

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California, )

Plaintiff, )

vs. )

Clarence Darrow, )

Defendant. )

No. 7373.  
part 1

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REPORTERS' TRANSCRIPT.

VOL. 52

I N D E X.

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

Job Harriman,

4156

B. N. Smith,  
Official Reporter

1s 1 WEDNESDAY, JULY 10, 1912; 10 A.M.

2 Defendant in court with counsel. Jury called; all pre-  
3 sent. Case resumed.

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5 J O B H A R R I M A N,  
6 on the stand for further direct examination.

7 MR. ROGERS. Q Mr. Harriman, did you go to your office,  
8 that is, your law office in the Higgins Building frequently  
9 or otherwise during the campaign to which you referred on  
10 yesterday? A Only occasionally, but before you go on I  
11 wish to state that the transcript yesterday makes me  
12 say that I began practicing the last time in '85. It  
13 should make me say in 1905.

14 MR. ROGERS. I agree with the stenographer myself, I think  
15 you said '85. A Did I say '85? If I did it was a mis-  
16 take. 1905 I came back the last time after my sickness.  
17 I didn't arrive in Los Angeles the first time until '86.

18 Q You said you went to your office only occasionally?

19 A Only occasionally during the last month.

20 Q You were engaged in the matters of the campaign then?

21 A All together.

22 Q Were you at your office the morning of November 28th?

23 A I was.

24 Q From where did you come to the office? A From home.

25 Q From home. What time, about, did you leave home on that  
26 morning? A Quite a little before 8. During the campaign

1 we took our meals downtown all together; I left early.

2 Q How did you come? A Walk.

3 Q Where did you live? A 1207 Maryland street, that is  
4 between Fourth and Fifth, a block or two west of Figueroa  
5 a short street.

6 Q Did you say--you say you walked? A Walked.

7 Q Did you come direct to your office or did you stop any  
8 where on your way down? A I walked down to the German-  
9 American Safe Deposit Vault and after visiting the vault  
10 took the machine from there to the office and from the of-  
11 fice to the headquarters.

12 Q Where is the German-American Safe Deposit? A Corner of  
13 Fourth and Spring.

14 Q Approximately, according to your recollection, what time  
15 did you arrive there? A Well, it was a little after 8,  
16 I don't remember, probably 15 or 20 minutes, somewhere  
17 along there.

18 Q Did you wait any time at the vault or not? A Waited  
19 until they opened. They open at 8:30, I believe.

20 Q Did you go to the vault? A I did.

21 Q What did you take from the vault? A \$500 in gold

22 Q In gold? A Yes, sir.

23 Q Did you take any currency at all? A No, sir.

24 Q What did you do with the \$500 in gold that you got out  
25 of the vault that morning? A On the day before--

26 Q You say on the day before? A On the day before, that

1 was on the 27th, the First National Bank presented this  
2 note.

3 Q You say this note?

4 MR. FREDERICKS. May we see it, if it is going to be used?

5 A To my office to Mr. Russell, who was clerk in the office,  
6 and demanded payment. Mr. Russell, on that day, came to  
7 the headquarters and told me. I told him to be at the of-  
8 fice early, that I would be there on the following money  
9 with the cash, stopping at the vault and that I would give  
10 him a check, and that he could then deposit the money in the  
11 bank and pay the note. On the morning of the 28th,  
12 following the presentation of this note, I came past the  
13 vault, got the money, took it to the office, gave it to Mr.  
14 Russell, signed the check for the amount of the note, told  
15 him to deposit the 500 in the California Savings Bank,  
16 which he did, and to inquire of them if there was sufficient  
17 amount to cover the check; the check amounted to about \$600  
18 It was a little short. On the following day he came, on  
19 the 29th, informed me that my balance was a little short.

20 I went with him again to the vault, got \$100. He deposited  
21 it in the bank and paid the note on the 29th, and the stamp  
22 on the note will show the date of payment and the check  
23 will show the date it was drawn.

24 Q Now, you have spoken of this note which you have pro-  
25 duced; counsel has seen it. Is this the note you referred  
26 to in your testimony that I now show you? A That is the

1 note that the First National Bank presented to me at my  
2 office on the 27th.

3 MR. ROGERS. I offer this in evidence.

p 4 MR. FORD. To which we object on the ground it is incom-  
5 petent, irrelevant and immaterial and not pertinent to any  
6 of the issues in this case. There is no dispute about the  
7 fact, your Honor, we do not care anything about that--about  
8 the fact that the note had been paid, but, assuming it  
9 had been paid what bearing has it on this case? As far  
10 as the witness using it to refresh his recollection is  
11 concerned to fix the date, that is the only object of it,  
12 he has done that and we raised no objection.

13 A That is not the object of it, pardon me.

14 MR. ROGERS. You are not a lawyer at this time, you are a  
15 witness and I will take care of that.

16 A I beg your pardon.

17 MR. ROGERS. If your Honor pleases, any physical fact, any  
18 circumstance may be introduced in evidence as part of the  
19 testimony of a witness to which he refers. They introduced  
20 Franklin's deposit slips and one thing and another of the  
21 kind--

22 MR. FORD. Those were moneys actually received.

23 MR. ROGERS-- --as sort of accentuating, if possible, his  
24 testimony.

25 THE COURT. I cannot read that stamp on there, I have not  
26 got my best glasses with me this morning.

1 MR ROGERS: I will loan your Honor mine; they are pretty  
2 good.

3 THE COURT: Yes, I read it now. The stamp says "Paid  
4 November 29, 1911." Do you want it in evidence?

5 MR ROGERS: Yes sir, I offer in evidence the whole note,  
6 together with the stamp.

7 THE COURT: Defendant's exhibit in order. Objection over-  
8 ruled.

9 THE CLERK: Defendant's exhibit G.

10 MR ROGERS: As soon as it is marked, I will put it in the  
11 record. (Note marked.) Certain pencil figures on the  
12 left-hand corner, do you care to have them in?

13 MR FREDERICKS: Not unless they are material.

14 MR ROGERS: In the left-hand corner, "\$557", and two  
15 naughts above the line. "El Monte, Cal., October 20,  
16 1909. On or before two years after date, for value re-  
17 ceived, I promise to pay to Nellie Dobyys, Fluvia Dobyys,  
18 Thomas William Dobyys and George Perry Dobyys" scratched  
19 out "at the First National  
20 Bank of El Monte, Cal., or order, at its banking house in  
21 El Monte, the sum of Five hundred and fifty-seven dollars  
22 with interest at the rate of 8% -- " figure 8 -- "8% per  
23 annum from date until paid, interest payable semi-  
24 annually, and if not so paid, to be compounded semi-  
25 annually and bear the same rate of interest as principal,  
26 and should the interest not be so paid then the whole

1 sum of the principal and the interest shall become immediate-  
2 ly due and payable at the option of the holder of this  
3 note. Should suit be commenced to enforce payment of  
4 this note----- agreed to pay the additional sum of 10% on  
5 principal as attorneys fees in said suit. Principal and  
6 interest payable in gold coin of the United States. Pre-  
7 sentment and demand for payment, protest and notice of  
8 protest are waived." Signature, "Job Harriman."

