

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. 39

I N D E X.

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

John R. Harrington,

3071

B. N. Smith,
Official Reporter

1 WEDNESDAY, JUNE 26, 1912; 10 A.M.

2 -----
3 Defendant in court with counsel. Jury called; all
4 present. Case resumed.

5
6 J O H N R. H A R R I N G T O N,

7 on the stand for further cross-examination:

8 MR. ROGERS. Q With whom have you talked since last
9 night about this case? A With nobody.

10 Q You are sure of that? A Yes, sir.

11 Q Did you go to the District Attorney's office after
12 leaving here? A Yes, sir.

13 Q And were you closeted there for some period of time?

14 A No, sir.

15 Q What is that? A No, sir.

16 Q Do you mean to say you were not up there in the Dis-
17 trict Attorney's office talking with the members of the
18 District Attorney's office after leaving the stand?

19 A No, sir.

20 Q What did you go up there for? A I went up there
21 to meet Mr. Behm, who was going home with me.

22 Q Just to meet Mr. Behm who is going home with you?

23 A Yes, sir.

24 Q Did you see any member of the District Attorney's of-
25 fice? A Yes, sir.

26 Q Did you talk with any of them? A No, sir.

1 Q And you are sure of that? A Yes, sir.

2 Q Were you shown any dictagraph sheets? A No, sir.

3 Q Were you told about the contents of any? A No, sir.

4 Q Anybody come to your house last night or to your place
5 of residence, whatever you call it, and talk with you
6 about it? A No, sir.

7 Q Did you talk with anybody about it last night? A No,
8 sir.

9 Q After you got down to Ocean Park last night whom did
10 you meet? A Nobody but Mr. Behm.

11 Q Mr. Behm tell you something about the contents of these
12 dictagraph sheets? A No, sir.

13 Q And you are sure of that? A Positively.

14 Q Now, in the first conversation that you had with Mr. Darrow
15 down in the Hayward, I am talking about the conversations
16 in the Hayward Hotel, in your room down there where the
17 dictagraph was, did you mention getting money from him?

18 A I don't remember, but I don't think so.

19 Q In the second did you mention getting money from him?

20 A No, sir.

21 Q In the third did you mention getting money from him?

22 A I can't recall.

23 Q In the fourth did you mention getting money from him?

24 A Do you mean by that asking him for money?

25 Q You heard what I said. A I want an explanation; I
26 don't understand the question.

1 Q Read it to him.

2 (Last question read by the reporter.)

3 A I might have referred to what he had paid me.

4 Q Did you ever ask him for any money? A Yes, sir.

5 Q When did you ask him for money down there in the Hay-
6 ward? A I didn't ask him for any money in the Hayward.

7 Q Just a moment ago you said you did. What did you mean
8 by that? A I didn't say anything of the kind and the
9 record will show that.

10 Q Did you demand any money from him at any of these con-
11 versations?

12 MR. FORD. Your Honor please, we object to that on the
13 ground it is calling for a conclusion of the witness.
14 He may ask him what was said or what was done, or if he
15 said such a thing.

16 THE COURT. Objection overruled.

17 MR. FORD. A witness like this cannot be asked any ques-
18 tion—

19 THE COURT. The objection is overruled, gentlemen, proceed.

20 MR. ROGERS. All right.

21 A What was the question?

22 (Last question read by the reporter.)

23 A No, sir.

24 Q Did you tell him that Harriman had received \$5,000
25 after the case closed and that you had received only
26 \$4500 for your services in the case, and you thought you

1 ought to have as much as Harriman had? A I think so.

2 Q You did? A Yes, sir.

3 Q When did you say that? A At one of these conversations.

4 Q What? A I didn't confine myself to Mr. Harriman.

5 Q Which conversation did you say that at? A I couldn't
6 tell you.

7 Q Said it at all of them, didn't you? A No, sir.

8 Q Well, at various of them? A No, sir.

9 Q At more than one of them? A My recollection is only
10 at one.

11 Q Which one was that? A I can't recall.

12 Q You told him you thought you ought to have \$5,000,
13 didn't you? A No, sir.

14 Q Did you mention any sum of money? A No, sir.

15 Q Did you mention the fact that Harriman had received
16 \$5,000 after the case closed and you thought you ought
17 to have as much as Harriman? A I mentioned the first
18 part of that but I am satisfied I didn't mention the last.

19 Q You are satisfied you didn't? A yes, sir.

20 Q Where did you mention the first--why did you mention the
21 first? A Drawing his attention to the fact that he
22 always told me he had no money, and that he couldn't
23 square up with me, and I drew his attention to the fact
24 that he gave Mr. Harriman what Mr. Harriman was entitled
25 to.

26 Q Couldn't square up with you. Did you claim he owed you

1 money? A Certainly did.

2 Q How much did you claim he owed you? A The same as
3 the other attorneys, that was the bargain we made in
4 Chicago before I left there.

5 Q The same as the other attorneys? A Yes, sir.

6 Q How much was that? A They got \$15,000 apiece he told
7 me.

8 Q And you thought you ought to have that? A That was
9 our bargain when I left Chicago.

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1 Q You thought that you ought to have that? A I thought
2 that the contract ought to be kept.

3 Q Now, do you mean to say, in every conversation you did
4 not demand or insist or use some phrase equivalent to a
5 demand or an insistence that he should pay you the differ-
6 ence between \$4500 and \$15,000? A No sir.

7 MR FORD: Now, if the court please, the question has been
8 answered, but I think as to whether or not that ^{one} expression
9 is equivalent to another; ^{is} the question which the court or
10 jury or counsel can draw at any time, but I do not think
11 it is a proper question to address to the witness.

12 MR ROGERS: I cannot put the words in his mouth.

13 THE COURT: Objection overruled.

14 MR ROGERS: Why, don't you know, that over the telephone,
15 after you had finished dictagraphing, when you telephoned
16 to Darrow, that the question of your demand of money was
17 talked over the telephone, and that there were other per-
18 sons on the wire to listen to you?

19 MR KEETCH: We object to that latter part of it, as calling
20 for a conclusion of the witness.

21 MR FORD: It is hearsay.

22 MR ROGERS: Cut the latter portion out.

23 THE COURT: Better re-frame the question so that it will
24 be clear, then.

25 MR ROGERS: Don't you know that on the telephone, after
26 the dictagraphing was over, when you were talking over the

1 telephone, when Mr Darrow called you up, that you demanded
2 money or called for money? A I did not, absolutely.

3 Q What did you say over the telephone?

4 MR FORD: When and where? A At what time?

5 MR ROGERS: After the dictagraphing had been accomplished,
6 and Mr Darrow called you up? A I think all I said was
7 just the one word, "All right".

8 Q What was said to you? A Mr Darrow called me up and
9 he said as long as he had been indicted and I was here as
10 a Federal witness that he could not at the present give me
11 the \$5000 which he agreed to give me, that the matter
12 would have to wait.

13 MR ROGERS: Read the answer, please. (Answer read.)

14 Q You understood what he meant? A Yes sir.

15 Q Well, he meant \$5000 that you had been demanding at
16 this dictagraph conversation, isn't that true? A That is
17 not true, there is not semblance of truth about that.

18 Q During the dictagraph conversations didn't you say to
19 him, that if he would give you \$5000 you would come out
20 here and help him try his case and that you would regard
21 the whole matter as ended and be his friend, and help him
22 prepare his case and all that sort of thing, or words to
23 that effect? A That is false, absolutely false.

24 Q Don't say it is false to me, I am asking you whether
25 that is said or not.

26 MR FORD: I object to that --

1 THE COURT: Wait a moment. Mr Rogers, you have no right to
2 direct the witness in that way, if you desire to have the
3 witness admonished the Court is here to administer any
4 proper admonishment, and will do so, but you cannot admonish
5 a witness.

6 MR ROGERS: I am not admonishing a witness, I am simply
7 telling him, "you need not tell me anything is false that I
8 have asked you."

9 THE COURT: You will have to re-frame the question, if you
10 want an answer to it.

11 MR ROGERS: I take an exception. Please read it.

12 THE REPORTER: Do you want the last portion?

13 MR ROGERS: No, I mean the other.

14 THE COURT: If that is not a part of the question that is
15 another matter. What is the question, now?

16 MR ROGERS: That is what I want.

17 (Last question read.)

