

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. 54.

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Frank E. Wolfe,		4307	4312	4318
I. H. Russell,	4323	4329	4370	

1 THURSDAY, JULY 11, 1913; 10 A.M.

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

4 -----
5 THE COURT. Sheriff Van Vliet informs me that he thinks
6 there are some witnesses who have come in lately that do
7 not know of the rule and I, therefore, announce that the
8 rule has been invoked and that all witnesses who have not
9 testified, whether the witness be not under subpoena or
10 otherwise, if he knows he is to be called, that all witnesses
11 are excluded from the court room.

12 MR. DAPROW. Your Honor had better tell them where to go.

13 THE COURT. Mr. Sheriff, what room has been provided for
14 the witnesses?

15 THE BAILIFF. The court room down the hall.

16 THE COURT. The court room right straight across the hall
17 is available at all times for witnesses. Gentlemen, you
18 may proceed.

19
20 F R A N K E. W O L F E ,
21 on the stand for further cross-examination.

22 MR. FREDERICKS. Q What kind of transportation were you
23 using on the morning you came in, as you say, on the 28th of
24 November with Mr. Darrow? A I don't recall.

25 Q Well, you don't remember what kind of transportation
26 you used that morning? A No.

1 Q you remembered every other incident of that morning;
2 do you remember what kind you used that month?

3 MR. ROGERS. Just a moment--I object to the form of the
4 question, "You remember every other incident that morning,"
5 as a comment and not a question.

6 MR. FREDERICKS. All right, I will withdraw the question.

7 Q What kind of tickets were you using that month? A I
8 might not have been using any ticket that month or at that
9 time.

10 Q What kind of a ticket is it your custom to use? A I
11 used at times computation ticket.

12 Q And you bought them by the month or by the number of
13 trips? A I bought a book of tickets whenever my book
14 ran out and I happened to accumulate enough money to buy
15 another one I bought it.

16 Q Well, you were not short of money enough to buy a ticket
17 any time, then I suppose you had a ticket, didn't you?

18 MR. ROGERS. Object to the form of that question.

19 MR. FREDERICKS. It is made necessary by the witness's
20 answer. It is perfectly proper cross-examination.

21 MR. ROGERS. No, if your Honor please, that is a comment,
22 three-quarters of it, and it is not a question, it is com-
23 pound and not cross-examination.

24 THE COURT. Read the question.

25 (Last question read by the reporter.)

26 MR. ROGERS. "You were not short of money enough" is a con-

1 ment.

2 THE COURT. Overruled.

3 MR. ROGERS. Exception.

4 A I bought books and used them quite frequently; I left
5 the book in my other pocket and quite frequently there was
6 a week or two I was without a book because it was not con-
7 venient to buy them.

8 MR. FREDERICKS. Q What was your general habit at that
9 time? A I should say at least half the time I rode on
10 tickets.

11 Q That is commutation ticket? A Commutation ticket.

12 Q Each one of those books is numbered, is it not? A I
13 think so.

14 Q Did you sign your name in the Book? A Yes, sir.

15 Q You are sure you always signed your name in the book?

16 A I might have missed it; I didn't care much about the
17 formality.

18 Q That was the Los Angeles Pacific Railroad? A Yes.

19 Q And where did you buy your books, when you bought them?

20 A Bought them at the Fourth street station, at the Hill
21 street station or at Colegrove.

22 Q What kind of a ticket was it, one that expired by a
23 certain--at a certain time or a ticket that expired--that
24 was good until it was used?

25 MR. ROGERS. Just a moment--the form of that question is
26 objected to as not cross-examination. The witness has not

1 said it, he has said about half the time he had commutation
2 ticket.

3 MR. FREDERICKS. I will amend the question. Q When you
4 had a ticket what kind of a ticket did you have? A When
5 I had commutation tickets?

6 Q Yes. A I had commutation tickets.

7 Q You had commutation tickets when you had commutation
8 tickets? A Yes.

9 Q You are sure of that, are you? A I am positive.

10 Q Absolutely certain, no doubt in your mind about it?

11 MR. ROGERS. That is objected to as not cross-examination.

12 THE COURT. Objection sustained.

13 MR. FREDERICKS. Will you tell me, Mr. Wolfe, whether the
14 ticket that you habitually had when you had a ticket was
15 one that called for a certain number of rides and those
16 rides were used, or was it one that called for trips
17 during a certain time, such as a monthly ticket? A I
18 believe there was an expiration date marked in the margin
19 of the cover.

20 Q Was it your custom to always use your entire commutation
21 book each time and turn in the last ticket? A I think I
22 used them all up.

23 Q Probably the amount you paid for a ticket would give
24 the kind of ticket it was. Do you remember what you paid
25 for your commutation ticket? A I cannot state whether it
26 was a \$4.00 ticket or a \$3.00 ticket.

1 Q Was there a \$3.00 ticket and a \$4.00 ticket? A The
2 rate was reduced at some time from \$3.00 to \$4.00, is my
3 recollection.

4 MR. ROGERS. From 4 to 3.

5 MR. FREDERICKS. Q Did the \$3.00 and \$4.00 buy the same
6 kind of ticket, only at a different time? A The fare was
7 reduced.

8 Q Mr. Wolfe, did you talk over your testimony with anybody
9 yesterday evening? A yes.

10 Q With whom? A Mr. Darrow.

11 Q Anybody else? A No, not my testimony. I had a dis-
12 cussion with Mr. Harriman.

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1 Q Did you read over the transcript of testimony? A I
2 read over a portion of the transcript of my testimony this
3 morning.

4 Q While you were on cross-examination?

5 MR ROGERS: No.

6 MR FREDERICKS: Isn't he on cross-examination this morning?

7 MR ROGERS: It is a comment; he does not read it while he
8 was on cross-examination. He said he read it this morning.

9 Q You read it while you were on the stand?

10 MR ROGERS: Now, I submit he has not said he read it while
11 he was on the stand.

12 MR FREDERICKS: No, not while he is physically on the stand
13 that is about equal to a commutation ticket is a commutation
14 ticket is a commutation ticket.

15 THE COURT: I think the record shows the situation fully.

16 MR FREDERICKS: You discussed your testimony with Mr Dar-
17 row last night, then, did you? A A portion of it.

18 Q Any correction that you wish to make in your testimony
19 this morning? A I don't know of any.

20 MR FREDERICKS: That is all.

21

22

REDIRECT EXAMINATION

23 MR DARROW: Mr Wolfe, I call your attention to a few mat-
24 ters in reference to this. You spoke yesterday of having
25 talked with Job Harriman first about Franklin's story?

26 A Yes.

1 Q Do you recall whether you talked with him about it?

2 A Yes.

3 Q And when was that? A I stated several weeks after
4 the Franklin arrest. It was several weeks after the Frank-
5 lin arrest. My impression is it was about eight or nine
6 weeks after the arrest.

7 Q And do you know how it arose, your conversation with
8 him, about Franklin's claim of being in the office that
9 morning? A Yes.

10 Q How was it? A I was in Mr Harriman's office; I ask-
11 ed him if he thought Darrow would be involved in the Frank-
12 lin affair --

13 MR FORD: just a moment --

14 THE COURT: Go ahead. A -- he said that information
15 that had just come to him inclined him to believe that
16 there would be an attempt made to involve Mr Darrow.

17 Q And where did he say that came from? A From Mr Ford.

18 Q And did he tell you the nature of the information?

19 A Yes.

20 Q What was it? A He said that Mr Ford had told him
21 that Franklin was making a statement, had made a statement
22 that the money -- that certain money was handed to him,
23 Franklin, by you, in his office, on the morning of the
24 arrest.

25 Q And did he say where I obtained that money, what Mr
26 Ford claimed was? A Yes, claimed that Harriman handed

1 it to you.

2 Q Now, when was that with reference to the time that
3 Harriman went before the grand jury, if you recall? A I
4 have no knowledge of Harriman's going before the grand
5 jury.

6 Q And that was the time you had the information from Mr
7 Harriman? A That was the time.

8 Q Was that the first information you ever had as to any
9 claim that Franklin received money that morning from me?

10 A Yes.

11 Q Now, previous to that time, had you received any infor-
12 mation or statements, or had any conversation in reference
13 to my having been on the street that morning that Franklin
14 was arrested? A Yes.

15 MR FREDERICKS: That is objected to on the ground it has
16 been covered, both on direct examination and cross-examina-
17 tion. And I call the court's attention to the testimony
18 in that regard, the testimony on page 4279, in which the
19 witness said "I spoke of talking concerning his complicity."

20 Q -- Did he say on that first occasion, that was about a
21 week after the arrest; did he call your attention to the
22 fact on that first occasion that he and you were up there
23 in the office together? When did the first -- A -- It
24 was sometime later. Q -- Well, now, how much later, as
25 near as you can fix it? A -- Probably several weeks later."

26 MR ROGERS: Now, then, --

1 MR FREDERICKS: (Continuing.) "Q -- That was the 20th of
2 November --"

3 THE COURT: Wait a minute.

4 MR ROGERS: Your Honor, that is misconduct.

5 MR FREDERICKS: Let me finish then; let us make a good
6 job of the misconduct.

7 MR ROGERS: I object now, if your Honor pleases, I object
8 to the further reading.

9 THE COURT: I will read it if you call my attention to the
10 page and lines.

11 MR FREDERICKS: That page, and over on page 4284, you will
12 find beginning at line 16 where he answered the same
13 questions in an entirely different way.

14 MR ROGERS: To that I take an exception, if your Honor
15 pleases.

16 MR FREDERICKS: All right.

17 MR ROGERS: And moreover, that is on cross-examination,
18 and this is redirect. It would make no difference what he
19 said on cross-examination or how many times or how differ-
20 ently he said it, on redirect the subject may be gone into.

