

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. 37

I N D E X.

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

John R. Harrington,

2930

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Official Reporter

VOLUMES 37 to 40 (Inc.)

WITNESS:

John R. Harrington, Vol. 37

John R. Harrington, Vol. 38

John R. Harrington, Vol. 39

John R. Harrington, Vol. 40

MONDAY, JUNE 24, 1912; 1:30 P.M.

1 Defendant in court with counsel. Jury called; all present.
2 Case resumed.

3
4 J O H N R. H A R R I N G T O N,

5 on the stand for further cross-examination:

6 THE COURT. You may proceed with the cross-examination.

7 MR. ROGERS. Mr. Harrington, you said you were not testifying
8 for immunity. Why, then, did you demand immunity before
9 you testified?

10 MR. FREDERICKS. Objected to upon the ground it is incom-
11 petent, irrelevant and immaterial.

12 THE COURT. Overruled.

13 A On account of the threats that you made in open court.

14 MR. ROGERS. Q What threats did I make in open court?

15 A You made some reference to there being other counties
16 in this state and other prosecutors.

17 Q Your conscience hurt you about some other counties in
18 this state?

19 MR. FORD. Objected to as incompetent, irrelevant and imma-
20 terial and not cross-examination.

21 THE COURT. Objection sustained.

22 MR. ROGERS. Q Is there something that you are conscious
23 of about other counties in this state that made you think
24 that those were threats when I mentioned other counties?

25 MR. FORD. Objected to as calling for a conclusion of the
26 witness; incompetent, irrelevant and immaterial.

1 MR. ROGERS. Explain his answer.

2 THE COURT. I don't think you can go that far, Mr. Rogers.

3 Objection sustained.

4 MR. ROGERS. Exception.

5 Q You say you demanded immunity because I made some threats
6 about other counties in this state. If there is nothing
7 in any other county in this state that you are afraid of,
8 why did those references to other counties appeal to you as
9 threats?

10 MR. FORD. Objected to as not cross-examination and as
11 argumentative; incompetent, irrelevant and immaterial.

12 THE COURT. Overruled.

13 A I did it as a matter of protection so you could not carry
14 out your threats.

15 MR. ROGERS. Q Will you mention any threat I made?

16 MR. FORD. Objected to on the ground that the records
17 themselves are the best evidence. Got the record here in
18 court.

19 MR. ROGERS. Cause for his conclusion.

20 THE COURT. Overruled.

21 A You said there were other counties in this state and
22 other prosecutors, and the matter would not end here.

23 MR. ROGERS. Q Did I say the matter would not end here?

24 MR. FORD. Objected to as incompetent, irrelevant and imma-
25 terial and not cross-examination and not the best evidence.

26 THE COURT. Objection sustained.

1 MR. ROGERS. Q Don't you know, as a matter of fact, I
2 didn't say anything about the matter not ending here in the
3 argument to the court, I merely mentioned that there were
4 other counties in this state, over which this court had
5 no jurisdiction, isn't that true?

6 MR. FORD. Objected to as incompetent, irrelevant and
7 immaterial and not cross-examination.

8 THE COURT. Objection sustained.

9 MR. ROGERS. Q So you thought it a matter of precaution
10 to demand immunity, although you have never done anything?

11 MR. FORD. Objected to as having been already answered.

12 THE COURT. Objection sustained.

13 MR. ROGERS. Exception.

14 Q You turned around to the Judge, didn't you, and asked
15 him to say to you that you were testifying under compulsion,
16 why did you do that?

17 MR. FORD. Objected to as already answered.

18 THE COURT. Overruled.

19 A Did it so as to make sure of my ground before I pro-
20 ceeded.

21 MR. ROGERS. Q And what ground did you want to make sure
22 of?

23 MR. FORD. Objected to as having been gone into fully, al-
24 ready answered, not cross-examination; incompetent, irre-
25 levant and immaterial.

26 THE COURT. Overruled.

1 A That I would not be subjected to any further--to any
2 prosecution in the future.

3 MR. ROGERS. Q What did you think you might be prosecuted
4 for?

5 MR. FORD. Objected to as irrelevant and immaterial, not
6 having been--not being cross-examination.

7 THE COURT. Overruled.

8 A Not knowing what you had in mind at the time you spoke
9 I could not answer.

10 MR. ROGERS. Q You thought it was an idle remark, then,
11 having no meaning to you?

12 MR. FORD. Objected to as calling for a conclusion of the
13 witness, not cross-examination; incompetent, irrelevant and
14 immaterial.

15 THE COURT. Overruled.

16 A No, sir, I could not tell.

17 MR. ROGERS. Q Is there anything in your mind now that
18 makes that remark about other prosecutors significant to
19 you?

20 MR. FORD. If the court please, we object to that as not
21 being cross-examination, not proper cross-examination.

22 Counsel well knows that the only manner in which a witness
23 can be impeached, along that ground, is not by instances
24 of specific misconduct, but by showing that the general
25 reputation of the witness for truth, honesty or integrity
26 is bad. If there is anything counsel has in mind that this

1 witness may have done that shows his relation to the case,
2 he has a right to ask him about it, but he has no right
3 to ask the witness anything about misconduct in the past
4 except to ask him if he has ever been convicted of a felony,
5 he may ask him that. Now, he is insinuating misconduct
6 on the part of this witness by his question. Specific
7 instances, even if he should recite a specific instance
8 of misconduct on the part of this witness, it would not be
9 proper cross-examination.

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1 THE COURT: Certainly would not; no doubt about your position.

2 MR FORD: If he wishes to show something this witness has
3 done in relation to the case, let him put the question,
4 but he cannot go off in a wild speculation whether this
5 witness has ever misconducted himself in any manner.

6 THE COURT: This, I take it, is on the theory of searching
7 his mind as to the statement he was not testifying for a
8 particular object.

9 MR FORD: If that is the object, , we object upon the
10 ground it has been fully answered.

11 THE COURT: Well, I am not so sure but that objection is
12 well taken, but will resolve the doubt by overruling it
13 and let it go in again.

14 A What is the question. (Last question read by the
15 reporter.) A No sir.

16 MR ROGERS: Then, why is it you demanded immunity before
17 you testified?

18 MR FORD: We object to that on the ground it has been fully
19 answered.

20 THE COURT: Objection sustained.

21 MR ROGERS: You demanded immunity from prosecution, did
22 you not, before you testified? Why did you do it?

23 MR FORD: We object to that on the ground it has been
24 fully answered.

25 MR ROGERS: If you had nothing to be prosecuted for?

26 MR FORD: We object to that on the ground it has been

1 fully answered and with the addition it is argumentative.

2 THE COURT: Objection sustained.

3 MR ROGERS: Exception.

4 MR ROGERS: You have testified under immunity, have you not?

5 MR FORD: We object to that on the ground the record is
6 best evidence whether he has or not.

7 THE COURT: Objection overruled.

8 A Yes sir.

9 Q Now, immunity from what?

10 MR FORD: We object to that as irrelevant and immaterial,
11 not cross-examination.

12 THE COURT: Objection overruled.

13 A From any further prosecution in connection with any
14 matter connected with the case.

15 MR ROGERS: Mr Harrington, I now direct your attention
16 again to your relation with Mr Franklin. You said you
17 had met him, as I recall it, not more than three times in
18 your office. I believe you said you met him once in his
19 house. Did you ever meet him at the Hoffman Cafe? A No
20 sir; I have no recollection of it. I think I was only
21 in there once in my life.

22 Q Did you ever eat a meal, be it dinner, supper or what-
23 ever you may call it, with Franklin, at the Hoffman Cafe?

24 A No sir.

25 Q You have no recollection of it? A I am positively cer-
26 tain I never ate there with Mr Franklin.

1 Q Are you as sure you never met Franklin at the Hoffman Cafe

2 A My memory serves me that way, yes sir.

3 Q Your memory serves you that way? A Yes sir.

4 Q Are you willing to say positively that you never did
5 meet Franklin at the Hoffman Cafe? A Yes sir.

6 Q Did you ever meet Franklin at the Waldorf saloon?

7 A No sir.

8 Q Did you ever meet Franklin any place outside of your
9 office and his house? A At Mt Lowe.

10 Q What? A And Mt Lowe, that I testified.

11 Q And Mt Lowe, yes. A No sir.

12 Q At any time or place or under any circumstances? A No
13 sir.

14 Q And you say his visits to you in your office
15 didn't exceed three times? A Oh, comparatively few times;
16 it might have been more than three; it was very, very few.

17 Q You had many transactions with Franklin, didn't you?

18 A No sir, never a dollar went between us.

19 Q Not between you? A No sir.

20 Q You gave Franklin money, though, didn't you? A I
21 did not.

22 Q You are sure of that? A Yes sir.

23 Q Now, you said you did not meet him, you did not recall
24 whether you ever met him on the afternoon of November 27th.
25 Do you desire to change your answer in that particular, or do
26 you stay with it? A I stay right with it.

1 Q State whether or not Franklin called on you about half
2 past 3 or 4 o'clock in the afternoon of November 27th? A I
3 do not recall.

4 Q Why do you say, "I do not recall."? Because you do
5 not wish to make a positive statement? A No sir, be-
6 cause there was nothing transpired that would refresh my
7 recollection as to a visit, if he did come to my office.

8 Q Will you say as positively that you did not meet him
9 on the afternoon of November 27, as you have said that you
10 did not meet him on the morning of November 28th?

11 MR FREDERICKS: That is objected to, may it please, the
12 court, on the ground it was fully gone into Saturday on
13 cross-examination.

14 MR ROGERS: No sir.

15 MR FREDERICKS: In which the same questions were asked of
16 the witness, the same answers elicited from him that are
17 being asked and given now.

18 THE COURT: That is my recollection of Saturday's
19 proceedings.

20 MR ROGERS: He said he didn't remember; he didn't recall.
21 Of course, all lawyers are familiar with that "didn't
22 remember" and "didn't recall" answer. We all know what
23 that means.
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3p 1 MR. FREDERICKS. Simply impossible--

2 MR. ROGERS. And we all know just exactly what that may
3 result in later.

4 MR. FREDERICKS. Your Honor, that is not fair.

5 MR. ROGERS. And I am trying now to ask him if he is as
6 positive about that as he is of the morning of November 28th.

7 MR. FREDERICKS. The man says he doesn't remember, there is
8 nothing in the world in the answer that would indicate that
9 the answer is not fair and an honest answer. I will venture
10 to say that any man would have to give that answer if asked
11 about whether he had met an acquaintance or friend at one
12 certain day without there being some particular thing to
13 call it to his attention, he would have to say he didn't
14 remember.

15 MR. ROGERS. In view of the evidence we will introduce it
16 will become farcical, this answer.

17 MR. FREDERICKS. We will take your evidence when you do.

18 MR. ROGERS. I have no doubt you will.

19 MR. FREDERICKS. Yes, sir.

20 THE COURT. Just a moment, gentlemen. I want to look at
21 the transcript. You came so near covering this ground
22 on page 2918 that it is difficult to see the difference,
23 but I assume you do not expect to pursue it very far--

24 MR. ROGERS. No, sir.

25 THE COURT. --and I will resolve the doubt by letting the
26 witness answer the question.

1 A What is the question?

2 (Question read by the reporter.)

3 A I didn't say that I didn't meet him on the afternoon of
4 November 27th, but I do say positively that I did not meet
5 him on the morning of the 28th.

6 MR. ROGERS. Q Now, why is it that you are uncertain about
7 the one and absolutely certain about the other?

8 MR. FREDERICKS. We object to that by reason of the fact
9 that that same question has been asked and answered a great
10 many times, identically the same question.

11 MR. ROGERS. I think the witness knows what I mean.

12 MR. FORD. If the Court please, the witness does not know
13 any more than we do about it.

14 THE COURT. Objection sustained.

15 MR. ROGERS. Q You had the combination to the safe at the
16 office in the Higgins Building, didn't you? A In Mr.
17 Harriman's office?

18 Q Yes. A Yes, sir.

19 Q You had the key to the safe, didn't you? A Yes, sir. I
20 had one key, not "the" key. There were several keys.

21 Q How many keys were there? A I don't know.

22 Q You know Mr. Darrow did not have any combination or key
23 to that safe, don't you? A I do not know.

24 Q What is that? A I do not know.

25 Q You never saw him use it? A No, sir.

26 Q You never saw him have it, did you? A No, sir.

1 Q But you had it all the time that you were there at the
2 office, didn't you? A I had a key, yes, sir.

3 Q And you occasionally used it? A Yes, sir.

4 Q Did you use it on the afternoon of November 27th?

5 A I don't remember.

6 Q Will you say you did not? A No, sir.

7 Q Will you say you were not at the safe and opened the
8 safe on the afternoon of November 27th? A No, sir; I will
9 not.

10 Q Why not? A Because I don't remember.

11 Q Is your recollection good? A Fairly so.

12 Q Do you know whether or not you were getting money as a
13 Burns detective during the time you were pretending to work
14 for the defense? A I know absolutely that I never got a
15 five cent piece or equivalent to a five cent piece from the
16 Burns Agency in my life, either before or after that case.

17 Q Directly or indirectly? A Indirectly or any other way
18 in God's green earth that you can form a question.

19 Q Do you know what your number was on the Burns roll?

20 MR. FREDERICKS. That is objected to, may it please the
21 court, as being foolish and assuming a fact not in evidence,
22 that he had a number on the Burns detective roll.

23 MR. ROGERS. I know that I cannot produce it--

24 THE COURT. Objection sustained.

25 MR. FORD. You know better.

26 MR. ROGERS. Yes, I know better than what you said.

1 THE COURT. Objection sustained, and that ends it.

2 MR. ROGERS. Counsel says I know better. Certainly I know
3 better.

4 THE COURT. The court's criticism is directed at counsel's
5 remark on the other side, Mr. Rogers.

6 MR. ROGERS. Thank you.

7 MR. ROGERS. Q Do you know of anybody who saw you or could
8 testify to your whereabouts on the morning of the 27th --
9 on the morning of the 28th of November? A Except my
10 daughter when I left the house; we were keeping house.