18 MR ROGERS: Now, if your Honor please, that is a question
19 read to the witness.

20 THE COURT: Striking out the admonition of Mr Rogers'
21 "Don't say it is false to me", I think the rest of the ques-
22 tion is correct.

23 MR FORD: I think the answer is responsive. I would like
24 to have the answer read. I think it is perfectly respon-
25 sive.

26 MR ROGERS: Just a moment, sir.

1 MR KEETCH: It is not a reflection on you at all.

2 MR ROGERS: Better not.

3 MR FORD: I do not think there is any attempt to reflect
4 on counsel, I think the answer is responsive, he asked him
5 if such a thing as that occurred, and he said "that is
6 false".

7 MR ROGERS: I ask a question in a perfectly proper way,
8 if a certain thing did not happen.

9 THE COURT: Strike out the answer. Now, answer the question
10 Mr Harrington.

11 MR FORD: We would like to be heard, your Honor, I think
12 that he pactly says "That is not true".

13 THE COURT: That is not an answer to the question as pro-
14 pounded. Mr Harrington will answer the question.

15 A That is not true.

16 THE COURT: Read the question again.

17 A I answered it, your Honor, "that is not true".

18 THE COURT: Read the question again.

19 (Question read.)

20 A No sir.

21 MR ROGERS: Did you say anything about coming out here to
22 help him in his lawsuit? A At what time?

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- Q At the conversation down at the Hayward? A No, sir.
- Q At the last conversation or at any preceding conversations at your room at the Hayward? A I do not recall.
- Q You do not recall? A No, sir.
- Q You mean to say you did or did not? A My best recollection is I did not.
- Q How did a matter of giving--of his giving Job Harriman \$5,000 after the case closed come up? A My recollection is that it was in reference to his all the time saying he had no money to square up with me.
- Q Then what was the occasion for his saying he had no money to square up with you if you were not demanding money? A That was prior to this time.
- Q I am talking about the conversations at the Hayward. A I did remind him that he didn't square up with me.
- Q How much did he give you? All the way through for your services, so-called, in the McNamara case? A I think about \$5500.
- Q \$5500? A Yes, sir.
- Q How much of that was for your services and how much for salary--I mean for expenses? A That was all services.
- Q Then you got \$5500 for how long a time? A Eight months.
- Q When did you come here? A I came here on the 25th of June.
- Q And went to work about what time? A I was at work at the time I came here.

1 Q How long had you been at work before you came?

2 A Since the 27th of April.

3 Q Where? A In the east.

4 Q At what places? A Indianapolis, Dayton, Pittsburg,
5 Cincinnati, Cleveland, Toledo, Detroit, some of the places.

6 Q Now, you claimed, did you, down there at the Hayward,
7 that Mr. Darrow owed you money? A I reminded him of the
8 fact that he had not paid me what he owed me.

9 Q Well, now, if Mr. Darrow owed you any money why did you
10 use this expression in this letter of January 20th, 1912?

11 MR. FORD. May I see the letter?

12 MR. ROGERS. It has been in evidence.

13 MR. FORD. I beg your pardon.

14 MR. ROGERS. "My business has gone to the dogs and if you
15 will I think you ought to send me a check to pay me for the
16 loss of business." Why, if he owed you money for services,
17 didn't you say, "Why don't you send me a check for what
18 you owe me?" instead of for the loss of business?

19 A I knew he would understand what the letter meant.
20 Probably was not guarded, was not sending that letter there
21 for that purpose.

22 Q Why was it in the letter of January 20th you said to
23 him, "I think you ought to send me a check to pay me for
24 the loss of business?" Why didn't you say, "Pay me the
25 check for the work I did," if he owed you any money?

26 MR. FORD. Objected to on the ground, if the Court please,

1 that the question has already been answered and that it is
2 argumentative and not anything inconsistent with his testi-
3 mony.

4 MR. ROGERS. No.

5 MR. FORD. I ask that counsel--

6 THE COURT. The last question was identical with this one
7 and it was answered.

8 MR. ROGERS. It was not answered. He said the expression
9 was doubtless unguarded, something of that kind, but that
10 is not an answer, if your Honor please, and I have a right
11 to pursue that. If a man owes another money--

12 THE COURT. If you think you can get any further answer
13 go ahead. Answer the question.

14 Q Because the lost business resulted from the loss of time
15 and I regarded them as synonymous.

16 MR. ROGERS. Q Why did you not say to him in this letter,
17 "You owe me the difference between \$5500 and \$15000 that
18 you promised to pay all the lawyers?"

19 MR. FORD. We object upon the ground it is absolutely--

20 MR. ROGERS. Q "Why don't you give me \$8500?"

21 MR. FORD. Objected to upon the ground that it is absolute-
22 ly immaterial the motive which prompted a man to use one
23 expression rather than another expression. The idea is
24 absolutely immaterial. One person will express an idea
25 one way and another one another way.

26 THE COURT. Objection overruled.

1 A Because we already had discussed that matter before I
2 left Los Angeles.

3 Q Then did you expect in this letter of January 20th that
4 he would send you something in excess of what he owed you
5 for services? A On account.

6 Q Then why didn't you say on account of services?

7 A Because he knew what he owed me.

8 Q Why did you not say on account of services? A Because
9 I told you that expresses it as I thought at the same time.

10 Q You think, then, that your expression, "My business has
11 gone to the dogs and I think you ought to send me a check
12 to pay me for the loss of business," is equivalent to a
13 demand for money owed you for services rendered?

14 MR. FORD. Just a moment, the Court please--I object upon
15 the ground it is incompetent, irrelevant and immaterial, and
16 not cross-examination. The situation is exactly like
17 this. Suppose a man owed his butcher some money--
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1 THE COURT: Overruled.

2 MR FORD: -- his wife is sent --

3 THE COURT: Overruled.

4 MR FORD: If the Court please, am I not allowed to be heard?

5 Counsel here on the other side can argue for hours --

6 THE COURT: There is no necessity for argument on that
7 point. The same question has been before the Court three
8 times in the last half hour. A Read the question.

9 (Last question read by the reporter.)

10 A Yes sir.

11 MR ROGERS: Do you know that each time that Mr Darrow went
12 down there, you telephoned to him to come to your apart-
13 ment at the Hayward, at my office? A I don't understand
14 your question.

15 Q Well then, if it is not understandable I will change it.
16 You telephoned Mr Darrow at my office to come down to your
17 apartment, didn't you, on each occasion? A I won't say
18 on each occasion.

19 Q Well, on most of the occasions? A That is my
20 recollection.

21 Q Did you know that Judge McNutt, Mr Dehm, and myself
22 were consulted before and after he went on each occasion?

23 MR FORD: Objected to on the ground it is irrelevant,
24 and immaterial, being necessarily hearsay and as argumenta-
25 tive. If counsel has any evidence of that character he
26 wants to introduce he can do so.

THE COURT: Objection sustained.

1 MR ROGERS: Did you think you were deceiving Darrow in
2 bringing him down there?

3 MR KEETCH: Objected to upon the ground it doesn't make
4 any difference what the witness thought.

5 THE COURT: Overruled. A Yes sir.

6 MR ROGERS: You thought you were defrauding him, did you
7 not? A No sir.

8 Q Is there any difference in your mind in deceiving him
9 and defrauding him? A Yes sir.

10 MR FORD: Objected to un -- the dictionary makes a differ-
11 ence.

12 MR ROGERS: Were you going to take that \$5000?

13 MR FORD: Objected to as irrelevant and immaterial.

14 MR ROGERS: That was referred to in one of the conversa-
15 tions? A Yes sir.

16 Q Did you ask Mr Darrow how he could pay you the \$5000,
17 whether in currency or by check? Refresh your recollec-
18 tion a bit on that, now. A It is refreshed. Mr Darrow
19 volunteered to pay me the \$5000.

20 Q When was that, that Mr Darrow volunteered to pay you the
21 \$5000? A On the last time that he was there.

22 Q After you had suggested Job Harriman getting \$5000?

23 A I didn't connect that with Mr Harriman, at all.

24 Mr Harriman got what he was entitled to and it made no
25 difference to me.

26 Q That is not an answer, sir. Please answer me, if you
will.

1 A It had no connection with Mr Harriman at all.

2 Q Was it after that, though? A Yes sir.

3 Q And in the same conversation? A I do not think so.

4 Q Or directly following it? A No sir.

5 Q As a matter of fact, didn't you come out here to
6 blackmail Darrow out of some money, as the price of your
7 staying off the stand as a witness against him? A No sir,
8 I did not, and I did not try to blackmail him.

