

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.)

Clarence Darrow,)

Defendant.)

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REPORTERS' TRANSCRIPT.

VOL. 33

I N D E X.

Direct.

Cross.

Re-D.

Re-C.

John R. Harrington,

3020

1 TUESDAY, JUNE 25, 1912; 9 A.M.

2 Defendant in court with counsel.

3 THE COURT. I have not called the jury in at this time and
4 unless counsel desire it, why, I assume that they consent
5 that they be excused.

6 MR. FORD. We consent. I think the argument will be much
7 shorter if they are not here.

8 MR. ROGERS. It is addressed to the court.

9 THE COURT. I suggested it on account of the jury, I
10 think they have a good many hours sitting in one position
11 and I like to relieve them whenever possible. You may
12 proceed. (Argument)

13 AFTERNOON SESSION.

14 3:45 P.M.

15 Defendant in court with counsel. Jury called; all
16 present. Case resumed.

17 THE COURT. Mr. Harrington was on the witness stand.

18
19 J O H N R. H A R R I N G T O N,
20 on the stand for further cross-examination.

21 MR. ROGERS. Q Mr. Harrington, do you know a man named
22 Berlin? A Yes, sir.

23 Q Did you employ him? A Yes, sir.

24 Q When did you employ Mr. Berlin?

25 MR. APPEL. Mr. Rogers, with your permission, the Court
26 please, we understood that the ruling of the court--

1 THE COURT. Yes, I was about to regard--

2 MR. APPEL. I wish your Honor would make a ruling in the
3 presence of the jury.

4 THE COURT. I think you had better get a formal ruling.
5 The application of the defendant for the alleged dictagraph
6 transcript is denied.

7 MR. APPEL. With an exception on the part of the defendant,
8 and at this point, your Honor, in order to get the record
9 straight, with the permission of counsel, we ask that all
10 of the witness Harrington's testimony given on the stand
11 against the defendant be stricken out on the ground and for
12 the reasons that the defendant has been denied the right
13 of cross-examination upon all subjects connected with the
14 direct testimony of the witness and his relation to the
15 case.

16 THE COURT. The motion to strike out is denied.

17 MR. APPEL. We take an exception.

18 MR. ROGERS. Q When did you employ Mr. Berlin? A I
19 should think during the latter part of September or early
20 in October.

21 Q You knew that he came to you directly from the Burns
22 agency, do you not? A I knew that he had worked for
23 them.

24 Q Immediately before working for you? A No, and after.

25 Q How long before working for you was it that you knew he
26 had been employed by the Burns agency? A He told me he had

1 been employed there about a month before that, and I had
2 worked him in Chicago a couple of years before that.

3 Q He told you that about a month before he came to you
4 he had been working for the Burns agency? A Sometime
5 about that. I don't pretend to be accurate about the exact
6 time.

7 Q Did you send him over to Franklin? A I did.

8 Q When did you send him over to Franklin? A He came to
9 my office sometime, I should think in October, to report
10 some matter about a juror. I told him I had nothing at all
11 to do with the jury, didn't receive reports from them--

12 MR. ROGERS. If your Honor please, I didn't ask for a con-
13 versation. I asked him when he sent him over to Franklin.

14 MR. FORD' I think he has a right to explain.

15 MR. ROGERS. He can answer the question and then explain
16 without any speech.

17 MR. APPEL' He cannot introduce hearsay evidence.

18 THE COURT. Read the answer.

19 (Last answer read by the reporter.)

20 THE COURT. Strike out the answer from the word "juror".

21 MR. FORD. All about his being employed by Burns also
22 is hearsay and should be stricken out. This witness is
23 not testifying--

24 THE COURT. The rest of that answer is not responsive to
25 any question. He asked him when he came and he told him
26 when. That is all that responds to the question.

p 1 MR. FORD. Perhaps it is not responsive, I think that is
2 correct. We can go into it on redirect examination.

3 MR. ROGERS. Please answer the question.

4 THE COURT. He has answered it, Mr. Rogers.

5 MR. ROGERS. He said, "He came to me sometime in October."
6 I asked you when you sent him over to Franklin? A It
7 was after I had discharged him.

8 Q How long was he in your employ? A Three weeks.

9 Q Then, coming from the Burns agency he was in your
10 employ about three weeks and then you sent him over to
11 Franklin?

12 MR. FORD. We object to that as assuming something that
13 is not in evidence by any competent evidence, that he was
14 ever in the employ of the Burns people.

15 MR. ROGERS. He stated so.

16 MR. FORD. No, he stated only what Berlin told him.

17 MR. APPEL. That is all right.

18 MR. FORD. If hearsay is all right--

19 THE COURT. Objection overruled.

20 A What is the question?

21 (Question read.)

22 A He had been out of my employment for some little time,
23 probably a couple of weeks before the Franklin incident
24 occurred.

25 Q And then you sent him over to Franklin? A I referred
26 him to Franklin.

1 Q Then he went back to the Burns Agency after working
2 for you and Franklin? A I never saw nor heard of him
3 since he left my office that day when I told him about re-
4 porting jury matters.

5 Q Did you not say before and after he was in your employ
6 he worked for the Burns Agency? A No sir, you got the
7 thing mixed up.

8 Q You didn't so say that? A Well, this man Berlin was
9 working for the agency in Chicago; I used him for shadowing
10 purposes. I think he was with Thiel or Moody & Boland
11 people in Chicago where I used to get my men. I used him
12 on a case there once or twice, and maybe three or four
13 times. I never saw him until he came to see me once in Los
14 Angeles with Mr Moore of Mr Davis' office, who recommended
15 him highly. Then I gave him three weeks' work and I then
16 discharged him; some little time after that, probably a
17 week or ten days, he came back to report about some juror.
18 I wouldn't listen to him, would not enter into any talk with
19 him at all, but told him to see Mr Franklin, who had charge
20 of the investigating of jurors.

21 Q Then you didn't have anything to do with the jury bus-
22 iness? A No sir.

23 Q Whom did you say he worked for in Chicago? A Myself?

24 Q No, he? A Either -- I think it was either the Thiel
25 people or the Moody & Boland, that is where I usually got
26 my shadows.

1 Q Now, did you employ anybody else from the Burns agency
2 besides Berlin? A Not unless they slipped one over me.

3 Q How about Macy? A I never worked Macy one day in my
4 life; he never worked an hour in my office.

5 Q Did Macy ever charge you with being in the employ of
6 Burns?

7 MR FORD: We object to that as hearsay, and incompetent
8 and immaterial.

9 MR ROGERS: To his face?

10 MR FORD: It would not make any difference, your Honor,
11 whether Macy charged him with doing this or that; it would
12 be purely hearsay; it is not a declaration of this witness
13 to Mr Macy.

14 THE COURT: I think Mr Ford is right about that.

15 MR ROGERS: No sir, his answer may be competent.

16 MR FORD: Let him ask him "Do you know Mr Macy", or, "did
17 you know him at such and such a time and such and such per-
18 sons being present, did you ever say such and such things",
19 as provided by the code.

20 MR ROGERS: We do not have to do that.

21 MR FORD: The code provides for it.

22 THE COURT: Did Macy charge this witness?

23 MR ROGERS: I will change the form of it.

24 Q Did Macy ever have a conversation with you in which he
25 told you, in the Higgins Building, after you started work-
26 ing for the defense, so-called, that you were a Burns man

1 and in the employ of Burns, at the same time pretending
2 to be in the employ of the defense.

3 MR FORD: We object to that on the ground no foundation
4 has been laid showing the place, the time and the persons
5 present, and as to what Macy charged him would be hearsay,
6 too.

7 MR ROGERS I said "say to you".

8 MR FORD: That is all right, or "say to you"; it is hear-
9 say. The only thing that can be responsive would be some-
10 thing that this witness may have said, and then only upon
11 the theory of impeachment, and the foundation will have to
12 be laid.

13 THE COURT: I do not see upon what theory you offer that,
14 Mr Rogers; I do not follow you.

15 MR ROGERS: If I tell you, or your Honor, in the presence
16 of the witness, I tell the witness and I do not want to do
17 that.

18 THE COURT: Well, all right.

19 MR FREDERICKS: It is immaterial and hearsay, no matter
20 what the theory is, your Honor.

21 MR ROGERS: Why, it is as plain --

22 MR FORD: If counsel will write it out and submit a copy
23 to the court and a copy to us we will make our objection.

24 THE COURT: Suppose anybody else would accuse this witness
25 of anything else?

26 MR ROGERS: Then, I purpose to follow it with something

1 that was said.

2 THE COURT: I will resolve the doubt in your favor, but
3 I am in doubt about it, but the objection is overruled.

4 A Please read the question. (Question read.) No sir.

5 MR ROGERS: Didn't Mr Macy say to you, in your office in
6 the Higgins Building, about a month after you entered into
7 the so-called employment of the defense, that he had been
8 a Burns man himself, and that he believed you were a Burns
9 man, and did you not reply to him as follows: "Well, if I
10 could get enough money, I might be."? A No sir.

11 Q Or words to that effect? A Nothing at all.

12 Q You know Macy, don't you? A Yes sir, that one-armed
13 man.

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1 Q Isn't this, just to call your attention to the con-
2 versation; did not Macy come to you and ask you for a
3 position and did you not say to him, "No, you are a Burns
4 man or have been a Burns man," and didn't he reply to
5 you, "You are a Burns man yourself and you ought to know,"
6 or words to that effect, and didn't you then say, "Well,
7 I probably would be if I could get enough money for it,"
8 or words to that effect, between you and Macy? A No, sir.

9 Q You know Macy, don't you? A Yes, sir.

10 Q Had a talk with him, didn't you? A He had been up to
11 my office looking for a position several times.

12 Q You knew he was a Burns man? A An Ex-Burns man
13 yes, sir.

14 Q An ex-Burns man? A yes, sir, he said so.

15 MR. FREDERICKS. We move to strike that out on the ground
16 it is hearsay.

17 THE COURT. Motion denied.

18 MR. ROGERS. Q Didn't you repeat in that conversation or
19 say twice in that conversation, "If I could get enough
20 money for it I would go over," to Mr. Macy? A Your ques-
21 tion is involved there. Go over to Mr. Macy?

22 Q Go over to the other side, the Burns side? A No, sir.

23 Q Didn't you have it in your mind at that time that Macy
24 was a Burns man and had to feel you out to see if he could
25 get you over to the Burns side? A Not at that time, no,
26 sir.

1 Q If Mr. Darrow, in the Hayward Hotel, told you that he
2 had anything to do with the bribery of Franklin, why
3 didn't you testify to it on the stand?

4 MR. FREDERICKS. That is objected to upon the ground that
5 it is not cross-examination, speculative and argumenta-
6 tive. The witness is on the stand to answer those questions
7 that are put to him, and there was no question asked him
8 on direct examination in regard to the dictagraph or the
9 Hayward Hotel or any conversation that he had with Mr. Burns
10 there; no question being asked him in regard to it, the
11 question answers itself, he, therefore, of course, could
12 make no testimony in regard to it.

13 MR. FORD. If your Honor will listen to the beginning.

14 THE COURT. Read the question then I will hear Mr. Rogers.
15 (Last question read by the reporter.)

16 MR. FORD. There is no evidence before the court that he
17 did tell him yet.

18 MR. ROGERS. Now, if your Honor please, they put this witness
19 on to testify to conversations like this: 'That he said--
20 that Mr. Darrow said he knew that Mrs. Caplan had gone, and
21 had--I call your attention to the record that there were
22 reasons why she went, it was all right, he knew there were
23 reasons why she went. He testified that out on the porch
24 at Mr. Darrow's house Mr. Darrow showed him a roll of bills
25 and told him that he had gotten that money, namely,
26 \$10,000 from Tveitmoe's bank, to reach certain jurors, and

1 other matters of that kind. Then it develops on cross-
2 examination that he had four or five conversations with
3 Mr. Darrow at the instance of the prosecution about this
4 case at the Hayward Hotel, and that he was working for
5 the prosecution, sent there by them for the purpose of
6 getting Mr. Darrow to talk and make admissions. Now, I
7 want to know if Mr. Darrow said anything to the effect
8 that he was involved in the bribery of Lockwood by
9 Franklin, why this witness has not testified to it, he
10 having been sworn to tell the truth, the whole truth and
11 nothing but the truth, namely, the whole truth, if they
12 asked him about matters of so much less importance than
13 that, of so much less relevancy and weight with this jury
14 or so much less importance in this case, if he testified,
15 for instance, that he knew there were reasons why Mrs.
16 Caplan was taken to Chicago, why was it that he didn't
17 testify upon the stand, if he knows, if Mr. Darrow ever
18 said to him in all of his four or five conversations that
19 he had anything to do with the main fact in issue. Now,
20 if your Honor please, that is an entirely relevant ques-
21 tion on cross-examination. It is entirely relevant to
22 ask the witness why he has not told everything, if he
23 has anything to tell. Is he secreting something? If he
24 had four or five conversations with Mr. Darrow at the
25 instance of the prosecution about this matter and Mr.
26 Darrow told him that he had nothing to do with the bribery

1 of Franklin, it is a perfectly legitimate question, why
2 haven't you told us that, and I have a right on cross-
3 examination to put my questions, it not being direct, if
4 your Honor please, not direct examination but cross, I
5 have a right to ask him if you know anything about an
6 admission of Darrow that he had anything to do with the
7 bribery of Lockwood by Franklin, why didn't you say so.
8 I have a right to that, sir.

9 MR. FORD. Now, if the court please, we made the objection--

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1 MR ROGERS: If they introduced a part of a series of conver-
2 sations upon any subject and there existed any more I have
3 a right to ask him why he has not testified to any more, if
4 they exist. I don't have to ask him, do they exist?

5 Did he say anything of that kind, on cross-examination?

6 No sir. I may say, if Darrow told you if he had anything
7 to do with the bribery of Lockwood by Franklin, why haven't
8 you testified to it.

