

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. 80

I N D E X.

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

Clarence Darrow

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August 3, 1912. 10 o'clock A.M.

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

THE COURT: Gentlemen, last evening when the court adjourned a very important question of law was partly submitted to the court. Some authorities have been presented and I feel it my duty to go a little further into those matters before ruling on the question that was presented, and I propose to defer the ruling on that question until Monday morning, but if counsel on both sides are still desirous of having the jury inspect and view the premises at the corner of Third and Los Angeles streets, that can be done at this time.

MR ROGERS: That is agreeable to us.

MR FREDERICKS: Under the stipulation heretofore introduced and entered into.

THE COURT: Pursuant to the stipulation heretofore entered. The court will at this time --

MR ROGERS: We have been informed, if your Honor please, that one or two changes -- possibly of no consideration, but I have not been informed about it sufficiently to say we are sure of them. We have been informed, however, there are certain changes that have been made in the situation down there. We would like to have the jury see the premises subject to the right of either party, if they are so advised, to introduce evidence of any changes that

1 may have occurred since the 20th day of November.

2 MR FORD: I think you have that legal right in spite of
3 any stipulation.

4 MR ROGERS: I didn't want to have any misunderstanding
5 hereafter.

6 MR FREDERICKS: Does counsel believe there has been some
7 change?

8 MR ROGERS: Mr Appel tells me that there has been one or
9 two minor changes . I didn't know of it.

10 MR FORD: In the arrangement of the -- in the structure
11 of the building?

12 MR APPEL: Since the employe of that place testified here.

13 MR FREDERICKS: Some changes in the bar room?

14 MR APPEL: No, no; in reference to those swinging doors.
15 I might state it, your Honor. I don't know that it is
16 true or not, but I have been told so. I didn't notice
17 it the other day when they were there, so I couldn't say --
18 that is, I didn't see, I didn't expect -- the swinging doors--
19 the testimony here was to the effect that they had been
20 nailed up against the side walls of the entrance there,
21 and we had examined that place, and the nails were there
22 and they were rusty. We are informed this morning that
23 since that man testified here, the nails have been taken
24 out by somebody. Whether true or not true, I am not stat-
25 ing, your Honor, but in case, we should find such to be
26 the case, we ask permission to introduce that fact in

1 evidence, if it should be necessary.

2 MR FREDERICKS: And that the doors now swing?

3 MR APPEL: No, they don't swing, but the nails show they
4 were there, and had been nailed a long time before they
5 were taken out.

6 THE COURT: All right.

7 MR FREDERICKS: We don't care anything about that.

8 MR APPEL: I don't know whether it is so or not.

9 MR FREDERICKS: We don't care anything about that.

10 MR DARROW: I don't know what the stipulation --

11 THE COURT: Let's be sure ^{of} that in case there is any doubt.

12 MR FREDERICKS: That will be a matter of testimony.

13 THE COURT: Now, but in regard to the stipulation, if there
14 is any question about there being a stipulation made.

15 MR FORD: The defense having requested that the jury be
16 taken down there, we are not urging an objection.

17 MR FREDERICKS: At the time they requested they made cer-
18 tain waivers of error and all that sort of thing, and of
19 course, we consented under those stipulations, and those
20 arrangements.

21 MR DARROW: You mean error in reference to anything that
22 might occur with the jurors on their trip down there today?

23 MR FREDERICKS: Well, Mr Appel made a very general state-
24 ment. I doubt if I will be able to go over it, but at the
25 time it satisfied my mind that no matter what happened down
26 there it couldn't be error.

1 MR DARROW: That was my understanding, whatever happened there
2 could not be error.

3 THE COURT: Now, I will announce what the court proposes to
4 do and will listen to the suggestion of counsel as to any matter
5 that may improve or better the condition.

6 MR FREDERICKS: We have agreed --

7 MR APPEL: Let me suggest this. I understand that in view-
8 ing the premises, in a criminal case, there is a direction
9 in the code as to how it shall be done, and I understand in
10 substance, it goes to the fact that the jury are instruct-
11 ed to proceed and to talk to no one, and that the person se-
12 lected by the court will point to them the specific points
13 which they should see, and that there shall be no other
14 matter done by the jury except to view the premises point-
15 ed out to them, the particular points, and the general
16 condition of the premises there or surrounding all those
17 points. I understand that is generally the way it is done.

18 MR FREDERICKS: Oh, yes, and we stipulate that the court
19 should be the one to point them out. That Judge Hutton
20 should be the one who would point them out.

21 MR ROGERS: Yes.

22 THE COURT: It is so stipulated?

23 MR APPEL: The court being the person, of course, the
24 court has supervision of the actions of the jurors there,
25 and if there is anything that should occur there, counsel
26 on either side may call attention to it and make the same

1 objection that should be made if it were done in open
2 court.

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28 1 MR. ROGERS. We have no apprehension the jury will do any-
2 thing. All we have to look out for is spectators. You
3 cannot tell what a bum ~~may~~ do in a saloon at 9 o'clock in
4 the morning.

5 THE COURT. The court proposes at this time, then pursuant
6 to stipulation of counsel and request of defendant's counsel,
7 to take a recess at this time for 15 minutes and the court
8 will reconvene at the corner of Third and Wall street--

9 MR. FREDERICKS. Third and Los Angeles.

10 THE COURT- Third and ~~Wall~~ is where we went over to inspect
11 the premises. (Discussion) All right, we will go to Third
12 and Los Angeles. We will adjourn and reconvene; the

13 court reporter, the clerk, the court, defendant and
14 attorneys and all parties being present at the corner of
15 Third and Los Angeles, the court will then proceed to in-
16 spect the premises near and about Third and Los Angeles,
17 Third and Wall, the saloon testified to and the rooming
18 house which entered into Mr. Browne's testimony, particular-
19 ly the window from which he made observation, and the point
20 at which different testimony shows the different parties
21 were arrested. Now, gentlemen of the jury, the court
22 admonishes you in taking this recess, the same admonition
23 that has applied heretofore, not to talk about the matter or
24 form any opinion about the matter, and it further admonishes
25 you and instructs you that the inspection of these premises
26 is not to enable you to form the idea or inquire into

1 independent testimony, but for the purpose of enabling you
2 better to understand the premises and the testimony that
3 is presented here in court, by your familiarity with the
4 ground and the situation.

5 MR. FORD. There is just one point, your Honor, that might
6 be overlooked, and for the information of the jury, so no
7 error may arise during the case, they are not to talk to
8 each other or call each other's attention to anything.

9 THE COURT. It is not a matter for discussion at all, it is
10 a matter for you eyes and ears; if you desire to ask any
11 questions I will be there and under the stipulation of
12 counsel I will point out anything that you desire to have
13 pointed out, if I am able to do so, and will undertake the
14 task of pointing out these particular items. I might state,
15 the attorneys on both sides and I visited the scene yester-
16 day morning and acquainted ourselves with the situation
17 so I might be better able to point out the matters. The
18 Court will take a recess for 15 minutes and reconvene at
19 Third and Los Angeles street.

1 (After recess. Corner of Third and Los Angeles streets.)

2 THE COURT: Call the Court to order. Under the stipulation
3 the court is now in session; all the jurors and defendant
4 and counsel being here present. The court will now proceed
5 to an inspection of the premises. We will go first to the
6 corner of Third and Wall streets.

7 THE COURT: Gentlemen, this is the corner of Third and Wall
8 streets testified to by one of the witnesses, and affords
9 you the opportunity to look about from here and view the
10 situation as testified to. We will now go across the street
11 to the place where the testimony shows the money was exchanged,
12 at the corner of Third and Los Angeles. Gentlemen, in
13 regard to that last statement, counsel suggests that in lieu
14 thereof I should say, the place where Mr Captain White and
15 Mr Lockwood met. Strike out the words, "the money was exchanged."
16

17 Gentlemen, this is Third and Los Angeles streets as
18 testified to in the testimony. Gentlemen, this is the corner
19 that your attention was called to in regard to the irregular-
20 ity of the corner. You observe those facts at this time.
21 Now we will go across the street on this same corner, to
22 the saloon which entered into the testimony. Just follow me
23 gentlemen. Now, from here we cross the street to the saloon
24 which you observe directly across the street. Anything else
25 from here?

26 MR ROGERS: That building from which Browne says he looked.

1 THE COURT: At the corner you will see the building from which
2 Mr Browne states he looked. Gentlemen, the window testified
3 to by Mr Browne, and which he said he stood in, is the window
4 in the corner building at the corner of Third and Main
5 streets, immediately over the sign "Dentists", which you can
6 see at this point; the window immediately above that sign
7 is the window referred to by Mr Browne. Am I correct in
8 that statement, gentlemen? Mr Appel; Mr Ford?

9 MR APPEL: The easterly window.

10 THE COURT: The first window on that corner, the most easterly
11 window of the third floor of that building, the top window
12 in that building, as you see it, has an oval top.

13 Now, gentlemen, we will go across and inspect the saloon.

14 Gentlemen, this is the saloon that entered into the
15 testimony. You can make your own inspection, and the toilet
16 in the rear. Mr Proprietor, we will not disturb you very
17 long.

18 THE BARTENDER: That is all right, Mr Appel.

19 MR APPEL: Just a moment --

20 THE COURT: Just a moment, Mr Sheriff, just keep the doors
21 closed a few minutes. Gentlemen of the Jury, the toilet in
22 the rear is the toilet testified to; the ice box in the
23 corner and the telephone; that side the lunch counter and
24 this is the bar. Go back and make any inspection you desire
25 in this part of the building; just go right through, gentle-
26 men, and see the toilet.

1 Gentlemen, you have observed the doors in the toilet
2 room and these are the swinging doors that enter into the
3 testimony. Gentlemen, you can make any inspection you
4 desire of these doors as you pass. Gentlemen, you will now
5 proceed to the window of the rooming house that entered
6 into Mr Samuel Browne's testimony, going out the side door,
7 now.

8 Gentlemen, this is the window that enters in the testi-
9 mony of Mr Browne, from which he made certain observations.
10 JUROR COPECK: I would like to ask if that sign was there at
11 the time.

12 THE COURT: I don't believe there is any testimony about
13 that sign. I call counsel's attention to the question of
14 Mr Copeck, ^{may call} for some explanation in the testimony.

15 MR ROGERS: I call their attention to the door from here.

16 THE COURT: Counsel asks me to call your attention to the
17 corner of Third and Los Angeles streets, at which we stood a
18 few minutes ago, and to the distance either way that can be
19 seen from this window.

20 MR ROGERS: I would like to have the jury go down and see
21 this other window.

22 THE COURT: Just a moment. We will proceed now and go around
23 on Main street. The Court will not attempt to point out the
24 exact spot where the testimony shows Mr Franklin was
25 arrested, but the general vicinity for your observation,
26 and at that point the Court will take another recess and

1 reconvene in the courtroom fifteen minutes later.

