

Mr. Dorsey (resuming): Now, may it please Your Honor, if they don't see the force of it, you do—

Mr. Rosser: I want to know, is Your Honor's ruling to be absolutely disregarded like that?

The Court: Mr. Dorsey, stay inside of the record, and quit commenting on what they say and do.

Mr. Dorsey: I am inside of the record, and Your Honor knows that's an entirely proper comment.

Mr. Rosser: Your Honor rules—he says one thing and then says your Honor knows better.

Mr. Dorsey: Your Honor knows I have got a right to comment on the conduct of this defendant.

The Court: Of course, you have, but when they get up and object, I don't think you have any right to comment on their objections as they are making them to the Court.

Mr. Dorsey: I don't?

The Court: No, I don't think so.

Mr. Dorsey: Isn't everything that occurs in the presence of the Court the subject matter for comment?

The Court: No, I don't think you can comment on these things. You can comment on any conduct within the province of this trial, but if he makes an objection that's sustained, why, then you can't comment on that.

Mr. Dorsey: Does your Honor say I'm outside of the record?

The Court: No, I don't, but I say this, you can comment on the fact that Frank refused to meet this man, if that's in the record, you have the right to do that.

Mr. Dorsey (resuming): This man Frank, with Anglo-Saxon blood in his veins, a graduate of Cornell, the superintendent of the pencil factory, so anxious to ferret out this murder that he 'phoned Schiff three times on Monday, April 28th, to employ the Pinkerton Detective Agency, this man of Anglo-Saxon blood and intelligence, refused to meet this ignorant negro, Jim Conley. He refused upon the flimsy pretext that his counsel was out of town but when his counsel returned, when he had the opportunity to know at least something of the accusations that Conley brought against this man, he dared not let him meet him.

Movant says that the Court erred in allowing the Solicitor-General to comment upon an alleged failure of the defendant to meet the witness, Conley and erred, when the defendant's counsel objected and interrupted him, the same not being authorized by the evidence, and erred in not stopping the Solicitor-General, and erred in not making a decisive and unequivocal ruling that such comment was improper, and should not influence the jury, and further erred in allowing the Solicitor-General to comment, as he did in the foregoing statement of facts, upon the interruption; and the Court expressly erred in ruling that the Solicitor-General could comment upon the fact that Frank refused to meet Conley; and because of such failures and errors on the Court's part, and because of such improper and prejudicial argument by the Solicitor-General, the movant says that a new trial should be granted him.

99. Movant further says that a new trial should be granted because of the following: