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1 August 6th 1913 10 o'clock A.M.

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

4
5 J. L. STONE, a witness called on behalf of
6 the defense, being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 MR ROGERS: Your name, please? A J. L. Stone.

9 Q What is your business or occupation? A Collection
10 teller of the First National Bank.

11 Q First National Bank of this city?

12 A Of this city.

13 Q Were you such collection teller th 1911, along in
14 November? A I was.

15 Q I show you a promissory note, purported to be signed
16 by Job Harriman, payable to the order of certain persons,
17 the four Dobyms people, which has been introduced in evi-
18 dence here as defendant's exhibit G, and I will ask you to
19 look at the note and see whether or not that passed through
20 your hands for collection? A Yes, we had it.

21 Q You had it for collection? A We did.

22 Q Particularly, I call your attention to the rubber stamp
23 figures, November 23rd, 1911, and I will ask you what those
24 figures signify and who put them on so far as you know,
25 what they indicate and so forth. A Well, I believe that
26 was put on there on that date we mailed him a notice that

1 we had the note for collection.

2 Q That signifies on that date, November 23rd, 1911, you
3 mailed a notice that you had this note for collection?

4 A For collection.

5 Q You sent it through the United States mail? A Through
6 the United States mail.

7 Q Now, do you know who made those pencil figures "11-27"
8 and "921 Higgins Building", do you know who put those on or
9 what they signify? A Well, either put on the note before
10 the note came to us as Mr parriman's address, or might have
11 been put on at the bank that that was his address to which
12 a notice was to be mailed; that is all they signify. The
13 11-27 was probably put on the date we presented it at his
14 office for collection by the messenger.

15 Q You employ a messenger, who, in addition to the mailing
16 of notices, carries the note to the address of the payor
17 or the note? A That is it.

18 Q Can you tell me from anything you know about the mat-
19 ter what messenger or collector took that note? A Well,
20 might possibly have been Roy Smith, that I am not positive;
21 I don't know whether it is his figures or not, but it was
22 one of the messengers, anyway, left the notice at the of-
23 fice on the day.

24 Q Was the note paid when? A It was paid on November
25 29th.

26 MR ROGERS: Is there anything else?

1 JUROR GOLDING: I just want to know from his knowledge,
2 how long the bank had possession of that note? A We had
3 it from November 23rd to November 29th. We received it on
4 November 23rd, and it was paid on November 29th, and
5 surrendered, I think it was Harriman's secretary.

6 JUROR GOLDING: Do you know how you came in possession of it

7 A It came to us from the bank at El Monte. Their endorse-
8 ment is on the back, the First National Bank of El Monte.

9 THE COURT: Is that all?

10 MR ROGERS: That is all, so far as I am concerned.

11 THE COURT: Any cross-examination?
12

13 CROSS-EXAMINATION

14 MR FREDERICKS: How many messengers, Mr Stone, do you have
15 in your bank who were doing collecting such as this, on the
16 27th day of November, 1911? A I think four.

17 Q And you have indicated that you thought this was proba-
18 bly in the hands of a messenger by the name of Roy Smith?

19 A Yes. I am not positive about that; it might have been
20 any of them.

21 Q What I want to find out from you, what there is that
22 indicates that, so if Roy Smith is the man, we can get him.

23 MR ROGERS: He is here. I have got him outside.

24 MR FREDERICKS: All right.

25 A If it isn't him, why, it is one of the others. I
26 guess they are all there at the present time.

1 Q You say this note was paid on November 29th? A 29th.

2 Q On November 29th, isn't it a fact that the Secretary
3 of Mr Harriman came to your window with this check to pay
4 this note, and couldn't pay it because the note was out with
5 the messenger? A yes, it is.

6 Q That was Monday? A I don't remember the day.

7 Q All right, November 27, and you had mailed a written
8 notice to him on November 23rd; generally, what did that
9 written notice state? A We held the note for collection
10 with the amount on.

11 Q Is the First National Bank at El Monte your regular
12 correspondent there? A Our regular correspondent.

13 Q You have been in the banking business for how many
14 years? A About 10 years.

15 Q State whether or not this is a usual method pursued
16 in collecting notes that are sent to you for collection.

17 A It is our regular procedure.

18 Q The secretary of Mr Harriman didn't leave the check on
19 the 27th, did he? A No.

20 Q Why didn't he?

21 MR ROGERS: That is calling for a conclusion or opinion.

22 MR FREDERICKS: Well, it is a fact that at that time this
23 note was out then in the hands of your collector?

24 A Yes.

25 Q Making his rounds. Did you see the check that Mr Har-
26 riman's secretary had there on the 27th? A Yes, I saw it.

1 Q Do you remember whose check it was? A What do you
2 mean?

3 Q Whose signed it? A That I don't remember, I couldn't
4 say that.

5 Q Was it for the correct amount? A I couldn't say that.

6 Q And what were the circumstances under which you saw it
7 on the 27th? A Why, the secretary, as I believed him
8 to be, called to pay the note, and I did not have the
9 note to surrender to him and I stated to him that
10 our boy had it out, and was going to present it at his of-
11 fice and he took the check away with him because I had not
12 the note to surrender to him.

13 Q Did he actually hand you the check or show it to you?

14 A I don't remember whether he handed me the check; he
15 had the check anyway, to pay the note.

16 Q You saw it? A I did, yes.

17 Q And he said he came to pay it? A He said he came to
18 pay the note.

19 Q And that was on the 27th? A Yes.

20 MR FREDERICKS: That is all.

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REDIRECT EXAMINATION.

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2p 2 MR. ROGERS. Q How do you know, Mr. Stone, it was on the
3 27th? Have you a memorandum of it or anything of that
4 kind? A Because our messenger's notice, or at least
5 notation on the note indicates that was the 27th, the
6 day he presented it at Mr. Harriman's office.

7 Q You have no other recollection than that? A I have
8 no other recollection than that, because that is our
9 record.

10 Q Might have been the 28th except for what pencil figures
11 are on the note? A The pencil figures would not have been
12 the 27th if it had been the 28th.

13 Q Except for the pencil figures you would not know what
14 date it was? A No, I would not know what date it was,
15 that is our record.

16 Q He presented it to Mr. Harriman's office on the 27th,
17 according to those figures? A He presented it to Mr
18 Harriman's office, according to those figures.

19 Q Sometime while he was out Mr. Harriman's secretary was in
20 and offered to pay it? A That is it.

21 Q You say you didn't see the check. Do you know what
22 bank it is on? A I saw the check, I couldn't tell you
23 who--it was on the California Savings Bank, if I am not
24 mistaken.

25 Q By whom was it signed? A I suppose Mr. Harriman. I
26 don't recall seeing the signature.

1 Q You don't recall? A No.

2 Q Then, aside from the fact that the memorandum of the
3 messenger indicates it was out on the 27th you would not
4 know what date that was? A No, we would not keep any
5 particular--that is the record and the reason we put it
6 there is for that purpose.

7 Q But you did not put that 11/27 there? A No, I didn't
8 put it there.

9 Q Aside from that you don't know what date it was, do you?

10 A No, only from what the record shows.

11 Q What record? A On the note.

12 Q That is what I am talking about, aside from the 11/27
13 there you would not know what it was?

14 MR. FORD. There are other records beside the 11/27.

15 THE COURT. If that is the fact, let him testify.

16 MR. ROGERS. Let him testify to it.

17 A The note shows we received it on the date on which it
18 stands, and it was presented to his office the date of the
19 lead pencil figures, and it was paid on the date it was
20 stamped paid.

21 Q That is what I am referring to, it came in on the 23rd
22 and you sent a written notice? A Yes, sir.

23 Q On the 27th it was out? A Yes, sir.

24 Q Your records show it was paid on the 29th? A Yes.

25 Q During that time, on the 27th, Mr. Harriman's secretary
26 or some person representing him appeared to take up the

1 note? A That is it.

2 Q But did not do it? A But did not do it.

3 MR. ROGERS. That is all.

4 MR. FREDERICKS. Q Do you recall when the time--

5 MR. ROGERS. Just a moment. Q On the 29th, have you a
6 personal recollection of the payment? A I believe I
7 received the check, yes, over the window.