2 A JUROR: This the window where Browne is supposed to be?

3 THE COURT: Yes sir; this is where Browne stood and made
4 his observatón.

5 MR FRIEDERICKS: That is what he said.

6 MR ROGERS: That is what he said yesterday, but I don't
7 know whether that is what he said -- we have a little some-
8 thing to say about that, yet.

9 THE COURT: At any rate, it is the window entering into
10 that testimony.

11 MR FRIEDERICKS: I would like to have ^{them} / look at this window.

12 THE COURT: You look at the sign; make your own observations.
13 Someone asked whether it was a new sign or an old one.
14 You will see it there; but I presume there will be testimony
15 on that.

16 MR ROGERS: I don't care, I would like to have them look
17 at the window, irrespective of the sign.

18 THE COURT: Go ahead, look at anything you see in the neigh-
19 borhood.

20 (The jury and the Court then came down out of the
21 lodging house and went to approximately the middle of the
22 block between Second and Third streets on Main.)

23 THE COURT: Gentlemen of the jury, counsel asked me to
24 point out the fact that the Canadian building is two blocks
25 or one block directly down this street -- or two blocks.

26 MR ROGERS: Right down on that side.

1 THE COURT: All right. Gentlemen, without attempting to
2 point out the exact spot, this is the general vicinity in
3 which the testimony shows Mr Franklin was arrested.
4 The Court will now take a recess of fifteen minutes and will
5 reconvene in the courtroom.

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1 AFTER RECESS.

2 (Courtroom, Department No. 11.)

3 THE COURT. Call the roll of jurors again, Mr. Clerk.

4 (Jurors called; all present.)

5 THE COURT. Gentlemen of the jury, the court having inspect-
6 ed and observed the premises involved in the testimony here
7 more or less will now proceed to adjourn until 10 o'clock
8 next Monday morning, but before doing so the court will
9 again admonish you as heretofore that your inspection of the
10 premises has not been for the purpose of gaining indepen-
11 dent evidence, but for the purpose of enabling you to
12 understand better the evidence that is introduced here.
13 If any questions occur to you, why, you will have an oppor-
14 tunity to ask them on Monday morning when court again
15 convenes.

16 MR. APPEL. Just a moment, I would like to hear that
17 statement. (Statement of the court read by the reporter.)

18 THE COURT. And as heretofore the court further admonishes
19 you not to confer among yourselves or to suffer any other
20 person to converse with you on the subject of this trial
21 or not to form or express any opinion relative to the merits
22 of the transaction until the whole matter is submitted to
23 you.

24 MR. APPEL. Will your Honor--I am not certain now whether
25 the position taken by the court in that statement to the
26 jury is right. I am in doubt as to whether it is correct

1 or not correct, your Honor, and without expressing any
2 opinion one way or the other, just to preserve the record,
3 will your Honor allow me to enter an exception to your
4 Honor's instructions, just simply out of precaution, you
5 understand.

6 THE COURT. Certainly.

7 MR. APPEL. I know such is the rule in civil cases, but
8 I don't know whether it is the rule in criminal cases.

9 THE COURT. The defendant's exception will be noted.

10 MR. FORD. I ask counsel to suggest anything to the court
11 he desires to have called to the attention of the jury in
12 the way of instructions from the court and if satisfactory
13 to us, why, we will have no objection to its being given.

14 MR. APPEL. No, we present our instructions in writing.

15 THE COURT. All right, we will adjourn, gentlemen of the
16 jury, and with that admonition just now given we will take
17 a recess until Monday morning at 10 o'clock.

1 Monday, August 5, 1912. 10 o'clock A.M.

2 Defendant in court with counsel. Jury called. All
3 present. Case resumed.

4 THE COURT: The matter of the record before the court in
5 ruling on the objection, Mr Rogers, you didn't say any-
6 thing, but I assume from your attitude you wanted to do
7 so.

8 MR ROGERS: If your Honor please, we looked up very care-
9 fully the issue presented by the situation to which I
10 last called your Honor's attention, namely, the situation
11 that they had called Falloon; that they had called Harring-
12 ton and that they had opened the subject, and we find the
13 authorities to be entirely uniform upon that proposition,
14 and if your Honor desires to hear from me I will be glad
15 to present that point.

16 THE COURT: I am inclined to think we have not reached that
17 feature of the case, although the argument here is very
18 enlightening upon the subject that will come up a little
19 later, but an examination of the transcript, and in view of
20 the situation, it convinces me that the only question
21 before the court at this time is whether or not it is
22 proper to ask of a witness, who is the defendant, an im-
23 peaching question, and a ruling upon that does not in
24 anyway involve the right that may or may not be claimed,
25 to present testimony of those who may have heard either a
26 full conversation, or as was suggested, fragmentary

1 conversations through the device known as the dictagraph.
2 I do not think, gentlemen, that that is before the court in
3 such a way as to call for a ruling on this objection, but
4 I do think counsel have a right to propound an impeaching
5 question.

6 MR ROGERS: If that is your Honor's view, that that is the
7 only issue, I do not care anything about the cross-examina-
8 tion part of it, but I do take this position --

9 THE COURT: Although, if it ever will be reached more di-
10 rectly, when that question comes up, if it does, I want it
11 understood at this time I have not ruled and I am not going
12 to foreclose further hearing, but it is the view I take
13 of the situation, after some reflection and study, not
14 as much as I would like to have given it, that the direct
15 question at this time is merely the right to ask an im-
16 peaching question, which I think is a right that the prose-
17 cution has, as a general proposition.

18 MR ROGERS: I call your Honor's attention, in that aspect
19 of it, to this idea: supposing that it should be true that
20 your Honor would eventually rule in accordance with the
21 cases which I have here in great number, that they could not
22 introduce it, and be foreclosed from so doing, and they
23 have that right -- in the case of *people v. Grandall*, in
24 125 Cal., they have held that the asking of questions
25 which cannot be rebutted is error.

26 THE COURT: Is that so held in the *Grandall* case?

1 MR ROGERS: Practically so, yes sir. I think it is in
2 the 125 Cal., People against Crandall.

3 THE COURT: It seems to me a question of this kind is
4 more than perhaps an impeachment, sometimes an impeaching
5 question serves to refresh the witness' memory, and he tes-
6 tifies to certain facts -- theoretically, at least, that
7 is one purpose that an impeaching question might serve.

8 MR ROGERS: The asking of questions which the prosecution
9 believes, or the party believes will be answered negative-
10 ly, as was said in the Schmitz case, with no expectation
11 of being able to contradict the statement, is error.

12 The case which I presented to the Supreme Court myself is
13 not exactly the proposition of an impeaching question,
14 but I call your Honor's attention to the rulings on page
15 134 and 135; it is quite long, and I won't take time to
16 read it.

17 MR FORD: What is that? THE COURT.

18 MR ROGERS: 134 of 125th Cal. / I might say that the at-
19 titude of mind I have assumed, is based largely on people
20 v. Purcell, in 78th Cal.; it is on my table in chambers, Mr
21 Dehm.

22 MR ROGERS: All the decisions which we expected to present
23 to your Honor relate to the right to contradict in rebuttal
24 and the Crandall case seems to indicate that it cannot be
25 done, if answers are binding -- now, you cannot ask ques-
26 tions expecting an answer against you, and you cannot rebut

1 matters which have been gone into in chief, having gone
2 into that in chief, they cannot rebut, therefore the asking
3 of the questions would be useless, it seems to me.

4 THE COURT: It might be so, but yet, whether or not it
5 can be rebutted, is a matter we will have to meet when we
6 come to it.

7 MR ROGERS: yes sir, unless it is raised by this condition.

8 THE COURT: I do not think it is. I thought at first it
9 was, but I do not believe it is further raised by the con-
10 dition presenting itself here at this time.

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1 MR. ROGERS. Beginning at the top of page 134 and from
2 there on, (handing book to court).

3 THE COURT. (After reading.) I had not considered this par-
4 ticular case, but this principle has entered into my mind
5 frequently in the last couple of days. I think the
6 question as an impeaching question is a proper one, but I
7 have expressly said that this does not in any way indicate
8 what the ruling may or may not be when the question of
9 contradicting it should arise, if it ever does arise, the
10 matter is still open, but the argument presented will be
11 availed of at that time for ruling, if it should come up.
12 Proceed.

13 MR. ROGERS. When the last question, your Honor overrules
14 the objection to and gives us an exception?

15 THE COURT. Perhaps, for the sake of the record, counsel
16 would ^{not} mind reframing that question so as to have it all
17 here together.

18
19 C L A R E N C E S D A R R O W,
20 on the stand for further cross-examination.

21 MR. FORD. Q Did you meet Mr. John R. Harrington in Room
22 438 of the Hayward Hotel in this city, February 14, and there
23 have a conversation with him from about 5 minutes past 2
24 until 10 minutes after 3 P.M.?

25 MR. ROGERS. I make the objection it is incompetent,
26 irrelevant and immaterial to the subject matter and the pre-

1 cise matters as opened in direct by the prosecution and
2 withdrawn by them for failure to comply with the ruling of
3 the court; it is not cross-examination; incompetent,
4 irrelevant and immaterial, intending to impeach the
5 witness, if at all, on an immaterial matter; collateral
6 to the main issues.

7 THE COURT. Objection overruled.

8 MR. ROGERS. Exception.

9 A I met Mr. Harrington at the Hayward Hotel in February
10 several times, six or seven, had a number of conversations
11 with him. I don't remember the name or the number of the
12 room or the exact date of any one of these conversations
13 nor how long I stayed.

14 Q Were you and he alone at each of these conversations?

15 A I thought so.

16 MR. ROGERS. The same objection may follow the interrogator-
17 ies concerning the matter as if presented to each one?

18 THE COURT. Yes, sir, the same objection, the same ruling
19 and the same exception to this entire line of testimony as
20 presented to the last question.

21 MR. FORD. Mr. Harrington, the calendar shows February 14,
22 1912 fell on Wednesday. Do you remember whether that was
23 your first conversation with him?

24 A I do not.

25 MR. DEHM. I believe you called him "Mr. Harrington", then.

26 MR. FORD. I meant "Mr. Darrow." A I thought you were

1 referring to him.

2 Q You knew at that time Mr. Harrington was present under
3 subpoena from the Federal grand jury in this district, or
4 you had learned that?

5 MR. ROGERS. We object to that as a double question, not
6 cross-examination, irrelevant, incompetent and immaterial.

7 THE COURT. Objection overruled.

8 A I did not know what the occasion of his presence was, I
9 knew he had been subpoenaed.

10 Q By the Federal grand jury? A yes.

11 Q You knew at that time Mr. Lawlor was questioning him
12 about his, Harrington's connection with the McNamara
13 defense?

