

J. D. FREDERICKS.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,

IN AND FOR THE COUNTY OF LOS ANGELES.

Dept. No. 11.

Hon. Geo. H. Hutton, Judge.

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The People of the State of California,

Plaintiff,

vs.

No. 7373.

Clarence Darrow,

Defendant.

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REPORTERS' TRANSCRIPT.

VOL. 14

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
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B. N. Smith,
Official Reporter.

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1 Defendant in court with counsel. Jury called; all present.

2 Case resumed.

3

4 THE COURT. Are you ready to proceed with the cross-
5 examination of Mr. Franklin?

6 MR. ROGERS. Yes, sir. I think I may say, if your Honor
7 please, on looking up the authorities I find that a number
8 of decisions have laid down the rule that we should be per-
9 mitted to recall him from to time in the Court's discre-
10 tion, if we desire, but I will go on as best I can.

11 THE COURT. Well, of course, we will cross that bridge when
12 we come to it.

13 MR. RIGERS. I wished to outline my position so there would
14 be no misunderstanding about it.

15

16 BERT H. FRANKLIN

17 on the stand for further cross-examination.

18 MR. ROGERS. Q Mr. Franklin, when you were--before you left
19 the United States District Attorney's office did you make
20 any application to Samuel Brown or to any person in the dis-
21 trict attorney's office for employment? A I did.

22 Q How long before you left the United States Marshall's
23 office? A Before I left there? No, sir, I did not.

24 Q Did you telephone on a number of different occasions
25 from the United States Marshall's office to the district
26 attorney's office before you left there? I am speaking

1 about immediately before, within two or three weeks?

2 A Well, not in regard to anything of that nature, no, sir.

3 I don't remember any telephone communication of this kind.

4 I may have telephoned?

5 Q You may have telephoned? A Yes, I may have done in

6 business.

7 Q You remember whether or not you telephoned practically

8 daily for the last two or three weeks that you were in the

9 United States Marshall's office to the United States District

10 Attorney's office?

11 MR. FREDERICKS' I don't think counsel meant that question.

12 (Last question read by the reporter.)

13 MR. FORD. I don't see what relevancy--

14 MR. ROGERS. If I have misspoke the question I beg your

15 pardon. From the United States Marshall's office to the

16 State's Attorney's Office. Pardon me if I misspoke myself.

17 A No, Mr. Rogers, I am able to testify with certainty that

18 nothing of that nature occurred.

19 Q If not almost daily did you not frequently? A No, sir,

20 I don't think I telephoned at all.

21 Q How soon after leaving the United States Marshall's office

22 was it that you applied to the district attorney's office

23 or to any member of it or to any person connected with it,

24 for employment? A Now, Mr. Rogers, so the record may be

25 correct, I think in your first question to me you said

26 before I left the United States District Attorney's office.

1 I think you meant the United States Marshall's office.

2 Q I did. Now, what is your answer? (Last question read
3 by the reporter.) A I never, Mr. Rogers, made an applica-
4 tion. I met Mr. Ford, I think, on the street, and told him
5 I would like to secure employment on any line of work that
6 he might have.

7 Q How long was that before you went into the employment
8 of the McNamara defense? A Well, of necessity it could not
9 have been over two weeks.

10 Q To whom did you first apply in the McNamara defense people
11 or those connected with the McNamara defense for employment?

12 A Why, I think I met Mr. LeCompte Davis on the street and
13 spoke to him about it at the corner of First and Spring, if
14 I remember correctly. I think he is the first one I mention-
15 ed it to.

16 Q Did you mention it to Mr. Harriman at any time?

17 A Job Harriman, you mean?

18 Q Yes. A I think I did, yes, sir. I am not positive
19 but I am quite sure that I did.

20 Q How long after your conversation with Mr. Ford or with
21 any person connected with the district attorney's office,
22 was it, that you spoke to Mr. Harriman about getting a job
23 with the McNamara defense? A Now, read that question.

24 (Last question read by the reporter.) Well, to be absolute-
25 ly correct about it, I don't remember of asking Mr. Harriman
26 or speaking to him about it, but I think that I did, and if

1 I did it was sometime, I should say, between the 14th of
2 June and the 29th of June.

3 Q That is not quite the question, Mr. Franklin. Will you
4 be kind enough to listen to the question. Either I don't
5 understand your answer or my question is not understood
6 by you. A I will try to answer the best I can.

7 Q All right, read it again. (Last question read by the
8 reporter.) A I can't answer that question for the reason
9 that I don't remember having any conversation, at this time,
10 with Mr. Harriman, but my impression is that I did. I want
11 to be fair about it but I don't remember the particular
12 occurrence, Mr. Rogers.

13 Q When did you speak to Mr. Ford about employment with the
14 State's Attorney's office? A Why, I think it was the day
15 that I quit the United States Marshall's office, but I am
16 not sure.

17 Q What day was that?
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1 A I think the 14th of June. I could tell by looking at a
2 memorandum that I have in my pocket.

3 Q Did you ever speak to Mr Scott about employment?

4 A I did.

5 Q In the McNamara case? A Yes sir.

6 Q I refer to Mr Joseph Scott, one of the attorneys.

7 A Yes sir, I did.

8 Q When was that compared with the time you spoke to Mr
9 Ford? A I couldn't tell you, but if you allow me to look
10 at a letter I have in my book --

11 Q You may look at the letter for the purpose of refresh-
12 ing your recollection.

13 A June 27.

14 Q June 27? A Yes sir.

15 Q Did you speak to Mr Scott about getting into the McNamara
16 defense before or after you spoke to Davis? A After.

17 Q Referring again to the matter of telephoning, I want you
18 to understand what I mean by it, so that there will be no
19 possibility of misunderstanding about it. I understand you
20 to say that you did not telephone a number of times from the
21 United States Marshal's office, to the State's attorney's
22 office immediately before you left the United States Marshal's
23 office, that is, within a short time, ten days or two weeks?

24 A I am absolutely sure of that. I do not wish to be under-
25 stood as saying that I did not telephone at all, but I have
26 no recollection of phoning at any time. I may have done it.

1 Pardon me just a minute. Will your Honor have those shades
2 lowered?

3 THE COURT: Mr Bailiff, will you lower those shades.

4 MR ROGERS: Did you ever speak to Sam Browne about employment
5 in the District Attorney's office, or in connection with it.

6 A When do you mean? Q At any time.

7 A Well at any time, you will have to fix the time.

8 Q About the time of your leaving the United States Marshal's
9 office, or thereabouts, around there? A I did not, no sir.

10 Q Did you ever speak to him since you left the United States
11 Marshal's office, about employment connected with the Dis-
12 trict Attorney's office? A In his department, no sir, or
13 any other department. No sir, I did not.

14 Q Under any circumstances, at any time, or under any con-
15 ditions? A Under any circumstances, or any time or any
16 conditions whatsoever you may name, I did not at any time
17 speak to Sam Browne, in regard to a job, no sir, for myself.

18 Q Or anybody else? A Not that I remember at this time --
19 I think I did, yes sir, at one time.

20 Q Who was that? A Mr Starkey. Fred Starkey, and I
21 think he obtained employment or work there for a short time.

22 Q When was that? A About a year or a year and a half
23 before I left the United States Marshal's office.

24 Q I am speaking, of course, about the time you left and
25 afterwards. A Well, Mr Rogers, nothing of that kind.

26 Q Now, have you been employed by the county of late, or by

1 any office of the county or any county officer.

2 A In this county?

3 Q Yes. A In an official capacity I presume you mean

4 Q In any capacity? A No sir, I have not.

5 Q Coming now to the time you spoke to Mr Ford, you say
6 you think that was approximately the day you left the United
7 States Marshal's office, which was the 27th day of June?

8 A I think -- I did not leave the United States service the
9 27th day of June.

10 Q When did you leave it? A The 14th.

11 Q Well, it was approximately the 14th of June? A I think
12 it was the same day I left. I am not sure. Yes sir.

13 Q I believe you said, going to another matter for a moment,
14 I believe you said you knew George Hood? A Yes sir, very
15 well, intimately for years.

16 Q Did you meet George Hood at the Court of Forrester's in
17 this city, at approximately the time that you were fined in
18 the adjoining department here, that \$4000? A What do you
19 mean by "approximately"?

20 Q The ordinary use of the term, I mean, in that vicinity
21 or close to it. A Within a week?

22 Q Well, answer it if you please, you may make your own
23 approximation. A Yes sir, but I want you to specify the
24 time. I am not going to do it.

25 Q Do you remember having a conversation with him close to
26 the time that you were fined that \$4000 in the adjoining
department? A No sir, I did not. I did have a conversation
with George Hood, though.

1 Q Do you remember when that was? A Well, I think I do,
2 but I am not sure. I think it was the 15th day of June, 1911,
3 Monday night, the 15th day of -- no, not June, the 15th day of
4 January, 1912.

5 Q Where was it? A I think it was within a half a block
6 of the Walker Theater building where our lodge meets.

7 Q Do you remember a conversation with him the night before
8 you plead guilty in the adjoining department and got that so-
9 called fine of \$4,000? A I do not, and I am not sure about
10 this time, remember, but I think that time when I had a con-
11 versation with Mr Hood. In fact, I am quite sure that I did.

12 Q At the conversation which you had with Mr Hood, yourself
13 and he talking together, no other persons being immediately
14 present, did you say this to Mr Hood, as follows: That is,
15 did this conversation occur as I will give it to you: did
16 he say to you, "Bert, you are a damn fool. Why didn't you
17 take that money and put it down in your jeans and just simply
18 tell it was all fixed and not take a chance of going behind
19 the bars." Did you reply to him: "My God, George, I couldn't
20 they were watching me too close." Then, did he ask you
21 "Where did you get that money?" Then did you reply to George
22 Hood, "The man that I got the money from, or who fixed up the
23 proposition --" Using one of those two terms, either the one
24 "Who fixed up the proposition", or the one "The man I got the
25 money from was a stranger to me, I never saw him before, he
26 was standing within thirty feet when the money was passed and

1 he just disappeared and I have never seen him since"; didn't
2 George say to you, "Couldn't you locate him?" And didn't
3 you say to him, "I don't know whether I could or not"; that
4 you had been waiting, hoping to hear from him; that if you
5 had the resources of the District Attorney's office behind
6 you you might locate him, but as it was then, you didn't
7 know whether you could or not. Did you further say to him
8 it was your impression it was a San Francisco man and he
9 might have been an eastern man, he was a stranger in Los
10 Angeles, you were sure of that?

Sm 11 A Now, your Honor, if Mr Rogers will ask me those
12 questions seriatim I will answer them the best I can "yes"
13 or "no".

14 Q I have given the conversation. Did you have that con-
15 versation, then we will take it up seriatim?

16 A I can't answer that question "yes" or "no".

17 MR FORD: I suggest the witness have the reporter read the
18 question to him.

19 A I'd like to have the question read and asked seriatim,
20 and I will answer it.

21 MR ROGERS: I have not finished. I will finish it. Then,
22 in that same conversation, was Darrow's name mentioned by
23 one or the other of you, either by your or Hood, and did
24 you not say then that Mr Darrow is a friend, speaking to
25 Hood -- saying to George Hood, "George, you never can know
26 what that man has done for me", or words to that effect or

1 substance? A Now, if the question will be asked
2 one at a time I will try and answer them. Your Honor,
3 I know what he has stated in his question, but I am not
4 able to answer all at one time. I can answer them as he
5 asked them one at a time, simply because if I said yes to
6 one part of it, it would be a lie to the other part. I did
7 have part of that conversation with Mr Hood; I am willing
8 to tell what part I had.

9 Q What part did you have, and what part did you not
10 have?

11 MR FORD: I want to make a suggestion that the reporter
12 can read the question right along and let him answer it,
13 and just keep on answering it.

14 THE COURT: I think we can get it.

15 MR ROGERS: Did you say this part, and Hood say this part
16 to you: "You are a damn fool. Why didn't you take that
17 money and put it down in your jeans and just simply tell
18 it was all fixed, and not take chances of going behind the
19 bars"? A No.

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1 Q Did you say to him, "By God, George, I couldn't, for
2 they were watching me too close?" A No.

3 Q And then did he ask you where you got the money, or in
4 some form or other, not being able to give the exact words?

5 A Mr. Rogers, I think it was the 15th day of January, 1912,
6 I had a conversation with Mr. Hood at the corner of Seventh
7 and Grand Avenue in this city, at the northeast corner.

8 When you asked me the other day in regard to it I had for-
9 gotten it. Mr. Hood called my attention to it yesterday
10 and I then remembered the conversation. I remember it now,
11 and I wish to tell you as near as possible what occurred.

12 Q Be kind enough to answer the question. A Yes. When I
13 get to it so I can. Now, what is it you want to know.?

14 Read the question. (Last question read by the reporter.)

15 He did not; no, sir.

16 Q Then did you say to him, "The man you got the money from"
17 or who fixed up the proposition, one or the other of those
18 questions, was a stranger to you and you never saw him before,
19 that he was standing within thirty feet of you when the money
20 was passed; that he just disappeared when the crack came

21 and you had never seen him since? A No, part of that con-
22 versation is true and part not true.

23 Q Which part is not true and which part is true? A I told
24 Mr. Hood at that time that the man, if there was one man,
25 that ^{if} I could find him, that I could clear myself, I thought;
26 that the man that was instrumental in getting me in that

1 trouble was near me when I was arrested, and, by the way,
2 I didn't at that time mean Mr. Darrow. I will be frank with
3 you about it. It was in pursuance to a conversation we had
4 an agreement the day before as to what I was to say. That
5 was on the 14th day of January.

6 Q Did you say in that conversation that he just disappeared
7 and that you had never seen him since? A I don't remember
8 saying that, no, sir.