8 Q Well, now, I call your attention to the check dated the
9 28th, the payment; do you remember the circumstances of
10 your getting the check? A I remember getting the
11 check, yes.

12 Q Do you remember whether it was the 28th or 29th--the
13 payment will show when it-- A I cannot recall.

14 MR. FREDERICKS. We object to the witness being interrogated
15 in regard to that date on the check. It may have been
16 dated the 28th and that would not indicate anything to
17 him, might have been dated the 26th or the 27th, he didn't
18 date it.

19 THE COURT. Well, let's see if it will refresh his recol-
20 lection at all.

21 MR. ROGERS. Q The check is dated November 28th.

22 THE COURT. If it does not, all right.

23 Q Received by your collection department November 29th,
24 would that indicate anything as to when you received that
25 check? A We received it on the 29th, this stamp here, and
26 we sent it down the same afternoon and received payment by

1 our messenger.

2 Q You didn't send the check through the clearing house?

3 A We did not send the check through the clearing house--
4 there is a clearing house stamp on it.

5 Q There is a clearing house stamp on it, isn't there?

6 MR. FORD. He said so.

7 MR. ROGERS. Suppose you keep out of this and let him
8 testify.

9 MR. FORD. I object to that on the ground the witness has
10 already answered.

11 THE COURT. What is a proper objection. What is the ques-
12 tion?

13 A If we received the money for it it went through our
14 clearing house on March 1st, and we received the check
15 on November 29th.

16 Q you received the money on March 1st? A We received the
17 money on March 1st.

18 Q You mean December 1st? A December 1st, I should say,
19 yes.

20 Q What became of the check between the 29th, 30th, 1st--
21 A the 30th of November--you see, the stamp is not plain,
22 I cannot see the date of it, it has been smeared.

23 MR. ROGERS. Let me look. I am not much account at it, but
24 I will take a chance. That appears to be a 1 there,
25 doesn't it? A That appears to be a 1, yes.

26 THE COURT. Let me try it.

1 MR. FREDERICKS. There is a magnifying glass, your Honor.

2 MR. FORD. I call your Honor's attention to the fact that
3 November 30th was a holiday, Thanksgiving Day.

4 A That would be the 31st, then.

5 MR. ROGERS. There is no 31st of November, you know that,
6 there has not been, except in leap years.

7 MR. FREDERICKS. Is it material? The check is paid.

8 THE COURT. I did not get your objection.

9 MR. FREDERICKS. We object to it on the ground it is imma-
10 terial.

11 A This must be December 1st, because if the 30th was
12 Thanksgiving Day, there is no 31st, this would be the 1st
13 of December, which accounts for the next business day it
14 went through our morning clearing.

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1 Q How did it miss clearing on the 29th? A If it was paid
2 in the afternoon we have no way of getting it cleared.

3 Q Suppose it was paid in the morning, then what? A Be-
4 fore 11 o'clock, it would go through that day.

5 Q After 11 o'clock it would not? A No, after 11 o'clock
6 it would not.

7 Q It would wait until the next succeeding day? A Yes,
8 it would wait until the next succeeding day, yes.

9 MR ROGERS: That is all.

10

11

RE-CROSS-EXAMINATION

12 MR FREDERICKS: Q You stated that you remember this check
13 was paid to you on the 29th. Now, do you remember that
14 the check that was presented to you by the secretary when
15 the note was out was presented two days before that; do you
16 remember, from your own memory? A No, I don't from
17 my own memory. All I go by is the record that shows on
18 that note, as I stated before.

19 Q What is your memory in regard to the length of time
20 or have you any memory in regard to the length of time
21 the check which was not used, was presented to you before
22 the check -- A Why, a day or two. I know it was not
23 very long after -- before the note was paid. They only
24 had a few days, for that matter.

25 MR ROGERS: That is all.

26 JUROR GOLDING: How did you consider Mr Harriman's credit

1 about that time? Did you consider that he was good for a
2 \$500 note? A I didn't think a man that was running for
3 office in the city would take a chance of **giving** a bad
4 check; wouldn't do him very much good.

5 Q No, I mean, the note itself. You know he was a very
6 busy man at that time; just ordinary business transaction
7 in the course of business? A Why, whether the note was
8 good or whether the check was good --

9 Q The note, whether you could get the money on the note
10 which you went after the payment just about that time?

11 A I don't know that I thought about that question.

12 Q Just simply a business proposition? A We have so many
13 of them they don't cut much figure in that respect whether
14 they are good or bad.

15 MR FREDERICKS: Did it make any difference to you, Mr
16 Stone or to your bank, whether Mr parriman paid the note
17 or not? A Not at all.

18 Q You simply collected it for some body else? A We
19 had no interest in it whatever.

20 Q You hadn't advanced any money on it? A Had not.

21 Q You were collecting it for the bank at El Monte?

22 A The bank at El Monte.

23 Q And they probably, for the people to whom it was made
24 out. A yes, at least I presume so.

25 MR FREDERICKS: That is all.

26 MR ROGERS: By the way, when you got that note, you knew

1 who Job Harriman was? A Yes.

2 Q You knew he was running for mayor at that time?

3 A Yes.

4 Q And you sent up the notice, and then you sent up your
5 collector and the note was paid? A That is right.

6 MR ROGERS: That is all.

7

8 CALVIN ROY SMITH, a witness called on behalf
9 of the defense, being first duly sworn, testified as fol-
10 lows;

11 DIRECT EXAMINATION

12 MR ROGERS: Your name, please? A Calvin Roy Smith.

13 Q Where do you live? A 4631 Kingswell Avenue.

14 Q Connected with the First National Bank? A yes sir.

15 Q What capacity? A Collector.

16 Q I don't know whether you have ever seen this note or
17 not; I am going to show it to you and ask you: did you
18 ever see that note? Look at the figures down here, and
19 so forth, and see if you remember to have received it?

20 A I don't remember it.

21 Q Well, when they have collections there in the bank they
22 turn them over to you or some of your compatriots in that
23 line, and you go and chase the man up, is that the idea?

24 A That is it.

25 Q Do you remember whether you chased Mr parriman up
26 on that day or not? A Why, I think it was another collec-

1 tor.

2 Q You don't know -- it was not your figures? A No.

3 Q Have you got any opinion what collector that was?

4 A I think it was a man named Scott.

5 Q Well, you know Stone thought it was you; that is why
6 we brought you up here. A Yes.

7 Q So it is Scott. Then you can go scott-free, and we
8 will bring Scott up. A All right.

9 MR ROGERS: Now, we have sent for -- if there is any
10 question about the matter at all that needs to be gone
11 into we have sent for a clerk at the California Savings
12 Bank to indicate Mr parriman's balance was not sufficient,
13 we will show his balance, but the book here, I think shows
14 it. If there is any question about that, we are going to
15 produce the witness, and we will send for Mr Scott if we
16 can. I took Mr Stone's word for it; he thought it was
17 Roy Smith who presented the note.

18 THE COURT: You can clear that up any time before the argu-
19 ment begins.

20 MR ROGERS: And we have sent for Mr Russell, Mr Harriman's
21 secretary. Before the argument we will clear this matter
22 up; it is nothing but a technical fact.

23 MR FREDERICKS: We would like the messenger on the stand,
24 your Honor. Of course --

25 MR ROGERS: We will have him, Mr Fredericks; I thought
26 it was Smith because Stone told me so. I couldn't get

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hold of Smith until this morning. He came up without having a formal subpoena, just to oblige me about it. He didn't know until he saw the note whether he had anything to do with it or not.

THE COURT: It would be useless to delay now. The chances are Mr Scott is out on his route, couldn't get him before 2 o'clock.

MR ROGERS: I don't think we will get him until 4 or 5 o'clock this afternoon.

MR FREDERICKS: yes, catch him any time.

THE COURT: Aside from that you rest?

MR ROGERS: No sir. I want to call Mr Dehm.

THE COURT: It is understood, then, gentlemen, so far as the matter of clearing up dates on this note is concerned, the defense has leave to call Mr Scott.

MR ROGERS: And possibly someone from the California Savings Bank and Mr Russell .

THE COURT: yes sir. of course the court assumes you will present it as soon as possible.

MR ROGERS: yes. Your Honor understands the matter came up by Mr Golding's question last night. I was not quite able to get to it in all its aspects by night.