11 Q And do you remember what time that was? A Approximately
12 at 9 o'clock.

13 Q Approximately at 9. A I lived at Angels Flight and it
14 only took 10 or 15 minutes to get to the office.

15 Q Aside from that do you know any one who knew your where-
16 abouts? A Except the regular help of the office, I do not.

17 Q Do you know any one who knew your whereabouts on the
18 afternoon of November 28th--November 27th, I beg your
19 pardon? A No, sir.

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1 Q Do you know of anyone who knew your whereabouts on
2 the afternoon of November 28th? A No sir.

3 Q Can you give us anyone who knew your whereabouts on
4 either of those dates, except your daughter?

5 MR FORD: Objected to upon the ground it is not cross-exam-
6 ination as to what other people may have known about his
7 movements, is not cross-examination of this witness as to
8 his own movements. It is only laying the foundation for
9 something else which is not cross-examination.

10 THE COURT: Objection overruled.

11 A I do not outside of the fact I was in my office.

12 MR ROGERS: Do you know the corner of Third and Los
13 Angeles? A In a general way, yes.

14 Q Have you been there? A I presume I have.

15 Q When? A I don't remember.

16 Q What was the occasion of your going to Third and Los
17 Angeles? A I do not recall.

18 Q But you do know the corner? A I know the corner.

19 Q Can you give us a sort of an idea what business or what
20 circumstance or what occasion led you to the corner of
21 Third and Los Angeles? A There was no special reason for
22 my going there. If I went there, it was passing by, walking.

23 Q Any business there? A None whatsoever.

24 Q Passing by, walking where? A At Third and Los Angeles.

25 Q Well, walking to what place? A No particular place.

26 Q Just walking? A Just walking. I used to walk around

1 the different streets of the city. I had no place to go.

2 Q Had no place to go? A No sir, after office hours. I
3 would walk around.

4 Q How many times did you ever go to Third and Los Angeles

5 A I don't know that I went there over once. There is
6 nothing that fixes it on my mind.

7 Q Not over once? A I may not. I might have gone
8 there twice. I don't recall. There is nothing fixes it on
9 my mind.

10 Q You said you were a lawyer, did you not? A Yes sir.

11 Q Why is it you will admit once at Third and Los Angeles
12 without occasion, without circumstance, without reason for
13 your being there, and won't admit more than once?

14 MR FORD: Objected to upon the ground that the whole ques-
15 tion is a subject of argument; incompetent, irrelevant and
16 immaterial, and not cross-examination.

17 MR ROGERS: When the witness demands immunity, if your
18 Honor please, that places him in the category suggested by
19 the 7th Appellate, and permits an interrogation as to his
20 reasons, his statements, his whereabouts, and his actions
21 in full.

22 THE COURT: Your question assumed at least one fact not
23 in evidence, Mr Rogers.

24 MR FREDERICKS: Assuming that he has said positively that
25 he was ever at the corner of Third and Los Angeles. He
26 gives his judgment that he was there, probably.

1 THE COURT: Assumes that he went there without occasion
2 or reason.

3 MR ROGERS: That is true. Your Honor's criticism is good.
4 Now, you have admitted that you have been there at least
5 once, but you won't admit more than once. Were you there
6 more than once? A I do not recall.

7 MR FORD: Just a moment -- well, he has answered.

8 MR ROGERS: Will you tell us anything, any circumstance,
9 any occasion that led you to the corner of Third and Los
10 Angeles, except the once? A I didn't say I was led
11 there by any occasion once.

12 Q Will you give us the circumstance or purpose or reason
13 that led you there the once?

14 MR FORD: Objected to --

15 THE COURT: Overruled.

16 A There was no special reason, walking around.

17 MR ROGERS: Just walking around. A Yes.

18 Q Looking the landscape o'er, as it were; so? A I was
19 walking around there; that is the explanation I give for
20 being there.

21 Q Do you know who was there at the same time you were?

22 A No sir.

23 Q Do you know how long it was before the 28th day of
24 November? A I do not.

25 Q Will you say it was a week before? A I don't fix
26 it in reference to any date; because it was just walking

1 around. There is nothing to fix it in my mind at all. I
2 know where the place is the same as I know where Fourth
3 and Hill or Sixth and Spring or any other corner you would
4 designate.

5 Q Do you remember the saloon on the corner? A No sir.

6 Q Were you ever in there? A No sir.

7 Q Will you say positively you were not? A I will say
8 absolutely and positively that I was never in the saloon.

9 Q Were you in the lunch counter at that corner? A No
10 sir.

11 Q Or in any building at that corner? A No sir.

12 Q When you got to Third and Los Angeles, did you stop
13 and look around a spell and view the various angles of the
14 street, and so forth? A No sir.

15 Q You did not? A No sir, I had no interest in the cor-
16 ner at all.

17 Q Had no interest in the corner at all. Mr Harrington,
18 how long did you say you had been a corporation lawyer,
19 so-called?

20 MR FORD: Objected to upon the ground it has been fully
21 answered.

22 MR ROGERS: No, it hasn't.

23 MR FORD: At the very beginning of the cross-examination,
24 if the court please, he testified for 10 years he had
25 been an attorney for the City Railroad Company of
26 Chicago.

1 THE COURT: Well, he can say it again in one moment.

2 I assume this is not going to any length.

3 MR FORD: I want to call the court's attention to the fact
4 that counsel often goes back and refers to some question
5 merely by way o f argument, and asks the same question
6 over so many times that if we didn't object once, he
7 will repeat it all day. If I thought he was going to ask
8 it once and quit, I wouldn't object at all.

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1 THE COURT. I am not criticising you for objecting, Mr.
2 Ford, but I think in this particular instance it is quicker
3 to get the answer than to object, that is the sole reason I
4 overruled the objection.

5 A From 1902 to 1909.

6 MR. ROGERS. Q You say from 1902; you were connected with
7 the City Railway Company long before that, weren't you?

8 A Yes, sir.

9 Q How long were you connected with them before 1902?

10 A Since '86.

11 Q Since 1886? A Yes, sir.

12 Q Then it is from 1886 to 1909 that you were connected with
13 the Chicago City Railway Company. A Yes, sir.

14 Q That is a street railway company? A Yes, sir.

15 Q Did you ever receive any money either directly or in-
16 directly from Foster? A Never a cent in my life.

17 Q Did you ever do any work for Foster? A No, sir.

18 Q Directly or indirectly? A No, sir.

19 Q Did you and he attempt to do work together then?

20 A Yes, sir.

21 Q You know whom I mean, Foster? A Yes, sir.

22 Q For the Erectors' Association? A Yes, sir.

23 Q You know he is a kind of what you people call an investi-
24 gator for the Erectors' Association? A So I understand.

25 Q And you did work with him together? A Worked for Mr.
26 Lawler, I did.

Q Work for Mr. Lawler, you did? A Yes, sir; not in the

1 sense of getting pay for work.

2 Q You mean Mr. Oscar Lawler, the special prosecutor for the
3 Government? A Yes, sir.

4 Q Have you been paid by the United States Government for
5 anything? A Not a dollar outside of witness fees.

6 Q How much money have you been paid by the United States
7 Government?

8 MR. FORD. Paid witness fees.

9 MR. ROGERS. Q I don't care what it is for.

10 MR. FREDERICKS. Objected to on the ground it is immaterial
11 in view of the witness's previous answer, he had received
12 witness fees.

13 MR. FORD. And the law fixes that as \$3.00 a day. It is
14 easy to compute how much he got.

15 MR. ROGERS. Let's see what he said.

16 THE COURT. Overruled.

17 MR. FREDERICKS. Now, he is asking how much witness fees he
18 got.

19 MR. ROGERS. No, I am not; I am asking how much he got
20 from the United States Government directly or indirectly.

21 A It was directly; I got \$338.00 the last trip I was here,
22 and the first trip including railroad fare and everything
23 was \$118.00.

24 Q Is that all the money you ever got for coming out here
25 after you say you left the defense? A Every dollar.

26 Q Are you sure of that? A Positively and absolutely cer-

1 tain.

2 Q Where did you cash your drafts? A The first one--
3 cashed both in Chicago, I think.

4 Q At what place in Chicago? A At the Hibernian Bank.

5 Q You say you never cashed-- A Either that or the
6 Englewood Bank, my wife--

7 Q I beg your pardon, you have not finished? A I may have
8 endorsed them over to my wife and if so they were cashed
9 at the Englewood Bank, if I cashed them or deposited them
10 myself they were in the Hibernian bank.

11 Q You say you were paid no money here? A In Los Angeles?
12 MR. FREDERICKS. By the United States Government, I sup-
13 pose?

14 MR. ROGERS. Q No, I do not say that.

15 MR. FREDERICKS. Then I object to it on the ground it is
16 indefinite.

17 THE COURT. Objection sustained.

18 MR. ROGERS. Q You say you never were paid any money in
19 connection with the prosecution of Mr. parrow in Los Angeles?

20 A I do not say that, I got--

21 Q Now, the United States Government paid you--

22 THE COURT. He has not finished his answer.

23 A I got fees in this case last week amounting to \$118.00.

24 MR. ROGERS. Q Any other money besides that? A Not a
25 dollar.

26 Q Not a dollar? A No, sir.

1 Q By that you mean no money at all? A No money at all.

2 Q And you are sure that is all the money that you have
3 received in connection with the prosecution of this case,
4 either from the United States Government or from any other
5 source? A Yes, sir.

6 Q And you are positive of it? A Yes, sir.

7 Q How long have you been here at this time? A I left
8 Chicago on the 21st of May.

9 Q Were you subpoenaed? A Yes, sir.

10 Q 21st of May? A No, sir.

11 Q When were you subpoenaed? A Before I left Los Angeles
12 in March.

13 Q In March you were subpoenaed to be here when? A On the
14 15th of May.

15 Q You went back to Chicago? A Yes, sir.

16 Q And then returned here? A Yes, sir.

17 Q You have been living down at the beach, I understood
18 you to say, down at Ocean Park? A Yes, sir.

19 Q You gave the place of your residence there as what?

20 A At the Merrimac Apartments; it is either 209 or 309
21 Ocean Front.

22 Q Mr. Cooney you say lived there? A He did live there,
23 yes, sir.

24 Q Mr. Fitzpatrick, you said, did live there? A He lives
25 there yet.

26 Q He lives there yet? A Yes, sir.

1 Q Those are two witnesses in the matter? A Yes, sir.

2 Q Behm lived there too? A No, sir.

3 Q Are you sure of that? A Yes, sir.

4 Q A block away, you said? A Yes, sir.

5 Q Did you see Mr. Behm back east before he came out here?

6 A I did.

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1 Q What? A Yes sir.

2 Q Where? A At Mr Darrow's house.

3 Q I mean after that? A No sir.

4 Q Are you sure that you did not see him? A Absolutely
5 positively certain.

6 Q Did you see Mr Keetch back there? A Yes sir.

7 Q Where? A In my office.

8 Q When? A About the 1st of May.

9 Q Of this year? A Yes sir.

10 Q Did you see him more than once? A No sir.

11 Q Did you deliver to him any documents? A No sir.

12 Q Did you deliver to the District Attorney any documents
13 at any time? A No sir.

14 Q Have you ever delivered to the prosecution any docu-
15 ments at any time? A No sir.

16 Q Do you mean to say that no documents had been deliver-
17 ed by you to the prosecution in this case at any time?

18 A Yes sir, I do.

19 Q Have you any reservation about that, or are you answer-
20 ing the question with a full understanding of what it means

21 A Yes sir.

22 MR FORD: We object to that as not a proper question to ad-
23 dress to any witness, with a reservation -- in other
24 words, might as well say to the witness, "Are you lying or
25 are you telling the whole truth?"

26 THE COURT: The witness has answered, he answered the ques-

1 tion fully and positively.

2 MR ROGERS: Where did this telegram that has already been
3 introduced in evidence come from, do you know?

4 MR FREDERICKS: That is objected to as assuming that this
5 witness knows anything about that telegram -- well, I will
6 withdraw it.

7 MR FORD: You are referring to the telegram from Johann-
8 sen?

9 MR ROGERS: Yes. A I have not seen that telegram, it
10 being the original telegram, I presume they got it from
11 the telegraph company.

12 Q Did you give them the information about it? A Yes sir.

13 Q When? A The last of December.

14 Q To whom? A Mr Lawler.

15 Q While you were living at Darrow's house? A No sir.

16 Q How soon after you had left Darrow's house, did you
17 give them the information about that telegram? A A day
18 or two after.

19 Q A day or two afterwards. Were you then pretending to
20 be friendly with Darrow?

21 MR FORD: We object to that as irrelevant and immaterial;
22 not cross-examination.

23 MR ROGERS: The witness demands immunity.

24 THE COURT: Objection overruled.

25 A Yes sir.

26 Q When did you give up the code that you have spoken of,

Code

to
Lawler

1 to the District Attorney? A When?

2 Q Yes. A About a month ago.

3 Q To whom? A Mr Lawler.

4 Q The prosecutor for the government in the United States
5 cases? A Yes sir.

6 Q Where was that? A I mailed it to him.

7 Q Where did you have it? A I had it at home.

8 Q How did you come to mail it to him? A I was asked
9 to.

10 Q You were asked to and you complied? A Yes sir.

11 Q Who asked you to mail him the code? A Mr Ford.

12 Q Mr Joseph Ford, W. Joseph Ford? A Yes sir.

13 Q Why didn't you mail it to Ford instead of to Lawler?

14 MR FORD: We object to that as irrelevant and immaterial.

15 THE COURT: Objection overruled.

16 A He asked me to mail it to Mr Lawler.

17 Q Did you think that was a kind of deceiving somebody?

18 MR FORD: Now, if the court please, we object to that
19 as not proper cross-examination.

20 THE COURT: Objection sustained.

21 MR FORD: I asked him to deliver it to Lawler; I asked
22 that because he had the documents --

23 THE COURT: Objection sustained.

24 MR FORD: I would like to state my reasons in full; I do
25 like the inference.

26 THE COURT: The objection is sustained, and that ought to

1 satisfy.