9 Q Did Hood ask you then, "Couldn't you locate him?" And
10 didn't you say, you didn't know whether you could or not,
11 you had been waiting hoping to hear from him? A I think
12 I did say that, yes, sir.

13 Q Did you further say, "If you had the resources of the dis-
14 trict attorney's office behind you you might locate him?"
15 A Yes, sir, I think I did.

16 Q But as it was you didn't know whether you could or not?
17 A I think I said something to that effect, in substance
18 that.

19 Q Did you further say it was your impression he was a San
20 Francisco man or possibly an eastern man? A I think I did,
21 yes, sir.

22 Q Did you say in that conversation or at any time to Mr.
23 Hood, I believe that conversation, though, is the way I
24 prefer the question--upon Darrow's name being mentioned in
25 some form or other, that "Darrow was a prince"? A If I
26 remember correctly, Mr. Hood asked me what kind of a man

1 Darrow was; that he had heard so much about him and I
2 said to Mr. Hood that Clarence Darrow was a prince, perhaps,
3 or words to that effect--if I thought it I said it, and if
4 I remember it correctly, I spoke of Mr. Darrow in the highest
5 terms, yes, sir, and he is not the only one I spoke that
6 way to.

7
8 Q You said if you thought it you said it; Will you kindly
9 explain that? I don,t quite get your idea there. A Well,
10 perhaps that was not as plain as it might have been. If I
11 had any conversation in regard to Mr. Darrow it was to
12 praise him at that conversation, and I think he asked me
13 what kind of a man he was.

14 Q You said you started keeping a memorandum book on the
15 14th? A Yes, sir.

16 Q Does Mr. Hood's name appear in that memorandum book? A I
17 don,t think so. The fact that I was at lodge appeared in
18 the memorandum book, though.

19 Q Well, did Mr. Hood's name appear in it as one of the per-
20 sons you talked to? A I don,t think so. I didn't put
21 down the name of every person I talked to. Some of them I
22 did; depended entirely on who it was.

23 Q Now, when I was talking to you about the cashing of
24 that check of a thousand dollars at the bank, the First
25 National Bank, I asked you if you knew where the Merchants &
26 Manufacturers Association office is; do you? A I think I
do, yes, sir.

1 Q Have you ever been there? A Yes, sir.

2 Q When? A Oh, I was in the M & M Association numerous
3 times on lodge work and work they were interested in--land
4 shows--things of that kind, numerous occasions. I don't
5 remember the date.

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1 Q Any time since your arrest have you ever been there?

2 A I have, yes sir.

3 Q When were you at the office of the Merchants & Manu-
4 facturers' Association after your arrest? A Well, let me
5 think -- I think I can tell you, approximately, at least.
6 The latter part of January or the first of February; near
7 that date.

8 Q When was that that you were at the office of the Merch-
9 ants & Manufacturers' Association as compared with your
10 statement that you made to the District Attorney --
11 Assistant District Attorney, Mr Ford? A It was after-
12 wards, Mr Rogers.

13 Q Afterwards? A Yes sir.

14 Q How long afterwards?

15 MR FREDERICKS: Just a moment, may it please the Court.

16 We submit the answer is not intelligible, it isn't to me.

17 "It was afterwards". Which was afterwards? I don't under-
18 stand.

19 THE COURT: I don't think that is quite clear.

20 MR ROGERS: Well, I will put it in another form: Does your
21 memorandum book show when you went to the office of the
22 Merchants & Manufacturers' Association? A I don't think
23 it does, it may though, I am not sure about it.

24 Q Who went with you to the office of the Merchants &
25 Manufacturers' Association after your arrest? A Nobody.

26 Q You went alone? A I did, yes sir.

1 Q Do you know Mr Zeehandelaar, ^{the} secretary?

2 A Very well, yes sir.

3 Q Did you see him on that occasion? A I did, yes sir.

4 Q You know that the Merchants & Manufacturers Association
5 was interested in the prosecution of the McNamaras, and that
6 Mr Zeehandelaar is secretary thereof, do you not?

7 A It was common report that they were interested in the
8 prosecution, yes sir -- not in the prosecution, either,
9 rather in the clearing up of the matter. I presume in the
10 prosecution, if you want to put it that way.

11 Q You say no one went with you to the office of the
12 Merchants & Manufacturers Association? A Yes sir, and that
13 is true.

14 Q How many times did you go there? A One.

15 Q To the office of the Merchants & Manufacturers Associa-
16 tion after your arrest? A One.

17 Q Did you see Mr Zeehandelaar anywhere else, that is,
18 the secretary? A Now, pardon me; I was there twice, on
19 two occasions.

20 Q When was the other occasion you were in the office
21 of the Merchants & Manufacturers Association after your ar-
22 rest? A Shortly after my first visit.

23 Q How long after; will you give us an estimation?

24 A I think within a day or two.

25 Q You know, don't you, and did then, that the Merchants
26 & Manufacturers Association is interested in the fighting of

1 strikes and in combats against unions, and that the Merchants
2 & Manufacturers Association has had charge of all opposition
3 to strikes in this city for a long period of time?

4 A I have no such --

5 MR FORD: To that question we object upon the ground it is
6 incompetent, irrelevant and immaterial. It certainly is not
7 relevant to any issues in this case, what^{the} Merchants & Manu-
8 facturers Association do in regard to strikers, and that is
9 best evidenced by the fact -- I don't know it will be proper
10 for me to call attention to the association of any persons
11 with the Merchants & Manufactuers Association, but it cer-
12 tainly has no bearing upon the guilt or innocence of this
13 defendant whether the Merchants & Manufacturers Association
14 is opposed to union labor.

15 THE COURT: I presume this question was for the purpose of
16 searching into the motives.

17 MR ROGERS: Precisely.

18 THE COURT: Overruled.

19 A Read the question.

20 (Last question read by the reporter)

21 A I ~~can't~~^{can't} say that I understand it quite as particular-
22 ly as that, Mr Rogers; I have understood common report,
23 that the interests of the M & M Association and the unions
24 in this city are opposed to one another, apparently so,
25 seem to be, according to my mind.

26 Q Wasn't it in your mind, that is, didn't you know --

Pete

1 we will put that in a little different form -- Were you not
2 aware at that time that you went up there on those two occa-
3 sions that the Merchants & Manufactueers Association was in
4 charge of the fight against the strikers in the iron strikes
5 and which occurred just before the blowing up of the Times,
6 and had charge of the opposition to that strike?

7 MR FREDERICKS: That is objected to on the ground it is in-
8 competent, irrelevant and immaterial.

9 MR ROGERS: Searching his motives and reasons again; it is
10 only a part of them.

11 MR FREDERICKS: His motives and reasons can certainly have
12 no effect.

13 THE COURT: Objection overruled.

14 A I didn't understand that the M & M Association, Mr Rog-
15 ers, as a body, were making that fight. I had understood
16 that individual members of the M & M Association were making
17 a fight against the unions.

18 Q Didn't you understand -- A And I didn't think then
19 and I don't think now, that the Association, as a body --
20 or I didn't think then, I won't say anything about what I
21 think now -- but I didn't think at that time that the Asso-
22 ciation as a body, but simply as individual members, that
23 that body was fighting unions.

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6p 1 Q Didn't you know at that time that the Merchants &
2 Manufacturers Association had a strike committee and that
3 that strike committee was incharge of the opposition to the
4 iron strike, that Mr. Pridham was chairman of it?

5 MR. FREDERICKS. We object to that as incompetent, irrele-
6 vant and immaterial to any issues before this court.

7 THE COURT. Objection overruled.

8 A No, I do not know that.

9 MR. FORD. It is objected to on the further ground it is
10 hearsay.

11 THE COURT. Objection overruled.

12 BY MR. ROGERS. Q Mr. Pridham was the man you met in the
13 district attorney's office when you were arrested and
14 brought up, wasn't he? A R. W. Pridham?

15 Q yes, sir. A Yes, sir.

16 Q Did you know he was chairman of the M & M strike Com-
17 mittee? A No, Mr. Rogers, I did not. I don't know it
18 now.

19 Q Did you know when you went up to the Merchants &
20 Manufacturers Association that the Merchants & Manufactur-
21 ers Association had financed the fight against the strike,
22 the iron strike, for months? A No, I didn't know that.
23 I had no way of knowing it, only by hearsay.

24 Q Did you ever meet Mr. Zeehandelaar there or anywhere else?
25 I am speaking of Zeehandelaar, Secretary of the Merchants
26 & Manufacturers Association--anywhere else than at his

1 office in the Merchants & Manufacturers Association room?

2 A I might have met him on the street and spoke to
3 him, not to have a meeting with him, no, sir.

4 Q Did you meet him at your attorney's office, George Adams?

5 A No, sir; I did not.

6 Q Did Mr. Adams report to you he had had conversations with
7 Zeehandelaar?

8 MR. FORD. We object to that as hearsay.

9 MR. ROGERS. No privilege here.

10 THE COURT. Objection overruled.

11 A He did not.

12 Q Who was present at the conversation you had with Mr.
13 Zeehandelaar after you were arrested? A Which conversa-
14 tion do you allude?

15 Q The first. A Well, I can name some of them.

16 Q Who were they? A Mr. Stoddard Jess, the vice president
17 of the First National Bank of this city; Mr. Jevne of the
18 Jevne Grocery Company.

19 Q Which Jevne? A H. Jevne. Mr. Fred^{W.}/Baker, or Fred
20 Baker--

21 Q Fred L. Baker? A Fred L. Baker, of the Baker Iron
22 Works of this city; Mr. Reese Llewellyn of the Llewellyn
23 Iron Works, of this city; Mr. Koepfli.

24 Q Koepfli? A Koepfli, the president of some company here,
25 I have forgotten the name of that now.

26 Q He was president of the Merchants & Manufacturers Asso-

1. ciation once, wasn't he? A I think he was at one time.

2 I know that by hearsay. But he is now president of this--

3 Q Bishop? A Bishop Candy Company, yes, sir.

4 Q Any others? A Yes, there were, I think, two others.

5 Q Were they the directors of the Merchants & Manufacturers
6 Association or merely the strike committee? A I have not
7 the least idea whether they are either one. I presume they
8 were part of the directors, Mr. Rogers, I don't know.

9 Q So you went up there and met the gentlemen who you presume
10 were the directors of the Merchants & Manufacturers Asso-
11 ciation. On what date was that? A I didn't presume any-
12 thing, I don't know anything about it.

13 Q You met them in their committee room of the Merchants
14 & Manufacturers Association? A I don't know whether it is
15 a committee room. It is a large room with a lot of chairs
16 in it.

17 Q And a big table in the middle? A Yes, sir. I presume
18 it is a committee room. It had all the appearance of it.

19 Q You think there were two others. Can you give me their
20 names? A Well, I ought to be able to. I knew them, but
21 I just cannot call them at this time.

22 Q You know, then, don't you, that Fred L. Baker of the
23 Baker Iron Works is president of the Founders' Association,
24 the association of the iron trade in this city? A I have
25 so understood; yes, sir.

26 Q That is to say, the association, owners of the foundries

1 and machine shops?

2 MR. FORD' I object to that as merely calling for a con-
3 clusion of the witness. If counsel knows all those things
4 he can introduce evidence of that matter. I do not think
5 he has a right to be introducing hearsay evidence on the
6 part of this witness.

7 THE COURT. It shows his state of mind.

8 MR. FORD. I move that the answer be stricken out as calling
9 for a conclusion of the witness.

10 THE COURT. The motion to strike out is denied.

11 A I wish to change m y answer to that question. I don't
12 know.

13 BY MR. ROGERS. Q How did you get onto the idea of wanting
14 to change your answer? If Mr. Ford wanted it s truck out on
15 a certain ground and the court overruled it, do you think
16 you can help him out a little? A Perhaps.

7p 17 MR. FORD. I object to that as entirely improper and ask
18 that the counsel be admonished to refrain from questions
19 of that sort.

20 THE COURT. The Court thinks the statement of counsel is
21 improper. The witness has a right to correct his testimony.

22 Mr. ROGERS. Yes, sir.

23 Q Now, did you know that the strike committee of the
24 Merchants & Manufacturers Association was Fred L. Baker,
25 R. W. Pridham, Reese Llewellyn, Stoddard Jess, H. Jevne,
26 J. A. Koepfli, and those other two men that met you up there

1 in the Merchants & Manufacturers Association's office
2 before you came on this stand?

3 MR. FORD. We object to that question on the ground it has
4 already been answered and asked bfor the second time is mis-
5 conduct on the part of counsel, done purely with the intent,
6 and it is apparent from the intonation he wishes to create
7 that impression in the mind of the jury. If he has evidence
8 of that character let him introduce it properly, if it is
9 relevant.

10 THE COURT. The question asked and answered is whether or
11 not he knew those gentlemen were directors at the time he
12 went up there. He is also asked now does he know at this
13 time--

14 MR. FORD. He was also asked if he knew they were members
15 of the strike committee and he said he didn't.

16 THE COURT. At that time.

17 MR. FORD. At that time. Now, he is stating it again,
18 it can only be hearsay, and it is objected to as certainly
19 not the best evidence; both on that ground, not the best
20 evidence, and it is hearsay.

21 THE COURT. Objection overruled.

22 A Read the question, please. (Question read.) Well, now,
23 the latter part of that question might mean one or two
24 things. I didn't see them just before I came on the stand,
25 if that is what you mean.

26 Q I didn't use the words "just before"? A Yes, about

1 four months before.

2 Q Yes. A Yes, well, I want that understood.

3 Q Yes, sir. A I did not.

4 Q At whose invitation did you go up there to meet those
5 gentlemen?

6 MR. FREDERICKS. That is objected to on the ground it is
7 incompetent, irrelevant and immaterial, and I would like to
8 state our position in that matter, your Honor.