9 Certain figures, "921 Higgins Building", "11/27" in pen-  
10 cil. "November 23, 1911", in rubber stamp across the face,  
11 in the stamp "Collection Department, Paid November 29,  
12 1911. First National Bank of Los Angeles, Cal." On  
13 the back endorsed, "5/13/11. Paid interest to December  
14 4/10, \$50". Two small naughts above the line. "Pay  
15 to First National Bank of Los Angeles, Calif. for coin  
16 First National Bank of El Monte," somebody "Worth Everett,  
17 A.C." Now, you say you went there to the safe deposit  
18 vault on the morning of November 28, and got \$500 in gold  
19 coin which you gave to Mr Russell, which proved not suffi-  
20 cient to balance your account. Have you your bank book of  
21 that time? A I have.

22 Q Will you produce it? A I will.

23 Q Is that the bank book which you now show me? A That  
24 is the bank book.

25 Q California Savings Bank of Los Angeles, California,  
26 in account with Job Harriman. Do you know that this

1 book was kept in the ordinary course of business? A It  
2 was.

3 Q Do you know that the entries made therein are in the  
4 ordinary course of business of the bank? A They are --  
5 they were.

6 Q And your business with the bank? A Yes sir.

7 Q And is this the book of the time or of the date or  
8 interval of November 29th and November 28th, 1911? A It  
9 is.

10 Q And have you had this in your possession since that  
11 time? A All the time excepting when they had it, being  
12 balanced.

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3s 1 Q And this is your book of that time? A That is my book  
2 of that time.

3 MR. ROGERS. I offer this in evidence, if your Honor please,  
4 in connection with the testimony of this witness, particu-  
5 larly the deposits on November 28, \$500, and of November 29,  
6 \$100.

7 MR. FREDERICKS. That is objected to upon the ground that  
8 it is incompetent, irrelevant and immaterial and self-  
9 serving and no foundation laid. The point is this: There  
10 might be no contention over the matter as to whether Mr.  
11 Harriman paid a note on the date which he says he did, on  
12 the date of the 28th. There may be no contention over the  
13 matter that he deposited his money in the bank, \$500 in the  
14 bank, to pay the note on that date--the contention, if there  
15 is any contention, will arise--does arise in this regard:  
16 Mr. Harriman did go to the vault on the morning of the 28th.  
17 Mr. Harriman did get money from the bank on the 28th. Our  
18 position would be that he got \$4,000 from the bank on that  
19 day and gave it to Mr. Darrow. The position of the defense  
20 would be that he didn't. Now, if--this would be immaterial  
21 in any event if he also did this, the fact he did this doesn't  
22 in any manner preclude the other.

23 THECOURT. I think that is a matter for argument to the  
24 jury, but it is as counsel has suggested a physical fact  
25 that enables the witness to account for his whereabouts and  
26 to trace his actions at that particular time, and ought to

1 be received in evidence. The objection is overruled.

2 MR. ROGERS. Well, while the bank book is being marked I  
3 show to the jury the note, with your Honor's permission.

4 THE COURT. Yes.

5 MR. ROGERS. I show the jury the note which has been in  
6 evidence.

7 MR. FREDERICKS. The entire bank book was offered?

8 MR. ROGERS. The relevancy depends upon the two items which  
9 I related in the offer.

10 THE COURT. You are only offering the book for the purpose  
11 of showing those two items?

12 MR. ROGERS. Of course, to make those two items competent  
13 the book must go in.

14 THE COURT. The jury has completed the examination of the  
15 document, proceed.

16 MR. ROGERS. Now, the defendant's Exhibit H reads as  
17 follows: "California Savings Bank of Los Angeles, Los  
18 Angeles, Cal., in Account with Job Harriman," it is on the  
19 front page of the book. Now, on the book itself, "Dr.  
20 California Savings Bank of Los Angeles, In Account with  
21 Job Harriman, Cr. 1911. October 21, 500; November 11,  
22 --" a figure which I cannot read, I don't know what it is.  
23 A That is the initial of the teller, I think. You see it  
24 changes to B later. It is H and B.

25 Q "November 11, H 500;" either 500 or 590, I don't know  
26 which that is. Have to figure it up and find out.

1 A I am not able to say. It looks like a 9 but I was not  
2 able to say this morning. I think it is 500, however.

3 Q "November 13, H 200; November 21, H 160; November 28,  
4 H 500; November 29;" in rubber stamp, "1911 B, 100;  
5 December 13, 1911, B 549.05; December 22, 1911, B 60;  
6 December 30, H 170; January 6, H 200; January 6, 1912,  
7 Balance 226.71", below it the figure "50", below it the  
8 figure "23"; "January 23, 1912, B 200. On the Cr. side--"

9 A No, that is a continuation, simply a continuation. There  
10 are no credits in that book.

11 Q Oh, I see. "February 2, 1912, B 300; February 5, 1912,  
12 B 1400; February 14, 1912, B 100; February 23, 1912;  
13 B 100; February 27, 1912, B 100;

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1 March 2, 1912, H. 125; April 5, Ldgr, 343; April 18, ditto  
2 marks, 75; April 24, 1912, B. 100; April 26, 1912, B,  
3 100; pencil figures, 1500, nothing opposite. May 23,  
4 1912, B, 283.75; June 1, 1912, B, 350; June 14, 1912, H,  
5 10. I show the book to the jury.

6 MR FREDERICKS: To shorten matters, we will not contro-  
7 vert the fact Mr Harriman paid \$500 that day and an addi-  
8 tional sum on the next.

9 THE COURT: The jury has examined the exhibit.

10 MR ROGERS: The statement may be read to the jury. I  
11 don't think they all got it. (Statement of Mr Fredericks  
12 read to the jury.)

13 MR ROGERS: That is not full enough. Now, Mr Harriman,  
14 the check for the money paid out upon that note, where  
15 is that? A Mr Ford has it.

16 Q I would like it, please.

17 MR FORD: I am looking for it, Mr Rogers. I expected  
18 you would ask for it.

19 MR ROGERS: How did Mr Ford happen to have it? A Mr --

20 MR FORD: Just a moment. We object to that as irrele-  
21 vant and incompetent. A Mr Russell --

22 MR ROGERS: Your Honor please, here is the gist of this  
23 whole thing --

24 THE COURT: Objection overruled. Let him answer.

25 A Mr Russell, whom I paid the money --

26 MR FORD: If the court please, I wish to add just another

1 objection to that. The only object of this question is  
2 to introduce a self-serving declaration, to detail what  
3 somebody else did, and to show how it came to the posses-  
4 sion of the District Attorney. Now, the fact is, it came  
5 into the District Attorney --

6 MR ROGERS: I object to the District Attorney stating  
7 what the fact is.

8 THE COURT: Just a moment, Mr Ford. Now, the court has  
9 ruled upon this question and there is a circumstance  
10 here that in the opinion of the court, the jury is en-  
11 titled to have explained by the witness in response to  
12 the question.

