

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. 15

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
Bert H. Franklin,		1106	1156	

AFTERNOON SESSION.

June 6, 1912. 2 o'clock P.M.

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6 BERT H. FRANKLIN, on the stand
7 for further cross-examination:

8 MR ROGERS: Mr Franklin, did anybody act as a go between
9 or means of communication between you and Mr Ford?

10 A At what --

11 MR FREDERICKS: Objected to unless the witness' attention
12 is called to some time.

13 MR ROGERS: I mean, if your Honor please, the time of the
14 happenings that we have been discussing this morning. I
15 don't mean any remote time.

16 THE COURT: Better fix it in the question.

17 MR ROGERS: Anybody act as a means of communication or go
18 between after your arrest and up until you pleaded guilty
19 at any time, between you and Mr Ford?

20 A Well --

21 MR FREDERICKS: That is further objected to upon the
22 ground that it is hearsay; incompetent, irrelevant and im-
23 material and not cross-examination.

24 MR FORD: I think, if the Court please, it would also be a
25 conclusion of the witness. We desire to add that to the
26 objection. In this, there might have been people represent-

1 ing themselves as coming from the office of the District
 2 Attorney from which the witness might conclude that they
 3 were go betweens. I think it would be proper to ask the
 4 witness if any persons called upon him who represented that
 5 they came from the District Attorney or any member of the
 6 District Attorney's office, and let him state what was said
 7 and done between him and this person, and then connect him
 8 up with the District Attorney, if they can do so; but whether
 9 the person was actually a messenger between the District At-
 10 torney and the witness would be an conclusion on his part,
 11 or if he saw the District Attorney in company with such
 12 person it would be different.

13 THE COURT: I think that last objection is well taken, Mr
 14 Rogers.

15 MR ROGERS: If your Honor has any doubt about it. I don't
 16 pretend or contend that this gentlemen came ^{from} ~~to~~ the District
 17 Attorney's office. I believe the contrary to be true.
 18 I don't believe that he represented Mr Ford or Mr Fredericks
 19 On the contrary, he represented somebody else. Now, if
 20 somebody else came to him and acted as a messenger or go
 21 between then I have a right to that preliminarily.

22 THE COURT: Who represented him as such --

23 MR FORD: I have no objection to that question.

24 MR ROGERS: Not as he represented as coming from Mr Ford or
 25 Mr Fredericks, he did not. As a matter of fact he did not
 26 come from Mr Ford or Mr Fredericks, but he came from a

1 different quarter not entirely disassociated with them, but
2 from a quarter infinitely more interested in procuring this
3 testimony than even Mr Ford or Mr Fredericks.

4 MR FREDERICKS: We object to the statement of counsel, being
5 an alleged statement of facts not in evidence and not sworn
6 to, assuming that anybody came to him from anybody.

7 MR ROGERS: If your Honor please --

8 MR FORD: I think your Honor has ruled on the question.

9 THE COURT: No, I have not ruled on the question. I suggested
10 to Mr Rogers that I thought it had merit, which called for the
11 argument.

12 MR ROGERS: I call your Honor's attention to the fact that
13 the answer to the question was long delayed, and then when
14 the witness hesitated a long time, then counsel interposed
15 an objection. Now I don't say the objection was interposed
16 in bad faith, or that there is no merit in it; the mere fact
17 that your Honor is considering it shows there may be merit
18 in it. Nevertheless, I don't wish to be put in the position
19 of arguing this or asserting that this man did ^{come} as a matter
20 of fact, from Ford or Fredericks, but that he did act as a
21 go between and as a means of communication. I have a right
22 to show that because I don't ^{have} to trace what I regard as
23 this plot or what I have designated one way or another from
24 time to time. I don't have to trace it to them, with all
25 due respect to them. I don't think they are the people
26 interested in this matter. I think someone else is.

1 I think someone else put this up, but I have never claimed
2 nor charged that Fredericks or Ford did it, but I have a
3 right to trace it back to the quarter from which it came.

4 MR FREDERICKS: We certainly object to counsel making the
5 remark anything is being put up, as being misconduct on
6 the part of the attorney for the defense.

7 MR ROGERS: Let's have the truth and fact about it, if your
8 Honor please.

9 THE COURT: I think, Mr Rogers, that the question calls for
10 a conclusion of the witness, and that it asks for the per-
11 son who may be a go between, would be his conclusion whether
12 or not such person was a go between.

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MR. ROGERS. Note an exception, if your Honor please.
Did any one carry messages between you and Ford, preliminary to your statement of the 25th of January?

A Before the 25th day of January?

Q Precisely. A Well, it is difficult for me to answer that question. I will answer it, though, by saying yes.

Q Who was it? A George P. Adams.

Q Any one else? A No, sir.

Q How about Erwin Dingle? A I testified that Erwin Dingle came to me and represented himself from the district attorney's office. I don't know whether he was or not. I don't know anything about it.

Q Don't know anything about it? A No, sir, I didn't send him.

Q He came to you and represented he was from the district attorney's office? A Yes, sir

Q And asked you to see Mr. Ford, did he? A No, sir.

Q Asked you to go to Mr. Ford? A He did not.

Q Asked you to send a message to Mr. Ford through him?

A He did not.

Q What did Erwin Dingle tell you?

MR. FORD. The time and place--object upon the ground no foundation laid.

MR. ROGERS. Q At the time he represented himself as coming from the district attorney's office?

MR. FORD. Just a moment--we object to it unless the time and place have been fixed. I don't think they have.

1 MR. ROGERS. I cannot fix the time nor place.

2 MR. FORD. Well, ask the witness to.

3 MR. APPEL. He says the time he knows the occasion when he
4 came to him.

5 THE COURT. I think he can answer and fix the time.

6 A After the 25th day of January?

7 MR. ROGERS. Q Before?

8 MR. FORD. I think the witness can fix the time and place.
9 We are entitled to know.

10 THE COURT. Objection sustained on that ground.

11 MR. ROGERS. Exception.

12 A I know the date which he came. I have no objection to
13 giving it.

14 MR. ROGERS. Q Go ahead and tell us. A The 14th day of
15 January.

16 Q The 14th day of January, the day you commenced keeping
17 your diary? A Yes, sir.

18 Q Where did he see you? A He saw me after I left the
19 office of Mr. Davis, in which I met Mr. Davis and Mr. Darrow.

20 Q Where did he see you? A Corner of Third and Spring
21 streets.

22 Q Third and Spring? A Third and Spring, the northwest
23 corner.

24 Q Did he stay with you any length of time? A About an
25 hour, hour and a half.

26 Q Where did you go? A Saddle Rock Cafe and had dinner.

1 Q Did he say anything to you about seeing the district
2 attorney or Mr. Ford? A He did not.

3 Q Did you say anything to him about it? A I did not.

4 Q He said to you that he came from the district attorney?

5 A Yes, sir.

6 Q What else did he say to you? A He said he thought it
7 was my duty and a duty that I owed to the public and a
8 duty that I owed to myself and family to tell the truth.

9 Q You knew, didn't you, that he was from Oscar Lawler,
10 and that he is a deputy United States Marshall? A I did
11 not know it nor he didn't so state.

12 Q You didn't know he was a deputy United States Marshall?

13 A Oh, yes; yes, sir. I have told you on numerous occa-
14 sions, if you separate your questions I can answer them
15 intelligently.

16 Q you knew, then, he was a deputy United States Marshall?

17 A Yes, sir.

18 Q Did he indicate to you where he had seen Mr. Ford or
19 Mr. Fredericks, when he said he came from the district attor-
20 ney's office? A I think he did, yes, sir.