9 Q Didn't you try to get some money out of him? A Pardon
10 me --

11 Q Go ahead. A I told Mr Darrow, rather than say any-
12 thing that was not true, he didn't owe me a dollar, and I
13 told him frequently in those interviews he didn't owe me a
14 dollar, and he was continually indicating in "how much
15 do I owe you, John, how much do I owe you, John?" And I
16 frequently told him, "You don't owe me a dollar, if there
17 are any conditions attached to it", and at last he suggest-
18 ed paying me \$5000 that he owed me for fees. I says,
19 "All right, keep your original promise", and the expression
20 was used "How would \$5000 do?" Or words to that effect, and
21 I said, "All right, just keep your original promise".

22 Q Did you ask Mr Darrow where he got the \$5000 that he
23 paid Harriman? A No sir.

24 Q Did you ask Darrow if he didn't pay Harriman the \$5000
25 in currency? A I don't remember. I had no interest in
26 what Mr Harriman got outside of the fact --

1 Q Did you ask -- A -- pardon me, read the answer --

2 Q Go ahead, and get all you want.

3 MR FORD: Read the answer as far as it goes, and let the
4 witness finish it, please.

5 (Answer read.)

6 A -- that it showed me that Mr Darrow had other money.

7 Q When you got the \$5000 that was the subject of con-
8 versation between you and Darrow, if you did get it, did
9 you intend t o turn it over to Mr Lawler or Mr Foster, or
10 did you intend to keep it? A I certainly meant to keep
11 it.

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5p 1 Q What for? A Fees.

2 Q Fee? That is after you had been before Mr. Lawler and
3 made this arrangement with the prosecution? A Why, yes,
4 my fees were not contingent on anything else but the work
5 I did.

6 Q Then you claim, do you, that Darrow owes you some fees
7 right now? A Yes, sir.

8 Q What is that? A Yes, sir.

9 Q How much do you claim Darrow owes you right now? A Why,
10 we compromised on \$5,000 down there, at his suggestion.

11 Q You compromised on \$5,000 at his suggestion? A Yes,
12 sir.

13 Q Then it was the subject of conversation down there,
14 \$5,000?

15 MR. FORD. Now, we object on the ground that the question
16 has been fully gone into and that the question now suggests
17 that the witness has testified to something different.

18 What this witness has testified to--

19 THE COURT. Objection sustained.

20 MR. ROGERS. What is that, sir?

21 THE COURT. Objection sustained.

22 MR. ROGERS. Exception.

23 MR. ROGERS. Q Were you to do anything further for the
24 \$5,000 that you were to get? A No, sir; I had already
25 earned it.

26 Q Did you suggest the compromise that you would, if it

1 were paid? A No, sir.

2 Q But the matter of any future services on your part to
3 Mr. Darrow was never mentioned? A No, sir.

4 Q By either one? A No, sir.

5 Q Then you claim, do you, that Mr. Darrow now owes you the
6 difference between 5500 and \$15000? A Well, we compro-
7 mised on \$5,000, at his suggestion.

8 Q After it had been suggested that Harriman got \$5,000,
9 after the case closed? A Mr. Harriman's fees had nothing
10 to do with mine at all. Mr. Harriman got, I suppose, what
11 he was entitled to, and he was lucky.

12 Q He was what? A He was lucky.

13 Q And you were unlucky? A I didn't get mine.

14 Q I suppose you feel all right about that, don't you,
15 pleasant and agreeable? A I feel as though I had been
16 duped, I didn't get what was coming to me.

17 Q And are you getting what is coming to you now? A I
18 don't understand the question.

19 Q Are you trying now by going on the stand to get what is
20 coming to you? A I do not understand the question.

21 Q No. And you come from Chicago.

22 MR. FORD. Just a moment--we object to that question as
23 irrelevant and immaterial.

24 THE COURT. Objection sustained.

25 MR. ROGERS. Q You are trying to get square now for money
26 you claim is owed you, aren't you? A No, sir.

1 Q As well as getting immunity? A No, sir.

2 Q Let's see. You have been working for the Chicago
3 City Railway a long time? A yes, sir.

4 Q What was your annual salary?

5 MR. FORD. We object to that as irrelevant and immaterial,
6 a private matter that has no bearing on this case.

7 MR. ROGERS. Yes, it has, too, as to whether he actually
8 earned any \$15,000, or any specified sum of money, I want
9 to show that he never earned \$5500 in the same time in his
10 life, and he never will, I presume, again.

11 MR. FORD. If the Court please--

12 THE COURT. Objection sustained.

13 A I object to these insults, your Honor, and I ought to
14 be protected in Court.

15 THE COURT. I think you are quite right about it, Mr.
16 Harrington, and I think counsel has no right whatever to
17 make the statement that he has just made. He is entitled
18 to his question and to the objection, and the witness
19 is here on the stand and he is entitled to the protection
20 of the court and will receive that protection.

21 MR. ROGERS. Q Did you ever have \$5500 in eight months
22 in your life?

23 MR. FORD. We object to that on the same ground as to the
24 preceding question, incompetent, irrelevant and immaterial.

25 MR. ROGERS. Q While you were practicing law.

26 THE COURT. Objection sustained.

1 MR • ROGERS. Exception.

2 MR. ROGERS. Q Did you ever earn \$5500 in a year practicing
3 law?

4 MR • FORD. We object to that on the ground it is an im-
5 proper question, not a proper test of the worth of attor-
6 ney's services, irrelevant and immaterial.

7 THE COURT. Objection sustained.

8 MR • ROGERS. Exception.

9 MR. ROGERS. Q Wasn't the telephone that Mr. Darrow sent
10 you, that is, wasn't the word Mr. Darrow told you over the
11 telephone--

12 MR. FORD. The last telephone, you mean? Pardon me for
13 interrupting you.

14 MR • ROGERS. Q That is, the telephone after the dicta-
15 graphing, that he was going before the Federal Grand Jury,
16 that is, that Harrington was, that you were going before
17 the Federal Grand Jury--and he didn't think it was proper
18 for him to have any financial transaction with you whatever?

19 A No, sir, that is not the way he expressed himself.

20 Q I will divert a moment to ask you concerning a little
21 matter here. Now, have you been reading over any of
22 your transcripts or the transcripts of your testimony?

23 A No, sir.

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1 or talking over any of the testimony that you have given?

2 A No sir.

3 Q Now, you said you were a lawyer and I would like to have
4 you reconcile, if you please, these two statements, or, if
5 you will, tell me which is true. I read to you your an-
6 swer of yesterday, and then I will read to you your answer
7 found at page 2758, -- the other is at 3061.

8 MR KEETCH: Which are you reading first, Mr Rogers?

9 MR ROGERS: I am reading 3061. This refers to Mrs Caplan's
10 going over to Nevada: "Q -- That is not what I am asking
11 you. You were up there at the time she left. A -- That I
12 understood she left, yes. Q -- You got a telegram about
13 it? A -- Yes. Q -- Where were you when you got that
14 telegram? A -- The Argonaut Hotel. Q -- Now, if you had
15 no previous knowledge of it, and had never talked about it,
16 how did they come to send you that telegram? A -- I don't
17 know." And at line 21 "Q -- Do you know why they sent
18 you the telegram to the Argonaut that Mrs Caplan was out
19 of the state? A -- The telegram didn't read that.

20 Q -- Well, whatever the telegram did say. A -- No sir."

21 Now, I call your attention to the answer found on 2758:

22 "I asked Mr Johansen what he meant by sending me a tele-
23 gram" --

24 MR FORD: What line is that?

25 MR. ROGERS. 23--

26 MR FREDERICKS: Q This is on your direct examination:

1 "Q -- What did he say, if anything? A -- He said he sent
2 it to test the Code." Now, which is the truth? A Both.

3 Q Both. A Yes sir, one is hearsay and the other is,
4 not; the questions were framed differently there.

5 Q You were asked here: "Do you know why they sent you
6 the telegram to the Argonaut Hotel, that Mrs C^aplan was
7 out of the state? A -- The telegram didn't read that.

8 Q -- Well, whatever the telegram did state. A -- No sir."

9 A I still answer that way.

10 Q You still say it? A Yes sir.

11 Q What is your explanation?

12 MR FORD: We object to that. Let him read it. I think
13 there is absolutely nothing inconsistent in the two answers
14 of the witness, and the witness has already answered the
15 question. Of course, we have no objection to them re-
16 reading the answer if they want it.

17 THE COURT: Read the answer.

18 (Answer read by the reporter as follows: "Yes sir. One
19 is hearsay and the other is not; The questions were framed
20 differently there.")

21 MR ROGERS: So you are drawing a lawyer's distinction
22 between hearsay and incompetent testimony and what you
23 answered on cross-examination, are you?

24 MR FORD: We object to that on the ground that the question
25 is improper, irrelevant and immaterial; the witness has
26 answered truthfully, as a witness.

- 1 THE COURT: Objection sustained.
- 2 MR ROGERS: Those papers come yet?
- 3 THE COURT: I will inquire in a moment. I sent the clerk
4 on another errand.
- 5 MR ROGERS: Now, did you ask Mr Darrow anything about the
6 last payment that he made you of money, on account of your
7 services?
- 8 MR FORD: At what time and place?
- 9 MR ROGERS: At any time or place.
- 10 MR FORD: Objected to upon the ground it has been asked
11 and answered, then.
- 12 MR ROGERS: No, it has not.
- 13 THE COURT: Overruled. A Please read the question.
14 (Last question read by the reporter.)
- 15 MR FORD: Now, the court please, we object upon the ground
16 no foundation has been laid, as to time, place and persons.
17 I don't understand whether it refers to the time that
18 Mr Darrow paid him the last sum did he ask him anything
19 at that time, or whether it refers to some subsequent
20 conversation upon the subject.
- 21 MR ROGERS: Did he ever ask him then, or any time?
- 22 MR FORD: I assume counsel has some specific instance in
23 his mind, concerning which he wants to interrogate this
24 witness, and if so I think he can lay the time and place
25 with some little degree of certainty, anyway.
- 26 THE COURT: Objection overruled.

1 A Will you read that question, now?

2 (Last question read by the reporter.)

3 THE COURT: That question is supplemented by saying, "at
4 any time."

5 A I spoke about the last payment that he made.

6 MR ROGERS: Where? A I think at the Hayward Hotel.

7 Q What did you ask him? A I spoke to him about his
8 paying me that in currency, \$2500, and it was in the course
9 of conversation.

10 Q What did you ask him? A He was talking to me about
11 money all the time, every time he mentioned not to tell
12 Ford about the conversation on the porch, he would want
13 to know how much he owed me. I told him it was not a
14 monetary matter with me at all.

15 MR ROGERS: I submit, your Honor please, the witness is not
16 answering the question. I asked him what he asked Darrow
17 about that \$2500. Now, he is trying to make a speech that
18 he has tried three times to make, according to the record.
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7s 1 THE COURT. Read the answer as far as it has been given.

2 MR. FORD. He is giving a conversation and I think if you
3 will allow him to complete it you will see the relevancy
4 of it.

5 (Last answer read by the reporter.)

6 THE COURT. I think the answer is proper as far as it has
7 gone. He ought not to be interrupted.

8 MR. ROGERS. Let me call your Honor's attention to the
9 question.

10 THE COURT. I don't want to be wrong about it. Read the
11 question.

12 (Last question read by the reporter.)

13 MR. ROGERS. What did you ask him. Now, he is trying to
14 say Darrow was all the time talking this, that or the other
15 thing; it is not responsive at all.

16 MR. FORD. It is preliminary to his answer to explain it.

17 MR. ROGERS. He must first answer and then explain. That
18 is the rule.

19 THE COURT. Yes, I think that is the strict rule.

20 A I did not ask him anything.

21 MR. ROGERS. Q Didn't you ask him where he got that \$2500
22 that he paid you the last thing before you went back to
23 Chicago? A I might have.

24 Q Did you? A I think I did.

25 Q And then what did you ask him about it? A Where he had
26 kept it.

Q What did you ask him about it?

1 MR. FORD. He just answered. Objected to upon the ground
2 it was answered.

3 THE COURT. I think there was an answer. I couldn't hear it.
4 Read the answer.

5 (Last answer read by the reporter.)

6 MR. ROGERS. Q What did he answer you? A In a vault;
7 some vault.

8 Q Did he say whom he got it from? A If you pardon me, do
9 you mean whom he got it from or who brought it to him?

10 Q Either way you want it. A I think that he said that
11 Mr. Davis brought it to the office to him. Now, I wont
12 be positive about that.

13 Q Did he say that he had anything to do with the vault
14 that it was kept in? A No, sir; that subject didn't come
15 up.

16 Q Didn't you ask him there in that room where the dicta-
17 graph was working, if it was not part of a slush fund?

18 A. You got that in in a different way. Yes, that was
19 brought up.

20 Q In reference to the \$2500? A \$2500, that is right.
21 You are getting to it.

22 Q What did Mr. Darrow say to you then? A Oh, I don't
23 remember his exact words.

24 Q Well, do the best you can with it. A I told him, if
25 you pardon me to get at it this way--

26 Q No, get at it my way; what did he say? A As near as I

1 can answer he says he can't prove anything like that, or
2 words to that effect.

3 Q You don't remember the exact words? A Not the exact
4 words.

5 Q Wasn't what he said, "There wasn't anything like that?"

6 A What is the question?

7 (Last question read by the reporter.)

8 A I didn't catch it yet.

9 Q What? A I don't understand you yet.

10 MR. FORD. Just a moment--I think the witness ought to be
11 permitted to explain his answer.

12 THE COURT. Read the last question and answer and then Mr.
13 Rogers's question I think will be understood.

14 (Testimony read as indicated.)

15 A That was referring to Ford, the word "he".

16 MR. ROGERS. He can't prove anything like that, but
17 you don't remember the exact words. Now, what he said
18 was this, wasn't it, "There wasn't anything like that?"

19 A No, sir.

20 Q Did he tell you where he got it, that \$2500 that he paid
21 you just before you went to Chicago? A I have answered
22 that question.

23 Q Got it from the vault? A Yes, sir.

24 Q Did he say that Mr. --he got it from LeCompte Davis?

25 A Now, I don't want to mention Mr. Davis's name without
26 being sure about it, but that is my best recollection.

1 Mr. Davis brought it to him, that is my best recollection
2 of that conversation.

3 Q Didn't he tell you that he got it from LeCompte Davis?

4 A No.

5 MR. FREDERICKS. That is objected to as already being an-
6 swered.

7 THE COURT. Objection sustained.

8 MR. ROGERS. Exception.

9 A By the way, there was \$32.00 short in that \$2500. It
10 was not quite \$2500.

11 MR. ROGERS. Q There was what? A \$32.00 short.

12 Q So you have got a financial grouch, have you, \$32.00
13 short in 2500?

14 MR. FORD Just a moment--we object to that, that is not
15 a proper term to use to the witness, "you have got another
16 financial grouch," not proper cross-examination.

17 THE COURT. Objection overruled.

18 A No, sir.

19 MR. ROGERS. Q When did you find out you had been short-
20 changed? A At the time Mr. Darrow gave me the money he
21 drew my attention to it.

22 Q So, in addition to the \$8500 coming to you for your
23 professional services in the McNamara case, there is \$32
24 short on his payment of \$2500 to you? A He gave me
25 \$2500 less \$32 at the time he paid that last amount.

26 Q Counsel calls attention to the fact that my adding

1 machine is not working this morning. It should be \$9500
2 instead of \$8500. Well, at any rate, whether it is 8500
3 as I first said, or \$9500 as Mr. Dehm says, and that dif-
4 ference of \$32 financially between you and Mr. Darrow

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1 MR FORD: Objected to upon the ground the matter has been
2 fully answered.

3 THE COURT: Overruled. A It is according to our con-
4 tract in Chicago before I came out here.

5 MR ROGERS: Why was it when you were writing Mr Darrow you
6 didn't call his attention to the fact that he owed you
7 money?

8 MR FORD: Objected to upon the ground that that matter has
9 been fully gone into.

10 MR ROGERS: Has not even been touched.

11 MR FORD: One letter.

12 MR ROGERS: One letter said he wanted the money because
13 his business was broken up, that's all, not a word about
14 his owing him money. Now, I am asking him why in the world
15 he didn't write to him about it at any time in any of his
16 letters.