14 MR. ROGERS. We object to that as irrelevant, incompetent
15 and immaterial, not cross-examination, calling for an
16 opinion and conclusion, indefinite and uncertain.

17 THE COURT. Objection overruled.

18 MR. ROGERS. Exception. In addition to the objections
19 heretofore made.

20 THE COURT. Yes, sir, it is so understood.

21 A He told me he had several conversations with Mr.
22 Lawlor, I don't know whether he said so at that time or
23 not.

24 Q Did you not at that time and place, Wednesday the 14th,
25 ask him along what lines Lawlor was questioning him and to
26 tell you what Lawlor was saying and doing?

1 MR. ROGERS. We object to that, if an impeaching question,
2 that the language is not put and the foundation is not
3 laid, it is incompetent and not cross-examination, in
4 addition to the first objection.

5 THE COURT. Objection overruled.

6 MR. ROGERS. Exception.

7 A Will you tell me which conversation this was?

8 MR. FORD. Q The first conversation, Mr. parrow, on
9 Wednesday.

10 MR. ROGERS. I do not think your Honor quite got that
11 question. That question is along the lines thus and so,
12 and if you are going to impeach --

13 THE COURT. Yes.

14 MR. FORD. It is preliminary to the impeaching question.

15 MR. ROGERS. I do not care whether it is preliminary or what
16 it is, you have to impeach--

17 MR FORD. I do not have to bring the witness down to the
18 impeaching question. I can bring up some of the surrounding
19 facts, but before I can offer the rebuttal on that impeaching
20 question I have to put to him the exact language, the persons
21 present and the time and place, and I propose to do all that,
22 but I have to lead up and refresh his memory as to the sub-
23 ject matter of the conversation leading up to the surround-
24 ing circumstances; I am not attempting to impeach the
25 witness by those preliminary questions, I am simply lead-
26 ing him up to the impeaching questions in fairness to the

1 witness as well as to the court and jury.

2 THE COURT. To a limited extent I think counsel has that
3 right, and upon that theory the objection is overruled.

4 The extent to which you can go into that is very limited.

5 A My remembrance is that on the first conversation he
6 said he had not been to Lawlor.

7 MR. FORD. Q Did you meet him again the next day, Thursday,
8 February 15th at the same place? A I met him again.

9 MR. ROGERS. The same objection.

10 THE COURT. Overruled.

11 MR. FORD. Q At the same place? A At the same place.

12 Q And your best recollection is that it was the next day?

13 A I didn't say that.

14 Q I am asking you. A It was soon after.

15 Q Well, was it within a day or two? A I should say it
16 was.

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1 Q Did you not, on February 15th, 1912, at room 438 of the
2 Hayward Hotel of this city, in the presence of Mr Harrington-
3 ton, you and Mr Harrington being alone in that room, did
4 you not at that time and place ask Mr Harrington if he was
5 going before the grand jury, and at that time ask him to
6 refuse to testify at all? A I asked him if he was going
7 before the grand jury, and he asked me whether I thought
8 he could be compelled to testify. I told him it was doubt-
9 ful; I thought he ought to refuse until the question was
10 raised.

11 Q Did you not at that time and place say to him,
12 "Well, they asked you whether you are admitted to the
13 bar, and asked you whether you refused to testify, you
14 say you claim you are, and refuse to testify, too?"

15 A Claim he is admitted to the bar? No. He was admit-
16 ted to the bar. I know that.

17 Q Just put the question to the witness again. A No.

18 Q You did not have that conversation? A Not in that
19 effect.

20 Q Or any part or substance of it, or such a conversa-
21 tion in substance or effect? A I wouldn't say I didn't
22 have any part of it.

23 Q Let me read the question to you again, Mr Darrow,
24 and be sure you understand it.

25 THE COURT: Let the reporter read it. (Last question
26 read by the reporter.)

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1 MR ROGERS: Of course, my objection is contradiction on
 2 an immaterial matter, applies particularly to that ques-
 3 tion. It is just such advice as any lawyer would give
 4 and is not in any wise contradictory or impeaching. It is
 5 advice that every lawyer has given in his career to a
 6 witness not to testify. May be that I shall give it yet.
 7 I am not quite sure, but what I will, and I don,t know
 8 that a lawyer is to be pillared or opinioned, even, because
 9 he gives a man advice to refuse to testify before a grand
 10 jury. I have also refused to testify before grand juries
 11 and told them to take me where they could get a ruling
 12 on it.

13 MR FORD: No relation of lawyer and client yet been shown
 14 between this witness and Mr parrington, and further, your
 15 Honor, this is part of the conversation and is one of the
 16 circumstances surrounding the very question of impeach-
 17 ment, and is part of the question. The effect of it is a
 18 matter of argument. MR Rogers' argument --

19 THE COURT: yes, I think so.

20 MR FORD: -- goes to the order of testimony and not as to
 21 its admissibility.

22 THE COURT: I think you are getting a great deal of prelim-
 23 inary matter here, Mr Ford.

24 MR ROGERS: The idea of by that immaterial, trying to
 25 effect the jury that the witness was doing something wrong,
 26 why, it was not doing anything wrong. He was not doing

1 anything that every lawyer does not do in his practice time
2 and time again. Not cross-examination, and if by the remot-
3 est stretch of the imagination it could be considered cross-
4 examination, it is cross-examination upon an immaterial
5 matter.

6 MR FORD: Your Honor please, this witness --

7 THE COURT: You have the answer, but the court suggests
8 it is time to get down to the impeaching qu estion. There
9 is a good deal of preliminary here. A I remember it.

10 MR FORD: You did have such conversation? A I didn't say
11 that. I said I remembered the conversation. Mr Harrington
12 called me up at my office and wanted me to come down and
13 consult with him, and he asked me whether I thought
14 he could be compelled to testify, and I told him I wasn't
15 sure, but I thought the proper way was to refuse, then we
16 could find out. He asked me on one occasion to look up the
17 law on the subject.

18 MR FORD: Did you use those words to which I have called
19 your attention? A Those words? No, not in any such
20 connection. I think I told him to refuse to testify.

21 MR ROGERS: You say you think you told him to refuse to
22 testify? A I think I did. I wouldn't pretend to give
23 the exact words.

24 MR FORD: Did you not at that time and place discuss with
25 Mr harrington the possibility of him being subpoenaed
26 before the county grand jury, and discussed with him the

1 right of the county grand jury to subpoena him when he was
2 brought into the state by means of a federal subpoena.

3 MR ROGERS: That is objected to as not cross-examination,
4 the matter is immaterial, incompetent and irrelevant and
5 not a matter tending in anywise to cross-examination or lay
6 the foundation for impeachment. If counsel wants to know,
7 I looked it up once myself, as to whether Mr Harrington
8 having been brought in here on a subterfuge --

9 MR FREDERICKS: I don't think counsel should testify on
10 these matters.

11 MR ROGERS: It is so --

12 MR FREDERICKS: No, it isn't so. Let's get through.

13 MR ROGERS: Let's get through. Let's get through right.

14 I don't understand that is contradiction but ~~the~~ ~~is~~
15 ~~it~~ cross-examination upon an immaterial matter, and
16 so object.

17 THE COURT: Overruled.

18 MR ROGERS: Exception. A On several occasions we dis-
19 cussed the question whether he could be brought here under
20 a federal subpoena for the purpose of getting him before
21 the county grand jury on a county subpoena. He asked me
22 to look up the law on the question.

23 MR FORD: Did not Mr Harrington at that time and place
24 say to you he, Lawler, was after Bert Hammerstrom, and ask-
25 ed you what they had on Bert, and did you not reply,
26 "The Diekelman affair at the Hotel Metropole in Chicago?"

6s 1 MR. ROGERS. That is objected to in addition to the other
2 matters previously stated. Cross-examination on immaterial
3 matters, collateral to the issue, and not gone into on direct
4 examination of the witness.

5 MR. FORD. The witness has testified about the Diekelman
6 affair.

7 THE COURT. Overruled.

8 A I never heard of Diekelman being at the Hotel Metropole.
9 There was some conversation about Bert Hammerstrom and
10 about the Diekelman matter. I couldn't pretend to give the
11 exact words or the exact conversation.

12 Q Did you again meet Mr. Harrington at the Hayward Hotel ,
13 room 438 this city, on the morning of Friday, February 15,
14 and there have a conversation with him, you and he being
15 alone?

16 MR. ROGERS. Now, if your Honor please, we have come to
17 another day and a conversation that he had with Harrington,
18 so far as related by the question, is entirely immaterial
19 and preliminary in that conversation. There isn't one
20 solitary thing there that contradicts the witness or his
21 cross-examination, and your Honor let it in, saying it
22 was entirely preliminary, leading up to something. Now,
23 they go to another day and to another conversation, and I
24 charge it is nothing but a subterfuge, to get in what they
25 have gotten, it is not preliminary to anything. They have
26 gone to another day after four hours conversation

1 forsooth that is all we have. Why, I move it be stricken
2 out as immaterial. It ought to be stricken out, if your
3 Honor please, because it is not leading up to anything.
4 MR. FORD. It is all we have directed the witness's at-
5 tention to.

6 THE COURT. Motion to strike denied.

7 A I saw him again shortly thereafter upon his telephoning
8 to me.

9 MR. FORD. Q You mean after the conversation? A After the
10 first conversation.

11 Q Well, I am referring now to the third conversation on
12 Friday, February 15, 1912. A I saw him shortly after the
13 second conversation.

14 Q Did not Mr. Harrington at that time and place say to you,
15 he, Lawlor, was speaking about a good many matters, and he
16 switched off on another angle this morning. He said there
17 was a strong suspicion that I, Harrington, knew a good
18 deal about the jury bribing business. I, Harrington, told
19 him I did not, ~~to~~ going about it--I am interpolating
20 the word Harrington to mean I--I told him I did not, ~~to~~
21 go about it, I did not, as he intimated,
22 to talk like that, and did you not reply, did he say
23 anything? Harrington then said--or did Harrington then
24 say, "I knew something about the money was passed. I told
25 him I did not." Did you not then reply, "Did he say you
26 were going to be indicted?" and did not Harrington then

1 say, "No, he doesn't talk like that, talks more in in-
2 sinuations; he hints more; he never mentioned
3 indictment." Did you not then ask him, "Have you any idea
4 you will be?" and did not Harrington then say, "I don't
5 think so; he hasn't made any threats." Did you not
6 ask him then, "Have you seen Ford," to which Harrington
7 replied, "No, I haven't seen him." Did you not then say,
8 "Did he, Lawlor, say anything about Ford," and did not
9 Harrington reply, "No, he did not mention ^{that he saw} Ford; he did not
10 mention him to me," to which you replied "No, he
11 did not." Did you not at that time and place say to
12 Harrington, "Are you scared," and when Harrington replied
13 "No, not a bit," did you not say, "You are not?", and did
14 not Harrington then say, "They are after you pretty hot,
15 there is no getting away from that unless you do something,
16 they are going after you, Oh, Darrow, Darrow Darrow, you
17 know! they have the goods on you? They are going after you."
18 And did you not then say, "Do they intimate anything about
19 what they have?"

20 MR. ROGERS. Well, if your Honor please, we hesitate to
21 object to that because I venture to say counsel is
22 trifling with us; I think he is joking, but nevertheless
23 it is not cross-examination. It is objected to upon that
24 ground and is immaterial, not tending to contradict the
25 statement of the witness upon direct, and immaterial and
26 no foundation has been laid, and even the usual method of

1 getting a thing across, that it is immaterial, doesn't seem
2 to answer in this case.

3 MR. FORD. Not making any pretense it is preliminary, it
4 is impeachment.

5 MR. ROGERS. Impeachment of what?

6 MR. FORD. That we will argue to the jury. The argument
7 of counsel is addressed to the order of the testimony.

8 MR. ROGERS. I will take a chance on that ruling anyway.

9 THE COURT. Overruled.

10 MR. ROGERS. Exception.

11 A I don't know or care whether any such conversation took
12 place.

13 MR. FORD. Q Dan't you answer that question yes or no and
14 then explain if you desire? A Insay I don't know, isn't
15 that an answer.

16 Q Then it may have occurred and if so you have forgotten
17 it? A Well, I can't say that. I said I don't know or
18 care whether it took place. I might have talked about the
19 weather or the baseball scores, I don't know.

20 Q Do you deny that you had such conversation? A I don't
21 know or care whether I had it.

22 MR. ROGERS. The same objection. Was that on Friday, that
23 conversation?

24 MR. FORD. Yes. Q Did not Mr. Harrington at that time and
25 place say to you, "You called me into your office that morn-
26 ing after the pinch and told me about it. I didn't see

Franklin at all that morning.?"

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1 A You called me into the office and told me about it,
2 is that it?

3 Q You called me into that office that morning after the
4 pinch and told me about it. I didn't see Franklin at
5 all that morning, referring to the morning of the 28th of
6 November, 1911, the day Franklin was arrested? A He
7 never told me that.

8 Q Did not Mr Harrington at that time and place, say, re-
9 ferring to Mr Lawler, he was awfully inquisitive to find
10 out how it got in here, how you got the money and how it
11 got in there, and did you not reply, "You didn't tell him
12 anything about it?" A About how the money got in?

13 Q Just read the question.

14 MR ROGERS: Let's have that question.

15 (Last question read by the reporter.)

16 A What, the money?

17 MR ROGERS: I object to it as incompetent, irrelevant
18 and immaterial, and such fragmentary portions of a three-
19 hour conversation -- four-hour conversation, that it is
20 absolutely impossible to understand it.

21 MR ROED: Referring to the money that Mr Franklin had
22 given to Captain White and Lockwood.

23 MR ROGERS: How do we know he was referring to that?
24 How do we know that? Where is the rest of the conversa-
25 tion to show that Harrington referred to it?

26 MR FORD: I have answered the question propounded by the

1 witness.

2 THE COURT: What is the entire question now?

3 MR ROGERS: Let's have the rest of the conversation.

4 THE COURT: What is the entire question now? Read it.

5 MR FORD: I withdraw that question just for a moment, and
6 put it this way. Did you not at that time and place dis-
7 cuss with Mr Harrington the fact that Lawler was pressing
8 him, Harrington, about how the money that Franklin gave to
9 White and Lockwood on the 28th day of November, how that
10 money came to Los Angeles?

11 MR ROGERS: Objected to as incompetent, irrelevant and
12 immaterial and not an impeaching question, and the law
13 forbids an impeaching question to be put in that indefi-
14 nite fashion. It is not material by the fact which may
15 perchance, as they say, be preliminary, and no foundation
16 laid.

17 MR FORD: Did you not then and there, in that connectio n,
18 have -- and upon that subject, have the following conver-
19 sation with Mr Harrington: Did not Mr Harrington at that
20 time and place say, referring to Lawler; "He was awfully
21 inquisitive to find out how it came in here; how you got
22 the money; how it got in there", and did you not reply,
23 "You didn't tell him about it?"

24 MR ROGERS: That is objected to upon the ground s just
25 stated. The question is a double question, ambiguous,
26 cannot be answered: did you have such conversation, --

1 after referring to the indefinite and hazy sort of matter,
2 if he has got a conversation in front of him taken down by
3 these shorthand reporters, let's have it. If he has got
4 it in front of him -- if it refers to that matter, let's
5 get the reference. If he has before him the short-
6 hand report of the conversation, where is the conversation
7 showing that his statement referring to that matter,
8 how the money got here, what money? Counsel cannot put it
9 in that fashion on impeachment, especially of the defend-
10 ant, where the defendant has not been interrogated about it
11 in direct.

12 MR FORD: If they want the whole of the conversation --

13 MR ROGERS: The matter is so doubtful it would be a point
14 of wisdom to hold your question to the ordinary rules of
15 evidence.

16 MR FORD: If they want the whole of the conversation, they
17 are entitled to it on redirect.

18 THE COURT: And this is an impeaching question, it cer-
19 tainly must, in the question, indicate what moneys are re-
20 ferred to.

21 MR FORD: I have done so.

22 MR FREDERICKS: The question does indicate it.

23 THE COURT: Then I overlooked it, if it is. Let us have
24 the question read.

25 MR ROGERS: It is Mr Ford's interpolation.

26 MR FREDERICKS: There is no such thing as interpolation

1 in a question' whatever is in the question, it is in the
2 question, is it part of the question, it is part of Mr
3 Ford's question.

4 THE COURT: precisely.

5 MR FREDERICKS: he cannot interpolate anything; whatever
6 he interpolates is part of the --

7 MR ROGERS: If counsel will put that question in the language,
8 he would not say thus and so -- I do not think they can
9 rightfully, your Honor; here they are trying to get an
10 answer to it, in a question they are asking of him, what
11 was said relating to a certain subject, and then to a cer-
12 tain subject upon that subject, did you not say thus and
13 so. Let us have what it refers to.

14 MR FREDERICKS: he is giving what it refers to.

15 MR ROGERS: That is Mr Ford's idea of what it refers to.

16 MR FREDERICKS: That is the question: "Did you have a
17 conversation in regard to the payment of \$10,000, the same
18 being \$10,000 which you received from John Doe, at such and
19 such a time and place", and the witness can answer, "No,
20 I didn't have such a conversation referring to a \$10,000
21 received from John Doe."

22 THE COURT: Let us see if that is covered in that ques-
23 tion. It has been split up here so much --

24 MR FORD: I will reframe the question, I think I can
25 remember it, your Honor.

26 Q Did you not at that time and place -- were you not at

1 that time and place informed by Mr parrington that Lawler
2 was trying to find out where the money that Franklin had
3 on the morning of the 28th of November, where it came from,
4 and did he not in that connection say to you he, referring
5 to Lawler, was awfully inquisitive to find out how it came
6 in here; how you got the money and how it came in here, and
7 did you not reply, you did not tell him anything about
8 it?

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8p 1 MR. ROGERS. I make the same objection, in view of the fact
2 that counsel has not related the conversation, and add there
3 to, what is alleged to be the effect of the conversation,
4 "did he not inform you to this effect?" The conversation
5 is not stated, and how are they going to contradict it?
6 They could not put Harrington on to say, "Didn't you inform
7 him thus and so?" Get it into shape.

8 THE COURT. Objection overruled.

9 A Your Honor, I want to make the further objection:

10 I thought we ought to be permitted to see any transcript
11 that any alleged eavesdroppers had in this matter, so that
12 we can put it in its proper connection.

13 MR. FREDERICKS. We are asking the questions about the con-
14 versation, and the witness can either affirm it or deny it.

15 MR. ROGERS. How do we know it is relating the conversation?

16 MR. FREDERICKS. We are asking him, "Did you have it relat-
17 ing to that?"

18 MR. ROGERS. Relating to that?

19 MR. FREDERICKS. Yes.

20 MR. ROGERS. Now, he is not giving the conversation, how
21 are we going to answer it?

22 MR. FORD. I withdraw the question and put it in a short
23 question to the witness. I think the witness had asked
24 me a question and in response to a question from the witness
25 I informed him of the subject matter. I will now ask the
26 witness this question: Q Didn't Mr. Harrington, at that time

1 and place, say, referring to Mr. Lawlor, "he was awfully
2 inquisitive to find out how it came in here, how you got the
3 money, and how it came in there," and did you not reply,
4 "You didn't tell him anything about it?"

5 MR. ROGERS. The same objection.

6 THE COURT. Objection overruled.

7 A I still want the question passed on, your Honor, whether
8 we have a right to see any transcript as they claim to have.

9 THE COURT. At the present time there is nothing before
10 the court indicating that the transcript is being used.

11 MR. ROGERS. We object to the question as indefinite, we
12 don't know what it means or refers to. Counsel claim to
13 have a transcript of this testimony; it is argumentative
14 and it may refer to anything. I don't know what it means
15 and the witness cannot answer it intelligently or intelligibly,
16 they have got a transcript of this testimony, or alleged
17 testimony, this key hole evidence, let us have it, let us
18 see what it refers to. Maybe the witness upon being shown
19 the alleged transcript might say, "Well, yes, I had such
20 money, but it refers to an entirely different thing."

21 How is he going to know what it refers to?

22 MR. FREDERICKS. That is a matter to be brought out later.

23 MR. ROGERS. Mr. Darrow, you need not answer that question.

24 I advise you in open court not to answer it until we have
25 some definite idea as to the connection and the use of the
26 word "It"; what it means, how it came into the conversation,

1 the connection of this fragment with the remainder of the
2 conversation, which is in the possession of the District
3 Attorney, and I demand its production in order that the
4 witness may see the connection of the sentence in the con-
5 versation, to the connection of the word "it".

6 MR. FREDERICKS. The question is--

7 THE COURT. Read the question.

8 MR. FREDERICKS. Did you have that conversation or that
9 in substances. No transcript or anything else referred to.

10 MR. ROGERS. What money? Any part of the \$10,000 or the
11 \$4,000 or any other indeterminate sum? How it came here,
12 how is a man going to know, sir?

13 MR. FREDERICKS. Let him answer that he doesn't know.

14 MR. ROGERS. No, we don't take any chances on anything of
15 that kind. Let us see what it means.

16 MR. FORD. Whatever he knows, if he used it--

17 MR. FREDERICKS. We explain what it means in the questions
18 several times.

19 MR. ROGERS. But we want the explanation from the testimony
20 of the witnesses, the statements made, you may not have
21 drawn the right deduction.