4s 1 JUROR GOLDING- I don't want to be misunderstood on this
2 matter in any way, shape or form.

3 MR. FREDERICKS. I don't think the juror could state
4 anything that is in his mind.

5 THE COURT. I don't think that may be gone into. You made
6 a suggestion that counsel desire to clear up, and they
7 will do so.

8 MR. FREDERICKS. And if we clear it too clear--

9 JUROR GOLDING. The only thing, I was born and raised in
10 this city and lived here all my life, I don't want any
11 misunderstanding.

12 MR. ROGERS. You want to know the facts.

13 JUROR GOLDING. Just looking at it from a business stand-
14 point, not legal.

15

16 H A R R Y D E H M,

17 called as a witness on behalf of the defendant, having
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION.

20 MR. ROGERS. Q What is your name, please? A Harry Dehm.

21 Q Mr. Dehm, you are a lawyer? A Yes, sir.

22 Q Practicing in this court? A Yes, sir.

23 Q One of the attorneys in this case? A Yes, sir.

24 Q Have been from the time of the indictment and before?

25 A Yes, sir.

26 Q You remember the incident of endeavoring to call up Mr.

1 Harrington at the Hayward Hotel? A Yes, sir; I do.

2 Q In your own way, without unnecessary interrogation, just
3 proceed to tell what was done with respect to that.

4 MR. FORD. Objected to on the ground that no foundation has
5 been laid as to time.

6 MR. ROGERS. Oh, well, if you have got any--if the occasion
7 has got any time at all I will state it was in the latter
8 part of February, 1912. A Along about the middle or
9 latter part of February, 1912.

10 MR. FORD. There was a number of conversations.

11 THE COURT. That is as near as you can fix it, is it?

12 A Yes, your Honor, along about the 20th of February, some
13 where along in there.

14 MR. FREDERICKS. It is the conversation Mr. Darrow testified
15 to?

16 A The same conversation Mr. Darrow testified to. Mr. Darrow
17 called up the Hayward hotel one evening about 6 o'clock and
18 asked for a certain room there but there was no response.
19 The next morning about 9 o'clock he called up the Hayward
20 Hotel again, Judge McNutt and Mr. Tuohy and I--we were
21 also on the 'phone. We have four Home 'phones in the office
22 and we each had one.

23 MR. ROGERS. Q On the evening before, Mr. Dehm, when a
24 room was called and there was no one there, that is there
25 was no response, will you say whether or not there were other
26 persons on the 'phone at that time? A There were.

1 Q Describe how many people can get on the 'phone there in
2 that office? A Four can get on the Home 'phone. We have
3 one main line, one main 'phone and three switches.

4 Q This was the Home 'phone and not the Sunset? A This
5 was the Home 'phone.

6 Q And on the preceding evening, that is to say, the
7 evening before the conversation, was there any--how many
8 persons were on the 'phone at that time? A The same number.
9 In the morning Mr. Darrow rang the Hayward Hotel and asked
10 for a certain room number, I have forgotten the number of
11 the room, but when he got a response, when there was a
12 "Hello" on the other end of the line, Mr. Darrow says,
13 "Hello, John," and he says, "Hello". Mr. Darrow says,
14 "John, I am under indictment and you are to appear before
15 the grand jury. I do not think best that we should have
16 any financial transactions at this time. If I owe you any
17 money I will straighten out this matter after these cases
18 are disposed of."

19 Q Was there a reply to that? A There was. The voice
20 on the other end of the 'phone said, "All right." That
21 closed the conversation. One other thing that was said,
22 Mr. Darrow also said, "I do not think there is anything in
23 that point we were discussing." That is the substance of
24 it.

25 Q "I do not think there is any point in the matter we were
26 discussing," or words to that effect? A Yes.

1 Q State whether or not you were informed before that
2 conversation occurred, and also on the evening before as
3 to who the person was that was to be called up? A I was.

4 MR. FORD. Just a moment--objected to as calling for
5 hearsay, incompetent and irrelevant and immaterial; the
6 circumstances speak for themselves. What this witness
7 heard someone else say would not be competent or anything
8 to the circumstances. Objected to upon the ground it is
9 hearsay and incompetent.

10 THE COURT. Objection sustained.

11 MR. ROGERS. Q Were you informed of the object of
12 putting so many people on the 'phone?

13 MR. FORD. Objected to as hearsay and incompetent.

14 THE COURT. Objection sustained.

15 MR. ROGERS- Q Was the defendant present at the time you
16 were informed--in fact, did he inform you? A We did.

17 MR. FORD. Just a moment, Mr. Dehm. You knew I was
18 objecting to that line of questions.

19 THE WITNESS. I beg your pardon.

20 MR. FORD. I move to strike it out and object to it on the
21 ground it is incompetent and hearsay.

22 THE COURT. Strike it out.

23 MR. ROGERS. The defendant's conduct with respect to the
24 matter is in issue here.

25 MR. FORD. What the defendant did or said, your Honor has
26 been testified to. All we object to is what he was informed

1 by defendant.

2 MR. ROGERS. If the defendant told the circumstances to
3 his attorneys and thereupon this was done, it indicates,
4 of course, that at that time, at least, the matter was done
5 for the purpose of indicating his condition of mind,
6 does indicate his condition of mind, whether he intended
7 to buy Mr. Harrington or not. They have said, you
8 know, that he was going to give him \$5,000 and so forth,
9 and we have merely produced this evidence to show it was
10 understood perfectly, to find out if he was seeking to be
11 bought, and then put him on record that he was trying to
12 be bought, that is all.

13 MR. FORD. The circumstances are there and speak for them-
14 selves, your Honor. Your honor has already ruled.

15 THE COURT. Objection sustained.

16 MR. ROGERS. Did your Honor sustain the objection?

17 THE COURT. yes.

18 MR. ROGERS. I beg your pardon. I knew your Honor struck
19 out the answer. I didn't know you sustained the objection.
20 As a matter of fact, wasn't these two conversations, the
21 one where there was no answer to the room and the one
22 the succeeding morning, held in the presence of the
23 defendant, he participating therein and stating what had
24 happened at the room and that he desired to put Harrington
25 on record as to his attempt to blackmail him out of \$5,000?

26

1 MR FORD: The last part of the question: state what oc-
 2 curred in the room and state his object, we object to that
 3 portion of the question and consequently to the whole ques-
 4 tion upon the ground that it is hearsay and incompe-
 5 tent. The rest of it, as to whether Mr Darrow was present
 6 and participated in the conversation has already been
 7 testified to, that he did.

8 THE COURT: Objection sustained.

9 MR ROGERS: Exception.

10 Q Was Mr Darrow present at this conversation, partici-
 11 pating therein, the one you testified to over the wire?

12 MR FORD: We object to that on the ground that it has been
 13 already answered that he was.

14 THE COURT: It has been answered -- I am not so sure about
 15 that. Answer it again. A He was.

16 MR ROGERS: You may cross-examine.

17
 18

CROSS-EXAMINATION

19 MR FREDERICKS: Q All that Mr Harrington said in reply
 20 was just what you have narrated, "All right"? A That
 21 is all that I recall was said.

22 Q He didn't ask Mr Darrow for any money? A Not in that
 23 conversation.

24 Q That is what I am talking about, that is the only
 25 conversation you heard, isn't it? A That is the only one.

26 Q Well, then, that is the one we are talking about.

1 He didn't say he wanted any money? A Not then.

2 Q Just said, "All right." A That is all.

3 MR FREDERICKS: That is all.

4 MR ROGERS: That is all.

5 MR FREDERICKS: Before counsel rests, we have asked that
6 a witness be recalled for cross-examination.

7 MR ROGERS: Call him.

8 MR FREDERICKS: Mr Steffens.

9 MR ROGERS: Mr Steffens, I understand is at the Alex-
10 andria Hotel; that is all I know about it.

11 MR FORD: We have called the Alexandria Hotel, and they
12 tell us he has not been there for several weeks.

13 MR ROGERS: I do not know anything about it, excepting he
14 said he was going to San Francisco and would be back, and
15 I understand he was here yesterday, seen by someone who
16 told me.