17 MR FORD: The Court please, a man might have money owing to
18 him from another party and say, I wish you would pay me, my
19 wife is sick; I wish you would pay me, my children are
20 sick, without mentioning the fact that it was due to him
21 and owing to him. He would understand that the other party
22 was owing; he would state some reason for it. Here is a
23 man owing him money, from a man in Los Angeles, and he says --

24 THE COURT: Let the witness answer the question, then.
25 Objection overruled.

26 A Read the question.

1 (Last question read by the reporter.)

2 A Because I knew that he knew it, and it was unnecessary
3 to call his attention to that fact.

4 MR ROGERS: In any letter that you ever sent to him, did
5 you ever call his attention to the fact that you claimed
6 he owed you money?

7 MR FORD: Objected to upon the ground the letters them-
8 selves are the best evidence.

9 THE COURT: Overruled. A I don't recall that I did.

10 MR ROGERS: Well, you were living at his house when you
11 were out here, while you were residing there did you ever
12 call his attention to the fact that he owed you money?

13 A Yes sir.

14 Q In anybody's presence? A No sir.

15 Q Was the subject ever referred to so anybody could
16 hear it? A No sir.

17 Q Now, when you were at the Hayward Hotel didn't this
18 conversation occur between you and Mr Darrow, the dicta-
19 graph listening --

20 THE COURT: I didn't get that question.

21 (Last question read by the reporter.)

22 MR ROGERS: -- if I owe you any money, why didn't you say
23 something about it while you were at my house, or before
24 you left, or words to that effect? A No sir.

25 Q The dictagraph listening? A No sir, nothing that
26 would resemble that.

1 Q And didn't you then say, "Oh, I wouldn't talk to you
2 about it," or words to that effect? A No sir.

3 Q Nothing of that kind occurred in the hearing of the
4 dictagraph? A Nothing that would be covered by your
5 two questions, no sir.

6 Q Nothing like it? A No sir.

7 THE COURT: Gentlemen of the jury, bearing in mind your
8 usual admonition, we will take a recess for five minutes,
9 at this time.

10

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

12 JOHN R. HARRINGTON, on the stand for further
13 cross-examination:

14 THE COURT: Before we proceed, gentlemen, I want to say
15 that it has come to my attention, and Mr Van Vleit, Sheriff,
16 I want to call your attention, that it has been brought to
17 my notice that there have been some demonstrations in the
18 rear of the room; this is a very large room and sometimes
19 I do not hear these things, but I want to again repeat the
20 instruction to the Sheriffs and officers here, there is to
21 be no demonstration, no talking, no laughing, and certainly
22 no hint even of hand-clapping. If such things occurred
23 outside of the case yesterday when I sent a man from the
24 house, I did not observe it, but if that happens the
25 Sheriff in the rear of the room must attend to it
26 immediately and promptly. No one has any place in this

1 court room on any occasion that cannot control his conduct.

2 This is a most serious and solemn matter and must be
3 treated accordingly and any member of the public coming
4 in here must either govern himself by that rule or leave.

5 SHERIFF AGUIERRE: Does that include the reporters?

6 THE COURT: That includes everybody in the room.

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8 MR ROGERS: Do you know whether you were the man referred
9 to by Mr Samuel L. Browne, chief of detectives for the
10 District Attorney's office, in the following statement,
11 published in the Times of J^anuary 31, 1912 --

12 MR FORD: (Interrupting) We object to any statement --

13 MR ROGERS: (Continuing) "Darrow's offices were filled
14 with detectives in our employ. Darrow was a shrewd lawyer,
15 but he has one great failing, that of being too close-
16 fisted with his help?"

17 MR FORD: We object to any examination of the witness upon
18 any statement, unless the statement is first exhibited
19 to us.

20 MR FREDERICKS: We make the further objection to that,
21 your Honor, it assumes a matter -- I will ask the beginning
22 of that question be read.

23 THE COURT: Yes, read it.

24 (Beginning of question read.)

25 MR FREDERICKS: Assuming that Mr Browne ever made any such
26 statement, we object to it on that ground, assuming that
fact, not in evidence.

THE COURT: Objection sustained.

9p 1 MR. ROGERS. Exception.

2 MR. ROGERS. Q Do you know Mr. Peterson? A Yes, sir, I
3 know one Mr. Peterson.

4 Q Do you know whether he was working in the office of the
5 defense while you were over there? A There was a man --
6 he was not in my office, and I had nothing to do with him.

7 Q Did you discharge him or have anything to do with him?

8 A I did not discharge him.

9 Q Did you have anything to do with him? A No, sir.

10 Q Did you not talk with him on several occasions?

11 A Yes, sir.

12 Q You said you didn't discharge him?

13 MR. FORD. Is that a question or a comment?

14 MR. ROGERS. Q That is a question. A Yes, sir.

15 Q Did you talk with him on several occasions? Did you
16 know that Mr. Darrow did discharge him because he was a
17 Burns man? A Yes, sir.

18 Q Did you tell Mr. Darrow that he was a Burns man? A No,
19 sir.

20 Q Did you tell Peterson he was a Burns man? A I put him
21 out of the office after he was discharged, on account of
22 Mr. Darrow's information to me that he was a Burns man.

23 Q Did you ever see a copy of his reports made to Burns?

24 A Yes, sir.

25 Q When? A After he had left. Now, I will modify that,
26 "of his reports". I saw a copy of a blue print that pur-

1 ported to come from Burns's office.

2 Q Did you see a copy of his daily reports to Mr. Burns,
3 while you were in the office? A No, sir.

4 Q Well, now, you say that you had talks with him, you
5 didn't discharge him, you saw a copy of blue prints of his
6 reports said to come from Burns's office, why didn't you
7 discharge him? A I didn't say I saw a blue print of his
8 reports. A blue print of the diagram he made of our offices.
9 And he was already discharged at that time.

10 Q You knew he was a Burns man all the time, didn't you?

11 A If you fix the time I can answer. All the time, I will
12 say, "Not."

13 Q Well, you knew he was a Burns man part of the time he
14 was working in the office? A After Mr. Darrow drew my
15 attention to him, and we were keeping him there to see if
16 we could trap him.

17 Q As a matter of fact you were keeping him there as a
18 means of communication with the Burns agency? A No, sir;
19 he was there before I came to the office at all; he was
20 working there when I came, before I arrived.

21 Q He was kept there with your knowledge after he was a
22 Burns man? A With the knowledge--I had nothing to do
23 with keeping him there. He was not working under me or
24 my side of the house.

25 Q Did you tell Mr. Darrow anything about his being a
26 Burns man? A No, sir; Mr. Darrow told me.

1 Q Did you tell Peterson anything about his being a Burns
2 man? A At what time?

3 Q At any time? A Yes, sir.

4 Q Before his discharge? A You see you put in that
5 little joker. No, sir.

6 Q What is the little joker? A "Before his discharge."
7 That was ^{not} connected with the first part of your question at
8 all until I started to answer .

9 Q Just wait, if you kindly will, until I finish my ques-
10 tion. A You hesitated.

11 Q And you will not find any little joker.

12 MR. FORD. I ask the court to instruct the witness and counsel
13 not to indulge in any--

14 MR. ROGERS. Some people can talk to me in that sort of
15 fashion and some I resent, sir, and I don't like to have it--

16 THE COURT. Mr. Rogers, you know the rule too well to have
17 it stated. There is only one way you can converse with
18 the witness on the stand and that is by questions and
19 answers.

20 MR. ROGERS. Q What did you make that remark about a
21 little joker for?

22 MR. FREDERICKS' Objected to upon the ground it is imma-
23 terial.

24 THE COURT' Overruled.

25 A Because the last part of your question was not connected
26 with the first part of your question and was not spoken until

1 I started to answer, then you added, "Before his discharge."
2 My answer would have been entirely different. It would
3 have put a different construction on it if I answered your
4 first question as it was and your question with the addi-
5 tion to it.

6 MR. ROGERS. Q Now, take my question without any little
7 joker, or without any pause or hesitation, and be kind
8 enough, if you will, to wait until I finish it. You knew
9 he was a Burns man while he was working in the office, did
10 you not? A Yes, sir.

11 Q And drawing salary from the def_ense? A I knew nothing
12 about his salary arrangement at all. He was not working
13 in my office; I had no jurisdiction over him; never
14 paid him; never gave him a dollar; never conversed with
15 him about the case.

16 Q Do you know about any other Burns man than Peterson
17 that was in the office? A No, sir.

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1 Q Is there any hesitation in your mind about that?

2 A No, I was thinking, and I cannot recall.

3 Q You cannot recall any? A No sir, I know of no other.

4 Q Do you know of any being sent over to get employment?

5 A That I cannot answer because I don't know. There were
6 several parties came and asked for employment. There was
7 Mr Macy you mentioned yesterday, came frequently after
8 employment, and several others, and would only be a suspi-
9 cion or hearsay on my part. If you will mention names,
10 then I will try to respond to them.

11 Q Did you ever tell Mr Darrow of any person you suspected
12 of being a Burns man that was in the employ of the defense,
13 or who had applied for employment? A Of course, we have
14 already discussed Berlin's connection with the office and
15 Peterson, we discussed with Mr Darrow, and then there was
16 some other man that Mr Darrow himself had, that he told me
17 was an ex-Burns' man. I forget his name. It was kind of a
18 French name, Veran or some such name as that. I can't
19 pronounce it. My recollection is that it started with a G,
20 but I can't recall it, because I didn't know the man well.

21 Q Do you know a man named Wells? A Not by that name,
22 no sir.

23 Q A tall man, rather thin and dark, with dark eyes and
24 a darkish moustache, a young man, probably 30. We who are
25 getting old call 30 young. A That would fit Berlin's
26 description with the exception of the moustache, but I

1 never knew him to go by the name of Wells.

2 Q Now you said that in Chicago you had entered into
3 arrangements with Mr Lawler to come out here and dictagraph
4 Mr Darrow? A Yes sir.

5 Q Did Mr Lawler at that time tell you he would pay the
6 expenses of the operation? A Yes sir; my expenses.

7 Q Your expenses? A Yes sir.

8 Q Such expenses as you might incur in the operation?

9 A No sir.

10 Q Well, such expenses as you might incur in the pursuit
11 of the dictagraphing? A No sir.

12 Q Well, what expenses did he tell you he would pay?

13 A My railroad fare and hotel expenses.

14 Q That was in Chicago that he told you that? A Yes sir.

15 Q I understood you to say that your moving object in
16 doing this was to show that you had nothing to do with the
17 jury bribery, so? A Yes sir.

18 Q Now, as a matter of fact, when you became Mr Lawler's
19 employe did you have any doubt that you were perfectly
20 safe on that subject? A On what subject?

21 Q On the subject of jury bribing? A I always knew I was
22 safe if I would not be jobbed.

23 Q Always, knew you were safe if you would not be jobbed?

24 A Yes sir.

25 Q Then your coming out here and jobbing Darrow was for
26 the purpose of preventing yourself from being jobbed?

1 MR FORD: If the court please, we object to the question,
2 and that it assumes the witness jobbed Mr Darrow. I don't
3 think it is a proper question --

4 MR ROGERS: Using his words.

5 THE COURT: Objection sustained.

6 MR ROGERS: Then we will use the word "trapping" instead
7 of "jobbing", and your coming out here and trapping Darrow
8 was in pursuit of your endeavor to keep yourself from
9 being jobbed, is that right? A Yes sir; to fortify
10 myself, in case they tried to do it.

11 Q And what interest did Lawler and Foster have -- pardon
12 me -- what interest did Lawler tell you he had in preventing
13 you from being jobbed? A Lawler apparently had no inter-
14 est in my being jobbed; his interest seemed to be to get
15 evidence for himself in some other matter; in some other
16 phase of the matter.

17 Q And you tried to get that evidence for him? A Yes sir.

18 Q Now, you said that you did not ask any questions con-
19 cerning the jury bribing of Lockwood or any jury bribing.
20 What subject was it that you were getting evidence on for
21 Mr Lawler?

22 MR FORD: We object to that question, in that it assumes
23 there is any evidence that he had testified at any time,
24 that he did not ask him anything about jury bribing. The
25 answer was he didn't ask him anything about the bribing of
26 Lockwood, he didn't ask him anything about the bribing of

1 any particular juror, but he did discuss the question about
2 the relations of Darrow with Franklin.

3 THE COURT: Read the question.

4 (Last question read.)

5 THE COURT: Objection overruled.

6 MR ROGERS: If your Honor pleases, counsel has said to
7 the jury --

8 MR FORD: It doesn't make any difference what I said, the
9 jury is not paying any attention to my remarks, they are
10 addressed to the Court.

11 MR ROGERS: If I may be permitted --

12 THE COURT: You have an assignment of error.

13 MR ROGERS: I assign as error the statement, because I
14 read from the transcript, which contradicts --

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1lp 1 MR. FORD. (Interrupting) I withdraw the remarks and
2 ask that the jury be instructed to pay no attention to them,
3 that your Honor admonish the jury to pay no attention to
4 them.

5 THE COURT. Gentlemen of the jury, you heard the remarks
6 of the District Attorney that he has withdrawn them, and
7 you are instructed to absolutely disregard them.

8 MR. ROGERS. Notwithstanding that, the admonition of the
9 Court--with all due respect to your Honor's endeavor to
10 correct the error of the District Attorney--it is not
11 always satisfactorily/^{corrected}and I therefore say that my question
12 is founded upon the question found at page 3049, line 26:
13 "Did you ask him if he had anything to do with the bribery
14 of any juror? A--No, sir."

15 MR. FREDERICKS. There is a question pending, your Honor.

16 THE COURT. With that in mind, and there is a question
17 already pending--

18 MR. FREDERICKS. There is a question pending to which the
19 objection has been overruled.

20 THE COURT. read the question.

21 (Question read.)

22 A This question says about any jury bribing and the other
23 question you refer to was any juror. I draw a distinction
24 there between the two questions.

25 MR. FREDERICKS. I do not think the witness answered the
26 question.

1 MR. ROGERS. Answer the question.

2 THE COURT. You have not answered the question yet, Mr.
3 Witness.

4 A Pardon me, will you please read it again?

5 THE COURT. Read it again.

6 (Question read again.)

7 A I did not say that, that I did not speak about jury
8 bribing, because I did, but I did not speak about the
9 jury bribing of any particular jurors.

10 MR. ROGERS. Q Oh! Well, what subject was it that you
11 were getting evidence on for Mr. Lawler, let us get to that?

12 A Well, the whereabouts of Schmidtie and Caplan and Mrs.
13 Caplan, principally.

14 Q Anything else?

15 MR. FREDERICKS. We object, your Honor, to counsel going
16 into that matter any further than he has done, by reason
17 of the fact it is not cross-examination and if this witness
18 was an agent for the government, getting evidence for Mr.
19 Lawler in any other matter other than this matter, it
20 seems to me it is not a matter that we should go into here
21 other than in a very general way.

22 THE COURT. Read the question.

23 (Question read.)

24 THE COURT. Objection overruled.

25 A I do not recall anything else just now.

26 MR. ROGERS. Q Don't you recall your asking him if he

1 didn't know something against Gompers?

2 MR. FORD. Pardon me--

3 MR. ROGERS. Q That is, at the dictagraph conversation?

4 A No, sir.

5 Q Did you mention Gompers's name? A Yes, sir.

6 Q In what connection did you mention Gompers's name?

7 A In connection that Gompers would repudiate Darrow in his
8 conduct with the McNamara case, that he would not stand for
9 it or any of the other labor unions would not stand for it.

10 Q Was that all that was said about Gompers?

11 MR. FREDERICKS. That is objected to on the ground it is
12 not cross-examination, immaterial, anything they said.

13 MR. ROGERS. No, sir.

14 MR. FREDERICKS. Or any efforts that were made in regard
15 to Mr. Gompers, as not material to this issue.

16 THE COURT. Objection overruled.

17 A I do not recall any others.

18 MR. ROGERS. Q Will you say that you did not say to Mr.
19 Darrow, "Why didn't you tell something against Gompers
20 and turn up Schmidtie, and that is all they want?" or words
21 to that effect? A No, sir, that is not true; I am
22 satisfied that is not true as regards Mr. Gompers.

23 Q As regards to Mr. Schmidtie? A Yes, sir.

24 Q Did you tell him if he would turn up Schmidtie, so-
25 called, that everything would be all right with him, or
26 words to that effect? A I didn't say positively that

1 they would be all right, but I thought they would tend
2 to make it all right.