22 MR. FORD. There is no testimony of witnesses. We are
23 asking the question, "Did you have such a conversation,"
24 that is all, either he did or he did not.

25 THE COURT. Objection overruled.

26 MR. ROGERS. You need not answer until we are furnished

1 with the remainder of the conversation in order to ascertain
2 whether or not it refers to \$200,000, \$10,000, \$4,000,
3 \$1,000, or any other money whatsoever, and its connection
4 in the conversation is shown, it being true as admitted
5 heretofore, that the District Attorney has in his possession
6 a transcript of the entire conversation, if it were taken
7 down, and the connection is available to them for the pur-
8 pose of illustration and the purposes of informing the
9 witness so that he may intelligently answer the question.

10 MR. FREDERICKS' The witness knows. We simply ask, "Did
11 you have such a conversation" and it is up to him to say he
12 did or did not.

13 MR. ROGERS. We might as well test it now.

14 MR. FORD. The court has ruled on this question.

15 MR1 FREDERICKS. The court has ruled on this question, now
16 the question is before the witness.

17 MR. FORD. Will you read the question to the witness?

18 A I know the question. If the court's ruling stands?

19 THE COURT. Yes.

20 MR. FORD. And counsel's ruling stands--

21 THE COURT. Yes, sir, the court is of the opinion, Mr.
22 parrow, it is your duty to answer the question.

1 A May I consult Mr Rogers on the question? So long as
2 he is directing differently from the court.

3 THE COURT: Yes, you may consult Mr Rogers in regard to the
4 matter. (The witness consults with counsel.)

5 MR ROGERS: Mr Darrow insists upon answering. I take an
6 exception. A Mr Harrington said, in substance, that Mr
7 ~~Lawyer~~ was inquisitive about something. I don't recall
8 what. I did not at any time ask him whether he told any-
9 thing about any money that ^{it} was supposed Bert Franklin
10 used. He told me that and many times he knew nothing about
11 any such money, and I did not, and no such question was
12 asked in that connection.

13 MR FORD: Did you not, at the same time and place, say to
14 Mr Harrington -- withdraw that. Read the latter part
15 of that answer, will you?

16 (Last portion of answer read.)

17 A No such statement was made, would be better. Probably
18 you took it the way I said it. I mean, no such state-
19 ment was made.

20 MR FORD: Either in substance or effect, no such statement
21 was made, either in substance or effect?

22 MR ROGERS: He has answered it; I object to it as not
23 cross-examination; he has asked and answered it.

24 MR FORD: It must be denied in substance and effect, as
25 well as the words, your Honor.

26 MR ROGERS: How can he deny a thing in substance or

1 in effect, when a man doesn't know what it means?

2 MR FORD: He says no such statement was made.

3 MR ROGERS: In connection with any money used by Franklin,
4 and that is sufficient.

5 MR FREDERICKS: He doesn't say that.

6 A Yes, Mr Fredericks. If I didn't, I will. If you read
7 that answer, I think it covers it.

8 MR FORD: You do say now, no such statement was made, in
9 substance or effect, referring to the money that was used
10 by Franklin. A You mean no such statement as you
11 put in my mouth?

12 Q Yes. A No, no.

13 Q Didn't Harrington, at that time and place, say to you,
14 "You showed me a big stack of bills that was brought down
15 from Frisco and what it was going to be used for. I won't
16 perjure myself; I won't do it; it is a matter about which
17 I won't perjure myself. I have been a goat too much in
18 this case already", and did you not then say, "It is a
19 damned shame" and didn't Mr Harrington say, "These fellows
20 have all the papers in regard to the matter; I took my
21 medicine after it was all over; we are getting into it
22 deeper all the time; the Chicago papers are saying I am
23 mixed up in this bribery business, jury business; it is
24 more than a fellow can stand; what am I going to do? "
25 And did you not then say, "What can you do?" And then
26 Harrington replied, "What can you do? Suppose they indict

1 me in this matter as an accomplice, and say I was trying to
2 aid you in this matter, to get me in there as an accom-
3 plice, suppose they try to get me in this matter as an ac-
4 complice?" "I told you to get out at an early stage of
5 the game, but you did not wake up to it; if you had done
6 as I told you about Schmitty, we would have all stood a
7 show", and did you not then say, "Have you said anything
8 about it?" Did you have such a conversation, either
9 in words, substance or effect?

10 MR ROGERS: I object to that as irrelevant, incompetent and
11 immaterial, not cross-examination. Here Harrington makes
12 a long argument, put into his mouth, as he said it was, by
13 Foster and Lawler, desiring to get the witness to make
14 a statement, and the witness replies simply by saying,
15 "Have you said anything about it?" Does not answer it,
16 or refer to it as anything, except to ask him the question.
17 It is not contradictory in any respect, not cross-examina-
18 tion.

19 MR FORD: Counsel is again testifying about how that dic-
20 tagraph came in there, without any evidence before this
21 court.

22 THE COURT: It is a question of weight for the jury --

23 MR ROGERS: There is evidence before this court. Harring-
24 ton himself said Foster sent him out here and Lawler did.

25 THE COURT: Mr Rogers, the court is not criticizing you;
26 I think you are within your rights in making the objec-

1 tion.

2 MR. ROGERS: Mr Ford is saying there is no such evidence.

3 THE COURT: The court intended to prevent that argument.

4 A You could not run that question in sections?

5 MR FORD: I could.

6 THE WITNESS: Maybe the reporter will read it to me and I
7 will get it as it is, and if I will not, I will try to ask
8 you to split it.

9 (Last question read down to and including "I won't per-
10 jure myself; I won't do it; it is a matter about which I
11 won't perjure myself.")

12 A Do you mind my answering right there and going on?

13 MR FREDERICKS: yes or no, I suppose. A No, not yes or
14 no, but so you will understand it.

15 MR FORD: I think we are entitled to a yes or no answer,
16 and the witness is entitled to make an explanation.

17 A All right. I will make it thatway.

18 MR ROGERS: No, don't you do it, Mr Darrow. Answer as
19 you like.

20 A I can make an explanation. They won't get me in a
21 false position; I have been at it too long.

22 THE COURT: Go ahead.

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1Op 1 A Yes, and no. Now, I will explain: Mr. Harrington did
2 not tell me he saw a big stack of bills I said I had
3 brought down from San Francisco. He told me that I showed
4 some bills and said I had got them in San Francisco, and why
5 I had them, but I said to him "no such thing ever happened,
6 where do you claim it happened?" He says, "Either at your
7 office or at your house, I don't remember which." I said,
8 "No such thing was ever shown you and no such thing was
9 ever done." Now, what is the next section?

10 MR. FORD. Q That was on the first occasion, wasn't it,
11 Mr. Parrow? A It was on any ^{occasion where he ever} claimed to me he saw any
12 such thing or heard any such thing. I never made any
13 statement otherwise in reference to the money.

14 MR. FREDERICKS. Do you want the reporter to read the rest
15 of the question?

16 A Yes please.

17 (The remainder of the question read.)

18 A There is nobody on earth could tell what "the sub-
19 stance or effect" means, of that statement. I never asked
20 him whether he had said anything about knowing any thing
21 connecting me with any bribery of jurors. No substance or
22 effect to that. He did say to me that you people wanted
23 to get hold of Schmidtie first. He said that about the
24 Christmas Holidays and he referred to it again here and
25 said, "If I would turn him up" that is all they wanted of
26 me, he said that, "and that is the way to get out."

1 JUROR WILLIAMS. May I ask a question, your Honor?

2 THE COURT. Yes.

3 JUROR WILLIAMS. Q Did you believe, at that time, Mr.

4 Darrow--of course, this may call for a conclusion-- A Yes.

5 Q --that Mr. Harrington was implicated in that bribery

6 matter? A The question had ran through my head; I don't

7 know whether it had reached the stage of belief or not; it

8 was one of the things that was running through my head,

9 it probably had not reached the stage of belief, I don't

10 think it had; it is a thing that I had thought, and I had

11 wondered how it came about and who could be responsible for

12 it, but I had not fastened it on him or believed it, although

13 I had thought about it.

14 MR. FORD. Q You did believe at that time, Mr. Darrow, that

15 Harrington was accusing you of being guilty of the jury

16 bribery?

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

18 calls for a conclusion and opinion of the witness and not

19 an impeaching question, calling for the effect of a state-

20 ment.

21 THE COURT. Objection sustained.

22 MR. FORD. If you will bear with me, on the ground it is

23 calling for an opinion--

24 THE WITNESS. Would you mind withdrawing that objection?

25 MR. FORD. --I presume that is the ground on which your

26 Honor sustained it. I want to call your Honor's attention

1 to the fact that I am not calling for an opinion of the
2 witness at the present time, but I am calling for a fact,
3 namely, "Did you on such and such a date form such a conclu-
4 sion?" That is quite a distinction the law makes. If I
5 was asking for his conclusion at the present time it would
6 be clearly improper, but if I was asking him whether he did,
7 as a matter of fact, entertain such a conclusion on such a
8 date, and it was otherwise relevant, I think it would be
9 admissible and not subject to that objection. However, I will
10 withdraw that.

11 THE WITNESS- I do not want to run counter to counsel.

12 MR. ROGERS. Do you want to answer that?

13 THE WITNESS. I would like to answer it, especially in
14 view of the juror's question.

15 MR. ROGERS. Go ahead and answer it.

16 MR. FORD. That is why I asked him.

17 MR. ROGERS. If it relates to Mr. Williams's question, go
18 ahead and answer it.

19 A Will you repeat it so that I can make sure of it.

20 (Last question read.)

21 A At that time Mr. Harrington told me in coming to Los
22 Angeles he had seen in some of the papers, a statement
23 that he was going to be called as a witness against me and
24 he told me at no time or place had he said anything either
25 to you or to Mr. Lawlor or to anybody else or ever had any
26 such intention. You will find it in ^{your} dictagraph trap, if

1 you have got anything.

2 THE COURT. Gentlemen of the jury, bear in mind your former
3 admonition. We will take a recess for 5 minutes.

4 (AFTER RECESS.)

5 A Have you got my answer? May I ask you to read it. I
6 think it is not complete, quite.

7 THE COURT. Yes read the last question and answer.

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

9 MR. FORD. Something further you wanted to add, Mr. Darrow?

10 A He said at no time or place whatever; said anything or
11 could he.

12 Q The question-- A Something else I had in mind, however,
13 to say, but I see your question does not cover it.

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1 Q Just a moment ago, if I understood you correctly, Mr
2 Darrow, you said that Harrington at this conversation
3 in the Hayward Hotel, had said to you that you had shown
4 him some bills and told him what you at that time had
5 told you were going to do with the money in reference to
6 fixing jurors. Did I understand you correctly; did he
7 accuse you of making that statement? A He made that
8 statement.

