

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,)
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vs.)
)
Clarence Darrow,)
)
Defendant.)

No. 7373.

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REPORTERS' TRANSCRIPT.

VOL. 85

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
C H F Mayer,			6884	6886
E A Cantrell,	6894			
E A Cantrell (Resumes)	6950			

1s 1

AFTERNOON SESSION. August 7, 1912; 2PM.

2 Defendant in court with counsel

3 THE COURT. Gentlemen, the clerk has just called my atten-
4 tion to the fact that the receipt offered this morning
5 was erroneously marked People's Exhibit 50; should have
6 been 51. I remembered you called attention to it at the time
7 The correction has been made and the record will so show.
8 You may proceed, Gentlemen.

9 MR. FREDERICKS. I am just looking to see if I have any
10 further questions to ask this witness. It will take me just
11 a moment.

12 THE COURT. All right.

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14 OSCAR HENRY FREDERICK MAYER,

15 on the stand for further redirect examination:

16 MR. FREDERICKS. There is one of the answers as to how you
17 concluded or why you concluded that this receipt was given
18 on the 27th that I don't think is quite clear. How do
19 you conclude that the receipt was given by you on the 27th?
20 Is it a matter of memory or because it is dated the 27th?

21 MR. APPEL. Wait a moment. We object to that upon the
22 ground it is not redirect or recross or anything brought
23 out by the defendant, upon the further ground the witness
24 has fully answered, and on the further ground that it calls
25 simply for an argument upon the facts stated by him.

26 MR. FREDERICKS. No, it isn't that, your Honor. It is a

1 fact.

2 MR. APPEL. Not rebuttal.

3 MR. FREDERICKS. Whether he based it on the fact it was
4 dated at that time or whether he bases it upon his
5 memory. I think it is a little in doubt. It is in doubt
6 in my mind.

7 THE COURT. The question in that form, at least, is objec-
8 tionable. The objection sustained.

9 MR. FREDERICKS. Upon what did you base the statement
10 that you think the receipt was given on the 27th?

11 MR. APPEL. We object upon the ground that it is asking for
12 reasons, for his conclusions, asking for his opinion, and
13 asking for an argument. We object to it as not being
14 redirect and not rebuttal.

15 THE COURT. Objection sustained.

16 MR. FREDERICKS. Did you make the statement that you think
17 the receipt was given on the 27th as a matter of independent
18 recollection or because the receipt was dated at that time?

19 MR. APPEL. Now, he has fully answered.

20 MR. FREDERICKS. That is the point.

21 THE COURT. Perhaps has. It won't do any harm to ask him
22 again.

23 MR. APPEL. Then I will have a right to ask him again.

24 THE COURT. Objection overruled.

25 MR. APPEL. We except.

26 A Because I am not in the habit of signing receipts that

1 don't have the date on--the same date on it I sign the
2 receipt or a check or anything else whatsoever.

3 MR. FREDERICKS. That is all.

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5 RE-CROSS-EXAMINATION.

6 MR. APPEL. Now, wait a moment. Do you remember signing
7 other receipts on or about that date to Mr. Franklin, I
8 mean not to any one else? A On or about that time?

9 Q Yes. A No, I don't recall.

10 Q Don't recall signing any other receipts? A No, sir.

11 Q And don't you think it is a very remarkable thing that
12 the date of the 27th being in question, that this would be
13 the only receipt bearing that date, and the only receipt
14 that you signed; don't you think that would make you think
15 that it might have been done some other time?

16 MR. FREDERICKS. Objected to as argumentative?

17 THE COURT. Overruled.

18 A No, sir, I do not.

19 MR. APPEL. Q Then you had transactions with Mr. Franklin
20 running on for months and this is the only receipt that you
21 signed that you remember of now?

22 MR. FORD. He didn't so state.

23 THE COURT. He is asking that. Overruled. Answer the
24 question.

25 MR. FORD. We wanted to object upon the ground it is not
26 cross-examination. If the witness is only being examined

1 as to the receipt of this date and not as to receipts
2 given on some other dates--

3 THE COURT. Objection overruled.

4 A I don't understand that question.

5 MR. APPEL. I asked you whether or not you signed other
6 receipts during your transactions with Mr. Franklin and you
7 said you didn't remember of having signed any, is that
8 right?

9 MR. FORD. Object to that as not a correct statement of
10 the record. The question was, did you sign any other
11 receipts about that time.

12 THE COURT. Well, let the witness answer. Overruled.

13 A The time is too indefinite. I worked three days.

14 MR. APPEL. Did you sign any receipts for him the early
15 part of December?

16 MR. FREDERICKS. If the court please, we object to this
17 on the ground it is not material, and that it is not
18 cross-examination, and I would like to call the court's
19 attention to the record in that regard.

20 THE COURT. This is directly responsive to your last
21 question.

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1 MR FREDERICKS: The witness has directly stated he don't
2 even remember finding this receipt. He don't remember of
3 it. He has no independent memory of it, and he has no inde-
4 pendent memory of signing any other receipts. Now, that is
5 the point, and he bases the fact that he thought this re-
6 ceipt was given on the 27th, simply because it was dated on
7 the 27th, and he didn't think he would sign anything on
8 that date that was not correct.

9 MR APPEL: I withdraw that question. You have no recollec-
10 tion of ever having signed any receipt and you have no recol-
11 lection of having signed this receipt except from the
12 fact it was shown to you here? A Any other receipt? I
13 do have a recollection. When I don't know. I signed
14 some receipts prior to this.

15 Q When? A I don't know when.

16 Q Don't know when. A I drew wages. I worked. I
17 signed receipts for wages that I did draw.

18 Q Did you give Mr Franklin any receipts? A No, I sign-
19 ed them. I never gave them to him. He had them. I
20 attached my signature.

21 Q He handed them over to you and you signed them; that is
22 the way you mean? A Yes sir.

23 Q When was the last receipt just before this that you
24 signed?

25 MR FREDERICKS: Just before this date?

26 MR APPEL: This one that purports to be signed on the 27th

1 day of October, 1911; when was the one just before that,
2 you may remember? A I don't recall exactly. I couldn't
3 tell you within 30 days.

4 Q When was it that you received money from Mr Franklin
5 just before you received this \$5? A I don,t recall when
6 I got through working on the case.

7 Q How much were you getting a day? A \$4 and expenses.

8 Q And you had worked three days? A yes sir.

9 Q And did he pay you -- A I didn't work three days.

10 Q What? How many days? A Probably eight or ten hours
11 in all.

12 Q And you were working by the day, were you not? A Not
13 necessarily.

14 Q Were you working by the hour? A Not necessarily.

15 Q Well, I want to know. Not necessarily don,t mean any-
16 thing. Were you getting so much per hour or getting so
17 much per day? A I got \$5.

18 Q I want that answer, your Honor.

19 THE COURT: yes, Mr Witness, you must answer that question.
20 He has asked you a fair question: were you working by the
21 day or by the hour?

22 MR FREDERICKS: He might not be working for either.

23 MR APPEL: There you are; it is for the witness to say
24 that; not the District Attorney.

25 THE COURT: Let the witness explain.

26 MR APPEL: how little we can grow.

1 THE COURT: That is a fair question; Mr Appel asked you
2 if you were working by the day or working by the hour?

3 A It wasn't stipulated how much I was to receive, and I
4 feel yet I have something coming.

5 MR APPEL: How much do you feel you have coming? Have
6 you got in your mind how much you were getting per hour
7 or per day?

8 MR FREDERICKS: Objected to upon the ground it is imma-
9 terial.

10 THE COURT: Overruled.

11 A I expect I got about -- well, the difference between
12 \$12 and \$5; \$7.

13 MR APPEL: The difference between \$12 and \$5, and for how
14 many days' work? A Well, that would be -- I consider
15 three days work. I came up there on Monday morning.
16 I don't care if it was an hour; it constituted one whole
17 day with me.

18 Q Oh, yes; you considered it one whole day with you.
19 Then it would be four dollars a day; that is about the
20 proposition, ain't it? A Yes.

21 Q You had had settlements with him before? A Yes.

22 Q Had you been paid by the rate of \$4 a day? A Yes sir,
23 I believe so.

24 Q You believe so. You don't know, do you? A I
25 could tell you if I seen any more receipts how much I got.

26 Q You don't know how much you got per day; that never

1 crossed your mind? A I believe I would feel safe in say-
2 ing \$4.

3 Q Safely? A Yes sir.

4 Q You feel safe. When did you have the next settlement
5 with him after this 27th day of November?

6 MR FREDERICKS: Objected to upon the ground it is imma-
7 terial and has been gone into and covered.

8 THE COURT: Overruled.

9 A Can I give you an explanation of that answer?

10 THE COURT: Certainly.

11 MR APPEL: Yes, certainly.

12 A As I just said, I feel I have some more money coming.
13 Very shortly after Mr Franklin was arrested, I didn't care
14 to ask him for any more money at the time because he was
15 in trouble. Very shortly after that Mr Darrow was pulled in
16 the case, and I didn't care to ask either one of them, seeing
17 that they were in trouble, and it has laid just so ever
18 since.

19 Q Yes, that is right. Now, let me see, then. There
20 was \$7 owing you. That is, you feel safe in feeling there
21 was \$7 owing you and because Mr Franklin was in trouble
22 and Mr Darrow was in trouble, you didn't feel like pressing
23 them for the \$7; you thought they were liable to need that
24 much? A That is the idea.

25 Q Exactly. Well, we appreciate it very much. Now, Mr
26 Franklin, didn't owe you anything, then, on Saturday morn-

1 ing when you went to work on Saturday, just before the
2 27th? A No sir.

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3p 1 Q When did he pay you just before that? A I just stated
2 I did not recall.

3 Q Had you been working any time for thirty days before
4 that day for him? A Probably not within thirty days, I
5 don't believe, as I stated; I don't exactly know when
6 I left his employ

7 Q You went to work on Saturd day and you worked Saturday
8 and Sunday and Monday, you got this \$5.00 and you have
9 stated what you did on that day? A To the best of my
10 knowledge.

11 MR. APPEL. That is all.

12 MR. FREDERICKS. That is all.

13 MR. APPEL. We would like to have him here when we com-
14 mence our rebuttal.

15 THE COURT. In regard to Mr. Mayer, did you want to ask him
16 some questions on direct, interrogate him as a witness?

17 MR. APPEL. No, we don't want him as a witness, we want
18 to ask a lot of people to look at him and see if he is the
19 man who was with Franklin.

20 MR. FREDERICKS. If Mr. Mayer will leave his telephone
21 number and his office number we will communicate with
22 him at any time and try to get him here.

23 MR. APPEL. Oh, yes, any time we need him.

24 THE COURT. All right, you can get him here.
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1 EDWARD ADAMS CANTRELL,

2 a witness called on behalf of the People, in rebuttal,
3 being first duly sworn, testified as follows:

4 DIRECT EXAMINATION.

5 MR. FREDERICKS. Q State your name to the jur^y.

6 A Edward Adams Cantrell.

7 Q Where do you live? A 1529 1/2 west 7th.

8 Q What is your business or occupation? A I am a lecturer.

9 Q How long have you lived here in southern California?

10 A About four years.

11 Q Are you acquainted with Job Harriman? A yes, sir.

12 Q State what you were engaged in just after and at the
13 time of the explosion of the Times Building on the morning
14 of the first of October, 1910? A I was engaged in the
15 state campaign of the Socialist party, I was a candi-
16 date at that time on the state ticket.

17 Q Candidate for what? A Secretary of state.

18 Q On the Socialist ticket? A On the Socialist ticket,
19 yes.

20 Q You said you were acquainted with Mr. Job Harriman.
21 Were you in the city of San Louis Obispo, in this state,
22 on or about the first of October, 1910, the same morning,
23 during the early part of which it is said the Times building
24 was blown up? A I was there.

25 Q Did you see Job Harriman there at San Louis Obispo at
26 or about that time? A Mr. Harriman was there engaged also

1 in the work of the state campaign, he also being a
2 candidate on the ticket.

3 Q These are questions which, if you will, answer yes or no,
4 if you can. A Yes.

5 Q Were you rooming in a hotel at San Louis Obispo at that
6 time? A yes.

7 Q Do you remember what the name of the hotel was?

8 A St. James, I think--St. James Annex.

9 Q St. James Annex, yes. State whether or not on the 1st
10 day of October, 1910, the day immediately following
11 the night or the morning it is said the Times Building
12 was blown up, you and Mr. Job Harriman were rooming at the
13 St. James Annex, in the city of San Louis Obispo, in this
14 state, and that on the morning of that day you and Mr.
15 Harriman, you met Mr. Harriman on the street in the said
16 city of San Louis Obispo, you and he being there alone,
17 that he said to you, "By God, Cantrell, the Times Building
18 has been dynamited and something like 20 people are
19 reported killed," or words to that effect or that in sub-
20 stance or language in substance or to that effect?

21 MR. ROGERS. We object to that as no foundation laid;
22 incompetent, irrelevant and immaterial; not rebuttal;
23 contradiction on an immaterial matter.

24 MR. FREDERICKS. The foundation was laid by the question--
25 THE COURT. Suppose it is, what is the materiality?

26 MR. FREDERICKS. Well, it leads up to the conversation,

1 makes it intelivable, it is the beginning of the conversa-
2 tion. I can put it all in one question.