3 Q You endeavored to give Mr. Darrow that impression?

4 A That I have just mentioned?

5 Q Yes. A Yes, sir.

6 Q Did anybody tell you to do that? A No, sir.

7 Q Well, then, what was it Mr. Lawler told you to get
8 evidence on? A On the-- as I told you, on the where-
9 abouts of Schmidtie and Caplan.

10 Q Did he tell you to offer Mr. Darrow any inducement?

11 A None whatsoever.

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1 Q Then, all that Mr Lawler told you to inquire of Mr
2 Darrow about was the whereabouts of Schmidtie and Caplan?

3 A Substantially all. I do not recall of anything else,
4 just now.

5 Q I beg your pardon? A I say, I do not recall of any-
6 thing else, just now.

7 Q Now, would you be kind enough to be reasonably sure
8 about that? Take all the time you need to deliberate and
9 think, and tell me whether or not that is all Lawler told
10 you to get evidence on from Darrow? A I do not think any
11 further deliberation would assist my recollection.

12 Q Isn't it a fact that you are deliberately forgetting
13 any reference to Gompers? A That is --

14 MR FORD: We object to that as not a proper form.

15 THE COURT: Objection sustained, the witness need not
16 answer it.

17 MR ROGERS: What did you say to him about Schmidtie?

18 A I told him I knew where Schmidtie was, that Schmidtie
19 had visited at his house, that he had seen Schmidtie when
20 Mr Darrow was in Chicago, and that I thought it was his
21 duty as a citizen to turn him up.

22 Q Did Darrow say that he had visited his house?

23 A Fix the time.

24 Q At the Hayward Hotel? A He denied it at the Hayward
25 but I told him that he had told me about that previously,
26 that after the explosion of the Times that Schmitie had

1 visited Darrow at his Chicago home, and I say so now.

2 Q Wasn't that long before the Times disaster? A Was
3 what long before the Times disaster?

4 Q Any time that Darrow said Schmidtie was at his house?

5 A It was not. I never heard of Schmidtie in my life
6 until I came into the case on the 27th of April.

7 Q Didn't Mr Darrow tell you, at the Hayward, that Schmidtie
8 had never visited his house at all, at any time, and that he
9 never knew him? A Part of that is true and part not true.

10 Q What part is true and what part not true? A About
11 visiting at hks house, that he had known Schmidtie before,
12 because he told me Schmidtie was a witness for him in a
13 lawsuit in Chicago.

14 Q Didn't Mr Darrow say this: "Somebody told me once that
15 Schmidtie had been a witness in a case I tried in Chicago,
16 but I have not any recollection of it?" A He did not.

17 Q Or words to that effect? A He told me affirmative-
18 ly, that Schmidtie was a witness for him.

19 Q That was while the dictagraph was going on? A I would
20 not say that.

21 Q Well, that was down in the Hayward? A No, because
22 we had conversations about Schmidtie before we had ever
23 met at the Hayward.

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13s 1 Q I am talking to you about the conversation down at the
2 dictagraph place, down at the Hayward. Now, please, I
3 call your attention to that, didn't Mr. Darrow say to you
4 down there that he didn't know where Schmidtie was and
5 couldn't turn him up if he wanted to, or words to that
6 effect?

7 MR. FREDERICKS. I desire to object to the question on the
8 ground it is misleading. Mr. Rogers, according to my
9 recollection of this testimony, has not been talking
10 about the Hayward.

11 MR. ROGERS. Absolutely and at all times.

12 MR. FREDERICKS. No, sir; my recollection is, and I think
13 the witness understood it so, that Mr. Rogers has been
14 talking about a previous conversation which this witness
15 had with Mr. Darrow, and he has gone even so far back as
16 to ask him if the conversation was not before the Times
17 disaster, so he has not been talking about Hayward Hotel
18 until now.

19 THE COURT. I will ask the witness. Mr. Harrington, is
20 the question clear in your mind? A It is clear according
21 to my answers. My answers was responsive to what was
22 in my mind.

23 THE COURT. If it is clear you can answer the question, if
24 not say so and I will have counsel clarify it.

25 A I would want the question read.

26 THE COURT. Read it.

1 (Last question read by the reporter.)

2 MR. ROGERS. I will withdraw that question.

3 MR. ROGERS. Q Didn't Mr. Darrow tell you down at the
4 Hayward, while you were getting him dictagraphed, that
5 he didn't know Schmidtie; that he didn't know where he
6 was; that he had been told that he was a witness once
7 in a lawsuit that he had tried, but that he had for-
8 gotten all about it and wouldn't know him if he saw him,
9 and couldn't turn him up he wanted to, or words to that
10 effect or that in substance or purport? A That is
11 mostly true, with the exception of the first part of it.

12 Q What is not true? A About his not knowing Schmidtie
13 previous to the Times disaster.

14 Q Didn't he say then to you while that dictagraph was
15 working that somebody had told him that Schmidtie had
16 once been a witness but that Mr. Darrow had forgotten him
17 absolutely, or words to that effect? A Yes, sir.

18 Q And that he never knew him? A Yes, sir.

19 Q Now, was that all Lawler sent you out here to get from
20 Darrow, was the inquiry as to where Schmidt was?

21 MR. FORD. Objected to as calling for a conclusion of the
22 witness whether it was all that Lawler sent him out here
23 for. This witness only knows what Lawler told him.

24 THE COURT. Overruled.

25 A Schmidtie and Caplan, I think that is all.

26 MR. ROGERS. Q What did you say that the government

1 would do for Mr. Darrow if he told, as a lawyer, where
2 schmidt was, if he knew? A I didn't use the word Govern-
3 ment. I used "the authorities."

4 Q Well, what did the authorities--change the question.

5 MR. FREDERICKS. Now, the question is involved. There are
6 several elements in it. One part is as a lawyer, I don't
7 know whether the witness understands what he means, I
8 am not sure that I do, and we object to it on the ground
9 it is indefinite.

10 THE COURT. Read it again.

11 (Last question read by the reporter.)

12 THE COURT. Overruled.

13 A The authorities never told me they would do anything
14 for Mr. Darrow in connection with that matter.

15 MR. ROGERS. What did you tell Mr. Darrow that the authori-
16 ties would do for him, if, as a lawyer, he told anything
17 about Schmidt? A I told him I thought the authorities
18 would be lenient with him.

19 Q Did you use the word lenient? A Something equiva-
20 lent to that.

21 Q Did you know what Lawler, as a United States Government
22 official, had to do with Captain Fredericks, as a state
23 official, prosecuting Mr. Darrow in the state court?

24 A No, sir.

25 Q Did you inquire? A No, sir.

26 Q How did you come to say that you thought that the authori-

1 ties would be lenient with Darrow if he would tell any-
2 thing about Schmidtie's whereabouts? A Both sets of
3 authorities were interested in Schmidtie at that time,
4 both the Government and the state authorities.

5 Q Did Mr. Keetch tell you anything about that, about being
6 lenient with Darrow if he would turn up Schmidtie?

7 A No, sir.

8 Q Then Mr. Lawler is the only one in the presence of Mr.
9 Foster, of course, but Mr. Lawler is the only one who told
10 you about your coming out here to get evidence from Darrow
11 as to the whereabouts of Schmidtie, is he?

12 MR. FREDERICKS. That is objected to as assuming what was
13 told in the presence of Mr. Foster, of course. It might
14 have been and might not have been.

15 MR. ROGERS. He said his conversation was in the presence
16 of Mr. Foster.

17 MR. FREDERICKS. Not all of it.

18 THE COURT. Objection overruled.

19 A Please read the question.

20 (Last question read by the reporter.)

21 MR. FREDERICKS' Yes, I think my objection was wrong. I
22 didn't notice the "coming out here."

23 A I think that is all, yes, sir.

24 MR. ROGERS. Q Now, what did you say to Mr. Darrow, as
25 nearly as you remember, about his turning up Schmidt to the
26 authorities?

1 MR. FORD. I presume this is at the Hayward again?

2 MR. ROGERS. At the Hayward, of course.

3 MR. FORD. We were just in Chicago and now we are at the
4 Hayward.

5 THE COURT. That fixes it.

6 MR. ROGERS. It is perfectly clear.

7 A My recollection is that I told Mr. parrow that if he
8 turned up Schmidtie that the authorities might take a more
9 lenient view of his case, or words to that effect.