21 THE COURT: I will have to have a moment's time to look at
22 this. 4279 first, and 4284.

23 MR FREDERICKS: The other one is 4284, yes.

24 MR ROGERS: Let me have the question. (Question read.)

25 MR FREDERICKS: The objection is that it was gone into on
26 cross-examination and that it was gone into previously
on direct examination.

1 MR ROGERS: Where is that?

2 THE COURT: When was it gone into on direct examination?

3 MR FREDERICKS: I have not called the court's attention
4 to that.

5 MR DARROW: My impression is it was not.

6 MR ROGERS: It was his statement it was on cross-examination.

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3s 1 MR. ROGERS. So far as the statement he answered in a dif-
2 ferent way.

3 THE COURT. I cannot recall it on direct, so I will have
4 to resolve the doubt and overrule the objection.

5 MR. DARROW. And there was several matters connected with
6 it anyway.

7 THE COURT. You want an answer to the question?

8 MR. DARROW. Yes, read the question.

9 (Last question read by the reporter.)

10 A yes.

11 MR. FREDERICKS. Now, having that in mind that time
12 refers--previous to that time refers to the time when he
13 says he had a conversation with Job Harriman.

14 MR. DARROW. Surely, previous to that time. Q How long
15 before the 28th day of November, assuming that was the day
16 Franklin was arrested, how long after did you hear any-
17 thing about my having been on the street at the time Frank-
18 lin was arrested, as near as you can fix it? A I heard
19 something of it the next day.

20 Q Do you remember how you got that information or heard
21 the stories or from whom? A The information was quite
22 general and I believe something was hinted in the news-
23 papers.

24 Q Do you know whether it was discussed around the office?

25 A Yes, it was whispered around.

26 Q Now, with reference to that matter, did you have a con-

1 versation with me as to why I was on the street and when
2 you had last seen me? A Yes.

3 Q And how soon after the 28th? A Not longer than two
4 days.

5 Q Was anything said at that time in reference to any
6 claim of Franklin's that he had been in the office and got
7 money that morning? A No, sir.

8 Q The first information you received of that was from Job
9 Harriman as you have stated? A Yes, sir.

10 MR. DARROW. That is all.

11

12 RE-CROSS-EXAMINATION.

13 MR. FREDERICKS. Q When did it first occur to you that
14 you got this information from Job Harriman and through
15 Job Harriman from Mr. Ford? A Yesterday.

16 Q After you got off the stand? A I had a very vivid
17 recollection of something of the sort while I was on the
18 stand but I could not place the circumstances and sur-
19 roundings.

20 Q And what was that information, now, again, that you got
21 from Mr. Harriman? A To the effect that he believed there
22 would be an attempt to involve Mr. Darrow in the Franklin
23 affair, that he had information from Mr. Ford to the effect
24 that Franklin was making the statement that there was
25 money delivered to him in Mr. Darrow's office by Mr. Darrow
26 on the morning of the arrest.

1 MR. DARROW. By Mr. Harriman, you mean?

2 MR. FREDERICKS. Q Well, that was after Mr. Darrow was in-
3 dicted, wasn't it? A I have no knowledge of the date.

4 Q You are a friend of Mr. Ford's, aren't you? A Mr. Ford
5 and I bore friendly relations a few years ago and I hope
6 we are not unfriendly.

7 Q You feel that way now, don't you? A I have no hard
8 feelings against Mr. Ford.

9 Q Why didn't you come and tell Mr. Ford, then, what you
10 knew about Mr. Franklin, about Mr. Darrow being in the office
11 at this time?

12 MR. ROGERS. That is objected to as not cross-examination.

13 MR. FORD. I think it is.

14 MR. ROGERS. Certainly not--not recross-examination I
15 should say.

16 MR. FORD. This witness was on friendly terms with the man
17 who was conducting the investigation and knew he was con-
18 ducting the investigation--

19 THE COURT. Objection overruled.

20 MR. ROGERS. Just a moment--your Honor has overruled the
21 objection--

22 THE COURT. I will hear you further.

23 MR. ROGERS. As a matter of right, as a matter of circum-
24 stance, one doesn't have to, he is under no obligation to
25 and in this instance I believe the witness would be thor-
26 oughly justified in saying it was neither his right nor

1 his duty to go to Mr. Ford about the matter, and there-
2 fore why he didn't go to the District Attorney and tell
3 him something he knew is of no consequence, never has been.
4 I get information every day about one matter and another
5 connected with their business and I don't rush up and tell
6 them, although I have been on terms of great friendship
7 and propose to continue so as long as they will let me, but
8 I don't think it is my duty to tell tales and tittle-tattle
9 around and I don't think it cuts any figure in the recross-
10 examination of the witness.

11 THE COURT. I think it is recross-examination. Objection
12 overruled. The witness may answer the question.

13 A It never occurred to me to carry any information to the
14 District Attorney's office. I felt you were well forti-
15 fied with the great corps of detectives and dictagraphs
16 and machines of that sort to take care of yourself.

17 MR. FREDERICKS. Q But you were interested in seeing jus-
18 tice done; weren't you? A I didn't feel that I was inter-
19 ested in carrying information to the District Attorney's
20 office.

21 Q Even though that information would help your friend,
22 Mr. parrow? A I never gave it a thought.

23 Q Never gave what a thought? A That of carrying informa-
24 tion to the District Attorney's office.

25 Q You were here at that time that--you knew that Mr. Ford
26 was in charge of the investigation at that time? Mr. Farni-

1 man told you so, I presume, did he not? A We didn't
2 say that Mr. Ford was in charge of the investigation.

3 Q Didn't you know that he was in charge, as a matter of
4 general knowledge? A No.

5 Q You didn't? A No.

6 Q Well, at any rate, Mr. Harriman told you that the in-
7 formation that he got came from Mr. Ford? A Yes.

8 Q Well, you have taken Mr. Ford information on various
9 occasions before this, haven't you?

10 MR. ROGERS. That is objected to as not recross-examina-
11 tion.

12 THE COURT. Overruled.

13 MR. ROGERS. Exception.

14 A When Mr. Ford was in the City Prosecutor's office and
15 I was city editor and managing editor of the Herald
16 we had considerable relations together. Possibly I
17 carried him information on those occasions.

18 MR. FREDERICKS. Q Then, why was it on this occasion
19 where there was in your possession, a piece of information
20 that was of vital importance to your friend, and if you
21 had that information, why didn't you take it to your
22 friend Mr. Ford and say, "Here, Ford, I was in that office
23 with parrow that morning and I know there wasn't any money
24 passed." Why didn't you do that?

1 MR ROGERS: That is objected to as not recross-examination,
2 moreover he has not said that at the time this matter was
3 under investigation at all he knew that Ford was the prose-
4 cutor before the grand jury, or had anything to do with
5 the prosecution of Mr Darrow, and it has already been
6 asked and answered, the same question identically.

7 THE COURT: I think your objection that it has been asked
8 and answered is well taken.

9 MR FREDERICKS: I think it has not been gone into, the
10 same exact question.

11 THE COURT: The substance of it has been covered. The
12 objection is sustained on that ground alone.

13 MR FREDERICKS: That is all.

14 MR ROGERS: Mr Wolfe, with your Honor's permission, do
15 you know how much good it would have done you to have taken
16 any information to Mr Ford on the subject of the indict-
17 ment of Mr Darrow at that time?

18 MR FORD: Just a moment. To that question we object up-
19 on the ground it is not proper. Mr Rogers himself, as
20 well as Mr Wolfe and other people frequently come to the
21 District Attorney's office where they think they should
22 make communications in order to forestall a prosecution,
23 as Mr Rogers has done on other occasions -- I just simply
24 state that to illustrate the point, that the matter con-
25 tained in this question is irrelevant and calling for a
26 conclusion.

1 THE COURT: I think he is entitled to get the witness'
2 view on that matter. The objection is overruled.

3 A How much good it would have done me to go to the Dis-
4 trict Attorney's office?

5 MR ROGERS: yes. A I hadn't given it a thought, but at
6 this moment, I don't think it would have done me very much
7 good to make an appearance there.

8 MR FREDERICKS: Oh, well, that is all.

9

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10 I. H. RUSSELL, a witness called on behalf
11 of the defense, being first duly sworn, testified as fol-
12 lows:

13 DIRECT EXAMINATION

14 MR ROGERS: You have given your name to the reporter?

15 A Yes sir.

16 THE COURT: I. H. or I. J.? A I .H.

17 MR ROGERS: What is your business? A Lawyer.

18 Q How long have you been a lawyer? A A year and a half.

19 Q About a year and a half; that is, you have been admit-
20 ted that length of time? A Yes sir.

21 Q Before you became a lawyer, what was your business?

22 A I was a stenographer.

23 Q Where do you live at present? A 525 Maryland avenue,
24 Glendale, this county.

25 Q How long have you lived in Los Angeles County?

26 A About seven years.

1 Q Have you ever been connected with the office of the
2 District Attorney as stenographer? A Yes sir.

3 Q How long? A I think I was there about three years.

4 Q And when was that? A That was in 1906, '7, and '8,
5 I think.

6 Q 1906, '7 and '8. Where were you connected
7 during the months of, say, July, August, September,
8 October, November and December, the latter half of 1911?

9 A I was in Mr Darrow's office and Mr Harriman's office.

10 Q You will have to speak a little louder and a little
11 more plain. A I was in Mr Harriman's office.

12 Q In Mr Harriman's office? A Yes.

13 Q In what capacity? A I was there, secretary to Mr
14 Harriman.

15 Q Those offices were where at that time? A On the
16 9th floor of the Higgins Building.

17 Q Now, do you recall the matter -- by the way, what were
18 your duties with Harriman? You say you were private
19 secretary to Mr Harriman? A My duties were to attend to
20 his correspondence. I had general management of the office
21 force there, paid them.