3 THE COURT* If that is the purpose, well, then, where is
4 the foundation laid?

5 MR. FREDERICKS* I have used exactly the same question
6 here. I have not gone to the transcript for it--Mr. Rogers
7 probably has it there if he will give me the proper
8 page.

9 MR. ROGERS. Page 4207.

10 MR. FORD. The place has been laid, the time--

11 THE COURT* The time, place and the persons present, but
12 is the question asked on impeachment--

13 MR. ROGERS. The materiality of it is what I don't under-
14 stand. They ask precisely the same question of Mr.
15 Harrimen, but how does that affect Mr. Darrow?

16 THE COURT- It would not be material except leading up
17 to something else. The District Attorney says,
18 explanatory thereof, and upon that theory he can have the
19 question, and that is the only materiality--

20 MR. DARROW* That is not the fact here, it is not a
21 preliminary question to lead up to something.

22 MR. FREDERICKS* yes, it is.

23 MR. DARROW- This is a direct impeachment. Mr. Harriman
24 was asked whether he said a certain thing to Mr. Cantrell.

25 THE COURT* Yes.

26 MR. DARROW* in reference to the Times Explosion. Mr.

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Harriman was asked on the witness stand whether he was not directly interested in that case and Mr. Fredericks asked him whether he didn't make a certain statement, and this is a part of the statement to Mr. Cantrell, right after the Times had been destroyed. Now, it is not a preliminary question at all.

1 THE COURT: Standing by itself, it would be utterly imma-
2 terial.

3 MR DARROW: Than it is utterly immaterial, because it is a
4 part of the impeaching question and the record shows exact-
5 ly what it is, and it is a part of that question.

6 THE COURT: Mr Rogers, let me look at that.

7 MR ROGERS: Yes sir, 4207.

8 MR FREDERICKS: I will make it all in one question.

9 THE COURT: I think that is the way to do it.

10 MR ROGERS: I understand this was said to be on the street,
11 as I recall the foundation --

12 MR FREDERICKS: Yes sir.

13 MR ROGERS: And as I understand it, what they claimed was
14 said, was said in a room of the same building.

15 THE COURT: Well, let us have the question completed, and
16 then it will be before us and for discussion, if there
17 is an objection. The record will show then, that the
18 question, in its present form, is withdrawn?

19 MR FREDERICKS: I thought you said, "Let us have the
20 question read?"

21 THE COURT: I understood you to say you wanted to put
22 it all in one question.

23 MR FREDERICKS: Oh, yes, I can do that if the court would
24 rather have it that way.

25 THE COURT: I think that is the way to do it.

26 MR FREDERICKS: All right. It is rather long, and I will

1 ask the witness to pay attention as I go along.

2 Q Going back so as to make the connection, didn't Mr
3 Harrington --

4 MR ROGERS: Harriman, please.

5 MR FREDERICKS: Harriman, say, "My God, Cantrell, the Times
6 building has been dynamited and something like 20 people
7 are reported killed", or words to that effect, or that in
8 substance, or language in substance to that effect, and
9 further, while still on the street above mentioned, at
10 the time and place above mentioned, he thereupon took you
11 by the arm and he and you walked up to his room in said
12 hotel, and that he closed the door of said room and turned
13 the key in the lock and threw himself into a chair and
14 burst into a fit of laughter, he and you being there alone,
15 and after he had ceased laughing and somewhat regained his
16 composure, and while still in his said room inside the
17 hotel, you and Job Harriman being alone, didn't you say to
18 him, "What does it mean"?, and he answered, "It means
19 that the boys are on the job", and you said, "What is
20 that", and he answered, "It means that they are on the job"
21 or words to that effect, or that in substance, or language
22 in substance to that effect, and state whether or not at
23 that same time, and in the same room in said St James Annex
24 to the St Andrews -- of the hotel, in said city of San
25 Luis Obispo, you and Mr Harriman being in said room alone,
26 he further said to you, "I have known for sometime that

1 preparations were being made to pull off the job", referring
2 to the blowing up of the Times Building -- or words to that
3 effect, or that in substance, or language in substance
4 to that effect, and while you and Mr Harriman were still
5 in the same room in the same hotel, he and you being pre-
6 sent, as I have said before, he further said to you,
7 in substance, that he had been in consultation with them --
8 referring to the parties who were making preparations to
9 blow up the Times Building -- as attorney for the Unions,
10 and was very close in their confidence, and that he had
11 asked or begged them -- referring to the parties who were
12 making preparations to blow up the Times Building, ^{or} were
13 planning to blow up the Times Building -- to postpone or
14 to put off that matter until after the state convention
15 or meeting here in Los Angeles during the 1st part of
16 October, 1910, of the Central Labor Council or State Feder-
17 ation of Building Trades Council, or convention or meeting
18 of the various labor unions of this state, by whatever name
19 it might be called, or in language to that effect, did
20 that conversation occur? Yes or no.

21 MR APPEL: Wait a moment. We object to the question
22 upon the ground, first, that no foundation has been laid
23 for the introduction of this evidence; second, upon the
24 ground that it is collateral to any issue in the case;
25 third, that it does not tend to impeach any fact or thing
26 testified to by Mr Harriman; fourth, that it calls for hear-

1 say evidence, that the question contains a great many mat-
2 ters and things which are not pertinent to the issue in
3 this case, or in anywise tend to impeach the veracity of
4 Mr parriman; that it contains matters and things which are
5 absolutely collateral to any issue in this case; and
6 that it is not rebuttal; that if it has anything to do with
7 it at all, it is a part of their case and cannot be intro-
8 duced by way or rebuttal.

9 Now, that question, your Honor, is again before the court
10 and it ought to be , unless your Honor has seen all the
11 authorities on this subject; it ought to be taken up.
12 That was a part of their case, and it should have come in
13 in their case in chief; they undertook here and told the
14 jury, undertook to say and told the jury, and in one in-
15 stance it got so that we all came to the conclusion that
16 Mr Darrow was not being tried here for the particular of-
17 fence mentioned in the indictment, but that he was being
18 tried for a general conspiracy. I think I heard the words
19 there.

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1 Now, if Mr. Warriman was a part of that conspiracy it
 2 should have come in in this case if there was or if he was
 3 a party to the transaction that resulted in the blowing up
 4 of the Times, then, your Honor, it would have to be an item
 5 in evidence to show a motive on his part to have gone into
 6 one room, handed the money over to Mr. Darrow, and Mr. Darrow
 7 giving it to Franklin, that is a part of the main case and
 8 they could not hold it back and ought not to have a right
 9 to hold it back until the defense opened for the purpose
 10 of introducing it in the guise it was cross-examination or
 11 that it was rebuttal. And I think, if your Honor please,
 12 that inasmuch as almost every state in the Union--I
 13 have taken the pains to gather decisions from every state
 14 in the Union, including Oklahoma. I haven't found any
 15 decisions in Arizona, your Honor, because I come from that
 16 state, and I didn't wish to have it shown that I was
 17 biased in favor of my native country, but I have looked for
 18 decisions in almost every state in the Union, and I found
 19 them, because I expected this very matter to come up--
 20 and criminal cases, as well as civil cases--that you cannot
 21 hold back anything that is material to the case in chief
 22 for the purpose of using it in rebuttal. That you cannot
 23 wait until some witness or some person goes on the stand
 24 in defense and offer it in rebuttal.

25 THE COURT. I fully agree with you as to that proposition
 26 of law.

MR. APPEL. Yes, your Honor, and you cannot wait until some

1 witness goes upon the stand for the purpose of asking him
2 and thereby making it material as rebuttal. There is no
3 reason, no cause; the decisions say it could not be done;
4 it is not a question as to whether a matter like that could
5 be brought up as a matter of impeachment or not, but because
6 of the more important fact, which the courts hold in their
7 mind and keep in view, and that is, that the prosecution,
8 under the rules of procedure, must introduce all of their
9 evidence, and it is emphasized in these decisions, your
10 Honor. I thought that some of the decisions we have cited
11 here sometime ago didn't go so far as to explain the prin-
12 ciple, but I went a little further to see how the decisions
13 held, and I found they have laid stress upon that very
14 proposition.

15 THE COURT. Well, now, let's start in with that. The
16 court has no intention of permitting the prosecution to
17 introduce any evidence that should have been introduced
18 in chief. Now, is this evidence--as a matter of fact, is
19 it evidence that ought to be introduced in chief, if so, it
20 cannot go in. I don't think there is any room for argument
21 on that proposition.

22 MR. APPEL. All right, I wont argue it.

23 THE COURT. At any rate, I think you are right on that
24 proposition of law. The question is one of fact, whether
25 or not this is part of the case in chief.

26 MR. APPEL. Your Honor can see. Now, they claim general

1 conspiracy. Now, let us see. They said by Franklin--
2 Franklin mentioned--Franklin and Harrington. Franklin,
3 the chief in command, the commander of the--the general-
4 essimo of the forces of the opposition; Harrington
5 is chief of staff. Now, they want to connect Darrow with
6 the getting of the money from San Francisco, and they put
7 Harrington on the stand who said Darrow told him that;
8 all right. That was considered part of the main case.
9 They didn't put Tveitmoe. Left that outside. Now, they
10 come in with Franklin and they say--Franklin says he met
11 Mr. Darrow on the morning of the 28th down there at the
12 office and that he said, "Wait a moment, Harriman will be
13 here in a few moments," and then they went to work and said
14 that Harriman was there and went into another room, and then
15 he got the money and handed it to him. They didn't put
16 Harriman on the stand--oh, no, they didn't put Harriman
17 on the stand, but they put Franklin on the stand.

18 Now, they connect Mr. Harriman there with the
19 conspiracy, with the aider and abettor in the proposition
20 of everything that was necessary, and furnishing the mind,
21 and having direct interest in the bribery complained of
22 here in this indictment. Now, all the interest and the
23 motives that actuated that conspirator, as well as the
24 motives that actuated the other conspirators is evidence
25 in the conspiracy. That is part of their case to show
26 that.

1 Now, they want to show here--they want to show here
2 by this witness that Harriman had a motive in furnishing
3 the money, in handing the money on that morning to Darrow,
4 so Darrow could make it possible for Franklin to bribe
5 Juror Lockwood.

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1 How? Why, we are going to show in rebuttal that Harriman
2 was so directly interested in the blowing up of the Times
3 that, knowing that a felony was to be committed, he even had
4 consulted them and called their attention to the fact that
5 a convention was going to be held, and asked them to post-
6 pone it. The commission of a horrible crime. We will
7 show in rebuttal that one of the parties who gave the money
8 to Mr Darrow so that this bribery might be committed, was
9 so interested, personally interested in the case, and the
10 principal case out of which all this arose, that this jury
11 could not but say, "Why, he was so interested that he must
12 have furnished the money." That is part of their main
13 case, isn't it? How would any lawyer go about proving a
14 case. Taking in view first, the principle of law laid down
15 by the courts, that it is the duty of the People to intro-
16 duce all of their evidence as a guiding star to the con-
17 duct of the District Attorney, he must produce it all, and
18 if it is material. Now, it was material then and they
19 could not withhold that evidence at that time and try to
20 introduce it now.

21 THE COURT: just a moment. This argument may occupy
22 some little time, and I think taking in consideration for
23 the jury, it would be well to let them retire to the room.
24 It is more comfortable and cooler, during the progress of
25 this argument.

26 MR APPEL: yes, your Honor.

1 (Jury admonished and retire to jury room.)

2 THE COURT: Gentlemen on both sides, you can assume for
3 the purpose of the argument, the court does not care to hear
4 any more authorities on the subject of the right of the
5 People to introduce part of their evidence in chief. As
6 far as that is concerned, their case in chief has closed.
7 I am satisfied that the rules of law absolutely require that
8 they present their case in chief so the defense can meet
9 it. The question is whether it is in fact, part of their
10 case in chief. I assume the District Attorney wants to
11 be heard on that matter, and that is the only reason I
12 allowed the jury to go out. The District Attorney will
13 have a little more freedom in stating facts.

14 MR APPEL: It is in regard to what Mr Harriman testified in
15 chief.

16 THE COURT: It seems so.

17 MR APPEL: Let's raise an issue, we must ^{for} get the balance
18 of the evidence so as to narrow the issue. What was
19 Harriman brought upon the witness stand to respond to on
20 the part of the defense? Must have been some evidence.
21 We asked ourselves on the part of the people, what was that
22 evidence. The evidence was the testimony of Franklin. He
23 says Harriman was over there in that building on a certain
24 morning, saw Franklin, he came in with his coat on one arm
25 or the other, walked into a room, Mr Darrow walked in
26 there, and Mr Darrow came out, handed him the money. MR

1 Darrow had, before that time, told him he would get the
2 money in a few moments; that Harriman was coming. Now, that
3 is all that is testified about Mr Harriman, are those
4 circumstances on the part of the defense. We put Harriman
5 on the stand, and Harriman says, "I didn't give him the
6 money." "I didn't see Franklin that morning. I wasn't
7 there when Darrow and Franklin were there. I didn't see
8 Mr Darrow there that morning when I came there", and he
9 states what he did. There is an issue raised as to a
10 fact on the part of the People, and there is a contra-
11 diction or a crossing of allegations of the prosecution
12 in that respect. There you are. Now, they want to show now
13 what? They want to show that Harriman knew, when? When?
14 That he knew the year before -- is that right? The year
15 before -- October 1st, 1910. What? What did he know?
16 That he knew that when the explosion occurred and he saw
17 it in the paper, he knew and stated to Cantrell that he
18 had talked with the parties who were preparing to blow up
19 the Times, and he had requested them to postpone it until
20 after a certain convention; that he knew it at that time.
21 That is all this amounts to. I don't care for the other
22 part introductory to the main point; that is the object.
23 That is the sum and substance of this evidence, that he knew
24 it. Now, how is that rebuttal of Harriman's testimony?
25 Oh, they might have called a great many others, according
26 to the evidence, a great many other persons were personally

1 interested in the matter that resulted in the explosion of
2 the Times. I am talking about what the evidence seems to
3 show here, your Honor. And yet, it isn't claimed that
4 any of those other persons, your Honor, handed any money
5 to Mr Darrow upon that morning to hand it over to Mr
6 Franklin.