2 MR APPEL: Let him take the witness stand and testify.

3 MR ROGERS: Did you mail any other documents to Mr Lawler
4 at the request of Mr Ford? A No sir.

5 Q The code was all? A Yes sir.

6 Q Have you ever mailed any other documents to Lawler?

7 A No sir.

8 Q Did you ever give any other documents to Lawler?

9 A No sir.

10 Q Than the code? A Than the code.

11 Q Have you told them where they could get them?

12 MR FORD: We object to that as irrelevant and immaterial,
13 not tending in anywise to impeach any testimony given by
14 this witness.

15 MR ROGERS: Oh, yes, the witness demands immunity.

16 MR FORD: Immunity from threatened prosecutions without
17 foundation.

18 MR ROGERS: Immunity from threatened prosecutions with-
19 out foundation would not require any man to sit up and de-
20 mand immunity.

21 THE COURT: What is the question? Read it.

22 MR APPEL: In view of Mr Fredericks' statement in the
23 paper "He better come through", that is a very poor show-
24 ing --

25 MR FREDERICKS: Mr Appel, I never made any such statement
26 in the paper, and there is no evidence I did.

1 MR APPEL: It is in the record.

2 MR FREDERICKS: No, it is not in the record.

3 MR APPEL: You are in the habit of denying almost anything.

4 MR FREDERICKS: I appeal to the court ---

5 MR FORD: I ask the court to protect Mr Fredericks from
6 remarks of counsel.

7 MR APPEL: I have seen you deny things that are absolutely
8 true, both of you.

9 MR FORD: I ask that the court protect us from remarks of
10 that sort from counsel.

11 MR ROGERS: In order that the court may take some action
12 about it, I showed to the witness, if your Honor pleases,
13 an interview with Mr Fredericks, and I took the pains to
14 send a man to Mr Fredericks to find out if the interview
15 were genuine, and he came back and reported to me it was.
16 Now, something may be done with me, too, because I stand
17 beside Mr Appel upon it.

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7p 1 MR. FREDERICKS. There is absolutely nothing--

2 MR. ROGERS. "He better come through", and when I saw that
3 in the paper I sent a man to the District Attorney's office
4 to find out if the interview were correct and I was told it
5 was correct. Now, if anything is to be done I stand beside
6 Mr. Appel.

7 MR. FREDERICKS. Now, may it please the court, I would like,
8 if possible, to do my share towards conducting this trial
9 in an orderly way. Mr. Rogers has stood here and made
10 statements of what he did out of court, what he says he did,
11 and has made them, I don't know, I cannot see any other
12 purpose, I cannot see any proper purposes for making them.
13 There is no proper purpose for making them. My objection
14 to this matter is that there is no evidence before this
15 court that I gave, ever gave any interview to the paper,
16 there is no such evidence. Counsel read an extract from
17 the paper, purporting to be an interview with me and asked
18 the witness if he had ever seen it. It was not introduced
19 in evidence, it is not evidence; it is not before this
20 court in any way, shape or form. That is my objection.

21 THE COURT. Gentlemen, the insistence of counsel in being
22 heard upon these matters does some violence to my sense
23 of the necessities and occasions arising in this case.
24 The court was quite ready to rule upon this objection,
25 assuming that the question was as the court thought it was.
26 And the court called for the reading of the question. Now,
gentlemen, I am going to say once again, that when the court

1 calls for the reading of the question that that closes
2 the controversy until the question is read. In this par-
3 ticular instance Mr. Appel is a serious offender against
4 that rule. I called for the reading of that question and
5 that was the time to read the question and the remark
6 here, whether proper or improper, should not have been made
7 until the question was read. It is a physical impossibility
8 for us to make a record in this case unless counsel will
9 just wait until the question is read.

10 MR. APPEL. Yet, your Honor, we have to complain once in a
11 while to the court, and it is done here in your presence,
12 it is done all the time, it is done prejudicial to the
13 rights of this defendant time and time and over and over again
14 Does your Honor contend for a moment that this man's state-
15 ment, Mr. Ford here, a little while ago, in getting up and
16 saying, "I sent for that book and told him to send it to
17 Mr. Lawler for this reason and that reason"--does your Honor
18 think that is a proper statement coming from the prosecu-
19 tion? Is he upon the witness stand? Are we to take his
20 word without being under oath? Are we bound by his state-
21 ments? And it is done time and time and over and over again
22 and your Honor allows them to do that. Was it proper for
23 this man, Mr. Fredericks, to come up here the other day and
24 accuse Mr. Darrow of having hypnotized a witness upon the
25 stand? Isn't that the highest class of misconduct on the
26 part of the District Attorney or any one else? Yet, the

1 incident went by without even a word of admonition against
2 the remarks of this kind, against Mr. Fredericks. Mr. Darrow
3 here was portrayed as a hypnotic before this jury, he says,
4 "We know this man, we know what we are talking about", and
5 there was not a single word of admonition from this court as
6 against Mr. Fredericks.

7 MR. FREDERICKS. I am perfectly willing to admit, your
8 Honor, that both sides have been offending along that line
9 and I will be very glad indeed to cut out our end of it if
10 the other side will only cut out theirs, and I believe I
11 see that the court is going to compel both sides to cut
12 it out.

13 MR. APPEL. Let the court speak for itself.

14 THE COURT. There is no way by which this court can read
15 the minds of counsel on either side or to anticipate what
16 either are going to say, but the rule that when the court
17 calls for the reading of the question that that calls for
18 silence on the part of all of counsel until the question is
19 read must be followed by both sides or we will never get
20 a proper record. I call upon counsel and request them to
21 assist the court in that very proper duty, seeing that the
22 record is made here. That is all. Now, read the ques-
23 tion, Mr. Reporter.

24 THE COURT. The objection is sustained.

25 MR. ROGERS. Before your Honor rules upon that does your
26 Honor hold that I cannot ask this witness if he has not told

1 the District Attorney or Mr. Lawler, who appears to be acting
2 with them, where they might get documents connected with
3 the prosecution? Am I forestalled or foreclosed on that
4 with a witness who demands immunity?

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1 THE COURT: You are acting on the theory that Mr Lawler is
2 incorporated --

3 MR ROGERS:" Why, in this very court room, from the mouth
4 of this very witness, that Mr W. Joseph Ford asked him to
5 send the code that has been introduced in this case to him,
6 instead of to Ford, and it comes into the court room from
7 Ford's hands.

8 THE COURT:" Perhaps on that theory you are entitled to
9 the question.

10 MR FREDERICKS: In order that there may be no misunder-
11 standing on that, I stated early in this case that the
12 United States government were working on their case and
13 we were working on ours, and frequently our lines crossed,
14 and we helped each other. Now, that is the situation.

15 THE COURT: Now, let him answer the question.

16 MR ROGERS: Now, if your Honor please, I may offend
17 sometimes by personal criticism, but never have I stood
18 here and attempted to state anything^{as} detrimental to the
19 defendant ~~as~~ that. There, if your Honor please, is a
20 sentence which is nothing in the world but an effort to
21 get this witness away out from certain questions which
22 your Honor has just, by intimation, said that I might
23 ask. It is absolute misconduct in a criminal case. It
24 ought not be permitted. It is an outrage upon our decency
25 and upon our rights to allow the District Attorney to stand
26 up and say, "Oh, our lines crossed, and I will answer
the question", that I was about to ask the witness. Why,

1 if your Honor please, it has never been heard of before in
2 any case where I have practiced, and I say to your Honor
3 that it ought not to be permitted.

4 THE COURT: You want an answer to the question?

5 MR ROGERS: I don't care; the answer to the question has
6 been given by the District Attorney, and it is absolutely
7 useless to cross-examine when the District attorney sits
8 here and states what he would like to have the witness say,
9 and he wants to give the witness the tip as to how to
10 answer it. I had a cross-examination outlined, and the
11 outline is absolutely useless now, because he said, "Oh,
12 we were working together for a long time and it was out-
13 lined", and yet, they say they are not after Darrow and
14 Gompers; they are working together. Oh, no! And yet,
15 they say so right here in the court room; they are not
16 after Darrow and Gompers. No! And Burns is not in this
17 thing. But, yet, our lines crossed, and they commit the
18 worst misconduct I ever saw in a court room by telling
19 this witness what to say with respect to how documents
20 came into this court room. Why, I never heard such an
21 outrageous thing in all my life, and, if your Honor please,
22 I went through San Francisco where they had some. And I
23 assign it as misconduct. If that would not reverse the
24 case, I never saw anything that would.

25 THE COURT: Do you want an answer to this question?

26 MR ROGERS: I will take an answer. I know what it will be.

1 MR APPEL: We ask the court to say to the District At-
2 torney, he must not make statements of fact. We ask your
3 Honor to instruct this jury to disregard them. We are
4 entitled to that much protection by the court, and we
5 demand it. We don,t propose to have the District Attorney
6 tell this jury and tell this audience here that the
7 United States Government is interested in this case;
8 that they are backing this case, that they wish to have
9 this man convicted. They have nothing to do with this
10 case, your Honor, and he tries to give the jury that im-
11 pression -- G entltmen of the jury, he might as well state,
12 not only the state of California is interested in prose-
13 cuting Darrow, but the whole United States Government is
14 interested in prosecuting Dafrow. He wants to show the
15 jury what is back of this prosecution.
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1 MR. FREDERICKS. I would like to say a word, your Honor, and
2 it wont take me long and it wont be vehement, but I think
3 it will--

4 THE COURT. If you think it is necessary. The court has
5 very clearly in mind what occurred.

6 MR. FREDERICKS. There has been no misconduct on the part
7 of the District Attorney. There has been no effort to
8 instruct any one. Now listen: A question was asked of this
9 witness and your Honor with the idea in mind possibly
10 that Mr. Lawler had no connection or nothing to do--was not
11 involved in any way with the prosecution, had ruled on it.
12 Then an argument came up which called the Court's atten-
13 tion to the fact that Mr Lawler, possibly, had something
14 to do with it, and in order that the court might rule with
15 intelligence--with the knowledge of the facts, to assist
16 the court, without the slightest idea of the witness, I
17 made a statement of the situation for the assistance of the
18 court. I made no statement of fact whatever, a statement
19 that has been made before, it is a statement that counsel
20 has contended for, and I supposed I was admitting something
21 that they wanted to show. Now, I am not in the habit of
22 tipping witnesses nor saying other undignified things in-
23 tentinally, at any rate.

24 THE COURT. There has been a great deal of discussion here,
25 and counsel for the defense states that there has been some
26 statements of fact made by the District Attorney. The jurors

1 are the best judges whether there was any statement of
2 facts made, if so, they will disregard them.

3 MR. APPEL. We demand of your Honor to state to the jury
4 there were statements of fact and they must disregard them.
5 It isn't left to them, it is left to this court; this court
6 must conduct this trial, and when he said that the lines
7 crossed and they were helping each other, they are interested
8 in this matter together, that is what he meant. I say,
9 your Honor, it is a statement of fact and it is your Honor
10 to decide this matter.

11 THE COURT. The District Attorney repeated a statement he
12 made early in the trial. I do not regard it as a statement
13 of fact.

14 MR. ROGERS. Then, if your Honor please, if it isn't a
15 statement of fact it is a statement of untruth, one thing or
16 the other, and I ask that it be read. Read it, please.

17 MR. FREDERICKS. That is for the Court to determine.

18 MR. ROGERS. We are going to take a ruling on this. May I
19 have the statement of the District Attorney made to the
20 witness and to the court read?

21 MR. FORD. If it isn't proper it ought not to be read
22 again.

23 THE COURT. read it.

24 (Statement of the District Attorney referred to read by the
25 reporter.)

26 MR. ROGERS. Q Now, sir, do you know why Mr. Lawler didn't

1 ask you for that code instead of Mr. Ford? A No, sir.

2 Q Do you know why Mr Lawler told you--Mr. Ford told you to
3 send it to Lawler instead of sending it to him? A No, sir.

4 Q Have you got the letter from Mr. Ford? A No, sir.

5 Q What did you do with it? A It is in Chicago.

6 Q Have you it there, then? A It was a telegram.

7 Q A telegram? A Yes, sir.

8 Q Do you know what it said? A I do not remember outside
9 of the fact that he asked me to send the code to Mr. Lawler.

10 Q Do you know the date of the telegram? A No, sir.

11 Q Do you know approximately its time of sending? A About
12 a month ago.

13 Q About a month ago? A Yes, sir.

14 Q Since this case started? A No, sir; it was prior to
15 the starting of this case.

16 Q Are you sure that it was not after this case had com-
17 menced? A My recollection is that it was prior to it.

18 Q How long prior to it? A Ten days, I should think.

19 Q Now, did he ask you to send any other documents to Mr.
20 Lawler? A No, sir.

21 Q Did you send any other documents to Mr. Lawler? A No, sir.

22 Q Did you give any other documents to Mr. Lawler? A No, sir.

23 Q Did you give any other documents to anybody connected
24 with the prosecution? A No, sir.

25 Q Did you send more than one code? A No, sir.

26 Q Is that the code that has been introduced here? A Yes,

1 sir.

2 Q And that is the only document that you ever sent before
3 the case commenced, to anybody connected one way or the other
4 with the prosecution of this case? A Yes, sir.