9 MR FORD: If the court please, we having made the objection,
10 have the right to close. Counsel has asked this witness
11 why if -- has stated here, rather, in the argument, that
12 this witness is sworn to tell the truth, the whole truth
13 and nothing but the truth, but your Honor knows, and we
14 know and counsel knows that the witness is not allowed
15 to testify to anything except in response to the answer
16 only a few moments ago in response - - in response to the
17 question, when a few moments ago an answer was stricken
18 out simply because it was not responsive to the question,
19 and we conceded it was properly so, this witness can only
20 answer such questions as are propounded to him. The only
21 person who knows why the questions -- why other questions
22 were not asked of him, is the prosecution. The prosecu-
23 tion has its reasons for asking only a certain number of
24 questions and for letting other times to -- other questions
25 go until we consider that the proper time has arisen to
26 ask those questions, and counsel knows that, and it isn't

1 fair to the witness in the presence of this jury to stand
 2 up here and accuse him of trying to conceal testimony,
 3 trying to conceal facts from the jury when he is bound
 4 to answer only such questions as are propounded to him,
 5 and so, when this question is put to him, if there were
 6 other conversations, why didn't you tell them -- about
 7 them -- the answer is perfectly obvious to the court, but
 8 it may not be to the jury. The answer is because the ques-
 9 tions were not asked concerning those other matters. Our
 10 reasons for not asking concerning those other matters have
 11 been discussed in the absence of this jury --

12 MR ROGERS: I take an exception to that.

13 MR FORD: I want to be fair to counsel and not repeat them
 14 ~~at~~ the present time, but in fairness to the witness I
 15 think the jury ought to understand that the witness is
 16 presumed to tell the whole truth in answering every ques-
 17 tion that is propounded to him, and the burden of asking
 18 questions rests upon us and the defense. We have asked
 19 certain questions we are interested in. If counsel wants
 20 the whole truth, let them ask about everything that has
 21 occurred, and not correct the witness for not having told
 22 the whole truth or not answering the question when he has
 23 not been asked the question. This question assumes some-
 24 thing that is not in evidence. He said if such and such
 25 things occur, it isn't in evidence that these other con-
 26 versations occurred yet. Let counsel bring it out, if he

1 wants to.

2 MR APPEL: If your Honor please --

3 THE COURT: I don't think the question accused him of
4 any impropriety. The objection is overruled.

5 MR FREDERICKS: We make a further objection, your Honor,
6 that we would like the court to rule on it. There was
7 nothing gone into on direct examination in regard to any
8 questions or any time or any conversations at the Hayward
9 Hotel, and we therefore object to questions on that line,
10 because they are not cross-examination. We are not press-
11 ing the matter, but we wish the record to show that we
12 have objected.

13 MR APPEL: Your Honor, we have a right to ask this witness
14 --

15 MR FREDERICKS: I am not arguing it.

16 MR APPEL: You made an objection now, and we have a right
17 to ask this witness why it is he didn't testify to any
18 further facts, if he knows them? We have a right to show
19 if it is possible, if the witness has been instructed to
20 leave that out --

21 THE COURT: Let him answer the question.

22 MR FREDERICKS: Our objection is overruled?

23 THE COURT: Yes sir.

24 A What is the question? (Last question read by the
25 reporter.) I was not asked any such questions.

26

1 Q Were you told to suppress it? A No, sir.

2 Q Did it ever happen?

3 MR. FREDERICKS. That is objected to as being indefinite.

4 MR. ROGERS. Cross-examination.

5 MR. FREDERICKS. The witness may not understand what is
6 meant by "it"--I do not.

7 THE COURT. Objection sustained.

8 BY MR. ROGERS. Q Did he ever tell you that? A Tell me
9 what?

10 Q That he had anything to do with the bribery of Franklin,
11 down there at the Hayward? A Franklin?

12 Q The bribery of Lockwood, yes. A No, sir.

13 Q He told you he didn't, didn't he? A No, sir.

14 Q You say he didn't tell you that he did or didn't tell
15 you that he didn't? A That is my answer, yes, sir.

16 Q You asked him about it, didn't you? A No, sir.

17 Q Were you sent out here to find out about it? A About
18 what?

19 Q About whether he had anything to do with the bribery
20 of Lockwood? A No, sir.

21 Q They gave you questions to ask him, or instructed you
22 about questions to ask him, didn't they? A Some few
23 things, yes, sir.

24 Q Was the bribery of Lockwood among them? A No, sir.

25 Q You were not to ask him anything about it? A I was not
26 prohibited from asking, but I was not told to and I did
not ask.

1 Q You were not told to? A Yes, sir.

2 Q Now, it was Foster and Lawler that talked to you about
3 what you were to ask Mr. Darrow, wasn't it?

4 MR. FORD. We object to that on the ground the question has
5 been asked and answered before.

6 THE COURT. Objection overruled.

7 A Mr. Foster had nothing to do with it.

8 MR. ROGERS. Q Well, Mr. Lawler, in Mr. Foster's presence?

9 A Yes, sir.

10 Q What is that? A Yes, sir.

11 Q Well, now, wasn't it the reason that you--now, when
12 you were sent out here to get Darrow into a room and talk
13 to him and you were not told to ask him anything about the
14 bribery of Lockwood at all, or the bribery--the Franklin
15 matter, wasn't it because you and Foster knew perfectly
16 well that you were the man that put it up with Franklin and
17 that it was a frame-up from the start and there was no use
18 in telling you to ask Darrow about it?

19 MR. FREDERICKS. We object to that on the ground it assumes
20 a fact not in evidence. The witness has not said that he
21 did not talk about the Franklin matter--in the way counsel
22 had put the question he couples it in with the statement
23 which the witness did make and one answer to the question
24 would undoubtedly be--

25 MR. FORD. It also calls for a conclusion of the witness
26 what was in the minds of Foster and Lawler and their pur-

1 poses, and in addition to that it is argumentative.

2 THE COURT. Read the question.

3 (Question read.)

4 THE COURT. Objection overruled.

5 MR. FREDERICKS. Will the Court permit me to call the
6 Court's attention now, the witness said that he was not
7 told to ask Darrow anything about the bribery of Lock-
8 wood and he has not said that there was no conversation
9 in regard to the Franklin matter, and the question assumes
10 that he did, it is such a general thing--

11 THE COURT. Perhaps there is such a distinction there.

12 MR. ROGERS. Of course, the witness has been given an office
13 I suppose he can answer.

14 THE COURT. Wait a minute--read that question again.

15 (Question read again.)

16 THE COURT. Captain Fredericks is right about the witness's
17 testimony in regard to the Franklin matter.

18 MR. FREDERICKS. I ask the elimination of the Franklin
19 matter from the question, because it is too broad.

20 MR. APPEL. We ask it in that broad sense, your Honor.

21 THE COURT. Objection sustained.

22 MR. APPEL. Exception.

23 MR. ROGERS. Q Now, that you have heard the objection,
24 do you desire to change any testimony you have just given?

25 MR. FORD. We object to that as immaterial and irrelevant,
26 not cross-examination.

1 MR. ROGERS. If not, I will have it read.

2 MR. FORD. We object to that question as not proper to
3 express to the witness, the witness has not expressed any
4 desire to change any testimony.