21 Q Where? A In the office of the United States Attorney
22 in the Federal Building in this city.

23 Q That is where he had seen Mr. Fredericks and Mr. Ford,
24 was it? A I don't know; that is what he said.

25 Q That is what he said? A Yes, sir.

26 Q Well, the officers of the United States District Attor-

1 ney, did he say that he had seen Mr. Lawler there, the
2 prosecutor in the general dynamiting cases? A He did not.

3 Q Did you ask him? A I did not.

4 Q Was that before or after you saw Davis and Darrow?

5 A That I had the conversation with Mr. Pingle?

6 Q Yes. A After.

7 Q By appointment? A No, sir, by accident.

8 Q You mean accident on your part, don't you? A Yes, sir.

9 Q You don't know whether it was accident on his part?

10 A I do not, no, sir.

11 Q You don't know whether he had been waiting down in
12 front to see you as you came down? A I do not.

13 Q Did you meet him or did he catch up with you or how did
14 your meeting occur? A He was coming south and I was

15 going north on the west side of Spring street and I met
16 him right at the corner of Third and Spring street, the

17 northwest corner, as I was to take my car to go home.

18 Q And he told you he thought it was your duty to tell
19 what you say the truth is? A And what the truth is, Mr.

20 Rogers.

21 Q And about the matter, and that he came from the district
22 attorney, whom he had seen at the office of the United
23 States District Attorney so? A That is in effect, yes, sir;
24 you have it about right.

25 Q Well, you told him you would see the United States Dis-
26 trict Attorney or Mr. Ford, did you? A I didn't say any-

1 thing about the United States District attorney, and I told
2 him I would not see Mr. Ford, if Mr. Ford wanted to see me,
3 the proper way for him to do was to come and see me in
4 person and not send anybody.

5 Q Did Mr. Ford do that? A He did.

6 Q Where? A He came to my house the same night.

7 Q The same night, after you had seen Mr. Dingle, who said
8 he came from the office of the United States District
9 Attorney? A He didn't say that.

10 Q Well, he said he came from there where he had seen Mr.
11 Ford? A Mr. Ford, yes, sir.

12 Q Did he tell you how Ford and the United States District
13 Attorney happened to be in consultation there? A He
14 didn't say they were in consultation, and never mentioned
15 the United States Attorney to me at that time or any other
16 time.

17 Q Did he just mention his office? A He just mentioned the
18 fact he had met Mr. Ford at the office of the United States
19 Attorney and Mr. Ford had requested him to see me. He didn't
20 say he had met him that day there.

21 Q Was that after or before you saw Col. Tom Johnson?

22 A Before, I think.

23 Q You met Davis and Darrow on the 14th? A Yes, sir.

24 Q And you saw Dingle directly after you left the office
25 on the 14th? A Within five minutes after, yes, sir.

26 Q Didn't you tell Davis and Darrow about meeting Col.

1 Tom Johnson on the 14th? A No, sir, I do not think I did.

2 Q Are you sure of that? A I am quite sure of it, yes,
3 sir.

4 Q You mean to say in your conversation with Davis and
5 Darrow on the 14th you didn't tell them about what Col.
6 Tom Johnson had said? A I don't think so. I couldn't
7 possibly have done it.

8 Q Couldn't possibly have done it. So you are absolutely
9 sure that that conversation with Dingle, who told you
10 he had come from the District Attorney, whom he had met
11 in the United States District Attorney's office, occurred
12 after you had been at Darrow's office and you know you saw
13 Col. Tom Johnson after you had left Darrow's office--or
14 Davis's office--pardon me--on January 14th? A It must have
15 been that way, because I never told any such story as I
16 told to Dingle and Johnson until after that conversation on
17 the 14th.

18 Q Did you see Dingle again? A That night? yes, sir.

19 Q At what time that night? A At about 8 o'clock.

20 Q Where? A At my residence.

21 Q By appointment? A No, sir.

22 Q Was anybody with Dingle? A Joseph Ford, Deputy Dis-
23 trict Attorney.

24 Q So, after Dingle had seen you, talked with you in the
25 afternoon, the next time you saw him was in company with
26 Ford out at your house? A The same night, yes, sir.

1 Q Did you tell Dingle to bring Ford out there? A I did
2 not.

3 Q Did Dingle remain during your talk with Ford? A Not
4 in the room where we were talking, no, sir.

5 Q He remained in the residence? A He did; yes, sir.

6 Q And left with Ford? A He did.

7 Q You had known for a long time, hadn't you, that Erwin
8 Dingle was Deputy United States Marshall? A I knew he
9 took my place when I resigned, yes, sir. X

10 Q And knew, didn't you, he was connected with the prose-
11 cution of Ryan and Gompers and all those people?

12 MR. FREDERICKS. That is objected to as assuming a fact
13 not in evidence.

14 THE COURT. Objection sustained.

15 MR. BORD. This is not a prosecution against Gompers that
16 I know of.

17 THE COURT. No evidence of the fact that either of these
18 men have been prosecuted.

19 MR. ROGERS. I know, but I am asking him if he doesn't
20 know that.

21 THE COURT. Read the question again.

22 (Question read.)

23 MR. ROGERS. The first of the question will show its
24 correctness.

25 THE COURT. Read the question before that.

26 (Last two questions read.)

1 MR. FREDERICKS. Assuming there is any prosecution of
2 Gompers--dual in its character, and objected to also on
3 that ground.

4 THE COURT. Objection overruled.

5 A I don't think Mr. Ryan was indicted until after that
6 time, subsequent to the time I had talked with Mr. Dingle,
7 and I couldn't have known it.

8 Q Then you are familiar with the dates of the indictments
9 against various persons in this so-called dynamiting--these
10 so-called dynamiting cases all over the country?

11 MR. FORD. We object to that as incompetent, irrelevant and
12 immaterial, not cross-examination.

13 THE COURT. Objection overruled.

14 A Did you finish your question?

15 Q yes. A Read it, please.

16 (Question read.) A I am not familiar with the date. I
17 say, I don't think Mr. Ryan was indicted until after that
18 time, so I could not have any such knowledge at that time.

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ete 1 Q You are pretty familiar with the general run of the
2 dynamiting cases all over the country, ar n't you?

3 A No sir, not any more so than any citizen that reads the
4 newspapers, I don't think; I have no interest, I can assure
5 you. I am trying to forget all of it.

6 Q And your quick recollection of the date of the indict-
7 ment of Ryan , you think is merely the result of
8 ordinary newspaper reading?

9 MR FREDERICKS: That is objected to because it assumes a
10 fact not in evidence; that is, that the witness has quickly
11 remembered the date when he was indicted.

12 MR ROGERS: He answered instantly.

13 THE COURT: Objection overruled.

14 A My instant recollection was brought about by your
15 question, Mr Rogers. I am sure now, I am correct; that is
16 my impression at least; I didn't at that time, or any subse-
17 quent time, before or since, know that Mr Dingle was in any
18 way connected with the prosecution, either of Mr Ryan, Mr
19 Gompers or anybody else connected with any of the so-called
20 dynamiting cases. Is that broad enough?

21 Q Yes. You knew Mr Lawler was working out of the
22 United States District Attorney's office in the prosecution
23 of these labor men, did you not -- labor men so-called, --
24 I use that in the general acceptation of the term.

25 A I did not.

26 Q You didn't know that Mr Lawler, so far as this matter

1 was concerned, was making his office in the same office
2 that Mr Dingle came from? A No, no, I did not. I had no
3 way of knowing it. I have not been in the Federal Building
4 three times since I left there that I remember of.