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1 And if they knew, if Harriman did know away back in 1910
2 the Times was about to be blown up, does that tend to im-
3 peach his testimony to the effect that he didn't hand Dar-
4 row that money; that he was not there on that morning?
5 What he knew way back in 1910, does that tend to even
6 prove, in the remotest degree that Harriman was present
7 on the 28th day of November, 1911, at the Higgins Build-
8 ing at the time that Franklin says?

9 THE COURT: Except as it might effect the interest of the
10 witness.

11 MR APPEL: Except as it might effect the interest of
12 the witness. How does it affect his interest. If it
13 affects his interests at all, he was interested in it,
14 then it should have been shown as a part of their main
15 case. Now, let us see, your Honor; let's illustrate this
16 case. They are trying to prove, your Honor, say, that
17 I have gone down here and committed a crime, in view of an
18 understanding and discussion in which we three were crim-
19 inally interested, and they say that I handed some money
20 to some person, and that your Honor handed me the money,
21 and that Mr Darrow knew about it. Very well. They have
22 a right to show that you and I and Darrow were carrying out
23 a purpose and intent previously formed, and were a contin-
24 uation of the conspiracy commenced in 1910, and ending
25 with the bribing of a juror in November, 1911. Part of
26 their main case. The fact that he knew that the building

1 was going to be blown up, does that tend to show any inter-
2 est in this case? Does this question show that he was inter-
3 ested with Mr Darrow, that Mr Darrow knew, together with
4 him, that the building was going to be blown up? That Mr
5 Darrow was a part and parcel of that conspiracy to blow up
6 the Times Building? How does it show it?

7 MR FORD: We don't claim that this transaction effects the
8 guilt or innocence of the defendant. We simply claim that
9 it affects the question of the veracity of a witness.

10 MR APPEL: I am glad -- put it right down there; put it
11 right down there. I want -- it is the finest thing in the
12 world to open this discussion, because it illustrates, your
13 Honor, absolutely how they attempt to impeach a witness.

14 MR FORD: We stipulate it can go down twice.

15 MR APPEL: It is not necessary. We have all a very good
16 opinion of the size of your mentality, but it shows how
17 out of the innocent lips many times flow the truth.
18 Fools and innocence sometimes tell the truth. Your Honor,
19 I don't mean personally, I am speaking what is the exper-
20 ience of men. They tried to impeach Harriman, then, by
21 showing that he was guilty of a specific act. Now, they
22 tell your Honor that. That is the point that he was guilty
23 of what? That he was guilty of conniving with the blowing
24 up of the Times Building, and you cannot impeach the wit-
25 ness that way. You cannot impeach his motives that way;
26 you cannot impeach his truth and veracity that way, and the

1 code so says. They might as well show that Mr parriman
2 carried the dynamite up there to the Times Building and
3 put it there; blew up the Times for the purpose of affecting
4 his credibility here on the stand, and impeach him in that
5 respect; that is the effect; that is the meaning of this
6 testimony, and that is not rebuttal, if it is upon that ground.

7 They have made a case; we have answered it. Now, they
8 can only impeach Mr parriman by what? They can only im-
9 peach him by evidence of general reputation for the traits
10 involved here as a witness, for truth, honesty and integrity,
11 or truth, honesty and veracity, whichever way you want to
12 put it. Now, by showing specific acts, not by showing
13 that he is an unconvicted felon, not by showing he has
14 committed crime; not by showing that he entered into the
15 conspiracy that ended in the blowing up of the Times.
16 If it is for the purpose of showing motive and for furnish-
17 ing the money to Mr Darrow, then it should have been a part
18 of their main case. A distinction; it is very clear. But,
19 your Honor, the great trouble with this case has been that
20 there have been general statements made here on the part
21 of the prosecution all the time, it is for the purpose of
22 showing interest of the witness that we want to introduce
23 such and such evidence, and under that general statement,
24 which covers a multitude of sins and a multitude of the
25 worst kind of reasoning, they have been successful in
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1 introducing a lot of stuff here that they should never have
2 introduced.
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Xlp 1 For the purpose of showing motive to have furnished
2 the money is a part of their main case; if it is for the
3 purpose of impeaching the witness, they cannot impeach him
4 by showing confessions on ^{the} a part of a witness that he has
5 been guilty of crime. They cannot do that; as your Honor
6 says, you do not wish to see the decisions, of course, I
7 wont cite them.

8 THE COURT. I do not, because I agree with you on the pro-
9 position of law as you have stated it. If anything should
10 be raised.

11 MR. APPEL. We are in this position, your Honor. I happen
12 to remember what happened to me once when one of our eminent
13 judges who had presided for years here at Calabasas
14 he said to me, "You have made the best argument I ever
15 heard and the decisions are just exactly what I thought
16 they would be and I know them all, but" he says "I have
17 retired here for 15 minutes and consulted Cowdrey's Justice
18 Practice and I find no case in there cited that says what
19 you stated, and the facts are against you." If the facts
20 are against us there is no use citing the law.

21 THE COURT. Mr. Appel, the court desires to hear you upon
22 the question of facts presented and any proper dissertation
23 upon that matter, but not upon the law.

24 MR. APPEL. Those are the facts as I remember them. Now, as
25 to the applicability of the law, I am not able to apply it.

26 THE COURT. Well, there are three questions here; I will
hear you upon that subject Mr. Fredericks. If this evidence

1 tends to show a motive in Mr. Harriman in handing the money
2 to the defendant the morning of the 28th, then it should have
3 been a part of your case in chief; if it is in the nature
4 of a confession of crime then you cannot introduce it.

5 The question is, it seems to me, the sole question is, is it
6 a proper question on impeachment showing interest of the
7 witness in giving his testimony?

8 MR. FREDERICKS. The fact that testimony may be injurious
9 to the defense and advantageous to the prosecution in their
10 main case does not bar it from being rebuttal; the
11 fact that evidence might have been introduced, if known,
12 on the main case, does not necessarily mean that it is not
13 also rebuttal.

14 THE COURT. No, your remedy in that event would be to
15 reopen the main case.

16 MR. FREDERICKS. No, I take issue with your Honor. It might
17 be admissible both as rebuttal and both as evidence in the
18 main case.

19 THE COURT. That might happen.

20 MR. FREDERICKS. That might happen. If we were trying
21 Mr. Harriman or someone else for conspiracy in blowing up
22 the Times Building, his admissions to Mr. Cantrell undoubtedly
23 ly would be a part of our main case. We are not trying
24 that case, we are trying this defendant for a separate
25 and different cause. Mr. Harriman has taken the witness
26 stand and testified to some things which we wish to show

1 are not correct, in order that the jury may weigh that
2 testimony; they are entitled to know his relations with
3 the defendant in this case, and when the defense put him
4 on the stand and he testified that certain relations did
5 not exist between him and the defendant, that is, that
6 the possible relations of attorney and client did not exist
7 between him and this defendant, we asked him an impeaching
8 question, if he had not made a statement at another time
9 that showed that those relations did exist and that would
10 be calculated to make his testimony more favorable to the
11 defense; he denied having made the statements which were
12 attributable to him, maintaining that those relations did
13 not exist, and we talked that matter over at the time, we
14 asked him the questions and went into the law of the
15 matter to a certain extent, and the questions were permitted.
16 Now, we wish to show by this witness the interest of Mr.
17 Harriman, not in the Times case, but that he had some inter-
18 est in this case other than the interest which he admitted
19 he had.

20 THE COURT. Let me see the transcript (transcript handed to
21 court). The proposition of law that was submitted to the
22 court a few days ago and pretty fully argued, I thought made
23 it very clear that testimony that tends to establish the
24 guilt of this defendant must come in the case in chief and
25 that the rule as stated by Mr. Fredericks at this time as
26 to matter being discovered, even at a later time, will have to

1 come in, if at all, upon the application to reopen the
2 case, unless, perchance, it be part of that class of
3 evidence that might be introduced either in the case in
4 chief or upon rebuttal. There is one or two things here
5 I want to glance over for a moment. We might take the
6 afternoon recess at this time and as soon as I have looked
7 over the transcript, in 10 or 15 minutes, I will have the
8 jury brought in. The court will take a recess for 15
9 minutes.

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Sp 1 (AFTER RECESS. Jury returned to court room.)

2 THE COURT. Take the stand, Mr. Cantrell.

3 EDWARD ADAMS CANTRELL,

4 resumes the stand for further direct examination.

5 THE COURT. You may proceed. Read the question.

6 (Last question read.)

s 7 A Yes.

8 MR. APPEL. Wait a moment. He has answered it.

9 THE COURT. Strike out the answer for the purpose of the
10 ruling.

11 MR. APPEL. Now, we wish permission of the court, for fear
12 I didn't make my objection full, to amend my objection by
13 adding to it the following ground of objection: That the
14 matter sought to be introduced in evidence being entirely
15 upon the collateral matter, a collateral issue, a collateral
16 cross-examination, that the state cannot introduce this
17 matter for the purpose of impeaching the witness Harriman
18 on such collateral matter.

19 MR. ROGERS. People against Crandall--

20 MR. APPEL. This matter has never been argued. That is the
21 vice of it--

22 THE COURT. That is a little different point too.

23 MR. APPEL. And your Honor--just permit us to call your
24 Honor's attention to a matter. I will just show you that
25 rule is applicable in the shortest cases we have here on the
26 subject. People against Webb, cited in the 70 Cal at Page

1 120, the facts were this. People against Webb. (Reading)

2 "The defendant was convicted of the crime of perjury,
3 alleged to have been committed in falsely swearing to a
4 petition for writ of habeas corpus to the effect that he
5 knew of his own knowledge that one Margaret Dix was un-
6 lawfully imprisoned and restrained of her liberty at the
7 Magdalen Asylum in the City and County of San Francisco,
8 by the person having charge thereof, whereas, he did not
9 know such facts or that Margaret Dix was unlawfully or
10 otherwise imprisoned or restrained by any one or at any
11 place. On the trial, after the prosecution and defense had
12 closed their case, the court permitted the prosecution to
13 recall one B. F. Napthaly, a witness for the defendant, for
14 further cross-examination."

15 Now, of course, the court would permit further
16 cross-examination. (Reading) "On such cross-examination,
17 the witness, after testifying that he presented the petition
18 for the writ to D J Murphy, the Judge of the Superior Court
19 who issued it, was asked by the prosecution whether at that
20 time he stated to Judge Murphy that he would not be respon-
21 sible for the writ, that he knew nothing about it and did not
22 like the appearance of the petitioner." He had been a
23 witness, your Honor, for the defendant, to the effect that
24 he had heard his statement and ~~that~~ he had advised him as an
25 attorney that he could present that petition. That is,
26 that he had in good faith presented that petition. That

1 he had honestly advised him, so as to show the defendant
2 in the case, who swore to the petition, had not acted
3 maliciously, and had not been wilfully false, if false at
4 all, in signing the petition. (Reading) "The witness
5 denied having made such statements. The prosecution,
6 against the objection and exception of the defendant
7 then called Judge Murphy who contradicted the witness in
8 this regard. The Court--On the trial of this case, after
9 the prosecution had announced that the case was closed, the
10 court permitted the District Attorney to ^{re}call a witness for
11 the defendant, who had been examined and cross-examined,
12 for further cross-examination, in order to lay a foundation
13 for impeaching him. On the cross-examination for that purpose
14 the witness was asked questions which were answered without
15 objections. But the subject matter of the cross-examination
16 was collateral and not relative to the issues being tried."

17 Now, your Honor will see right there the question
18 asked Mr. Harriman was not relative to the issues being
19 tried here and it was collateral to his condition of mind
20 and to his knowledge concerning the matters, which were
21 included in this question, and yet the--the question arose
22 as to whether or not he had furnished the money so Mr.
23 Darrow might give it to Franklin, it is collateral.