5 MR. ROGERS. I know he has not, I am asking him.

6 THE COURT. Objection overruled.

7 A Please read it. (Question read.) I do not think so;
8 no, sir.

9 MR. ROGERS. Q Were you told to inquire about the bribery
10 of any juror? A About the bribery matter there was, I do
11 not think, any juror's name mentioned.

12 Q Did Mr. Darrow say or deny to you that he had had anything
13 to do with the bribery of any juror?

14 MR. FREDERICKS. Read the question.

15 MR. ROGERS. Wait a moment--he has got it.

16 MR. FORD. We are entitled to it.

17 THE COURT. Read it.

18 (Question read.)

19 MR. FORD. Which is which? We object to it on the
20 ground--

21 MR. APPEL. Now, your Honor, this apparently, ^{is} an attempt
22 to give this witness a chance to think about it. Your
23 Honor, the question is perfectly plain, he can say, "I
24 object on such and such legal grounds."

25

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1 THE COURT: Counsel is objecting and you cannot deprive
2 him of that right.

3 MR APPEL: It is too plain to not be understood, your Honor

4 THE COURT: He has a right to object. What is your ob-
5 jection?

6 MR APPEL: The witness has started in to thinking, your
7 Honor, and they are giving him more time and more time,
8 and this way we will stay here until dooms-day.

9 THE COURT: What is the objection?

10 MR FORD: The witness can take all the time he wants to
11 think without my making an objection at all, and we will
12 take all the time we want to make the objection.

13 THE COURT: Make your objection.

14 MR FORD: We object to the question on the ground it is
15 a compound question, containing two questions, each one of
16 which is inconsistent with the other, one is, did he say
17 anything about the bribery matter, and the other is, did
18 he deny anything about the bribery matter. Now, he cannot
19 answer that yes or no; it is absolutely impossible to answer
20 that question yes or no; it is a compound question.

21 MR APPEL: The question is, did he say or deny he had any-
22 thing to do with the bribery. Did he say he had anything
23 to do with the bribery of jurors?

24 MR FREDERICKS: Two different questions.

25 MR ROGERS: I will change it.

26 Q Did Mr Darrow deny to you he had anything to do with

1 the bribery of any jurors? Now, let us see if you under-
2 stand me.

3 MR FORD: No objection.

4 MR ROGERS: Thank you.

5 A I don,t think that question was asked.

6 Q Why not? A Because it was not.

7 Q What is that? A It was not asked.

8 Q Why not? A I don't know.

9 Q Wasn't it because you knew who had something to do
10 with the bribery of the jurors that you didn't ask it?

11 A Oh, I knew --

12 Q You knew you and Foster put it up, didn't you?

13 MR FORD: Just a minute; we ask that the witness be per-
14 mitted to answer.

15 THE COURT: yes, finish your answer.

16 A I knew what Mr Darrow told me he intended to do with
17 that \$10,000; I knew the admission he made to me the morn-
18 ing after Franklin's arrest.

19 Q But, when you had this dictagraph working and the re-
20 porters at the end of it, why didn't you ask him then, "Did
21 you have anything to do with the bribery of the jurors"?

22 A Because I never knew anything myself about the bribing
23 of the jurors.

24 Q Why is it you didn't ask Darrow there when that
25 dictagraph was working, "Why, didn't you give that money to
26 Franklin?", so that the dictagraph might hear it?

1 MR FORD: Read that question.

2 MR ROGERS: You need not have it read. Give him all the
3 time to think he needs.

4 MR FORD: I want it read, and I am entitled to it.

5 THE COURT: Read the question. (Question read.)

6 MR ROGERS: Didn't you give that money to Franklin?

7 There is no "why" in that. A That was asked, but not
8 in that way.

9 Q What did you ask Darrow about that? A "You know, Dar-
10 row, you admitted to me the morning after Franklin's ar-
11 rest that you did."

12 Q What did Darrow say to you then? A He said he did
13 not.

14 Q He said "You were dreaming", didn't he? A No sir, I
15 am not a dope-fiend, I don't --

16 Q Didn't he say to you then, "Why, you are dreaming,
17 man; I never did any such thing"? A No sir.

18 Q What did he say to you? A He said he didn't tell me
19 that.

20 Q Didn't he say, "You are a liar"? A No sir.

21 Q Or words to that effect? A No sir.

22 Q But when you did say to him there "Why, you told me
23 you did give him that money", he said, "Why, I did no
24 such a thing"; didn't he say that?

25 MR FORD: Read that. I don't think counsel meant that
26 question.

1 MR FREDERICKS: That question is unintelligible.

2 MR ROGERS: If it is unintelligible, I will change it.

3 Q When you said to Darrow, "Why, you told me you had
4 \$10,000 to bribe jurors with", or something of that sort,
5 Darrow said to you "I did no such a thing", or words to that
6 effect, did he not? A Yes sir.

7 Q And he didn't know that the dictagraph was working then
8 did he? A I suppose not.

9 Q And he looked you right in the eye when he told you
10 that, too, didn't he? A I don't remember.

11 Q Did you look him in the eye any more than you have
12 done here in the court room when you said it?

13 MR FREDERICKS: We object to that as immaterial.

14 THE COURT: Objection sustained.

15 MR APPEL: Exception.

16 MR ROGERS: Now, why didn't you say to him, "Why, I saw
17 you have \$10,000 in money" for the purpose of having the
18 dictagraph hear it, or words to that effect?

19 MR FORD: Let me hear that question again.
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1 THE COURT. Read it.

2 (Question read.)

3 A I did tell him that he told me about the \$10,000.

4 MR. ROGERS. Q Didn't you say there that you saw it?

5 A He showed it to me.

6 Q Did you say there in that room, "I saw it?" A Saw
7 what?

8 Q The \$10,000? A I only saw what he said was \$10,000.

9 Q All right. Didn't you say there in that room that you
10 saw what he said was \$10,000? A I don't think I did.

11 Q Do you swear you didn't? A I am under oath.

12 Q Well, I understand that. You just said a minute ago
13 you didn't think you did. Now, I mean, are you positive
14 about it? A That is my best recollection.

15 Q Then, didn't Darrow say, "Oh, where was it I ever showed
16 you \$10,000?" and didn't you reply, "Either at the house
17 or the office, I don't remember which."? A No, sir.

18 Q Nothing of that kind? A No, sir.

19 MR. ROGERS. Now, if your Honor please, we demand again
20 the production of the dictagraph papers, the sheets
21 written, to contradict the witness, he having testified to
22 conversations occurring down there and having seen the
23 paper itself and it having been shown to him; I demand it.

24 MR. FORD. And we decline to give it on the ground that the
25 document referred to is not competent evidence, is a writ-
26 ten communication made to the District Attorney in official

1 confidence and the public interests would suffer by dis-
2 closure of it at this time.