5 Q Or the prosecution of the Federal cases? A Yes, sir.

6 Q And you sent it for the purpose of aiding the prosecution
7 of Mr. Darrow, did you not? A I sent it because I
8 was asked to send it.

9 Q Answer me, please.

10 MR. FREDERICKS. That we submit is an answer, gives the
11 reason why he sent it.

12 MR. ROGERS. It is not an answer, does not even come close
13 to being an answer.

14 THE COURT. I think you can answer that question more fully,
15 Mr. Harrington.

16 MR. FREDERICKS. The question is why did you send it and
17 he answered.

18 MR. ROGERS. No, no.

19 THE COURT. That was not the question. Read the question.

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

21 THE COURT. Is that the best answer you can make to that
22 question?

23 A Yes, sir.

24 MR. ROGERS. Q You cannot give any better answer than that?

25 A No, sir.

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1 Q And you knew it was going to be used against Mr Darrow,
2 didn't you? A I thought it would figure in the case.

3 Q And that is the reason you sent it? A I sent it be-
4 cause I was asked to send it.

5 Q You thought it would be used in the prosecution of Mr
6 Darrow, and that is the reason you sent it; isn't that true?

7 MR FREDERICKS: Objected to upon the ground it has been
8 asked and answered.

9 THE COURT: Objection sustained.

10 MR ROGERS: Exception.

11 Q When you thought it would be used in the prosecution
12 of Mr Darrow, why did you send it to Mr Lawler of the
13 United States government?

14 MR FREDERICKS: Objected to upon the ground it has been
15 asked and answered. He said why he sent it.

16 MR ROGERS: A witness who demands immunity can be inter-
17 rogated.

18 THE COURT: Overruled.

19 A I sent it because Mr Ford asked me to send it.

20 MR ROGERS: Knowing that it was to be used in the prose-
21 cution of Mr Darrow you had in mind, did you not, that
22 he was being prosecuted in the state court and that Mr
23 Lawler was in the United States court; huh?

24 MR FORD: If the court please, we object upon the ground
25 it has been fully answered. If I requested that it be
26 sent to Mr Lawler, I was the one who knew the reasons why

1 I did so; not this witness. This witness has answered
2 repeatedly that he did it merely because I requested him
3 to do so.

4 THE COURT: The objection is it has already been asked
5 and answered?

6 MR FORD: I don't wish to violate any rules -- I know why
7 I asked him to send it to Mr Lawler and it isn't the reason
8 counsel is insinuating.

9 MR APPEL: We object to the statement of counsel; he is
10 not a witness on the stand, he is leading the jury to
11 believe he had good reasons other than we have drawn
12 from the witness, drawn from sworn testimony, and it is
13 unfair to the defendant; it is prejudicial to the rights
14 of the defendant. It is letting the jury receive unsworn
15 statements here before them which is not permitted by the
16 code, and we ask that the jury be admonished to pay abso-
17 lutely no attention to the statements of Mr Ford.

18 MR FREDERICKS: I would like to state in reply that the
19 argument of Mr Ford was not a statement of fact, but was
20 the same as asking him if I sent it. The argument would
21 have been just as strong as though the request had been
22 signed by John Doe. Joh Doe would be the one that would
23 be the one that would know why it was sent; that is the
24 argument.

25 MR APPEL: Then label him John Due.

26 THE COURT: Gentlemen, I was quite well satisfied as soon

1 as the objection was made that the objection should be
2 sustained.

3 MR APPEL: How about our request for your Honor to instruct
4 the jury. Does your Honor refuse to instruct the jury?"

5 THE COURT: There was no statement of fact.

6 MR APPEL: Your Honor refuses to instruct the jury.

7 THE COURT: Yes sir.

8 MR APPEL: Exception. And we will take occasion to an-
9 swer those statements of fact, because the court will not
10 protect us.

11 THE COURT: If you will call the court's attention to any
12 statement of fact --

13 MR ROGERS: Counsel says there are reasons other than
14 those that are being insinuated. If that is not a state-
15 ment of fact --

16 THE COURT: I think you are right. That escaped my at-
17 tention in the argument. That was the purpose of my in-
18 quiry. Gentlemen of the jury, you heard the statement
19 purported to be a statement of fact from the District At-
20 torney just recited by Mr Rogers. You will disregard
21 any statement of fact as having any bearing on this case
22 whatever.

23 MR ROGERS: Have you been shown any other documents and
24 asked to look them over before testifying here?

25 MR FREDERICKS: That is objected to --

26 MR ROGERS: A witness who demands immunity can be interro-

1 gated.

2 MR FREDERICKS: It is so general.

3 MR ROGERS: Dealings with the District Attorney's office,
4 that is giving him immunity.

5 MR FORD: We are not giving him immunity. We object to
6 the statement -- to a statement of that kind being made.
7 It is not in evidence that this witness is testifying
8 under -- or is testifying for immunity. He stated that he
9 is not.

10 THE COURT: Objection overruled.

11 A Read the question.

12 (Last question read by the reporter.)

13 A Yes sir.

14 MR ROGERS: Where? A In the District Attorney's
15 office.

16 Q When? A Yesterday.

17 Q When? A Saturday.

18 Q What documents were they? A It was a purported
19 dictagraph statement.

20 MR ROGERS: Have you got that statement, gentlemen?

21 MR FREDERICKS: We are trying our end of the case.

22 MR ROGERS: I would like to show it to the witness and
23 have him identify it.

24 MR FREDERICKS: Would you?

25 MR ROGERS: I demand it.

26 MR FREDERICKS: You won't get it now.

1 MR APPEL: We ask an order of the court to produce it.

2 MR FREDERICKS: The court will not make any such order.

3 MR ROGERS: The court will have to make such an order in
4 view of the statement of the witness, since he left the
5 stand and under cross-examination, he was shown a document
6 in the District Attorney's office. Now, I demand them.
7 I have a right to them.

8 MR FREDERICKS: I don't think so.

9 MR ROGERS: Yes sir.

10 MR FREDERICKS: Well, you won't get them.

11 THE COURT: Gentlemen, this is not a question of whether
12 you will or won't; it is a question of what the law
13 entitles the defense to in this case. Now, let's see
14 what that is. That is all there is to it.

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11s1 MR. FREDERICKS. Suppose I had shown the witness anything,
2 a thousand different things.

3 THE COURT. Well, the burden is on the defendant to show
4 what the law is. Let's see what it is.

5 MR. ROGERS. I will lay the foundation.

6 THE COURT. While you are looking that up we might take a
7 recess.

8 MR. ROGERS. I have to lay a foundation.

9 THE COURT. Gentlemen of the jury, bearing in mind your
10 former admonition, we will take a recess for ten minutes.

11 -----
12 (After recess.)

13 MR. ROGERS. Before the matter is presented I must lay a
14 further foundation, Sir.

15 THE COURT. All right, go ahead.

16 MR. ROGERS. Q On Saturday afternoon you said you were
17 asked to look over some sheets of paper? A Yes, sir.

18 Q At the District Attorney's office, is that correct?

19 A Yes, sir.

20 Q Are those the only documents you ever have been asked to
21 look over by the District Attorney or any of his deputies
22 or representatives? A Yes, sir.

23 Q And that was while you were under cross-examination?

24 A Yes, sir.

25 Q Were you asked to read them? A To glance over them.

26 Q Well, in glancing over them you were asked to get know-
ledge of their contents, weren't you? A I couldn't make

1 what was in it, there was two or three sheets there, that
2 is all I looked at that.

3 Q How many sheets were there altogether? A I don't know,
4 there was probably 30 or 40, something like that, I didn't
5 count them.

6 Q Were they in typewriting? A Yes, sir.

7 Q And while you were glancing over them did you read the
8 contents of any of them? A Only as I have said, I could
9 not make it out.

10 Q You could not make it out? A I could not make out the
11 sense of it.

12 Q You could not make out the sense of it? A Yes, sir.

13 Q You mean by that that it was unintelligible or that it
14 was miswritten or-- A Unintelligible.

15 Q That is, the words did not make sense? A Yes, sir.

16 Q How much further did you look into it than two or three
17 sheets? A I didn't look any further.

18 Q Did you tell them it was unintelligible to you? A No,
19 sir.

20 Q Then, what reason did you give them for not looking
21 further? A I gave them no reason. I just threw the
22 paper back and went home.

23 Q Threw the paper back and went home? A Yes, sir.

24 Q Did you tell them--did they ask you to look through
25 all of the sheets or just the two or three? A Just the
26 front two or three sheets.

1 Q And what request was made of you when you were asked
2 to look through them? A Just to look through them, to see
3 if I could make anything out of them.

4 Q Yes, to see if you could make anything out of them.

5 A Yes, sir.

6 Q Would you know those sheets if you saw them again?

7 A I didn't mark them, I don't know.

8 Q Have you any idea what was on them? A No, sir.

9 Q Well, now, at the request of Mr. Foster, of the Erectors"
10 Association, you were requested to get Mr. Darrow to call
11 on you at your hotel, weren't you? A No, sir.

12 Q You were with Mr. Foster a part of the time while some
13 alleged dictagraph stuff was being taken, weren't you?

14 A No, sir.

15 Q Do you know where Mr. Foster was at that time? A No, sir.

16 Q Did you know he was in the closet of your room? A I know
17 he was not.

18 Q How long before this alleged dictagraph stuff was
19 taken had you seen Mr. Foster? A I saw him on the first
20 day.

21 Q What first day? A On the 14th of February.

22 Q And how long after the 14th of February was the alleged
23 dictagraph stuff taken? A It started on that day.

24 Q The alleged dictagraph stuff was supposed to be con-
25 versations between you and Mr. Darrow, wasn't it? A Yes,
26 sir.

1 Q Did you and Mr. Foster have a conversation about dicta-
2 graph stuff? A No, sir.

3 Q Did you and Mr. Foster have a conversation about Mr.
4 Darrow calling at your room? A No, sir.

5 Q Did you and Mr. Foster have any conversation whatever about
6 Mr. Darrow being at your room in the Hayward Hotel?

7 A No, sir.

8 Q Did you tell him he would be there? A I told Mr.
9 Lawler.

10 Q Mr. Lawler? A Yes sir.

11 Q You refer to Mr. Oscar Lawler? A Yes, sir.

12 Q Did you tell Mr. Oscar Lawler that you and Mr. Darrow
13 would be at your room? A Yes, sir.

14 Q Did Mr. Lawler talk with you about the presence of any
15 alleged dictagraph in your room? A Yes, sir.

16 Q Then an arrangement was made between you and Mr. Lawler
17 that Mr. Darrow should call at your room and that the dicta-
18 graph should be there? A Yes, sir.

19 Q Did you read Mr. Foster's interview in the paper since
20 this case came on and since you have been here, in which
21 Mr. Foster said, "I will convict Darrow with my dictagraph",
22 meaning Foster?

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1 MR FREDERICKS: That is objected to as assuming a fact that
2 is not in evidence, that Mr Foster ever made any such
3 statement to the newspaper.

4 MR ROGERS: yes, it is in evidence in this case that he
5 did.

6 MR FREDERICKS: No, it is not; I beg your pardon.

7 MR ROGERS: Very well. It makes no difference whether
8 it is in evidence or not; I asked him if he read it.

9 MR FREDERICKS: Let us see what the question is.

10 THE COURT: Read the question.

11 (Question read.)

12 MR FREDERICKS: Our objection was that no evidence Mr
13 Foster ever made such a statement in the paper.

14 MR ROGERS: Well, then, we will send for the paper.

15 THE COURT: The question is "Did he read such a state-
16 ment"?

17 MR FREDERICKS: Oh, if that is the question, that is dif-
18 ferent.

19 THE COURT: All right.

20 A Yes sir.

21 MR ROGERS: And do you say you did not see Mr Foster while
22 he was here in Los Angeles. A I saw Mr Foster here, yes
23 sir.

24 Q How many times? A Three or four times.

25 Q At about the time this alleged dictagraph stuff was
26 being taken? A A little later.

1 Q Did you see him in Chicago before you came out here?

2 A Yes sir.

3 Q How many times did you see him in Chicago before you
4 came out here? A Twice.

5 Q Where? A Once in my office and once in the hotel with
6 Mr Lawler.

7 Q With whom? A Mr Lawler.

8 Q You know Mr Foster is the alleged investigator for the
9 Erectors' Association, don't you? A I heard it --

10 MR FREDERICKS: We object to that on the ground it has
11 already been asked and answered.

12 THE COURT: Objection sustained.

13 MR FORD: There is an answer in there, and I suppose that
14 will be stricken out.

15 THE COURT: Leave it, if it is there. It is only that it
16 is already asked and answered, and if he has answered
17 it twice, it does no harm.

18 MR ROGERS: Let us hear the answer, ~~if~~ you have it, Mr
19 Petermichel. (Answer read.)

20 MR ROGERS: Mr Foster himself told you he was representing
21 the Erectors' Association, didn't he?

22 MR FORD: We object to that as irrelevant and immaterial,
23 not in anywise tending to impeach the testimony of the
24 witness on that subject.

25 MR ROGERS: It is preliminary.

26 THE COURT: Objection overruled.

1 A yes sir.

2 MR ROGERS: Now, when you saw him in Chicago, was the al-
3 leged dictagraph stuff mentioned to you? A Yes sir.

4 Q Well, then, before you came out here to Los Angeles
5 you and Mr Foster had talked over your getting Mr Darrow
6 into a room where Mr Foster, among others, might put a
7 dictagraph?

8 MR FREDERICKS: That is objected to as assuming a fact
9 not in evidence. I don't think the witness' answer jus-
10 tifies that conclusion. I may be in error.

11 THE COURT: Read the question again.

12 MR ROGERS: The question does not need to assume any-
13 thing in evidence; I am asking him.

14 THE COURT: Read it.

15 (Question read.)