9 Q And then you denied it? A I did.

10 Q Well, at that time and from that remark, did you not
11 conclude that Mr Harrington was accusing you of furnishing
12 the money to Franklin? A Accuse^{to} me or to you?

13 Q No, accuse you right then and there? A I concluded --
14 yes sir. He said at the same time, which is implied in
15 your other question, which I thought I was answering, the
16 reason I had to do this. That he thought they were
17 trying to get him into trouble; that he had been criticized
18 or had articles written about him in the Chicago papers;
19 that he didn't propose to come out here and be indicted,
20 whether he was right or wrong, because he couldn't stand
21 a trial in California, and was not going to, and that if
22 I had done the things he asked me to do in reference to
23 turning up somebody else to take my place, that there would
24 be no pursuit of any of us, and I assumed it was all for
25 taking care of his own hide, he made the statement.

26 Q He did say this to you at that time and place, you

1 showed me a big stack of bills that was brought down from
2 Frisco, and what it was going to be used for? A I
3 answered that.

4 MR ROGERS: At that time and place -- let's see where that
5 was and when it was. It is already answered.

6 MR FORD: It was on Friday. A I answered that one.

7 Q When he said that to you, "You showed me a big stack
8 of bills that was brought down from Frisco, and what it
9 was going to be used for." Didn't you understand that as
10 equivalent of accusing you of having given the money to
11 Franklin to bribe Lockwood with? A I said I didn't say
12 that, and I told you what I did say, and then I told you
13 what I understood by his statement to me. Do you want me
14 to state it over -- I will do it.

15 Q Did you believe at that time that Mr Harrington was
16 trying to trap you? A No. I didn't think anybody would
17 do a thing as mean as that, the District Attorney or Har-
18 rington or anybody else, or even the Erectors Association.

19 Q Then, what did you understand when he said, "You showed
20 me a big stack of bills that was brought down from San
21 Francisco, and what it was going to be used for?"

22 MR ROGERS: Objected to as not cross-examination, not
23 impeachment.

24 A Didn't I just answer it, Mr Rogers? What I thought
25 his intentions were?

26 THE COURT: I think it is already asked and answered.

1 MR FORD: Did you not say to Harrington at that time and
2 place, Friday, February 16th, 1912, if he said anything
3 about it, and did not Harrington reply, "No, I never men-
4 tioned it to a soul. I will tell you, Darrow, I am not
5 going to perjure myself; I will not do it. " And did
6 you then not say, "Are you going to give them everything
7 they want?" And did not Harrington reply, " Well, you
8 have to, Darrow, if they ask you under oath. I won't vol-
9 unteer it, but the moment they put me under oath, what am
10 I going to do?" Did that conversation occur in either
11 words, substance of effect?

12 MR ROGERS: Objected to as not cross-examination, a state-
13 ment of Harrington's, and an argument evidently said for
14 the ears of the doctagraph. The witness Harrington makes
15 a speech or conversation of things of that kind, and will
16 call your Honor's attention to the case of People vs.
17 Dole, in which it was held a statement made in the defend-
18 ant's presence, does not bind him. His answers is what
19 bind him, and that one cannot proceed to read to a witness
20 a lecture given by Harrington, there implied for the pur-
21 pose of being heard and spread out and used like this. It
22 is Mr Darrow's statements that must bind him, and there is
23 nothing in there, if your Honor please, that in anywise
24 contradicts or impeaches anything he said upon direct, and
25 it is not cross-examination, incompetant, irrelevant and
26 immaterial.

1 MR FORD: Counsel's statement of the law is partially cor-
2 rect, but it has no application to the present case.

3 THE COURT: I think, Mr Ford's question is for the weight of
4 the testimony than it is for the jury. Objection over-
5 ruled.

6 A I will have to ask you to read that over again.
7 (Last question read by the reporter.) At which conver-
8 sation do you claim this way: first, second, third, or
9 fourth?

10 MR FORD: At the third conversation, Mr Darrow, on Feb-
11 ruary 16th A There were things in there -- I may have
12 overlooked some of them, if I do ask me again. He said so --
13 he was not going to perjure himself, which relieved me some.
14 I did not ask him what he was -- whether he was going to
15 say anything about any money. I knew I knew nothing about
16 it, and I knew he knew nothing about a thing I could have
17 had to do with it, because I didn't have anything to do with
18 it. What else is in there?

19 Q Did you say the words, "Are you going to give them any-
20 thing they want?"

21 MR ROGERS: Anything they want?

22 MR FORD: That is the way I put it. A To whom; me?
23 Q -- Well, did you?
24 To whom am I referring, do you mean? A Well, to whom,
25 give who everything or anything?

26 Q The grand jury, I presume; I don't know -- I beg your
pardon I will withdraw that question. That was a portion

1 If the conversation that you had asked me to call your at-
2 tention to, if there was anything you overlooked.

3 A If you don't know who he was referring to, how do I
4 know?

5 Q Referring to the authorities, "Are you going to give them
6 anything they want"? A Then, do you mean the grand jury
7 or you or Lawler?

8 Q Lawler and the Federal grand jury? A Of Burns or
9 who?

10 MR ROGERS: The accent of that, your Honor, might change
11 the entire aspect of it, "Are you going to give them any-
12 thing?"

13 THE COURT: You can put the accent where you want when you
14 come to the argument.

15 MR ROGERS: Then, Mr Darrow can get it in that view. "Are
16 you going to give them anything? A Probably asked him
17 in substance whether he was going to tell you people every-
18 thing that took place in the office while we were working
19 together as counsel.

20 MR FORD:

21 The question is contained in the middle of the con-
22 versation that I related or put the question to you about
23 in the preceding question,, and I was just calling your at-
24 tention to those particular words Now, did you use those
25 words in that conversation? A I don't know whether I
26 asked him if he was going to give them anything they want-
ed or ~~any~~ everything they wanted. I didn't use any words in

1 reference to any bribery or any unlawful matter, I will say
2 that. I said to him that he should not tell private conver-
3 sations and business transactions between us, which I
4 ought not to have needed to suggested to him.

5 Q Did you not at that time and place, say to Harrington,
6 "They probably will ask you whether I have told you any-
7 thing about this," -- referring to jury bribing, and did
8 not Harrington at that time and place say to you, "Well,
9 hell, you can't expect me to perjure myself; I won't do it.
10 I won't. My God, I am at that stage of the game where I
11 won't perjure myself;" and did not Harrington at that time
12 and place say to you, "I am going to look out for number
13 one; I am not going to perjure myself; I am not going
14 over the road fo r perjury, I will tell you that right
15 now, if I go at all, I will go for something I have al-
16 ready done. I am sure now it won't be for anything else,"
17 and did you not then say, "They will ask you such ques-
18 tions as sure you are born", and did Harrington then say,
19 "They haven't so far. They have been trying to show I had
20 guilty knowledge; I was an accomplice or something. They
21 seem to think I handled the money", and did you not then
22 and there say to Harrington, "But you have not?" A Have
23 not what?

24 Q Handled the money, I presume -- the question was,
25 did not Harrington -- the latter part of the question was,
26 "Did not Harrington then say, They haven't so far; they

1 have been trying to show I had guilty knowledge or I was
2 an accomplice or something. They seem to think I handled
3 the money", and did you not then and there say, "But
4 you have not"?

5 MR ROGERS: You have not or they have not?

6 MR FORD: You have not.

7 MR ROGERS: Have not what?

8 A You mean in such connected conversation, or altogether,
9 or pick out a piece and piece together, or what?

10 Q Did you have such a conversation connected or discon-
11 nected, in words or substance or effect? A I might have
12 used words, if you could pick any word from any part of it
13 and put it next to another part in another part of it,
14 you could do that; the same as you would with the diction-
15 ary, but I have no connected conversation to convey any
16 impression which you seem to want to convey here. I don't
17 think the words do, however.

18 Q Then you did not have such a connected conversation,
19 either in words, substance or effect? A I think I have
20 answered that question.

21 Q You did not say anything like that in substance?

22 MR ROGERS: You needn't answer that.

23 A I think I have answered it, to my own satisfaction.
24 If it is not to the court, I will answer it some more.

25 MR FORD: I don't think there is an express denial of
26 having such a conversation, in words, substance or effect,

1 or an admission, and we are entitled to one or the other,
2 and therefore ask it.

3 A If the court didn't hear this answer -

4 THE COURT: I heard the answer, and I was impressed with
5 the idea that the witness had answered it the best he
6 could.

7 THE COURT: Well, I assume it is a denial.

8 A I have no control over your assumptions.

9 Q Well, did you not intend to deny it, Mr Darrow?

10 A I have answered the question, Mr Ford. Now, do you
11 think you can coax me further?

12 Q I ask that question.

13 MR FREDERICKS: We are entitled to know if there is any
14 doubt about it, as a matter of fact, in asking an impeach-
15 ing question, the rule is, did this conversation occur.

16 THE COURT: The court assumes a witness has --

17 MR FORD: For our information do we understand the court
18 interprets the answer as a denial?

19 THE COURT: The court assumes that is a denial of the sub-
20 stance and effect of that conversation.

21 MR FORD: Did not Mr Harrington say to you at that time and
22 place, "You are damned reckless of everybody who worked for
23 you, to throw people into trouble that you knew, to throw
24 people into trouble that you did," did you not reply, "You
25 are getting me into the pen", and did not Harrington then
26 say to you, "Suppose I should perjure myself; what do

1 they care about me; they don't know me from Adam. The
2 thing is getting to a point where they won't stand any
3 monkey business. What do they care about me? I have
4 come out here and got myself discredited," and did you not
5 then reply, "Well, are you going to testify against mr,
6 John?" Did you have such a conversation in words, sub-
7 stance or effect? A Well, now, Mr Ford, there is a
8 good deal of stuff there, and I might have used some of
9 the words. I wouldn't say I didn't.

10 Q Just let the reporter read it. A I never said
11 anything consecutively of that sort with him, but some of
12 the words and some of the expressings might have been us-
13 ed by him and possibly by me.

14 Q Did you use these words consecutively, I will recite
15 one part of the conversation, at that time and place,
16 "You are damned reckless of everybody who worked for you
17 to throw people into trouble when you knew it, to throw
18 people in trouble the way you did", and did you not
19 then reply, "You are getting me in the pen?" A What did
20 I say -- the words -- no.