22 Q Did you have anything to do with taking letters from
23 Mr Darrow? A I took several letters from Mr Darrow,
24 yes sir.

25 Q And that sort of work, the work of a secretary for
26 the office? A Yes sir.

1 Q Have you a recollection of the morning or of the day
2 of November 28th, 1911? A Yes sir.

3 Q Do you recall any circumstances of that day connect-
4 ed with Mr Harriman? A Yes sir.

5 Q In a general way, in your own fashion, as you now re-
6 call it, relate what that circumstance was of that morn-
7 ing or of that day of November 28th, just in your own way,
8 Mr Russell. A Mr Harriman came into my office, into his
9 office about half past 8 that morning and gave me \$500
10 to pay a note at the First National Bank, \$500 in gold,
11 which I had told him the day before was due.

12 Q Now, where did you get the information -- you need not
13 state what was said, but where did you get the information
14 that that note was due?

15 MR FORD: We object to that as immaterial, calling for
16 hearsay, not competent, not interested in where Mr Rus-
17 sel got the information.

18 THE COURT: Overruled. A A notice was presented to me
19 the day before, the 27th, by a messenger from the bank.

20 MR ROGERS: Now, what did you do with the \$500 Mr Harri-
21 man gave you on that occasion? A I went down and deposit-
22 ed it in the California Savings Bank.

23 Q Did you make any investigation at that time as to
24 the amount which was in Mr Harriman's account at the Cal-
25 ifornia Savings Bank after the deposit had been made.

26 A I did.

1 Q State what you found it to be or approximately? A I
2 found he didn't have enough money on deposit to pay the
3 face of the note.

4 Q You say "The face of the note." A I mean the
5 amount of the note.

6 Q The amount of the note? A Yes sir.

7 Q By that you mean the note and interest and what was
8 due on it? A Yes sir.

9 Q And did you get any money from him subsequently?

10 A Yes sir.

11 Q When? A The next morning.

12 Q What did you do with that? A Took that down and de-
13 posited it in the same bank.

14 Q Then what was done with respect to the payment of the
15 note? A I went and paid the note.

16 Q In what way? A BY MR HARRIMAN'S check.

17 MR ROGERS: Let me have the exhibit, please, Mr Clerk.

18 (Same handed to counsel by clerk.) I will ask you to
19 look at that and say if you have ever seen it before?

20 A Yes sir.

21 THE COURT: What is it you are showing the witness?

22 MR ROGERS: I am showing now the witness, defendant's ex-
23 hibit I.

24 Q State if there is any of your handwriting on that
25 check? A It is all mine except the signature, and this
26 up here "Exhibit 50".

5p 1 Q State whether or not that is the check you referred to
2 in your testimony as the check you gave--Mr. Harriman's
3 check, in payment for the note? A It is.

4 Q Now, about what time of the day did that circumstance
5 of Mr. Harriman's coming in and giving you \$500 in gold on
6 the 28th, what time did that occur, approximately? A The
7 only way I can fix it in my memory is it was before the
8 office force got there and they usually got there about
9 9 o'clock.

10 Q Did you see Mr. Darrow that morning? A Not that I can
11 recall.

12 Q Did you see Mr. Franklin that morning? A Not that I
13 remember of.

14 Q Do you know a Mr. John R. Harrington? A I do.

15 Q Did you know him at that time, November 28th, 1911?

16 A I did.

17 Q Did you know Bert H. Franklin at that time? A Yes, sir.

18 Q Did you know where Mr. Harrington's office was, his room?

19 A Yes, sir.

20 Q Where was this with respect to your offices? A It was
21 across the hall and down one room.

22 Q Was there a safe in your office, that is, in the office
23 of Harriman? A Yes, sir.

24 Q State who had the combination to that safe? A Mr.
25 Harriman had it, Mr. Harrington had it and I had it.

26 Q Mr. Harrington had it? A Yes, sir.

1 Q That is the same John R. Harrington that was here on the
2 witness stand? A John R. Harrington, yes, sir.

3 Q Were there any compartments in that safe? A Yes, there
4 were three locked compartments and several that were open.

5 Q State whether or not any of those locked compartments
6 was reserved for any particular use or for any persons?

7 A One locked compartment was reserved by Mr. Harrington,
8 one was reserved by Mr. Harriman, and I had access to the
9 other one.

10 Q Then Mr. Harrington had a locked compartment there for
11 his own special use, and the combination to the safe?

12 A He did; yes, sir.

13 Q Did Mr. Darrow have any access to the safe whatever?

14 A No, sir.

15 Q Do you remember any incident or circumstance of Mr.
16 Darrow's being unable to get into the safe?

17 MR. FORD. We object to that as irrelevant, incompetent,
18 an attempt to cross-examine their own witness.

19 MR. ROGERS. I presume it is.

20 THE COURT. The question is withdrawn?

21 MR. ROGERS. Yes. Q Did you ever see, during the time
22 you were up there in the Harriman offices, did you ever
23 see Bert Franklin and John R. Harrington together? A Yes,
24 sir, many times.

25 Q Many times? A Yes, sir.

26 Q Where? A Why, in Mr. Harrington's office, in Mr. Darrow's

1 office when he was out of town or not there and in Mr.
2 Rickman's office also.

3 Q Mr. Rickman? A Yes, sir.

4 Q Who is Mr. Rickman? A He is the partner of Mr. Harriman
5 in the law firm there.

6 Q Did you ever see them in any room where they were by
7 themselves closeted, that is to say, the doors closed and
8 cut off from other people? A That is what I refer to now.

9 Q In evident consultation? A Yes, sir.

10 Q How many times do you say this occurred, to your observa-
11 tion? A Oh, several times, I couldn't state positively.

12 Q Can you approximate it in any way? A Oh, during those
13 months it was probably a couple of dozen times.

14 Q During those months, what months do you refer to?

15 A Why, after Mr. Franklin was employed by the defense's
16 attorneys.

17 MR. ROGERS. You may cross-examine.

18
19 CROSS-EXAMINATION.

20 MR. FORD. Q How many times did you appear before the
21 grand jury, Mr. Russell?

22 MR. ROGERS. Just a moment, Mr. Ford. Go ahead.

23 MR. FORD. Q How many times did you appear before the
24 grand jury? A Twice before the county grand jury.

25 Q Yes. The first time you appeared before the grand jury
26 had you talked with Mr. Ford before appearing? A Yes, sir.

1 Q How long before going into the room? A I think it
2 was the night before.

3 Q The night before? A Or the afternoon before.

4 Q On that occasion do you remember what the subject of
5 your conversation was? A The subject of the conversation
6 was that which was gone over in the grand jury the next
7 day.

8 Q And that night you talked to Mr. Harriman? A After
9 I had talked to you, yes.

10 Q And before you went before the grand jury? A Yes, sir.

11 Q You never testified incorrectly before the grand jury
12 with regard to this check? A No, sir.

13 Q The first time you appeared before the grand jury you
14 told them about the check? A Yes, sir.

15 Q And the night before you told Mr. Harriman that Ford
16 had called you before the grand jury or was going to call
17 you before the grand jury? A Yes, sir.

18 Q And that he had asked you about the check? A Yes, sir.

19 Q And then Mr. Harriman called to your attention, or tried
20 to refresh your recollection and told you about this check
21 at once? A Yes, sir.

22 Q Told you it was the 28th day of November? A Yes, sir.

23 Q Did he show you the check at that time? A I think he
24 did. Not the check, but the note.

25 Q The note? A Yes.

26 Q Showed you the note which we have here? A Yes, sir.

1 Q And where was the note, did he have it in his hands?

2 A I think he got it out of the files there, yes.

3 Q Now, when you started talking with Mr. Harriman you
4 had no independent recollection of the fact that you had
5 been in the office on the 28th day of November or that
6 you had seen Mr. Harriman that morning, had you?

7 A I had forgotten that he was there that morning, that
8 that occurrence took place on that particular morning.

9 Q You told Mr. Ford that you didn't remember anything about
10 seeing him that morning? A Yes, that is true.

11 Q That you might have seen him but you didn't remember?

12 A That is true.

13 Q Then, when you went back and saw Mr. Harriman--it
14 was on the 4th day of January, 1912, that you went before
15 the grand jury? A All right.

16 Q That is about your recollection, is it not? A Something
17 like that, yes, sir.

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1 Q The day that you had seen Mr Ford was on the 3rd day of
2 January, Wednesday, the 3rd day of January, 1912? A I
3 think it was the afternoon before, yes.

4 Q The afternoon before and the moment you spoke to Mr
5 Harriman he told you he did see you? A Yes sir.

6 Q And he went and got this note and showed it to you?

7 A I think that is true, yes sir.

8 Q After telling you that he had seen you on that morning,
9 you were not convinced until he went and got the note?

10 MR ROGERS: That is objected to as not cross-examination,
11 in that way.

12 MR FORD: It is my way, I think it is good.

13 THE COURT: Objection overruled.

14 MR ROGERS: Exception.

15 A I don't know whether I was convinced or not, I would
16 have believed, I would have believed him if he had told
17 me so.

18 Q How is that? A I don't know whether I was convinced
19 or not, but if he would have told me that I would have
20 believed him.

21 MR ROGERS: Read that answer.

22 MR FORD: Now, --

23 THE COURT: Read the answer.

24 (Answer read.)

25 MR FORD: At any rate, when he did get the note, you look-
26 ed at the note to see it was dated the 29th? A Yes sir.

1 Q And you recalled the incident of having seen Mr Harriman
2 man the day before the 29th? A Yes sir.

3 Q And got \$500 from him? A Yes sir.

4 Q You had forgotten all about it? A Yes sir.

5 Q And Mr Harriman instantly recalled it to your atten-
6 tion? A (No response.)

7 MR ROGERS: Did you answer that? A No, I didn't answer
8 it. I don't know whether he did instantly call it to my
9 attention or not.