5 Q On the 14th day that you saw Dingle and you saw Ford,
6 was the day you commenced keeping this so-called diary?

7 A Yes sir.

8 Q Coming now to that alleged conversation in which you
9 said that Mr Darrow told you he got this money, you need
10 not worry about the marks on the money, that he got it
11 direct from Gompers, isn't it a fact that you were told to
12 bring that in if you got an opportunity to, in order to
13 connect Gompers up with this? A I will answer that, Mr
14 Rogers, so that it may be understood by yourself.

15 Q All right, go ahead.

16 A I have answered it before, but you probably have for-
17 gotten it, that at no time, at no place, have I ever had any
18 discussion of the prosecution of Mr Darrow or the crime with
19 which he is charged, either with Mr Ford or with Mr Fredericks,
20 other than just one or two words. We never have had any con-
21 versation in regard to it; in fact, I have refused to enter
22 into any conversation with them in regard to the question,
23 because I knew you would ask that question.

24 Q You knew, didn't you, I wasn't driving at Ford and
25 Fredericks the time when I spoke about "who told you to say
26 that"; do you know that? A No, I don't know it. I would
be glad to know who you mean, and then I will tell you.

1 Q I mean the people connected with the prosecution
2 against Gompers, and Ryan and those people, not Fredericks
3 and Ford at all? A I don't know who they are.

4 MR FREDERICKS: That is objected to on the ground it assumes
5 a fact not in evidence; that is, that there is any prosecu-
6 tion or any person connected with any prosecution against
7 Gompers, or anybody interested in the prosecution of Gompers--
8 it assumes that.

9 MR ROGERS: A matter of common knowledge, that the United
10 States in this district, through Oscar Lawler, and in other
11 districts has made a very strenuous effort to connect Mr
12 Gompers and to bring his name in if peradventure it might
13 be, and it is a matter of common knowledge right from the
14 evidence in this case, that the Federal Grand Jury at
15 Indianapolis sent for this check-book and it came into this
16 Court from Indianapolis, where they are investigating these
17 other charges, and it is our contention that this prosecu-
18 tion against Darrow is but a step against Gompers. Mr Burns
19 is going all over the East and being interviewed everywhere,
20 announcing that he is going to get Gompers, if he can,
21 through Darrow.

22 I would not have said that, if your Honor pleases, and
23 I apologize for doing it, except they drove me up to it.
24 That is the situation right from the Indianapolis Grand Jury
25 came these checks.

26 MR FORD: We take exception to each and every one of the

1 statements as to alleged facts made by counsel, on the
2 ground it is not a proper method to introduce facts
3 before this jury.
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5 1 It was done only for the purpose of influencing the jury
2 by means other than evidence, and on the further ground
3 that it is assuming what is not a fact, that Mr. Burns
4 is in any way, shape or form connected with this prosecution.
5 MR. ROGERS. If your Honor please, Mr. Ford has said Mr.
6 Burns is not connected with this prosecution. In this room
7 every day, right over there, yesterday in the hearing of
8 Mr. Blakesley, I venture ^{to} say Mr. McLaren, a Burns man who
9 goes from this court room to the district attorney's office,
10 employed and paid by Burns, is a man that they send out
11 and the Burns men run all over this case everywhere, even
12 to hounding our witnesses and watching our offices and
13 dictagraphing our places. Now, no man ^{could} ~~can~~ truthfully
14 deny that William J. Burns's men, employed by the National
15 Erectors Association are not behind this case in every
16 particular. Let any man stand up and deny it who can, and
17 bring Mr. McLaren to that stand.

MR. FREDERICKS. Well, now, may it please the court, I don't know what we can do when counsel is permitted to make such statements as that other than to state that they are not true. Mr. McLaren is a Burns deteceige who has been separated from Burns's office and employed by the district attorney's office in this case and in several other cases for a number of months. The Burns Detective Agency, like the Pinkerton Detective Agency or any other detective agency that might be handy, is used by the district attorney's office at times in running out matters, in looking up evidence; they obey orders in that regard. They are not interested in this prosecution except occasionally as hired men, and in that regard if they come in contact with evidence that might be material, of course, they would be used as witnesses. This prosecution is a prosecution entirely and solely in the hands of the district attorney of this county and not in the hands of Burns or his agents, nor the National Erectors Association, or any one else, and I don't know of any way to legally put on evidence to disprove the violent and erratic and uncalled for statements of counsel. He makes them here to this jury. The jury are apt to forget they are not sworn testimony and I don't know what to do, your Honor. We are trying to try this case according to the rules of evidence; we are trying to prove to this jury by the sworn testimony of witnesses that this man Darrow committed this crime, and Burns has absolutely nothing to do with it,

1 except in cases where he may be hired by us, as any other
2 detective would be, and told to go and look and see what he
3 can find. If Burns has anything against Mr. Gompers and
4 is following Mr. Gompers, that is his business, not ours, and
5 we are not interested in it. We have no charges to prefer
6 here against Mr. Gompers in any way, shape or form, and if Mr.
7 Darrow, as this witness has said, had not mentioned the
8 name of Gompers and if it had not been brought out on cross-
9 examination by this witness, the name of Gompers would never
10 have been mentioned in this case. We are quite well content
11 to try one man at a time. We have no case against Mr. Gompers
12 if we had we would file it. We are not trying to make
13 cases. God knows there are cases enough made without our
14 trying to make any. Now, that is as near as I am able to
15 state the situation of the prosecution in this case. Oscar
16 Lawler is the attorney--may be the attorney for the National
17 Government investigating something along his own line, and
18 the lines may cross, and there may be information passed
19 back and forth, but there is absolutely no effort to drag
20 any one in here and when counsel makes that statement it is
21 misconduct. We have no appeal. This jury is our final
22 arbiter in this matter, and when counsel stands up and
23 endeavors to poison their minds, I don't think that it
24 can be done and then it is not fair.

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5m 1 He is doing something that certainly, in my mind, is deserv-
2 ing of a rebuke from the Court, and the Court should not per-
3 mit him to do it. Now, I don't know how to lay the matter
4 more clearly before the Court.

5 MR ROGERS: If your Honor please, I challenge the District
6 Attorney to permit us to show the publi^{shed} statements of
7 William J Burns, or to produce Mr Burns and his correspond-
8 ence with the District Attorney. I challenge counsel --
9 he denies my good faith -- I challenge counsel now to permit
10 me, if I cannot bring Mr Burns who is not in the juris-
11 diction, to permit me to bring his publi^{shed} statements into
12 this Court.

13 MR FREDERICKS: What has Burns to do with this prosecution?

14 MR ROGERS: That is what I will show, by his statements,
15 if your Honor please.

16 MR FREDERICKS: Absolutely nothing.

17 MR FORD: If the Court please, I don't wish to be misunder-
18 stood. I made the statement that Mr Burns was not connected
19 with this prosecution. The fact that the employees of the
20 Burns' Agency here, or any place, may have been requested
21 to do a particular thing for us or not, is not in any wise
22 inconsistent with my statement that Mr William J Burns
23 personally, the man of whom they are complaining, has
24 anything to do with this case, and he hasn't anything to do
25 with this case. Gompers may have^{been} mentioned, but the
26 question here is not Gompers, or it isn't Burns. There is

1 a question before the Court and we ask your Honor to rule
2 on it, and we ask your Honor to protect us from the state-
3 ment made by Mr Rogers, and we ask at this time that your
4 Honor take some action against the bitter tirade made here
5 and the vehement tirade made before the jury.

6 MR APPEL: We didn't mean any disrespect for the District
7 Attorney or his assistant, either, and we certainly feel
8 that they ought not to be so vehement in defending Mr Burns
9 here. If Mr Burns is not connected with this prosecution,
10 why then, he don't need any defense.

11 MR FREDERICKS: We are not defending Burns.

12 MR APPEL: If Burns is not connected with this prosecution
13 and he has corresponded with the District Attorney here in
14 reference to this case, why, his correspondence will show
15 whether he is connected or not; and being in the hands of
16 the District Attorney, of course we cannot get it.

17 MR FREDERICKS: We have no correspondence with Mr Burns in
18 regard to this case. I will say that to the counsel.

19 MR APPEL: I know, but Burns' National Detective Agency --

20 MR FREDERICKS: Or Burns' National Detective Agency in regard
21 to this case except ^{to ask} that one of their men come here and
22 as a witness to tell something that he learned several
23 months ago.

24 MR APPEL: But I don't know anything about it, your Honor.
25 I am simply trying to illustrate here the difference here,
26 without virtually there being anything to it between our

1 friends on the other side. Now, if this man Burns is
 2 going around saying he is convicting everybody, including
 3 his methods of convicting Mr Mitchell up in Oregon, which
 4 is the subject of investigation now by Mr Taft, if he goes
 5 around blowing that way, the District Attorney ought to
 6 squelch him because it affects the public. If it is true
 7 he is, we ought to know that fact. If there is anybody
 8 outside interested in the prosecution of Mr Darrow growing
 9 out of the differences that have occurred between Labor
 10 Unions and anyone else back in Chicago, or anywhere else,
 11 not connected with this case, they ought to be kept out of
 12 this case; ~~they have~~ nothing to do with this case. But if
 13 they come up here and say something, now, your Honor, it
 14 might be possible the County of Los Angeles and the Board of
 15 Supervisors have offered a reward that Mr Burns is claiming
 16 now. It may be possible it is a matter of public notoriety
 17 that Mr McLaren is a representative of the Burns' Agency.
 18 He is the local agent, so constituted. If it isn't true
 19 these gentlemen ought to rise up and claim it is not true.
 20 We are led to believe that by the notoriety in the press, and
 21 if the press is lying to us and to the public, these gentlemen
 22 ought to be able to show it is not true. It is within their
 23 knowledge; I don't know it, I don't associate with detec-
 24 tives of that kind, therefore I am not able to state, but
 25 counsel seems to know all about it.

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7a 1 He says Burns's Agency has nothing to do with this prose-
2 cution. He ought to know. If there is anybody in the dis-
3 trict attorney's office who is not representing Mr. Burns
4 now in getting the reward from the County and the City of
5 Los Angeles, then he ought to know it, and we are simply
6 asking to have light, and if it doesn't have anything to
7 do with this case then keep it out.

8 MR. FORD. If the Court please, the truth or falsity of
9 the statement made by counsel has no place in the record at
10 all until introduced by competent evidence, and we ask
11 that your Honor take some action with regard to that state-
12 ment. It is absolutely immaterial whether it is true or
13 false. That is not the point. Simply inviting that we
14 admit or deny it is true in all respects, the fact of its
15 truth or falsity counsel has no right to make the state-
16 ment and insinuation that he has made and we ask your
17 Honor to take some action in regard to that matter. We
18 are not here trying the truth or the falsity of this, we
19 are trying to show whether counsel has a right to state
20 alleged fact before this jury or make any attempt to reach
21 the minds of this jury except with legal evidence. That
22 is the point we make and we ask your Honor to take some
23 action in regard to that. We are not going to try subor-
24 dinate issues.

25 THE COURT. The real question before the Court is whether
26 or not Mr. Rogers's question assumes facts not in evidence,

1 not a question of whether or not the facts exist, but
2 whether or not the facts are inevidence. I think that
3 objection is well taken. I think it is my duty at this
4 time and I do must fully and completely admonish the jury
5 that the somewhat heated and emphatic statements purporting
6 to be facts in regard to this matter, presented within
7 your hearing at this time must be absolutely disregarded
8 by you as being evidence in this case, and not for your
9 consideration at all by way of testimony here presented
10 at this time, and I admonish counsel that in the heated
11 condition that necessarily arises inthe carrying on of
12 this trial they should be more careful to refrain from
13 s tatements of facts or purported facts not in evidence.

14 The objection is sustained.

15 MR. ROGERS. With respect to your Honor's ruling and your
16 statement that it was somewhat heated, I admit the heat and
17 possibly lay it to the fact that the atmospheric conditions
18 are not salubrious, but I call your Honor's attention to
19 the fact that my statements were a reply to the statement
20 of the district attorney made by Mr. Ford and Mr. Ford ori-
21 ginally, that Mr. Burns had nothing to do with it. Taking
22 it upon that I transgressed your Honor's kindness and I
23 tender to your Honor my apology.

24 THE COURT. My admonition went to counsel on both sides
25 in this matter, thatnstatements of counsel ought not to
26 be made by counsel at the bar.

1 MR. ROGERS. Q Mr. Franklin, a few moments ago we were
2 discussing whether or not you had seen Col. Tom Johnson
3 after or before you saw Erwin Dingle on the 14th of
4 January and you said--you remember the circumstance?

5 A I remember the conversation we had, yes, sir.

6 Q Now, that conversation occurred, as you said, in the
7 office of Mr. Rush between Mr. Darrow and Mr. Davis and
8 yours elf? A Yes, sir, the 14th day of January.

9 Q The only conversation that you had in the office of Mr.
10 Rush was on the 14th of January? A The three of us,
11 yes, sir.

12 Q And you had not seen Col. Tom Johnson then? A I don't
13 think so at this time, that is my recollection. If I so
14 stated I was mistaken.

15 Q I will ask you if you didn't testify this on your
16 direct examination: "Q--Now, on Sunday afternoon when you
17 met Mr. Darrow and Mr. Davis in Mr. Davis's office, you rem-
18 ember the time, do you, after your arrest? A--I did not.

19 I met him in Mr. Rush's office. Q--In Mr. Rush's office?
20 A--Yes, in Mr. Rush's office. Q--Well, Mr. Davis and Mr.

21 Rush are partners and the office is the office of Davis
22 and Rush, isn't it? A--They don't occupy the same rooms,
23 no. Q--One has a private office and the other had a

24 private office? A--It was in Mr. Rush's room. Q--All

25 right, it was in Mr. Rush's room. A--Yes, sir. Q--Do you
26 remember saying then to Mr. Davis and Mr. Darrow "The dis-

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trict attorney has sent Col. Tom Johnson to me and
told me--'" A Just read that part again.

-Sm 1 Q "Q Do you remember saying then" -- this is the ques-
2 tion that was put to you on your direct examination:
3 "--to Mr Davis and Mr Darrow the District Attorney has
4 sent Colonel Tom Johnson to me and told me that if I will
5 come through against Darrow I will get nothing but a fine,
6 and they will take the money that they have to pay the fine.
7 A No sir, I didn't. I told them, I think, at that time
8 On the same occasion, Mr Rogers, that they had sent Colonel
9 Johnson who had said he came from Mr Ford, whether he did
10 or not I don't know. Q Now, did you further say to
11 them on that occasion that Colonel Tom Johnson had told you
12 that the District Attorney had said to you if you knew
13 anything against any man other than Mr Darrow, any local
14 man in Los Angeles, you needn't tell it. A I did not.
15 Q If you will come through against Darrow? A No, I did
16 not. Q If you will come through against Darrow?
17 A No, I did not say that, and Mr Johnson didn't say that.
18 Q Didn't you say that to Davis and Darrow at that time?
19 A I did not. Q Or anything like it? A I did not.
20 Q Did you mention Colonel Tom Johnson? A I told them
21 Mr Johnson had told me that, but not coming from the
22 District Attorney. Q You told them that Colonel Tom
23 Johnson told you that? A Yes, that is what he advised
24 and I paid^{him} for his advice and he gave it. Q Didn't
25 Colonel Tom Johnson tell you that, that I have just given
26 you? A He did, what I have said, not what you gave; what

1 I said he said. Q What did you say he said anyhow?

2 A I said that he said if it was necessary to mix up any-
3 body else, any local man, in a fight of this kind, to keep
4 my mouth shut; that is what he said, and that is what I told
5 Mr Darrow and Mr Davis. I thanked him and paid him, and
6 that is all there was to it."

