORD. We object to that on the ground it is irrelevant,
4 incompetent and immaterial, his relation of attorney to the
5 McNamaras not having any relevancy whatever to the question
6 now before this court as to whether the relation of attorney
7 and client exists between him and the defendant and as to
8 whether such evidence is competent. The only thing that is
9 before your Honor--I think your Honor assumes at this time
10 for the purpose of this argument that this witness was
11 attorney for the McNamaras.

12 THE COURT. I am assuming that for the purpose of the
13 argument, it is not necessary, but I am assuming it.

14 MR. FORD. It is not necessary, but you are assuming it,
15 but even assuming he was attorney for the McNamaras,
16 his relation between him and the McNamaras is entirely
17 distinct and apart from his relation to this defendant.

18 THE COURT. Yes. I have your point on that matter, Mr. Ford,
19 but this is merely an examination on voir dire to determine
20 the status of this witness in the matter and to make that
21 clear for the purpose of ruling on the main question.

22 I think the doubt should be resolved and the witness should
23 answer the question.

24 MR. FORD. If it is only for that purpose, let the witness
25 answer the question.

26 THE COURT. What is your answer?

1 A What is the question, please read it.

2 (Question read by the reporter.)

3 A I did not refuse.

4 BY MR. ROGERS. Q Did you not state that you were an
5 attorney for the McNamaras and that your information and
6 knowledge was privileged?

7 MR. FREDERICKS. At that time and place, I suppose?

8 MR. ROGERS. At that time and place, before the Federal
9 Grand Jury.

10 A I did not.

11 Q You did not. Were you attorney for the McNamaras at
12 any time?

13 MR. FREDERICKS. We object to that as a conclusion of the
14 witness, not relevant to this issue. Whether he was an
15 attorney for the McNamaras, the issue before the court is,
16 is Clarence Darrow.

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1 MR ROGERS: The court says he assumes it, and I would like
2 to have the record show it.

3 THE COURT: All right. Answer the question.

4 A I was at one time.

5 MR ROGERS: And at what time? A Up to the time their
6 case terminated.

7 Q Up until the time their case terminated -- A Until
8 the McNamara case terminated.

9 Q And at what time did you fix that? A About the 5th
10 of December, 1911.

11 Q Commencing when? A On the 27th of April, 1911.

12 Q And by "attorney for the McNamaras", you mean attorney
13 at law? A Yes sir.

14 Q You have been admitted as an attorney at law? A Yes
15 sir.

16 Q In the courts of this state? A No, never.

17 Q In the courts -- A Illinois.

18 Q In the courts of Illinois? A Yes.

19 Q And you did confer with the McNamaras from time to
20 time as such attorney -- A I did.

21 Q -- during the pendency of that case --

22 MR FORD: We object to that on the ground it already
23 appears from the testimony of the witness, he was not an
24 attorney at law in California at that time, not endowed
25 with any of the privileges of an attorney.

26 MR ROGERS: That would not make any difference.

1 THE COURT: I think the statutes also include the secre-
2 tary and the clerk of the attorney.

3 MR FORD: This man was neither, neither secretary nor the
4 clerk.

5 THE COURT: Objection overruled.

6 MR FREDERICKS: We are not interrogating him in re-
7 gard to what he had had with the McNamaras.

8 THE COURT: Objection overruled.

9 MR ROGERS: Was there an answer to the last question?

10 THE COURT: I didn't hear any answer.

11 MR ROGERS: Did you answer, sir? A What is the ques-
12 tion?

13 MR ROGERS: Read it, please.

14 (Last two questions and answer read.)

15 A On the McNamara case, yes.

16 MR ROGERS: Did you confer with the attorneys for the Mc-
17 Namaras, Mr Scott, Judge McNutt, Mr Davis, Mr Harriman and
18 Mr Darrow, from time to time?