9 MR. ROGERS. Before counsel proceeds, may I enter an excep-
10 tion to counsel saying anything that will tend to enlighten
11 the witness as to what he is to answer. Counsel's posi-
12 tion upon it, if your Honor pleases, is not material to
13 this.

14 MR. FREDERICKS. Our position on the objection, I would
15 like to make an argument.

16 THE COURT. I cannot anticipate what counsel is going to
17 say.

18 MR. ROGERS. You cannot, but I desire to enter an excep-
19 tion in advance and protest in advance to his making an
20 argument in advance which will tend--whether intended so
21 or not,--which will tend to put the answer in the witness's
22 mouth, so that I may assign misconduct in case it is done.

23 THE COURT. Counsel has made a proper objection and he has
24 a right to be heard on it. Captain Fredericks, I will
25 hear you.

26 MR. ROGERS. Yes, sir.

1 MR. FREDERICKS. We are trying a case of bribery against
2 Clarence Darrow, charging him with bribing a jurymen in
3 the case on trial in the Superior Court of Los Angeles
4 County, State of California. There is not anything before
5 this court in any way, shape or form, and I maintain there
6 cannot be anything before this court in any way, shape or
7 form that will show that the Merchants & Manufacturers
8 Association has one whit of interest in this prosecution or
9 in the testimony of this witness. There is--

10 MR. ROGERS. (Interrupting) I take an exception to the
11 remarks of counsel just made--

12 MR. FREDERICKS. (Continuing) Let me finish and you can get
13 one exception covering it all. Now, that is our position,
14 and that is why we maintain/^{whether}this witness went to the Mer-
15 chants & Manufacturers Association or not has nothing to do
16 with the prosecution of this case; whether the Merchants
17 & Manufacturers Association were fighting the unions or the
18 unions were fighting the Merchants & Manufacturers Association
19 tion, we maintain has absolutely nothing to do with the
20 issues in this case. I cannot by any stretch of the imagina-
21 tion see how the question as to what the relations between
22 the Merchants & Manufacturers Association and the unions
23 were can affect this case.
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ete1 Now, I may not be able to see as far into the case as counsel
2 for the defense does, but it certainly is not apparent to me
3 that there is any relevency in the fact that there was a con-
4 groversy between the Merchants & Manufacturers Association
5 and the unions. This defendant is not tied to the unions,
6 we are not trying the unions; there is no issue of unionism
7 in this case that is on trial, and so we think it is hearsay.
8 Of course, if there was anybody tried to influence this wit-
9 ness in his testimony, of course, we think that would be
10 material and ought to be shown; but to go into the relations
11 of the Merchants & Manufacturers Association with the unions,
12 we think it is immaterial. Now, that is our position in
13 the matter, your Honor, that it is hearsay.

14 THE COURT: Read the question, Mr Reporter.

15 MR FREDERICKS: We are not in a position to refute it or
16 rebut it when it comes in, because when we would come to put
17 in something it would be hearsay and the other side would
18 object to our idea of questions, and it would be stricken
19 out.

20 THE COURT: Read the question.

21 (Question read)

22 THE COURT: Overruled.

23 MR ROGERS: I desire, at this time, to enter an exception
24 to the statement of counsel as containing statements which
25 are -- Well, I won't use so bad a word as "intended" --
26 but which are calculated, not by him, but by the circumstan

1 and nature of the remarks made, to endeavor to convey to the
2 jury statements which are not evidence and which cannot be
3 evidence, but which are stated by counsel flatly and affirm-
4 atively as if they were to be considered by the jury; and,
5 of course, I understand there is a general admonition they
6 are to pay no attention to those matters, but I desire an
7 exception in the record.

8 THE COURT: I again admonish the jury that any statement of
9 facts coming from counsel of their position at the table,
10 unless sworn as witnesses, are not to be considered by you
11 as evidence.

12 MR FREDERICKS: But, your Honor, I made no statement of
13 facts. I think the admonition of your Honor is unjust to
14 the prosecution at this time. I have made no statement of
15 facts to the jury.

16 THE COURT: In that event the admonition falls and has no
17 effect. If the jury should be inclined to consider the
18 statement, they are admonished not to; and if not, the ad-
19 monition does not apply. Answer the question.

20 A In answering that question, Mr Rogers, it will be neces-
21 sary, perhaps, for me to tell just how I happened to go there
22 I didn't go there at anyone's particular invitation. I will
23 very frankly tell you how I happened to go there and what oc-
24 curred there, if you wish it, to the best of my recollection
25 will be very glad to.

26 Q By Mr Rogers: Did you solicit the interview with these

1 gentlemen or did they send for you? A Neither one.

2 Q Did you know when you went up there whom you were going
3 to meet? A I did not.

4 Q Did you know when you went up there the nature and
5 character of the assemblage of the meeting? A The char-
6 acter of the assemblage, of the individual members you mean?

7 Q No -- A What position they occupied with the M & M
8 Association you mean?

9 Q I mean to say, did you know you were going up there to
10 meet a party of men connected with the Merchants & Manufactur
11 ers Association, in some official capacity? A No sir, I
12 did not.

13 Q Did you know whom you were going to meet in a general
14 way? A I did not.

15 Q Did you know that you were going to meet men who had
16 connections with the Merchants & Manufacturers Association,
17 in their rooms? A I didn't know it, but I presumed that
18 they would be members, yes sir.

19 Q Now, you went back again on the second occasion?

20 A Yes sir.

21 Q About two days or so after the first? A I think it
22 was about that time.

23 Q Whom did you meet on the second occasion? A A lady
24 in the outer office and Felix Zeehandelaar.

25 Q You met Mr Zeehandelaar? A I did, yes sir.

26 Q He is secretary and practically the manager of the

1 affairs of the Merchants & Manufacturers Association to your
2 then knowledge?

with 3 A I think he is about the whole thing in regards to the
4 business end of it, yes sir.

5 Q Did you talk with Zeehandelaar there? A I did for
6 about half a minute.

7 Q Did you talk with any of the other gentlemen interested?

8 A There was nobody there but the lady in the outer office.
9 I opened the door and stepped in and asked if Mr Zeehandelaar
10 was there, and she went to the door and said "yes", and I
11 went in.

12 Q You saw him then? A I did, yes sir.

13 Q Now, have you ever seen Zeehandelaar of the Merchants &
14 Manufacturers Association at any other place than in his of-
15 fice? A When do you mean?

16 Q Since your arrest? A Not to my recollection. I might
17 have seen him on the street.

18 Q Have you ever talked with him on the street -- I desire
19 you to reflect on that for a moment. A No sir, I have not.

20 Q On the street or any other place other than his office?

21 A No sir, I have not. I am quite sure of that. I know I
22 never had any conversation with him; may have met him on the
23 street, I don't remember that.

24 Q Who told you the time that you were to go to the Merch-
25 ants & Manufacturers Association, if anybody? A You mean
26 who told me to go to that place to meet some people?

1 Q At that time, yes. A J A Crook, sixth floor of the
2 Chamber of Commerce building, a contractor.

3 Q Where does Mr J A Crook live, if you know? A Right
4 near you, at Hollywood.

5 Q That is the same one that lives on Vermont Avenue?

6 A Yes sir; your friend, yes sir.

7 Q Did he tell you that the men would receive you when you
8 went over there?

9 MR FREDERICKS: That is objected to upon the ground it is
10 hearsay.

11 THE COURT: Overruled.

12 A Did he tell me would they receive me?

13 MR ROGERS: Did he tell you that there was a body of men
14 over there that you were to see? A No, he didn't.

15 Q What did he tell you about that?

16 MR FREDERICKS: Objected to upon the ground that it is hearsay.

17 THE COURT: Overruled .

18 A Your Honor, it is pretty hard to answer those questions
19 without telling what came before, very difficult indeed.

20 MR FORD: I wish your Honor would instruct the witness he is
21 entitled to explain.

22 THE COURT: You have the right to make any explanation of
23 your answer that is necessary to make it intelligible.

24 A It is not a question of explanation. It is a question
25 of telling; then I can tell just what happened.

26 THE COURT: If telling what came before is necessary to

1 explain your answer to make it intelligible, you have that
2 right; both as to this question and as to other questions.

3 MR ROGERS: He must answer the question first, and then ex-
4 plain.

5 THE COURT: The question itself must be answered, and then
6 make such explanation as you may find necessary to make it
7 intelligible.

8 A Read the question.

9 (Last question read by the reporter)

10 A He told me that he thought there would be some of my
11 friends there, for me to talk about certain matters that I
12 spoke to him about.

13 MR ROGERS: You had spoken to Crook, then, to get you an
14 interview with the Merchants & Manufacturers Association?

15 A I did not, and I didn't say so; nothing of that kind
16 ever occurred.

17 Q You knew that Crook told you to go over to the Merchants
18 & Manufacturers Association, that you were going over to the
19 people who had the prosecution of the McNamara case in hand,
20 didn't you, and the fighting against strikes?

21 MR FREDERICKS: Just a moment please. That is objected to,
22 may it please the Court; calling for a conclusion of this
23 witness; assuming something not in evidence; cannot be in
24 evidence; that is, that the Merchants & Manufacturers Asso-
25 ciation had the prosecution of the McNamara case in hand.

26 THE COURT: Objection sustained.

1 MR ROGERS: Mr Franklin, who was it that mentioned the
2 Merchants & Manufacturers Association ^{as} for the place for you
3 to meet, you or Mr Crook? A Mr Crook.

4 Q Did he tell you that there would be somebody over there
5 for you to see? A Said there would be some of my friends
6 there that I could talk to about a matter that I had spoken
7 to him about, yes sir, and not a committee of the M & M
8 Association; not particularly any^body connected with, but
9 that the meeting was to be there and it was to be a meeting
10 of my friends, and I thank God they were.

11 Q To be a meeting of your friends? A Yes sir, my friends

12 Q Is Fred L Baker your friend? A He certainly is for
13 twenty-five years.

14 Q Reese Llewellyn your friend? A Reese Llewellyn has
15 been my friend for years.

16 Q Stoddard Jess your friend? A He certainly is, yes sir

17 Q They have all been your friends? A Yes sir, and they
18 are yet, I hope.

19 Q They all were your friends before this? A Yes sir.

20 Q Well then, how did it come when they were your intimate
21 friends, as I understood you to infer by your tone --

22 A Not intimate
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1 Q --that they were in charge of the prosecution of the
2 McNamaras, in a way, or participated in it, that you went
3 on the defense? A Why, simply because it was a matter
4 of business, the same as you are defending Mr. Darrow now.
5 Every man--wait until I get through my answer, please.
6 Every man has a right to what defense he can get and what
7 money he has to engage counsel and help on the outside.
8 That was my business. I took the position and conducted
9 myself as honestly as I could toward my client. I conducted
10 it dishonestly towards the people of the State of California.
11 Now, do you understand my position?

12 Q How do you explain the coincidence of these men being your
13 friends for whom you thank God-- A Yes, sir.

14 Q --and your going to the office of the Merchants &
15 Manufacturers Association, which association you have indi-
16 cated you knew the character of it? How does it come that
17 your friends, those to whom you went as to the horns of the
18 altar, happened to be the strike committee of the Merchants
19 & Manufacturers Association?

20 MR. FREDERICKS. That is objected to as assuming a fact not
21 in evidence, that this was the strike committee of the
22 Merchants & Manufacturers Association.

23 THE COURT. Objection sustained.

24 MR. FREDERICKS. Now, I presume counsel is perfectly within
25 his right in the remarks they are making, "that they
26 can prove that here", in the hearing of the jury.

1 MR. ROGERS. I beg the Court's pardon. Mr. Appel asked
2 me if we could prove a certain thing and I said certainly
3 we can prove that. It was not intended for the ears of
4 any one except us four gentlemen here. If it was too loud
5 I regret it very much. I didn't intend it. I certainly
6 didn't stand up here and say it to him or to the defendant.
7 THE COURT* Gentlemen, proceed.

8 MR. ROGERS. Q How do you account for the fact that these
9 intimate friends of yours were interested in the prosecu-
10 tion of Mr. Darrow? A I don't intend to try to account
11 for it. I am not trying to account for anything except my
12 own acts and answer the questions as they are asked me,
13 to the best of my ability.

14 Q Are you endeavoring to say to us that that body of men
15 were your friends, personal friends, intimate friends--

16 A I didn't say intimate friends.

17 Q --to whom you went for personal advice and association
18 at the time?

19 MR. FORD. If the Court please, I think the question and its
20 intimation indicates right on the face the argumentative
21 character of that question. We object upon the ground
22 that it is argumentative, not cross-examination, and on the
23 further ground that the matter has been fully gone into,
24 and would only be calling for a conclusion of the witness
25 at this time, and that the witness is not required to account
26 for anything. It is a matter for counsel to argue to the

1 jury at the proper time.