7 A I testified so at that time.

8 MR FREDERICKS: Just a moment. We object to that, may it
9 please the Court, not serving to impeach anything the
10 witness now says. I call the Court's attention to the
11 statement of the witness as purported to have been made
12 there in which he says: "He said that at that time or some
13 other time."

14 MR APPEL: Oh, no --

15 A That is the exact language of my answer.

16 MR FORD: On page 852.

17 MR FREDERICKS: I submit it to the Court.

18 THE COURT: Let me see the transcript.

19 MR ROGERS: He said just now he saw Mr Davis and Mr Darrow
20 in Mr Rush's' office but once.

21 A That is all the time I saw them, in Mr Rush's office.

22 Q He told them that you came -- he told them that any
23 other time?

24 MR FORD: Wait a moment until the Court rules on this
25 question.

26 THE COURT: I think the transcript is somewhat ambiguous

1 on the matter. I think the witness ought to clear it up.

2 MR FREDERICKS: Withdraw the objection.

3 A I stated to you at that time, Mr Rogers --

4 MR APPEL: No, no; the question is whether or not you so
5 testified?

6 A Well, I don't care to be interrogated by only one
7 attorney at a time.

8 MR FORD: That is the witness' right.

9 MR APPEL: I am making a very kind suggestion.

10 A I don't need your suggestion, Mr Appel.

11 THE COURT: Now, Mr Franklin, the Court will protect you
12 if you require any protection. I don't think you do under
13 the circumstances. What is the question.

14 MR ROGERS: Did you so testify?

15 THE COURT: You want to see the transcript?

16 A I so testified at that time, but I so testified at
17 this time -- wait until I get through with my answer.

18 MR ROGERS: Go ahead.

19 A The question was asked me at that time if I had a
20 conversation with Mr Darrow and Mr Davis in regard to Tom
21 Johnson, and I said there at that time, or some other time,
22 and it is so in the transcript, and I say so now, and I
23 don't want to be put on record as ^{saying} something at that time
24 and something else now.

25 Q What other occasion did you ever meet Davis and Darrow
26 together in Mr Rush's office? A The answers and ques-

1 tions doesn't signify that I met them at the time I had that
2 conversation in Mr Rush's office. It is merely a play on
3 words.

4 Q At what other time did you meet Davis and Darrow
5 together when you talked about Colonel Tom Johnson other
6 than that Sunday afternoon, January 14th?

7 A That question was never answered.

8 Q At what other time did you ever meet Darrow and Davis
9 together in Mr Rush's office, or anybody else's office,
10 except January 14th? A I don't recollect the date; it
11 was after January 14th, it must have been or I would never
12 have talked to him the way I did.

13 Q Where? A Where what?

14 Q Where did you meet Davis and Darrow together after
15 January 14th? A I met them on numerous occasions.

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9s 1 Q Where, after January 14th? A Oh, I don't remember
2 any specific cases, Mr. Rogers. Be impossible to tell
3 you.

4 Q Tell me where it was that you met Davis and Darrow to-
5 gether and told them about Col. Tom Johnson and when it was?

6 A I don't remember at this time.

7 Q Tell me where you ever met Davis and Darrow together
8 after January 14th when you met Erwin Dingle and Mr. Ford
9 that night? A What is that question? Read that question.
10 (Last question read by the reporter) A I don't remember.

11 Q Did you ever meet them again? A I question it very
12 much. I don't think I did.

13 Q Then you never met them together after January 14th?

14 A I don't know whether I did or not.

15 Q Well, tell me whether you did or not? A I don't know,
16 I am sure. If you will let me look at my memorandum I can
17 tell you.

18 Q Go ahead.

19 MR. FORD. I suggest your Honor caution the witness if he
20 refreshes his memory from any writings he take it out so
21 they may be subject to inspection.

22 MR. ROGERS. I don't think it is fair and I object to it
23 and take exception to it.

24 MR. FORD. We repeat it. I think the Court ought to do it.
25 We want it done.

26 A It doesn't say in this record that I ever met them.

1 MR. ROGERS. Well, did you?

2 A I question it very much at this time.

3 Q Then you question it very much and don't think you met
4 them. Tell me when it was you told them about Col Tom
5 Johnson? A I couldn't tell you and I told you before;
6 I told you I thought it was after January 14th, but I
7 think now that I didn't meet them after that time together.
8 and I am very frank to say to you that I was mistaken,
9 apparently, in what I testified to and any time I make a mis-
10 take in my testimony I am only too glad to correct it.

11 Q Now, you want to correct it, do you? A I said all I
12 wish to on that subject.

13 Q Then what did you tell us the truth about it. Did you
14 see Col. Tom Johnson before or after you saw Dingle?

15 A I don't know.

16 Q What is your best recollection now that you desire to
17 correct your testimony? A I don't care to give any recol-
18 lection of the matter at all. I saw him, as I testified
19 to.

20 Q Well, as you testified half an hour ago, as you testi-
21 fied the other day or as you testify now, which? A I don't
22 remember when I saw him. I so testified the other day and
23 half an hour ago and I so testify now.

24 Q And you repeat that much of the conversation anyhow that
25 I read to you when you had the two of them together which
26 you say must have been before the 14th or on the 14th?

1 A Read it again and I will tell you. I don't remember
2 just what your statement was.

3 Q Don't you remember what I asked you about a moment ago?

4 A Not altogether; there was so much of it.

5 Q I will show you the transcript. A I don't care to read
6 it, my eyes are hurting me.

7 Q You want me to read this all to you again? A If you
8 wish.

9 Q Well, I am asking you if what I read to you a while ago
10 concerning what you said to Darrow and Davis together didn't
11 occur on the 14th the last time that you saw Darrow and
12 Davis together? A About Col. Tom Johnson?

13 Q Yes, sir. A I don't think so; I am not sure.

14 Q Then when was it? A I don't know; don't pretend to
15 know; never said I did know.

16 Q But you think you didn't have any conversation anyhow after
17 the 14th? A I question it very much.

18 Q You got a memorandum of the 14th there? A Yes, sir.

19 Q Let's see it. A It is my private property and I will
20 not show it to you.

21 Q You referred to it a while ago and I would like to look
22 at it.

23 MR. FORD. The witness didn't refer to it to testify.

24 MR. ROGERS. I ask an order to give it to me.

25 MR. APPEL. He refreshed his memory.

26 MR. FORD. He didn't testify from it. The point is this,

1 that the witness did not testify from his memorandum, if
2 he did then they would be entitled to it.