17 MR FREDERICKS: We wish also to call Mr Shoeber.

18 MR ROGERS: All right, call him. I cannot agree to produce
19 Mr Steffens. I understand he is here in town, and I am
20 not going to look him up; I have not time to do that.

21 MR FORD: When counsel wanted any of our witnesses for
22 further cross-examination we dug them up.

23 THE COURT: There is a different situation.

24 MR ROGERS: No, we had to re-subpoena Mr Harrington and we
25 re-subpoenaed Mr Franklin twice to get him here. I am
26 perfectly willing to be accommodating, but I cannot run

1 around.

2 THE COURT: There is a different situation. It is the duty
3 of the state to aid the defendant, but it is not the duty
4 of the defendant to aid the state.

5 MR ROGERS: I will give you what assistance I can. He
6 was here, I heard, yesterday, and I was told he was at the
7 Alexandria Hotel. He lives in the Alexandria hotel when
8 he is here, and I understand he is there.

9 MR FREDERICKS: I suppose if we get him any time today,
10 we can put him on?

11 MR ROGERS: yes, I do not object to that.

12 MR FREDERICKS: Let us have this man Shoeber.

13 THE COURT: My attention was distracted for a moment. Do
14 I understand you have rested, with the right to recall a
15 witness?

16 MR ROGERS: They have asked to cross-examine some of our
17 witnesses; I have not announced we have rested.

18 THE COURT: yes. I was in a little doubt about that.

19

20 LEONARD SHOEBER, a witness recalled
21 on behalf of the defendant, for further cross-examination,
22 testified as follows:

23 Mr Fredericks; Q Mr Shoeber, your name is Shoeber?

24 A yes sir.

25 Q There has been a good many witnesses here, Mr Shoeber,
26 so I will lead you for a moment, with counsel's permis-

1 sion -- you are the watchman down at the Higgins Building,
2 or were the watchman down at the Higgins Building during
3 November, 1911? A Yes sir.

4 Q And testified here for the defense that a man had
5 come up to the headquarters of the defense on the morning --
6 I am not just sure whether you said positively on Tuesday --
7 Tuesday or Monday, the 27th or 28th of November, came up
8 there early in the morning with Mr Franklin, and they had
9 asked you for a room in which they could have a talk?

10 A Yes sir.

11 Q Do you recall the circumstance? A I do.

12 Q And you said that was about what time in the morning?

13 A About 7 o'clock.

14 Q What time did you go off duty? You have answered these
15 questions once --

16 MR ROGERS: Then, what is the use --

17 A About 9 o'clock, half past 8 or 9.

18 MR FREDERICKS: That is all there was to it, so that the
19 jury will get a general insight of it. Now, this morning
20 you were called into the District Attorney's office
21 and confronted with a man, shown a man, rather? A Yes
22 sir.

23 Q And you were asked whether that was the man that came
24 up there that morning with Mr Franklin?

25 MR ROGERS: That is objected to as incompetent, irrelevant
26 and immaterial, and an attempt, of course, outside of the

1 court, without having the witness under oath, confronta-
2 tion in a private office; what happened there is secondary
3 evidence, hearsay, incompetent, no foundation laid, and not
4 cross-examination.

5 MR FREDERICKS: I could ask him if he saw a man on the
6 street that was the man.

7 THE COURT: Merely preliminary. Objection overruled.

8 MR FREDERICKS: I tried to get this man here, and I thought
9 he would be here; he will be here in a few minutes.

10 MR ROGERS: yes, I want him here. You cannot call for any
11 conversation.

12 MR FREDERICKS: I am not calling for any conversation;
13 I do not see why counsel does not wait until I make an error.

14 MR ROGERS: previous experience has taught me to be
15 sure --

16 MR FREDERICKS: No, nothing of the kind. Q Now, Mr Shoeber
17 state whether or not the man whom you saw up in the Dis-
18 trict Attorney's office this morning, in your judgment, was
19 the man you saw down at the Higgins Building on the morning
20 of the 27th or 28th? A I don't think he was; no sir; not
21 the man.

22 Q Now, the man you saw down there that morning, down at
23 the Higgins Building that morning of the 27th or 28th, had
24 what colored hair? A Why, sort of dark.

25

26

sp 1 Q What color hair did this man you saw this morning have?

2 A The same.

3 MR. ROGERS. I object to that as not cross-examination and
4 an attempt to manufacture testimony--I don't mean it in an
5 offensive sense, but in a legal sense it is manufacturing
6 testimony.

7 MR. FREDERICKS. It is nothing of the kind, your Honor.

8 THE COURT. Objection overruled.

9 MR. ROGERS. Exception.

10 MR. FREDERICKS. This is cross-examination. He is not my
11 witness.

12 THE COURT. I understand.

13 MR. FREDERICKS. And the man that you saw down there that
14 morning, was he not the height of the man you saw in the
15 District Attorney's office this morning?

16 MR. ROGERS. The same objection, not cross-examination,
17 irrelevant, incompetent and immaterial, no foundation laid,
18 not the best evidence.

19 THE COURT. Objection overruled.

20 MR. ROGERS. Exception.

21 A Why, yes.

22 MR. FREDERICKS. Q And the man you saw down there on the
23 morning of the 27th or 28th, how was he for being fleshy
24 or spare in his build? A He was a spare built man.

25 Q And the man you saw up in the District Attorney's office
26 this morning? A Likewise.

1 Q Was he not spare? A Yes, sir .

2 Q The same? A Yes.

3 Q And as for the height, they were the same, were they
4 not? A As near as I can remember, yes.

5 MR. ROGERS. The same objection.

6 THE COURT. Objection overruled.

7 MR. ROGERS. Exception.

8 MR FREDERICKS. Q And as to the clothes they wore, and
9 general appearance, were they not the same? A Why,
10 excepting his face, yes.

11 Q Now, then, as to the face, what sort of a face in des-
12 cription did this man have that you saw on the 27th or
13 28th?

14 MR. ROGERS. I object to that as not cross-examination, in
15 view of the fact it has been gone into, he said he
16 looked like Joe Ford.

17 MR. FRDERICKS. No, I think he said he looked like Mr.
18 Timmons .

19 MR. ROGERS. And that is a sufficient description.

20 THE COURT. Let's see who he did look like. Objection over-
21 ruled.

22 A Well, I thought he looked something like Mr. Ford.

23 MR. FREDERICKS. Q Do you think he had a chin as long as
24 that of Mr. Ford? A yes, sir.

25 Q I didn't get the answer. A Yes, sir .

26 Q And you thought he had rather a square chin? A Yes, sir .

1 Q And didn't this man up there this morning have rather
2 a square chin? A Not when I looked at him, no, sir.

3 Q He did not? A No, sir.

4 Q Well, what was the difference between the man you saw up
5 there this morning in my office and the man that you saw
6 down at the Higgins Building on the morning of the 27th or
7 28th?

8 MR. ROGERS. That is objected to as not cross-examination,
9 calling for a conclusion and opinion of the witness, irrele-
10 vant, immaterial.

11 THE COURT. Objection overruled.

12 MR. ROGERS- Let us have this man in here and then we can
13 stick him up beside Mr. Ford and take a look for ourselves.

14 MR. FREDERICKS. He will be here, he ought to be here now,
15 but I didn't want to delay the trial if I can get along with
16 this witness without him, it will save time.

17 THE COURT. Objection overruled.

18 MR. FREDERICKS. Read the question, Mr. Petermichel.

19 (Last question read.)

20 A Why, I thought he was a better looking man than this
21 man I saw this morning.

22 Q You thought that the man at the Higgins Building you saw
23 was better looking than the one you saw here this morning?

24 A Yes, sir.

25 Q How long was this man down at the Higgins Building in
26 your view? A About, I should judge, two minutes.

1 Q Two minutes? A yes, sir.

2 Q Did you talk to him any? A Not a word, sir.

3 THE COURT. It is almost time to take the forenoon
4 recess, Captain Fredericks, and I think it is desirable
5 to have this man here if possible, and we will take the
6 recess. Gentlemen of the jury, bear in mind your former
7 admonition. The court will take a recess for 5 minutes.

8 (AFTER RECESS.)

9 MR. FREDERICKS. Have you got anything you can put on?

10 MR. DARROW. Yes

11 MR. FREDERICKS. Well, all right. Counsel for the defense
12 have something that they can put on now so we can withdraw
13 this witness so we wont lose the time.

14 -----

15 J A M E S A B L A I R,

16 called as a witness on behalf of the defense, having been
17 first dully sworn, testified as follows:

18 DIRECT EXAMINATION.

19 MR. DARROW. Mark this for identification.

20 THE CLERK. This will be def endant's Exhibit T for iden-
21 tification.

22 MR. FORD. Leave off the word "for identification."

23 MR. DARROW. I beg your pardon? Q What is your name,
24 please? A James A Blair.

25 Q What is your business? A Bookkeeper, California
26 Savings Bank.

Q How long have you been in that position? A Almost 2

1 years now.

2 Q I give you a paper marked Defendant's Exhibit T for
3 identification. Will you state what that is? A That is
4 a ledger sheet of Mr. Harriman's account.

5 Q Does that show the balance he had at various times?

6 A Yes, sir.

7 Q Now, what bank is this? A California Savings Bank.

8 Q What balance did he have in the bank on November 27th?

9 A \$103.85.

10 Q That is November 27th, 1911? A Yes, sir.

11 Q Was there any deposit made on the 28th? A Yes, sir,
12 \$500.

13 Q Any further one on the 29th? A \$100 on the 29th.

14 Q You know whether any checks were drawn against it on the
15 28th or 29th or both? A There was one check paid for
16 \$1.75 on the 28th.

17 Q What else? A That is all the checks on the 28th.

18 Q What was paid on the 29th? A Nothing paid on the 29th;
19 one deposit.

20 Q When was there one drawn--or charged against it, the
21 30th? A No, on December 1st.

22 Q How much? A \$600.81.

23 Q Anything else on December 1st? A Nothing more on
24 December 1st.

25 MR. DARROW I offer this in evidence.

26 MR. FREDERICKS. No objection.

1 THE COURT. Defendant's Exhibit T.

2 MR. DARROW. Cross-examine.

3 THE COURT. The jury is inspecting the document. Do you
4 waive the reading? Reading waived.

5

6

CROSS-EXAMINATION.

7 MR. FORD. Q Mr. Blair, the record which is being exhibited
8 to the jury now marked Defendant's Exhibit Number T,
9 indicates the balances on each day? A Yes, sir.

10 Q You have testified that on November 27th there was a
11 balance of \$103. and some odd cents? A Yes, sir.

12 Q And on November 28th there was a deposit of \$500?

13 A Yes, sir.

14 Q And a check drawn at that time for \$1.75? A Check paid
15 on that date.

16 Q Paid by your bank on that day? A Yes.

17 Q There was no other check drawn until the one of December
18 1st for \$600.81? A No one paid until that date.

19 Q No other check presented to your bank or paid until
20 after December 5th? A None paid until December 5th.

21 Q Now, on November 28th when that \$500 check --the \$500
22 rather, was deposited, and the \$1.75 check was paid out,
23 that left a balance-- A Of \$600.81, I think.

24

25

26

1 Q No, let the balance -- after that check of \$1.75 was
2 paid, and after the \$500 deposit was credited on the 28th,
3 that left a balance of \$602.10, did it not? A It did.

4 Q And that was sufficient to pay the check on that date of
5 \$600.81 if it had been presented on that day? A Suppose
6 this check and this check were presented at the same time.

7 Q Yes, suppose that. A It was not enough to pay both.

8 Q It was not enough to pay both? A No.

9 Q After the \$500 had been deposited, and after the \$1.75
10 check had been paid by your bank, it still left \$602.10,
11 did it not? A It did.

12 Q Then, wasn't the amount sufficient to pay the check of
13 \$600.81? A Yes, on the 28th it was.

14 Q On the 28th it was sufficient, was it not? A It was.

15 Q So there was enough money in the bank on the 28th day
16 of November, to pay a check of \$1.75 also, and pay the check
17 of \$600.81 if they had been presented that day? A Yes,

18 MR FORD: That is all.

19 MR DARROW: Let me ask a little further.

20 MR FORD: Pardon me just a moment. Do you remember Mr
21 Russell coming to your bank and making a deposit on that
22 day? A I do not.

23 Q Do you remember looking up the amount and handing it
24 out to anybody that day? A I do not.

25 MR DARROW: You wouldn't remember it, anyway? A No, I
26 don't handle the money. I just handle the books, that is

1 all.

2 Q They wouldn't have come to you if they had come?

3 A No.

4 Q You say there was another check December 5th? A Check
5 December 5th, \$1.75 and paid.

6 Q When was the next? A On December 6th, for \$6.05.

7 Q Do you know whether that check was mailed in or came --

8 A I do not.

9 Q On December 28th up to the time of depositing \$500,
10 there was one hundred odd dollars in the bank? A Yes.

11 Q Of course, you don't know ~~what~~ time of the day the \$500
12 was deposited? A I do not.

13 Q Up to that time -- A There was \$100.

14 Q Of course, there might have been outstanding checks for
15 all you know? A Yes.

16 MR FORD: Object to that as speculative.

17 MR DARROW: So the other is speculation.

18 MR FREDERICKS: No, the record shows it is -- there was
19 enough money in the bank to pay this check on the 28th.

20 THE COURT: Objection overruled.

21 MR DARROW: As far as you know there might have been
22 a check outstanding or somewhere else that was outstanding
23 at that time? A Yes, there might have been.

24 Q That is not unusual in any bank? A No.

25 MR FORD: You would have paid a check of \$600.81 if it had
26 been presented on November 28th, without waiting for the

1 deposit of \$100 more?

2 MR DARROW: I object to that question because it is not a
3 question whether the check would have been paid first,
4 it isn't even a question of whether there is enough
5 there. The question is, the deposit on the 28th, and pos-
6 sibly that if ^{there} had been outstanding checks, Mr parriman would
7 have known it, and the bank would not have known it, and
8 they would have paid the first check.

9 THE COURT: Objection overruled.

10 MR FREDERICKS: Mr Russell testified he went down to the
11 bank and found out there was not enough money to pay the
12 check.

13 THE COURT: The objection is overruled. Answer the ques-
14 tion.

15 A What is the question again? (Last question read by
16 the reporter.) Yes sir.

17 MR DARROW: You would have paid any check that came along
18 so long as there was the money there; that is it? A Yes.

19 THE COURT: Is that all?

20 MR DARROW: That is all -- Oh, just a moment.

21 Q Where was this document? Where has it been. A It
22 has been for sometime with the District Attorney.

23 MR FORD: It has been with the grand jury.

24 A Before the grand jury, you took it yourself.

25 Q In the grand jury room? A Yes.

26 MR DARROW: You don't know where it was, whether in the

1 grand jury room or not? A That is where it was taken in,
2 I don't know where it has been since.

3 Q Do you know -- You know it came out of a little tin
4 box this morning, don't you?

5 MR FREDERICKS: It has always been available to either
6 side.

7 MR FORD: It was given to you on your request during re-
8 cess.

9 MR DARROW: There isn't any doubt about it, but we didn't
10 have it.

11 MR FREDERICKS: You wouldn't have had it if the bank had it.

12 --

13 I. H. RUSSELL, recalled by the defense,
14 testified as follows:

15 DIRECT EXAMINATION

16 THE COURT: ⁱⁿ Mr Russell has been sworn before.

17 MR DARROW: Yes.

18 Q Mr Russell, you testified before that you were in Mr
19 Parriman's and my employ? A yes sir.

20 Q And in the employ of the defense? A yes sir.

21 Q And on November 28th, did you make a deposit with the
22 California Savings Bank, is it --

23 MR FORD: If I am not mistaken this witness testified to
24 that, and the deposit slip was introduced.

25 MR DARROW: He did, your Honor; that is just preliminary
26 to another question.

1 THE COURT: All right; go ahead.

2 A I did.

3 MR DARROW: You so testified? A Yes sir.

4 Q Now, did you go to the bank at that time to see if
5 there was enough to pay a certain note? A To the
6 California Savings Bank, yes sir.

7 Q And what did you ascertain? A I found out that there
8 was not enough.

9 Q You asked at the window, did you? A yes sir.

10 Q Do you know whether there were any outstanding checks,
11 do you have any remembrance about that?

12 MR FORD: We object to that upon the ground that the checks
13 must first be produced. Mr Harriman produced this check
14 and undoubtedly has the checks that were presented to the
15 bank on December 5th, and holds in his possession.