16 THE COURT: Objection overruled.

17 A The conversation was held with Mr Lawler.

18 Q Was Mr Foster present? A Yes sir.

19 Q Well, then, the conversation was, as a matter of fact,
20 with Mr Lawler and Mr Foster about getting Mr Darrow into
21 a room with you where was a dictagraph? A There was such
22 a conversation.

23 Q And that was in Chicago before you came out here?

24 A Yes sir.

25 Q And you agreed to it? A Yes sir.

26 Q To get evidence against Mr Darrow? A Not so much as

1 to get evidence that I was not connected with this jury
2 bribing, to get him to commit himself to that.

3 Q You wanted him to convict him to excavate yourself,
4 is that it. A No sir.

5 Q Then, it was agreed you should ask Darrow certain
6 questions, wasn't it? A No sir.

7 Q It was agreed you should talk with Darrow about cer-
8 tain things? A Yes sir.

9 Q That was while Mr Foster, the Investigator for the
10 Erectors' Association was present, wasn't it? A Yes sir.

11 Q Well, now, when you were talking with Mr Foster, the
12 investigator for the Erectors' Association, you had an
13 agreement with him that you would procure a room in Los
14 Angeles and send for Mr Darrow, did you not? A No sir.

15 Q You had an agreement in his presence? A With Mr
16 Lawler.

17 Q Well, in the presence of Mr Foster, the investigator
18 for the Erectors' Association? A Yes sir.

19 Q How much did you get for that? A Nothing. My repu-
20 tation back that I lost by coming out with Darrow.

21 Q You think you got your reputation back? A Yes sir.

22 Q Where is it?

23 MR FORD: That is objected to -- A It is right here.

24 MR FORD: I do not think it is a proper question.

25 THE COURT: It is not proper.

26 MR ROGERS: Were you told what to ask Mr Darrow when you

1 got him into a room where the dictagraph was to be? A In
2 a general way, yes sir.
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13p1 Q Who told you what to say to Mr. Darrow? A Mr. Lawler.

2 Q Did Mr. Foster participate in the conversation at all?

3 A No, sir.

4 Q Do you know, then, why he was present? A I do not know.

5 Q Just you three were present, though, eh? A There was
6 a third gentleman, I don't know his name. He was a lawyer,
7 I don't know his name.

8 Q Was it Drew? A No, sir.

9 Q Was it an attorney for the Erectors' Association?

10 A I don't know who the gentleman was.

11 Q Don't you know, as a matter of fact, it was the attor-
12 ney for the Erectors' Association and the Steel Trust
13 that was present? A No, sir; I do not.

14 Q You don't know who he was, though? A No, sir, I never
15 saw him before and never saw him since.

16 Q Was he introduced to you? A He was.

17 Q What was he called? A I don't remember. He didn't
18 take part in the conversation at all.

19 Q Did Foster take part in the conversation at all?

20 A No, sir.

21 Q Well, describe this anonymous gentleman? A He was
22 tall and thin, a man that would weigh about 160 pounds,
23 sandy complexion.

24 Q Do you know Erew? A No, sir.

25 Q The attorney for the Erectors' Association? A No, sir.

26 Q Never have seen him? A No, sir.

1 Q Heard of him? A I have heard of him.

2 Q Does that name strike you as being similar to the name
3 that he was called by by Mr. Foster the investigator for the
4 Erectors' Association? A That is not the name. If that
5 was the name I would remember it, because I am familiar with
6 that name.

7 Q Did they tell you where this anonymous attorney lived,
8 whether at Chicago, Indianapolis or whereabouts?

9 MR. FREDERICKS. That is objected to as assuming that the
10 attorney who was there present was present anonymously
11 as the witness's testimony is--

12 MR. ROGERS. He is at present anonymous.

13 THE COURT. Counsel's explanation of the use of the word
14 "anonymous"--

15 MR. FREDERICKS. I will withdraw the objection.

16 A What is the question?

17 (Question read.)

18 A I have an idea, but I am not positive--that he was a San
19 Francisco man.

20 Q It could not, by any peradventure, be Francis J. Heney?

21 A Who?

22 Q Mr. Heney? A No, sir, that was not the name.

23 Q What was Foster doing there? A I don't--

24 Q When-- A--pardon me, I thought you finished--

25 Q --I had. I asked you what Foster was doing there at
26 this foregathering between you and Mr. Foster and the anony-

1 mous attorney, possibly from San Francisco? A I don't
2 know.

3 Q Did they meet you by appointment? A No, sir.

4 Q Just happened so? A No, sir.

5 Q How did it come about? A Mr. Lawler called up my office
6 and asked me to come to the hotel?

7 Q To what Hotel? A The Sherman House.

8 Q Did he tell you whom you were to meet? A No.

9 Q Then the meeting at the hotel was before the meeting
10 at the office? A I don't understand that question.

11 Q I thought you said you met Mr. Foster and Mr. Lawler a bout
12 this dictagraph stuff twice? A No, sir.

13 Q You did not? A No, I think, what I mean--

14 Q You met Foster twice? A Yes, sir; yes, sir.

15 MR. FORD. Let the witness answer; he started to say whom
16 he met twice.

17 A I met Foster twice, but not Mr. Lawler, in Chicago.

18 MR. ROGERS. Q Where did you meet Foster? A At the
19 office the first time.

20 Q Alone? A Yes, sir.

21 Q Was that before or subsequent to your meeting at the
22 hotel? A It was prior to.

23 Q How long before you met Foster at the hotel was it that
24 you met Foster at your office alone? A A week or ten
25 days.

26 Q What is that? A A week or ten days.

1 Q Was there anybody present when you and Foster fore-
2 gathered at the office? A We did not foregather at the
3 office.

4 Q Was there anybody present when you and Mr. Foster, the
5 investigator for the Erectors' Association, met at your
6 office? A No, sir.

7 Q How long did you and he remain together at your office?
8 A We did not remain together at all.

9 Q Did he talk to you on that occasion? A Just spoke and
10 when I found out who he was I told him I had nothing fur-
11 ther to say in the matter.

12 Q You had nothing further to say in the matter? A Yes,
13 sir.

14 Q And then you met him a little later and had something
15 to say? A Not to him.

16 Q Well, in his presence? A Yes, sir.

17 Q And in his hearing? A Yes, sir.

18 Q Did you object to his presence there with Mr Lawler
19 and this attorney for the steel trust?

20 MR. FREDERICKS. That is objected to as assuming a fact
21 not in evidence, that is, that there was any attorney for
22 the steel trust present.

23 THE COURT. Objection sustained.

24 MR. ROGERS. Q Did you object to the presence of Mr. Foster
25 the investigator for the Erectors' Association? A No, sir.

26 Q Well, you had objected to talking to him at your office?

A Yes, sir.

1 Q But you did not object to talking to him at the Sherman
2 House? A I did not talk to him at the Sherman House.

3 Q But you talked in his presence and hearing? A Yes
4 sir.

5 Q It was then agreed what you would do when you came out
6 here? A Yes sir.

7 Q And you agreed to do certain things? A Yes sir.

8 Q Who was going to put the dictagraph in? A Mr Lawler
9 told me he would look after it.

10 Q Did you have anything to do with the putting of that
11 in? A No sir.

12 Q Did you speak to the maid in the room about it?

13 A No sir.

14 Q Are you sure? A Yes sir.

15 Q That you didn't mention to any employe of the Hotel
16 Hayward the presence of any apparatus of wiring in your
17 room? A Yes sir.

18 Q Now, then, when you got Darrow down there, it was for
19 the purpose of getting him to talk so that the dictagraph
20 could be used on him? A No sir.

21 Q You came here for that purpose? A That expression
22 "used on him" -- it was done for the purpose of getting
23 him in there so that he would declare himself just
24 where I stood on this jury bribing matter.

25 Q Oh, just where you stood on this jury-bribing?

26 A Yes sir.

1 Q Then Foster and Lawler were working to save your
2 reputation; is that it? A No sir. They wanted to know
3 some other things.

4 Q Well; then, you stood in on their learning some other
5 things? A Yes sir.

6 Q That is what I asked you; you got him in there for
7 the purpose of using this dictagraph on him? A Yes sir.

8 Q How many times did you get him in there for the pur-
9 pose of using this dictagraph on him? A Five times ---
10 four or five.

11 Q Four or five times; that was your intention? A Yes
12 sir.

13 Q It took five times to save your reputation?

14 MR FREDERICKS: That is objected to as argumentative.

15 THE COURT: Objection sustained.

16 MR ROGERS: Did you and Foster come on the same train?

17 A No sir.

18 Q Was that intentional or otherwise? A Was what in-
19 tentional?

20 Q That you did not happen to take the same train in
21 order to come here for the same purposes? A I came when
22 they sent for me; subpoenaed me.

23 Q Who sent for you? A Mr Lawler. I was served with a
24 federal subpoena to come out.

25 Q You knew that was not in good faith; you knew it was
26 for the purpose of getting you out here to dictagraph Dar-

1 row, didn't you? A I knew they served a subpoena; I
2 didn't question their motives, and I responded to the
3 subpoena.

4 Q You knew, as a matter of fact, that the subpoena was
5 a blind for the sole purpose of getting you out here to
6 bait the dictagraph with, at the expense of the United
7 States government, didn't you?

8 MR FORD: We object to that as argumentative, calling
9 for a conclusion of the witness as to the motive which
10 prompted the federal government, and not proper cross-
11 examination.

12 THE COURT: Objection sustained.

13 MR ROGERS: Well, when you got out here on this dicta-
14 graph expedition, in response to a Federal subpoena, did
15 you testify before the Federal grand jury? A Yes sir.

16 Q How many times? A Once.

17 Q How long? A Probably I was in there half an hour.

18 Q Was that before or after you had baited the dictagraph?

19 MR FORD: Done what?

20 MR ROGERS: Baited the dictagraph? A That was after.

21 Q Afterwards? A Yes sir.

22 Q So, as a matter of fact, the subpoena was simply for
23 the purpose of getting you out here to use the dicta-
24 graph upon Darrow and then to be a witness as a blind,
25 wasn't that it?

26 MR FORD: We object to that on the ground he has stated

1 that -- exactly the same question before.

2 THE COURT: Objection sustained.

3 MR ROGERS: Exception.

4 Q Was there anybody in the room when you had this
5 dictagraph dictagraphing? A Yes sir.

6 Q Who? A Mr Darrow and myself.

7 Q Anyone else? A No sir.

8 Q Are you sure of that? A Yes sir.

9 Q Did you do any telephoning to Mr Darrow after the
10 dictagraphing had been done? A Yes sir.

11 Q What telephone did you use? A I used the room tele-
12 phone, if I remember rightly.

13 Q Did you know that your conversation over the tele-
14 phone was listened to by five different people? A No
15 sir.

16 Q Did you know that you were on an exchange with five
17 people on it? A No sir.

18 Q Then, you didn't know that you got the hook, too,
19 did you? A No sir.

20 Q Well, now, in this unintelligible dictagraph stuff
21 that you came out here to get ^{from} Darrow, you have seen
22 in the District Attorney's office on Saturday? A Yes sir.

23 MR ROGERS: Gentlemen, I demand the production of the dicta-
24 graph stuff, whether intelligible or otherwise; it was
25 shown to the witness, which he came out here to get from
26 Darrow.

1 MR FREDERIEKS: And we refuse to let you see it.

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15p MR. APPEL. Your Honor, we demand under Section 1938 of
2 the Code of Civil Procedure, of the production by the
3 other side of the alleged document, and under the answer
4 made by the other side that they will not produce it, we
5 contend that the notice required in that section would
6 be unavailing and we are not required to give notice
7 mentioned therein because the giving of that notice would
8 be in vain in view of the answer on the other side.

9 Section 1938 of the Code of Civil Procedure provides:

10 "If the writing be in the possession of the adverse party,
11 he must first have reasonable notice to produce it. If he
12 then fail to do so, the contents of the writing may be
13 proved as in case of its loss, but the notice to produce
14 it is not necessary where the writing is itself a notice,
15 but where it has been wrongfully obtained or withheld
16 by the adverse parties. "

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1 Now, we have a right, your Honor, to go into all the
2 conduct of this witness, who appears here as a witness for
3 the prosecution; we have a right to show what part he has
4 taken in becoming himself a party not only as a witness
5 but as an aid in assisting, in producing evidence against
6 this defendant. If that is so, we have a right to see
7 and to show that to its fullest extent. We have a right
8 to show that he was a party to the manufacturing of evi-
9 dence, if it be so; we have a right to show he aided to
10 get evidence against this defendant in order to convict
11 him; we have a right to show to what extent he went in
12 doing that, and in order to bring the evidence before the
13 jury we are entitled to bring in everything he manufactured
14 MR. FORD. We will waive the sufficiency of the notice.

15 MR. APPEL. You have waived it already when you say you
16 wont produce.

17 MR. FORD. We admit that, and the law permits you to intro-
18 duce secondary evidence of the contents.

19 MR. APPEL. The writing is in the hands of the other side.

20 MR. FORD. It is in our hands.

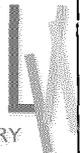
21 THE COURT. One at a time.