13 MR FORD: Yes, your Honor, if the court will pardon me  
14 just a moment; it is not so much a question -- it is not  
15 the substance of the question as the answer, which is not  
16 going to be responsive. The witness knows the official  
17 manner or can state the official manner in which the Dis-  
18 trict Attorney got possession of the document, and further,  
19 I would like, before the question is answered, to ask  
20 leave to cross-examine him just a moment, in order to pre-  
21 vent self-serving declarations from being introduced in  
22 evidence.

23 MR APPEL: We object to that, your Honor. We have a right--

24 MR FORD: Just pardon me a moment, Mr Appel: We will  
25 show that the witness is mistaken when he makes the answer,  
26 and I ask leave to show on cross-examination --

1 MR APPEL: I appeal to your Honor, not to allow him to  
2 testify here. We take the facts from the sworn lips of  
3 the witness. We take an exception.

4 MR FORD: It will appear in just a moment, and the whole  
5 thing will be disposed of, and to prevent any self-serv-  
6 ing declarations coming in from the witness.

7 THE COURT: I don't think that you have any right to assume  
8 that Mr Harriman here is going to answer a question in  
9 a way that is not responsive.

10 MR FORD: Then, I will ask your Honor to caution the wit-  
11 ness in answering, not to detail conversations.

12 THE COURT: I don't think Mr Harriman needs cautioning.  
13 He is a lawyer at the bar. Read the question.

14 MR FORD: If the court will pardon me, I don't want any  
15 conversation between himself and some other person in the  
16 absence of Mr Ford in response to this question; that is  
17 what I want to keep out. I know what is alleged to have  
18 occurred and it is to keep that out, because it is a self-  
19 serving d eclaration.

1 THE COURT. If Mr. Harriman were not a lawyer I would cer-  
2 tainly admonish him to state the facts that occurred and  
3 not conversations that are not called for in this question,  
4 but as to the facts.

5 MR. ROGERS. Just a moment, if your Honor please, at the  
6 risk of talking after your Honor has ruled, might I sug-  
7 gest that barring of a certain matter here in order that  
8 your Honor may intelligently rule upon the answer of the  
9 witness: Now, Mr. Franklin has assumed to detail an alleged  
10 conversation between himself and Mr. Darrow in which Mr.  
11 Darrow said, "You needn't worry about Job, or Mr. Harriman,  
12 he has got it all fixed it up. He paid a note on that day  
13 and he has got it all fixed up." Now, we purpose to show  
14 that Mr. Harriman had testified and Mr. Russell had testi-  
15 fied before the grand jury, and it was in the possession of  
16 the District Attorney before Mr. Franklin ever testified  
17 to such a thing, that is--

18 MR. FREDERICKS. Doesn't that show that it was all fixed  
19 up?

20 MR. ROGERS. No, sir, it shows that Franklin was fixed up.

21 MR. APPEL. It shows that Franklin was fixed up and he  
22 got his information from the other side.

23 THE COURT. We are getting away off from the case. The  
24 question is admittedly a proper question. I do not think  
25 this witness needs any admonition to answer the question  
26 directly or simply. He may answer the question.

1 MR. ROGERS. Read the question.

2 (Last question read by the reporter.)

3 A Mr. Russell, the same man to whom I have referred, was  
4 called before the grand jury in the investigation of this  
5 case. On his return he told me that he had been asked if  
6 he--

7 THE COURT. Wait a moment, Mr. Harriman.

8 MR. FORD. That was just the point I was driving at.

9 MR. FREDERICKS. It is hearsay, plain hearsay.

10 A Well, it is a matter of record before the grand jury,  
11 your Honor.

12 THE COURT. This question is calling for this witness's  
13 knowledge as to whether he knows how Mr. Ford got that check.

14 MR. APPEL. It goes further, in view of what Mr. Fredericks  
15 has just said, that this witness had fixed this matter up,  
16 and in view of their statement here and the statement of  
17 Mr. Franklin that Mr. Harriman here had guilty knowledge of  
18 this affair, as they claim, we have a right to show, your  
19 Honor, that when they came to him, Mr. Russell, and said  
20 something to him, that this man upon the witness stand,  
21 then claiming to be absolutely innocent, every act of his  
22 indicated that he was absolutely innocent, every act of his  
23 in giving the information and of every kind and description  
24 to the other side was the best proof of his having nothing  
25 to do with it. They did not know, your Honor, at that time  
26 that he had gone to the bank or had had this transaction

1 unless the information came directly from Mr. Harriman and  
2 directly from Mr. Russell, who had acted for him, and that  
3 when Mr. Russell came to him and said something to him as  
4 to what information the other side had, I imagine that--I  
5 don't know what his statements will be--we have a right to  
6 show that he acted perfectly consistent with innocence and  
7 with the innocence of the transaction.

8 MR. FORD. This is the first time in a court of law I ever  
9 heard a doctrine enunciated that a witness could explain  
10 his acts by self-serving declarations made upon particular  
11 occasions, but I do not think it is necessary to discuss  
12 that phase of the case, because counsel has already stated  
13 that the object of this was to show that these documents  
14 had come into the possession of the grand jury, they are  
15 in the possession of Ford, and that it was for the purpose  
16 of showing that they had the possession of them before  
17 Franklin testified, in order to show up a frame-up between  
18 Ford and Franklin, although he has before this time stated  
19 in the record he did not make such accusation, and in view  
20 of the fact they have made that accusation, the only thing  
21 necessary is to show the date that went before the grand  
22 jury, that document. There is no claim made at the present  
23 time that the District Attorney got possession of the docu-  
24 ment surreptitiously or in any other manner than a legal  
25 manner in response to a subpoena to produce it before the  
26 grand jury. We have the document in the archives, or should

1 have in the grand jury exhibits. It is not in the box, I  
2 have sent upstairs to locate it. It was introduced as No.  
3 50 before the grand jury.

4 MR. APPEL. Counsel does not get the idea.

5 MR. FORD. And that being the case, how the witness came to  
6 give up possession of the document or any self-serving  
7 declarations that he might have made while so doing would  
8 not be admissible to explain the conduct of the witness ;  
9 a witness or a party cannot explain his conduct by state-  
10 ments made by himself which are merely self-serving. That is  
11 a rule that is as old as the hills and the reason of it is  
12 perfectly plain, your Honor. A man may have committed a  
13 crime, he may have framed up an answer and divert suspicion  
14 from himself,

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1 He may have expressed certain sentiments, he may have  
2 tried to give them, to give that very frame-up of the  
3 transaction and made remarks, self-serving declarations,  
4 while so doing, in order to divert suspicion, in order to  
5 pretend that he was innocent, and then go on and try to  
6 produce those self-serving declarations. The courts from  
7 time immemorial have held that was the most vicious kind  
8 of evidence classed as hearsay, and not admissible at all  
9 under any circumstances, and if your Honor wants decisions  
10 to the admissibility of self-serving declarations we can  
11 furnish thousands of them; the century will be full of  
12 them.