10 MR FORD: Who else was present when Mr Harriman told you
11 about this transaction? A I don't remember whether any-
12 one was or not.

13 Q Was Mr Darrow present? A It is very likely.

14 Q It was in the Higgins Building? A Yes sir.

15 Q Don't you recall now that Mr Darrow was present? A I
16 couldn't swear to it, no sir.

17 Q Was your recollection better on the 4th day of January,
18 1912, with regard to that incident than it is at the pre-
19 sent time? A Naturally, yes.

20 Q Did you not -- I direct your attention to your testi-
21 mony given before the grand jury.

22 THE COURT: What page?

23 MR FORD: It is page 9 of my copy; it has never been
24 made up like yours.

25 MR DARROW: Let us see yours.

26 MR ROGERS: page 9?

1 MR FORD: Do you know whether or not -- beginning at line
2 25: "Q -- Do you know whether or not MR Harriman was at
3 the office on November 27th or 28th, 1911? A -- I am
4 not positive, except he told me that he was --" Just a
5 moment before I ask that question. I withdraw it just a
6 moment. I want to ask another question before I ask this
7 one. You are quite positive that Mr Harriman showed you
8 that note on that occasion, are you? A Why, I think he
9 did.

10 Q You are sure of that? A No, I am not positive of it,
11 no. I think he did, though. I have seen it several times
12 since.

13 Q You may be mistaken about whether he showed you the
14 note on that occasion or not? A It is very likely.

15 Q I will now ask you if you did not on the 4th day of
16 January, 1912, testify as follows before the grand jury?

17 "Q -- Do you know whether or not MR Harriman was at the
18 office on November 27th or 28th, 1911? A -- I am not posi-
19 tive except he told me that he was. Q -- When did Mr

20 Harriman tell you that he was at the office? A -- He told
21 me that last night. Q -- That he was at the office on

22 November 28th, that he was at the office on the morning
23 that Mr Franklin was arrested? A -- He was at the office

24 that morning. Q -- At what place were you last night

25 when he told you that? A -- At his office. Q -- In the Hig

26 gins Building? A -- yes sir. Q -- Who else was present?

1 A -- Mr Darrow. Q -- What was the conversation you had
2 with Mr Harriman at that time? A -- Why, he sought to re-
3 fresh my recollection. Q -- Who did? A -- Mr Harriman.
4 Q -- What did he say? A -- To the effect that I had re-
5 ceived \$500 from him that morning to pay a note of his at
6 the bank, which I did. I paid the note and I have the
7 note down there now, but I had forgotten ^{it} up to that time.
8 He said it was that morning but I had forgotten it. Q --
9 Then Mr Harriman was at the office that morning? A -- He
10 says so."

11 MR ROGERS: No, no. Wait a moment.

12 MR FORD: That is all about Mr Harriman.

13 MR ROGERS: The question was, "Who was present at that
14 conversation?"

15 MR FORD: Yes.

16 MR ROGERS: Now, then, they asked him, if your Honor
17 please, with reference to who was present at that conver-
18 sation, was Mr Darrow not there. He says he does not
19 recall now. They seek to refresh his recollection now by
20 showing him his grand jury testimony to the effect that
21 Mr Darrow was there, but they have not read all of it.

22 MR FORD: I have read all that I care to read.

23 THE COURT: The witness has a right to have the transcript
24 in his hand and examine it.

25 MR FORD: Anything further you desire to read, Mr Russell,
26 to refresh your recollection? A No.

1 Q Did you so testify on that occasion? A yes sir.

2 Q Do you recall now whether or not Mr Darrow was present
3 on that occasion? A My memory was better at that time
4 than it is now, and he probably was present if I so tes-
5 tified at that time.

6 Q Well, do you now recall, after having had your memory
7 refreshed, that you did? A He must have been there.

8 Q Well, was he there? A Why, yes.

9 Q What time of the day was it that you met Mr Harriman
10 and Mr Darrow at the office in the Higgins Building?

11 A Before going to the grand jury, do you mean?

12 Q Yes. A Why, around 5 o'clock, I think somewhere,
13 I am not positive, in the evening.

14 Q When you went before the grand jury on that day, Mr
15 Russell, you took an oath to keep secret all that you
16 learned or heard or testified to before the grand jury,
17 did you not?

18 MR ROGERS: That is objected to as incompetent, irrelevant
19 and immaterial; not a cross-examination and there is not, nor
20 such
21 can there be anything, there being no law upon which it
22 is founded, or which can be founded.

22 MR KEETCH: It is in the statute.

23 MR ROGERS: Let's see it in the statute.

24 MR APPEL: Just a moment. We want to state our other
25 reasons so you can argue.

26 THE COURT: The defense is making their objection, they

1 have a right to go ahead. I will hear you.

2 MR APPEL: Here is the idea, your Honor: if it were true ,
3 assuming anything of that kind, we further object upon this
4 ground, that you cannot ask the witness by specific acts
5 in any way, either to disgrace him or impeach him in that
6 manner by specific acts, even ^{if} counsel on the other side
7 should be correct, but you cannot ask him whether he is
8 guilty of any improper conduct, anything like that; that
9 is not the way to impeach a witness directly in the teeth
10 of the statute. The statute says you cannot ask it; that
11 is all.

12 THE COURT: Now, let's get the prosecution's point.

13 MR FORD: If the court please, the two objections made by
14 counsel are inconsistent with each other. One insists
15 that there is no violation of the law, and the other in-
16 sists --

17 THE COURT: They have a right to be inconsistent.

18 MR FORD: yes, and I have a right to call it to the at-
19 tention of the court, and point out the inconsistency
20 which I am trying to do within my rights. The question
21 now whether or not the law requires an oath to be admin-
22 istered, is absolutely irrelevant, the thing is, was an oath
23 administered, and did this witness have an interest in
24 the case? Was his relation to the case such that he vio-
25 lated that oath, regardless of whether or not it consti-
26 tuted a crime; the purpose is to show his bias and prejudice,

1 his feelings toward one of the parties, the defendant, in
 2 this case; that is the entire purpose of it, not to cast
 3 any imputation that he has committed a crime upon him at
 4 all; simply to ask him whether or not he took an oath,
 5 and did he, after taking such oath, tell Mr Harriman and
 6 Mr Darrow, the persons who were being investigated at that
 7 time, the result of what he had learned. Now, that is the
 8 sole matter before the court.

9 THE COURT: Objection sustained.

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8s 1 MR. ROGERS. I desire to reply further--

2 THE COURT. The objection is sustained.

3 MR. ROGERS. I desire to be heard.

4 THE COURT. Then I will set aside the ruling.

5 MR. FORD. If the court please, I withdraw the question,
6 if the court is going to sustain the objection it is not
7 for the purpose of convincing your Honor but to affect the
8 jury.

9 THE COURT. He may convince me I am wrong.

10 MR. FORD. But your Honor has sustained the objection and
11 he is not going to try to convince you you are wrong. I
12 will withdraw the question because I am satisfied--

13 MR. ROGERS. I didn't know I was so dangerous as all that,
14 but what I wanted to suggest, counsel is misstating the
15 evidence, has misstated the matter in the presence of the
16 jury and I wish to assign error with respect to it, that it
17 is not particularly that Mr. Russell told Mr. Harriman or Mr.
18 Darrow anything that he learned before the grand jury, I
19 didn't understand that there was any sanctity about a
20 consultation or talk with Mr. Ford in his office. That is
21 where the witness says that he talked with Mr. Ford, in his
22 office, before he went to the grand jury.

23 THE COURT. You wish to assign that as error?

24 MR. ROGERS. Yes, sir, and counsel has misquoted the evi-
25 dence.

26 THE COURT. It will be so assigned; proceed with the examina-
tion.

1 MR. FORD. Now, this safe in that room up there was a large
2 Mosler safe, I believe you call it? A Yes, sir.

3 Q And had three compartments? A Three locked compart-
4 ments.

5 Q Three locked compartments. Mr. Harriman had access to
6 one of those locked compartments, is that correct? A Yes,
7 sir.

8 Q Mr. Harrington had access to another of those locked
9 compartments? A He did.

10 Q And you had access to the third locked compartment, is
11 that correct? A That is correct.

12 Q How about open compartments that had no doors on? A They
13 were just several partitions I referred to in there.

14 Q Did Mr. Harriman or Mr. Harrington keep anything in those
15 open compartments? A Yes, they all kept things in the
16 open compartments.

17 Q Did Mr. Darrow ever give you any package to put in your
18 locked compartment? A Yes.

19 Q Frequently? A Why, yes, frequently.

20 Q And you would hand him back the packages at different
21 times, I presume? A Yes, sir.

22 Q Do you remember whether or not you gave him any packages
23 on the 28th day of November, 1911? A I don't remember
24 whether I did or not on that date.

25 Q You may and you may not, is that correct? A I may and
26 I may not.

1 Q The room which you occupied was the private office of
2 Mr. Harriman? A Yes, sir.

3 Q That morning after receiving the money from Mr. Harriman
4 you remained at the office until the bank opened about 10
5 o'clock? A Why, I think I did; I have no independent
6 recollection of going out.

7 Q What time did you usually come to the office? A Oh,
8 about 8 or 8:30.

9 Q That morning do you recall how long you had been there
10 before meeting Mr. Harriman? A I do not.

11 Q Do you recall what you were doing that morning? A No,
12 sir.

13 Q It was your custom to open the mail and answer such
14 letters as you could answer without consultation with Mr.
15 Harriman? A A portion of the mail, yes.