2 MR. ROGERS. Will your Honor hear me?

3 THE COURT. If you wish to be heard.

4 MR. ROGERS. If your Honor please, as it appears, not by
5 question and answer exactly, but by the association of
6 questions and answers all through this testimony, according
7 to our view of it, the Merchants & Manufacturers Association,
8 according to the knowledge of the witness, was an associa-
9 tion which has for its primal object the handling of the
10 employers' end of union labor strikes and difficulties
11 in this city. We intend to introduce evidence concerning
12 that. Now, we have the witness--the chief witness for the
13 prosecution before he appears upon the stand and before he
14 enters his plea of guilty, himself, going up to the office
15 of the Merchants & Manufacturers Association and there meet-
16 ing a portion of their directors, their strike committee,
17 and his explanation of that, his endeavor to convey the
18 idea--I doubt if he is succeeding, but he is endeavoring
19 to convey the idea that he thanks God that these men were
20 friends of his, personal friends, and I am asking if he can
21 explain the remarkable coincident, as we claim it to be,
22 of his friends being also the strike committee of the Mer-
23 chants & Manufacturers Association. It is a unique thing,
24 that the Association, which, according to our contention,
25 and what we will show, has participated in the prosecution
26 of the McNamara cases, and has participated in the prosecu-

1 tion of this case, who, perchance, have this witness up
2 there before them in that assemblage with which, we contend,
3 that he must have been impressed by its body of distin-
4 guished gentlemen standing around there listening to him,
5 and doubtless assuring him of some future things that would
6 doubtless happen in the future. At any rate, we have a
7 right to probe into his mind, we think, under those remark-
8 able circumstances. We have a right to know whether or not
9 they were his friends personally, or whether they were his
10 friends because, perchance, he might come on this stand and
11 testify in this case against Mr. Darrow, who has been the
12 champion of their opponents for a good many years, and we
13 want to know more than that, and this is the relevancy of
14 it, what effect that had upon his mind and would have upon
15 his mind. Here is a man who was taken up there or who goes
16 up there to attend a meeting of the Merchants & Manufactur-
17 ers Association, a body of exceedingly impressive men, a
18 body of men, the reading of whose names impresses one as
19 we listen to it. Some of the finest and most distinguished
20 men in the city, yet men who are engaged against Mr. Darrow
21 in this controversy. No question about it.

22 MR. FORD. It isn't in evidence yet.

23 MR. ROGERS. But it is partly in evidence and will be fur-
24 ther in evidence, and I have a right to know all the cir-
25 cumstances of this most unique and remarkable meeting before
26 this witness entered his plea of guilty, and went upon this

1 stand to testify against Mr. Darrow. I can give your
2 Honor a very close illustration of it, if you will permit
3 me: When Mr. Gallagher was on the stand in San Francisco,
4 I was permitted against objections even more strenuous
5 than these here, to show that Mr. Gallagher met Mr. Spreckles,
6 the chief friend of the prosecution, although a private
7 citizen, out in the Presidio at night, and there had con-
8 versation with him, and I was permitted to show all the
9 circumstances of how they went there and what for, and its
10 impression on the mind of Gallagher.

11 MR. FORD. We are not arguing that question at all. The
12 Court has ruled you can do that.

13 MR. ROGERS. I can see no reason why we should not be per-
14 mitted to ask this question right along this line, it is
15 part of it. I have a right to probe into this witness
16 to ascertain why he thought there, if he is trying to
17 convey the idea to the jury, that he had an honorable and
18 personal acquaintance and had a personal solicitude for
19 these men who by some strange coincidence are the prose-
20 cutors, to a certain extent, of Mr. Darrow. Now, far from
21 me to say anything against the Merchants & Manufacturers
22 Association or those men. I have the very highest regard
23 and respect, and for their position. I have nothing to
24 say because it is one which they have a right to take, but
25 the mere taking of this witness up there before that dis-
26 tinguished body of men, opposed as they are to Mr. Darrow

1 upon principle and upon every association in life--the
2 mere taking of this witness up there and letting him see
3 those men and talk with them and receiving the assurances
4 of their friendship, is enough almost to put this man on
5 the stand.

6 MR. FREDERICKS. Now, may it please the Court, it seems
7 to me--

8 THE COURT. Captain, let's have the question and objection
9 read.

10 (Last question and objection read by the reporter.)

11 MR. FREDERICKS' I think the matter is before the Court.
12 It is largely how do you reconcile. Now, we maintain
13 that this--there is being dragged in here by the heels, you
14 may say, the idea that because counsel has in some slight
15 degree shown that the Merchants & Manufacturers Associa-
16 tion were interested in the prosecution of the McNamara
17 case, that is, I will admit there has been some slight
18 indication that way by reason of the testimony of this
19 witness that he was advised to avoid members of the Merchants
20 & Manufacturers Association as jurors and perhaps in one
21 or two other little ways, but in a very minor way; but the
22 idea has ^{been} apparently, to my mind, is being an attempt to
23 hitch onto that feeling that the Merchants & manufacturers
24 Association were interested in the McNamara case, to hitch
25 onto that feeling the idea that the Merchants & Manufacturers
26 Association are interested in this case. Now, I might

1 cite, for instance, counsel's own case. Hewas the attorney
2 for the Merchants & Manufacturers Association in the McNamara
3 case, and he is here properly and rightfully defending Mr.
4 Darrow.

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m 1 There is absolutely and can be nothing incongruous or in-
2 consistent with the two positions, and this man may have
3 known that the Merchants & Manufacturers Association was
4 interested in the McNamara case, but there isn't one scin-
5 tilla of evidence to show that that would disqualify a man
6 from taking -- or that would make a man interested in this
7 case. Certainly counsel cannot argue that. Now, we main-
8 tain there is no connection between the two cases shown yet,
9 and there cannot be, at least -- I will withdraw that state-
10 ment, "there can't be", because anything that has not been
11 done yet can be done in this world; but there is no connect-
12 ion between the two. There is nothing in evidence here that
13 shows that the Merchants & Manufacturers Association and the
14 strike breaking committee is interested in the prosecution
15 of this case, or is interested in anything else other than
16 as citizens of this community they might be interested in
17 what they thought was a correct prosecution, or what they
18 thought was not a correct prosecution. They might be inter-
19 ested in one side or the other of that, but that has not
20 been shown yet.

21 THE COURT: Counsel has declared his intention of making a
22 further showing.

23 MR FREDERICKS: Yes I know, it has been dragged in by the
24 heels. If we keep on with that we will perhaps all have the
25 impression it has been shown, when it has not been shown.
26 Therefore, counsel is not called upon to reconcile the
answer that he has made, when he certainly assumed the

1 hypothesis, which doesn't exist, and calls for the conclu-
2 sion of the witness. He is not called upon to reconcile that.

3 THE COURT: Let me have that question once more.

4 (Last question read by the reporter.)

5 MR FORD: Now, if the Court please, there has been no
6 foundation laid for the question at all. This question has
7 one of two purposes and can only be asked for one of two
8 purposes. This whole line of questionings are to show the
9 motives of the witness, to show that these men have gotten
10 this man to testify falsely. That men like Stoddard Jess
11 and Fred L Baker and so forth, have procured this witness
12 to commit perjury and say what occurred in that room. Now
13 they can ask him what occurred there, if they want to get at
14 his motives. They can ask him what occurred with Mr Crook.
15 They haven't done so. They have gone along and hit the
16 high spots, and if they seek to impeach the witness let
17 them put the impeaching question to him and lay the founda-
18 tion; they have a right to go into that, but there is an
19 orderly way to go into it.

20 THE COURT: Objection overruled.

21 A I will have to ask you to read that question again.

22 (Last question read by the reporter) A No.

23 MR ROGERS: When you went up there, did you go seeking aid
24 and comfort? A No.

25 Q When you went up there you knew that those men were, to
26 say the very least, extremely friendly with the prosecution

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1 in this case? A Mr Rogers --

2 MR FORD: Just a moment. We object to that question as ir-
3 relevant, immaterial and no foundation laid for its intro-
4 duction Let them first show that there was something oc-
5 curred between this witness and those people, and then go
6 into their relations with the prosecution if they so wish.
7 If they show there was something between them that occurred
8 that should not have occurred, then let them go into their
9 relations; or, even if they have gone into that matter, and
10 unsuccessfully, and desire to show it all, they are entitled
11 to go into it; but they are hitting the high spots, and we
12 object to it upon the ground that no foundation has been
13 laid and that the question is not cross-examination, incompe-
14 tent, irrelevant and immaterial.

15 THE COURT: Objection overruled.

16 A Read the question.

17 (Last question read by the reporter)

18 A I didn't know what men I was going to meet, Mr Rogers,
19 so I couldn't have known of that:

20 MR ROGERS: You knew in a general way the kind of men that
21 you would meet in the Merchants & Manufacturers Association's
22 offices, didn't you? A Oh yes.

23 MR FORD: Objected to as calling for a conclusion of the
24 witness.

25 MR ROGERS: It is the state of mind.

26 THE COURT: Objection sustained.

1 MR ROGERS: Exception. Didn't you know when you went
2 up there, whether you knew the precise individuals or not,
3 that they were to meet in the Merchants & Manufacturers
4 Association's offices.
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13s 1 MR. FORD. Objected to upon the ground it has already been
2 answered.

3 THE COURT. Objection sustained.

4 MR. ROGERS. Q Now, if you didn't know whom you were going
5 up there to meet, how do you contend that you went up there
6 to meet friends of yours?

7 MR. FORD. Just a moment--we object upon the ground that
8 the question is irrelevant and immaterial and the witness is
9 not contending for anything. He is simply answering ques-
10 tions put to him. Objected to upon the ground that it is
11 not cross-examination.

12 THE COURT. It is argumentative.

13 MR. FORD. And it also assumes a fact not in evidence, that
14 the men whom he met--he testified were personal friends
15 of his. He didn't say he was going to meet personal
16 friends. He said he was going over there to meet some men,
17 Mr. Crook advised him to meet.

18 THE COURT. Objection sustained.

19 MR. ROGERS. Q You say you didn't know whom you were going
20 to meet?

21 MR. FORD. Objected to upon the ground the question has
22 already been answered.

23 MR. ROGERS. Just a moment--I would like to finish my ques-
24 tion, with all due respect.

25 THE COURT. Finish your question.

26 MR. ROGERS. Q You say you didn't know whom you were going

1 to meet. You mean by that you didn't know the individuals
2 you were going to meet or do you mean you didn't know what
3 kind of men you were going to meet?

4 MR. FORD. Objected to upon the ground the matter has
5 been fully gone into and fully answered.

6 THE COURT. Overruled.

7 A Well, I certainly didn't know who I was going to meet and
8 if I didn't know who I was going to meet I certainly couldn't
9 know the character of men I was going to meet.

10 BY MR. ROGERS. Q But you knew the character of place to
11 which you were going, didn't you? A Yes, sir. I am willing
12 to testify--

13 MR. FORD. Objected to upon the ground it has been fully
14 gone into.

15 THE COURT. Strike the answer out.

16 MR. FORD. Objected to upon the ground it has been fully
17 answered and gone into.

18 THE COURT. Objection sustained on that ground.

19 MR. ROGERS. On the ground that it has been fully answered,
20 your Honor?

21 THE COURT. Yes, sir.

22 BY MR. ROGERS. Q How long before you went up there was it
23 that you and Mr. Crook had this talk about your going up?

24 A Why, I think about two days, I am not sure as to the exact
25 time.

26 Q Who suggested it first, you or Crook? A Mr. Crook.

1 Q You know Mr. Crook's connection with the Merchants &
2 Manufacturers Association? A No, sir, I don't think I do;
3 I am not sure whether he is a member or not.

4 Q You know he is a contractor and builder? A Yes, sir.

5 Q You know he is an employer of nonunion men and an opponent
6 of unions, don't you?

7 MR. FORD. The question as to what Mr. Crook is or is not
8 would be, as far as this witness is concerned, purely hearsay
9 and I cannot see the relevancy of it. Counsel is making
10 a statement after statement as evidence, in other words a
11 statement he makes it in the form of questions and I cer-
12 tainly think, until the relation of Mr. Crook to this case
13 appears that there ought to be some way of preventing in-
14 quiring into whether he is a married man or whether he has
15 any children and what his affiliations are, and Church,
16 etc., and non union labor, and any other subject, until some
17 connection is shown.

18 THE COURT. This is not an inquiry. The question is what
19 does this witness know about it.

20 MR. FORD. The question is, "Don't you know he was an employer
21 of nonunion labor?" Now, what difference does it make
22 until we can show his relation to the case; let it be
23 shown there that he has some relation to the case and let
24 them show what occurred before that fact can become at
25 least relevant, certainly there has not been a scintilla
26 of evidence to show that union labor is in any way connected

1 with this case and with this charge. I am sure I have
2 just as much sympathy, and possibly more practical sympathy
3 with union labor than some that are claiming it now.

4 MR. APPEL. Your Honor, the question is simple, we are try-
5 ing to show the conduct, your Honor.

6 THE COURT. Objection overruled.

7 A Read the question.

8 (Question read.)

9 A No, sir, I do not.

10 Q In this meeting with the Merchants & Manufacturers, in
11 the Merchants & Manufacturers Association office, with these
12 gentlemen whose names you have given us as being present
13 in their office, including Mr. Zeehandelaar, the secretary of
14 the Merchants & Manufacturers Association, all these meetings
15 occurred before you plead guilty and got this alleged fine
16 and promised to testify in this case?

17 MR. FREDERICKS' That is objected to, because the question
18 is dual in its character, "before you plead guilty" would
19 be one time, possibly, and "before you promised to testify"
20 another.

21 MR. ROGERS. All right.

22 THE COURT. Question is withdrawn.
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otel Q By Mr Rogers : Before you plead guilty in the next
2 department, and got that so-called fine? A The conversa-
3 tion, the meeting with the people at the M & M Association
4 occurred between the time that I had made and signed a
5 sworn statement to the District Attorney of the facts in
6 this case and the time I plead guilty. It was after I made
7 the statement to the District Attorney, and I want that dis-
8 tinctly understood.

9 Q When did you make that statement to the District Attorney?

10 A I think it was the 25th day of January; I can tell if
11 you will allow me to refresh my recollection.

12 MR ROGERS: Gentlemen, will you be kind enough to furnish
13 me that statement in order that I may compare the testimony
14 of the witness in cross-examining him about it.

15 MR FREDERICKS: We assign counsel's request as being misconduct.
16 Counsel knows he has no right to make such a request; he
17 knows those notes are our private notes, and he has no right
18 to make a request for them, and we will not give them to him;
19 and we assign his request as misconduct.