3 MR. APPEL. There is no such thing in a criminal case,
4 your Honor. The public interests will suffer, your
5 Honor, if an innocent man is convicted by suppression of
6 the evidence.

7 MR. FREDERICKS. There wont be any innocent man convicted.

8 MR. FORD. We will not suppress anything.

9 MR. FREDERICKS. It will come out at the right time.

10 MR. APPEL. Yes, it will come out as you are coming out,
11 and it is all coming out about the efforts and your conduct
12 of the case here is the most prominent part, the suppression
13 of any evidence for public interests. Just think what
14 sort of a misnomer it is, just think how they interpret the
15 law like chewing gum, to think those words have such a
16 significance, your Honor.

17 MR. FREDERICKS. I am done, your Honor, that has got to
18 stop, that has got to stop.

19 MR. APPEL. Public interest demands that the paper be
20 given to us.

21 MR. FREDERICKS. Now, stop it. I have stood this thing
22 just as long as I am going to stand it and I will stand it
23 no longer.

24 THE COURT. Captain Fredericks, sit down.

25 MR. FREDERICKS. I have stood this thing until I have
26 gotten sick and tired of it. If this is going to be a

1 court of justice let us have a court of justice and if it
2 is going to be a fight, then I will have a fight.

3 THE COURT. Captain! be seated.

4 MR. FREDERICKS. I want to know, your Honor, how much
5 longer I have got to endure the insults of the other side.

6 MR. ROGERS. Do you include me in that?

7 MR. FREDERICKS. Sometimes I do, Mr. Rogers.

8 THE COURT. Captain Fredericks!

9 MR. ROGERS. I just saved Captain Fredericks from committing
10 crime, and I do not deserve it.

11 THE COURT. I think the court is quite capable of disposing
12 of this matter without any further assistance.

13 MR. FREDERICKS. I have reached the limit. X

14 THE COURT. The question before the court is a demand for
15 certain documents in the possession of the District Attorney,
16 on which a most careful, dignified and scholarly argument
17 has been presented to this court since 9 o'clock this
18 morning until after 3 this afternoon; the court being fully
19 advised upon the matter did deny the application of the
20 defendant.

21 MR. FORD. Now, there is another matter before the court.

22 THE COURT. Wait a minute, I want to say some thing. There
23 is no necessity, absolutely no occasion for this outburst
24 on either side. If counsel on either side are so overworked
25 and nervously exhausted as to become hysterical they can
26 say so and the court will adjourn and give them a reason-

1 able opportunity to get over it, but the hysterical
2 outbursts seem to indicate overwrought nerves on both
3 sides, entirely out of place. Realizing the intensity
4 of the situation the court will say, under the circumstances,
5 that it must not be repeated. These personal attacks have
6 absolutely nothing to do with the merits of this case,
7 absolutely nothing.

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1 Counsel on either side are not on trial here. Mr Appel's
2 personal attack upon Captain Fredericks was entirely out
3 of order, and Captain Fredericks' reply was shockingly
4 out of order. The court is amazed. Gentlemen that have
5 presented the brilliant and scholarly arguments that have
6 been presented here, that they should so far forget
7 themselves. Let us proceed. Let's drop the incident, Mr
8 Appel.

9 MR APPEL: I know, your Honor, but I was not looking at
10 Captain Fredericks when he was attempting to do something
11 to me, and afterwards, upon reflection, after I was told,
12 I wish to say, your Honor, that we assign his conduct here
13 as prejudicial to the rights of this defendant. We as-
14 sign his conduct as error in this case, prejudicial to the
15 rights of the defendant, and I wish to state right here that
16 any personal demonstration on his part has had absolutely
17 no effect upon me by way of intimidation from him or any-
18 one else.

19 MR FREDERICKS: Now, are we going to have some more of
20 this? I assumed that this incident was closed.

21 THE COURT: It is closed.

22 MR FREDERICKS: I ask your Honor to keep it closed.

23 MR ROGERS: If your Honor please, I have something to say--

24 MR FREDERICKS: If it is an assignment of error, there is
25 no objection to that.

26 THE COURT: That has been done. Now, gentlemen, the ner-
vous strain upon gentlemen in presenting a case of this

1 kind is liable to be very great. I think the time has come
2 to let the question close where it is. †

3 MR ROGERS: The District Attorney has in his possession,
4 according to your knowledge, a full account of what was
5 said between you and Darrow at that room, a part of which
6 I have asked you concerning, has he not?

7 MR FORD: Objected to upon the ground it calls for a
8 conclusion of the witness whether or not -- the witness
9 has already testified that that District Attorney showed
10 him some sheets. There is no foundation to show that this
11 witness knows anything about the preparation of those
12 sheets, and whatever knowledge he may have, those sheets
13 would be surely the best evidence; not what the District
14 Attorney may have told him, or may have shown to him,
15 coupled with the fact whatever was shown him was taken by
16 the witness' testimony, therefore, it will clearly appear
17 to the court that any testimony he may give upon that point
18 will be hearsay and a conclusion upon his part, and upon
19 those grounds we object to the question.

20 THE COURT: The objection is sustained.

21 MR ROGERS: Exception.

22 Q Now, you say you came here and went into that room
23 to get Darrow there, and so forth, after a conversation
24 with Mr Foster and Mr Lawler, to protect your own reputa-
25 tion. Did you ask Darrow in front of the dictagraph
26 if you had anything to do with the bribery of jurors.

1 A In the first place I didn't come at Mr Foster's sug-
2 gestion. That answer will answer all the way through.
3 In the next place Mr Darrow did tell me there himself, that
4 I had nothing to do with it.

5 Q What did he say to you? A That you had nothing to
6 do with that.

7 Q What did you ask him before he made that reply, if he
8 ever did make it? A My recollection is that I said "I
9 had nothing to do with it, Darrow." He said, "No, you
10 didn't."

11 Q With what? A With the jury bribing.

12 Q Why did you ask him that? A I wanted to get him on
13 record.

14 Q Well, now, then, if you wanted to get him on record for
15 the purposes of the prosecution, why didn't -- you also
16 asked him if he had anything to do with it, did you? A I
17 didn't get him on record for the purpose of the prose-
18 cution. I did it for myself -- what is the last part of
19 the question?

20 Q You asked him if he had anything to do with it, you
21 said a while ago, and he said, "Certainly not", or words
22 to that effect.

23 MR FORB: That was not the question at all. We object --

24 A That is not the question you asked a while ago. It
25 was in reference to showing the money.

26 MR ROGERS: Did you ask him if he had anything to do with

1 the bribery of any juror? A No sir.

2 Q Why not?

3 MR FORD: Objected to as irrelevant and immaterial.

4 THE COURT: Overruled.

5 A Because he told me once before that he had.

6 MR ROGERS: But that was not with the dictagraph listening

7 Now, you were on this occasion, trying to get him on re-

8 cord, weren't you? A Yes sir.