3 MR. APPEL. He looked over the memorandum, he refreshed his
4 memory from his memorandum, his mind, as to when that con-
5 versation was, after looking at it, and after the district
6 attorney here made some remark that it is unnecessary to
7 mention now, he said that "there is nothing in the memo-
8 randu~~m~~ here about that." Now, your Honor, we have to
9 take his word for it and we are entitled to anything that
10 he refreshed his memory from, either to testify that a cer-
11 tain thing exists or doesn't exist, and we are entitled
12 to it. He has been allowed to refresh his memory and
13 we have been calling for this same identical memorandum
14 all the time, and opportunity after opportunity has pre-
15 sented itself whether we are entitled to it, and if there
16 is anything in the diary we are entitled to call his atten-
17 tion to it. If there is not we are not and we ask that it
18 be produced.

Sm 1 MR FORD: If the Court please, the witness was allowed to
2 look through a memorandum book to see if he could find
3 something from which he could refresh his recollection. He
4 didn't find anything by which he could refresh his recol-
5 lection. He did not refresh his recollection. There was
6 no memorandum from which he did refresh his recollection,
7 consequently there is nothing to which counsel is entitled
8 to look at. If he had found something which refreshed his
9 recollection and had testified, why then, as in the case
10 this morning, we would submit it was perfectly proper that
11 counsel should be entitled to that. Section 2024 provides
12 if the witness testifies from a memorandum, then they are
13 entitled to look at it, and we state that to be the law.

te 14 MR ROGERS: Didn't the witness mention the memorandum, and
15 didn't he look at it in your Honor's presence, and turn
16 around and say there was no mention in it?

17 MR FORD: I ask that the rule be enforced; I was not al-
18 lowed to argue. This is our objection, and I have a right
19 to close. I ask that the argument be concluded.

20 THE COURT: Yes, the argument should be concluded. It is
21 virtually the same question that came up this morning, and
22 the ruling will be the same. Objection sustained.

23 MR ROGERS: Exception.

24 MR APPEL: We understand that no rule will be enforced by
25 the Court to submit a memorandum that he has inspected in
26 Court to us.

1 MR FORD: There was no objection, your Honor, and we ask --
2 that is a moot question. We ask that there be no ruling
3 until there is some objection before the Court.

4 THE COURT: The request was made by the attorneys that it
5 be produced, and it was objected to by the witness on the
6 stand, and the request is overruled and the objections of
7 the witness is sustained.

8 MR APPEL: Oh, I see; we take an exception.

9 THE COURT: At this time --

10 MR APPEL: We ask that the memorandum be passed over to
11 the Clerk of the Court and be marked for identification,
12 go into the record so that the record will speak what
13 memorandum we asked for and what memorandum the Court re-
14 fused our request.

15 THE COURT: The request will be denied.

16 MR APPEL: We take an exception.

17 Q By Mr Rogers: Does that memorandum say anything about
18 your meeting Davis and Darrow on the 14th?

19 MR FORD: We object to that as irrelevant and immaterial,
20 the witness not having testified from it.

21 MR ROGERS: He looked at it in the presence, if your Honor
22 please, of your Honor and the jury.

23 MR FORD: He has not.

24 MR ROGERS: We have nothing to conceal, and I sincerely
25 hope they have nothing. If there is anything that witness
26 looked at that he ought not to look at, very well, then he

1 ought not to look at it.

2 A I withdraw my consent to showing the memorandum, and
3 will show it to the District Attorney --

4 MR FORD: We object to them looking at it at all, because
5 the rules of evidence provide for circumstances under which
6 they are entitled to look at it, and we don't care for it
7 outside of the record.

8 THE COURT: That question is passed, now. The request of
9 defendant has been denied. There is a question now be-
10 fore the Court; read the question.

11 MR APPEL: The witness says, your Honor, offers to let us
12 see the memorandum .

13 THE COURT: If the witness offers to let you see the memo-
14 randum, if there is no objection from the District Attorney--

15 MR APPEL: But, the District Attorney cannot object to that.
16 This man is a witness for both sides. When a witness comes
17 before this Court, whatever information he has in his mind
18 or in his possession, may be used by both sides. They have
19 no right to object that the witness shall not give us any
20 information, your Honor.

21 THE COURT: I don't know of any limitation to the right of
22 counsel to object if they desire to.

23 MR APPEL: They object, and we ask your Honor to rule.

24 MR FORD: The witness is in Court, and we are entitled to
25 know everything that transpires in Court.

26 THE COURT: The statement by the witness resurrects the

1 question that was disposed of. Witnesses have a right to
2 be protected in court, and when they protest, ^{against} producing a
3 memorandum that was not clearly and unquestionably material,
4 he ought to be protected. He has now waived that question,
5 and I see no reason why the memorandum should not be pro-
6 duced and handed to counsel.

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1lp 1 A I waive objection to that one particular page or memo-
2 randum and the only memorandum of that conversation.

3 THE COURT. All right. Produce that page.

4 MR. ROGERS. Pardon me, I wont look at anything.

5 A I don't care what you look at. I would like to have it
6 read to the jury, if you would. (Hands document to
7 counsel.)

8 MR. ROGERS. I offer this inevidence. You have seen it,
9 haven't you? (Handing document to Mr. Ford.)

10 MR. FORD. I do not carry everything in my head. (After
11 examining document.) We have no objection to joining
12 in the request.

13 MR. ROGERS. I offer it in evidence: "January 1, 1912.
14 Consultation with Davis and Darrow at 3 P.M. in Davis's
15 office. Met Erwin Dingle at Third and Main street and went
16 with him to the Saddle Rock restaurant for dinner, then
17 went home. At 7 P.M. was visited by Dingle, accompanied by
18 Ford of the District Attorney's office. Stayed until
19 11 P.M. Mr. Ford tried to get a statement. Refused to make
20 any."

21 THE CLERK. Defendant's Exhibit C?

22 MR. ROGERS. Yes, sir.

23 Q Now, having made a memorandum of that visit, of that
24 consultation with Davis and Darrow, be kind enough to
25 look and see if you have had any other?

26 MR. FORD. With whom?

1 Q With Davis and Darrow? A My memorandum does not show
2 any other, I don't think, and I don't think I had another
3 one with Mr. Davis and Mr. Darrow together.

4 Q Now, does your memorandum show that you had any other
5 consultations or meetings with the other gentlemen mentioned
6 on that slip, namely, Mr. Dingle and Mr. Ford? A Oh,
7 yes, I think so.

8 Q Now, refresh your recollection-- A Together, you mean,
9 or separately?

10 Q Together and separately both. A I don't think it has
11 any reference to Mr. Dingle. I think it has to Mr. Ford.

12 Q Now, tell us when you met Mr. Ford again after the 14th?
13 MR. FORD. You want him to use his memorandum?

14 BY MR. ROGERS. If that will aid his efficient recollection.

15 A I don't think I made any.

16 MR. FORD. We have no objection.

17 A To the best of my recollection at this time, the next time
18 I met Mr. Ford was on Wednesday night, following the 14th
19 day of January.

20 Q Are you doubtful about the date? A Just a moment and
21 I will be sure about it. I don't think there is any ques-
22 tion about it.

23 Q Does this memorandum book of your show it? A I don't
24 know.

25 Q Look and see.

26 MR. KEECH. I object to that--

1 A It is not necessary. (Referring to book.)

2 THE COURT. Any other questions, Mr. Rogers?

3 MR. ROGERS. I asked him to look and see. There is a
4 matter pending, if your Honor please.

5 THE COURT. The witness answered that question.

6 A It was on Wednesday night, according to my memorandum,
7 which is correct.

8 Q Where? A Where did I see him?

9 Q Yes. A He came to my house in his automobile and
10 we went from there to the residence of George P. Adams.

11 Q Attorney? A Attorney at law, yes, sir.

12 Q The first time you had seen Adams? A No, sir.

13 Q When did you see him? A Monday and Tuesday.

14 Q You know he is attorney for the Erectors' Association,
15 don't you? A No.

16 Q National Erectors' Association? A I do not.

17 Q You do not? A I do not, unless it might be, if you
18 will pardon me, I will change that statement a little--
19 I had read in the paper he was representing--

20 MR. FORD. We object to any hearsay statement of what this
21 witness read in the paper or anything about George Adams,
22 at the present time.