20 MR ROGERS: I ask for an order of the Court upon counsel's
21 refusal, to require them to furnish the statement of this
22 witness as having been made and referred to in his testimony,
23 at a particular date.

24 THE COURT: The application is denied.

25 MR ROGERS: Exception.

26 Q By Mr Rogers: Now, when was this meeting at the M & M

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1 Association rooms, having fixed those two dates?

2 A I cannot tell you the exact date. It was sometime sub-
3 sequent to the time I had made this statement.

4 Q Does your memorandum book show? A Yes sir, it does.

5 Q Where is it? A In my pocket.

6 Q Let's see it. A I will let you see that page. It is
7 a loose leaf --

8 MR FREDERICKS: We object to the question and direction --
9 it is hardly a question, but we assume that counsel is asking
10 the witness to produce it; but if he does, he can only produce
11 it for his own enlightenment and not for counsel's.

12 MR APPEL: We ask the Court to make an order requiring the
13 witness to produce that memorandum referred to by the wit-
14 ness at this time, and referred to by the witness heretofore
15 in his direct examination.

16 MR FORD: If the Court please, the witness is entitled to
17 use his memorandum book if he desires to refresh his recol-
18 lection at any time; and if he does use it, then counsel is
19 entitled to look at it, and if they are the ones that procure
20 it from him and introduce it, we will be the ones that will
21 have the right to examine it, not they. The witness has
22 not used his memorandum book in order to refresh his recol-
23 lection from it, and counsel are not entitled to look at it
24 unless the witness himself is willing to confer that privi-
25 lege upon him. Now, the witness has said he is willing to
26 give them the memorandum of that date; it is a loose leaf

1 memorandum -- if they want it, and we have no power and the
2 Court has no power to compel him to give up his private
3 record for inspection of counsel unless the witness desires
4 to do so, unless the witness himself should produce the
5 book.

6 MR APPEL: We are simply making a request upon a proposition
7 that the law says, and which everybody ought to know, that
8 the defendant is entitled to the process of this Court, is
9 entitled to the process of this Court for the purpose of
10 making his defense. We have followed a line of simply
11 asking the Court, in our humble judgment, for our rights.
12 He is not our witness; he is a witness against us, and he
13 says that he has in his possession certain information from
14 which he can state as to dates here. We ask him to produce
15 that memorandum. We have a right to ask it. We can only
16 ask the Court to enforce that right, and we simply are asking
17 the Court now to enforce our rights as against the witness',
18 to produce that memorandum. That is all we are asking for,
19 and we think we are right, and that is the reason we ask for
20 it.

21 MR FORD: Section 2047 of the Code of Civil Procedure con-
22 tains the law on the subject: "A witness is allowed to re-
23 fresh his memory respecting a fact by anything written by
24 himself, or under his direction at the time when the fact
25 occurred, or immediately thereafter, or at any other time
26 when the fact was fresh in his memory and he knew the same

1 was correctly stated in the writing; but in such a case
2 the writing must be produced and must be seen by the adverse
3 party who may, if he choose, cross-examine the witness on it
4 and may read it to the jury."
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1 Now, if the Court please, the expression of one thing
2 in the law is the exclusion of another. In this case the
3 law expresses the circumstances under which the witness may
4 be allowed to use that memorandum. The witness has testified
5 here from his recollection, and unless he is unable to
6 testify from recollection then he is allowed to use the
7 book, but he has testified here from recollection and has
8 not asked to see the book. They are the ones that are
9 asking to see the book and the law does not confer any
10 privilege upon them to go into this man's private books.

11 MR. APPEL. The witness says he cannot state the date exactly,
12 except by reference to that memorandum.

13 THE COURT. Is that your statement, Mr. Franklin?

14 MR. APPEL. That is what he said, that is what the record
15 states.

16 A I will state, to the best of my recollection that meeting--

17 THE COURT. Let us see what the record says about that date.

18 (Record read by the reporter as follows: "Q" When did
19 you make that statement to the district attorney? A I
20 think it was the 25th day of January. I can tell if you
21 will allow me to refresh my recollection.")

22 MR. APPEL. That is not correct, your Honor. He said, "That
23 I can refresh my recollection from a memorandum." He
24 desired to use the memorandum.

25 MR. FORD. To save time, I will stipulate the whole memo-
26 randum may be put into evidence.

1 MR. APPEL. That is the same stipulation, and we except to
2 it--

3 MR. Ford. Then I will withdraw the stipulation.

4 MR. APPEL. We will take another exception and we assign
5 that as error and trying to prevent us here and putting us
6 on examination as to our ideas of conducting the case, com-
7 pelling us in a certain manner to respond to that and
8 keep silent as to each matter that is necessarily before
9 the jury. We do not like that, your Honor.

10 THE COURT. The question is a little vague in this, that
11 it does not indicate to the Court for what purpose the
12 memorandum is to be produced.

13 MR. ROGERS. The reporter didn't read--

14 MR. APPEL. The reporter didn't get it right.

15 MR. ROGERS. The reporter didn't read the situation as it
16 was.

17 THE COURT. The reporter has read it as I recalled it,
18 but you might reframe the question.

19 MR. ROGERS. I will do so.

20 Q Is there any way you can tell us exactly and precisely
21 what day you first went up to the Merchants & Manufacturers
22 Association to meet these gentlemen at their offices?

23 A No, I do not think so. It was a time subsequent,
24 though, to the 25th day of January.

25 Q Have you something in your possession by which you can
26 make it absolute? A The time?

1 Q yes, sir. A No, sir, not exactly.

2 Q Haven't you got a memorandum book in which it is set down,
3 the day you went up there which you made approximately at
4 the time as you have heretofore testified?

5 MR. FORD. If the Court please, the witness has not here-
6 tofore testified.

7 MR. APPEL. There is no objection. He is arguing--

8 MR. FORD. --I object to the question on the ground it
9 assumes the witness has testified to a state of facts which
10 he did not testify to. Counsel has asked him if he didn't
11 heretofore testify he had a memorandum as to the date he
12 went up there to meet these gentlemen. The witness didn't
13 testify to that. He testified he had a memorandum by
14 which he thought he could fix the date when he made a state-
15 ment to Mr. Ford, which is an entirely different matter. The
16 record shows it and I object to counsel making statements
17 which are not in accordance to the fact.

18 MR. ROGERS. The record shows.

19 MR. FORD. Read it and settle it right now. There are
20 too many of those misstatements like that.

21 THE COURT. Objection overruled.

22 MR. ROGERS. If your Honor please, counsel states, "There
23 have been too many misstatements like that." If your
24 Honor pleases that is not fair; and I have made no mis-
25 statements and if your Honor will permit me, in order that
26 that may not go before the jury as a fact, I desire to say
what the record is and to produce the record.

Petel MR FORD: We join in the request.

2 MR ROGERS: He says on the 14th of January he commenced to
3 keep an account of where he went and all whom he met, that
4 he dictated it to his wife at night and he tried to produce
5 it here on one or two occasions and he was kept from doing
6 so, and I asked him right in this examination if he had a
7 memorandum in that book showing that he was up to the Mer-
8 chants & Manufactuers Association office and he said he did.

9 A I said I didn't say any such thing.

10 MR FORD: I would like to have the record produced on that
11 matter right now.

12 THE COURT: Produce the record if you want it.

13 MR ROGERS: Very well, sir, as soon as it is written up I
14 will return to it.

15 THE COURT: Objection overruled. But, counsel desires you
16 to produce the record, and in view of the statement he has
17 that right.

18 MR ROGERS: Read the question, please.

19 (Question read)

20 THE COURT: Gentlemen of the jury, bear in mind the admoni-
21 tion of the Court heretofore given you. We will take a re-
22 cess for ten minutes.

23 (Here a recess was taken for ten minutes. After recess
24 jury returned into court-room.)

25 THE COURT: The jurors are all present. You may read the
26 last question, Mr Reporter.

1 MR ROGERS: I will withdraw the last question.

2 THE COURT: All right.

3 Q By Mr Rogers: Did you put down in your record a memo-
4 randum of the meeting between yourself and Mr Zeehandelaar
5 and others at the Merchants & Manufacturers Association?

6 MR FORD: We object to that on the ground the memorandum
7 itself is the best evidence.

8 THE COURT: Objection overruled.

9 A I am not positive as to that, Mr Rogers.

10 MR ROGERS: Mr Petermichel, will you be kind enough to turn
11 to that record which was called to your attention during the
12 recess concerning a matter, and I ask that it be read.

13 THE COURT: All right.

14 MR FREDERICKS: In order to save repeating, we would like
15 to have it read on the page before it.

16 MR ROGERS: Never mind that. I will have him read for me,
17 and if counsel desires further reading it may be done.

18 THE COURT: All right.

19 (Record read by the reporter as follows: "Q Now, when
20 was this meeting at the M & M Association rooms, having
21 fixed those two dates? A I cannot tell you the exact
22 date. I t was sometime subsequent to the time I had made
23 this statement. Q Does your memorandum book show?

24 A Yes sir, it does. Q Where is it? A In my pocket.

25 A Let us see it. A I will let you see that page. It is
26 a loose leaf --")

1 MR FORD: I listened very carefully at the time that in-
2 formation was given, for the reason, I might state frankly
3 to the Court, I have read the memorandum book and I listened
4 carefully to the testimony of the witness, and my recollect-
5 ion is that the statement as to what was in his memorandum
6 book was with reference to the time when he made the state-
7 ment to me.

8 MR APPEL: We take an exception, your Honor, to counsel in
9 this Court telling the jury what the facts are so far as he
10 is concerned, and we assign this as error again.

11 MR FREDERICKS: I think that the record of the reporter is
12 susceptible to that interpretation, even now the way it
13 stands.

14 THE COURT: The record was read to the jury, and let them
15 interpret it.

16 MR APPEL: But my friend didn't say as to what his recollect-
17 ion is, what he read in that memorandum.

18 MR FORD: I think it is incorrect, and I am going to state
19 it to the Court. I think the reporter left out a portion
20 of it there, it sometimes happens, it frequently does happen.

21 THE COURT: It appears that this matter is not of sufficient
22 importance to justify any further time.

23 MR ROGERS: Now, sir, will you be kind enough to explain
24 your answer that the reporter read. Please read it again,
25 Mr Reporter.

26 A I understand what the answer was.

1 Q You understand what the answer was? A Yes sir.

2 MR FREDERICKS: That is objected to on the ground it assumes
3 that the answer calls for any explanation.

4 THE COURT: Objection overruled.

5 MR FORD: The witness is not required to explain the Reporter's-

6 A I did not understand your question to allude to the
7 meeting in the M & M Association. I thought you meant the
8 time I made the statement to the district attorney, and I
9 think my answer was to that effect.

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ete1 Q Please read the record again, Mr Reporter.

2 A The record does not so show the way it read.

3 MR FORD: We object to the reading of the record. For the
4 benefit of the witness I would like the question preceding
5 that read by the reporter.

6 THE COURT: Is it necessary to have it re-read, Mr Rogers?

7 MR ROGERS: Yes sir.

8 THE COURT: You are entitled to it.

9 MR ROGERS: Yes sir.

10 THE COURT: Go ahead.

11 MR FORD: I think the witness is entitled to have read the
12 preceding portion of it.

13 THE COURT: Read the portion called for. If it becomes
14 necessary I will order more read.

15 MR FREDERICKS: Now, may it please the Court, I maintain
16 that that does not show any contradiction.

17 MR ROGERS: That is a matter of argument, sir, to the jury.

18 A If your Honor please, before we go any further, I don't
19 wish to be understood as testifying that my book shows any
20 entry of any meeting at the M & M Association. I did not so
21 intend my testimony, didn't wish you to understand that
22 from my testimony. I intend my testimony to say that my
23 memorandum book does show the meeting at the time I made
24 the statement and this meeting at the M & M Association was
25 subsequent to that time.

26 MR ROGERS: Now, will you let me see the memorandum by which

1 you can tell what day you were at the Merchants & Manufactur-
2 ers Association? A I will if you want it, yes sir. That
3 part of my memorandum.

4 MR ROGERS: Yes. A Yes sir. (Produces memorandum).

5 Q: You have handed me a memorandum dated January 25, 1912.

6 MR FREDERICKS: We object to counsel reading it in evidence.

7 MR ROGERS: I desire to inquire if this memorandum is one
8 which will refresh his recollection concerning the date of
9 the meeting in the Merchants & Manufacturers Association
10 rooms.

11 MR FREDERICKS: No objection.

12 A Yes sir. I cannot tell you the exact date, but it was
13 a few days subsequent to that time, to the best of my recol-
14 lection.

15 MR ROGERS: Now, this memorandum I offer in evidence, if
16 your Honor please.

17 THE COURT: Counsel are entitled to see it.

18 MR ROGERS: Yes sir. I understood from Mr Ford he had seen
19 it, from his remark, so I didn't show it to him.

20 MR FREDERICKS: Your Honor, we think it is immaterial and
21 no foundation laid; therefore, it is ^{not} admissible. We don't
22 make any particular point on it, following the rules of
23 evidence.

24 MR ROGERS: Show it to the Court.

25 THE COURT: Let me see it. (Witness hands memorandum to
26 Court) Objection overruled.

1 MR ROGERS: Let me have it. (Reading): "January 25, 1912.
2 During day built chicken yard. Received telephone message
3 from Mr Ford at 4 p m. After supper went to Lawler's of-
4 fice. Mr Ford and Mr Lawler were both there. Stayed until
5 11:30 p m". With your permission

6 I will omit the last part. Do you desire me to do so? It
7 doesn't refer to any matter I am concerned about.

8 A Yes sir, I do wish you to.

9 Q By Mr Rogers: Now, who was the Mr Lawler referred to
10 here? A Oscar Lawler, Ex-United States Attorney.

11 Q Special prosecutor in the so-called dynamite conspiracy
12 cases, is that right? A I don't know.

13 Q You don't know? A I haven't any knowledge, no sir.
14 I have understood.

15 Q You so understood?

16 MR FORD: We ask that the last part of the answer be stricken
17 out. They are seeking continually to put hearsay testimony
18 in this record, and it isn't that it is a matter in itself
19 so important, but it is setting a precedent that we certainly
20 object to. I move to strike out the last part of that answer
21 as being a conclusion of the witness and not responsive to
22 the question.