24 (Reading) "And the prosecution was bound by the answers of
25 the witness; as to them he could not be contradicted. It
26 was therefore error to allow, against the objections and

1 exceptions of the defendant, the testimony offered and
2 given to contradict the witness. Judgment and order
3 reversed, and cause remanded for a new trial."
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1 In People v. Dye, 75 Cal., page 112, "A party cannot
2 cross-examine his adversaries witness upon irrelevant mat-
3 ters, for the purpose of eliciting something to be contra-
4 dicted. And if such matters are drawn out, the court
5 should stop the inquiry there. It is well settled that
6 a witness cannot be impeached by contradicting him upon
7 collateral matters. Nor does it make any difference
8 what the subject of the relations of Crow with defendant's
9 wife was commenced by the defense. The defendant's
10 evidence upon this point stopped far short of the testimony
11 complained of. And, conceding a great part of it to have
12 been irrelevant, it furnished no justification for the
13 course taken by the prosecution. The introduction of
14 irrelevant evidence by one side does not justify the intro-
15 duction of further irrelevant evidence by the other.
16 Any other rule would destroy the law of evidence, and make
17 trials interminable." This case was reversed, and very
18 eminent counsel, Bicknell and Stephen M. White, and Henry
19 T. Gage helped try the case, and it went up from the Super-
20 ior Court of the county of Ventura, where Mr Dye was con-
21 victed of murder. People against Dye, a case which we
22 are all well acquainted with, owing to our long residence
23 here in times gone by, and having known the individual
24 who was convicted on that occasion.

25 In People versus Tiley, which is a decision in the 84
26

1 Cal., the question arose in this respect -- let us see --
2 reading from page 653 -- "The prosecution also called
3 as a witness one James Tye, who testified, among other
4 things, that he was tending bar for Tiley and Myers during
5 the last days of December, 1888; that at the time of the
6 fire he was present in the bar room of the Arctic saloon,
7 and that he knew a man by the name of Brock O'Neal.
8 He was then asked and answered as follows: 'Q -- Was he
9 there at the time of the burning of the saloon? A -- Yes
10 sir; he was there; he was there 10 minutes before the burn-
11 ing of the building. Q -- What was he doing there? A -- He
12 was shaking dice with me about 10 minutes before the fire.
13 He was in the saloon at the time of the fire; I, at least,
14 saw him during the burning of the saloon. Q -- Had he any
15 relations there, or not, with Ben Tiley? A -- I don't
16 know whether he had anything to do with Mr Tiley. Q -- Had
17 you done anything, as a go-between, between him and defend-
18 ant before the fire, within a day or two? A -- I brought
19 him a package. Q -- Where did you get that package?
20 A -- From the Calico saloon. Mr Tiley told me he had a
21 package for to give Brock O'Neal, for me to take it down.
22 I took it down, and don't know whether I gave it to him,
23 or told him where it was. This was a few days before the
24 fire. At the time he gave me the package he wanted to
25 know who was hanging around there, and I told him, and
26 among others, I mentioned the name of Brock O'Neal.

1 The package was a small soda water bottle. It had in it a
2 whitish liquid; in my judgment, it resembled water. I
3 don't know what was in it.'

4 "The defendant, in his examination in chief, testified
5 that he never set the fire, or caused it to be set, and
6 never had any knowledge whatever as to the cause of the
7 fire; and that he never sent to Brock O'Neal any bottle or
8 package by James Tye or anyone else. On cross-examination he
9 was asked: 'Q -- You know Brock O'Neal, don't you? A -- Yes
10 sir.

11 Q-- How long have you been acquainted with him? A -- I
12 have been acquainted with him only a little while.

13 Q -- How long had you been acquainted with him before that
14 fire? A -- Five or six days. Q -- Now, then, I will ask you
15 as a question on this trial, how long did you know Brock
16 O'Neal before the fire occurred at the depot last January?

17 A -- How long did I know him before the fire? I should
18 judge 5 or 6 days; it might have been up as high as 7,
19 but not outside of that. Q -- And no longer? A No sir,
20 I never saw him before.'

21 In rebuttal the prosecution
22 called two witnesses to prove that the defendant had known
23 O'Neal for a considerably longer time than that stated by
24 him on his cross-examination. This testimony was objected
25 to, 'on the ground that it is not proper rebuttal testi-
26 mony; on the further ground that it is irrelevant and
immaterial; if it is asked for the purpose of impeaching

1 the defendant, it is wholly upon a collateral and imma-
2 terial matter and the proper foundation has not been laid.'
3 The objections were overruled, and these rulings are assign-
4 ed as error. We are unable to see that this rebuttal tes-
5 timony was relevant or material for any purpose, other
6 than to discredit and impeach the defendant. But, as said
7 in People versus Dye, 75 Cal., 112: 'A person cannot cross-
8 examine his adversary witness upon irrelevant matters,
9 for the purpose of eliciting something to be contradict-
10 ed. And if such matters are drawn out, the court should
11 stop the inquiry there. It is well settled that a wit-
12 ness cannot be impeached by contradicting him upon colater-
13 al matters.' In our opinions, the rulings complained of
14 were erroneous and the evidence thus wrongly admitted,
15 tended to prejudice the defendant before the jury. For
16 that reason the judgment is set aside."

11p1 In People against Furtado, that is the American
2 spelling for Urtado, in the 57th Cal., page 345, by the
3 Court: "Manuel Francisco, a witness who was called and
4 examined on behalf of defendant, was asked, on cross-
5 examination by the District Attorney if, in the month
6 of August 1879, on the streets of Hollister he, witness,
7 had a conversation with one Harris. Witness answered,
8 'Yes.' The District Attorney then put the following
9 question to the witness: 'Did he tell you, in the presence
10 of McCloskey, that Mr. Payne was going to sue you for
11 damages, for having been on his range that year?' To
12 which the witness answered, 'No, sir, he did not. He told
13 me Payne was going to give me fits.' The prosecution
14 called Thomas McCloskey as a witness in rebuttal, who
15 testified that he was present at a conversation between the
16 defendant and Harris, in the streets of Hollister, in
17 August, 1879. Witness was then asked by the District
18 Attorney this question, 'Did you hear Mr. Harris say to
19 Manuel Francisco that Mr. Payne was going to sue him for
20 damages for his sheep being on Payne's ranch?' The
21 question was, 'Objected to by the defendant, on the grounds
22 that it is irrelevant and immaterial, and that the proper
23 foundation has not been laid as to particulars of time and
24 place--stating that it was heard in the town of Hollister
25 without designating the part of town is insufficient.'
26 The objection was overruled and the defendant excepted.

1 After which the witness answered that he heard such a
2 conversation between Francisco and Harris!"

3 A Recognized rule, or rather qualification of the
4 rule, governing the impeachment of the credit of a witness
5 by proof of contradictory statements elsewhere made by
6 him is, that the matter involved in the supposed contra-
7 diction must not itself be merely collateral in its charac-
8 ter, but must be relevant to the issue being tried.'
9 How a statement made by Harris to Francisco--the
10 defendant not being present--could be releavent to the issue
11 being tried in this case, is certainly not apparent."

12 That Harriman knew or did not know that the McNamaras
13 or any one else was going to blow up the Times at a time
14 anterior to October 1st, 1910, and that he requested them
15 to lay off this stunt until after the convention, is not
16 a matter concerning the subject matter of this action.
17 Is there any way that I can make it more plain? Are
18 there any words that I can get from any one that will convey
19 my idea? "How a statement made by Harris to Francisco,
20 the defendant not being present, could be relevant to the
21 issue being tried in this case, is certainly not
22 apparent. Two of the witnesses for the prosecution--
23 Pogue and Hilburn --were severally asked on their cross-
24 examination, if it was not understood that they were to
25 meet Payne on his ranch on the morning of the homicide,
26 and to assist him in driving the defendant and the sheep

1 from both ranges--Paynes and Pogue's father's. The
2 question was objected to as being irrelevant and immaterial
3 and the objection as sustained. Defendant excepting. If,
4 by means of cross-examination an opportunity is afforded of
5 bringing out the 'situation of a witness with respect to
6 the parties and to the subject of litigation, his interest,
7 his motives, his inclination and prejudices,' it would seem
8 that a witness for the prosecution, on his cross-examination,
9 in a case of murder, might properly be asked whether he had
10 agreed to be present and to aid in the expulsion of the
11 defendant, etc.' The judgment and the order reversed and
12 the cause remanded for new trial."

13 In People against Brown, a person called to prove that
14 he was not present--

15 THE COURT. Book and page?

16 MR. APPEL. People against McKeller 53 Cal. Page 65:

17 "The prisoner, in order to prove he was not present
18 in San Joaquin County at the commission of the burglary,
19 produced a witness who testified in substance that he had
20 seen the prisoner at the corner of Third and Mission streets
21 in San Francisco on Sunday, April 22, 1877 between 3
22 o'clock and 4 o'clock P.M. It was conceded at the trial
23 if the prisoner was present in San Francisco at the time
24 testified to it was impossible for him to have been present
25 at the scene of the burglary. The witness Carolan,
26 upon his cross-examination by the counsel for the people

1 people said, that he had lived in the city of San
2 Francisco ever since 1855, except he had been out of the
3 city for a space of two years working on a ranch in Marin
4 County; he also testified that he had testified in this
5 case as a witness for the prisoner at a former trial.

6 He was then asked by counsel for the People if he did not
7 testify at the former trial that he had lived in Marin
8 County for four years or that he had been in that county
9 six or seven years since 1855, and answered that he had
10 not so testified."

11 THE COURT' I see that this matter is going to take a little
12 time. Some of the jurors requested me that they be allowed
13 to retire during these arguments, and I will allow them to
14 retire. Gentlemen of the jury, bear in mind your
15 admonition, and you may retire.

16 (Jury retire from court room.)
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MR. FORD.

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1 We submit all these authorities, in support of one proposi-
2 tion that a witness cannot be impeached or cross-examined
3 on material matter. That is the law.

4 THE COURT: On collateral matters.

5 MR APPEL: I have heard others say the same thing to me
6 after I have read the law. I have heard a great many say,
7 "I knew that is the law". Let the record show that pend-
8 ing this argument, the jury has been ordered out of the
9 court room, and that we proceed to the presentation of
10 this argument. I suppose that will be admitted.

11 THE COURT: That is a fact.

12 MR APPEL: Very well. Now, he was asking whether or not
13 he had testified he lived in Marin County four years or that
14 he had been in that county 6 or 7 years since the year
15 1855, and he answered he had not so testified. (Reading.)
16 "In their case in rebuttal, the People, in order to contra-
17 dict the witness upon this point, were permitted by the
18 court, against the objections of the prisoner, to read to
19 the jury a portion of the evidence given by the witness
20 at a former trial, and by which it was made to appear that
21 he had, in point of fact, testified as claimed by the
22 counsel for the prosecution, and had stated at the former
23 trial that he had been absent from San Francisco and in
24 Marin County some 6 or 7 years since the year 1855. In
25 permitting the prosecution to contradict the witness on
26 this point, the court below erred.

1 The witness had testified in chief that he had met the
2 prisoner in San Francisco in the month of April, 1877.
3 When on his cross-examination, and in answers to questions
4 put by the prosecution, he testified that he had first come
5 to live in San Francisco some 22 years before, and that
6 since the year 1855, he had been in the county of Marin
7 only two years; he testified to matters merely collateral
8 in their character, and under the well settled rules
9 concerning the production of evidence, the prosecution
10 were bound by his answers.

11 'But it is a well settled rule,' says Mr Greeleaf, 'that
12 a witness cannot be cross-examined as to any fact which
13 is collateral and irrelevant to the issue merely for the
14 purpose of contradicting him by other evidence, if he
15 should deny it, thereby to discredit his testimony. And
16 if a question is put to a witness which is collateral or
17 irrelevant to the issue, his answer cannot be contradicted
18 by the party who asked the question; but is conclusive
19 against him.

20 judgment and order denying a new trial, reversed, and
21 case remanded for a new trial."

22 Apropos? Harriman is asked whether he told Cantrell
23 certain things at a certain place under lock and key
24 while sitting on a chair after enjoying a hearty laugh,
25 the boys were onto their job. He couldn't have made
26 any statement there at that time concerning the bribery or

1 concerning the connection that he gave the money, because it
2 was one year -- yes, more than a year before this case
3 or action arose. How? Why, it was away back -- this state-
4 ment is alleged to have been made on October 1st, or
5 October 2nd, 1910. This matter of his testimony of Mr
6 Harriman comes afterwards -- over one year -- and it re-
7 lates to what? To November 28th, 1911. Hah! And he
8 is asked whether or not he told Mr Cantrell that he knew
9 the Times was going to be blown up; that he had discussed
10 that matter with the unions or his clients, that he re-
11 quested them to hold off the blowing up of the Times
12 office. How does that tend to impeach or contradict his
13 testimony here? On cross-examination he may have been asked
14 your Honor, whether or not he was an attorney for the Mc-
15 Namaras; that has been shown here. Whether or not he
16 was the greatest friend, or the most intimate friend of
17 this defendant and attacked his motives to show he was
18 interested or might have been asked whether or not away
19 down deep in his heart, he had the greatest desire to see
20 his friend acquitted in this case. He could have been asked
21 whether or not he had connived with Darrow in bribing
22 Juror Lockwood. He could have been asked any of these
23 questions but his knowledge of what occurred on the 1st
24 day of October, 1910, or what he did, or what consul-
25 tation he had with those connected with the horrible crime,
26 are collateral to the issue here, and he cannot be contra-

1 dicted, and I say, your Honor, without fear, that no
2 court who has considered this question which is so plain-
3 ly illustrated by these same cases, could ever hold to the
4 contrary.