13 MR APPEL: You don't need to, we will admit that.

14 MR FORD: Our theory with regard to this witness is, he  
15 framed up a certain thing to occur when he would have an  
16 explanation and when the time came when those matters were  
17 being investigated that he came forward in this investiga-  
18 tion, that he came forward with a number of self-serving  
19 declarations; that may be the theory we will adopt in this  
20 case, and if that is true, why, if the witness be allowed  
21 to put in evidence those self-serving declarations of the  
22 frame-up he prepared to unload -- that is the viciousness  
23 of the principles. I make that by way of illustrating  
24 the point.

25 MR APPEL: It is not a self-serving declaration. We  
26 admit a man cannot be permitted to say that he did a cer-

1 tain thing by way of proving innocence, although I know  
2 of one case where a man was allowed to prove his inno-  
3 cence at one time, but he was peculiarly before the court  
4 at that time. Here is a man that has his own check. We  
5 want to show how he passed it to the District Attorney's  
6 office. Cannot he say that a man from the District At-  
7 torney's office came and wanted it, a man that we will  
8 show acted as his agent when going to get it from him?  
9 If I have a document in my hand which is my own, your  
10 Honor, and it is found in the hands of counsel on the  
11 other side, and I ask "How did he happen to get it?";  
12 "Let's see, he sent a deputy sheriff over there-- at  
13 least a deputy sheriff came to me and asked me -- told  
14 me that the District Attorney wanted it and I gave it to  
15 him." And that is the circumstance to show that it got  
16 into the District Attorney's office through their own  
17 procurement. Now, is there any self-serving declaration  
18 in that. It simply explains how he parted with it, under  
19 what conditions he parted with it. It is not what he  
20 said to Russell, it is not what he said to Russell, it is  
21 his act of parting with it, accompanying it with the de-  
22 clarations; that is not hearsay, as your Honor well knows,  
23 with the act and declarations accompanying each other.  
24 Your Honor may explain an act, and it is not a self-serv-  
25 ing declaration, it is an act; it is this check that was  
26 supposed to be in his hands, and we are simply explaining

1 how it happened to go there. We want to show that Mr Rus-  
2 sell went before the Grand Jury, that some other matter  
3 came up in reference to this check, that he went over  
4 there and asked Mr Harriman for it, that the District  
5 Attorney wanted it, and that he parted with it and sent  
6 it over to the District Attorney's office, and subse-  
7 quently Mr Harriman will probably say he found out it had  
8 reached its destination. That is not self-serving. He  
9 is not going to say, "I am innocent; I went and told Judge  
10 Hutton and someone else I was innocent of any crime," or  
11 "I did this and I did that"; he is not doing that. Those  
12 are self-serving declarations. The very fact, your  
13 Honor, that counsel says he can cite thousands of decisions  
14 on the point, is to show that the trouble with the deci-  
15 sions is this: "What are self-serving declarations and  
16 what are not"? We all know what self-serving declarations  
17 are and the very fact there are many decisions on the sub-  
18 ject is proof that the question is not well settled or  
19 there would not be many thousands of decisions on it,  
20 as to the application of it.

21 MR FORD: This is our objection and I presume we have a  
22 right to close.

23 THE COURT: Yes sir.

24 MR FORD: The theory upon which your Honor has admitted  
25 the evidence of what occurred at the bank and the making of  
26 a check and so forth, was merely that it was some slight

1 incident of the corroboration of the witness' whereabouts  
2 on that day or the things that he did on that day,  
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7p 1 although, as your Honor said, being of a negative char-  
2 acter, its weight may not be very great. However, that is  
3 a matter for the jury to determine, that being the point  
4 to be established--

5 MR. ROGERS. I do not understand the court to say it had  
6 very little weight.

7 THE COURT. The Court did not so state.

8 MR. FORD. The Court did not pass upon it.

9 MR. ROGERS. I understand counsel says the court says it  
10 might have little weight and I didn't understand the court  
11 to say anything of the kind.

12 THE COURT. That is a misunderstanding of what the court  
13 said. If such a remark was made it certainly did not in-  
14 tend to have made it.

15 MR. FORD. I do not want to misquote the court.

16 MR. DARROW. I certainly did not hear any such remark.

17 MR. FORD. I do not want to--permit me to correct it.

18 MR. ROGERS. Get busy.

19 MR. FORD. The court admitted it, leaving the weight of it,  
20 very properly, for the jury to determine. Now, that being  
21 the point, the manner in which the District Attorney got  
22 it is absolutely immaterial and the only possible object  
23 here is to show that the witness gave it voluntarily to the  
24 District Attorney and that while doing so voluntarily that  
25 he made certain declarations, which declarations if admis-  
26 sible, which conversations if admitted would serve to show

1 his scintillating innocence. Now, the declarations of  
2 that character serve no other purpose than the witness  
3 himself saying he is innocent. Now, counsel is absolutely  
4 in error as to what self-serving declarations are if he  
5 does not know that to be a self-serving declaration, and  
6 we can bring in plenty of authorities on that as to what  
7 constitutes a self-serving declaration, and certainly  
8 there ought to be no dispute upon such an elementary pro-  
9 position. That is purely a self-serving declaration.

10 THE COURT. This argument is for the assistance of the  
11 court and not to enlighten counsel on the other side.  
12 I am satisfied from the statement made by defendant's  
13 counsel as to what they expect to show here that the witness  
14 should be allowed to proceed. The court interrupted him  
15 upon the theory it seemed as if he was about to reach some  
16 self-serving statements, but in view of the statements  
17 made by the defendant's counsel as to what they expect to  
18 prove, it is impossible to determine that question at this  
19 time and the witness is directed to proceed with his answer.  
20 The question and answer so far will be read to him.

21 MR. FORD. In order to avoid further complications, do  
22 we understand your Honor's ruling is to permit the witness  
23 to detail the conversation between himself and Mr Russell?

24 THE COURT. Yes, sir, under the peculiar circumstances here  
25 presented, I think that--

26 MR. FORD. The answer was, "You did?"

1 THE COURT. Yes, sir.

2 MR. FORD. We take an exception.

3 MR. ROGERS. What are you going to do with your exception?

4 MR. FORD. I don't know, we have no protection.

5 THE COURT. The reporter will read the question and the  
6 answer as far as it had proceeded when the court had inter-  
7 rupted the witness.

8 THE REPORTER. Mr. Smith has the question and answer.

9 THE COURT. Perhaps you can reframe it.

10 MR. ROGERS. It would be infinitely more satisfactory and  
11 I could proceed very much more rapidly and intelligently  
12 if the District Attorney would give me that check, and Mr.  
13 Ford is diligently looking for it and has so far not been  
14 able to find it--

15 THE COURT. We are about to take a recess and perhaps it  
16 will appear during that time. Gentlemen of the jury,  
17 bear in mind your former admonition. We will take a  
18 recess for five minutes.