23 MR. APPEL. What he thought about it is proper.

24 THE COURT. Yes, the witness ought to have a clear field
25 in which to make his answer and when his answer is something
26 improper it will be stricken out.

1 MR. Ford. I think your Honor knows what the witness was
2 going to say and I know and counsel know and I think we
3 will all agree and counsel will be willing to stipulate it
4 is not a proper answer and it is certainly not responsive
5 to the question and it certainly is immaterial.

6 THE COURT. Make your objection.

7 MR. FORD. We object to it on the ground it is immaterial.

8 THE COURT. If you make an objection it is not respon-
9 sive to the question if it is not responsive it will be
10 stricken out.

11 MR. Ford. We object to what George Adams is at the
12 present time, it is not material, the only question material
13 is what he did at that time.

Pete1 THE COURT: The question is not what George Adams is, or
2 was, it is a question of what this witness knew about this,
3 and he has great latitude in --

4 MR FORD: But, he stated he didn't know except what he read
5 in the paper. That is clearly hearsay, and it is not neces-
6 sary for us to hear what he read in the paper, and it is
7 necessary for me to make my objection, if there is harm
8 being done, before there is any harm.

9 THE COURT: All right. The answer stands.

10 MR ROGERS: Did you know anything about the connection of
11 the Merchants & Manufacturers Association with the National
12 Erectors Association? A No sir.

13 Q Did you see Adams about this matter before January
14 14th? A I don't think so.

15 Q And you saw George P Adams after you had seen the
16 District Attorney, that is, Mr Ford, on the night of January
17 14th? A I saw him the next day.

18 Q Did Erwin Dingle or Mr Ford suggest that you consult
19 Mr George P Adams? A They did not.

20 Q Coming now to the Merchants & Manufacturers Association
21 meeting again, I want you to -- for fear the record does
22 not cover it, -do you say that the first time after your
23 arrest that you talked with Zeehandelaar, the Secretary,
24 was when you went up to the office on the day you have
25 mentioned as after the 25th, when he said to you, as you
26 came in, "Do you want to make a statement?"

A Yes sir, that is correct.

1 Q Did anybody on your behalf, or at your suggestion,
2 see him? A I don't know.

3 MR FORD: We object to that as hearsay.

4 MR KEETCH: Calls for a conclusion of the witness.

5 MR ROGERS: That is plain.

6 MR FORD: If the witness didn't see him, how does he know
7 who else saw him; that is clearly hearsay.

8 THE COURT: The question is: "on your behalf".

9 MR ROGERS: Or "at your suggestion".

10 MR FORD: He would have a right to say: "Did you send any-
11 body to him before that", but if that person saw him, even
12 if he sent him, would be purely hearsay. He has a right to
13 say: "Did you send him?" and we would not object to that,
14 but he says: "Did anybody else see him on your behalf?"
15 How does he know?

16 THE COURT: Yes, that is so. Objection sustained.

17 Q By Mr Rogers: Did anybody, at your suggestion, go to
18 see Zeehandelaar? A No sir.

19 Q To your knowledge? A No sir.

20 Q And you are sure of that? A To my knowledge, yes sir.

21 Q Did you get any word from Zeehandelaar, either directly
22 or indirectly, after your arrest and before the 25th?

23 A Before the 25th?

24 Q Yes. A No sir.

25 Q And you are sure of that? A Before the 25th?

26 Q Yes. A No sir, I did not, directly or indirectly --

1 the 25th of January, of course, you are alluding to?

2 Q I am assuming that, yes sir. A Yes.

3 Q Did you receive any word from him before the 25th?

4 A No, Mr Rogers, I did not -- of January.

5 Q Did you do so afterwards? A No sir.

6 Q Did you believe Mr Zeehandelaar was under obligations
7 to you so that he would go to the newspapers and ask them
8 to suppress anything about you that they were about to
9 publish?

10 MR FREDERICKS: We object to that as incompetent, irrelevant
11 and immaterial.

12 THE COURT: Objection overruled.

13 A Mr Zeehandelaar is not under obligations to me, nor
14 never was.

15 Q Then why did you go to Zeehandelaar and ask him to get
16 the papers to suppress the publications about you?

17 A Because I thought he would be the proper person to go

18 Q And why the proper person to go?

19 MR FORD: We object to that as calling for a conclusion of
20 the witness.

21 Q By Mr Rogers: What made you so think; that is the
22 question.

23 MR FORD: That is objected to as calling for a conclusion
24 of the witness, irrelevant and immaterial.

25 THE COURT: Objection overruled.

26 A On account of the relationship supposed to be existing

1 between Mr Otis, or the Los Angeles Times, rather, and Mr
2 Zeehandelaar.

3 Q And why did you think that he would be the proper
4 person for him to go to?

5 MR FORD: We object to that as irrelevant and immaterial.

6 THE COURT: Objection overruled.

7 A It is hard to answer that question. I went to him --

8 Q What reason had you to believe that he owed you the
9 trouble of suppressing news in the newspapers?

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MR. Ford. I object to that--wait a minute--

2 A I did not. I wanted to owe him something.

3 MR. FORD. I want a chance to make an objection, there is
4 no use making it now.

5 THE COURT. Do you want an objection?

6 MR. FORD. No.

7 BY MR. ROGERS. Q You wanted to owe Mr. Zeehandelaar some-
8 thing, did you? A That would have been the effect of it--

9 MR. FORD? Just a moment--I wish you would give us an
10 opportunity to make an objection.

11 A I beg your pardon. Yes, sir.

12 MR. FORD. I don't want to make any now, the question is
13 answered.

14 MR. ROGERS. For the present, if your Honor pleases, unless
15 I shall request it--pardon me, I withdraw the statement
16 I was about to make, Mr. Appel reminds me--

17 Q At what hour of the day was your meeting at the Merchants
18 & Manufacturers Association with those gentlemen that
19 you have named, and Mr. Zeehandelaar? A I don't remember.

20 Q Well, nighttime or daytime? A Daytime.

21 Q Forenoon or afternoon? A I am not certain, I think it
22 was in the forenoon.

23 MR. ROGERS. Unless I shall present reasons to your Honor
24 which would appeal to your consideration for the reopening
25 which may occur, that is all.

26 THE COURT. There is a matter, Mr. Rogers, I want to take

1 up at this time. Sometime ago when a somewhat heated
2 discussion was on you made the remark that some detective
3 had been seated at a place in this court room where he had
4 spoken in a way that was calculated to and might attract
5 the attention and influence a juror, mentioning that juror
6 by name.

7 MR. ROGERS. Yes, sir.

8 THE COURT. If there is anything--

9 MR. ROGERS. Does your Honor desire to hear from me?

10 THE COURT. If you desire to make any definite charge in
11 that respect, the court would like to hear it.

12 MR. ROGERS. I think possibly it was inadvertent on Mr.
13 McLaren's part, and it is possibly true that the gentleman
14 whose name I mentioned did not hear it, but I was informed
15 by a witness whose name I will give to your Honor--

16 THE COURT. I merely wish to know whether or not that
17 matter is intended to be called to the attention of the
18 court for the purpose of taking any active steps?