16 THE COURT: yes, they must be produced or accounted
17 for.

18 MR FREDERICKS: There is another point, took your Honor--

19 THE COURT: That one is good in the meantime.

20 MR DARROW: You did find out there was not enough there
21 on the 28th? A Yes sir.

22 Q And you asked for another \$100? A Yes sir.

23 Q And deposited that When? A On the 29th.

24 Q And then did you draw a check to pay the balance on Mr
25 Harriman's note? A I drew that on the 28th.

26 Q You drew that on the 28th? A Yes sir.

1 Q And you found out afterwards that there was not balance
2 enough as you understood it? A Yes.

3 Q Did you ever present that check to the First National
4 Bank before the 28th? A I don't think I presented the
5 check there before the 28th, no.

6 Q You didn't present a check to pay this note before the
7 28th? A No sir.

8 Q Did you present it on the 28th or did you present it
9 on the 29th? A I presented it on the 29th.

10 MRDARROW: That is all.

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CROSS-EXAMINATION.

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MR. FORD. Q You first received a written notice from the bank that there was a note at the First National Bank held there for collection? A Yes.

Q From these people to whom it was payable? A Yes, sir.

Q And you went down there on the 27th? A Very likely did, yes, sir.

Q And you were informed at that time by Mr. Stone that the boy was out with the note? A On the 27th?

Q Yes. A At the First National Bank?

Q yes. A Yes.

Q And when you got back to your office you found that the boy had been there and left the notice, is that it?

A Why, I think that is correct, yes, sir.

Q The boy left the notice at your office? A Yes.

Q You didn't see him at all during the day? A On the 27th?

Q yes. A I don't know whether I did or not. I saw him with that notice.

Q Before you went to the bank? A Before I went to the bank?

Q Yes. A Yes, sir.

Q Before you went to the First National Bank? A Yes.

Q The same day? A I think it was the same day. I think perhaps he was there twice that day.

Q Well, the boy informed you as to the amount of the note when he came to your office, the amount necessary to take it

- 1 up? A The amount was on a slip.
- 2 Q And that was \$600.81? A I don't remember that; I
3 suppose that is right.
- 4 Q It was the amount that you afterwards paid, wasn't it?
5 A I think so, yes.
- 6 Q Then on the 28th--what did you go to the First National
7 Bank for if you already knew from the boy how much it was?
8 A On the 27th?
- 9 Q Yes. A I went there to tell them Mr. Harriman would pay
10 it in a day or two.
- 11 Q Mr. Harriman would pay it in a day or two? A yes.
- 12 Q Did you see Mr. Harriman in the meantime? A On the 27th?
- 13 Q Yes. A I think I did.
- 14 Q Between the time the boy came to your office and the
15 time you went to the First National Bank you had seen Mr.
16 Harriman? A I think so.
- 17 Q Isn't it a fact you presented--you think you did not
18 present a check on the 27th from Mr. Russell. Are you sure
19 about that? A I am positive I did not.
- 20 Q You are positive about that? A Yes, sir.
- 21 Q Now, do you know where these other checks are, this
22 check of \$1.75 that was presented on December 5? A No,
23 sir.
- 24 Q You don't know where those checks are? A No, sir.
- 25 Q Those checks were returned from the California Bank?
26 A That I know nothing about, that is Mr. Harriman's private

1 account.

2 Q Didn't you have his account balanced for him and get the
3 checks and turn them over to him? A His private account?

4 Q Yes. A I don't recall whether I did or not.

5 Q You don't know where his checks are? A No, sir.

6 Q You didn't draw any checks--^{A--}not on that account, no, sir.

7 Q The only check you drew on that account was the one where
8 you filled out, the one for \$600.81? A I mean to say,
9 I had drawn several checks on his account.

10 Q But you did not about that time draw any checks on
11 his account? A I don't remember now.

12 Q You don't recall now--

13 MR. DARROW He didn't say that, he says he didn't
14 remember.

15 MR. FORD. That is equivalent to "do not recall."

16 MR. DARROW. No, it is not.

17 THE COURT. The witness says he didn't remember, and it is
18 of no consequence ^A what counsel testifies to unless he is on
19 the stand.

20 MR. FORD. Well, at that time, Mr. Russell, you didn't
21 know anything about the existence of any checks except the
22 check for \$600.81? A That is all I remember of now.

23 Q And when you went to the California Savings Bank you
24 learned that the amount necessary to be presented to the
25 First National Bank was \$600.81? A Yes, sir.

26 Q When you went to the California Savings Bank on Novem-

1 ber 28th to deposit this \$500, they told you that Mr.
2 Harriman's balance after paying the \$1.75 check was \$602.10?

3 A I don't know. They told me what his balance was.

4 Q What is your recollection about that? A I have no
5 recollection except it did not figure it was quite enough.

6 Q You don't know that \$602.10 was a sum greater than \$600.81

7 --well, you knew that, did you?

8 MR. DARROW_ I object to that question.

9 A Naturally, anybody would know that.

10 MR. FORD. All right. That is all.

11
12 REDIRECT EXAMINATION.

13 MR. DARROW. Q Mr. Russell, you don't know whether at that
14 time you had known there was some other check out or not?

15 MR. FORD. I object to that on the ground it has been asked
16 and answered, counsel has asked that several times and on
17 direct and redirect, and it is now not redirect.

18 MR. FREDERICKS. The further objection, if the Court will
19 permit me, so that they can all be in so that to counsel's
20 reply I can tell the court--this witness has said he went
21 to the bank and he got his information from the bank as to
22 what balance was there.

23 THE COURT. I understand his testimony.

24 MR. FREDERICKS. And, therefore, any knowledge he might have
25 about outstanding checks would not amount to anything,
26 because he did not take that into consideration.

1 THE COURT. I will hear you, Mr. Darrow.

2 MR. DARROW. Your Honor, it was not this same question and
3 it was objected to and the court sustained the objection.

4 THE COURT. That is not my recollection of it, Mr. Darrow,
5 but if there is any question about it, why, have it gone
6 into. I intended you should have that question answered.

7 MR. DARROW. I asked the question, your Honor, and counsel
8 says the check is the best evidence.

9 MR. FORD. Yes, your Honor.

10 THE COURT. As to another branch of it, that is true, the
11 check is the best evidence.

12 MR. DARROW. Now, Mr. Ford on cross-examination says to the
13 witness, "You knew there was a check for \$1.75 out?"

14 MR. FORD. No, I did not, after the check of \$1.75 was paid
15 on November 28th.

16 MR. DARROW. That refers to it just the same.

17 MR. FORD. There is another check of \$1.75 on December 5,
18 I did not ask him any questions about that.

19 MR. DARROW. Now I ask him whether he knows at that time
20 whether he knew there was another check out.

21 THE COURT. That I think was answered. If it is not, answer
22 it.

23 A I don't know.

24

25

26

1 MR DARROW: At least, Mr Russell, from the balance he gave
2 you at the bank, and from what you knew of the account,
3 you thought the \$500 would not pay it; is that right?

4 MR FORD: We object to that as already asked and answered.

5 THE COURT: Objection overruled.

6 MR DARROW: Is that correct? A Certainly, or I would
7 not have asked for the extra hundred.

8 Q And you reported to Job Harriman he would have to have
9 some more money? A I did..

10 Q That is the reason the other hundred was paid in?

11 A It is.

12 MR DARROW: That is all.

13 MR FORD: The other hundred was paid in to cover this check?

14 A Yes sir.

15 MR FORD: That is all.

16

17 JOB HARRIMAN, recalled for further re-
18 direct examination.

19 THE COURT: Mr Harriman has been sworn in this case.

20 MR DARROW: Mr Harriman, do you remember the transaction
21 of paying that check, paying that note, the \$600 odd
22 dollars. A I do.

23 Q There was a notice sent to your office, according to
24 the note on the 23rd. Do you know whether you saw it at
25 that time? A I don't remember of having seen it; there
26 was a stack of mail there.

1 Q Were you watching your mail regularly, then? A I was
2 not.

3 Q Now, you learned later that the note had been present-
4 ed at your office? A The first I remember of it was that
5 Mr Russell told me they had presented the note.