19 MR FORD: We object to that as not being pertinent to the
20 particular issue before the court. The privilege has
21 been granted to counsel to cross-examine this witness at
22 this time as to his relations as attorney for the McNama-
23 ras, and I think, from your Honor's point of view, and
24 from ours, it can be, for the purpose of this argument,
25 conceded that he was attorney for the McNamaras, although
26 we shall contend he could not even be such an attorney, if
we desire to go into the relation with the McNamaras. LIBRARY

1 THE COURT: This question brings it right down to the re-
2 lation of this witness with the defendant here.

3 MR FORRD: But not as to whether the relation of attorney
4 and client existed.

5 THE COURT: I expect that is what we are getting at here.

6 MR FORD: Very well, your Honor, if that is the purpose.

7 A I conferred with them frequently.

8 MR ROGERS: The answer, please? (Answer read.)

9 Q Your offices were in the Higgins Building? A Yes
10 sir.

11 Q Did you have cards printed, "John R. Harrington,
12 Attorney at law, Higgins Building?" A Yes sir.

13 Q And those cards, did you cause them to be circulated ,
14 John R. Harrington, Attorney at law, Higgins Building?

15 A They were used; I used them.

16 Q You used them? A Yes sir.

17 MR ROGERS: That is all.

18 THE COURT: Anything further?

19 MR ROGERS: I do not desire to ask any further questions.
20 We desire to argue the matter and present it to your Honor.

21 MR APHEL: I was going to say this, your Honor: We have
22 the facts before your Honor upon which we think we can
23 base our objection that we made heretofore to any state-
24 ments between him and the other attorneys, or any other
25 facts that he may have learned in the course of his em-
26 ployment, which would be absolutely privileged, and I think

1 it is a matter that you should determine before going
2 into it, and we cannot present the matter fully here
3 unless we are given some time. It is a matter of import-
4 ance to us, and a matter of importance to the other
5 side, and we think, if your Honor please, that your Honor
6 should adjourn until tomorrow. We can present the matter
7 tomorrow very briefly by selecting the cases that we
8 think we have that are precisely in point.

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1 THE COURT. Will you be ready to take it up at 9 o'clock?

2 MR. APPEL_ Yes, your Honor.

3 The Court. It merely means the loss of 20 minutes, as
4 far as the time is concerned.

5 MR. FREDERICKS. Unless there is too much time taken up
6 with the argument.

7 MR. ROGERS. The jury need not appear until 10 o'clock,
8 and we can take it up at 9.

9 THE COURT. Yes, I think that is fair.

10 MR. ROGERS. Personally, I desire to say to your Honor,
11 I did not realize when I spoke about the sneering manner
12 that you might perchance take it as if I had spoken to you.

13 THE COURT. I did so take it, Mr. Rogers, and was greatly
14 surprised at it.

15 MR. ROGERS. Therefore, I desire to explain to your Honor
16 that I did not mean it in that way at all. I meant it as
17 coming from counsel here, who made some sort of a noise
18 which I took to be that, and under the circumstances I
19 think an apology is due to your Honor. I was surprised
20 your Honor took it that way but I didn't certainly mean it
21 that way.

22 MR. FORD. I wish to state to the court that my remarks
23 and my smile were addressed to the district attorney
24 and not to counsel, and if there was any sneer on my face
25 I am sure it was not any greater or any more frequent than
26 that on the faces of my distinguished opponents.

1 MR. APPEL. As long as he sneers at Mr. Fredericks, I don't
2 object.

3 THE COURT. All right, gentlemen. Gentlemen of the jury,
4 for the reasons you have heard stated, the court deems
5 it best to adjourn at this time. The court will re-
6 convene at 9 o'clock in the morning for the purpose of
7 hearing the argument on this question of law, but the jury
8 will not be required to return until 10, Mr. Sheriff.

9 MR. JUROR WILLIAMS. Your Honor?

10 THE COURT. Yes, Mr. Williams.

11 JUROR WILLIAMS. May we come back if we would like to?

12 MR. FORD. We have no objections.

13 THE COURT. The order is made for your convenience, gentle-
14 men, and for no other purpose.

15 ANOTHER JUROR. We can start at 6 if you want us to.

16 THE COURT. Under those circumstances we will adjourn gen-
17 erally until 9 o'clock in the morning. I understood the
18 jury did not desire to be present and I made that rule for
19 your convenience.

20 (Jury admonished.) We will now adjourn until 9 o'clock
21 tomorrow morning.

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