16 Q And the balance of the mail you would hold until Mr.
17 Harriman came? A Yes, sir.

18 Q He usually came there every morning and dictated his
19 letters and then went away, during the campaign, is that
20 correct? A Well, during the campaign he usually dictated
21 his letters about once a week.

22 Q About once a week? A Yes.

23 Q He usually came through Mr. Wolfe's room into your room?

24 A Almost always.

25 Q During the campaign? A Almost always.

26 Q The door between your room and Mr. Wolfe's room was open

1 all the time? A It was.

2 Q The employes of Mr. Wolfe's room came there about 9
3 o'clock in the morning? A Usually, yes, sir.

4 Q That was known as the publicity bureau, was it not?

5 MR. ROGERS. I object to that as not cross-examination.

6 THE COURT. Overruled.

7 A I heard it referred to as that, I don't know who by.

8 Q Wasn't it generally understood that department was for
9 the purpose of manufacturing public sentiment?

10 MR. APPEL. Wait a moment--we object to the question
11 upon the ground it is incompetent, irrelevant and imma-
12 terial and not cross-examination and we assign the con-
13 duct of the district Attorney in asking the question as
14 misconduct for the purpose of misleading the jury by irre-
15 levant matters, prejudicing this defendant by irrelevant
16 and immaterial matter, a matter that he should know is not
17 proper to go before the jury.

18 THE COURT. Objection sustained.

19 MR. FORD. Q Did you see Mr. Wolfe there that morning?

20 A I cannot be positive when he came in that morning, he
21 was always there, with the exception of a few days.

22 Q We usually came there before the rest of the employes
23 would come? A Yes, sir.

24 Q Usually be there about the same time you were? A Just
25 about, yes, sir.

26 Q 8 o'clock in the morning? A Yes.

1 Q Usually arrived there about 8 in the morning, is that
2 correct? A About 8:30, about the time I came.

3 Q You usually got there at 8:30? A Just about; yes.

4 Q Now, you remained in that office attending to your mail
5 and your duties up until the time the bank opened, is that
6 correct? A I think that is correct; I am not positive,
7 though. I might have gone out, I frequently did.

8 Q Did you see Mr. Harriman there that morning? A Why, yes
9 when he gave me the money.

10 Q Did you see--I mean to say Mr. Harrington. Did you see
11 Mr. Harrington there that morning? A I couldn't be positive
12 about that?

13 Q Did you see Mr. Franklin there that morning? A I couldn't
14 swear to that either.

15 Q Were you in Mr. Darrow's room at all that morning?

16 A I think not.

17 Q Across the hall from you and just north of Mr. Darrow's
18 room, the room had been partitioned off, had it not, into
19 two compartments? A I think it had been at that time,
20 yes, sir.

21 Q One of them was used as sort of a consultation room
22 for Mr. Darrow and the other was the stenographer's room,
23 is that correct? A That is correct.

24 THE COURT. I think we will take a recess, Mr. Ford, of five
25 minutes.

26 (Jury admonished. Recess for 5 minutes.)

1 (After recess.)

2 THE COURT: All parties are present. You may proceed,
3 gentlemen.

4 (Last question and answer read.)

5 MR FORD: And beyond that room was Mr Harrington's room;
6 is that correct? A Beyond the stenographers' room, yes
7 sir.

8 Q Being the third room, beginning at the south? A Yes
9 sir.

10 Q The first room was Mr Darrow's, the second room was
11 the one that had been divided off into a consultation and
12 stenographers' room, and the third room was Mr Darrow's
13 room -- A The third room was Mr Harrington's room.

14 Q The third room was Mr Harrington's room? A Yes sir.

15 Q Those were all on the west side of the building?

16 A Yes sir.

17 Q Directly opposite Mr Harrington's room was Mr Wolfe's
18 room? A Yes sir.

19 Q And directly opposite the consultation and stenographers'
20 room was your room, Mr Harriman's office? A Yes sir.

21 Q Did Mr Harrington come into that room where you were
22 that morning? A I don't remember of seeing him that
23 morning.

24 Q You don't remember of giving him any package or
25 seeing him going to the safe at all? A No sir.

26 Q Did you give any package to Mr Harriman? A No sir.

1 Q You are sure of that? A I am quite positive of it,
2 yes.

3 Q Do you know whether Mr Harriman went to his safe
4 and took any packages out that morning? A No, I couldn't
5 say as to that.

6 Q You don't know anything about that? A No.

7 Q You were in the room? A Yes, I was in the room.

8 Q But if he did that you would not have noticed it?

9 A I would not have paid any attention to it.

10 Q You don't know whether he kept any money in his com-
11 partment or not? A I don't know anything about what was
12 in his compartment.

13 Q Do you know of anyone else coming into that room that
14 morning where you were? A I don't remember.

15 Q You don't remember anybody? A No sir.

16 Q The room was not occupied by any other person other
17 than yourself and Mr Harriman? A That is all.

18 Q Where were you during the most of the day, were you
19 performing your duties in that room? A In that room,
20 yes sir.

21 Q You didn't have occasion to go around to the other
22 rooms frequently? A Oh, yes, I went around frequently
23 to all of them.

24 Q For what purposes? A Various purposes.

25 Q Well, what purpose? A Well, that would be hard to
26 tell.

1 Q You were acting as stenographer for everybody there?

2 A No sir.

3 Q You didn't go around to various rooms for the purpose
4 of taking dictation? A No sir.

5 Q For what purpose did you go? A I don't know as I
6 could state any specific purposes. I had free access to
7 all of them, and went around whenever I felt like it.

8 Q To visit? A Perhaps.

9 Q Did you have charge of the stenographers in the room
10 next to Mr Darrow's room? A Why, to the extent of pay-
11 ing them their salary.

12 Q You didn't direct their movements or employ them or
13 discharge them? A No sir.

14 Q You simply paid their salaries? A That is all.

15 Q Had nothing else to do with them? A No sir.

16 Q Did you go into their room frequently?

17 MR APPEL: We object to that, your Honor, as not a cross-
18 examination. Now, he cannot go and ask him generally what
19 he did during all the time he was employed there.

20 Our examination, if I am correctly informed, was limited
21 to what occurred there that day.

22 MR FORD: It is preliminary.

23 MR APPEL: It cannot be preliminary, a whole lot of
24 these propositions, whether he did this or did that as a
25 general rule, has nothing to do with this, absolutely.

26 THE COURT: On the statement it is preliminary, objection

1 is overruled.

2 MR APPEL: We take an exception.

3 A What is the question.

4 MR FORD: Read the question.

5 (Question read.)

6 A Into the room occupied by the stenographers in the
7 second room from Mr Darrow's, is the one you mean?

8 MR FORD: Yes. A Yes, I went in there frequently.

9 Q For what purpose? A Oh, I don't know; I can't rem-
10 ember what purposes I went in there for.

11 Q Well, generally?

12 MR APPEL: I object to that as not cross-examination.

13 THE COURT: Objection overruled.

14 MR APPEL: We except.

15 A Perhaps to talk to the stenographers.

16 Q Just socially, you mean? A Why, yes.

17 Q Did you take dictation from Mr Harrington? A No sir.

18 Q Did you have any business with Mr Harrington?

19 MR APPEL: Wait a moment. We object to that as not cross-
20 examination, immaterial.

21 MR FORD: Showing his relations and the conditions around
22 there, leading up to November 28th. I cannot put my
23 entire cross-examination into one question, your Honor.

24 THE COURT: Objection overruled.

25 MR APPEL: We except.

26 A What is the question?

1 (Question read.)

2 A Ifrequently assisted him in translating messages and
3 things of that kind.

4 Q Code messages? A Yes sir.

5 Q Were there any other duties you did in connection
6 with Mr Harrington? A I think not. I had no direct
7 connection with Mr Harrington.

8 Q You knew what Mr Harrington's connection with the de-
9 fense was, did you not?

10 MR APPEL: Wait a moment. A Yes sir.

11 Q You knew Mr Franklin? A Yes sir.

12 Q And you knew what his connection with the defense was?

13 A Yes sir.

14 Q You knew that both Mr Franklin and Mr Harrington were
15 in separate departments?

16 MR APPEL: Wait a moment. We object to that on the ground
17 it is immaterial for any purpose; not cross-examination.

18 MR FORD: The witness has testified on direct examination.

19 THE COURT: Objection overruled.

20 MR APPEL: We except. A What is the question, please?

21 (Question read.) Why, I think they worked separately,
22 yes.

23 MR FORD: You knew Mr Franklin was employed by Mr Darrow
24 to investigate jurors?

25 MR APPEL: Wait a moment. We object to that, assumes a fact
26 to which no foundation has been laid; the witness has not

1 testified he knows the nature of the employment or was
2 present at the employment, who told him or how he got it.
3 He cannot testify to hearsay any more on cross-examination
4 than on direct examination.

5 THE COURT: It seems to me you are going beyond the scope
6 of cross-examination, Mr Ford.

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1 MR. FORD. If the court please, this witness has testified
2 he had seen Mr. Harrington and Mr. Franklin frequently to-
3 gether and he was allowed to express his conclusion that
4 they were in consultation together. Now, here is a man
5 who was secretary to Mr. Harriman, who had charge of a large
6 number of the employes and was familiar with his employer's
7 business.

8 THE COURT. Yes, I see your point. I think I had overlooked
9 that.

10 MR. APPEL. The inquiry may be material, your Honor, but the
11 question--

12 THE COURT. Read the question.

13 MR. APPEL. The evidence may be material, but sometimes
14 we do not know how to get it in.

15 THE COURT. Read the question.

16 (Question read.)