21 Q Did Mr Harrington use those words? A No.

22 Q "You are getting me into the pen?" A No.

23 Q Did you have this, Did not Mr Harrington say, "Suppose
24 I should perjure myself; what do they care about me? They
25 don't know me from Adam. The thing is getting to a point
26 where they won't stand any monkey business. What do they

1 care about me. I have come out here and got myself dis-
2 credited." Did you not then reply, "Well, are you
3 going to testify against me, John?", and did you and Har-
4 rington have that portion of the conversation there either
5 in words, substance or effect? A Harrington did say he
6 had got himself discredited, or words to that effect. He
7 did say that "You don't care anything about him." He did
8 say, "He was going to take care of himself", Now, what
9 else is there?

10 Q Did you not then reply, "Well, are you going to tes-
11 tify against me, John?" A Probably at some stage of
12 the proceedings I did.

13 Q At that stage? A Oh, I don't know whether at that
14 stage or not. I probably asked him whether he was going
15 to testify against me. Undoubtedly I did.

16 Q Did not the following conversation occur between you
17 and Harrington at that time, either in words, substance or
18 effect?

19 MR ROGERS: The question is not fully answered yet.

20 MR FORD: pardon me. Do you want to answer it some more?

21 A With me under indictment and him here in that position,
22 I didn't -- I don't see how I could sell have hesitat-
23 ed to ask him, and I probably did ask him whether he was
24 going to testify, what to. Isn't very good English,
25 but I guess it is answered.

26 Q Did you not have the following conversation between

1 yourself and Mr Harrington, either in words, substance or
2 effect and at that time and place, Harrington say to you,
3 "Franklin is in possession of the other side now," and
4 did not Harrington then and there say to you, "Lawler
5 intimated that I handled some of the money." He says,
6 "I could testify to that." I said, "I did not, and I flew
7 up", and he said, "You are a lian, and you know it", and
8 did you not then and there reply, "You are not a liar".

9 A I don,t know whether I told him he was not a liar or
10 not. I might have at that time.

11 Q You may have told him he was not a liar? A At that
12 time I might have. I would not now.

13 Q Did you have that conversation at that time and place,
14 either in words, substance or effect? A I don,t remember
15 whether he told me that Lawler had called him a liar or
16 not.

17 Q Did you tell him he was not a liar in regard to what
18 he had just reported to you at that time? A Is that be-
19 fore you are reading to me.

20 MR ROGERS: The question cannot be picked out in that
21 fashion.

22 THE COURT: No, it cannot. You can reread it, if you want
23 to.

24 MR FORD: Did you at that time and place tell Mr Harrington
25 that he was not a liar, when he, Harrington, told Lawler
26 that he did not handle some of the money?

1 MR ROGERS: Just a moment. We object to that question as
2 putting it in substance and effect and is not a direct
3 question as to what was said, and counsel pretends to have
4 in front of him the exact words he used, and simply adding
5 to it, and asking for effect; already asked and answered;
6 and not cross-examination.

7 THE COURT: Objection sustained.

8 MR FORD: In view of the witness' previous answer about
9 having told Harrington that he was not a liar at that time.

10 THE COURT: If there is any question about it, have the
11 question reread and let him amplify his answer if he wants
12 to.

13 MR FORD: I want to --

14 THE COURT: Read the question.

15 MR FORD: Withdraw the question.

16 MR ROGERS: No, it has been answered, you cannot withdraw it.

17 THE COURT: Read the question and the answer. (Last ques-
18 tion and answer read by the reporter.)

19 MR FORD: Did you have such a conversation, either in
20 words, substance or effect? A Is that all of my
21 answer?

22 (Last three or four questions and answers read ^{by} the
23 reporter.)

24 MR FORD: You don't remember whether Lawler told him that
25 or not, as I now ask you? A I didn't say.

26 MR ROGERS: You heard that --

1 MR FREDERICKS: Let him finish the question. A That is
2 part of the question; let him go on.

3 MR FORD: Did you not later -- I was interrupted. I with-
4 draw this question and reframe it now: You say you don't
5 remember whether Harrington told you that Lawler had said
6 that he, (Harrington) was a liar, when he, (Harrington)
7 denied that he handled the money. Now, isn't it a fact
8 that you discussed Lawler's accusation against Harrington,
9 to-wit, that Harrington handled the money, and did you not
10 then say that if Lawler called him a liar on that, that
11 he (Harrington) was not a liar, and that he did not handle
12 the money, either in words, substance or effect. I am not
13 pretending to put the exact words.

14 MR ROGERS: Now counsel is not putting the words or the
15 statement, and counsel has gotten that question up out of
16 his own imagination. He has before him what pretends to
17 be the dictagraph --

18 MR FREDERICKS: We have nothing of the kind.

19 MR ROGERS: He has it available, and he is trying to put
20 in questions probably like it, and he cannot have that in
21 that way' if your Honor please, under the rules of cross-
22 examination. Objected to; it is argumentative, and it is
23 not giving the witness an opportunity to admit or deny the
24 conversation; calls for his conclusion or opinion.

25 MR FORD: Now, if the court please, the question as put
26 to the witness -- the impeaching question was the latter

1 part of it.

2 THE COURT: Yes, I have it. I don't care to hear argument
3 on it. Objection overruled.

4 MR ROGERS: Exception.

5 A Now, I will have to have that question read, I am sor-
6 ry to say. (Last question read by the reporter.) You
7 refer to the same thing you asked me --

8 MR FORD: yes, Mr Darrow. A Then I have answered it.

9 THE COURT: Mr Darrow, I failed to catch the full force
10 of your answer. A I thought, your Honor, that this was
11 another time. If you didn't, why, I will try to do bet-
12 ter, but I think I fully answered it; if I didn't why, --

13 THE COURT: My mind was not impressed with the idea it had
14 been fully answered. A I thought that meant some other
15 time; I thought probably you did.

16 THE COURT: Do the best you can. A I guess you will have
17 to read the latter part of that again. (Latter part of last
18 question read by the reporter.) You mean discuss it in
19 this way, or had other discussions and said this? Did I
20 discuss it further or was this the discussion; is that what
21 you are getting at?

22 MR FORD: Never mind what I am getting at. Don't you
23 understand the question? A I don't. I don't know
24 which you mean.

25 Q Did you tell Mr Harrington that he was not a liar
26 when he denied that he, Harrington, handled the money.

1 A I might have; I don't know. Certainly didn't think he
2 was lying about that at that time.

3 Q Did not Mr Harrington at that time and place say to
4 you, "I would not say a word, but, my God, Darrow, I won't
5 perjure myself for any man; I won't do it; I won't perjure
6 myself", and did you not then say in reply, "I am sorry
7 you have that in your head anyway; I will give you any-
8 thing you ask within reason, I wish you would name the
9 amount; don't desert me on this thing"; and did you not
10 further say to him, "Are you going before the grand jury
11 and tell them everything?" A You want me to answer yes
12 or no and then explain?

13 Q Any way you can answer so we can understand it.

14 A In the first conversation Harrington had with me --

15 Q I am referring to Friday. A I know, but I am leading
16 up to it, this is a series. From the first time he open-
17 ed his mouth he wanted money. He complained that he had
18 not had enough. That I didn't give him what was coming to
19 him, and that I ought to give him as much as any lawyer
20 in the case. He repeatedly asked it, and I thought that his
21 whole tenor and his whole purpose -- his main tenor and
22 purpose, was to get money. I think there wasn't a single
23 conversation there when he didn't in terms or by impli-
24 cation, ask me for money, and I thought it was a play,
25 and purpose of getting it, and he at one time spoke about
26 having given Job Harriman some extra money. I think he said

1 \$5000, and I told him that if he thought he was entitled to
2 any more money, I would give it to him, and I told him ex-
3 plicitely in the latter conversation which I will tell
4 you about when you come to it, the same thing. Every
5 conversation in reference to money was brought about by him,
6 and about half what he said was about getting more money
7 out of me while I was under indictment, and he stood in
8 the attitude of threatening me.

9 Q Having made your explanation, did you or did you not at
10 that time and place have the following conversation in
11 words, substance or effect? Did Harrington say to you,
12 "I would not say a word, but my God, Darrow, I won't perjure
13 myself for any man; I won't do it; I won't perjure myself."
14 And did you not then reply, "I am sorry you have that in
15 your head anyway; I will give you anything you ask within
16 reason; I wish you would name the amount; don't desert
17 me on this thing. Are you going before the grand jury and
18 tell them everything?"

15s1 A I never asked him if he was going before the grand jury
2 and tell them everything. I did ask him not to desert me.
3 I did probably say that I was sorry he had any such thing
4 in his head which I had insisently denied, and which was
5 untrue, and I did tell him at the latter conversation, or
6 at that one, I would give him some money if he thought he
7 ought to have it.

8 Q The response I have just asked you was made in the follow-
9 ing response, "I would not say a word, but My God, I wont
10 perjur myself for any man; I wont do it; I wont perjure
11 myself"? A That I didn't say at all.

12 Q Well, I said that that you just said now was in response
13 to that question? A No, it was said all through the
14 conversation.

15 Q Very well, that answers the question. A And he was
16 never asked to perjure himself by me.

17 JUROR WILLIAMS. May I ask a question right here, your
18 Honor?

19 THE COURT. Yes.

20 JUROR WILLIAMS. I had it in mind before, this has brought
21 it up; Mr. Darrow did you pay Mr. Harrington \$250⁰ at the
22 time after the 28th of November?

23 A I did, Mr. Williams.

24 Q That was before this conversation? A Oh, certainly,
25 right after the plea of guilty.

26 JUROR WILLIAMS- Then I understood you to say that was

1 the price he named himself? A That is just exactly
2 what he asked me for \$2500, every penny, but he did come
3 around a day or two later and say that he had got to go
4 back to Chicago and he ought to have a thousand dollars
5 more for expenses, which I didn't give him, but I give him
6 every cent he asked for.

7 ANOTHER JUROR. Did you take a receipt for that money?
8 A I think Mr. Davis took one but I am not certain; I am not
9 certain whether a receipt was taken or not.

10 THE SAME JUROR. Then you don't know whether there is one
11 in existence? A I would rather think there is not but I
12 am not certain about that; I will try to find out.

13 ANOTHER JUROR. Did you pay him by check? A That was in
14 cash. I will explain here, if you remember the other day,
15 after the case was disposed of, the money was drawn out of
16 the bank by Mr. Davis and he was paid in currency.

17 MR. ROGERS. That explanation you speak of was about some
18 attachment?

19 A Yes, I presume the juror recollects that.

20 A JUROR. Q What was the demand now, a thousand dollars
21 of you there at this conversation? A No, he wanted five,
22 at least, but he said he was entitled to fifteen because
23 some of the lawyers had this. He said he was entitled to
24 as much as any lawyer, as he testified here.

25 MR. FORD. Q And all the time that Mr. Harrington made these
26 demands on you, as you allege, Harrington knew that the

1 remarks were being taken down by dictagraph, is that cor-
2 rect?