23 THE COURT: Motion denied.

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8s 1 MR. ROGERS. Now, is this the date that you made the state-
2 ment that you say you made to Mr. Ford? A It is the date
3 I say I made the statement and it is the day that I did
4 make the statement.

5 Q Did you make that statement in the presence of Mr.
6 Oscar Lawler? A Part of it.

7 Q Did you make that statement in the office of Mr. Oscar
8 Lawler? A I did, yes, sir.

9 Q Mr. Oscar Lawler was present, who else besides yourself
10 an Mr. Ford? A Mr. Peter michel, shorthand reporter, as
11 I remember, I am quite sure it was him.

12 Q Any one else? A I don't think so; no, I am sure
13 there was not.

14 Q Who asked you the questions, Mr. Lawler or Mr. Ford, at
15 the making of that statement? A Mr. Ford.

16 Q Do you know why it was that the statement was made in
17 Mr. Oscar Lawler's office, the attorney for the United
18 States authorities in prosecuting the so-called dynamite
19 cases? A I haven't the least idea in the world.

20 Q Do you know why they didn't go to Mr. Ford's office?
21 A I haven't the least idea in the world.

22 Q Who telephoned you to come to Mr. Lawler's office instead
23 of to the State's Attorney's office? A Nobody.

24 Q How did you come to go to Mr. Lawler's office instead of
25 Mr. Ford's office?

26 MR. ford. We object to that as calling for a conclusion

1 of the witness. I can explain that.

2 MR. APPEL. But we want the witness to state.

3 MR. FORD. The witness's conclusion.

4 MR. APPEL. Your Honor, we object to his making a state-
5 ment or giving any intimation or suggestion to this witness

6 MR. FORD. I am not going to make any suggestions.

7 THE COURT. I can't read the mind of Mr. Ford.

8 MR. APPEL. I can read his mind by the way he starts. It
9 is not necessary to read his mind.

10 THE COURT. He is making an objection, Mr. Appel, and he is
11 entitled to be heard. Proceed.

12 MR. FORD. He said he don't know why that office was
13 selected. Now, any other questions, if he don't know,
14 would be merely a conclusion. He stated the reason he
15 went there was because Mr. Ford requested him. Now, let
16 them subpoena me, if they want to know why that office was
17 selected. That is the proper way. I am not saying they
18 should do it. I am not saying they are required to put
19 him on the stand but I am simply making the point as to
20 this witness under the circumstances it would be a pure
21 conclusion on his part as to why that office was selected,
22 and we object to it on the ground that it is a conclusion.

23 THE COURT. Read the last question, Mr. Reporter.

24 (Last question read by the reporter.)

25 THE COURT. Objection overruled.

26 A I don't know anything about it. I went there with Mr. Ford

1 BY MR. ROGERS. Q Did Mr. Lawler tell you at that time
2 that he was engaged in the prosecution of cases in the
3 United States court? A Mr. Lawler didn't address me in over
4 ten words all the time I was there.

5 Q Did you go to Mr. Lawler's office at the advice or
6 request of Mr. Ford? A I did, at the request of Mr. Ford.

7 Q Now, having made that memorandum of your being at Mr.
8 Lawler's office on the 24th does--the 25th--does your memo-
9 randum book of a similar nature to this page which you
10 have given me, show your going to the Merchants & Manu-
11 facturers Association's rooms and there meeting Mr. Zeehande-
12 laar, Mr. Fred L. Baker, Mr. Reese Llewellyn, and the others
13 whose names you have mentioned in the Merchants & Manu-
14 facturers Association's rooms? A I don't know, because I
15 haven't read my memorandum from the time it was made.

16 Q Be kind enough at the present moment to look it over
17 and see. A Certainly. I don't think it does.

18 Q Will you explain, then, why you put down the fact that
19 you went to Lawler's office and did not put down the fact
20 that you went to the Merchants & Manufacturers Association
21 offices? A It was not necessary to have that to refresh
22 my memory; I remember it.

23 Q Was it necessary to refresh your recollection as to being
24 at Lawler's office?

25 MR. Ford. Object upon the ground that the question is argu-
26 mentative and not cross-examination; irrelevant and imma-

1 terial.

2 THE COURT. overruled.

3 A yes, sir; I considered that a very important point in
4 my life. I put that down, and I didn't consider the visit
5 to the Merchants & Manufacturers Association important
6 to this case or to any other one.

7 MR. ROGERS. The important things you could remember, is
8 it not true? and the unimportant you could not, so why
9 didn't you put down the unimportant instead of the important
10 thing?

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1 MR FORD: Objected to on the ground it is argumentative.
2 It calls for a conclusion of the witness; no foundation laid
3 as to whether the witness has any special skill in psychology
4 which would enable him to --

5 THE COURT: I think it is calling for a conclusion of the
6 witness. Objection sustained on that ground.

7 MR ROGERS: Mr Franklin, then that memorandum book of yours
8 does not purport or pretend to contain where you went or who
9 you saw, only that which you chose to put down; is that not
10 true?

11 MR FORD: It is a self-evident proposition. Objected to
12 upon the ground it is not material. The memorandum book is
13 not in evidence. It is a personal matter and not cross-
14 examination.

15 THE COURT: Objection overruled.

16 A I put in that memorandum book just such things as I
17 thought might be necessary as a protection to myself at
18 some future time, from the time it was made, and to refresh
19 my memory on dates that I considered important.

20 MR APPEL: Now, if your Honor please, in view of what we
21 consider the different statements of the witness with refer-
22 ence to this memorandum in relation to the subject of this
23 inquiry, we ask now for an order of the Court requiring the
24 witness to produce the memorandum for the inspection of the
25 attorneys for the defendant. We contend, your Honor, that
26 at one time the witness said there was something there by

1 which he could tell the exact date, and at another time he
2 said it was not there. In view of that statement we ask
3 now for an order of the Court requiring him to produce the
4 memorandum and allow the defendant's attorneys to inspect
5 the same, to enable them to further cross-examine him upon
6 that question.

7 MR FORD: Now, if the Court please, we object to that.
8 It is purely a private matter, just as much as our records
9 are private matters. There is ample opportunity, and there
10 are a number of men out of which number they can surely
11 find at least one reputable witness among the number of
12 Stoddard Jess, Reese Llewellyn or Fred L Baker, to find
13 the date that he was down there; the date he was down there
14 is the only important thing apparently, and there are
15 plenty of reputable witnesses from whom they can secure
16 that information. They have no right to inspect the
17 private memorandum of the witness where the witness does
18 not use it to refresh his recollection; and then it is
19 only the adverse party that is entitled to it, where the
20 witness is relying on memorandum. They are seeking to
21 put it in and they would not let us put it in when we
22 wanted to.

23 MR APPEL: We again on the part of the defendant protest
24 against the conduct of Mr Ford in persistently making state-
25 ments of facts to the jury which are prejudicial to the
26 rights of this defendant. We assign this conduct as error.

1 We assign his continual custom in that respect, of which
2 this is only one incident, as unprofessional and as pre-
3 judicial to the rights of this defendant, and because he
4 being one of the prosecutors here he is taking advantage
5 of the situation in order to make those statements, which
6 is undue advantage of our rights. Now, with respect to
7 the question here, counsel says that the adverse party has
8 a right to inspect the record, your Honor. What does
9 "adverse party" mean? It means the party against whom the
10 witness is produced. Can your Honor put on any other
11 construction upon that, it means the cross-examiner. It
12 means the person who has to meet what the witness testified
13 to.

14 THE COURT: I agree with you as to that phase of it, Mr
15 Appel.

16 MR APPEL: So we are entitled to see this -- this section
17 which he reads is our ^{authority} ~~party~~ for that request. The adverse
18 party may look at that memorandum but not only that, your
19 Honor, he stated -- he stated here --

20 THE COURT: That is the point I want to get at.

21 MR APPEL: -- that the witness made this memorandum on the
22 14th day of January, this year, and that he put down the
23 proceedings from time to time. Begins on page 771-2 and
24 including 722:

25

26

Os 1 (Reading) " Q--Is that because on the 14th day of January
2 you started making a memorandum? A--No, sir, it is not.
3 Q--When did you start making a memorandum? A--The 14th
4 day of January. Q--You have been reading that memorandum
5 from time to time since? A--No, sir, I have not; It is
6 not necessary. Q--Didn't you say the other day on the
7 stand you had read it? A--I said I had read it after Mrs.
8 Franklin had written it to see if it was correct. I read
9 each entry after it was made. Q--I say, you read it
10 from time to time? A--No, sir, I have not; I have read
11 each day's after it was written down, after it was written,
12 to see if it was correct. Q--The journal of the day's pro-
13 ceedings; those proceedings might perchance be set down?
14 A--They were set down there in as short manner as possible
15 so if I wished to refresh my memory, and as a protection
16 to myself, any certain transaction I wished to allude to.
17 It has not at this time been necessary for me to do so."
18 And so on, your Honor, showing that this memorandum if it
19 contained the proceedings from day to day of those matters
20 which he thinks important, as he says in this particular
21 case, we are entitled to see it. Now, whatever is there
22 which is material we are entitled to it. If there is noth-
23 ing there that is material we are not entitled to it. Cer-
24 tainly, your Honor, that is a continuing memorandum--a
25 continuing memorandum. Those continuing events are related
26 to each other. It is concerning the same subject. It is
concerning the acts and doings of this witness. Now, we

1 don't have to ask the witness a particular question in a
2 particular way to get a particular fact. We have a right
3 to show his conduct. We have a right to show his acts.
4 We have a right to show that this witness, your Honor,
5 once aligned on the part of the defendant, according to
6 his testimony, immediately upon the condition of things
7 being such that then he sought association, sought consul-
8 tation, that he became a willing party in the office of
9 Tom, Dick and Harry who were interested in the prosecution
10 of Mr. Darrow or in the prosecution of the McNamara cases,
11 which is related to this. We have a right to do that.
12 Wouldn't they have the right, your Honor, while I am associat
13 here, wouldn't they have the right, if I went upon the stand
14 against any of my colleagues here to show that I was travelin
15 around with Mr. Ford, that I was traveling around with Mr.
16 Fredericks and that I was traveling around with others;
17 that I traveled with the United States officials indirectly
18 or directly interested. How would you prove the conduct
19 of a spy? Wouldn't you show he was upon one side of the
20 controversy and afterwards he was seen going over there and
21 going over on the other side? Haven't the jury the right
22 to see this man traveled from time to time after certain
23 events occurred, after he made his statement down there to
24 Mr. Ford?

25 MR. FORD. Pardon me, I object to--

26 MR. APPEL. Haven't we the right to ask of this jury this

1 conduct--

2 THE COURT. Just a moment.

3 MR. FORD. I object to this statement of facts and I assign
4 this man's conduct as to these matters as misconduct.

5 If the Court please, the only question before the Court is
6 with regard to that memorandum and not an argument about
7 other matters. Let him confine his argument to the memo-
8 randum.

9 THE COURT. As soon as he gets away from the subject before
10 the Court I will admonish him.

11 MR. FORD. I am calling your Honor's attention to the sub-
12 ject, was the right to examine the memorandum.

13 MR. APPEL. I beg your Honor's pardon and I beg counsel's
14 pardon. I am going to be extremely, unduly and extraordinar-
15 ily polite and mild. Perhaps that will have a better
16 effect upon counsel on the other side than by being a
17 rough-neck, if you will allow me the expression, and I want
18 to be--I want to reform. Your Honor has been very kind
19 to me and admonished me in a very good way how to reform,
20 and I am going to take your Honor's suggestion.

21 Your Honor, I am simply illustrating what we want to
22 show. We are entitled to that information that he has
23 there in that book; if there is any there that we can
24 view. It is the only means of knowing, your Honor,
25 what this man did and whom he saw and I am illustrating
26 why it is material for us to know what points we want to

1 address. Of course, I want to show, your Honor, that a
2 man went into a house and took something from there and
3 carried it off in the dark, and then to ask him, "Did
4 you steal it?" He will say, "No, I didn't steal it".
5 He might not construe his act as "I stole it", but I
6 rather show his act in reference to the matter and if
7 there is anything there, in all justice, your Honor, the
8 Court ought to afford us the most liberal means in the
9 world to get at this gentleman's relation and position to
10 the prosecution. In other words, if there ^{is} one inducement
11 for him to testify we have a right to show there was another
12 inducement. We want to show to the Court what the induce-
13 ments were. We have a right to show that there an accumu-
14 lation of inducements. The Supreme Court of this state
15 said you may ask a witness not only whether or not he is
16 receiving pay to testify in a case, but you have a right to
17 show how much, and the Court reversed the case for that
18 reason. So, in a question of inducement, if the question
19 of motives were like Mr. Franklin's testimony against Mr.
20 Darrow we have a right to go into the inducements in showing
21 how correct those motives are, how correct these inducements
22 are, and if we cannot get it from the witness we have a
23 right to show it by his acts. If we cannot--if the witness
24 will not say and if it be not true that any one in authority
25 induced or gave him inducements to testify, we have a
26 right to show that he was in consultation with him. We have

1 a right to show that person in authority beckoning him
2 said to him, "Go here, go there; you do this; you do
3 that." We have a right to show he was under the influence
4 of that man by those acts, so that the jury may draw the
5 inference whether or not those little things-- now, a man
6 might as well say, "My boy, I am not going to offer you any
7 thing to testify, but you understand." Now, the witness
8 could truthfully testify that no offer was made to him to
9 testify, but the suggestion, the mere suggestion, the mere
10 saying, "you understand." We would have the right to
11 show that, and we have a right in conjunction with that to
12 show his acts in reference to that person. Now, here is a
13 witness who has made adverse statements in respect to this
14 matter, and if there is anything in that memorandum con-
15 cerning that meeting down there, why, it wont hurt him;
16 wont hurt the prosecution, wont hurt us, but if there is
17 anything there that he is concealing from us, and to show
18 he is we are entitled to show it to this jury, that when he
19 said there was nothing in there with reference to that meet-
20 ing that he didn't tell the truth, and if there is not
21 anything in reference to that meeting, then he stands here
22 acquitted of any desire to mislead anybody, but as counsel
23 has said here and as counsel has come to the aid of the
24 witness, and has so nicely said, "I have read it and I know
25 what there is in there, and there is nothing in there to that
26 effect--" why, Gentlemen, if it is so here, you satisfy

1 yourself--here it is. What is there to conceal about
2 this? And I say in view of the attitude of counsel on the
3 other side and in view of the attitude of the witness, in
4 view of the different statements here, we ask your Honor
5 to extend to us the most liberal means of ascertaining the
6 exact truth in respect to that matter.