17 THE COURT. Objection overruled.

18 MR. APPEL. Exception.

19 A I supposed that was his duty, yes, sir.

20 Q You knew it, did you not? A Quite likely, yes.

21 MR. ROGERS. The same question, we object to it.

22 THE COURT. It is answered and it is harmless.

23 MR. FORD. Q You knew Mr. Harri^{ngton's} business was to in-
24 vestigate evidence concerning the gas theory, to
25 investigate the evidence that would be introduced after
26 the jury was selected and to combat evidence secured by

1 the prosecution, to investigate the character and reputa-
2 tion of the witnesses secured by the prosecution, did you
3 not?

4 MR. APPEL. We object to that upon the ground it is not
5 cross-examination, calls for a conclusion and opinion, no
6 foundation laid.

7 MR. FORD. The same question as the preceding one, exactly.

8 THE COURT. Objection overruled.

9 MR. APPEL. We except.

10 A I know that Mr. Harrington was employed in the matter of
11 evidence. As far as the other part of the question is con-
12 cerned, I couldn't state.

13 Q That is, as to the details of the evidence? A Yes, I
14 don't know anything about that.

15 Q You knew he was employed, and that his efforts were
16 confined to the evidence, that he had nothing to do with
17 the jury?

18 MR. APPEL. We object to that, in view of the answer of
19 the witness just now; counsel assumes that he knows when
20 the witness has just told him, and under oath, told him he
21 knew Mr. Harrington was employed in the matter of the evidence
22 and as to the other matters he did not know. He said,
23 "I do not know." Now, he is asking him whether or not
24 that employment was limited entirely to that, when the wit-
25 ness himself says he doesn't know, and if he knew the limi-
26 tation of it in the first instance he would have known that

1 and would have so stated in his answer. Now, he assumes it
2 was limited to that.

3 MR. FORD. The answer of the witness was Mr. Harrington
4 was employed in the matter of evidence but he was not fami-
5 liar with the details of what that evidence was, and this
6 is a perfectly proper answer. Now, this inquiry is to
7 show whether his employment was limited to that or whether
8 he had anything to do with the jury, whether he had anything
9 to do with Mr. Franklin's department, leading up to these
10 apparent consultations--

11 MR. APPEL. It is not cross-examination.

12 MR. FORD. --I wish the court would admonish counsel not
13 to address the court while I am talking.

14 THE COURT. I can only hear one at a time.

15 MR. APPEL. I beg your Honor's pardon. I know I must be
16 exceedingly careful how I make my points here. I appreciate
17 the situation I am placed in.

18 THE COURT. Now, Mr. Ford, I will hear you.

19 MR. FORD. Read the last part of my statement.

20 (Last part of Mr. Ford's statement read.)

21 MR. FORD. To show what there was in these consultations we
22 attract the mind of the witness to them. I think that
23 is about all that is necessary to say at this time, I do
24 not care to go further and disclose the reason of the cross-
25 examination to the witness.

26 MR. Appel. That is the very reason why it is not cross-

1 examination. I am called on the stand and I say in the
2 course of my employment in a certain building I saw Mr.
3 Franklin and Mr. Harrington together many times. Now, that
4 is addressed simply to one point, is it true or is it not?
5 What Mr. Franklin said or what Mr. Harrington said--that is
6 all, is it true that their consultations were only limited
7 to two or three times or substantially that number of
8 times as testified to by them--we contradict them, we come
9 in and put this witness on the stand and he says he saw
10 them several times apparently in consultation. Now, how is
11 it material what consultation, what this man knows about the
12 limitation of employment of Mr. Harrington, he only testi-
13 fies to the physical fact of having seen them? Whether he
14 knows one was employed in one department and another was
15 employed in another department is not cross-examination to
16 the fact he saw them together on several occasions. Whether
17 he regarded this as suspicious or what his conclusions were
18 is not material, the only point is were they apparently in
19 consultation or were they seen together, that is the only
20 inquiry to it; as to what this man knew or what he didn't
21 know concerning the peculiar employment of each one of these
22 employes is not material, and does not aid him to show
23 whether he saw them or didn't see them. It does not aid
24 the prosecution or in any way modify the fact that he saw
25 them. It might explain the conduct of Mr. Harrington and Mr
26 Franklin, but that is not for this witness to say and it is

1 not cross-examination. He simply is testifying to what
2 he saw, the physical facts, seeing them together, that is
3 all. As to the reasons why they were together or as
4 to the motives of their being together, this witness has
5 not testified to.

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1 If this witness had expressed an opinion, your Honor, that
2 he believed they were consulting concerning evidence, why,
3 then he might be asked, "Why, don't you know that that be-
4 lief is not well founded because you knew they worked in
5 separate departments, one in the investigation of the stand-
6 ing of the jury and the other one concerning witnesses?",
7 and that would be cross-examination for the purpose of show-
8 ing to the jury that this belief of this man was not well
9 founded, and his statement or his conclusion that they
10 were consulting concerning a certain matter was not well-
11 founded, but when he says he saw them together apparently
12 in consultation, it is only ask to the physical fact, and
13 as to the reasons for that, it certainly is not cross-exam-
14 ination, and it -- have they a right to prove the facts,
15 either infavor of Franklin or in favor of Harrington
16 by asking questions of this witness on cross-examination?
17 MR FORD: The witness has testified to his belief they
18 were in consultation together; he has testified they were
19 apparently in consultation together, on num erous occas-
20 sions, and at several different places around the office
21 there, so that on the belief alone, we would be entitled
22 to go into it on cross-examination, on counsel's theory
23 just advocated by him, but there are other reasons why we
24 want to go into this. The witness has testified to the
25 fact of having seen them frequently together. Now, we
26 have a right to inquire into his recollection, the founda-

1 tions of that recollection. It is a well known fact in
2 psychology that the first element of memory is attention,
3 that a person will remember those things to which he pays
4 the most attention, that those things which are made to
5 attract his attention will be the impression upon the mem-
6 ory, and are retained in the memory, while things that
7 are of no importance do not attract the attention, do not
8 leave any lasting impression in the memory, and they do
9 not recall them. Now, I am going to the strength of his
10 recollection in regard to the number of times he has seen
11 these people together as well as his conclusions as to
12 what they were doing.

13 MR APPEL: Your Honor, I do not know -- of course, I never
14 was a professor of psychology nor a professor of philosophy,
15 and I understand that psychology is one of the branches of
16 philosophy, so stated by a very eminent French professor
17 here once upon a trial, I learned that from him, I never
18 looked into this psychology. Of course, these eminent
19 gentlemen know all about it. Here is the proposition:
20 if psychology is true, according to the interpretation
21 of counsel here, it is the very reason why this man remem-
22 bered these things; it is the very reason, your Honor, here
23 is Bert Franklin, according to the theory, working on one
24 branch of the case that had nothing to do with the branch
25 upon which Mr Harrington was working, and yet it would be,
26 according to this gentleman's argument, according to his

1 logic and very strongest reason why it impresses itself
2 upon the mind of this witness, ~~then~~ how was it that these
3 men were consulting together when they were working on dif-
4 ferent branches of the case, and now, because he is asking
5 him for the very things that would not tend to modify
6 this statement of this witness or alter his impressions of
7 that --

8 MR FORD: Counsel has got a wrong impression with regard
9 to one thing that ought to be corrected.

10 THE COURT: Let us have the question read.

11 (Question read.)

12 THE COURT: The objection is overruled.

13 MR ROGERS: Exception.

14 A I know that is -- that he was employed in gathering
15 evidence, segregating it. As far as the jury was concern-
16 ed I know nothing about.

17 MR FORD: Didn't Mr Franklin make all the reports to you?

18 A No.

19 Q Weren't all the written reports turned over to you?

20 MR APPEL: Wait a moment. We object to that as not cross-
21 examination, and immaterial as to what Franklin did,
22 generally.

23 THE COURT: I think you are getting beyond the scope of
24 the cross-examination.

25 MR FORD: If the court please, the witness has just answer-
26 ed that he didn't know -- that he doesn't know whether

1 Mr Harrington had anything to do with the jury. Now, I
2 wish to show this witness was the custodian of all re-
3 ports concerning the jury, knew their source and had
4 charge of them, and that he came in contact with Mr.
5 Franklin.

6 THE COURT. If he was the ous todian of the reports he
7 doesn't know their contents.

8 MR FORD. I will find out and find out whether he
9 consulted with anybody concerning these reports, with
10 anybody other than Mr. Franklin; whether he ever dis-
11 cussed the matters at all with Mr. Harrington. It is
12 true that the witness has not yet testified whether he knew
13 their contents or not, but that is a matter to be disclosed
14 on cross-examination, the very matter I want to go into,
15 showing his relationship to all the persons involved. I am
16 entitled to show the relationship of this witness and
17 all the persons whose names have been mentioned in this
18 testimony by him.

12a 1 MR. APPEL. Can't have anything to do with what he learned
2 unless it is cross-examination. How does that throw any
3 light upon his statement that he saw them together? He
4 intends to ask him whether or not he discussed the things
5 with Mr. Darrow, that is not cross-examination.

6 MR. FORD. No, I didn't.

7 MR. APPEL. He just said that in his statement.

8 (Last question read by the reporter.)

9 MR. FORD. Referring to the written reports on the jurors
10 made by Franklin.

11 THE COURT. Objection overruled.

12 MR. APPEL. Exception.

13 A There were written reports turned over to me which I
14 had placed in the safe. I don't know as to all of them.

15 MR. FORD. It was your understanding it was all of them?

16 MR. APPEL. I object to his understanding, immaterial and
17 not cross-examination.

18 MR. FORD. I think it is just merely quibbling, your
19 Honor.

20 MR. APPEL. Questions like that are so perfectly absurd,
21 your Honor, we want to stop it somewhere.

22 THE COURT. Objection sustained.

23 MR. FORD. Q Did you not on various occasions get out
24 these reports for Mr. Franklin? A Yes, sir.

25 Q On the 25th day of November you came from your home
26 in Glendale and met Mr. Franklin at the office so he could
get the reports, did you not?