22 MR. APPEL. We have a right to show what was done. The
23 only way we could introduce evidence of its contents is
24 to prove its loss, to show that it is lost. Your Hojor
25 understands we have a right to inspect it, we have a
26 right to have it here before ourselves; we have a right

1 to see it, we have a right to have it for the purpose of
2 cross-examining this witness as to the part he took in
3 laying a trap, and the worst kind of a trap for a witness
4 to lay. If your Honor pleases, he cannot come here and
5 assume that he comes as a disinterested and impartial
6 witness to tell the truth, if we can show he is interested
7 in laying traps, if we can show the extent to which he
8 has gone, we have a right to argue that to the jury to show
9 his motives, to show what influenced him to testify against
10 the def_endant so that his motive may be taken into con-
11 sideration, in view of all the circumstances of the
12 case, and his actions in referenceto his own relations to
13 the case. Now, we are entitled to this document and
14 under the decision in the 132 Cal. the court says this:
15 THE COURT. What page, Mr. Appel?
16 MR. APPEL. page 133: "Plaintiff offered and read in
17 evidence, under Appellant's objection, a copy or duplicate
18 of the written lease, This is claimed to be error, for the
19 reason that the lease, being in writing, was itself the best
20 evidence. The objection is without merit, for the reason
21 that the facts stated in the complaint, in regard to the
22 execution of the lease and its contents were not denied
23 in the answer. These pleadings were verified, and the
24 lease, when proven, did not add anything to the admissions
25 of the pleadings. The lease was in the appellant's possess-
26 ion. When called upon to produce it, he failed to do so,

1 and said that he had given it to Ernest Graves, one of his
2 attorneys. William Graves, who was trying the case for
3 appellant, said that he did not know where the lease is.
4 If the lease is in the possession of Graves and Graves,
5 it is in the private box of Mr. Ernest Graves, who is now
6 sick in San Francisco'. It thus appears, that, when called
7 upon, appellant did not produce the lease. He did not
8 place his objection upon the ground that he had not had
9 reasonable notice to produce it. In such case the
10 evidence was admissible. And where the original lease
11 was not introduced the other party had a right to show
12 a copy of it."

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1 Now, we have not got a copy of it, your Honor, to produce
2 here. We have not got the oral statements of anyone con-
3 cerning that document, and the original, if your Honor
4 pleases, is shown to be in the possession of the District
5 Attorney, by his own admission. He says to you here, and
6 he says to this jury that he has it, and that ~~he~~ will not
7 produce it. Now, we cannot be deprived of the benefit of
8 that evidence if we choose to introduce it in evidence;
9 we cannot be deprived of the inspection of it, even if we
10 do not introduce it in evidence. We have a right to
11 consider the paper, whatever it is in connection with
12 the evidence of this witness; we have a right to show what
13 methods this witness entered into with others for the
14 purpose of obtaining evidence; we have a right to show,
15 your Honor, that the paper is of such a character that it
16 is not true, as this witness said, that it was for the
17 purpose of clearing his own reputation and that it was
18 another purpose; it was the purpose to manufacture evidence
19 through decoy means, through false assumption of friend-
20 ship on his part. It is a fraud proposed on the defendant-
21 Evidence of that kind, your Ho_nor, does not weigh a feath-
22 er's weight against the defendant. Evidence obtained by
23 fraud, by deceit or trickery or connivance or subterfuge,
24 does not weigh a feather's weight; but we have a right
25 to show that the conduct of this witness in reference to
26 that matter is of such a serious character, and we can

1 only show that by having all the evidence that was made
2 and manufactured at that time, and furthermore, if your
3 Honor please, this witness was upon the stand, his cross-
4 examination had not been ended, he goes in to the District
5 Attorney's office, and there he receives the inspection
6 of documents; for what purpose? Not for the purpose of
7 leaving him as an impartial witness, but for the purpose of
8 giving him impressions, that he may be further enabled
9 to answer the questions on cross-examination. If I should
10 take a witness from the stand and take him to my office,
11 a witness on our side, and there show him memorandums and
12 show him documents in order to enable him to refresh his
13 memory concerning those matters stated therein, or to en-
14 able him to assume a better position upon the witness stand
15 against the other side, they have a right, on cross-examina-
16 tion, to bring that matter out. Not only that, your Honor,
17 they have a right to show, your Honor please, what are the
18 documents, what are the contents of the writings which were
19 shown to the witness, especially so, in view of the fact
20 that this witness was still a witness of this court, a
21 witness in the hands of the defense. In other words, we
22 have a right to show not only his conduct, but we have a
23 right to show the whole conduct of the prosecution and
24 all of its attorneys, and that is a matter which this
25 jury is entitled to look into for the purpose of enabling
26 them to give the weight which his testimony alone merits,

1 and no more, and we ask for the production of that document.
2 MR ROGERS: If your Honor please, in order that you may
3 fully understand our position: my position differs slight-
4 ly from Mr Appel's in some particulars. It is well to
5 recognize several aspects of this matter. First, I call
6 your Honor's attention to the fact that this witness be-
7 fore testifying demanded the benefit of section 1324.
8 He demanded immunity. He refused to testify until he
9 got it, and there appears in the record your Honor's state-
10 ment, "You are now testifying under compulsion", and his
11 question of your Honor, "Then, do I receive immunity for
12 what I now say?" And your Honor said, "Yes." Therefore,
13 whether he is an accomplice or not, he is an immunity
14 witness; he has received an immunity bath. In the second
15 place, we find him to be an attorney at law, who admits,
16 or, claims, rather -- we do not admit,-- but he claims, so
17 far as his testimony goes, that he is an attorney at law,
18 associated with the McNamara defense, therefore, he
19 claims to be an attorney, speaking as an attorney who
20 gained his information while acting in a professional
21 capacity.

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17a 1 He claims that his information came to him by reason of the
2 fact that he was employed in the McNamara case. He claims
3 his information, which he now testifies to and his associa-
4 tion with Mr. Darrow in this matter, arose by reason of his
5 alleged employment as an attorney, forsooth a lawyer
6 in the McNamara case. In the next place he says that he
7 has done certain things at the behest and the behoof of the
8 prosecution, in other words, he has become an agent of the
9 prosecution. He has become to that extent, whether he has
10 received money or not I do not expect him to admit, whe-
11 ther he is being paid or not we don't expect him to tell
12 the truth about, but nevertheless he is getting something
13 for his testimony, at least immunity, at least, the
14 clearing of his so-called reputation. He is getting
15 something and he is doing something for the prosecution.
16 He is not only testifying, if your Honor please, he is
17 not going on the stand to answer questions, if the court
18 may look at it that way, but he is affirmatively acting
19 as a detective; He is affirmatively acting as a sneak
20 and a sleuth; he is affirmatively pretending to be a
21 friend of the defendant and at the same time, according to
22 his testimony, he is doing it for the purpose of affording
23 evidence to the other side, in other words, he is a traitor
24 of the worst kind. Now, under those circumstances we have
25 a right to search him in every particular and in every
26 way. I am an Irishman myself and proud of it, but sometimes

1 I wonder why it is that the traitors of the world come
2 out of that tribe, but nevertheless he admits on the
3 other side--

4 THE WITNESS. Traitor to the church?

5 MR. ROGERS. That he--

6 MR. FREDERICKS. That is not an argument on the law.

7 MR. ROGERS. Yes, it is.

8 THE COURT. Mr. Rogers, your argument is getting beyond the
9 bounds of decorum under the circumstances.

10 MR. ROGERS. He admits, if your Honor please, he came out
11 here to get Darrow into a room for the purpose of getting
12 Darrow dictagraphed, and we know what that means.

13 THE COURT. He admits those facts but your conclusions in
14 the vehement language you used I think is quite out of
15 order at this time.

16 MR. ROGERS. If your Honor sees fit to criticise me for
17 them--

18 THE COURT. The witness is still on the stand.

19 MR. ROGERS. But I make no apology to him. If I have
20 offended your Honors decorum I apologize to your Honor,
21 that is all. Now, if your Honor please, he comes out here
22 for the express purpose of doing some act or thing against
23 the defendant. Under those circumstances his testimony
24 is to be sifted, his testimony is to be tried by every
25 touch-stone on proof on cross-examination, being not only
26 an agent of the prosecution, being not only a hierling of

1 the prosecution in one sense of the word, being not only
2 one of their men, being not only one of their witnesses, but
3 he is pretending at the same time to be a friend of the
4 defendant, and by means of deceit and pretention, endeavors
5 to get evidence under those circumstances, If your Honor
6 please, if you will take a recess for a few moments I can
7 show you the books, so many books that your Honor couldn't
8 see over the top of them on your desk, that a witness of
9 that kind may be searched clear to his conscience, if he
10 has one; can be searched all the way through and up and
11 down. Now, then, having admitted, if your Honor please,
12 that he came here for the purpose of inducing Darrow, by
13 deception, by deceit, by fraud, if so you may call it, to
14 come to his room as his friend and talk to him as his
15 friend, having admitted that, now, he says that what was
16 said there was taken down. I don't believe, if your Honor
17 please, that this evidence will be admissible if produced,
18 because I believe it to be thoroughly unreliable, after
19 many experiences. We will not discuss that at this time,
20 that affects another question, but what he said while
21 he was in that room with Mr. Darrow, what he said while he
22 was pretending to be Mr. Darrow's friend, what he said while
23 he was taking him by the hand in his own room, what he
24 said while he was talking to the man with whom he had
25 associated, at the same time being under employment of
26 someone else, what he said, then we have the right to,
we have the right to go into it.

1 MR FORD: Go ahead. We are not stopping you.

2 MR ROGERS: Now, then, they claim to have shown him for
3 some purpose or other while he was under cross-examination,
4 and at least, knowing from the one question I asked, which
5 may have been a mistake on my part, but from the one
6 question I asked on Saturday, "Do you know Foster," the dic-
7 tagraph man, which I didn't say, but he knew what I meant,
8 they took him up there Saturday afternoon and showed him
9 these dictagraph sheets. Under those conditions, if your
10 Honor please, he having talked, and it having been taken
11 down, he having talked, and it having been taken down, if
12 so it may be -- I don't know that it may be, but at least
13 they contend to -- I have a right, for the purpose of
14 searching this witness as to what he said to Darrow while he
15 was pretending to be his friend, and was, as a matter of
16 fact, knifing him in the back, I have a right to ask him,
17 did you say thus and so at Mr Lawler's and Mr Foster's
18 dictation? Did you inquire thus, did you, at Mr Lawler's
19 and Mr Foster's request, did you say thus and so to him?
20 Did he reply thus and so, and I am entitled to know what
21 he saw on Saturday, and for that purpose I am entitled
22 to cross-examine him about what he came out here for, not
23 only as showing his interest in the case, but as showing,
24 if your Honor please, whether his contention that he is
25 here to protect his reputation may or may not be true. I
26 am at liberty to show how far he will go, what he will

1 say, what questions he will ask. I have a right to every-
2 thing that he has seen in the meantime. Now, if your
3 Honor please, I would not be entitled, I admit it, I would
4 not be entitled, at least, to the District Attorney's pri-
5 vate memorandum of conversations which may have occur-
6 red between the defendant and any person, but I would be
7 entitled to memorandum made by the witness who testifies
8 as this witness testifies under all the conditions, and
9 that is particularly true, if your Honor please, when he
10 says that on Saturday, the moment I mentioned Foster's
11 name they took him up to the office, and showed him this.
12 What is the harm? What is the harm? Why can't I have it?
13 Why can't we put it right in front of us and let me cross -
14 examine this witness about it? He is the kind of a witness
15 who, in the first place, has demanded immunity, therefore,
16 under the 7th Appellate we are entitled to search every
17 motive, every statement, every action, we are entitled to
18 go to the utmost limits of cross-examination. In the
19 second place, Moore on Facts, the best book that has been
20 published of law in a long time, and one of the most accu-
21 rate books, speaks of the testimony of informers, spies
22 and detectives and allows cross-examination into their
23 motive and actions to the fullest extent. Underhill
24 is a new book on criminal evidence, just the same thing,
25 and if your Honor has the slightest doubt we are at liberty
26 to take that so-called dictagraph stuff and lay it down

1 here and cross-examine on it, I would like to show your
2 Honor these authorities. I am so thoroughly convinced
3 of it, he having been shown it, that I ask your Honor to
4 consider the matter briefly enough to allow us to get the
5 authorities together. I didn't have an idea they had
6 shown it to him, but it appears they have shown it to him.
7 They have shown it to him for a purpose, and having shown
8 it to him for a purpose, they have answered our purpose
9 of allowing us to see it, and we have a right to cross-
10 examine him in reference to it. Now, I request your Honor
11 in all fairness that ^{before} your Honor rules, if you have any doubt
12 about the matter, to let us produce at least the text-books
13 authorities on the proposition.

14 THE COURT: To get your point of view fully, I would like
15 to ask you one question.

16 MR ROGERS: yes sir.

17 THE COURT: Suppose instead of a dictagraph device having
18 been used, a ^{hand} short reporter had been concealed in that room
19 and had taken down the conversation and had transcribed
20 it into longhand and that was at the present time in the
21 possession of the District Attorney, would you contend at
22 this time you had a right to have it?
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199 1 MR. ROGERS. I would surely have a right to have it,
2 especially so, sir, if he had been shown it.

3 THE COURT. But in addition to that testimony that it
4 was taken down and transcribed in an unintelligible form,
5 would you contend you had a right to it?

6 MR. ROGERS. Then we have a right to see if it is unin-
7 telligible.

8 MR. FREDERICKS. If it is unintelligible to the witness
9 the only thing then would be the effect it would have
10 on the witness, if it was unintelligible to the witness.

11 THE COURT. I want to get at your point of view. This
12 is a very unusual question.

13 MR. ROGERS. I think, if your Honor please, we can pro-
14 duce the authorities we would be entitled under these
15 conditions to the shorthand report, but aside from that
16 let me call your Honor's attention--

17 THE COURT. There are probably no authorities you have
18 to the dictagraph, but on the shorthand reporter's notes
19 why, there ought to be authorities available.