19 (After recess.)

20 THE COURT. gentlemen, there is a little matter here that  
21 ought to be disposed of at this time: It is in a sense  
22 outside of the case and in a sense inside of the case,  
23 collaterally. Information came to my ears last night  
24 and again this morning from one side or the other here, I  
25 will not state at this time which side, that one of the  
26 officers in charge of the jury had some prejudicial feel-

1 ~~ings for or against one side or the other and that he was~~  
2 availing himself of the opportunity to express his preju-  
3 dices more or less. I will not state which side it was  
4 unless it becomes necessary; but, this morning before  
5 court convened, I went to the jury room personally in the  
6 absence of any officer except myself, made the inquiry of  
7 each and every member of the jury, except Mr. Leavitt, who  
8 was not then there; since that time and during the recess  
9 I have made the same inquiry of Mr. Leavitt, and each man  
10 on the jury has stated positively and absolutely and  
11 unequivocally that there is no such influence, there has  
12 been no such suggestion and positively denies that any  
13 officer of the court has in any way attempted to influence  
14 them directly or indirectly or to cast any slurring remarks  
15 at one side or make any favorable comments as to the  
16 other.

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8p 1 Nevertheless, I regret to have to say at this time that  
2 Mr. Martin Aguirre, who is in charge of this work at  
3 this time, informed me before court convened this morning  
4 that under the circumstances he felt that it would be  
5 too embarrassing to him to proceed and that he must ask to  
6 be relieved from further duty. I again discussed the  
7 matter with him during the recess that has just taken  
8 place, and very much to my regret Mr. Aguirre still feels  
9 that his position will be so uncomfortable, that for per-  
10 sonal reasons he ought to be relieved. I say this in  
11 justice to Mr. Aguirre, who has the entire confidence of  
12 this court; so far as I am personally concerned I have no  
13 criticism whatever and would not, under the showing made,  
14 suggest or ask to make any change, but he insists on it as  
15 a personal matter and for that reason I deem it proper,  
16 under the circumstances, to make the announcement, to say  
17 that I will take the matter up with the sheriff and I  
18 believe make a suitable selection before 2 o'clock this  
19 afternoon.

20 MR. ROGERS. If your Honor pleases, the defense is not  
21 satisfied with the mere relation of the situation as your  
22 Honor has so fairly presented it. There are circumstances  
23 connected with this matter which lead me to think--

24 THE COURT. One moment, Mr. Rogers. I think if there are  
25 further proceedings in this matter, perhaps it would be  
26 better to take it in the absence of the jury.

MR. ROGERS. No, sir. The statement has been made to the

1 jury, if your Honor please, and I think, sir, that they  
 2 ought to know the full circumstances. I think they ought  
 3 to know how this matter was brought to your Honor's atten-  
 4 tion and what about it and I openly charge here, without  
 5 going beyond what your Honor will permit me to do, I  
 6 openly charge here, there was caused to be published a  
 7 criticism of Martin Aguirre for the sole purpose of offend-  
 8 ing his wellknown sense of justice and his pride in order  
 9 to displace him, to disgrace him and thereby to be placed  
 10 an imputation against him, and because of a racial connec-  
 11 tion, as was stated in that very article, sir, upon Mr.  
 12 Aguirre, whom we have all known here, I since I was a little  
 13 fellow so big, and all of us have loved him and trusted  
 14 him and believe in him and do now, and I say it is a  
 15 shame and an outrage that the object of that article,  
 16 which is a scandalous and scoundrelly thing, should be  
 17 published simply by offending Mr. Aguirre's well known sense  
 18 of justice. I say it was a scheme from the start and I  
 19 stand ready to prove it. It was written by a man who has  
 20 been in the employ of the District Attorney's office, and  
 21 published for the purpose of offending Mr. Aguirre, in  
 22 order that he might be driven from his position and Mr.  
 23 Appel, mentioned in the article, because he belongs to the  
 24 same race thereby stamps this as a scandal, a shame, and  
 25 it ought not to cease with this kind of thing, and I don't  
 26 propose, if your Honor sees fit to send me to jail for it,

1 I don't intend to stand here and let Mr. Aguirre be stamped  
2 in such fashion. I call for the production of the author  
3 of that article and I would like to cross-examine him  
4 about two minutes, and I will show who he is and where he  
5 got it from.

6 THE COURT. You mean the newspaper article?

7 MR. ROGERS. Yes, sir.

8 THE COURT. The newspaper article is not the governing  
9 factor in this matter; so far as what Mr. Rogers has said,  
10 I concur in it and do not regard Mr. Aguirre in any way  
11 stamped as having committed any improper act. I shall  
12 request the sheriff to assign him to my department as soon  
13 as this case is over. Mr. Aguirre has stated to me that he  
14 will be willing to accept such assignment, but he has  
15 on personal grounds asked to be relieved until this case  
16 is over, and solely upon those personal grounds.

17 MR. APPEL. Your Honor, the information came up that these  
18 accusations were made to your Honor in chambers. That in  
19 view of those accusations that this reporter went out and  
20 ~~investigated the matter and he took--~~

21 THE COURT. Now is that again, Mr. Appel, ~~I didn't quite~~  
22 catch it.

1 MR APPEL: ~~Information came to us that the matter was com-~~  
2 ~~plained of by someone connected with this case upon one~~  
3 ~~side of the case.~~

4 THE COURT: Yes sir, I have stated that in this court  
5 room at this time.

6 MR APPEL: That afterwards this reporter went out to in-  
7 vestigate the matter and he talked to me last night and  
8 he said the objection to Mr Aguirre was because he was a  
9 friend of mine. I stated to him, your Honor, that he was  
10 my friend, and that I was his friend, but I did say to  
11 him, your Honor, that never in my life, and all the of-  
12 ficers of this county can come here to your Honor or to  
13 anyone, and say that I ever asked him to do a single  
14 thing for me in a case, or asked them to do an unlawful  
15 or improper act. It was an insinuation, an accusation  
16 against me, forsooth, because I am that man's friend, and  
17 became, your Honor, we had the timerity to talk in that  
18 room and here and elsewhere in a foreign language, and be-  
19 cause someone, not mentioning names for the purpose of  
20 not offending their feelings, were watching us talking  
21 upon some things not connected with the case. The sus-  
22 picions of the other side led to their going into your  
23 chambers and pointing to me and pointing to this man as  
24 doing something improper in this case. It was for the  
25 purpose, evidently, of getting even with me. It was for  
26 ~~the purpose of casting suspicion that would militate against~~

1 this defendant. Now, it seems, your Honor, that if any-  
2 thing has been said concerning me, concerning any action  
3 or any connection between myself and this man, that that mat-  
4 ter should be investigated, and that if there is anything  
5 improper in my conduct, it is proper and due to this de-  
6 fendant that I should be compelled to have anything to do  
7 with this case that might in some way prejudice the in-  
8 terests of this defendant, your Honor.