6 Q Did you ever draw more than one check of \$600.81? A Only
7 one.

8 Q That is the one offered here, of the 28th? A That
9 is the one.

10 Q And did Mr Russell say anything to you on the 28th in
11 reference to needing more money for it? A He told me
12 the balance was not sufficient and I went the next morning
13 and got another hundred.

14 Q That is the way you happened to get your hundred?

15 A That is the way I happened to get the hundred.

16 MR DARROW: That is all.

17

18 RE-CROSS-EXAMINATION

19 MR WORD: You say you saved your checks over that period
20 and produced this check for \$600.81 in court, is that cor-
21 rect? A What is this?

22 Q The reason you happened to save the \$600.81 check was
23 that you saved all your checks? A I think I have all the
24 checks of the account.

25 Q And have you the other checks that were presented to
26 the bank at that time? A I think so. I think they are

1 all there.

2 Q Will you produce them in court?

3 MR DARROW: I object to that; he can ask him --

4 THE COURT: He is asking.

5 MR DARROW: He is asking if he would. A I think I have
6 them.

7 MR FORD: We will ask that the witness produce the other
8 checks before we continue our cross-examination.

9 MR DARROW: I object to that. The question is not whether
10 there was a balance; the question is whether he was noti-
11 fied by Mr Russell; of course, the \$500 deposit is all
12 we are interested in anyway, but the question is whether
13 this witness was notified by Mr Russell about the balance.

14 MR FORD : If the court please, defendant's counsel, includ-
15 ing himself, have asked the witness about this transaction
16 and have asked Mr Russell and have asked Mr Blair if they
17 knew whether or not there were other amounts outstanding,
18 if they did not know that the check of December 5, was
19 paid by the bank on December 5 might possibly not have
20 been sent away in the mail by somebody. Now, I want the
21 witness to produce those checks; he says he can, and we
22 want those checks in court.

23 MR DARROW: It could not make the slightest difference
24 whether the cashier was mistaken, whether Mr Russell was
25 mistaken, none of it could make any difference; the ques-
26 tion, so far as there is any question is, what was told this

1 witness, whether he went and got the other \$100 for that
2 purpose. Of course, the \$500 is all we are interested
3 in.

4 MR FORD: Counsel's argument is addressed to the weight of
5 the evidence, and we want the facts before the jury, and
6 let them argue. --

7 THE COURT: The witness says he will produce them;
8 maybe there are some other matters, ^{and} you can continue the cross
9 examination at 2 o'clock. I do not think, Mr Darrow, your
10 objection is before the court in such a way as to get a
11 ruling on it; when the witness appears at 2 o'clock and
12 we proceed then, we can get a ruling on it.

13 MR FORD: These people Dobyms who owned the note, you knew
14 them quite well, did you, Mr Parriman? A No.

15 Q You knew they held the note up until November 23rd,
16 1911? A I did not know.

17 Q You knew -- where had you been paying interest on it, to
18 them personally, or at the bank? A At the bank in El
19 Monte.

20 Q The bank at El Monte held the note for collection?
21 ^{their}

22 A I don't know what business arrangements were; they had
23 the note, and I paid it there, whether they held it for
24 the original owners or had purchased it or what other ar-
rangements they had, I don't know.

25 Q You were acquainted with the cashier at El Monte?

26 A I am.

1 Q And on very friendly terms with him? A I am on friendly
2 terms with him, yes sir.

3 Q The cashier there belongs to the same political party
4 that you do, does he not?

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

6 THE COURT: Objection sustained.

7 Q You are bound to him by many ties of friendship?

8 MR DARROW: I object to that, what bearing could that have?

9 THE COURT: The witness has admitted they are friendly,
10 and I think that is about as far as you can go along that
11 line, you don't measure their friendship by being members
12 of the same political party.

13 MR FORD: Who were these Dobyys people, Mr parriman?

14 A I don't know them.

15 Q Never met them? A I met their agent, one of the family
16 only.

17 Q That is all you know about them? A If you desire the
18 transaction, I will give it to you.

19 Q No, I want to know who the people were? A You will
20 have to learn from their friends, I never saw them.

21 Q You never learned anything about them? A I don't know
22 them; wouldn't know them if I would meet them. I can tell
23 you of the transaction.

24 Q Did you give that note, Mr parriman, on the date it
25 appears to be given or purports to be given? A I did.

26 Q And to whom did you actually give it. A I don't

1 remember his name. The entire transaction is of record in
2 the county here; we purchased a ranch; this was the balance
3 due on the purchase, the transfer of the ranch was made to
4 us at the time and this was a note given.

5 Q Who is "us"? A I believe my wife and my mother, I
6 think.

7 MR FORD: That is all for the present, until 2 o'clock.

8 MR DARROW: just a moment, Mr Golding wants to ask you a
9 question.

10 JUROR GOLDING: On the 27th, after the secretary had noti-
11 fied you that the bank had made a demand for you to pay
12 that note, did you instruct him to go back to the bank and
13 tell them you would pay it the next day or in a day or so?

14 A I did.

15 Q The next day? A I told him to hold it and I would pay
16 it in a day or so.

17 Q In a day or so? A Yes.

18 JUROR GOLDING: I don't know whether we are supposed to
19 go into the political situation about the time these things
20 happened, your Honor.

21 THE COURT: I do not think it would be competent, except
22 to a very limited extent. A I am willing.

23 JUROR GOLDING: We understand the situation better than
24 some of the other jurymen, being they are scattered around
25 the county.

26 A I am willing; it is immaterial.

1 THE COURT: Ask the question, if you want to.

2 MR FREDERICKS: We will leave it to the court to determine
3 whether it is pertinent, without any objection on our part.

4 THE COURT: Yes.

5 JUROR GOLDING: Of course, there are lots of people were
6 directly interested; that was a very hot campaign, the peo-
7 ple that were interested also in the settlement of the Mc-
8 Namara case from the evidence produced, for instance, Mr
9 Brand of the Title Insurance, Mr Chandler, Mr Otis and Mr
10 Earl and Stoddard Jess, were directly interested, and also
11 in your position on the water question, the situation theree
12 as regards the labor situation was very interesting to
13 lots of people: In your opinion, did this occurrence down
14 at Third and Los Angeles, which might have probably been
15 taken advantage of by some unscrupulous people, and the
16 general situation throughout the city, to their own ad-
17 vantage, did that lose you any votes in your opinion, or not?

18 THE COURT: I do not think that is a matter that can be
19 gone into here, an opinion, speculative, far-reaching. I
20 do not think I can let the witness answer that question.

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1 MR. ROGERS. I think I can put it so it can be answered.
2 Mr. Harriman, what incident of the campaign, what matter
3 affecting or bearing upon the campaign, was just happening
4 at that time, say coming up that night?

5 THE COURT. What night?

6 A What night do you refer to?

7 MR. ROGERS. Q I mean the 28th, the particular matter
8 affecting the campaign or of interest in the campaign,
9 say, about to transpire. A Well, on the night of the
10 27th and the morning of the 28th we had notice of it on the
11 morning of the 28th, and on the night of the 27th/^{at}the
12 large Good Government rally, I think Mr. T A Gibbon
13 challenged me to debate, and at that hour there was quite
14 an exciting time, if that is what you refer to.

15 MR. ROGERS. That is what I refer to.

16 MR. FORD. On the 27th?

17 A On the night of the 27th the challenge was made, and on the
18 day of the 28th the challenge was accepted, and within a
19 day or so the debate was had, just before the crisis prior
20 to the election.

21 Q Well, at that debate--

22 MR. ROGERS. I don't know what the witness means by crisis?

23 A The crisis is the one you have so often referred to, the
24 plea of guilty was the crisis that took place before the
25 campaign.

26 Q The plea of guilty of the McNamaras, that is the

1 crisis? A That was the crisis, just previous to the cam-
2 paign, certainly was.

3 Q It was the blow that almost killed Father?

4 MR. ROGERS. Well, it did kill father.

5 A Absolutely.

6 MR. FREDERICKS. You don't know why they should then plead
7 guilty? A Well, it has been a reservation, if that is
8 under consideration.

9 Q You don't know why your friends allowed them to plead
10 guilty at that time? A I was not apprised of the fact
11 until you men had done the work.