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

4 MR. FORD. If he don't know he can answer that he don't
5 know.

6 MR. ROGERS. Then he don't need to answer.

7 THE COURT. You did not ask him if he knows. Objection
8 sustained.

9 MR. FORD. Oh, I withdraw the question. A matter of argu-
10 ment.

11 Q Didn't you at this conversation at the Hayward Hotel
12 on Friday the 15th of February, the third conversation,
13 endeavor to scare Mr. Harrington from testifying before the
14 grand jury, and try to make him believe he was likely to be
15 indicted himself?

16 MR. ROGERS. Objected to as incompetent, irrelevant and
17 immaterial; calling for a conclusipon or opinion and not
18 cross-examination. If he said it by word or mouth or
19 by action it should be put to him directly.

20 MR. FORD. I am not calling for any conclusion. I am
21 asking for his purpose at that time to scare him.

22 THE COURT. To what subject is this responsive?

23 MR. DARROW. I wish you would withdraw that, because I
24 have that in mind.

25 MR. ROGERS. All right.

26 THE WITNESS. Excuse me.

1 MR. ROGERS. Go ahead if you want to, it is absolutely
2 incompetent .

3 THE COURT. Objection withdrawn, go ahead.

4 A I did not. It is the last thing I would have done,
5 because I have no doubt if he was scared he would jump
6 in the first hole he could get into, no matter who suffered
7 for it or no matter what he had to say. I explicitly
8 tried not to scare him. I told him that the papers had
9 said he was going to be indicted, and I asked him whe ther
10 he thought he would, and I said, if he was I would help him
11 get a bond and defend him. I never at any time attempted
12 to scare him. I tried to keep him from being scared by you
13 people.

14 MR. FORD. Q You knew he was a timid man and would jump
15 for the first hole? A I thought he was.

16 Q Did you believe that there was any reason why he should
17 be scared? A I did.

18 Q And the reasons are those out of the employment that he
19 had with you? A Now, I didn't say any such thing, Mr. Ford.
20 You had better let me tell.

21 MR. FORD. Withdraw it.

22 MR. ROGERS. Go ahead and answer it.

23 MR. FORD. Go ahead, answer it. A I said I believe there
24 were reasons for it; first, he ^{been} had arrested here in Los
25 Angeles on a proceeding for contempt of court, for not
26 answering questions before the grand jury, which had
scared him. Secondly, it had been given out in the news-
MARY

1 papers that he would be indicted. Thirdly, he had written
2 me that the Burns people in Chicago were after him. Next
3 you had got him back here subpoenaed by the United States

4 Court.

MR. FORD.

5 Q That is I? A Yes, you, and then after getting him in
6 this jurisdiction, hauling him in the state court, he had
7 been brought back from Albuquerque on a United States
8 subpoena. Any man who had any brains at all would have
9 known it, and Mr. Fredericks had given out interviews to that
10 effect, and that he had better come through or it would go
11 hard with him, a whole column of it, in the Evening
12 Herald.

13 Q Before that time? A I don't know, but during that
14 time. Do you suppose we didn't know what was going on?

15 Q Don't you know that Captain Fredericks was not even
16 in the State of California at that time? A I know he
17 was in February, I think he was, anyway. Have you got
18 the Herald.

19 MR. ROGERS. Yes, I think it has been offered in evidence.

20 MR. FORD. Q Did not Mr. Harrington at that time and place
21 say to you, "I don't want to put anything in your way, but,
22 great God, I don't want to be tripped up for perjury," and
23 did you not then say, "How do you know you will be tripped
24 up," and when Harrington said, "How do I know?" Didn't
25 you say, "John, you know God Damn well." A What is
26 that? Didn't I say "Don't you know God Damn well?"

1 Q Yes. A I didn't.

2 Q Didn't you say, "How do you know you will be tripped
3 up?" A I might have, and then did I say--you asked me
4 whether I said, "John, you know God Damn well--" know what?

5 Q I don,t know. A Well, I don,t either. I am pretty
6 sure I didn't use that language, but I sometimes swear
7 since this case began.

8 Q When you used the words, "John, you know God Damn well,"
9 you meant, Mr. parrow, that it was impossible for the prose-
10 cution to have any memorandum of a private conversation
11 between yourself at your home at Echo Park?

12 MR. ROGERS. That is objected to as not cross-examination
13 and moreover it plainly appears that that is nothing but
14 a fragment of the conversation and that the dictagraph
15 didn't get the rest of it. If he did say, "John, you
16 know so and so well," why, just chop it off there. Maybe
17 they didn't like it, and maybe they didn't get it. It is
18 only a fragment.

19 MR. FORD. The witness is just asked what the words,
20 "John, you know God Damn well," what that refers to. I am
21 asking him if he didn't mean at that time it was impossible
22 for the prosecution to have any memorandum or any evidence,
23 against other than the evidence that either Harrington or
24 the defendant himself, as to the private conversations
25 between himself, Mr. parrow and Mr. Harrington, at the home
26 of Mr. parrow at Echo Park or near Echo Park. Now, isn't

1 that what you meant?

2 MR. ROGERS. Objected to as not cross-examination. He has
3 not said he was there at the time. He has not answered
4 the question, whether that conversation took place,
5 either leading up to that conversation, or not.

6 THE COURT. Objection overruled.

7 MR. ROGERS. Does your Honor mean to rule he has used
8 that language?

9 THE COURT. Oh, no, but he has asked what was referred to,
10 and this question is for the purpose of getting what was
11 referred to.

12 THE WITNESS. What was referred to in something I didn't
13 say?

14 MR. FORD. Well, I didn't intend to testify you didn't
15 say it, you did not have the conversation I asked you?

16 A I answered the question, Mr. Ford, let the reporter
17 read it - Read my answer, then you can know what I said.
18 If you don't I will make it plainer.

19 (Last answer read by the reporter.)

20 MR. ROGERS. The first part of the question I didn't
21 understand what led up to that. "You know God Damm well,"
22 whether that has been answered or not?

23 A Mr. Ford says he don't know.

24 MR. FORD. I didn't mean to say I didn't know. I mean to
25 say it was not in the question. A Well, I asked you what
26 led up to it.

Alp 1 Q I will put the whole conversation before you. Did you
2 not have the following conversation there in words, sub-
3 stance or effect, with Mr. Harrington, on Friday, February
4 15th, the third conversation: Didn't Mr. Harrington say,
5 "I don't want to put anything at all in your way, but,
6 great God, I don't want to be tripped up for perjury."
7 Did you not then reply, "How do you know you will be
8 tripped up?" and didn't Harrington say, "How do I know?"
9 Did you not then reply, "John, you know God Damn well,"
10 and didn't Mr. Harrington then say, "How do I know what in-
11 formation those fellows have got?" and did you reply,
12 "They have not got any information." Didn't Mr. Harrington
13 then say to you in answer to that remark, "They have not
14 any information, they have not got it from me," and did you
15 not then say, "The conversation between you and me. Now,
16 for God's sake, John, don't go back on me." Didn't
17 Harrington say, "I have no desire to go back on you, I don't
18 feel that way." Did you not then say, "I know you don't,
19 bu, great God, don't do it, now, my God, don't do anything
20 that will hurt me." and didn't Harrington say, "If I can
21 sidestep it I will do it," and did you not then say,
22 "Suppose they ask you if you had a conversation with me, sup-
23 pose you refuse to testify, then what?" and Harrington
24 then said, "Then I will talk it over with you," and didn't
25 you reply,--"I will talk it over with you," and did you not
26 then say, "That is Hell, be careful about whatever you

1 tell?" A That is Hell?

2 Q Did you have such a conversation in words, substance or
3 effect? A I would not know what such a conversation would
4 be.

5 Q Then, you didn't have it? A Didn't I?

6 Q Is that the answer? A I say, I don't think anybody
7 on earth would know what such a conversation can be in
8 words, substance or effect, because to my interpretation
9 it does not mean anything and I cannot answer that. Did
10 you ask whether he said those words, and I said those
11 words, I would say, No, I don't think either one of us
12 said them in such order, but what it means in words, sub-
13 stance or effect, nobody could tell you-

14 Q That is the question I asked you, didn't you say to
15 Mr. Harrington, speaking of Lawlor, "Suppose he asks you
16 about a conversation with me, what can you do?" and didn't
17 Harrington say, "It all depends on whether he will ask me
18 about it, if I should perjure myself, where shall I get
19 off?" and didn't he tell you at that time, say to you at
20 that time, that he didn't want to commit perjury on account
21 of his family, and did you not tell him that he could avoid
22 it by not saying anything? A I don't know he could. Prob-
23 ably if he talked he would commit it.

24 Q Did you or did you not have that conversation? A I don't
25 recall it. I know I never asked him to commit perjury for
26 me.

1 Q And didn't Mr. Harrington say to you, "I know what I
2 promised my family, that I would not perjure myself, I
3 promised that I would not do it," and did you then reply,
4 "Well, don't tell it," and didn't Mr. Harrington say,
5 "I wont do it unless they absolutely force me to", and did
6 you not say, "Suppose they do?" A Tell what.

7 Q Tell about the conversation on the porch. A There was
8 not any.

9 Q Then you didn't have this conversation with Harrington
10 at that time and place? A I didn't say that, I asked you
11 to "tell what"?

12 Q Did you or did you not have this conversation at that
13 time and place? A I had no such connected conversation
14 that had reference to any such matter. There were a good
15 many matters spoken of there, as you know, if you have any
16 notes at all.

17 Q Did you or did you not have that conversation, without
18 regard to what subject it was connected with? A I think
19 I have answered it.

20 MR. FORD. The witness has said, your Honor, "I didn't
21 have that conversation with reference to that subject
22 matter." Now, it may be he intends to admit he did have such
23 a conversation and denies he referred to any such subject

24 MR. ROGERS: I don't think there is any doubt about its
25 being a denial as to having said those words, in that con-
26 nected form.

1 MR. FORD. I understood that, your Honor, but he did not
2 deny having said the words, and as you--

3 THE COURT. It is the connected words.

4 THE WITNESS. In reference to anysuch subject matter, I
5 said.

6 MR. ROGERS. There seems to be a tendency, like Shakespeare,
7 "It seemeth to me he doth protest too much" that this
8 man was trying to get ready to commit perjury and getting
9 ready to do it in about forty different ways--

10 THE COURT. It is time to argue that, Mr. Rogers, when the
11 time comes.

12 MR. FORD. Q Did Mr. Harrington say to you, at that time'
13 and place, "You know all about Mrs. Caplan, you know where
14 she is," and did you not reply--

15 THE COURT. You are getting into another subject and you
16 can take that up at 2 o'clock. It is 12 o'clock and time
17 for the noon recess.

18 (Jury admonished.) We will adjourn until 2 o'clock
19 this afternoon.

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