20 MR. ROGERS. I can't recall the case but I have a recol-
21 lection of a case before Judge Smith where police detec-
22 tives made reports--Mr. Appel reminds me of another case
23 which he will outline to your Honor, but I have a recol-
24 lection of one case in which Mr. Hawley, one of the police
25 detectives had memoranda of this sort and Judge Smith
26 compelled its production, in view of the fact that the

1 witness had seen it during his presence upon the stand.
2 Now, this witness has seen this during his presence
3 upon the stand. We are not obliged to take his statement
4 that he merely glanced over one or two pages and it was
5 unintelligible. We are not obliged to take that. He has
6 seen it, he has seen the document, he has seen it for a
7 purpose.

8 THE COURT. I think that is your strongest point.

9 MR. ROGERS. But we have a right to look at it, therefore,
10 ourselves, and particularly in view of the confession of
11 the witness which is, no matter how he puts it, no matter
12 how he glosses it over, no matter how he dresses it up,
13 we are entitled to it, because he came out here to get it.

14 MR. APPEL. Your Honor, in one case, if you permit me
15 to remind Mr. Fredericks, in one case, your Honor, which
16 was the People of the State of California against a certain
17 gentleman who was a trustee or councilman in the city of
18 Long Beach, your Honor, there he was brought into the dis-
19 trict attorney's office and Mr. Fredericks, himself, examined
20 him, had a shorthand reporter there and it was taken down,
21 and he said to him, "Now, come on, what is the use of your
22 denying this," and all that. Afterwards he brought the
23 witness on the stand to show the admissions of the defend-
24 ant there concerning his guilt and he was compelled to
25 produce the shorthand notes.

26 MR. FREDERICKS. Oh, no.

1 MR. APPEL. Judge Smith said this, that that transcript
2 of the shorthand notes indicated, your Honor, that the
3 confession had been dragged from him by every artifice,
4 by ever coercion, and everything that was inhuman to the
5 man, and he would not allow it to go in, and afterwards
6 the case, your Honor, although it went to the jury,
7 there was a disagreement.

8 MR. FREDERICKS. And he afterwards plead guilty.

9 MR. APPEL. He afterwards plead guilty and you allowed him
10 to pay a fine for the purpose of getting out of the box.

11 MR. ROGERS. I would like to produce the authorities.

12 THE COURT. I think very well of Mr. Rogers suggestion
13 that authorities be presented.

14 MR. FREDERICKS. I don't see ^{of} ~~any~~ particle ^{use} of wasting
15 time on it. Now, the fact as brought out by this witness
16 are these--

17 THE COURT. Now, Captain Fredericks, just a moment--I think
18 the burden here is still on the def_endant and he has asked
19 to present authorities, says he is unprepared at the pre-
20 sent time. Now, I ^{am} willing to take this matter up at
21 9 o'clock tomorrow morning for the purpose of hearing the
22 defendant's authorities, if you desire to have it. You
23 may proceed with your cross-examination now. I don't mean
24 by that I am willing to adjourn at this time but if you
25 can go on with your cross-examination and leave the ques-
26 tion until tomorrow I will hear you then.

1 MR. ROGERS. I will do the best I can.

2 MR. FREDERICKS. In view of the fact that this witness
3 may not be here at 9 o'clock if it is only to be an
4 argument, I think I would like/him ^{to ask} a couple of questions
5 as to the facts which the record may show, but from
6 counsel's argument he has a wrong idea of it.

7 THE COURT. You can ask him if you want to.

8 MR. ROGERS. I didn't get Mr. Frederick's observation.
9 (Last statement by Mr. Fredericks read by the reporter.)

10 THE COURT. I assume, gentlemen, it will not be neces-
11 sary, I don't expect to have the jury here at 9 o'clock.

12 MR. FREDERICKS. Q I want to ask you, Mr. Harrington,
13 were you in my office Saturday afternoon at all, afternoon
14 after lunch? A After court adjourned?

15 Q No, no, after lunch. A No, sir, I was not.

16 Q And the time you spoke of was between the time you
17 went to lunch and the time you came up from court at
18 12 o'clock, or approximately? A Yes, sir.)

19 MR. FREDERICKS. That is all.
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1 MR ROGERS: Mr Harrington, did you see Mr Foster while
2 you were here taking this dictagraph stuff? A Yes sir.
3 Q How often? A I think it was twice.
4 Q Where? A Mr Lawler's office.
5 Q Was the matter of this dictagraph and its progress
6 under discussion? A Yes sir.
7 Q And referred to? A Yes sir.
8 Q Did you see Mr Lawler at all about the dictagraph mat-
9 ter, in the absence of Mr Foster? A Yes sir.
10 Q How many times? A Oh, three or four times.
11 Q Did you see Mr Lawler ever day? A Mostly, yes sir.
12 Q You saw Mr Foster at least twice during that time?
13 A Yes sir.
14 Q Did you see Mr Foster at any other place than Mr Law-
15 ler's office? A No sir.
16 Q Are you sure you didn't see him at the Hayward's Hotel?
17 A I saw him in the lobby of the hotel once, yes sir.
18 Q Saw him in the lobby of the hotel? A Yes sir.
19 Q He had a room there, didn't he? A I don't know.
20 Q He hired a room next to yours, didn't he? A I don't
21 know that.
22 Q What is that? A I don't know that.
23 Q Do you know where he was stopping, as a matter of fact?
24 A No sir.
25 Q Don't you know he was stopping at the Hayward Hotel,
26 the same place you were when you got this dictagraph made?

1 A I don't know that he was.

2 Q You saw him in the lobby? A Yes sir.

3 Q What time was that? A It was during the first week
4 that I was in town.

5 Q While the dictagraphing was going on? A Yes sir.

6 Q And you didn't refer to the dictagraphing matter to
7 him? A No sir.

8 Q Are you sure of that? A Yes sir.

9 Q Did you see anybody else concerning the dictagraphing
10 matter, excepting Mr Foster and Mr Lawler? A No sir.

11 Q Talked to no one? A No sir.

12 Q Not to a living soul? A No sir.

13 Q And you are sure of that? A That is my best recol-
14 lection.

15 Q That is your best recollection. Are you sure you did
16 not speak to anybody aside from Mr Foster and Mr Lawler
17 after you came to Los Angeles about the dictagraph matter?

18 A yes sir.

19 Q Where was the dictagraph? A It was in the room.

20 Q Where? A Back of the bureau.

21 Q Who put it there? A I don't know.

22 Q What is that? A I don't know.

23 Q Did you see it put there? A No sir.

24 Q Were you told it was put there? A Mr Lawler told me
25 it was there.

26 Q Did you look to see? A Yes sir.

- 1 Q When did you look to see? A When I first went into
2 the room.
- 3 Q Did you hire the room? A Yes sir.
- 4 Q Did you pay for it? A Yes sir.
- 5 Q Who gave you the money to pay for it? A I paid for
6 it myself.
- 7 Q Did you turn it in as an expense? A Not as an ex-
8 pense; Mr Lawler refunded it to me:
- 9 Q Mr Lawler gave it back to you? A Yes sir.
- 10 Q When did he give it back to you? A Oh, probably in-
11 side or two or three weeks.
- 12 Q That is the rent of the room? A Yes sir.
- 13 Q Did you sleep there? A Yes sir.
- 14 Q That was, as a matter of fact, your habitation?
15 A Yes sir.
- 16 Q Did you eat your meals at the hotel? A No sir.
- 17 Q Whom did you see while you were here, except Mr Dar-
18 row, Mr Lawler and Mr Foster while you were here on that
19 dictagraphing expedition? A Towards the very last I saw
20 Mr Ford, probably a day or two before I left.
- 21 Q Where? A At the District Attorney's office.
- 22 Q Did you go up at his request? A Yes sir.
- 23 Q Talk over the dictagraph matter with him? A No sir.
- 24 Q Didn't mention it? A No sir.
- 25 Q Did he mention it to you? A No sir.
- 26 Q Did he know anything about it? A I don't know.

1 Q You don't know?

2 MR FREDERICKS: Objected to.

3 THE COURT: Objection sustained.

4 MR ROGERS: When you made an appointment with Mr Darrow,
5 whom would you call up? A I would call up Mr Darrow.

6 Q Well, when you -- you called up Mr Darrow? A Yes
7 sir.

8 Q To make an appointment with him? A Yes sir.

9 Q And then, whom did you call up, anybody? A Yes sir.

10 Q Who? A Mr Lawler.

11 Q And told him that the stage was set? A I told him Mr
12 Darrow would be over.

13 Q In each instance? A Yes sir.

14 Q For what purpose did you tell him that Mr Darrow would
15 be over? A So as to apprise him of that fact.

16 Q And why to apprise him of that fact? A Why, he ask-
17 ed me to do it, that is all.

18 Q Don't you know what it was for? A Lawler asked me
19 to call him up, and I did it.

20 Q On each occasion when you succeeded in making an
21 appointment with Mr Darrow? A Yes sir.

22 Q Don't you know why?

23 MR FORD: Oh, we object to that as calling for a conclusion.

24 THE COURT: Overruled.

25 MR ROGERS: The witness is shilly-shallying.

26 THE COURT: Mr Rogers; your question is allowed; your remark

1 is out of order.

2 MR BOND: I ask that your Honor reprove him for that re-
3 mark.

4 MR ROGERS: Please answer.

5 A What is the question? (Last question read by the
6 reporter.) I presume it was enabling him to notify the
7 reporters.

8 Q What reporters? A I don,t know.

9 Q Reporters to do what? A To take down the conversa-
10 tion.

11 Q Your idea of the conversation was to get MF Darrow to
12 give some evidence against himself? A Primarily to give
13 it so I would not be accused of jury-bribing.

14 Q Was that your whole idea? A That was my primary ob-
15 ject.

16 Q Was that your idea? A Yes sir.

17 Q Then did you tell MF Lawler that that was your idea?

18 A No, I don't know that I told him that, but that is
19 what was operating in my mind at the time.

20 Q Did he tell you that he was interested in the rehabilita-
21 tion? A No sir.

22 Q Did they tell you you were suspicioned of jury-bribery?

23 A Of jury-bribing, nb sir, not until the end of the
24 year, not until after the arrest, then Lawler spoke to me
25 and he seemed to be nagging all the time that I knew more
26 about the money and knew more about this thing than I let

1 on. I told him if he arranged the matter I could get Mr
2 Darrow to tell his side, and Lawler could judge whether
3 I had anything to do it or not.

4 Q Then you were under fears that they believed you guilty?

5 A I would not want to have it go so far as that, but
6 certainly they were red-hot after everybody that was con-
7 nected with Darrow.

8 Q Now, in view of the fact that you put this job up,
9 as a matter of fact, didn't you put the original job up?

10 A I did not, and I will waive immunity this minute if
11 you will try me on that one charge.

12 Q You will waive immunity? A On jury-bribing.

13 Q Will you waive immunity on everything? A I am saying
14 on jury-bribing; -- no sir.

15 Q Will you waive immunity on everything? A We will
16 take everything as it comes.

17 MR FORD: We object to that question as not being a
18 proper question. The question of waiving immunity is some-
19 thing that has got nothing to do whatever with any other
20 charges. Now, the last answer of the witness is not
21 really responsive to the question.

22 THE COURT: Do you want it stricken out.

23 MR FORD: No, but it is now -- but we object to any fur-
24 ther cross-examination along that line. We just object
25 to the last question as immaterial.

26 THE COURT: Is there anything unanswered, any unanswered

1 question before the court?

2 MR ROGERS: yes, I am asking him if he will waive immunity
3 on everything.

4 MR FORD: To that question we object as irrelevant and imma-
5 terial, and not cross-examination.

6 THE COURT: Objection overruled.

7 MR FORD: I would like to be heard on that just a moment.

8 THE COURT: very well.

9 MR FORD: Counsel has put to him a suppositious case. The
10 witness has said, "If you will try me on the charge of
11 jury-bribing, I will waive immunity." Now, Mr Rogers
12 comes back with "Will you waive immunity on everything"?
13 Now, Mr Rogers cannot try him for jury-bribing. It is
14 purely a hypothetical matter that cannot ever exist.

15 THE COURT: You might have had that voluntary statement
16 stricken out and eliminated all that.

17 MR FORD: I am not objecting to that. If counsel wants it
18 stricken out, counsel may have it stricken out. It isn't
19 responsive to any question before the court. It isn't up
20 to us to ask to have it stricken out.

21 THE COURT: I think in view of the voluntary statement that
22 was given, it is not response to any question --

23 MR FREDERICKS: he wants to know whether he will waive im-
24 munity. He can't waive immunity. That is a matter that
25 the law operates on.

26 THE COURT: Here is a voluntary statement that counsel has

1 a right to analyze.

2 MR FREDERICKS: For what purpose? It is immaterial.

3 MR FORD: That is our objection; it is absolutely imma-
4 terialmatter.

5 THE COURT: Shows his state of mind.

6 MR FORD: The witness here might state his ability to have
7 a fist fight with him; something of that sort. Counsel
8 might, by that voluntary statement, ask him if he will
9 consent to carry it on without gloves or without surgeons,
10 and tie their feet together, and a number of different
11 things, or shoot at each other in the dark, and a lot of
12 other suppositions. Got about as much to do with this
13 case as the proposition of whether or not the moon is made
14 of green cheese. The fact that the witness makes an imma-
15 terial answer doesn't give counsel a right to ask imma-
16 terial questions. Every question put to this witness must
17 be material, must be pertinent before this court to some
18 issue before the court. The mere fact that the witness
19 volunteered something, doesn't make it material.

20 THE COURT: yes, I think it is material, Mr Ford; it goes
21 to the question of motive. Overruled.

22 MR ROGERS: Read the question.

23 (Last question read by the reporter.)

24 A No sir.

25 MR ROGERS: When you said that you were perfectly willing to
26 be tried on jury-bribing you knew very well, didn't you,

1 that it was only you and Franklin for it, and that nobody
2 but God could convict you; wasn't that why you said it?