5 People against Jones. Now, let us see. Touching right
6 there at the very root of this question. The District At-
7 torney has already made it apparent in the record here, and
8 I hope the statement was properly taken by the reporter,
9 and that it shall suffer no change. It is for the purpose
10 of impeaching the witness. How?

1 By saying in a collateral matter that he has been guilty
2 of some terrible crime. Suppose the defendant was on the
3 stand? People against Jones, by Sawyer, Judge. a very
4 good judge. He is dead now, your Honor. It is a pity
5 we haven,t got more of such judges as Judge Sawyer was.
6 The Supreme Court through Judge Sawyer says this. (Reading)
7 "The main fact necessary to be established as a basis of the
8 prosecution was that the house had been burned; for without
9 that there could be no guilt in any one. After proof of
10 that fact it was necessary to prove how it was done and by
11 whom; and these particulars could be established by any
12 evidence which was competent in law and sufficient in its
13 force to satisfy the mind. The rule with regard to proof
14 of the corpus delicti, apart from the mere confessions of
15 the accused, proceeds upon the reason that the general
16 fact, without which there could be no guilt, either in the
17 accused or in any one else, must be established before any
18 one could be convicted of the perpetration of the alleged
19 criminal act which caused it; as in cases of homicide, the
20 death must be shown; in larceny, it must be proved that
21 the goods were lost by the owner, and in arson that the
22 house had been burned; or otherwise the accused might be
23 convicted of murder when the person alleged to be murdered
24 was alive; or of larceny, when the owner had not lost the
25 goods, or of arson, when the house was not burned. But when
26 the general fact is proved the foundation is laid, and it is

1 competent to show by any legal and sufficient evidence how
2 and by whom the act was committed, and that it was done
3 criminally. Here the burning was proved apart from the
4 prisoner's confessions, and the confessions were, therefore,
5 properly admitted in evidence."

6 "In People versus Bagley, while it was conceded
7 that evidence of confessions alone, unsupported by cor-
8 roborating facts and circumstances, is not sufficient to
9 convict, and that there must be evidence aliunde of the
10 corpus delicti, it was said that 'full proof of the body of
11 the crime, the corpus delicti, independent of the confes-
12 sions, is not required by any of the cases; and in many
13 of them slight corroborating facts were held sufficient.'

14 "A similar view was taken in State vs Lamb,
15 but in both of those cases there are many facts and circum-
16 stances other than the confessions, going to show that the
17 offenses charged had in fact been committed, and we have
18 no doubt that the defendants were properly convicted, or
19 the correctness of the principles stated by the court.

20 In this case, however, after a careful examination of the
21 record, aside from the naked extra judicial statements of
22 the prisoners we do not find a fact or circumstance
23 tending in the slightest degree to show that a robbery had
24 been committed on ~~A~~ Po, or any other person. There was
25 nothing but their statements to show that anybody had lost
26 any gold dust or had been robbed, or put in fear, or that

1 there was any party in that region by the name of AhPo.
2 There seems to have been two companies of chinamen working
3 on a ravine, to whom the prisoners referred in their state-
4 ments; and a party doing business in the neighborhood
5 testified that he was acquainted with those chinamen;
6 that they did business with him and sold their gold to
7 him, but that there was no one among them by the name of
8 AhPo; and there is no other testimony to the contrary except
9 that, and the statement of the prisoners, one of the
10 chinamen was called AhPo. There is testimony showing that
11 subsequent to the alleged robbery, the prisoner in con-
12 nection with the principal prosecuting witness, who was
13 a feigned accomplice, went out with guns and disguises
14 on the night preceding their arrest, for the purpose of
15 robbing a chinaman's cabin, but abandoned the enterprise.
16 This testimony tends strongly to prove that the defendant
17 was bad enough to commit a robbery but did in no way tend
18 to prove that AhPo, or anybody else had in fact, before
19 and on another occasion been robbed. The evidence itself
20 was inadmissible and improperly admitted. It related to
21 another and entirely different transaction, and in no
22 degree tended to prove the fact in issue. It is one of the
23 first principles of the law of evidence that testimony
24 must be confined to the issues.' This rule excludes all
25 evidence of collateral facts, or those which are incapable
26 of affording any reasonable presumption or inference as

1 to the principal facts or matters indispute.'"

2 I read this decision because it illustrates what is
3 meant by collateral matters. Does the knowledge of Harriman
4 on ^{the} 1st day of October, 1910, that the Times Building was
5 going to be blown up, tend to illustrate any facts in this
6 case? Does it tend to contradict his evidence that he
7 was not present a year and some days--27 days afterwards
8 up in the Higgins Building where Franklin claims he saw
9 Harriman and Darrow? If he didn't know it, if he didn't
10 know your Honor, that the Times Building was going to be
11 blown up, it doesn't tend to contradict his testimony as
12 to whether he was there or not, a year and 27 days after-
13 wards, if he knew it it doesn't tend to contradict his testi-
14 mony. It tends insome degree to show that he was guilty
15 of some offense and what is the rule laid down here?
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1 (Reading:) "Under this rule it is not competent for
2 the prosecution to give evidence of facts tending to prove
3 another distinct offense for the purpose of raising an
4 inference that the person had committed the offense in
5 question. " Now, under this rule, it isn't competent to
6 show to this jury or to your Honor, Harriman was interested,
7 and was a party to the crime in blowing up the Times for
8 the purpose of raising the inference from the accusation he
9 had given the money to Darrow on the morning of the 27th of
10 November a year and 27 days afterwards. (Reading:)

11 "Under this rule it is not competent for the prosecution
12 to give evidence of facts tending to prove another dis-
13 tinct offense for the purpose of raising an inference
14 that the person had committed the offense in question.
15 Upon the same ground it is not competent for the prosecutor
16 to give evidence of the prisoner's tendency to commit
17 the offense with which he is charged. Much evidence of this
18 kind was erroneously admitted under objection and exception.
19 We do not see a fact or circumstance which tends to prove
20 the body of the offense charged, aside from the loose state-
21 ments of the prisoners, and these, neither as to the num-
22 ber or identify of parties, or the amount obtained, cor-
23 respond with the offense as charged.", and so on. "Judgment
24 is reversed."

25 In the case of People vs. George T. Bell and Henry Bell,
26 in the 63rd Cal., at page 119, it is by the court:

1 (Reading:) "The defendant was examined as a witness on
2 his own behalf, and on his cross-examination by the prose-
3 cution, testified that the deceased, on the occasion of
4 the quarrel which resulted in his death, called the defend-
5 ant and his brother 'damned sons-of-b.' The witness further
6 testified: 'That is not the first time I ever heard him
7 use that kind of language. Have heard him use it frequently
8 I don't know as he was a practical swearer; he was a profane
9 swarer.'

10 The prosecution called several witnesses in rebuttal,
11 who were permitted to testify, against the objection of
12 the defendant, that they were intimately acquainted with
13 the deceased in his lifetime, and that he was not a profane
14 swearer, and that they had never heard him use profane
15 language. The defendant excepted to the ruling of the
16 court in admitting this evidence, and we think the excep-
17 tion was well taken. Whether or not the deceased was a pro-
18 fane swearer or in the habit of using profane language
19 was a purely collateral matter, having no reference what-
20 ever to the guilt or innocence of the defendant. The first
21 evidence on that point was brought out by the prosecution
22 on the cross-examination of the defendant, and in such
23 cases the rule is: 'That if a question is put to a wit-
24 ness which is collateral or irrelevant to the issue, his
25 answer cannot be contradicted by the party who asked
26 the question, but is conclusive against him.'

1 Harriman went upon the stand; he testified that Franklin's
2 story was a fabrication and tissue of lies. Concerning what
3 facts? Concerning his presence on the morning of November
4 28th, 1911, at the Higgins Building, and for providing Darrow
5 with the money that he said he got from Darrow. That was
6 direct evidence. On cross-examination, he is asked whether
7 or not he told Cantrell that he knew before the Times Build-
8 ing was wrecked, whether or not he knew it was going to be
9 done, and he asked to have it postponed: Collateral, then.
10 The answer was allowed and the witness says no, nothing of
11 the kind. Who brought it out for the first time? They
12 brought it out. The People brought it out. There is no
13 ghost, no fleeting ghost, we had nothing to do with it.
14 They put up a stuffed man of straw which now they under-
15 take to knock down. It had nothing to do with the testi-
16 mony; it had nothing to do with the case. Is it for the
17 purpose of showing his interest as a witness? He says he
18 was one of the attorneys. He could have asked him any
19 question in reference to that, but that is not the object.
20 I deny, your Honor, notwithstanding the great protestations
21 of counsel on the other side, that their object is to show
22 motive and interest of this witness. There are several
23 avenues by which that can be shown without intrenching upon
24 the rule against the admission of collateral matters, to
25 show there that the witness is debased, or that he is a
26 criminal. I deny that that is the real intention.

1 They may say so, we don't have to believe it, and no lawyer
2 of experience does believe that. It is for the purpose
3 of getting to this jury the fact that Parriman is a crimi-
4 nal, and he has been guilty of the commission of an of-
5 fense for the purpose of arguing to the jury that he was
6 more likely to have given the money to Mr Darrow upon the
7 occasion that Franklin has testified. Because for what?
8 Because he is guilty of another offense. Then, the infer-
9 ence is that he would be guilty of this offense, and these
10 decisions say that you cannot do that.

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15s 1 (Reading) "If a question is put to a witness which
2 is collateral or irrelevant to the issue, his answer cannot
3 be contradicted by the party who asked the question, but
4 is conclusive against him. The evidence in rebuttal could
5 have been introduced for no other purpose than to impeach
6 the defendant as a witness, and we cannot say that it did
7 not prejudice his case before the jury. Judgment and order
8 reversed, and case remanded for a new trial."

9 Well, civil cases just the same. They complained
10 the other day that we couldn't show criminal cases. We have
11 shown criminal cases. We can show a great many civil
12 cases. Whenever a man challenges the ability of counsel to
13 do anything here, of course, counsel wants to show, your
14 Honor, not for the mere satisfaction of counsel on the
15 other side, for God knows I have no desire to satisfy
16 them, but only the good faith of counsel in presenting
17 law to the court, his conduct, when they think that
18 lawyers must so forget their duty to the court that they
19 state propositions of law here which they cannot prove, we
20 are compelled, your Honor, to show for our own good credit,
21 for our own good name, that the law is as we have said it
22 was, or as we honestly believed it was, barring or not

23 barring the question of whether we are in error or not,
24 I can cite to your Honor I can cite here decisions from
25 every state in the Union, and from text books from every
26 state in the Union except Arizona, because I am biased in

1 favor of the Arizona law. I say I can cite a lot of
2 decisions here to that effect. Just to state the rule
3 generally. There is no use reading this. They are civil
4 cases. I say the rule is just the same, but we can cite
5 them.

6 MR. FORD. Your Honor, I ask counsel to refer to People
7 against Hart, in which you were called as a witness.

8 MR. APPEL. Oh, Hart is very simple.

9 MR. FORD. Yes, you testified in that case.

10 MR. APPEL. See if you understand it. People against Hart.
11 Mr. Hart went down here and what did he do? An old offender
12 that killed three or four men down in Arizona. I defended
13 him once for cutting a man up by the name of Bullock down
14 at the Palms, cut him up 7 or 8 times. Tanner from the
15 beautiful city of Santa Monica, employed me to help defend
16 him, and I defended him and the jury disagreed and after
17 wards the case dismissed and collected the fee and I never
18 got any, that is why I remember that case so well, but here
19 is the proposition. Mr. Hart went around the country down
20 here after going to a great many experiences on the way,
21 why, he opened a lodging house down here and he rented a
22 room to some old man and he had a quarrel with him one
23 night and over 50 cents he killed him; he shot him--yes
24 I think he shot him. He might have stabbed him. I don't
25 know. He used both weapons just as he pleased, but I
26 think he shot him. All right. There was an old lady by the

1 name of Mrs. Grosse. Old Mrs. Grosse, I knew her well.
2 I had defended her two or three times and her husband also.
3 Her husband was a German. I defended him once for stealing
4 a hack. I guess I defendēd her and her son for stealing
5 turkeys, that I do remember. Then Hart was put in jail and
6 here Lo and behold, Lo, Mrs. Grosse comes over to my office
7 and she said she wanted me to defend Hart. I had not
8 forgotten I hadn't got my fee in the other case and I said
9 I wouldn't defend him for anything, and then she said to me
10 that she understood how the killing occurred, and I asked
11 her, your Honor, whether she was present and she said
12 "No," that onthat day she had been down to San Bernando
13 looking up there a watermelon patch where she was going
14 to be a witness for a fellow who had been stealing water
15 melons at San Bernando. I came in the court room during
16 the trial and she was testifying that she was present at the
17 killing. It was my duty to tell the District Attorney
18 that that woman had told me that she was not there; that
19 she had told me at the time of the killing, your Honor,
20 that she had been down in San Bernando, 25 miles away
21 from here, and other circumstances relating to it. The
22 District Attorney had a right to ask her when she said she
23 was present at the killing your Honor, he had a right
24 to ask her, isn't it a fact that you told Mr. Appel down
25 there at the office that on the day of the killing you
26 were not present at the killing but you were in San Ber-
nando, or words to that effect? Why, it was really lay

1 ing the foundation to impeach the witness upon the matter at
2 issue, upon the matter that she had testified to. What has
3 that to do with the question here? Read it, if it isn't
4 so I will eat the book up.