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1 Q Well, did you need the dictagraph in the room to do that?

2 MR FORD: Objected to as irrelevant and immaterial.

3 THE COURT: Objection sustained.

4 MR ROGERS: Was it your understanding that they put the
5 dictagraph in the room, so that that conversation could be
6 taken down?

7 MR FORD: Objected to as irrelevant and immaterial; fully
8 covered on cross-examination.

9 THE COURT: I think that objection is good. I think it
10 has been fully covered.

11 MR ROGERS: Not with reference to Schmidt alone.

12 THE COURT: Well, perhaps not.

13 MR ROGERS: Four or five conversations.

14 THE COURT: Yes, I think perhaps on that theory. Obje e-
15 tion overruled. (Lasy question read by the reporter.)

16 A Yes sir.

17 MR ROGERS: What was said about Caplan? A I think the
18 same answer would apply to Caplan.

19 Q Well, be kind enough to say what you said to Mr Darrow,
20 about Caplan. A I thought it was his duty to tell where
21 Caplan was, if he knew.

22 Q Did you use those words? A I won't say that I used
23 these exact words.

24 Q Did you say that in substance and purport? A That
25 is my recollection.

26 Q Were you told to? A Touse words?

1 Q No, were you told to give him that idea? A No sir.

2 Q Then what was it that Lawler told you to get evidence
3 on when he was in Chicago?

4 MR FORD: Objected to upon the ground it has been fully
5 covered.

6 MR ROGERS: No sir.

7 MR FREDERICKS: On the further ground, as I recollect it,
8 it assumes that Mr Lawler told him that he must get evidence.

9 MR ROGERS: He has said so.

10 MR FREDERICKS: I don't so recall it.

11 THE COURT: Objection overruled. (Last question read by
12 the reporter.) A Lawler told me to get information
13 as to the whereabouts of Schmidtie and Caplan, if I could.

14 MR ROGERS: Did he tell you anything else, whatever, to
15 get from Darrow? A I don't recall anything else.

16 Q Did you have any talk with Ford or Fredericks, or any
17 representative of the District Attorney's office, either
18 personally or by telephone or by letter, before you went
19 into that dictagraph room? A No sir.

20 Q Or while you were in it? A No sir.

21 Q Did you see Fredericks in Chicago? A Yes sir.

22 Q Where did you see Fredericks in Chicago? A At the
23 depot.

24 Q By what arrangement did you go to the depot to see
25 Fredericks? A I didn't go there by any arrangement.

26 Q How did you come to see Fredericks in Chicago?

1 A We both left Los Angeles on the same train.

2 Q At what time did you leave Los Angeles on the same
3 train, and approximately with Mr Fredericks? A I didn't
4 leave with Mr Fredericks. He was on the same train I was
5 on. I saw him very little on the way. He was in a differ-
6 ent part of the train altogether.

7 Q Did you see him while you were mutually traveling
8 towards Chicago? A Yes sir.

9 Q Was that after you had talked with Lawler? A Yes sir.

10 Q You saw him at the depot. Did you have conversation
11 with him at the depot? A No sir, not in the sense of a
12 conversation.

13 Q Did you see him on the train? A No sir.

14 Q Did you see him anywhere else than at the depot?

15 A Where?

16 Q In the eastern part of the United States? A No sir.

17 Q In Chicago? A No sir.

18 Q Did you see him, after you saw him at the depot in
19 Chicago? A Yes sir.

20 Q Where? A In Los Angeles.

21 Q At what time? A After I came back for this trial.

22 Q Did you see him approximately at the time this dicta-
23 graphing was going on? A No sir, I never saw Captain
24 Fredericks, during that visit to Los Angeles, at all.

25 Q Or any of his office force? A I saw Mr Ford. He
26 called me to the office and had a subpoenae served on me

1 the night before I left.

2 Q He called you to the office? A Yes sir.

3 Q What office? A District Attorney's office.

4 Q Upstairs here, or over in the International Bank
5 building? A Upstairs here.

6 Q Did you see Mr Ford alone? A No sir.

7 Q Who was with you? A I was alone.

8 Q Well who was with him? A I think Mr Keetch was in
9 the office at the time.

10 Q Mr Keetch? A Yes, and then he brought somebody else
11 into the room to serve the subpoenae.

12 Q Well then, they brought someone else in to serve the
13 subpoenae? A Yes sir.

14 Q Did you tell Mr Darrow, while you were dictagraphing
15 him down at the Hayward, that you had been subpoenaed
16 before the State grand jury? A Yes sir.

17 Q Then you had been up at the District Attorney's office,
18 while the dictagraphing was going on? A No sir.

19 Q Well then, how was it that you told Mr Darrow down at
20 the Hayward while the dictagraphing was going on, that
21 you had been subpoenaed before the State grand jury?

22 A That is true. I had been subpoenaed before the state
23 grand jury.

24 Q Were you subpoenaed anywhere else, than up in the
25 District Attorney's office? A You are confounding the
26 two things. Probably I don't make myself clear.

1 The subpoenae up in the District Attorney's office was for
2 my attendance at this trial. The other subpoenae was to
3 go before the grand jury, county grand jury.

4 Q Where were you subpoenaed to go before the grand jury?

5 A At the Hayward building.

6 Q By whom? A I don't know who he was, some official.

7 Q Do you mean to say that you had no communication by
8 telephone whatever, with the ^{state} district attorney's office?

9 while you were dictagraphing Darrow down at the Hayward?

10 A I positively had no communication with them in refer-
11 ence to the dictagraphing.

12 Q In reference to anything? A To the going before the
13 grand jury.

14 Q Who saw you down there, coming from the District
15 Attorney's office? A Saw me down where?

16 Q At the Hayward? A Coming from the District Attor-
17 ney's?

18 Q Yes. A I don't understand your question.

19 MR FORD: I think what counsel means, what person from the
20 District Attorney's office saw you.

21 THE COURT: You will have to re-frame it, Mr Rogers.

22 MR ROGERS: Did Lawler tell you he was communicating with
23 the state district attorney's office, while you were dicta-
24 graphing Darrow down there? A No sir.

25 Q Did you communicate in any wise, one way or the other,
26 in any fashion with the state district attorney's office,
while you were dictagraphing Darrow down in the Hayward?
A Not only with reference to the grand jury subpoenae.

15s 1 Q And with whom did you have that communication?

2 A The communication was the attendance, I used that word
3 to express the attendance before the grand jury.

4 Q Were you in the District Attorney's office while you
5 were dictagraphing Darrow down there or during intervals
6 between the dictagraphing? A No, sir.

7 Q Did you see Keene Fitzpatrick while you were here on
8 that visit dictagraphing Darrow? A Yes, sir.

9 Q How often? A Every few days.

10 Q Where? A At various places. I saw him at the Hay-
11 ward Hotel. I saw him at the Occidental Hotel.

12 Q You knew he was employed by the District Attorney's of-
13 fice then and was communicating back and forth between
14 you two, didn't you?

15 MR. FORD. Objected to upon the ground that it is assuming
16 something not in evidence, and it is not a fact that he
17 was in the employ of the District Attorney's office.

18 MR. ROGERS. Why--

19 THE COURT. Read that question again.

20 (Last question read by the reporter.)

21 THE COURT. Objection sustained.

22 MR. ROGERS. We take an exception. Q Didn't you know that
23 Keene Fitzpatrick at the time you saw him was communicating
24 back and forth with the District Attorney's office and you?

25 A No, sir; I do not.

26 Q Did you know he was in the employ of the District Attor-

1 ney's office then? A No, sir, I did not.

2 Q You knew it afterwards, didn't you? A No, sir.

3 MR. FREDERICKS. The vice of these questions, your Honor,
4 is the manner in which they are put, is assuming that
5 Keene Fitzpatrick ever was in the employ of the District
6 Attorney's office. Almost impossible to object.

7 MR. ROGERS. I cannot look into the secret service fund.
8 All I know is what Keene Fitzpatrick said.

9 MR. FREDERICKS. I don't know anything about that. I don't
10 care to state--

11 THE COURT. The knowledge of the witness is a proper subject
12 of inquiry by the defense. The question was what he knew.
13 You have a right to it. It lacks but a minute to 12;
14 we will take an adjournment now.

15 (Jury admonished. Recess until 2 P.M.)

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