7 MR. FORD. If the Court please, I hope counsel's reform
8 will be permanent, but there is one point I want to call
9 your Honor's attention to--

10 THE COURT. I don't think it has any application here. I
11 see this question from the standpoint of the materiality of
12 this book as you do, and it is unnecessary for you to pre-
13 sent it further. The objection to the demand that the
14 witness produce the memorandum book is sustained at this
15 time.

16 MR. ROGERS. Since the Court has been talking you have
17 been running over the leaves of that memorandum, haven't
18 you? A Yes, sir.

19 Q In the presence of the jury? A I have.

20 Q Not once but twice? A Yes, sir, twice.

21 Q Let me see what you ran over. A I didn't read any par-
22 ticular part of it.

23 Q Well, while you have been on the stand--

24 MR. FORD. If the Court please, the witness didn't read it.

25 MR. APPEL. Now, is that fair--

26 MR. FORD. Just put the record right, before the witness

1 answers, what he said. I ask that be done before I say
2 anything further.

3 (Last answer read by the reporter.)

4 A I did not read it; I simply glanced at it to see if there
5 was any memorandum there in regard to the meeting of the
6 M & M Association.

7 MR. ROGERS. Q Now, is there? A Not that I have seen.

8 Q Let me see what you ran over? A It is my private
9 property and I refuse to produce it.

10 THE COURT. The objection of the witness is sustained.

11 MR. ROGERS. Q Now, having looked at your memorandum
12 book, could you tell us whether you met Mr. Oscar Lawler,
13 prosecutor in the dynamite cases, so-called, at any other
14 time than the time that you were there with Mr. Ford and
15 made this statement?

16 MR. FORD. Now, if the Court please, we object to the ques-
17 tion on account of the first part contained in it, on the
18 ground that it is assuming something that is not a fact;
19 not been testified to; no foundation laid for its intro-
20 duction; that the witness is testifying by reason of having
21 looked at his memorandum. Counsel is seeking ingeniously
22 to work in to the question something that the witness might
23 overlook and from which he might later argue a right to
24 examine that memorandum book. The rule being this that if
25 the witness testifies to any fact by refreshing his recol-
26 lection from a memorandum book he has a right to look at it,

1 just as your Honor ruled in that particular case where
2 it was done. Now, counsel is trying to claim from all
3 of these questions that the witness by reason of having
4 looked through the memorandum book can now testify to another
5 matter. We say the witness has no right to refresh his
6 recollection from the book until he states he is unable to
7 testify. They are seeking to put something in that ques-
8 tion that is not evidence and no foundation laid for asking
9 such a question, and we object upon the ground it is impro-
10 per to the witness, assuming something to be true that the
11 witness did not testify to be true, and that it is incom-
12 petent, irrelevant and immaterial and the question is com-
13 pound and complex.

14 THE COURT. Read the question.

15 (Last question read by the reporter.)

16 THE COURT. Objection sustained.

17 MR. ROGERS. On what ground, if your Honor please, for
18 the benefit of framing the next question?

19 THE COURT. On the ground that the part of the question
20 saying, "Having looked at the memorandum book--"

21 MR. ROGERS. Q I will withdraw that. It occurred in the
22 presence of the Court, of course. Answer the latter part
23 of that question and omit the first clause, having run
24 over your memorandum book.

25 MR. FORD. Your Honor, we object to the rest of that
26 question on the ground it assumes something not in evidence

1 calls for hearsay answer, namely, that Mr. Lawler was the
2 prosecutor in the dynamite cases.

3 MR. ROGERS. I will withdraw this witness and put Mr. Ford
4 on the stand for the purpose of laying the foundation.

5
6 J. W. F O R D,

7 a witness called on behalf of the defense, being first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION.

10 BY MR. ROGERS. Q You know Mr. Lawler? A I do.

11 Q To your knowledge is he not the special attorney for the
12 United States Government engaged in the prosecution of the
13 dynamiting cases? A I know nothing about that subject
14 except what was told to me by others?

15 Q By Mr. Lawler, among others? A I had a certain assump-
16 tion upon which I acted and I don't believe I ever ques-
17 tioned him about the matter; I am not sure.

18 Q But you do know that he was special attorney for the
19 United States Government in the dynamiting cases, in the
20 United States Court? A I object to that on the ground
21 that the warrant by the Government would be the best evidence
22 of that fact, if such is the fact, calling for hearsay.

23 MR. ROGERS. I ask for a reading of the question.

24 MR. FREDERICKS. We further object to it, your Honor, on
25 the ground that it is absolutely immaterial whether Oscar
26 Lawler was attorney for the dynamiting cases or not;

1 further, that it is hearsay and calls for a conclusion of
2 the witness and not the best evidence.

3 THE COURT. Gentlemen, what is the use of wasting time on
4 this matter? It is a matter of common knowledge that
5 Oscar Lawler occupied that position and the Court takes
6 judicial notice of it and so declares it at this time.

7 MR. ROGERS. Q Isn't the reason you went down there that
8 Oscar Lawler was known to you to be such attorney and went
9 down there to his office with Mr. Franklin at the time
10 indicated? A The reason I selected that office was, I
11 wanted Mr. Lawler's assistance by reason of any knowledge
12 either of fact or law that he might have.

13 Q Isn't it a fact, to be fair about it and frank about
14 it, that you went down there because he was special attor-
15 ney for the Government in the prosecution of the dynamiting
16 cases? A The reason I went down there was because of my
17 respect for Mr. Lawler's knowledge of the law and the facts
18 concerning which I was investigating, I was conducting the
19 examination before the grand jury at that time, and I wanted
20 his professional assistance regardless of any official
21 position he may or may not have occupied at that time.

22 Q Mr. Ford, do you say to this jury that Mr. Lawler's posi-
23 tion as special attorney in the dynamiting cases or the
24 prosecution thereof had nothing to do with your going to
25 his office and taking Mr. Franklin's statement?

26 MR. FREDERICKS. I assume, may it please the Court, that the

1 dynamiting cases and the special prosecutor means the
2 United States dynamiting cases and the United States prose-
3 cutor?

4 THE COURT. Solely.

5 A I don't know how I can answer that. You can draw your
6 own conclusions and so can the jury in regard to that.
7 matter. I never have examined into/^{the} particularly things that
8 led me to go down there, but the reason that I asked his
9 assistance at that time and some other people in whom I
10 had confidence at various stages of the proceedings on
11 questions of law or questions of fact. I went there to
12 Mr. Lawler not because of any official position he held, --
13 I will say positively I went there not because of any
14 official connection he had at the time with any case, but
15 because of his professional knowledge of the facts and the
16 law.

17 Q Did he get a copy of the statement taken at that time?

18 A I am not sure that he did. I am rather of the impression
19 that he did not. I might be mistaken on that.

20 Q You mean to say he did not get it at that time or did
21 not get it at all? A At any time. I don't see any
22 reason why he should want it and my impression is that it
23 was not given to him. I couldn't see anything in it that
24 the United States or anybody else would be interested in
25 except the County of Los Angeles.

26 Q I am asking for your recollection and not for an argu-

1 ment. A I am stating the grounds upon which I based
2 my recollection, and that is my recollection, that he hasn't
3 any. I might be mistaken. I am stating my reason that
4 strengthens me in my belief he hasn't any, that I cannot
5 see any reason why he is interested in it by reason of
6 any official capacity.

7 Q Why did you spar and refuse to answer that you did not
8 know Mr. Lawler was an attorney for the United States
9 Government in the prosecution of the dynamiting cases when
10 the Court told you that it was a matter of common knowledge
11 which he would say to the jury is a matter of common know-
12 ledge? A I will answer that question I don't think the
13 Court had any right to state any fact which he could not
14 take judicial notice of. I don't think he could take
15 judicial notice and I don't want to set a precedent for you
16 to be introducing evidence which I know to be clearly
17 incompetent and hearsay and not because of its value what-
18 ever. I have conclusions and the jury may have conclusions
19 in regard to that matter, and they may have learned things
20 in general. I don't care to set any precedent for you, that
21 is my reason.

22 MR. APPEL. I understood the court took judicial notice
23 of the doings and acts of the different departments of the
24 Government were true, and whether said seemed to indicate--

25 A Out statute doesn't say that. Such is not the law.

26 MR. FREDERICKS I don't think there is anything before the

1 Court.

2 MR. ROGERS. I said that is all; you may cross-examine.

3 MR. FREDERICKS. That is all.

4

5 BERT H. FRANKLIN,

6 recalled for further cross-examination.

7 BY MR. ROGERS. Q Please answer the last question put
8 to you.

9 A Read it, please.

10 MR. Ford. Before we proceed further, I want to take an
11 exception to the Court taking judicial notice of the occupa-
12 tion of Mr. Lawler at any time and ask that the Court strike
13 it out and I do that without disrespect to your Honor. I
14 think your Honor is mistaken in that. You have no right to
15 take judicial notice of that fact: (Reading) --

16 THE COURT. Motion to strike out is denied. The exception
17 will be noted.

18 MR. Fredericks. We understand we may want to prove
19 Mr. Lawler is just what the Court says he takes judicial
20 notice of, and we understand counsel makes no exception to
21 the fact that the Court has taken judicial notice of the
22 fact that Oscar Lawler was the deputy--was an assistant
23 United States attorney, generally?

24 MR. ROGERS. Not in general. He has a special appointment
25 for the prosecution of the dynamiting cases, so-called, of
26 which there are supposed to be many, in this jurisdiction

1 and in other jurisdictions, and his appointment is a
2 special appointment and not general appointment, as I
3 understand it.

4 MR. FREDERICKS. I don't know that counsel can bind his
5 client in a stipulation of fact, but at any rate I presume
6 counsel will not make it very difficult for us if we were
7 to prove--

8 MR. ROGERS. Not any more difficult than Mr. Ford tried to
9 make it for me. I might get back in that respect.

10 THE COURT. Any further cross-examination of this witness?

11 MR. ROGERS. Yes, sir, I would like to have the last ques-
12 tion read and his answer, if I am correctly informed
13 about the record. (Last question read by the reporter.)

14 MR. FORD. We object, if your Honor please, upon the
15 ground that it is assuming a fact that is not legally in
16 evidence, in that Mr. Lawler was the dynamiting prosecutor
17 for the United States.

18 THE COURT. Objection overruled.

19 A Now, what is the question?

20 MR. ROGERS. Q The latter part of that question, omitting
21 the first part, "Having looked at your memorandum", the
22 latter part you may answer, if you please.

23 A It is impossible for me to tell where the first part
24 of that question stops and the latter part commences, for
25 that reason it is impossible for me to answer it.

26 THE COURT. Did you adopt the question as the reporter

1 read it?

2 MR. ROGERS. Yes, sir.

3 THE COURT. Read it again.

4 (Last question read by the reporter.)

5 A Now, if you will fix the time, Mr. Rogers, I will
6 answer that question. I met Mr. Lawler frequently, but
7 never since that time. I don't think I have ever set eyes
8 on him.

9 Q You haven't met him, then, since the 25th day of January
10 when you were in his office in company with Mr. Ford and
11 made this statement? A I don't recollect. I don't think
12 I have, no, sir. I don't think I have even seen him.

13 Q How long before that had you met him? A Considerable
14 length of time.

15 Q Well, would you give us your best recollection as to the
16 time? A Do you mean by meeting him to see him or to
17 converse with him?

18 Q To converse with him? A For months.

19 Q Now, when you went to the Merchants & Manufacturers
20 Association's rooms and there met Mr. Seehandelaar, had you
21 known him before that date? A You mean when I met him the
22 second time or the first time?

23 Q The first time? A In company with the other men?

24 Q Yes. A Oh yes; yes, sir.

25 Q When had you last met him before that time? A To con-
26 verse with him, you mean, or to see him on the street?

1 Q I don't mean, of course, the ordinary passing by on
2 the street. I mean whenever you had seen him to talk with
3 him or any person in his presence? A Months, years,
4 I guess; probably two years.

5 Q Then he was not a special friend of yours? A Yes, sir--
6 not a special friend--I never testified that he was.
7 I said he was a personal friend of mine and I say so now.