5 Mr. Harriman made a statement to Mr. Cantrell
6 after the 28th day of November, 1912, down there in some
7 village or some place, I don,t care where, "Cantrell,
8 By Jingo, Darrow is indicted. I am awful sorry. I don't
9 know what to do about it. They are liable to get me into
10 that case. I was there and I gave the money to Darrow."
11 Harriman having testified that he didn't and was not
12 present at the transaction, it would have been cross-
13 examination and would have been a matter of absolute im-
14 peachment. Mr. Harriman, you know Mr. Cantrell? Didn't you
15 tell him on such and such occasion that you were present;
16 that you had furnished the money and expressed some fear
17 you might be drawn into this? The witness says No; they
18 have a right to prove it. To prove impeachment upon what?
19 Upon the matter at issue. Is it possible; can there be
20 any question about it, your Honor?

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1 How different this is. Franklin says harriman was present;
2 gave the money to Darrow, and Darrow gave it to him. Came
3 over there with an overcoat on the left arm. I remember
4 that overcoat. Seemed to think something of the overcoat,
5 I don't know what it was about the overcoat, but anyhow, he
6 saw it. He says it was on the left arm. Harriman comes on
7 the stand and says, I wasn't there; didn't give him the
8 money; didn't see Franklin that morning. Ah, Mr Harriman,
9 you know Mr Cantrell? Yes, I know Mr Cantrell. Didn't
10 you tell him? Tell him what? On or about the 1st day of
11 October, 1911, a year and 27 days before this crime is
12 alleged to have occurred, didn't you tell him that you knew
13 the Times Building was going to be blown up, and you had
14 consulted with parties who were going to do it to postpone
15 the stunt. That is a good word. I have learned that in
16 this case. The stunt. Until after the convention, and that
17 you knew it was going to happen. Is that concerning the mat-
18 ter at issue? Does that touch upon the question of whether
19 Harriman was present or not down here in the Higgins Build-
20 ing? Does it touch on his testimony that he didn't give
21 the money to Darrow? Does it touch on the question he was
22 not present when Franklin said he came there? Isn't it
23 for the nefarious purpose of violating every principle of
24 law; degrading the witness Harriman in the eyes of this
25 jury, to horrify this jury, your Honor, to say, "Why,
26 Harriman, you knew that the Times Building was going to

1 blown up. You knew that a terrible crime and 21 lives
2 were going to be sent into eternity, and you raised not a
3 finger against the commission of such a horrible crime.
4 You stood by and when you heard of the news, you took your
5 friend away back into a room, threw yourself carelessly into
6 a chair and you laughed a satonic laugh over the great
7 incident that occurred. Isn't that true? Answer! Search
8 your conscience; raise up your hand and tell God Almighty
9 whether or not that is in your mind, and that is the real
10 purpose or object of impeaching the witness by showing
11 that he is guilty of the commission of offenses? Tear off
12 the mask from this apparent sincerity; that is the only
13 purpose. The law says, your Honor must not permit it,
14 in the name of common decency and in the name of eternal
15 justice.

16 MR. FREDERICKS: May it please the court, counsel's argument,
17 in my judgment, does not change the situation a particle
18 from that which we presented to the court originally. I
19 will use the language of the case of Anderson vs. Black,
20 in the 70th Cal., at page 229, as quoted from people
21 vs. Benson, which expresses the matter very briefly and
22 clearer than I could. Beginning at the middle of the page,
23 the court says: (Reading:) "If it had clearly appeared
24 that by putting that question an attempt was being made
25 to attack the credibility of the witness by showing him
26 to have committed such a wrongful act as is meant by the

1 section of the Code of Civil Procedure, supra, the action
2 of the court would have been correct; but it seems evident
3 from the record that the cross-examination of which the
4 question was a part, was for the purpose, not of exhibiting
5 the witness to the jury as one unworthy of belief, because
6 of the commission of a crime or unlawful act, but as one who,
7 if he had taken part in a violent demonstration against
8 the defendants of the crime designated in the language of
9 the query put to him, might perhaps have been thought by the
10 jury to be biased or to entertain ill-will against the
11 defendants. And in this point of view, it is not deemed
12 by us to have been an improper question, 'as it is per-
13 fectly well settled that on cross-examination the witness
14 may be interrogated as to any circumstances which tend
15 to impeach his credibility by showing that he is biased against
16 the party conducting the cross-examination, or that he has
17 an interest adverse to such party.'" That is our purpose.

18 MR DARROW: May I ask you to state just what the facts are

19 MR FREDERICKS: I haven't read the facts. It is a civil
20 case.

21 MR FORD: The facts in that case were, the witness was
22 asked if he had gone upon the land with a party with guns
23 and pistols and attacked a man who was a witness, or the
24 defendant.

25 MR DARROW: I gather from that that it was -- the facts
26 were that it was a question to show prejudice against the

1 witness on cross-examination. You may show on cross-examina
2 tion the conviction of a crime, or you may show prejudice;
3 that is about all you can show; I gather that is what it
4 is.

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17p 1 MR- FREDERICKS. The case of People vs Benson is a little
2 more clear on that subject.

3 THE COURT. Are you ready to submit it?

4 MR. FREDERICKS. Yes, sir.

5 THE COURT. Bring in the jury. (Jury returned to court
6 room.)

7 THE COURT. The jurors are all present. Take the stand,
8 Mr. Cantrell.

9

10 E A CANTRELL,

11 resumes the stand.

12 THE COURT. On the ground the question propounded to the
13 witness is not before the court in an attempt to impeach
14 upon a collateral issue, the objection of the defense is
15 sustained.

16 MR. FREDERICKS. Well, we will withdraw the witness for
17 the present then, your Honor.

18 THE COURT. All right, unless you wish to ask some question
19 upon matters he has testified about.

20 MR. FREDERICKS. There has been no testimony.

21 MR. ROGERS. Q Have you been in the State of California
22 ever since October, 1910?

23 MR. FREDERICKS. That is objected to, may it please the
24 court, as being immaterial. I do not think that the
25 witness has testified to anything, absolutely nothing,
26 except his identity, which is not material unless he testi-

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fies to some fact in the case, I think it is immaterial and that we should not take up time.

THE COURT. I think that is true. Objection is sustained.

MR. ROGERS. I would like to have the witness remain under the Court's order, to be called. I do not wish him to leave.

THE COURT. The witness may step aside for the present but is not excused from attendance on the trial.

MR. FORD. Just a moment, your Honor. In this matter of your Honor's ruling, it was a distinct surprise to me, and there were a number of cases I would like to submit to your Honor on that case and on that point on which your Honor decided it. There is no dispute over the proposition that a witness cannot be impeached on an immaterial matter, an immaterial fact having no relevancy to the issue before the court, but--

THE COURT. I think this is distinctly a collateral matter under the authorities cited.

MR. FORD. That is the point we wanted to be heard on, your Honor, that it is not a collateral issue in this case, used in the decisions quoted by the defendant here, and we have some authorities upon that point and we would like to be heard a little further on that point, your Honor.

THE COURT. I inquired of you before proceeding and you said the matter was submitted.

1 MR. FREDERICKS . I listened very carefully and I heard the
2 court's ruling on the first argument and I saw absolutely
3 nothing in there that changed the matter.

4 THE COURT . Upon the first matter the question of being--
5 MR. FREDERICKS I did not assume the court wanted to hear
6 anything on it.

7 THE COURT . The question of being collateral matter was
8 not raised, was not considered. The first objection would
9 have been overruled had this objection not been raised.

10 MR. FORD . But your Honor has usually indicated when satis-
11 fied with counsel's argument that you would like to hear
12 from the other side.

13 THE COURT . If you are taken by surprise, I will not fore-
14 close you from arguing on the matter, where counsel is sur-
15 prised on either side.

16 MR. FREDERICKS I was trying to save time, that is all.

17 MR. DARROW You have saved it.

18 MR. FREDERICKS I am afraid not.

19 MR. ROGERS . Now, if your Honor pleases, I suggest that
20 the matter of the jury being sent out, while we were
21 arguing--

22 THE COURT . Yes, that will be done.

23 MR. FORD . yes, sure.

24 MR. ROGERS . We would not like to have them permitted to
25 hear their argument.

26 THE COURT . It seems to me we ought not to take three turns

1 at this. All right, gentlemen of the jury, you will
2 retire.

3 (Jury retires.)

4 THE COURT. Why is this not impeachment on a collateral
5 matter, Mr. Ford?

6 MR. FORD. I will read, to show your Honor, Section 1870 of
7 the Code of Civil Procedure, which provides the facts which
8 may be proved on any trial in any case, the first and most
9 important point for proof being subdivision 1, the precise
10 fact in dispute, subdivision 15, "Such facts as serve to
11 show the credibility of a witness" as explained in Section
12 1847, the People have always the right to prove the facts
13 showing the credibility of a witness, and they cannot do
14 that as far as the defendant's witnesses are concerned
15 until the defendant's witnesses have been produced.

16 Section 16 is, "Such facts as serve to show the credi-
17 bility of a witness," as tend to explain Section 1647--

18 THE COURT. I am basing the ruling upon the theory that
19 this is part of the case in chief.

20 MR. FORD. No, your Honor, you are basing it on the
21 proposition it is collateral to the issue, not properly
22 admissible in evidence according to the decisions read by
23 the defendant, and we want to show it is not such a collateral
24 fact or that the law expressly provides that the People
25 have a right to introduce in evidence on rebuttal facts
26 showing the credibility of a witness, and that the facts

1 showing the credibility of a witness, by this express
2 provision of the code, is not a collateral and immaterial
3 issue, having no relevancy to the merits of the case,
4 because the law expressly provides that it is relevant and
5 that it is material and that it is not collateral, but is
6 a direct attack upon the credibility of a witness.

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1 Now, section 1847, provides the methods by which it may
2 be done -- the presumption that a witness speaks the truth,
3 may be repelled --

4 THE COURT: But, these sections were all considered by
5 the Supreme Court in the authorities cited.

6 MR FORD: Not in one of those decisions was it decided that
7 an impeaching question could not be put to a witness, ex-
8 cept upon the precise fact in dispute, that was not a point
9 in every one of those, it was decided that the matter upon
10 which they sought to impeach him was immaterial. Some of
11 the decisions loosely use the term "collateral" as loose-
12 ly as it has been used in this case frequently by counsel
13 for the defense. It is a very loose use of the term "collat-
14 eral", and it is synonymous with the term "immaterial",
15 and we have cases precisely here in point where the
16 witnesses were impeached, not as to their testimony of
17 the precise fact in dispute, namely, was the defendant
18 guilty or innocent, or, did you participate in his guilt
19 or innocence on that particular occasion, but the witness
20 was impeached on some other matter. It would be ridiculous
21 to have a provision of law providing that the statements
22 of witnesses might not be contradicted, and I will read
23 the decisions. Section 1847 provides that a witness is
24 presumed to speak the truth, this presumption however, may
25 be repelled by the manner in which he testifies, by the
26 character of his testimony or by evidence as to his char-

1 acter for truth, honesty or integrity or his motives, or by
2 contradictory evidence, and the jury are the exclusive judges
3 of his credibility. Now, the words "motives" and "contra-
4 dictory evidence" have been interpreted by the Supreme
5 Court of our state and in the instruction which has been so
6 frequently given by your Honor in jury cases, that it is
7 not necessary to do more than refer to it, namely, the re-
8 lation of the witness to the case, that is one of the things
9 that the jury is always instructed under this section 1847,
10 that they may take into consideration, in determining the
11 credibility of a witness. Now, section 2051 provides
12 for the impeachment of a witness by contradictory testimony
13 or by evidence affecting his character for truth, honesty
14 or integrity, etc. Section 2052 provides that he may be
15 contradicted by showing that at other times or at other
16 places he has made statements inconsistent with his pre-
17 sent testimony. I will read the exact language of the sec-
18 tion to your Honor. "A witness may also be impeached by
19 evidence that he has made at other times, statements incon-
20 sistent with his present testimony, but before this can
21 be done the statement must be related to him, etc."
22 The foundation that must be laid, and the witness may be
23 impeached by evidence he has made at other times statements
24 inconsistent with his present testimony. Now, in this case,
25 Job Harriman testified he had no personal interest in the
26 McNamara case, that there was nothing in his relation to the

1 defendant which would prevent him from testifying in ef-
2 fect -- he didn't use those words, but by that answer he
3 meant to imply there was nothing in his attitude or his re-
4 lation to the case which would prevent him from testifying
5 with entire impartiality. Now, that was a material fact
6 that was before this court at that time, and at that time
7 your Honor expressly ruled that that was material, and
8 that he might be asked if he did not at that time and did
9 not at any other time, in San Luis Obispo at the St James
10 Hotel, and on the street, make statements to Mr Cantrell
11 and to Mr Marriam that were absolutely inconsistent with
12 his present testimony given upon the stand, and if it is
13 immaterial now, your Honor, it was immaterial then, and if
14 it was proper cross-examination then, it is proper rebut-
15 tal now, because that was proper cross-examination, and we
16 have a right to rebut it.