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98 1 Q Well, then, why was it when you got him on record you
2 didn't ask him, you and he being alone and confidential,
3 why wasn't it you didn't ask him something about the
4 bribery of jurors?

5 MR. FORD. Objected to as argumentative.

6 THE COURT. Overruled.

7 MR. ROGERS. Q And with the dictagraph listening?

8 MR. FORD. Especially the latter addition, it is very
9 argumentative, more argumentative than ever.

10 THE COURT. Objection overruled.

11 A Because Mr. Darrow never told me outright in words
12 that he had anything to do with the bribing of jurors.

13 MR. ROGERS. Q Did he tell you not outright that he had
14 anything to do with the bribing of jurors? A Yes, sir.

15 Q What did he tell you? A He told me that--the remark
16 he made about Franklin the morning of the arrest.

17 Q I am not talking about that. I am talking about this
18 dictagraph conversation. A You should express it, if
19 you please.

20 Q I will express it. I am talking about your room down
21 in the Hayward. Did he tell you indirectly that he had
22 anything to do with the bribery of jurors down in the dicta-
23 graph conversation? A Yes, sir.

24 Q What did he tell you? A He told me not to tell Mr. Ford
25 or the others about his conversation with me on the porch,
26 to suppress--

1 Q Then he denied he ever had such a conversation with
2 you? A He did.

3 Q When he denied that he had ever had any such conversa-
4 tion with you then he told you not to tell Ford about it?

5 A Yes, sir.

6 Q Well, when he denied that he had it, told you he never
7 did have it-- A Pardon me, you have got that--I said

8 that he denied he showed me the money on the porch and
9 then several times he asked me not to tell Ford or Lawler
10 about the conversation I had with him.

11 Q Didn't he say to you he never had any such conversation
12 with you? A He said he didn't remember.

13 Q Didn't he say he never had any such conversation with
14 you? A I think he did.

15 Q Well, then, when he said he didn't have any such con-
16 versation with you, why did he ask you not to tell Ford
17 that he had the conversation that he didn't have with you?

18 A Because I told him, "Yes, you did, Darrow; you did have
19 that conversation and you showed me the money." "Well,"
20 he said, "that was a private conversation between the
21 two of ourselves and nobody will know about it and you do
22 not have to mention it."

23 MR. FORD. Just a moment. While we are getting down to
24 order I hope we will continue in it and I don't believe that
25 the witness should be interrupted by laughter or being
26 sneered at, and the witness was interrupted.

MR. ROGERS. I shall laugh at this witness and I probably

1 cannot resist sneering at him. I will do my very best to
2 preserve decorum. I shall not commit violence in the
3 court room if I can restrain myself, but I do not promise
4 that when I hear a man say that Darrow denied the conver-
5 sation once and then hear him say that he asked somebody
6 not to tell it, and with the same thing. I prob-
7 ably shall laugh and it may be a sneering laugh too, and
8 I cannot be sure of that, but if at any time I have
9 offended the dignity of this court I stand ready for
10 your Honor's reproof.

11 MR. FORD. I will leave it to your Honor if that conduct
12 is not a breach of decorum in this court room, we want to
13 know it, that is all, in itself.

14 THE COURT. I think the statement of Mr. Rogers is cer-
15 tainly an improper statement. I expect the gentlemen at
16 the bar to refrain from sneering at witnesses on the stand
17 under all circumstances and at all times. Every counsel
18 should exercise that control over his conduct and I cannot
19 believe that a gentleman of Mr. Rogers's standing or
20 position at the bar quite means that.

21 MR. ROGERS. I will tell you what I did mean, your Honor.
22 I meant that I would refrain from anything that might
23 prejudice your Honor's control over the proceedings
24 of your court room. I shall, as in the past, endeavor
25 at all times to govern myself strictly in accordance with
26 the rule of decorum, however, I cannot, I cannot resist

1 showing at times my disbelief in improbabilities, and so
2 far as sneering is concerned, I don't mean to say that I
3 will sneer at the witness. I will merely say I don't
4 believe that he is telling the truth, and we will let it
5 go in the record and I will never sneer again so my sneer
6 will go in the record. I don't believe he is telling the
7 truth and I will keep a straight face.

8 MR. FREDERICKS. We would like to have accompany that in
9 the record we do believe he is telling the truth.

10 THE COURT. Now, gentlemen, let's go on and try this case.
11 Neither counsel on either side is on trial. I am afraid
12 we have perhaps worked over-long hours today. Perhaps we
13 ought not to do that but perhaps it is my fault. Let's
14 finish out the balance of the day in taking evidence in
15 this case. What is the question?

1 MR ROGERS: Did you say to Mr Darrow, for the purpose of
2 having the dictagraph hear you, "You told me you brought
3 the money from San Francisco?" A I don't remember.

4 Q Would your memory be better if you looked at the trans-
5 cript of the dictagraph testimony?

6 MR FORD: Objected to upon the ground it is irrelevant and
7 immaterial: the witness has only one way of refreshing
8 his memory according to section 2052 of the Code of Civil
9 Procedure, or 2047, maybe I have it wrong -- at any rate,
10 whatever the section is, by the memorandum made by him
11 at the time in his own handwriting, and being made at his
12 direction or being one read over by him immediately af-
13 terwards and corrected, and unless the witness requires
14 the use of such memorandum, it is not for counsel to
15 put a question of that character. Our objection is, it is
16 not cross-examination; irrelevant and immaterial.

17 MR ROGERS: 2047: (Reading) "A witness is allowed to re-
18 fresh his memory respecting a fact by anything written
19 by himself, or under his direction." Now, he knew that
20 this dictagraph was taking it down. He was talking for
21 that purpose; he was talking for the purpose of having it
22 taken down, therefore, it was under his direction to that
23 extent. Direction doesn't necessarily mean control, but
24 it means participation. Now, those stenographers were
25 working just as much under his direction, sir, as if
26 they were working in the room. He was talking for the

1 purpose of having them hear. Now he says he doesn't
2 remember. Under his direction there was being taken down
3 this conversation.

4 THE COURT: This question is largely preliminary. Objec-
5 tion overruled.

6 MR ROGERS: He says he doesn't remember. Read the
7 question.

8 (Last question read by the reporter.)

9 A That would depend on the accuracy of the testimony,
10 of the dictagraph testimony.

11 Q Well, assuming it to be accurate, would your memory
12 be benefitted by the transcription of it?

13 MR FORD: Objected to upon the ground that it is a self-
14 evident proposition. The question answers itself.

15 THE COURT: Overruled.

16 A It would have to depend whether my memory would refresh
17 of its own accord or through reading the testimony.

18 Q If you saw what was taken down on that subject at
19 the time would you not be able to answer whether you
20 said that or not?

21 MR FORD: Objected to upon the ground it is argumentative,
22 not cross-examination.

23 THE COURT: Overruled.

24 A It might or it might not.

25 MR ROGERS: Are you willing, if the transcript of testi-
26 mony is produced here in court, are you willing to look

1 at it and see if you can remember?