3 A No sir.

4 MR FREDERICKS: Glad we found out now who the jury-briber
5 was.

6 MR DARROW: Will the reporter read that remark of the
7 State's Attorney. I didn't quite understand it.

8 (Last statement of Mr Fredericks read by the reporter.)

9 MR ROGERS: Give me that again. (The same statement read
10 again by the reporter.)

11 Q You know, also, when you said you were perfectly will-
12 ing to go to trial on the matter of jury-bribing, you knew
13 very well you were an agent of the state when you pulled
14 it off, and that it was nothing but a confederate that you
15 were, didn't you? A No sir.

16 Q But you knew you couldn't be tried on it at all;
17 didn't you know that? A No sir.

18 Q And you say you are a lawyer, do you?

19 MR FORD: About 20 times that is in the record. I sup-
20 pose it is harmless.

21 MR ROGERS: It is perfectly harmless for him to say he
22 is a lawyer; certainly it is. When you and Mr Lawler
23 and Mr Foster, the attorney for the Erectors -- investi-
24 gator for the Erectors' Association met together, and they
25 told you what to ask Darrow, didn't they, in a general way?

26 MR FORD: The matter has been fully gone into, your Honor,

1 on cross-examination. He stated repeatedly what occurred.

2 A Yes sir.

3 MR ROGERS: That was -- They told you, then, what to ask him
4 for the purpose of clearing your reputation, did they?

5 A No sir.

6 Q Or they then told you what to ask him for some other
7 purpose, then? A No sir.

8 Q They told you, in a general way, what to ask him, but
9 you say not for the purpose of clearing your reputation?

10 A They didn't tell -- Mr Lawler didn't state what the ob-
11 ject was.

12 Q Did you think it was for the purpose of clearing your
13 reputation? A So I took it, and that is what I meant
14 they should do.

15 Q You took it Mr Lawler's suggestion to you and the sug-
16 gession of Mr Foster were made to you so as to enable you
17 to clear your reputation, did you? A Yes sir.

18 Q What purpose did you think they were made to you for?

19 A They were looking for information.

20 Q On what? A On matters connected with Darrow's con-
21 duct.

22 Q And you agreed to put those questions to Darrow so
23 that they could get information out of him? A So that
24 they and I could.

25 Q That is, they and you? A Mr Lawler and I.

26 Q So what? A So Mr Lawler and I could get information

1 Q Do you know who paid the bill for the dictagraph?

2 Don't you know Foster did? A I do not.

3 MR FORD: In view of that, I would like to ask if counsel
4 is going to seek to introduce affidavits, hearsay evidence
5 in this case?

6 THE COURT: I have no idea.

7 MR FORD: I have, your Honor. I can tell you; he will say,
8 didn't you, in this affidavit there say so and so, reciting
9 page after page from that affidavit.

10 MR ROGERS: Don't get frightened.

11 MR FORD: I only judge the future from the past.

12 MR FREDERICKS: An affidavit which coun el made himself
13 which was afterwards thrown out when it came before Judge
14 Willis.

15 MR APPEL: Thrown out?

16 MR FREDERICKS: You bed.

17 MR APPEL: Well, I don't bet.

18 THE COURT: I will give up any attempt to read Mr Rogers'
19 mind; what he is going to do.

20 MR FREDERICKS: That is the trouble, he goes ahead and
21 makes a long argument on facts, and the court listens pa-
22 tiently to him until he has gotten through and finds it
23 is not material, but it is all in. We sit idly by and we
24 have nothing to refute, nothing to say.

25 MR APPEL: Let the complaints of the District Attorney
26 be entered in the record. We will dispose of them some day

1 MR ROGERS: Did you have any memorandum of the questions
2 that you were to put to MR Darrow when you pretended to be
3 his friend and got him into your room? A No sir.

4 Q That was left to your recollection? A Yes sir.

5 Q Did you make any memorandum? A No sir.

6 Q Did you make any memorandum of the telephone communi-
7 cation that you had with Mr Darrow over the telephone?

8 A No sir.

9 Q Did you make any statement directly after the telephone
10 communication as to the communication? A I don't under-
11 stand your question.

12 Q I mean to say, did you tell it to anybody immediately
13 after it happened? A No sir.

14 Q Were you in your room when you did that telephoning?

15 A I don't remember.

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

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- 23s1 Q Can you remember whether you were in your hotel or not?
2 A I was in the hotel.
3 Q You remember whether it was morning or afternoon?
4 A The afternoon.
5 Q Are you sure of that? A Yes, sir.
6 Q You recall that it was in the morning-- A About
7 noon, I would say, probably a little before noon.
8 Q I am referring now to the last telephone. A Oh, the
9 last.
10 Q The last one. A My recollection of the last one was
11 in the afternoon.
12 Q Do you remember where you were when you did that last
13 telephoning? A I was in my room.
14 Q Any one there? A No, sir.
15 Q When you were told that you were to be the instigator
16 of the dictagraphing did you ask where the other end of
17 that dictagraph was going to be? A No, sir.
18 Q When you looked at the dictagraph behind the bureau
19 what kind of a looking thing was it? A A black instru-
20 ment about the size of a small saucer.
21 Q Did you roll the bureau out and investigate? A No,
22 sir.
23 Q Did you see whether they broke holes in the walls for
24 the wires? A No, sir.
25 Q Didn't you have any curiosity to know anything about it?
26 A No, sir.

1 Q Did you ever see a dictagraph before? A No, sir.

2 Q Well, you didn't have a bit of curiosity, then, to see
3 how the thing worked? A I saw the dictagraph there.

4 Q I mean you didn't have any curiosity to see how it was
5 operated? A I knew it was operated by sounds.

6 Q I mean to say in what manner and in what way it was
7 operated? A Oh, I understood that they took sound waves
8 from the room.

9 Q Well, did you have any curiosity to know where the wires
10 went? A No, sir.

11 Q Didn't even take a look to see? A No, sir.

12 Q Was there any test made out of any kind, of a trial
13 heat as it were, kind of a warming up heat? A Not in my
14 presence.

15 Q Did they tell you that they had tried it out?

16 A No, sir.

17 Q And you didn't know, then, whether the thing was in
18 working order or in operation or not? A No, sir.

19 Q So, when you telephoned to Darrow you didn't know whe-
20 ther the dictagraph was already to dictagraph or not?

21 A No, sir.

22 Q Well, did you ask him if he was ready to shoot or go on
23 or work, or something of that kind?

24 MR. FREDERICKS. Ask who, your Honor?

25 MR. ROGERS. Q Lawler? A No, sir.

26 Q Without knowing that the dictagraph was ready to dicta-

1 graph, you didn't ask any questions about it, didn't know
2 anything about it? You merely telephoned Darrow to come down
3 there, is that so? A I assumed it was all right.

4 Q What led you to assume it was all right? A The fact
5 that Mr. Lawler said it was there.

6 Q When did he say it was there? A In the forenoon.

7 Q How did he tell you, by telephone? A By telephone.

8 Q Told you that it was there and to get Darrow? A I
9 don't know that he used that expression.

10 Q Well, something to that effect? A Yes, sir.

11 Q And then what did you do to get Darrow? A Telephoned
12 him.

13 Q And did you get him? A Yes, sir.

14 Q Where? A At your office.

15 Q What did you tell him over the telephone? A I spoke
16 to him on general matters.

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1 Q Well, what did you tell him over the telephone at my
2 office? A My recollection is I told him I had just
3 arrived in town and served with a Federal subpoena and
4 wanted to see him.

5 Q Wanted to see him. Tell him where you were at that
6 time? A Yes, sir.

7 Q And where was that? A In the Hayward Hotel.

8 Q Did you tell him the number of the room? A Yes, sir.

9 Q When he came did he send up his card? A No, sir.

10 Q Come to the room? A Yes, sir.

11 Q You gave him the number? A Yes, sir.

12 Q Now, how many times in all do you say you telephoned
13 parrow to come? A I should think three or four times.

14 Q At each time at the behoof of Mr. Lawler? A Yes, sir.

15 Q By the way, what name were you registered under?

16 A Gorman, James Gorman.

17 Q James Gorman? A Yes, sir.

18 Q At the Hayward Hotel? A Yes, sir.

19 Q Did Mr. Lawler know you were masquerading under an
20 assumed name? A Yes, sir.

21 Q Was it at his suggestion that you adopted a name that
22 was not your own or your father's before you? A Yes, sir.

23 Q Did Lawler suggest that you adopt the name of Gorman?

24 A No.

25 MR. FREDERICKS. I object to that as immaterial.

26 THE COURT. Overruled.

1 Q BY MR. ROGERS. Whose invention was that name of
2 Gorman you used and took on that occasion? A It was
3 mine.

4 Q And did you inform Mr. Lawler you were masquerading
5 under that name? A Yes, sir.

6 Q Did you tell Mr. Foster also, in case he wanted to talk
7 to Mr. Harrington that he was then being known as Mr.
8 Gorman? A No, sir.

9 Q Did Foster know your name was Gorman at the Hayward?

10 A I don't know.

11 Q Did anybody else around there know your real name?

12 A My real name?

13 Q Yes. A No, sir; not that I know of.

14 Q Now, seeing that you have been talking to Mr. Lawler,
15 I will ask you if you knew when you mentioned that Mr.
16 Darrow showed you the roll of bills and told you he got
17 it out of Tveitmoe's bank, that Mr. Lawler was after Mr.
18 Tveitmoe? A No, sir.

19 Q What? A I knew he had him before the grand jury, but
20 that was all I knew.

21 Q Why, didn't you know, all the time that he was trying
22 to prosecute Mr. Tveitmoe? A I knew he was after these
23 men.

24 Q What? A I knew he was after these men.

25 Q After Tveitmoe, didn't you? A Yes, sir.

26 Q Isn't that why you put that name in, Tveitmoe's bank?

1 A It was not.

2 Q Well, do you know why, for Heaven's sake, Mr. Darrow
3 would tell you he got the money at Tveitmoe's bank?

4 MR. FORD. We object to that on the ground it was gone
5 into fully on Friday or Saturday.

6 MR. ROGERS. No, I looked over the record and found I
7 omitted it.

8 THE COURT. What is the fact as to that, Mr. Rogers?

9 MR. ROGERS. The fact that he said Mr. Darrow told him he
10 got it at Tveitmoe's bank was mentioned, but I didn't
11 ask him how it happened.

12 MR. FORD. At cross-examination--

13 THE COURT. My recollection is that you went into that
14 pretty fully.

15 MR. ROGERS. Your Honor's recollection may be better than
16 mine, I have taken a pretty good look at this record,
17 however, sir. Your Honor may be right.

18 MR. FORD. The first question on cross-examination started
19 in with Tveitmoe's bank at page 2774, the first question
20 you started out, "Mr. Harrington, do you say Mr. Darrow
21 told you at his house that he got the \$10,000--" and then
22 further down, line 18 you say, "Darrow got the \$10,000
23 at Tveitmoe's bank".

24 MR. ROGERS. Yes, but that is not the present question.

25 MR. FORD. That is along that subject.

26 THE COURT. What is the question, Mr. Reporter?

(Question read.)

1 MR. ROGERS. I will change the question, sir.

2 Q Do you know why Mr. Darrow told you he got the money
3 at Tveitmoe's bank?

4 MR. FREDERICKS. I object to that because it has been already
5 gone into!

6 THE COURT. Objection sustained.

7 MR. ROGERS. Exception.

8 MR. ROGERS. Q Wasn't that a part of your further agreement
9 with Lawley?

10 MR. FREDERICKS. The same objection, the same reason, and
11 further, it is incompetent, irrelevant and immaterial.

12 THE COURT. Objection overruled.

13 A No, sir; it was not.

14 MR. ROGERS. I have sent for a document, your Honor.

15 THE COURT. The clerk has gone for some documents, I don't
16 know where they are, but he asked to be excused that he
17 might go down to the office and look for some documents.

18 MR. ROGERS. Yes, sir.

19 THE COURT. Gentlemen of the jury, bear in mind your admoni-
20 tion. We will take a recess for five minutes while we
21 are waiting for the papers.

22 (Recess for five minutes. After recess.)

23 THE COURT. Did you find those papers, Mr. Smith?

24 THE CLERK. The clerk in charge of those papers is not
25 here and the rest of them cannot place them.

26 THE COURT. Mr. Rogers informs me that he cannot proceed

1 with the cross-examination without those papers.

2 MR. FREDERICKS. What papers are they?

3 THE COURT. I do not know what they are, but they are some
4 papers in the custody of the clerk and he has a right to
5 them.

6 THE CLERK. The case was tried before Judge Willis and the
7 papers were sent down to the clerk's office.

8 THE COURT. It was in connection with the contempt proceed-
9 ings of Foster?

10 MR. FREDERICKS. What do you want? Foster's affidavit or
11 your own?

12 MR. ROGERS. Both of them.

13 MR. FREDERICKS. You have a copy of yours, I suppose?

14 MR. ROGERS. I was not furnished with a copy of the other.
15 I want to get it. Besides that, my throat is just about
16 gone.

17 THE COURT. I thnk practically the afternoon is almost
18 gone and Mr. Rogers tells me he needs the papers and he has
19 to prepare himself for a matter coming up tomorrow at 9
20 o'clock and requests an adjournment at this time and I
21 think that is fair. It is understood that you will be
22 here at 9 o'clock tomorrow morning?

23 MR. ROGERS. Yes, sir, I will be here at 9 o'clock.

24 THE COURT. Unless there is objection I will not ask the
25 jury to be here.

26 MR. ROGERS. It is just as they feel. Just as they like.

1 THE COURT. Gentlemen of the jury, the court is about to
2 adjourn and will convene at 9 o'clock for the purpose of
3 hearing an argument on a question of law; you may or may
4 not be interested in it; at any rate, your presence
5 will not be required until 10 o'clock.

6 (Jury admonished.) The court will now adjourn until 9
7 o'clock tomorrow morning.

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