12 Q Mr. Darrow was a very good friend of yours and helping
13 you at that time, wasn't he? A He always has been a friend
14 of mine.

15 Q Helping you in the campaign. You don't know why he per-
16 mitted them to plead guilty at that particular time and upset
17 your campaign? A I shall have to ask the privilege of answer-
18 ing one question at a time.

19 Q All right. A Why, Mr. Darrow came down occasionally
20 to the headquarters and talked over the situation with us
21 on various things. I don't know that I can say that he
22 especially helped except when we asked him or he wished to
23 know how things were going, not often, occasionally. Now
24 I am ready for the next.

25 Q Now, didn't you understand that you and Mr. Darrow were
26 working together in this campaign and he was vitally inter-

1 ested in helping you win the campaign? A I am telling
2 you that Mr. Darrow was at the headquarters occasionally,
3 and was friendly towards him, as a matter of course, at
4 least I thought that a successful campaign would not be
5 injurious from any point of view.

6 Q To the McNamara case? A From any point of view, and
7 I understand the reverse was your opinion, or the same was
8 your opinion.

9 Q The same was my opinion. A Yes.

10 Q How do you account for your friend and supporter, Darrow,
11 permitting this blow to be struck just about four days before
12 election time, if he could have put it off until after
13 election? A I know nothing about the transaction. I
14 apprehend you are better qualified to answer that question;
15 I know nothing about it.

16 Q Yes, but I am not on the witness stand. A I knew noth-
17 ing about it.

18 Q You then don't attempt to account for how he permitted
19 it to be done? A I do not.

20 Q At this time, that upset your political campaign?

21 A Excepting on the negotiations that have been sworn to
22 on this trial.

23 Q Lincoln Steffens was helping you also? A Lincoln Steffens
24 raised some money in New York and sent it to us, but--

25 Q And he was helping you at that time.

26 MR. ROGERS. Let him finish his answer.

1 MR. FREDERICKS. Yes.

2 A But we called for funds from the socialists for assis-
3 tance, and from the unions for assistance for that campaign,
4 and received them from all parts of the country.

5 Q Then, if Lincoln Steffens was really trying to have these
6 men plead guilty at the time they did, he was spending his
7 money to help you win the campaign, but he was doing
8 something that absolutely made you lose it, wasn't he?

9 A I do not understand that he spent any of his money.

10 Q Well, he was contributing other people's money to help
11 you win the campaign, but out here he was really doing the
12 thing that made you lose it? A I think he did bring about
13 the thing that made us lose the campaign, but his statement--

14 Q That is--

15 MR. ROGERS. Let him finish.

16 MR. FREDERICKS. Yes, yes, he will finish.

17 MR. ROGERS. He hasn't finished, now, wait a minute.

18 THE COURT. Now, all of you wait a minute--go ahead, Mr.

19 Harriman.

20 A His statement from his point of view was very different
21 from my point of view, naturally being involved in the
22 election here it was of great importance to us, but he
23 viewed the matter from--as he says, from a different point
24 of view and looked upon the settlement as of greater import-
25 ance, that is, his view of the case, whether he is right or
26 whether I was right is a question.

1 JUROR WILLIAMS: May I ask a question?

2 THE COURT: Yes.

3 JUROR WILLIAMS: Did you believe Mr Darrow when he told
4 you his view of the matter? A Mr Darrow or Mr Stef-
5 fens, you mean?

6Q--MR DARROW? A I rather clung to my view --

7 Q No, did you believe he was telling the truth?

8 A Oh, that he really believed that the settlement was
9 better?

10 Q Yes. A Yes, I think he was in earnest about it.

11 Q You have been called for your opinion in several cases,
12 so I suppose it would be all right for me to ask for your
13 opinion: Do you think an attorney's duty is to his client
14 first and to his political parties, and so on afterwards?

15 A Well, --

16 Q In other words -- A -- I suppose that Darrow, not
17 being a member of the socialist party, has no duty to the
18 socialist party other than such duty would serve the in-
19 terest of his clients. I don't suppose he has, although
20 I was one of the attorneys, and feel that I suffered
21 from the arrangement, at the same time I believe he was act-
22 ing as he thought he should.

23 Q But if the tables were exactly turned, and you were a
24 socialist, as you were, and at the head of that case, in-
25 stead of Mr Darrow, do you think you would have done as
26 Mr Darrow did, or would you have waited and tried to hold

1 off? A Well, we see things very differently, I think.
2 My view of that is this: that the men involved in the ne-
3 gotiations, not excluding the District Attorney, saw
4 that there was developing in this city a tremendous politi-
5 cal power in opposition to them, and they were, to that
6 extent, bowing to that power. I am convinced that if a
7 plea of guilty had not been made or entered until after
8 the campaign was over, that we would have been elected;
9 the power would have been greater, and correspondingly
10 better arrangements could have been made. I may be mis-
11 taken -- it is my judgment.

12 Q But we are given to understand here that the defense
13 in this case was hurrying the matter, or trying to hurry
14 the matter, and the prosecution was staving it off. A I
15 do not know as to the negotiations.

16 Q That is the evidence as I gather it. A I do not
17 know as to the negotiations. I was wholly ignorant of
18 them until after the plea was entered; never dreamed of
19 it being done, at least, at that time.

20 MR FREDERICKS: Well, the plea of guilty on the part of
21 J. B. McNamara would have been just about as fatal in your
22 political campaign as a plea of guilty of both of them,
23 just about? A Oh, I don't see any particular difference
24 in that. Might or might not. I don't see why it should
25 be different.

26 MR DARROW: Mr Harriman --

1 MR FREDERICKS: Wait just a moment, will you?

2 MR DARROW: Mr Harriman, returning to Mr Williams' ques-
3 tion for a minute, as to the duty of a lawyer, you have
4 been practicing for some years, haven't you? A Yes.

5 Q Don't you know what the teachings and traditions of the
6 profession are? A I do.

7 MR FORD: Objected to as incompetent, irrelevant and imma-
8 terial, not tending to prove the state of mind of the de-
9 fendant by the custom of other people.

10 MR DARROW: Just following out Mr Williams' question.

11 THE COURT: Question overruled.

12 MR DARROW: Don't you know that a lawyer, acting as a law-
13 yer, is bound by his oath, and his traditions, and his
14 feelings ordinarily to consider his clients, instead of
15 any political or personal matter. A That is the rule.

16 MR FORD: Just a moment. Mr Harriman, didn't you see me
17 raise my hand?

18 THE WITNESS: No.

19 THE COURT: If the court desires that admonition, the
20 court will admonish the witness.

21 MR FORD: We object upon the ground it is incompetent, ir-
22 relevant and immaterial, what this witness knows, and it
23 is incompetent, and doesn't in anywise illustrate what
24 the defendant knows or did know, and if the witness
25 stated his present mind, it would not reflect the defendant's
26 state of mind on any date involved in this case, and it is

1 certainly incompetent, hearsay, and a conclusion of the
2 witness, and irrelevant.

3 THE COURT: Objection overruled.

4 A I have stated, Mr Darrow, that especially, inasmuch
5 as you were not a member of the socialist party, that I
6 supposed your primary duty was to your client, but being
7 involved myself, my judgment might not be the same.

8 MR DARROW: What you mean is, Mr Harriman, is that you owe
9 allegiance both to the party and the defendant and perhaps it
10 was greater to the party, for that reason you may have acted
differently?

11 A No.

12 MR FORD: Objected to upon the ground it is argumentative,
13 not cross-examination, calling for a conclusion of the wit-
14 ness, speculation, what he might have done, and not in any-
15 wise illustrating the defendant's state of mind or the de-
16 fendant's actions or purpose or intention, and therefore
17 incompetent, irrelevant and immaterial.

18 THE COURT: yes, I think we are getting into a foreign field
19 in permitting this witness to argue the case.

20 MR DARROW: I wanted to ask him in view of the juror's ques-
21 tion.

22 THE COURT: Objection sustained.

23 MR FREDERICKS: I think both counsels' views have been put
24 in evidence and can be used in argument.

25 MR DARROW: That is all.

26 MR FORD: I think we will save by adjourning until
2 o'clock.

Jury admonished. Recess until 2 P.M.)