2 MR FORD: If the court please, it doesn't make any dif-
3 ference whether he is or not. We object to that as incom-
4 petent, irrelevant and immaterial. Suppose this witness
5 is willing, what benefit is that going to be to counsel?
6 Suppose he answers he is willing to do that? Your Honor
7 has ruled that they cannot have it and we are not going
8 to give it to them whether the witness is willing or not
9 willing. We object upon the ground it is incompetent,
10 irrelevant and immaterial and not cross-examination.

11 MR ROGERS: We have got a different situation.

12 THE COURT: Objection overruled.

13 (Last question read by the reporter.)

14 A Yes sir.

15 MR ROGERS: I ask that it be produced then, for that pur-
16 pose.

17 MR FORD: Objected to under subdivision 5 -- we refuse
18 to do it under subdivision 5 of section 1881 of the Code of
19 Civil Procedure, on the ground that any communications
20 we have upon that subject are made to the District At-
21 torney in official confidence, and the public interests
22 would suffer by the disclosure of the same at this time.

23 THE COURT: Objection sustained.

24 MR ROGERS: Exception.

25 Q Didn't Darrow answer to you then, when you asked him,
26 "Did you"-- "Did you tell me that you brought the money

1 from San Francisco?" Didn't Darrow say, "I never told you
2 any such thing, and I never brought any such money", or
3 words to that effect? A No sir.

4 Q Well, then, if you don't remember if you ever asked
5 the question, how is it you cannot say he didn't make
6 that reply? A Because I know no such answer was made.
7 He was hedging all the time.

8 Q Oh, hedging all the time? A Yes.

9 Q Did he answer any such question? A About what?

10 Q About bringing the money from San Francisco? A I
11 do not remember.

12 Q Then, how do you know he was hedging about it?

13 A Because I know he did not make such an answer as that.

14 Q Do you know whether you asked him anything about bring-
15 ing the money down from San Francisco? A/ Not that I
16 recall.

17 Q Do you know whether he said anything to you about it?

18 A I do not recall.

19 Q I will return to the conversation at the Haywards --

20 MR FORD: Isn't this conversation at the Haywards?
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11s 1 MR. ROGERS. Yes, I said I would return to it. In the
2 meantime if you are shown any dictagraph sheets I will
3 interrogate you about it, or any sort of a refreshment of
4 your recollection, I will interrogate you about it. Now,
5 for the short time that remains I want to direct your
6 attention to the alleged conversation about Mrs. Caplan.
7 What did Darrow tell you about Mrs. Caplan?

8 MR. FREDERICKS. Objected to as being indefinite. The
9 witness's testimony shows that he had two conversations
10 about Mrs. Caplan.

11 MR. ROGERS. If he had five, the question includes it.

12 MR. FORD. Which one are you referring to?

13 MR. ROGERS. I am not referring to any one. I am asking
14 him if he can tell me what Darrow told him about Mrs.
15 Caplan.

16 THE COURT. Overruled.

17 A If you refer to the morning of August the 1st, 1911,
18 why, he told me that he had known about it and that he
19 had spoken to Tveitmoe and Johannsen when he was up in
20 San Francisco the week before about their going away, and
21 that there were reasons for her going.

22 Q How do you fix that date? A I left--I came to Los
23 Angeles on the morning of the 1st.

24 Q And Darrow told you that he had talked with Tveitmoe
25 and Johannsen about it and there were reasons? A Yes,
26 sir.

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1 Q Was that after Mrs. Caplan had gone, as you understood
2 it? A Mrs. Caplan left, if I remember rightly, around
3 the last of July.

4 Q You have been told that since you came here, haven't
5 you? A I remember it.

6 Q You have been told that since you came here, haven't
7 you? A No, sir.

8 Q Nobody told you that? A No, sir.

9 Q You have been talking to the District Attorney's office
10 every day since you have been on the stand, haven't you?

11 A No, sir.

12 Q You have been up there every day, haven't you? A Yes,
13 sir.

14 Q Now, did Mr. Darrow tell you what reasons there were for
15 Mrs. Caplan going away? A No, sir.

16 Q Did you ask him? A No, sir.

17 Q When he said there were reasons for it did you have
18 no curiosity about what the reasons were? A I can't
19 say that I did.

20 Q Didn't you know as a lawyer she could not be put on the
21 stand?

22 MR. FORD. Objected to as irrelevant and immaterial, not
23 a correct statement of the law.

24 THE COURT. Objection overruled.

25 A I didn't think about that feature of it at all. I was
26 not interested in Mrs. Caplan.

1 MR. ROGERS. Why, you were up in San Francisco at the
2 time, weren't you? A I was there prior to the time,
3 if you refer to the time I was in Los Angeles.

4 Q Were you up there about the 29th of July? A I was.

5 Q The 28th of July? A Yes.

6 Q Up there when she left? A I had no personal knowledge
7 of her going outside of what I was told. I never saw the
8 woman in my life.

9 Q That is not what I am asking you. You were up there
10 at the time she left? A That I understand she left, yes.

11 Q You got a telegram about it? A Yes.

12 Q Where were you when you got that telegram? A The Argo-
13 naut Hotel.

14 Q Now, if you had no previous knowledge of it and had
15 never talked about it, how did they come to send you that
16 telegram? A I do not know.

17 Q That is a mystery to you why they should send you the
18 telegram to San Francisco that Mrs. Caplan had gone away
19 when you had no previous knowledge of the circumstances
20 whatever? A I can't say that.

21 Q Do you know why they sent you the telegram to the
22 Argonaut Hotel that Mrs. Caplan was out of the state?

23 A The telegram didn't read that.

24 Q Well, whatever the telegram did state? A No, sir.

25 Q You didn't know she was going? A I knew what Johannsen
26 told me that he was going to take her.

1 Q You knew that Johannsen told you he was going to take
2 her? A Yes, sir.

3 Q When did Johannsen tell you that? A I think it was
4 on Saturday.

5 Q The Saturday before she left? A Yes, sir.

6 Q Where? A At Tveitmoe's office.

7 Q Where was Darrow then? A I don't know; I presume he
8 was in Los Angeles.

9 Q Did you know from whom the telegram came? A Yes, sir.

10 Q Did you understand what it meant? A Yes, sir.

11 Q How long before that time had Darrow been up in San
12 Francisco? A He left there on the afternoon of the 22nd
13 of July.

14 Q The afternoon of the 22nd of July. Had Darrow ever
15 talked to you before that time about Mrs. Caplan going
16 out of the state? A I don't recall that he did.

17 Q Then the first person that ever spoke to you about Mrs. }
18 Caplan going out of the state was Johannsen? A That is }
19 my recollection.

20 Q And that was the Saturday before she left? A I think
21 they left on Saturday.

22 Q Well? A I think they left the last of the week.

23 Q Well, how long was it before she left? A I don't
24 know when she left.

25 Q How long was it before you got the telegram? A My
26 recollection is that I got the telegram on the 31st, but

1 I think that was either Sunday or Monday.

2 Q Well, it was a couple of days before you got the
3 telegram? A A day or two; I couldn't tell exactly.

4 Q A day or two? A yes.

5 Q And you had never spoken to Darrow about it in your
6 life, about Mrs. Caplan going out of the state? A Before
7 what?