17 THE COURT: That is not what the Supreme Court has held
18 in People against Dye.

19 MR FORD: Let me read what the Supreme Court has held.
20 I think your Honor has entirely misconceived the effect
21 of those decisions.

22 THE COURT: Perhaps I have.

23 MR FORD: In People vs. Wong Chuey, in 117 Cal., page
24 624, a later case than most of those that have been read,
25 "Wong Chee, as defendant's witness --" not as the defendant,
26 but as the defendant's witness, as in this case Mr Harriman

1 was the defendant's witness, "testified that he had known
2 the defendant for 10 years, and never knew him to speak
3 English in his presence. Upon cross-examination he was
4 asked, in effect, if he had not met one Courtney and
5 one Morrison,

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19p1 in his rooms, prior to the pending trial, and there at-
2 tempted to bribe Courtney to give false testimony in the
3 interest of the defendant. " In the interest of the
4 defendant. Now, remember the case here was where the
5 defendant had been convicted of murder and the witness was
6 asked, "Did you not at any other time, at another place,
7 commit another crime"connected, it is true, with the
8 defense, just as the McNamara case is connected with the
9 bribery in this case; if the bribery in the murder case,
10 if the bribery was connected with the murder case--"Upon
11 cross-examination he was asked, in effect, if he had not
12 met one Courtney and one Morrison, in his rooms, prior to
13 the pending trial, and there attempted to bribe Courtney to
14 give false testimony in the interest of the defendant."
15 Now, your Honor, whether the witness had attempted at
16 another time or another occasion to bribe a witness was
17 not the issue before the court, it was a collateral matter,
18 in the true sense of the term, it was not a collateral
19 matter in the sense used in the decisions, loosely, and
20 from which counsel has quoted. In 1, 2 or 3 of those
21 decisions, as I recall it, was the term collateral used
22 and in every case it was linked up by the use of the con-
23 junction with the word "immaterial". But it was upon the
24 fact that it was immaterial that the court decided it
25 was an improper cross-examination and whatever the word
26 "collateral" was used in those decisions, it was used

1 synonymously with or to express the idea that the fact
2 had no materiality or no relevancy to the matters before
3 the court, they did not affect the credibility of a
4 witness on a material point. Suppose a man did
5 testify he was or he saw another man at the corner of
6 Third and Market street in San Francisco on a certain day,
7 whether he lived in San Francisco 6 days or 60 years is
8 absolutely immaterial, the only fact material before the
9 court was, "Were you in San Francisco or were you in the
10 vicinity of San Francisco at that time?" Whether he
11 had lived for 6 years in Marion County or some other
12 county during a portion of the preceding 6 years, was
13 absolutely immaterial and purely collateral. However, in
14 the sense where collateral is used to indicate an imma-
15 terial fact bearing some slight connection with the inci-
16 dents of the case or some witness in the case, but in the
17 Wong Chuey case, the court held that the bribery was not
18 collateral in that sense, it held that the fact of
19 bribery was relevant to the murder charge for which the
20 defendant was being tried.

21 MR. APPEL. It did not hold that.

22 MR. FORD. Conversely they held it, in effect.

23 MR. APPEL. No, they didn't hold it in effect. I tried
24 that case, I introduced that evidence.

25 MR. FORD. If the court please, if the bribery is connected
26 with the murder conversely, the murder is connected with the

1 bribery.

2 THE COURT Give me that citation.

3 MR. FORD- Wong Chuey, People versus Wong Chuey, 117 Cal.
4 page 627.

5 MR. DARROW. was that bribery in the case that was
6 being tried?

7 MR. FORD- Yes.

8 MR. DARROW. Then it shows the interest of the witness
9 in that case?

10 MR. FORD. Yes, exactly.

11 THE COURT. People vs Wong Chuey, 117 Cal. page 627.

12 MR. FORD. (Reading) "Under objection, the witness answer-
13 ed in the negative. There was no error in allowing the
14 question. For the purpose of fairly and fully weighing the
15 evidence of any witness, the jury are entitled to know his
16 bias and feeling in the case, if such there be. If the
17 witness was such an active partisan of the defendant as
18 to be engaged in suborning witnesses in his behalf, that
19 fact was most material in weighing his testimony." If the
20 witness in this case was personally involved in the defense
21 for which the defendant, McNamaras were being tried at
22 that time, if, as the defendant says upon the witness stand
23 in this case, they plead guilty to save others, isn't
24 he, if, as the prosecution charges in this case, the
25 defendant did the act here in dispute as one of a
26 series of indicents to defeat and obstruct justice,
wouldn't the bias and prejudice of the witness in that

1 case, of Mr. Harrington in this case, be such as would prompt
2 him to take the stand and testify falsely? Or to stretch
3 the truth in favor of the defendant and to protect the
4 defendant? If this defendant had protected the McNamaras
5 and this witness in that case, wouldn't it be natural for
6 the witness to show his gratitude to hang together, to
7 stick together and take the stand, and wouldn't the fact as
8 to whether or not Mr. Harriman had any bias or prejudice be
9 a pertinent, material and relevant fact in this case?
10 Wouldn't the jury be entitled to know his relation to this
11 case?

1 I want to be careful here and not allow my mentality to
2 be misinterpreted. This case does not say, but in effect
3 it holds that the bribery committed in the defense of a mur-
4 der case is a fact, that so far as a witness is concerned
5 is relevant and material, not to the precise fact in dis-
6 pute, but to the issues of the case, that it comes in,
7 as subdivision 16 provides, that it may come -- subdivision
8 16 of section 1870 of the Code of Civil Procedure, that
9 the facts which illustrate the relations of a witness to a
10 case as provided for in section 1847 of the Code of
11 Civil Procedure may be introduced in evidence, and the
12 only time it can be introduced is when the defendant
13 gets through with his witnesses, which is the time pro-
14 vided for in rebuttal, the only possible time. Why, plain,
15 knowledge of the terms of the English language and an ex-
16 amination of the code itself ought to be sufficient to dem-
17 onstrate that the People have no other opportunity to at-
18 tack the motives of the witnesses for the defendant, except
19 upon rebuttal; they have no other opportunity provided by
20 law for them to do that, and when that time comes, then
21 they have the right to put in the evidence at that time
22 in rebuttal. Now, Mr Harriman says he has no personal
23 relation to this case. Your Honor allowed him, on cross-
24 examination, to be asked, "Did you not have this conversa-
25 tion?" "Didn't we argue that matter before your Honor at
26 that time? Didn't your Honor hold that the question as to

1 whether or not he had such a conversation was the same sub-
2 ject, the same subject matter as the witness' statement
3 that he had no personal interest in that case? Your Honor
4 held that it was and I agreed with your Honor at that time.
5 Your Honor was absolutely right in so doing, and I think
6 your Honor has overlooked the fact that he was permitted
7 on cross-examination, and it is our duty at this time to
8 call these facts to your Honor's attention.

9 THE COURT: I have read the testimony on page 4207 and 4209
10 and I have not overlooked the fact, I read the testimony.

11 MR FORD: On cross-examination of Mr Harriman?

12 THE COURT: Yes sir.

13 MR FORD: That he had no interest in the McNamara case?

14 THE COURT: yes sir.

15 MR FORD: And your Honor held that it was relevant and
16 competent.

17 THE COURT: Yes; but the citations in the case of people
18 vs. Webb have specifically held, on the ground that impeach-
19 ment was permitted on a collateral matter --

20 MR FORD: I will get to People versus Webb in a moment.

21 MR FREDERICKS: But we maintain this is not a collateral
22 matter, not an immaterial matter.

23 MR FORD: I want to finish the case of People versus Wong
24 Chuey: "If the witness was such an active partisan of the
25 defendant as to be engaged in suborning witnesses in his
26 behalf, that fact was most material in weighing his tes-
timony. In rebuttal, the prosecution contradicted the

1 witness Chee by placing Courtney upon the stand, who tes-
2 tified to the attempted bribery. This evidence was given
3 under objection, but we see no valid objection to it.
4 The case of People versus Dixon, 94 Cal., 255, and People
5 versus Choy Ah Sing, 84 Cal., 276, in no way supports
6 defendant's contention. The evidence proposed to be shown
7 in those cases in no way attacked the credibility of the
8 witness giving it. Here the evidence is a direct attack
9 upon his credibility. The evidence was not offered as tending
10 to show the guilt of the defendant, or as in any way smirch-
11 ing his character by intimating that he was a party to the
12 proposed bribery. But it was offered for the purpose of
13 shedding light upon the evidence of the witness himself. "
14 In most cases here where the credibility of witnesses was
15 touched upon at all, the court held it was not a material
16 fact. The law does not regard trifles, it must be some mater-
17 ial fact. Here the evidence is a direct attack upon his
18 credibility, as it is in this case, "The evidence was not
19 offered as tending to show the guilt of the defendant, or
20 as in any way smirching his character by intimating that
21 he was a party to the proposed bribery -- it is not di-
22 rect -- it is not identical, rather, the evidence is not
23 offered as tending to show the guilt of the defendant, or
24 in any way smirching his character, or intimating that he
25 was a party to the proposed bribery." Nor, in this case
26 is it offered as tending to show Mr Darrow is guilty of the

1 crime of bribery or any attempt to show Mr Darrow was a
2 party to the Times explosion; it is not offered for that
3 purpose; it is affecting the credibility of Harriman,
4 that is the man we are interested in.

5 "It was offered for the purpose of shedding light upon
6 the evidence of the witness himself. In the case of Lewis
7 vs. Steiger, 68 Cal., 200", a civil case, but it is here
8 applied to a criminal case -- "it is said that it is not to
9 be doubted that where a witness for the defendant has at-
10 tempted to dissuade one of the plaintiff's witnesses from
11 attending the trial,

21p 1 and denies on his cross-examination that he has done so,
2 the plaintiff is entitled to give evidence to contradict
3 him in this respect. So in the case under consideration,
4 it was competent for the defendant to show that the
5 witness Miller had endeavored to corrupt the witness
6 Webster, and induce him to swear false in this particular
7 suit, to the prejudice of the defendant.' (See also,
8 People vs Murray, 85 Cal. 350) "

9 Now, in People vs Webb, which your Honor has
10 called our attention to, 70th Cal, it is a very short
11 decision--now, the decision of People vs Webb, the
12 decision itself is very short and I want to say we have
13 no quarrel with the language of the decision, because
14 we believe it is the law: "On the trial of this case,
15 after the prosecution had announced that the case was
16 closed, the court permitted the District Attorney to
17 recall a witness for the defendant, who had been examined
18 and cross-examined; for further cross-examination, in order
19 to lay a foundation for impeaching him. On the cross-
20 examination for that purpose, the witness was asked ques-
21 tions which were answered without objections. But the
22 subject matter of the cross-examination was collateral, and
23 not relative to the issues being tried, and the prosecution
24 was bound by the answers of the witness; as to them he
25 could not be contradicted. It was, therefore, error to
26 allow, against the objections and exceptions of the
defendant, the testimony offered and given to contradict

1 the witness."

2 Now, what are the facts in that case? What are the
3 facts before the court that the court holds to be col-
4 lateral? The facts were, the defendant in that case was
5 convicted of the crime of perjury, and upon the trial of the
6 case he produced a witness, B F Napthaly on the trial after
7 the prosecution had closed the case, and the court permitted
8 the prosecution to call one B F Napthaly, a witness for the
9 defendant, for further cross-examination, on such cross-
10 examination, the witness, after testifying that he presented
11 the petition upon which the perjury charge was predicated
12 to Judge Murphy of the Superior Court, he was asked by the
13 prosecution whether at that time he stated to Judge Murphy--"
14 not what defendant had done at all, but the witness was
15 asked if he, Napthaly, had stated to Judge Murphy that he
16 would not be responsible for the writ, that he knew nothing
17 about it, and did not like the appearance of the petitioner.
18 The witness denied having made such statements, and the
19 prosecution, against the objection and exception of the
20 defendant, then called Judge Murphy to contradict the witness.
21 Where is the materiality of that, where is the comparison
22 between that state of facts and the facts in the case at
23 bar? Your Honor, what possible resemblance is there
24 between the two situations? Mr. Farriman has been asked if
25 he went to such a place and made some comments on what the
26 defendant did. This was not throwing any light upon the

1 witness with reference to the case, it was not showing
2 any motives on the part of the witness at that time. If it
3 did, your Honor, in this question throw any light upon the
4 credibility of the witness, as I claim it did not, as it
5 has been expressly overruled in the case of people vs
6 Wong Chuey--but I do claim it does not show anything--
7 THE COURT* That case was reversed because of that ques-
8 tion.