1 MR. APPEL. That is objected to because the witness has
2 answered he did sometimes, but whether he did on that day
3 is immaterial and not cross-examination; calling for the
4 acts of these people, not in reference to the subject mat-
5 ter; not calling for the act of Harrington and Franklin
6 together, but calling for the act of this witness and
7 Franklin together, general acts with reference to a particu-
8 lar thing which is not cross-examination.

9 THE COURT. I am satisfied that the question is beyond
10 the scope of cross-examination. The objection is sustained
11 on that ground.

12 MR. FORD. Q Did you ever at any time or ^{at} any place have
13 anything to do with Mr. Harrington in reference to the
14 reports on jurors or any other matter connected with
15 jurors?

16 MR. APPEL. To that we object upon the ground it is not
17 cross-examination, it is irrelevant and immaterial for
18 any purpose whatsoever; it doesn't tend in any way shape
19 or manner either to contradict the witness or modify the
20 testimony in chief; that it calls for acts between this
21 witness and Mr. Harrington and not any matter connected with
22 the acts of Franklin and Harrington.

23 THE COURT. Objection sustained.

24 MR. FORD. Q Now, at the time--when Mr. Harrington was in
25 his office was it his custom to keep his door shut or open
26 in the hall? A Shut.

1 Q At the times you saw Mr. Franklin and Mr. Harrington in
2 Harrington's office was the door open or shut? A The door
3 would be shut until I opened it.

4 Q And you went in? A Yes, sir.

5 Q How long did you remain? A Oh, just a moment or two.

6 Q Were they talking when you came in? A Yes.

7 Q Do you know about what they were talking? A No, sir.

8 Q What time of the day was it that you saw them together?

9 A Oh, I don't recall any particular time of day.

10 Q How frequently did you see Mr. Franklin in Mr. Harrington's
11 office? A In his office perhaps eight or ten times, I
12 can't be positive.

13 Q In his office eight or ten times? A Yes.

14 Q You had seen them together how many times? A 15 or 20
15 times.

16 Q How many times did you see them together in Mr. Rickman's
17 office? A Not more than 2 or 3.

18 Q Who else was present when you saw them in Mr. Rickman's
19 office? A Nobody.

20 Q Who was in Mr. Harrington's office at the time they were
21 in Mr. Rickman's office? A Why, I couldn't tell you that.

22 Q Well, did it impress you that they had gone off to Mr.
23 Rockman's office to secure secrecy?

24 MR. APPEL: I object to that, asking for his impression,
25 being hearsay.

26 THE COURT. Objection sustained.

1 MR. FORD. Were they apparently in a secret conversation
2 in Mr. Rickman's office?

3 MR. ROGERS. Pardon me--let me hear that question.

4 (Last question read by the reporter.)

5 A Well, they were talking, I don't know whether it was
6 secret or not; they were talking together.

7 MR. FORD. Q Did they stop talking when you came in?

8 A Oh, yes, nearly always.

9 Q Did you address yourself to either one of them when you
10 came in? A If I had any business with them I did, I don't
11 remember as I did.

12 Q Did you have anything to say when you went into the
13 room where they were? A I oftentimes did, yes.

14 Q And did they stop talking for the purpose of answering
15 your question or was it apparently because they didn't
16 want you to hear what they were talking about? A Well,
17 that would be hard to say.

18 Q Did it leave such an impression on your mind that they
19 didn't want you to hear what they were talking about?

20 MR. ROGERS. That is too far, if your Honor please, and
21 we object, not cross-examination. Object to it on that
22 ground, calls for a conclusion or opinion; it is not
23 definite evidence.

24 THE COURT. Objection sustained.

25 MR. FORD. Q Now, at the time you went into Mr. Harrington's
26 office it was in the daytime? A Yes, sir.

1 Q And the door was unlocked? A Yes--that is, the outside
2 door was nearly always locked. The door in the next room
3 is the one I went in.

4 Q The door through which you came, however, was unlocked?

5 A Yes, sir.

6 Q There was no attempt to bar you out or order you out
7 when you came in? A Nobody ever did that with me in that
8 office.

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1 Q Did you ever at any time report to Mr Darrow the fact
2 that Mr Franklin and Mr Harrington were plotting to-
3 gether?

4 MR APPEL: Wait a moment. We object upon the ground it
5 is not cross-examination. It assumes a fact not testified
6 to by the witness. He is not drawing a conclusion at all.
7 He is simply stating they were together.

8 MR FORD: If the court please, I have a right to assume
9 this was plotting from what the witness has told, even if
10 it don't bear -- if there was no such logical deduction
11 from what he has told; I have a right to assume this
12 without any reason whatever on cross-examination. I
13 have a right to assume facts not in evidence on cross-exam-
14 ination, always.

15 THE COURT: This question would call for a conclusion of
16 the witness, which he is not entitled to give. Objec-
17 tion sustained upon that ground.

18 MR FORD: Did you ever report to Mr Darrow that they
19 were talking together alone, separate from everybody else?
20 And that they had stopped talking when you came into the
21 room? A No.

22 Q Did you ever report that to Mr Harriman? A No.

23 Q Did you ever report it to anybody? A No.

24 Q Do you want to give such an impression at the pre-
25 sent time, that they were?

26 MR ROGERS: That is objected to as not cross-examination.

1 calling for a conclusion or opinion, not evidence.

2 THE COURT: It is a conclusion. Sustained on that
3 ground.

4 MR FORD: What do you want us to understand by your lan-
5 guage when you said they were talking together in the
6 room alone, and that they had stopped talking when you
7 came in?

8 MR ROGERS: Why, if your Honor please, I object to that as
9 not a cross-examination, and not a recitation of a matter of
10 fact. He has said in reply to counsel that they were to-
11 gether in a room, that they were talking together; that
12 they stopped when he came in, that the outside door was lock
13 ed and the inside door was unlocked.

14 THE COURT: I don't think the language is ambiguous or
15 requires any interpretation. Objection sustained.

16 MR FORD: Mr Russell, you have been in the room for several
17 days since this trial began? A I have been in here, yes
18 sir.

19 Q You were here this morning in the room before you were
20 called to the stand? A I was here until court opened.

21 Q You were not here while Mr Harriman testified?

22 A Yesterday.

23 Q Today? A No sir.

24 Q Yesterday? A I was here part of the time yesterday,
25 yes sir.

26 Q Were you here while any other witnesses were testify-
ing? A I was here while Mr Wolfe was testifying for a

1 little while.

2 Q While any other witnesses were testifying? A No
3 sir; that is all.

4 Q You knew that there was a rule excluding witnesses,
5 did you not?

6 MR APPEL: We object to that, your Honor. Your Honor, I
7 only object for this reason, your Honor: everyone of our
8 witnesses here, has been called upon the stand to give evi-
9 dence. Now, counsel here, upon cross-examination has
10 charged every one of them with violating some rule of the
11 court or violating some statute or something. Now, this
12 is not the time or place to charge our witnesses with
13 violation of being in contempt of court. It is the worst
14 kind of error to commit. He has by insinuation here under-
15 taken to show specific acts on the part of the witness
16 tending to bring him before the jury in an improper light.
17 That is improper of the District Attorney, and not only
18 is it misconduct but it is the highest conduct of unfair-
19 ness. It is wrong, you know, that everyone of our wit-
20 nesses should be intimidated. Just a moment; let me see
21 what the statute says. Now, your Honor, we certainly do ob-
22 ject if it had only occurred once or twice. Section 2051
23 (reading:) "A witness may be impeached by the party
24 against whom he was called by contradictory evidence or
25 by evidence that his general reputation for truth, honesty
26 or integrity is bad, but not by evidence of particular

1 wrongful acts, except that it may be shown by the examina-
2 tion of the witness, or the record of the judgment, that
3 he has been convicted of a felony." Now, the other sec-
4 tion of the code, 2064: (Reading:) "A witness, served with
5 a subpoena, must attend at the time appointed with any
6 papers under his control", and so forth, "and answer all
7 pertinent and legal questions; and, unless sooner dis-
8 charged, must remain until the testimony is closed. "

9 Now, "A witness must answer questions legal and pertinent
10 to the matter in issue, although his answers may estab-
11 lish a claim against himself; but he need not give an
12 answer which will have a tendency to subject him to pun-
13 ishment for a felony; nor need he give an answer which
14 will have a direct tendency to degrade his character, un-
15 less it be to the very fact in issue, or to a fact from
16 which the fact in issue would be presumed."

14s 1 Now, here, your Honor, every one of our witnesses
2 --the first witness that went upon the stand here was
3 undertaken to be intimidated by what they were going to do
4 in the future, by what they intended to do--"We only
5 want to preserve the rights of the state, we don't want
6 to be foreclosed--we may possibly take some action."

7 Then comes this witness here, then, your Honor, and he is
8 asked whether or not he has violated some rule of the
9 court. They have a right, your Honor, to file an affidavit
10 here if this witness is in contempt of court of any rule
11 known by him to have been made by your Honor, but they have
12 no right to say that on cross-examination of the witness,
13 in any manner tending to impeach the witness or bring him
14 into ridicule or in bad situation before this jury. It is
15 not concerning the rights of the witness but it is con-
16 cerning the rights of this defendant. The evidence he pro-
17 duced here comes from that witness. I submit, your Honor,
18 and we object to that kind of conduct generally and to
19 this question specifically.