8 Q Before you got that telegram? A I have no recollection
9 that I did.

10 Q Well, how is your recollection, pretty good? A Fairly
11 so.

12 Q So are you safe in saying you had never talked about it?

13 A That would be my best recollection.

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1 Q Now, when Johannsen told you that he was going to
2 take her out of the state, did he tell you the reason?

3 A No.

4 Q Did you ask him? A No.

5 Q Why, you were a lawyer in the case, weren't you? A Yes

6 Q You knew Mrs Caplan's relation to the case? A I did
7 not.

8 Q You knew she was the wife of one of the defendants?

9 A Yes.

10 Q Well, then, when he told you that he was going to take
11 her out of the state, you being one of the learned counsel
12 in the case, why didn't you ask him, "What are you going
13 to do that for, Johannsen"? A I never meddled with
14 Mrs Caplan or any of the associates of Mr Tveitmoe or Mr
15 Johannsen or any of the people that were involved in that
16 matter in San Francisco.

17 Q You had -- When you got that telegram you already had
18 the cipher code, didn't you? A Yes.

19 Q And you paid no attention about Mrs Caplan going away
20 at all? It was a kind of a matter of indifference to you?

21 A Yes sir.

22 Q No consideration about it at all? A No sir.

23 Q How does it come, then, in the cipher code that you
24 had got up before Mrs Caplan went away, the name "Flora
25 Caplan" appears.

26 MR FORD: Objected to upon the ground it is assuming some

1 thing that is not in evidence. This witness didn't get
2 it up.

3 MR ROGERS: He said he had it before Mrs Caplan went away,
4 and here it is.

5 MR FREDERICKS: We didn't offer it in evidence. Of course,
6 we have no objection to counsel offering it in evidence.
7 We were unable to lay the foundation. If it may be assum-
8 ed in evidence --

9 MR ROGERS: It is people's exhibit No.23, an unfortunate
10 number.

11 MR FREDERICKS: But the writing in the back.

12 MR DARROW: yes, you offered it the second time.

13 MR FREDERICKS: The writing in the back. We did not of-
14 fer the writing in evidence.

15 MR APPEL: When this witness was on the stand he iden-
16 tified that writing.

17 MR FREDERICKS: But we were unable to -- if it is in, all
18 right. We are willing to assume it is in.

19 MR ROGERS: It bears the skiddo number; I don't know any-
20 thing about it. Now, do you understand my question.

21 A I haven't heard it yet.

22 Q Read it to him. (Last question read by the reporter.)

23 A I didn't get up the cipher code and the names and the
24 code and the names were given to me.

25 Q Who gave it to you? A Mr Darrow.

26 Q When? A The next day.

1 Q The next day when? A After he got there.

2 Q What day was that? A Well, I was there the week
3 before with Mr Darrow, and then he gave me the code --
4 we fixed on that code with Mr Johansen and Mr Darrow at
5 the time before Mr Darrow left. Yousee he left the week
6 before Mrs Caplan did.

7 Q Precisely, on the 23rd? A On the 22nd, and I had
8 the code from then on.

9 Q Now, then, you had no concern about it, you had no
10 care about Mr's Caplan at all, and you got a message in
11 the code containing Mr's Caplan's name, you say? A Yes
12 sir.

13 Q Where is any handwriting, anything in Mr Darrow's hand-
14 writing, or that bears even his finger prints that shows
15 that he got up that code or gave you a code?

16 MR FORD: Objecte d to as calling for a conclusion of the
17 witness. This witness has stated as far as the actual
18 evidence is concerned, that he had a list given to him by
19 Mr Darrow personally first, and that hee copied it into
20 this book. Now, the question as to whether there was any
21 finger prints in it or anything of that sort showing
22 that Mr Darrow gave it to him would be purely a matter of
23 argument to the jury, and the question is argumentative
24 and not cross-examination. I don't think it is a proper
25 form of question. Objected to on all those grounds.

26 THE COURT: Objection overruled.

1 A The names and the code itself I had before I had the
2 book.

3 MR ROGERS: Where is any scratch of a pen of Mr Darrow's
4 that he gave you or that you have or know where is, that
5 shows that he got up that code? A That was destroyed.
6 I haven't seen it.

7 Q Who destroyed it? A I presume I did myself.

8 Q You presume you did; when? A When I copied it into
9 the book.

10 Q When did you copy it into the book? A Sometime the
11 latter part of July.

12 Q Well, then, the latter part of July -- the code ap -
13 pears in your handwriting? A Yes sir.

14 Q And that is the only evidence that you know that exists
15 about that code? A At present that is all.

16 Q Do you know where we can find anything else in the
17 future about that code that is in Mr Darrow's handwriting?

18 A No sir.

19 Q Then the only evidence extant about that code is in
20 your handwriting that you know anything about, isn't that
21 so? A Yes sir.

22 MR FORD: Just a moment. I would like to have --

23 MR ROGERS: Where did you get that book?

24 THE COURT: The question is withdrawn and another substi-
25 tuted.

26 MR FORD: I think there was an answer put in there. We

1 have evidence that Mr Johannsen had a code. We don't
2 know whether that is in existence or destroyed. It is
3 purely a conclusion on the part of this witness what be-
4 came of Mr Johannsen's code.

5 THE COURT: If there was an answer strike it out.

6 The question is where did you get that book? A There
7 are two things here. We are talking about the book it-
8 self. You referred to it as a code, and there is the
9 names.

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13s 1 MR. ROGERS. I am asking the witness for a single scratch
2 of a pen of Mr. Darrow's in this code or any part of it
3 or any name connected with it.

4 A I haven't got it.

5 Q Who bought this book? A I did.

6 Q So Mr. Darrow didn't even buy the book that it is in?

7 A No, sir.

8 Q And the code is in your handwriting?

9 MR. FORD. Objected to on the ground it is already
10 answered.

11 THE COURT. Objection sustained.

12 MR. ROGERS. Q And the telegram came to you, didn't it?

13 A Yes, sir.

14 Q And you understood it, is that so? A I ciphered it
15 out, yes, sir.

16 THE COURT. Gentlemen--

17 MR. FREDERICKS. May it please the court, before adjourning
18 I would like to apologize for losing my temper, something
19 that doesn't often happen with me, but I am only human, and
20 I think I owe the court an apology and I make it.

21 THE COURT. I feel, gentlemen, as I said before, that the
22 strain upon counsellors in this matter is a very great
23 one, and that in the very long strain of this trial that the
24 court should bear that in mind, and I think the attorneys
25 at the bar should bear in mind the fact that each one is
26 under great mental strain here. It is an unusual effort

1 to present a long case of this kind, and attorneys
2 should consider that among themselves. It is a most
3 regrettable incident, and I am very glad that Captain
4 Fredericks felt like apologizing to the court voluntarily.

5 (Jury admonished; recess until 10 A.M. June 26th,
6 1912.)

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