9 THE COURT: Let me answer --

10 MR APPEL: For, your Honor, it will not be proper for  
11 counsel on one side to be in a position to injure his  
12 client's interests.

13 THE COURT: I want to clear that up right there, Mr Appel.  
14 There has been nothing said in my presence or in my hear-  
15 ing, directly or indirectly, excepting inquiry as to  
16 whether or not Mr Aguirre and Mr Appel were related by  
17 blood ties or by consanguinity, to which I replied to my  
18 best knowledge and information, not.

19 MR APPEL: I say this, and I want everybody to understand  
20 it, that there is not any blood relationship between  
21 us, but there is a relationship of eternal grateful  
22 friendship for each other, and if that is any disqualifi-  
23 cation against this man, it is a disqualification against  
24 me to serve the interests of this man here in this case.  
25 Why, can it be said, your Honor, that we have to go  
26 about and meet our friends in the court room and anywhere

1 ~~else and not even be allowed to greet them without these~~  
2 detective's suspicions of our actions? Can it be said,  
3 your Honor, that I could not talk to your Honor, or talk  
4 to counsel on the other side or to anyone, without it  
5 being said there is something wrong going on? Have we  
6 got to isolate ourselves in order to be attorneys? Have  
7 we got to turn away from our friends, and not meet  
8 them or talk to them? Is it possible that a man, in order  
9 to practice law, in order to appear for a defendant, must  
10 so far forget his manhood and his honor, forget the repu-  
11 tation and the honor of his family, that he must do wrong  
12 to practice law? I submit, your Honor, that those things  
13 and those insinuations cast against <sup>us</sup> in this paper, serve  
14 to attract the public to a suspicion against the man,  
15 and those things are not done against great, influential  
16 men. The power of the state seems to be to pick out one  
17 whom they think can stand it. I submit, your Honor, that  
18 is not right; it is not fair.

19 THE COURT: Mr Appel, lest there might be any suspicion,  
20 I took upon myself this morning to do precisely what I  
21 have recited in open court, and I have stated in response  
22 to each one made of the thirteen jurors making the state-  
23 ment here, in their presence and hearing, and each and  
24 every man of them have positively and unequivocally,  
25 and unquestionably denied that any of the deputies, any of-  
26 ficer has attempted by direction or indirection, in any

1 way, ~~shape or manner to influence them. That so far as~~  
2 any question of reputation is concerned, that is final. I  
3 would not ask MR Aguirre to leave this court room for  
4 anything that has occurred, but he, himself, has not merely  
5 demanded it, but insisted upon the personal right to such  
6 an extent that the court has felt bound to acquiesce, and  
7 requests that he again be assigned to my department when  
8 this case is over.

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10s 1 JUROR GOLDING. I think you have found out what each and  
2 every one of us think about Mr. Aguirre and his honesty and  
3 integrity, and I think you have put the proposition up to  
4 each and every one of us, that we don't want him to leave  
5 us. We have tried him and we know him, and being with him,  
6 and practically sleeping with him, staying with him, and  
7 we can see a man when we rub up against him like that, and  
8 we have every confidence in him. Why should we change now?  
9 He has been with us for six or seven weeks. For myself,  
10 I don't know about the rest of them, I think they are of the  
11 same mind, though, we don't care to change. We want an  
12 honest square deal here and he certainly is giving it to  
13 us, and to the court and everybody.

14 ANOTHER JUROR. I am in the same mind, your Honor, as Mr.  
15 Golding.

16 MR. FREDERICKS. It seems to me, your Honor, that the  
17 only person in this matter who has exhibited good judgment  
18 is Martin Aguirre. This is not a matter for discussion in  
19 court. Mr. Aguirre has taken the manly ground because there  
20 was some criticism of him, he refused to serve in a position  
21 where he might be subject to criticism. That is a strong  
22 manly position for any man to take, and any man who would  
23 take a less position would be less of a man. Now, that  
24 is his position. Mr. Aguirre has said he was criticised and  
25 he refuses to serve, and it is perfectly proper that he  
26 should do so. I think the one in charge of the jury should  
be--should step out at any time there is any criticism.

1 now, that is all; there has been no charge made against Mr.  
2 Aguirre from either side. There has been nothing filed  
3 against him. The court has absolved him; the jury have  
4 absolved him, and the matter is not a matter for court  
5 proceeding at all. It seems to me we should drive on with  
6 the case.

7 THE COURT. It is up to Mr. Aguirre.

8 MR. AGUIRRE. I would rather go. I think that is the best  
9 for both sides.

10 THE COURT. In view of that statement I see nothing else to  
11 do. Mr. Aguirre, the court has made his statement and the  
12 jury have made their statement. I regret exceedingly--

13 MR. APPEL. We may have something to say on this side of  
14 the house who shall take charge of the jury.

15 MR. ROGERS. In view of the publication of this article, and  
16 in view of its authorship and in view of what is stated in  
17 it, and in view of the offense that Mr. Aguirre has taken  
18 at it, in view of the fact I have not the slightest doubt  
19 in the world for the purpose of offending Mr. Aguirre and  
20 making him take the manly position which has been adhered  
21 to, I think there ought to be some further proceeding to  
22 find out about this a little bit. It is the easiest  
23 thing in the world--I have seen this done once before, and  
24 by the very same people.

25 THE COURT. I have not read the article carefully. I  
26 will do so during the noon hour.

1 MR. ROGERS. I take great pleasure in handing it to you.

2 THE COURT. I have a copy on my desk. I haven't had time  
3 to read it. I just glanced at it.

4 MR. FREDERICKS. I will state I haven't read it at all,  
5 simply glanced at the headlines and saw there was such an  
6 article.

7 MR. ROGERS. Let me have the check.

8 A JUROR. Your Honor, I would like to ask if Mr. Aguirre  
9 goes, if we couldn't have a selection of our own, of one  
10 who was already serving us?

11 MR. FREDERICKS. I think that is a matter the court can  
12 take up with the jury.

13 THE COURT. I will take that matter up with you gentlemen  
14 before leaving tonight. You may proceed with the evidence,  
15 Gentlemen.

16 MR. ROGERS. There has been furnished in open court a check  
17 which I now show you, handed to me by Mr. Ford in open  
18 court.

19 MR. FORD. Exhibit No. 50 of the grand jury exhibits.

20 MR. ROGERS. I don't know a thing in the world about that.  
21 That is a matter that will be testified to when it comes.

22 MR. FORD. So the record will be straight I have delivered  
23 to Mr. Rogers Exhibit No. 50 of the grand jury exhibits.

24 MR. ROGERS. Is that your signature at the foot of the  
25 check which I now show you? A That is my signature.

26 Q And whose handwriting is the body of the check? A Mr.

1 Russell's, I think; quite certain. He prepared the check  
2 for me when I came down that morning.

3 Q May I ask if this is the check you have referred to  
4 in your testimony? A It is.

5 Q <sup>this</sup> Is <sup>A</sup> the check with which you paid the note that has been  
6 referrē\_d to herētofore? A It is.