9 MR. FORD. Yes, the case was reversed because the questions
10 upon ^{which} they sought to contradict him were immaterial, abso-
11 lutely immaterial. I want to show your Honor that the
12 term "collateral" as used in that decision was as to some
13 other matter, a conversation not in the presence of the
14 defendant, a conversation not shown to have been authorized
15 by the defendant, a conversation that is no part of the
16 perjury charge, absolutely collateral in the sense that
17 it is immaterial, and irrelevant; it was not admissible
18 in any stage of the case, as showing the guilt of the
19 defendant and it could not be admissible in rebuttal as
20 showing the guilt of the defendant. It might show the guilt of
21 the /defendant but it would not be admissible for that purpose;
22 if it was admissible at all, your Honor, it would have
23 to be admissible as some material or impeachment of the
24 witness's testimony, but it does not appear that it was,
25 it does not even appear that this was an impeachment, the
26 previous testimony given by Mr. Napthaly, it does not appear

1 that it was a matter that was inconsistent with some other
2 testimony given in the case given by Mr. Napthaly, because
3 your Honor will recall the decisions have held if a
4 witness has testified to a certain state of facts, in the
5 callagher case, the defendant himself, in the Gallagher
6 case, 100 Cal. in that case the defendant himself has
7 testified to a certain conversation he had and he was
8 cross-examined upon his conduct, which the court held
9 was inconsistent with his having held the conversation he
10 claimed to have held.

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1 The court held it was the same subject matter, it was cross-
2 examination upon it and the foundation laid, and He was
3 impeached upon the matter:

4 Now, Captain Fredericks read the legal portion of the de-
5 cision of Anderson v. Black, and I want to call your
6 Honor's attention to the situation in that case, as to
7 the facts. "Another question which it is claimed should
8 have been allowed to be answered by the witness Anderson
9 was "I would like to know if you did not, in the month of
10 December last, go upon this ground when they were in pos-
11 session, working peaceably, with shotguns in the night time
12 and take forcible possession? The reason of its being
13 regarded as a proper question by the defendants is that
14 the witness has been inquired of if he entertained any
15 bias or ill-will toward the defendants, and that he had
16 replied, 'No sir, I do not, except one'; and that, there-
17 fore, as tending to show the state of mind of the witness
18 as biased against the defendants, it was proper to show an
19 act of violence done toward them by the witness. "

20 Now, in that case, your Honor, if it was proper to show
21 bias, or ill-will on the part of a witness toward the
22 plaintiff, in this case, it is proper for us in this case
23 to show bias and ill-will on the part of this witness,
24 Mr Harriman, against the prosecution, to show a community
25 of purposes between him and this defendant, which would
26 show the existence of a state of mind, of a motive, and

1 the relation to the case, absolutely inconsistent -- not
2 inconsistent with his testimony, but casting grave doubts
3 upon his credibility. That is the object of it. Now, other
4 cases upon the same point, I want to cite your Honor to,
5 and let your Honor read them at your leisure, the case of
6 People v . Lee Ah Chuck, 66 Cal., 667, People vs. Thompson,
7 97 Cal., page 506; People vs. Murray, 85 Cal., page 350,
8 also Lewis vs. Steiger, 68 Cal., at page 200.

9 MR APPEL: I would like to answer on that Wong Chuey
10 case. I am very well acquainted with the Chuey case, your
11 Honor, one Wong Wing, Wong Chuey and Wong Chee, three men,
12 Wong Chee, the head of the Highbinders assisted Wong
13 Chee and Wong Chuey and his brother and Wong Wing, his
14 hatchet-man, were being tried for killing Louie Suey
15 at the corner of First and Alameda street. I was prosecutor.
16 Mr McComas and I were prosecutors, and on the other side
17 there was messrs. Marble & Phibbs, Henry T. Gage, and W. I.
18 Foley defending. We were trying one of the defendants,
19 that is Suey, the one who fired the shot. Chuey was a
20 fellow about his size, your Honor (indicating). We intro-
21 duced the evidence of some policemen that Wong Chuey went
22 down there to the police station, that his pistol, the
23 pistol that was found by the policemen within three feet of
24 where he was hiding in a gutter in a small alley, a little
25 alley about three feet wide, down there in the classic
26 precincts of Ballerino's old headquarters, the policeman

1 caught him red-handed and the pistol was found three feet
2 from him; they took him down to the station, your Honor,
3 and the pistol was placed upon the desk of the sergeant,
4 in charge of the police station that night, and Little Chuey
5 said that that was his pistol. Now, we introduced that
6 declaration in order to identify the weapon as being the
7 weapon with which he did the shooting, that, in connection
8 with the fact he was lying in the gutter with the pistol
9 that showed it had been freshly exploded, he was seen
10 running in that direction, the policeman following him,
11 with his victim lying within 30 feet of him inside of a
12 little room, we thought we would identify the pistol that
13 way. Now, this other man, Wong Chee, was sitting there in
14 the court room, your Honor, as a co-defendant. Now, Cortney,
15 two carpenters had been to see us, and they told us that
16 Mr Chee was a member of an allied family, our witnesses
17 showed that Chee was there at the killing, your Honor,
18 and that Wong Wing was there and Chuey was there, the three
19 defendants.

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1 Mr. Chee brought a man by the name of Foster who testi-
2 fied he had met him at the corner of Second and Main and he
3 brought another gentleman here, whose name I do not wish
4 to mention, who is a one-armed officer, who claimed he
5 was there with Foster, -- Foster happened to be working
6 down at Santa Anna and we showed that against Foster and
7 this one-armed man happened to be the man who received
8 tickets at the Los Angeles Theatre, which afterwards was
9 the Orpheum, we showed he was there, and we wanted to
10 introduce the evidence of Courtney your Honor, and
11 I said to McComas, "Now, let us see whether we cannot
12 introduce it." I called Mr. Chee, one of the defendants,
13 to the stand and asked him what his name was and Mr. Gage
14 got up and he objected, he protested most vigorously to
15 my asking questions of one of the defendants, not the one
16 on trial--I took the ground I could ask any question of the
17 defendant, and of, course, he didn't have to answer, if he
18 claimed the privilege, and Mr. Gage advised him not to
19 answer. I says, "All right, if he doesn't want to answer,
20 let him go off the stand," and he did. I did it for
21 the purpose of compelling them to put that man Chee on
22 afterwards. I conjured in my mind that not having allowed
23 him to answer it would make an impression upon the jury and
24 that Mr. Gage would eventually put him upon the stand and
25 he did put him upon the stand, just as I expected, and Mr.
26 Chee testified he had known Chuey for 20 years and he had

1 never heard him speak a word of English, in contradiction
2 of the testimony of the policeman, who said that Chuey said,
3 "That is my pistol." Now, knowing what Courtney had told
4 us, and another carpenter, in that case itself, in that
5 case where you are directly interested, where we charged
6 in this indictment you and the defendant and Wong Wing
7 killed and murdered Louis Suey, we asked him the question,
8 "Didn't you in this very case the other day at a certain
9 time, away up in that room, away up above a store at the
10 corner of First and Nigger Alley, didn't you take these
11 two men up there, and particularly Courtney, and say to
12 them, 'Now, look here, this is the question I want you to
13 testify, that you met me on Main street at a certain hour
14 the night of the killing, you need not be afraid, I will
15 pay you \$500 if you testify, certain contractors well
16 known in this town, I have arranged with them that they
17 will testify to the same thing, and Foster and the one-
18 armed ex-policeman, ex-constable and ex-employee of the
19 Southern Pacific at the old station on Alameda street are
20 going to testify to the same fact.'" We had a right to
21 show in that very case that man was trying to procure false
22 and fraudulent testimony in that case, and that is the
23 Chuey case. Your Honor, I introduced that evidence and I
24 convicted Mr. Chuey and the Supreme Court affirmed the deci-
25 sion, and I introduced it on the decisions that if any
26 witness goes upon the stand here and testifies, either for

1 the People or for the defense, that the party against
2 whom he is called may show that in that very case he is
3 manufacturing evidence. In this very case, if Mr. warri-
4 man, your Honor, had said to Cantrell, "Cantrell, wont
5 you go over there and say that onthe morning of the 28th
6 you were with me down at the headquarters, went down south
7 Main street and that you were with me at the time and that
8 I did not come in my office or Mr. parrow's office and didn't
9 meet Franklin, and I will give you \$500," why, we would
10 not have a right to object. These are matters concerning
11 the case of Mr. Wong Chuey in the very case in which he was a
12 defendant and in the very case in which he was a witness,
13 that is, he was trying to get evidence, fraudulent evidence,
14 in favor of the defendant then on trial. What is this
15 case? Counsel says, your Honor, that these decisions that
16 we cited do not come under those sections of the code he
17 has read. Your Honor, I say to you, you can take this
18 code, and you will find every one of those decisions cited
19 directly under those sections of the code he read, and
20 we got them from there, I venture to say, your Honor,
21 that every one of those sections which counsel read are
22 named in each one of those decisions, and I did not cite
23 them, nor did I cite the quotations upon which those
24 cases were decided, following those cases, nor did I
25 mention the sections quoted in there as being applicable
26 to those cases.

1 the most of them, and they all mention collateral, they
2 do not say immaterial; it is not true that they base it upon
3 the fact it was immaterial; those rulings are based entire-
4 ly upon the fact that they are collateral. Must I go over
5 them and contradict counsel? It reminds me of something I
6 saw down in Tuscon, Arizona, when I was a little bare-footed
7 boy, there was a break in the jail about sundown, and one
8 of the prisoners put his hand in the door, and he says,
9 "Catch them; catch them; they have broken jail", and he was
10 a little behind the other prisoners, and he walked out
11 behind the other prisoners and he sneaked away, and he is
12 the only one that ever got away while they were in pur-
13 suit of the others, and here is a whole lot of things right
14 here, and they say right here, they use the word "immaterial"
15 in those decisions, and raise a whole lot of dust here.
16 They have not analyzed the cases, and this Wong Chuey case
17 has as much to do with that decision as ^a last year's bird's
18 nest with the convention that is now in progress to put
19 upon the country the birth of a new party called the
20 "Moose Party". Here is a statement removed from this
21 case, from the testimony of Mr Harriman, of a year and 27
22 days. If Mr Harriman had been caught red-handed making
23 evidence for Mr Darrow in this case, why, it would be cross-
24 examination, of course. That is the reason we asked a de-
25 tective on the stand here, your Honor, when he testifies
26 against us, "Are you in the employ of the prosecution? A--

1 Yes. Q -- Are you around searching for evidence, are you
2 employed to get evidence against us? A -- Yes." That
3 shows his interest and relation to the case, but the re-
4 lation of Mr Harriman to the fact that he knew that a
5 crime was going to be committed and that he was a party
6 to it, I say, does not touch either the question of his
7 subsequent testimony concerning the facts that occurred a
8 year and 27 days afterwards. Collateral; immaterial.
9 Your Honor, that Wong Chuey case; I tried that case.

10 THE COURT: Gentlemen, in view of the difference of opin-
11 ion between counsel on this matter, it becomes my duty to
12 examine these cases a little more carefully. I will not
13 attempt to do it tonight, but I will before 10 o'clock to-
14 morrow morning.

15 MR DARROW: May I make a suggestion, as long as you are
16 not going to do any more tonight?

17 THE COURT: Yes, I will call the jury for the purpose of
18 adjournment.

19 MR DARROW: Yes, but what I have to say will be very brief.
20 The law is very plain, fixed in the code, it is practically
21 common law. There are certain things by which a witness
22 may be impeached, and only certain things, and they are
23 very few. You may impeach him by bringing evidence that
24 he is not worthy of belief under oath, that his general
25 reputation is bad, and that he cannot be believed; you may
26 impeach him by showing he has been convicted of a crime;

1 you may impeach him by showing he has made contrary
2 declarations at some other time and place in which the de-
3 clarations must be stated to him; you may impeach him or
4 seek to injure his character by showing his interest in the
5 case. Now, that is about the end of them. It is not nec-
6 essary that he should have sought to bribe a witness, you
7 may ask him if he ran an errand for somebody; if he was
8 a special friend or he made threats, if he is interested
9 either for or against the defendant; that is about the end
10 of it, and I think the end of it, and this "Heathen Chinees"
11 case, of course, is right square on that line, showing his
12 interest in the particular case; it could not go any fur-
13 ther. If instead of trying to bribe a witness he had
14 sought to find one, in a perfectly legitimate manner, that
15 could have been shown, to show his interest, that is all.
16 You could not show some other transaction. If so, there
17 would be no end to it, any possible transaction might be
18 shown if that was the case. This amounts to simply this:
19 an effort to show that the witness had done something
20 criminal or reprehensible and therefore, he could not be
21 believed in this matter, which, of course, is prevented by
22 the statute law and by the common law; it really has not
23 any connection with it. The only thing is, did he swear
24 falsely or truthfully in this case while I am on trial; "
25 his relation to me could be shown, whether he was my friend
26 or my enemy as his interest in this case, and not in any
other case.

1 THE COURT: Bring in the jury, Mr Bailiff.

2 (Jury return to court room.)

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35p 1 THE COURT. The jury is again present. The court makes
2 an order vacating and setting aside the order sustaining
3 the objection of the defendant and leaves the matter open
4 to be ruled upon tomorrow morning at 10 o'clock. The
5 ruling will be made at that time. This is done in view
6 of the argument presented by the prosecution.

7 MR. DARROW. Do you want any more authorities?

8 THE COURT. I think the authorities cited, I have them in
9 my book, and unless there is something particularly
10 pertinent, that is about all I will be able to read and
11 glance at between half past 8 tomorrow morning and 10.

12 MR. GEISLER. We have a great many text books and of other
13 states.

14 THE COURT. I want to examine the decisions of our own
15 court, I belong to that, and not to the others.

16 (Jury admonished) The court will now adjourn until 10
17 o'clock tomorrow morning.

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