8 Q You associate with him socially? A I did not.

9 Q Did you at that time? A I did not.

10 Q You hadn't seen him and spoke to him that you know of
11 in a couple of years? A I don't think so.

12 Q How long before that meeting had you seen Fred Baker?

13 A To speak and converse with him?

14 Q Yes. A I don't remember; considerable time, though.

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- 25-Sm 1 Q As long as Zeehandelaar, a couple of years?
- 2 A Perhaps so.
- 3 Q Your acquaintance with Mr Baker in recent times has
4 been considerably limited, has it not? A My acquaintance
5 has lasted about twenty-five or six years.
- 6 Q Not socially? A Not socially, no sir.
- 7 Q Had you met Reese Llewellyn to talk with him at any
8 time within two years before this meeting? A Yes sir.
- 9 Q Where? A At his place of business.
- 10 Q When? A I don't remember; it was during election
11 time.
- 12 Q Election time? A Yes sir.
- 13 Q Your call upon him was political? A Yes sir.
- 14 Q When, before that political conversation that you had
15 with Reese Llewellyn, was it, that you had last seen him?
16 A I don't remember.
- 17 Q A long time, wasn't it? A I don't remember; a con-
18 siderable time.
- 19 Q A considerable period of time? A I was out of the
20 city myself, most of the time, Mr Rogers, for the last five
21 years, out a good share of the time. It was impossible for
22 me to meet him.
- 23 Q Well, you haven't met him to speak of within five
24 years, had you? A No, I don't think that I have.
- 25 Q How is it with respect to Mr Stoddard Jess. Have you
26 met him to speak to him or talk to him before this meeting

1 at the Merchants & Manufacturers Association within recent
2 times? A Yes sir, I met him frequently.

3 Q Where? A At the bank.

4 Q Talk with him? A Yes sir.

5 Q Business with him? A Yes sir.

6 Q Just depositing money, wasn't it? A No sir.

7 Q What business was it?

8 MR FREDERICKS: Objected to upon the ground it is incompetent
9 irrelevant and immaterial.

10 THE COURT: Objection sustained.

11 MR FREDERICKS: Unless shown to refer to his testimony in
12 the case.

13 THE COURT: It doesn't so appear at this time.

14 MR ROGERS: Mr Koepfle, had you known him well? A No sir.
Had

15 Q You met him within recent time? A No.

16 Q Had you ever met him before? A Not to my knowledge.

17 Q Mr Jevne, had you seen him within recent times before
18 that meeting at the Merchants & Manufacturers Association?

19 A Very little in the last four or five years.

20 Q Very little? A Very little. I was out of the city
21 most of the time.

22 Q Do you remember when you last saw Mr Jevne before the
23 meeting at the Merchants & Manufacturers Association?

24 A I do not.

25 Q Do you remember the other gentlemen who were there?

26

Al-P1 A No, I do not.

2 Q Were they friends of yours? A That would be impossible
3 to tell unless I remember who they were.

4 Q If they had been intimate friends of yours, or special
5 friends of yours, do you not think you would remember them?

6 A Not necessarily, no, Mr Rogers.

7 Q Suffice it to say you don't know who it was at this
8 time. A It didn't make any particular impression on
9 my mind that I should try to remember.

10 Q Please answer me. A That is my answer.

11 MR FORD: We submit the witness has answered.

12 Q Read the question, please. (Question read)

13 A No, I don't remember, Mr Rogers.

14 Q Now, having gone up there with Mr -- you saw Mr Zee-
15 handelaar first, did you not? A No sir.

16 Q Whom did you see first? A A lady in the outside
17 office.

18 Q Well, aside from the lady in the outside office, whom
19 did you see first? A Well, that is difficult to tell.
20 There were several of them there at the time, three or four
21 of them, two or three of them.

22 Q When you went up there whom did you ask to see of the
23 lady in the outside office? A Now, there were two or
24 three in the outside office when I went there.

25 Q Who were they? A I don't remember which ones at this
26 time. I think Mr Jevne was one of them, I think Stoddard

1 Jess was another.

2 Q Were you then taken into the rear office, or private
3 office of the Board of Directors? A I was not.

4 Q Did you meet them in the outside office? A Yes sir,
5 all at one time.

6 Q Who opened the conversation, you or they, or some one
7 of them? A I think Mr Zeehandelaar did.

8 Q What did he say? A I don't remember.

9 Q Could you remember any part of what Mr Zeehandelaar
10 did in opening the conversation? A No, I don't remember,
11 Mr Rogers. I would be glad to.

12 Q Did you reply to Mr Zeehandelaar, the Secretary of the
13 Merchants & Manufacturers Association? A He didn't ask
14 me anything.

15 Q Did you reply to him. I didn't say "Did you answer
16 him". I asked: "Did you reply to him"? A I did not to
17 him, no sir.

18 Q Well then, who spoke next after Mr Zeehandelaar had
19 spoken to you? A Mr Franklin -- he didn't speak to me.

20 Q What did you say? A He didn't speak to me.

21 Q He didn't speak to you? A No sir, he spoke to the
22 gentlemen there generally.

23 Q He spoke to the gentlemen there generally? A Yes sir
24 but I don't remember his language.

25 Q Well, give us the substance and purpost of what Mr
26 Zeehandelaar said to the gentlemen there generally, the

1 Secretary of the Merchants & Manufacturers Association,
2 in your presence in their rooms.

3 MR FORD: We object to that as purely hearsay, pure and
4 simple, as not in anywise being cross-examination, not in
5 anywise tending to show statements made by this witness in-
6 consistent with those made on another occasion. There is
7 only ^{one} way in which a witness may be contradicted, and I want
8 to put this clearly before the Court. I do not for one
9 moment contend that counsel has not the right to show by
10 legal evidence that any transactions occurred which in-
11 fluenced this witness at that place, or that any things were
12 done by other people which influenced him, but let him
13 bring the people in who made the statement in order that we
14 may cross-examine them. Now, he is seeking apparently to
15 impeach this witness, or to show somethingsaid or done by
16 this witness, or to this witness, which would influence this
17 witness. That would be proper and we made no objections to
18 this time, but now he is trying to introduce something that
19 was said by somebody to somebody else, not addressed to this
20 witness, and as far as I know or can see at the present time
21 something over which this witness had no concern. Now, if
22 this witness had testified to some negotiations, some ar-
23 rangements had between him and any person there present and
24 that they want to explain something that was said in the
25 presence of this witness by somebody else, all right, let
26 them lay the foundation, then. At this time we object on

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1 the ground it is hearsay, pure and simple, not cross-
2 examination, no foundation laid for its introduction; in-
3 competent, irrelevant and immaterial.

4 THE COURT: Objection overruled.

5 A I think Mr Zeehandelaar notified those present that
6 Mr Franklin wished to make a statement and I recall that
7 at the time I went in Mr Zeehandelaar said to me: "Do you
8 wish to make a statement to the gentlemen present?" And I
9 said, "Yes". After Mr Zeehandelaar had made that state-
10 ment, if I remember correctly, F L Baker who said that he
11 thought as he had known me a long while that any statement
12 I wished to make that they should listen to, and I thereupon
13 made my statement.

14 MR FREDERICKS: The question calls for the whole conversa-
15 tion. A I did not so understand it.

16 MR ROGERS: No, the question didn't call for the whole con-
17 versation, if your Honor please. The question called for
18 the conversation as I wish to bring it out, namely, item by
19 item, and person by person.

20 MR FREDERICKS: All right. I withdraw my understanding.

21 Q By Mr Rogers: Now then, after Mr Baker had said he
22 thought you ought to be permitted to make a statement to
23 them -- A I think it was Mr Baker --

24 Q You made a statement? A I did, yes sir.

25 Q Then the first words said to you up there were "Do you
26 want to make a statement?" A Yes sir, if I remember cor-
rectly, that is what Mr Zeehandelaar said to me just after

1 I went into the room.

2 Q Then how did Mr Zeehandelaar have in his head you
3 wanted to make a statement, do you know? How do you know he
4 didn't think you came up there to collect a bill or something

5 MR FREDERICKS: That is objected to as calling for a con-
6 clusion of the witness.

7 Q If you know.

8 THE COURT: Objection overruled.

9 A I have no way of knowing.

10 Q Did it surprise you? A Not a bit.

11 Q When Mr Zeehandelaar said "Do you want to make a state-
12 ment?" and turned around and said "Mr Franklin desires to
13 make a statement"? A Not a bit. I had been told by
14 Mr Crook those gentlemen would be there, friends of mine,
15 and said to come there a certain time, and I went.

16 Q Friends of yours? A Yes sir, friends of mine, that is
17 what I said.

18 Q Two of them you don't remember, and the others you had
19 seen the first time, and do you call those friends? A Yes
20 sir, I do.

21 MR FORD: We object to those comments on the testimony by
22 counsel as improper. We are not allowed to do that; they
23 objected continually whenever we made them, to any testimony.

24 THE COURT: All that is necessary is to make the objection.
25 Objection sustained.

26 Q By Mr Rogers: Had you ever been in the house of any one

1 of this committee in your life? A Not to my knowledge.

-3-P 2 Q Had they ever been in your house, any one of the
3 committee? A Not to my knowledge.

4 Q Did you ever do any business for any one of them
5 before that time? A Not to my recollection.

6 Q Did any one of them ever do any business for you?

7 A Yes sir.

8 Q Before that time? A Yes sir.

9 Q Who? A Mr Jess, Mr Jevne.

10 Q As a small depositor in the bank, in the case of Mr
11 Jess, and as a purchaser of groceries of Mr Jevne's empor-
12 ium thereof, isn't that true? A As to the small amount,
13 that is a matter of your opinion and easily proven. I made
14 them as I stated.

15 Q Well, not to differ with you about the size of the
16 account, your business with Mr Stoddard Jess is exemplified
17 in the bank-book which you have produced here, is it not?

18 A It is not --

19 MR FORD: We object to that on the ground the witness has
20 already testified he had other transactions with Mr Jess,
21 and your Honor sustained objection to counsel's going
22 into those other relations.

23 MR ROGERS: I beg your pardon, I think the counsel is not
24 stating the testimony accurately. He did say Mr Jess
25 had done some business for him, but he didn't say Mr Jess
26 had done business with him. And I asked him relating to

1 his business with Mr Jess, if it was exemplified in the
2 bank account.

3 THE COURT: All right. Answer the question.

4 A I said "no".

5 Q By Mr Rogers: What other business had Mr Jess done
6 for you, other than the banking business? A That is my
7 private business, and none of yours.

8 MR FREDERICKS: We object to that, and move that the
9 answer be stricken out --

10 A I beg your pardon, Mr Rogers --

11 MR ROGERS: All right.

12 THE COURT: The answer is stricken out. Mr Franklin, the
13 Court has admonished you, and does admonish you, that you
14 are not testifying here for the benefit of counsel on
15 either side, and the remark you have just made here is
16 entirely out of order; you are not testifying for the
17 benefit of counsel, you are testifying for the benefit of
18 this Court and jury.

19 MR FRANKLIN: I have offered an apology to Mr Rogers and
20 he has accepted it. I should not have made the statement.

21 Q By Mr Rogers: I do not want to interfere with any
22 matters you regard as private business. What I am reaching
23 is whether or not, outside of the banking business, that is,
24 in Mr Jess' position as a member of the Board of Directors
25 and an officer of the First National Bank, if he ever had
26 done any business for you? A No sir.

1 Q Then your relations with him were purely financial
2 and things connected with that bank; that is what I was
3 reaching for? A Yes sir.

4 Q Now, you said you had never done any business for any
5 of them -- A Not --

6 Q I beg your pardon -- A Finish your question.

7 Q Did you say that? A I think so; I think that is
8 correct.

9 Q You went up there on this occasion and you asked them
10 for business in the future, did you not, in words or effect?

11 A I did not.

12 Q What did you say to them when you made this statement,
13 that Mr Zeehandelaar asked you if you wanted to make?

14 A I told those men that I had made a statement to the
15 District Attorney of this County as to the facts in relation
16 to my arrest, what led up to it, all the occurrences as far
17 as I remembered them at the time I made the statement, that
18 my future in this city was going to be a very difficult one,
19 and I felt that those men, being friends of mine, would
20 later on assist me ^{to} ~~and~~ try to build me up in the community,
21 being business men.

22 Q And assist you by giving you business particularly?

23 A That is what I meant, yes sir.

24 Q Assist you by giving you business? A Yes sir, that
25 is what I meant.

26 Q You meant business for the Merchants & Manufacturers

1 Association as well as for the individuals, did you not?

2 A I did not, no sir.

3 Q Why did you make this statement ~~here~~ in the rooms of
4 the Merchants & Manufacturers Association to their Secretary
5 and those gentlemen there, if you didn't mean that you
6 wanted the business of the Merchants & Manufacturers Associa-
7 tion?

8 MR FORD: To that we object on the ground it is argumenta-
9 tive.

10 THE COURT: Objection sustained.

11 Q What did they say in reply to that, when you asked
12 them for business?

13 A They told me they thought that was not the proper time
14 to discuss questions of that kind, and I left.

15 Q What did you go back for the second time?

16 A I don't remember. Yes, I do. Yes, I remember very well.

17 Q What was it? A I went to Mr Zeehandelaar and said
18 when I went to trial, or plead guilty, there would be some
19 questions, some statements in the papers that might injure
20 me, and then I asked him to go to the Los Angeles Times,
21 and the Los Angeles Examiner, and request them not to make
22 statements derogatory to my character.

23 Q Why did you go to Mr Zeehandelaar and ask him to induce
24 the papers not to say much -- A I went to him --

25 Q -- as distinguished from any other person.

26 MR FORD: To that we object on the ground that it is irre-

1 levant and immaterial; his reasons for doing it are not
2 material. The only things that are material are what oc-
3 curred.

4 THE COURT: Objection sustained.

5 MR ROGERS: If your Honor please, I can put it in another
6 form. My throat is played out, I have had a long session.

7 THE COURT: (Jury admonished.) We will adjourn until
8 two o'clock this afternoon.

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