7 MR. ROGERS. I offer it in evidence.

8 MR. FREDERICKS. I presume we have seen it.

9 THE CLERK. Defendant's Exhibit I.  
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1 MR ROGERS: The check is as follows: (Reading:) "Job  
2 Harriman, 521 Higgins Building", in red print. "Los  
3 Angeles, Cal. Nov. 28, 1911. Pay to the order of First  
4 National Bank, \$600 and 81 cents." That is in figures.  
5 "Six hundred and 81/100," in figures. "Dollars. To Cal-  
6 ifornia Savings Bank of Los Angeles, Fifth and Broadway",  
7 signed, "Job Harriman." Endorsed, "First National Bank,  
8 Los Angeles Clearing House." Rubber stamp on the back,  
9 The check is perforated with the letters, "Paid 12-1-11."  
10 with the further rubber stamp, "Collection Department  
11 Nov. 29, 1911, First National Bank." Further stamped,  
12 endorsement, "First National Bank of Los Angeles. A B.  
13 Jones, Assistant Cashier." Now, I renew my question:  
14 under what circumstances was that check delivered to the  
15 District Attorney's office?

16 MR FORD: Objected to upon the ground it calls for self-  
17 serving acts and declarations, incompetent, irrelevant  
18 and immaterial.

19 THE COURT: Objection overruled. A Mr Russel, of whom  
20 I have just spoken was called before the grand jury.  
21 On his return he stated to me they asked him if I had been  
22 present at my office on the morning of the 28th, and that  
23 he had answered in the negative. I corrected his state-  
24 ment, rehearsing the circumstances concerning the payment  
25 of this note. He then remembered that I was there and I  
26 told him to go back and correct his statement, and to re-

1 late the circumstances, which he did. I was then called  
2 before the grand jury and recited the same circumstances.  
3 The check was called for, and whether we had taken it from  
4 the bank at that time, I do not remember, but consented  
5 to Mr Ford, I believe, having its production, if we had it,  
6 and if not for them to get it at the bank, and it passed  
7 to him, either through our offices or through the bank,  
8 I don't remember which.

9 MR FORD: If the court<sup>please,</sup> we move to strike out all that  
10 portion of the answer of the witness relating to the con-  
11 versation between himself and Mr Russell on the ground  
12 that it is hearsay. In the first place, in passing, I  
13 might remark that Mr Russell was violating the oath taken  
14 before the grand jury in revealing what had occurred be-  
15 fore the grand jury, but we move to strike it out on the  
16 ground that it is hearsay, a conversation between himself  
17 and Mr Russell, not responsive to the question and incom-  
18 petent, irrelevant and immaterial, and self-serving de-  
19 clarations, and clearly having nothing to do with the cir-  
20 cumstances of producing the check, to which his attention  
21 has been called. That portion of the answer which relates  
22 to our -- to the testimony given by Mr Russell before  
23 the grand jury is also clearly hearsay. The portion of  
24 the testimony as to what Mr Russell remembered or as to  
25 whether it coincided with Mr Parriman's testimony, or whe-  
26 ther Mr Parriman gave the same testimony, is also hear-

1 say, and a conclusion of the witness, and upon all those  
2 grounds, I move to strike it out. It seems to me so ap-  
3 parent that it is incompetent, I will not argue it but  
4 content myself with the objection.

5 THE COURT: The portion of it giving the same testimony  
6 may be stricken out. The rest of it is a history of ac-  
7 counting for how that check got in the District Attorney's  
8 office. I think it will have to stand for that reason.

9 MR FORD: If the court please, I want to call your Honor's  
10 attention to the fact, he didn't testify that he gave the  
11 check to Mr Russell. He didn't even remember how the  
12 check got before the grand jury.

13 THE COURT: I think it is important -- at least, I think  
14 it is evidence.

15 MR ROGERS: Do you recall the date on which you were pre-  
16 sent before the grand jury, Mr Harriman? A I do not, but  
17 the transcript will probably show.

18 Q Was it, refreshing your recollection from the transcript  
19 of the proceedings of the grand jury, which appears as  
20 January 23rd, 1912, the 23rd day of January, does that co-  
21 incide approximately with your recollection? A Approxi-  
22 mately, but I don't remember.

23 Q At any rate, it was before Franklin was called on the  
24 stand in this case? A yes sir, it was.

25 Q Now, did you ever tell Darrow at any time before you  
26 testified before the grand jury, before January 23rd, any-

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thing whatever about the circumstances of your paying  
this note, of your getting money from the safe deposit  
box, of your giving this check or any circumstances con-  
nected with it at all, before you went before the grand  
jury? A I told Mr Darrow on the morning of my conversa-  
tion --

12s 1 MR. FORD. Just pardon me a moment. To that question we  
2 object upon the ground it is incompetent, irrelevant and  
3 immaterial, hearsay, as to what occurred between him and  
4 Mr. Darrow.

5 THE COURT. Well, it has an element of hearsay testimony,  
6 but in view of the record here I think counsel is entitled  
7 to it. Objection overruled.

8 A Repeating, I told Mr. Darrow on the morning Mr. Russell  
9 told me he had answered in the negative, and that I asked  
10 him to correct the statement, that was the first conversa-  
11 tion we had ever had.

12 MR. ROGERS. Now, that was approximately the 23rd day of  
13 January? A The record can and will show the date; I  
14 don't remember.

15 Q And that was after Franklin had been arrested, a long  
16 time? A It was in the latter part of January.

17 Q Six weeks afterwards.

18 MR. FORD. Object to that as a matter of calculation.

19 A I believe so.

20 THE COURT. It is answered.

21 MR. ROGERS. Q Did Mr. Darrow ever give you the sum of  
22 \$10,000 or any other sum whatever to keep for him for any  
23 purpose whatever in any place or anywhere? A He did not.

24 Q Did you ever have in your safe or safety deposit box,  
25 to your knowledge, any sum or any amount in currency  
26 coming from Mr. Darrow for any purpose whatsoever? A I did

1 not. My own currency was there but nothing belonging  
2 to Darrow. My own cash.

3 Q Or the defense fund? A Not for the defense fund,  
4 no, sir.

MR. FREDERICKS.

5 Q Or the defense fund, I think counsel said? A No, not  
6 any of the defense fund was ever in my box.

7 MR. ROGERS. Q Did you ever receive any money from Darrow  
8 in any way, any money itself? A No money. I received  
9 my check on my fee but no cash.

10 Q You received checks for fees? A But no cash.

11 Q Did you ever have anything from Mr. Darrow in money  
12 whatever, from Mr. Darrow, except for your fees? A No,  
13 sir.

14 Q And did you ever give to Darrow back any portion of  
15 your fees in currency or in any other way? A I never  
16 have at any time.

17 Q Now I call your attention again to the morning of the  
18 28th and I will ask you again to state whether or not  
19 when you came up there that morning of the 28th, whether  
20 you went into Mr. Darrow's room at all or not? A I did  
21 not.

22 Q Where did you go, as a matter of fact? A Into my own  
23 office.

24 Q Did you see Franklin there at all that morning? A I  
25 did not.

26 Q Was Franklin there to your knowledge? A Not to my

1 knowledge.

2 Q when you came? A Not to my knowledge.

3 Q or while you were there? A Not to my knowledge.

4 Q Did you speak to him? A I did not.

5 Q Did Darrow come into your room or see you that morning  
6 so far as you are aware? A He was not in my room while  
7 I was there and I do not know that he saw me?

8 Q Did he speak to you? A He did not.

9 Q Did you have any transaction together whatever that  
10 morning? A None whatever.

11 Q You had a separate office, a business place from Mr.  
12 Darrow's office across the hall, was it not? A We did and  
13 have yet.

14 Q Is that the one you went to, then, your own office?

15 A To my own private office.

16 Q Did you go into the corner room, Mr. Darrow's office,  
17 that morning at all? A I did not.

18 Q How long did you stay, approximately, or as best you can  
19 give us the idea, at the Higgins Building that morning?

20 A Oh, a very short time; just long enough to sign the  
21 check and to tell Mr. Russell to deposit the money, ascer-  
22 tain if my balance was sufficient and if not to let me  
23 know. Looked over four or five letters that were there and  
24 passed away.

25 Q Where did you go from there? A To the campaign head-  
26 quarters.

1 Q Where was that? A On the corner of Winston and Main  
2 streets, between Fourth and Fifth.

3 Q Now, speaking of the outline of your offices there at  
4 that time, as you get off the elevator and come down the  
5 hall, what is the first office that you pass in going  
6 towards your office on your side of the hall? A Do you  
7 mean the first office in connection with either our office  
8 or the defense?

9 Q No, no, the first office that you pass. A The offices  
10 when you get off of the elevator, you turn first to the  
11 north. There are offices there--a row of offices on the  
12 north side of the building adjoining ours until the hall  
13 turns and then offices on the right hand side to the end  
14 of the hall, also offices on the left hand side of the  
15 hall, part of those offices belong to strangers to me;  
16 part of them belong or were under the control of the  
17 defense, and part of them under the control of our firm  
18 separately.

19 Q Now, next to your own office towards the elevator on the  
20 same side of the hall whose office is there? A That was  
21 under the control of the defense and used for the clipping  
22 department and for the news department.

23 Q Who occupied it? A Mr. Wolfe, I believe, was occupying  
24 that at the time.

25 Q And your private office is directly next? A Directly  
26 south, opening into.

1 Q And your reception room, where is that? A Well, south.

2 Q Next? A Next to mine.

3 Q At that time state whether or not when you went to  
4 your office there were large numbers of people there.

5 MR. FREDERICKS. That is objected to as being immaterial,  
6 very general.

7 MR. ROGERS. I expect that is true, too general; I with-  
8 draw it. Q When you went to your office that morning

9 where did you go? How did you go into your own office?

10 A I entered through the clipping department into my door.

11 Q That is what you have referred to as Mr. Wolfe's office?

12 A Yes sir.

13 Q Entered through the clipping department? A Yes.

14 Q And went into your door? A I did.

15 Q You did not go into the reception room? A I did not.

16 Q Was there any reason why you did not go through the  
17 reception room?

1 A Well, during the campaign, I -- what few times I  
2 was at the office, I usually entered that way. There  
3 were a number usually waiting for me, and then if I  
4 didn't I couldn't get away, and I took that way of coming  
5 in and going out without being detained, so I entered and  
6 escaped.

7 Q Now, there has been some testimony here concerning Mr  
8 Darrow telephoning you that morning, and some statement  
9 made over the telephone -- having a conversation with Dar-  
10 row over the phone. Did you talk with Darrow over the  
11 phone that morning?

12 MR FREDERICKS: That is objected to upon the ground it  
13 is immaterial, not relevant. There has been no testimony  
14 that Mr Darrow talked to this man, therefore, his recita-  
15 tion of that fact, would not be material.

16 MR FORD: It is assuming facts not in evidence. Mr Frank-  
17 lin testified that he talked to some man or to some person,  
18 apparently over the phone. It didn't come out whether he  
19 talked to somebody that was there or whether Mr Harriman  
20 had already left or whether he talked with Mr Harriman  
21 personally. There was nothing in the conversation to  
22 show one way or the other.

23 THE COURT: I remember the testimony, Mr Ford.

24 MR FORD: And it assumes something not in evidence.

25 MR ROGERS: I will admit that there is not a bit of Frank-  
26 lin's testimony worth calling evidence, but he did see fit

1 to say that Mr Darrow said, "Is that you, Job?", leaving  
2 the inference. I propose to ask Mr Harriman if Darrow  
3 said, "Is that you, Job"? -- just for the purpose of show-  
4 ing he did not. If your Honor please, it is perfectly  
5 proper to show there was no telephone communications be-  
6 tween the two, because they <sup>will</sup> argued that there was, and  
7 we didn't deny it.

1 MR FREDERICKS: The remark of counsel, there was none of  
2 Mr Franklin's testimony that was worthy to be considered  
3 evidence, seems entirely out of place at this time, if  
4 he wants to make it in argument --

5 THE COURT: Yes, I think that is improper at this time --

6 MR FREDERICKS: "We hardly think his evidence is worth  
7 considering" and all that sort of thing, and I don't want  
8 to have to come here and meet a thing of that kind. I  
9 will do that at the proper time.

10 THE COURT: It is an improper statement, and should not  
11 have been made, nevertheless, I think this question is a  
12 proper question to be propounded to the witness, and the  
13 objection is overruled. Read the question, Mr Reporter.)

14 THE REPORTER: Mr Smith has the question.

15 MR ROGERS: Then I will repeat it. That morning, Novem-  
16 ber 28th, did you hold any communication whatever with  
17 Mr Darrow over the phone? A I did not.

18 Q Did he talk to you and say, "Is that you, Job?", or  
19 anything at all, word or syllable that morning? A No  
20 communication.

21 MR FORD: Just a moment. Let me object, if you please,  
22 Mr Harriman. We object to the question on the ground that  
23 the matter has been fully covered; the question is lead-  
24 ing and suggestive. He said he didn't talk with him,  
25 and that covers the matter very fully.

26 THE COURT: Objection overruled. The question is already

1 answered.

2 MR ROGERS: The night before or evening of the 27th, at  
3 any time, or the afternoon of the 27th, did you have any  
4 telephonic communication with Mr Darrow? A I did not.

5 Q Did he call you up and ask you whether your safe  
6 deposit box or vault or compartment or anything like that  
7 was open or not? A He did not.

8 MR ROGERS: Cross-examine.

9 THE COURT: I guess you will hardly begin on cross-exam-  
10 ination; it is 5 minutes to 12.

11 MR FREDERICKS: It is immaterial to us.

12 (Jury admonished.)

13 THE COURT: The court will now adjourn until 2 o'clock  
14 this afternoon.)

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