20 MR. FORD. If the court please, Section 2043 of the Code
21 of Civil Procedure provides: "(Reading) "If either party
22 requires it, the judge may exclude from the court room any
23 witness of the adverse party not at the time under examina-
24 tion, so that he may not hear the testimony of other
25 witnesses;" and the courts have held in this state that if
26 that rule is violated that the court may, in its discretion,

1 exclude the testimony altogether of the witness. Now, we
2 don't desire to exclude the testimony of this witness; we
3 don't desire at this time that the witness be punished for
4 contempt. We merely wish to ascertain if he was aware
5 of the existence of that rule, merely to show as a matter
6 of argument what effect it might have had, if any, upon
7 his testimony. We have a right to show the relation of the
8 witness to the case, and if he has been interested and has
9 remained here, and that is all, and listened to the testi-
10 mony of other witnesses, knowing the existence of that
11 rule, it may be argued from that what the effect is upon
12 his credibility as a witness, what his interest is in the
13 case. That is the only object of it and not any other
14 object at all. I have not made any charges against the
15 witness. I just simply wish to show he was present in the
16 court room and that he knew of the existence of that rule.
17 That he had spoken to me several days ago about it and I
18 told him about the existence of the rule.

19 MR. APPEL. We certainly object to his testifying again.
20 He is not under oath. We cannot cross-examine him. So far
21 as this case is concerned, although I have the greatest
22 respect for counsel and all that, I have a right to question
23 his veracity whenever he testifies to a fact against this
24 defendant; at least I have a right to cross-examine him.

25 MR. FORD. I was stating to the court what I desired to
26 show and I will ask the witness those questions.

1 THE COURT. The Court will admonish the jury to disregard
2 the statement of the District Attorney as being a statement
3 that they are not entitled to consider as a fact in evidence
4 in this case. The facts must all come from the sworn wit-
5 nesses on the witness stand at all times. Now, let's have
6 this question.

7 (Last question read by the reporter.)

8 THE COURT. Objection overruled.

9 MR. APPEL. We except.

10 A I knew that there was, yes. I hadn't been subpoenaed,
11 however.

12 MR. FORD. Q You spoke to me in the ante-room several
13 days ago about that rule? A Yes, and you said you had no
14 objection to my coming in.

15 Q Mr. Russell, at that time did I not tell you that there
16 was a rule, that it was not a personal matter with me at
17 all, and that we would probably call you as a witness our-
18 selves in rebuttal? A That was a long time ago. Yester-
19 day you told me you had no objection to my coming in ex-
20 cept while Mr. Harriman was testifying and I didn't come in
21 while he was testifying.

22 MR. FORD. I think it was a misunderstanding. That is all.

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REDIRECT EXAMINATION.

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MR. ROGERS. Q Well, Mr. Russell, about that matter of the
payment or the receipt by you of the \$500 and your deposit-

1 ing it in the bank and getting \$100 the succeeding day and
2 depositing that in the bank and drawing a check in payment
3 for a note, you remember those circumstances independently
4 of the dates, do you not?

5 MR. FORD. Just a moment--to that we object upon the ground
6 that it is not redirect examination. We did not cross-
7 examine him about those matters on cross-examination. We
8 didn't care anything about that.

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1 MR ROGERS: Tried to get the witness to say that he could
2 not remember that matter independently of Mr Harriman hav-
3 ing stated it to him, and to that end and for that pur-
4 pose, they read page 9 of the grand jury transcript,
5 which I have here, where he is made to say -- the counsel
6 read it with some gusto, if your Honor please: "A -- I
7 am not positive, except he told me that he was. Q -- When
8 did Mr Harriman tell you that he was at the office? A --
9 He told me last night." Now, what I have a right to do
10 after they have brought that in, sir, is to show that he
11 remembered the fact, the incident or circumstances, and that
12 at the time --

13 THE COURT: I have your point. Let me hear the District
14 Attorney's objection.

15 MR FORD: Our objection was it was not redirect examina-
16 tion, and they went into that matter fully on direct ex-
17 amination. We have cross-examined him in regard to his
18 memory; we didn't bring out any new matter in regard to
19 the fact of his making a payment; that is not in dispute.
20 We have not raised any issue about that, and didn't
21 even cross-examine about it. We thought so little of it
22 we are not making any objection that he actually went down
23 and deposited \$500 in the bank and the next day he deposit-
24 ed \$100 more, and on the second day that he drew a check
25 for six hundred and some odd dollars to pay a note. We
26 are not making a dispute of that, that is a fact inde-

1 pend ent of this witness' recollection. We didn't care
2 anything about it. We didn't consider it of any import-
3 ance. We objected to its introduction in the first
4 place, because we didn't consider it material.

5 THE COURT: Answer the question. Objection overruled.

6 A I remember it, yes sir.

7 MR ROGERS: Now, then, can you be aided as to the exact
8 date when that circumstance happened by a bank book?

9 MR FORD: We object upon the ground it has been gone into
10 fully on cross-examination -- I mean on direct examina-
11 tion of their own witness.

12 THE COURT: Objection overruled.

13 MR ROGERS: Can you be aided by a bank book to refresh
14 your recollection?

15 MR FORD: I desire to add the further objection the wit-
16 ness testified the bank book entries were not made by him
17 or under his direction.

18 MR APPEL: Made in his presence when he had knowledge.

19 MR FORD: And he has so testified.

20 THE COURT: Well, the question before the court now is
21 to be answered yes or no, he can be aided or he cannot,
22 and you can examine on the voir dire, if you want to.
23 Answer the question yes or no, MR Russell? A Why, it
24 isn't necessary for me to see the bank book at all. I
25 know it independent of that.

26 MR ROGERS: You remember it independently of that?

1 A Yes sir.

2 Q Now, some questions were put to you from the transcript
3 of the grand jury and you remember you were asked if Mr
4 Darrow was not present that morning when Mr Harriman and
5 you talked together, and when Mr Harriman refreshed your
6 recollection that he was there at the office on that morn-
7 ing by a recital of these events; I will ask you if at
8 that time you didn't testify, just beyond what Mr Ford read
9 to you, and immediately succeeding it, as follows:

10 "Q -- In this conversation which you had last night, what,
11 if anything, did Mr Darrow say about his presence there
12 that morning? A -- Nothing. Q -- What conversation,
13 if any, did you have with Mr Darrow last night? A -- I
14 had none except told him that I had been up and talked
15 a little with you," meaning Mr Ford. "Q -- What did he
16 say? A -- Nothing." Did you testify that way?

17 A Yes.

18 MR FORD: Just a moment. We object to that upon the
19 ground it is not redirect examination; that it is leading
20 and suggestive; that it doesn't in any way touch any
21 matter brought out newly upon cross-examination. We
22 didn't ask him at any time whether he had talked with Mr
23 Darrow. The only question was, was he present. On the
24 further ground that no foundation has been laid for the
25 asking of this question. Are they seeking to impeach
26 their own witness? They have no right to put a leading

1 question to him unless they are seeking to impeach their
2 own witness. They haven't even laid the foundation by
3 asking him if he had a talk with Mr Darrow, and now,
4 further your Honor, suppose they had asked him the ques-
5 tion, "Did you talk with Mr Darrow"?, and suppose he re-
6 plied he did not. They could not bring this in to corro-
7 borate what he now suggests, for that would be a self-
8 serving declaration, and we object to it on the further
9 ground that its introduction at this time would be self-
10 serving declaration, and would not be admissible under
11 any circumstances, and they cannot impeach their own wit-
12 ness unless they are taken by surprise, which they have not
13 been.

14 THE COURT: Objection overruled. A I so testified, yes.

15 MR ROGERS: Now, you spoke of -- some questions were put
16 to you relative to the oath you took before the grand jury
17 and that objection was sustained. I am going to ask you
18 if the conversation -- if what you related to Mr Harriman
19 that night when he spoke to you about depositing this
20 money and the payment of this note, and the drawing of
21 this check and all that, if ^{what} you told him was not a conver-
22 sation you had with Mr Ford himself outside of the grand
23 jury room? A yes sir, the day before.

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1 Q And you were not under any solemn sanctity or anything
2 of that kind at all when you were talking with Mr. Ford, were
3 you, as far as you understood it?

4 MR. FORD^{*} Objected to as calling for a conclusion of the
5 witness.

6 MR. ROGERS. Did the fact concern you or concern
7 which you were there? A No, sir.

8 Q Has Mr. Ford talked to you about your testimony before
9 the grand jury since, since the testimony was given? A Yes,
10 I think so. He has talked with me, I think, about that.

11 Q Mr. Ford Ask^{ed}/you if Mr. Darrow gave you any packages
12 to put in the safe? Did Mr. Darrow give you any packages of
13 money to put in the safe? A No, sir; that is, not
14 to my knowledge.

15 Q What kind of packages did he give you to put in the
16 safe? A Usually papers.

17 Q What do you mean by papers? A Oh, bundles of papers
18 wrapped up--something of that kind.

19 Q Legal papers or something of that sort?

20 MR. FORD^{*} Objected to as calling for a conclusion of the
21 witness. He said not to his knowledge; he don't know
22 what the contents were.

23 MR. ROGERS. He didn't say anything of the kind.

24 MR. FORD. Read back three questions. He asked, did he
25 ever give you any money and he said, "Not to my knowledge."

26 THE COURT. Yes, the objection is good on the ground that

1 it calls for a conclusion. Objection sustained on that
2 ground.

3 MR. ROGERS. Describe the kind of packages that Mr. Darrow
4 gave you to put in the safe.

5 MR. FORD. Objected to as irrelevant and immaterial.

6 The witness didn't know the contents of it and could not
7 serve any useful purpose and it is immaterial.

8 THE COURT. Overruled.

9 A Simply sheets wrapped up, one bundle of packages laid
10 on the other, usually, and a string around them, something
11 of that kind, then he would give me the book of reports
12 on jurors to put in the safe nightly.

13 MR. ROGERS. I think that is all but I would like--it is
14 within 5 minutes of adjourning time. I might ask a ques-
15 tion or two.

16 THE COURT. Gentlemen of the jury, we will take a recess.

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