19 MR. ROGERS. No, sir.

20 MR. FORD. I would like to know what it is.

21 MR. KEETCH. May we submit, if there is any statement it
22 should be out of the presence of the jury.

23 THE COURT. The statement was in the presence of the jury.

24 MR. FORD. We would like to hear it.

25 MR. ROGERS. If your Honor will ask counsel to take their
26 seats I will tell you all about it. I don't like to men-

1 tion the name of my informant, but if your Honor desires
2 it I will report it for your Honor's judicial considera-
3 tion, not for your personal consideration. I do not care
4 to blare it out in the court room.

5 THE COURT. In that event, we are about to take a recess and
6 I will hear you in chambers.

7 MR. ROGERS. I will say, I did not intend to mention it
8 for the benefit of the juror himself, I don't know whether
9 he heard it or not, and I don't care whether he heard it
10 or not. Your Honor, it is an unkind thing to do, it is
11 possible it was not heard, but it was heard at considerable
12 distance and it was reported to me and I didn't mention it
13 except to show that the person whose connection with this
14 case had been denied had been in the court room all the
15 time and had been doing those things which have been denied.

16 MR. FORD. There has not been at any time a denial that Mr.
17 McLaren was associated with us in this case. The only person
18 I spoke of was Mr. Burns not being connected with it.

19 THE COURT. That is not a question, the record is very clear
20 on that.

21 MR. FORD. We will take it up with your Honor.

22 THE COURT. The court is about to take a recess.

23 (Jury admonished) We will take a recess for ten minutes.

24 (After recess. Defendant in court with counsel.)

25 THE COURT. All parties are present.

26 MR. ROGERS. If your Honor please, recurring to the incident

1 which I referred to, upon investigation it appears that
 2 the juror whose name was mentioned did not hear the conver-
 3 sation to which¹adverted. I am assured by Mr. Ford, and
 4 I am glad to believe it to be true, and to accept it as
 5 true, that whatever was said bythe gentleman whose name I
 6 usedw as not intended to be heard by the juror, and in
 7 view of the fact the juror did not hear it, and whatever
 8 may have been said was not intended for his hearing, it is
 9 well enough that I say I am satisfied that the incident
 10 should close and I am satisfied no harm has been done,
 11 and from the circumstances doubtless no harm was intended.

12 THE COURT. You may proceed with the redirect examination
 13 of Mr. Franklin; you had closed your cross-examination?

14 MR. ROGERS. I had subject to permission of your Honor to
 15 recall him on showing.

16 MR. FORD. Showing of new matter, I take it?

17 THE COURT. I said this morning we would cross that bridge
 18 when we come to it.

19 MR. FORD. Only I want to give notice at this time, your
 20 Honor, which will certainly oppose any reexamination of
 21 Mr. Franklin on any matter that they may have examined at
 22 this time, so our position may be understood! We are not
 23 trying to keep anything out of the record at any time but
 24 want it gone into at the proper time.

25
 26

REDIRECT EXAMINATION.

1
2 MR. FORD. Mr. Franklin, you stated oncross-examination this
3 morning that you met Mr. Dingle on the 14th of January, 1912.
4 What day of the week was that? A Sunday?

5 Q And that you saw Ford of the district attorney's office
6 that evening in company with Mr. Dingle at your home?

7 A Yes, sir.

8 Q Did you ever after that time carry on your communications
9 with the district attorney's office through any intermediary
10 whatever--I withdraw it. When ever you had anything to say
11 to the district attorney or his assistant, Ford, did you
12 do so personally or did you do it through someone else,

13 A Well, there was one occasion following that that some-
14 body went to see--at least, I requested--no, I didn't--
15 yes, I did, I requested that they go to see you.

16 Q Well, the point I am trying to get at is this: Did
17 Col. Johnson ever act for you or through you or have any-
18 thing to do on your behalf with the district attorney after
19 you had met Ford, personally, at your home? A No, sir,
20 I don,t think so.

21 Q Then having called your attention to that fact state
22 whether or not you had seen Col. Johnson before or after
23 you had seen Dingle? A It must have been after, Mr. Ford,
24 after I saw--must have been before I saw Mr. Dingle.

25 Q And you saw Mr. Dingle on the 14th of January, 1912?

26 A Yes.

1 Q You are positive as to that date? A I am positive
2 as to the date I saw Mr. Dingle, but I am not sure as to the
3 date I saw Mr. Johnson.

4 Q But you believe it was before that date--you have so
5 said, at any rate? A It must have been.

6 Q Then you had conversation with Mr. Darrow and Mr. Davis
7 on the 14th of January, 1912? A Yes, sir.

8 Q Then your conversation with Mr. Johnson was before
9 that date, the date of the conversation with Mr. Darrow and
10 Mr. Davis? A I think it must have been.

11 Q Attracting your attention now to the conversation with
12 Darrow and Davis testified to by you on page 851 of the
13 record, you testified to a conversation had with Mr. Davis
14 and Mr. Darrow in the office of Mr. Rush, as follows, page
15 852: "Did you mention Col. Tom Johnson? A I told him
16 that Mr. Johnson had told me that but not coming from the
17 district attorney." Attracting you now to that testi-
18 mony and in view of the testimony which you have just given,
19 that you had seen Mr. Johnson before you had seen Mr. Dingle,
20 what is your best recollection as to whether you had men-
21 tioned the name of Col. Johnson to Mr. Darrow and Mr. Davis?
22 MR. APPEL. Just a moment.

23 MR. Ford. Withdraw it. Q What is your best recollection,
24 bearing all those things in mind, whether you mentioned
25 Mr. Johnson's name to Mr. Davis and Mr. Darrow in the office
26 of Jud. Rush on the 14th day of January, 1912.

1 MR. APPEL. We object upon the ground it calls for an
2 opinion of the witness, not for facts. The witness having
3 stated the facts already with reference to the time in
4 reference to what he said in that conversation, the witness
5 having fixed already the conversation with Mr. Johnson was
6 before the conversation with Mr. Darrow and Mr. Davis, and
7 he has stated what was said and what Mr. Johnson said to
8 him and doesn't require any calculation on the part of the
9 witness or any deductions from the circumstances related
10 by the prosecutor in his question.

11 THE COURT. Objection overruled.

12 MR. FORD. Q Well, how long--

13 THE COURT. The question has not been answered.

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

15 A Well, there is something in there that I cannot quite
16 remember.

17 BY MR. FORD.

18 Q Very well, I will return to that later. Do you recall
19 the first occasion of your meeting Col. Johnson in reference
20 to this case or having any conversation with him in
21 reference to this case? A I remember meeting him, yes,
22 sir.

23 Q Where was that? A Waldorf Cafe.

24 Q On Broadway between First and Second streets? A yes,
25 sir.

26 Q Who else was present besides you and Col. Johnson at
that time? A Nobody.

Petel 1 Q How many times did you meet Colonel Johnson in ref-
2 erence to that subject? A Twice.

3 Q Where was the next place you met Colonel Johnson in
4 reference to that subject? A Waldorf.

5 Q The same place? A Yes sir.

6 Q You paid him, I believe you testified, on both occa-
7 sions for his advice? A Yes sir.

8 Q What period elapsed between your first and second con-
9 versations with Mr Johnson? A I don't remember.

10 Q Well, approximately? A A few days; I don't remember.

11 Q On the first occasion that you met Colonel Tom Johnson,
12 just state what was said between you two?

13 MR APPEL: We object to that on the ground it is hearsay
14 and not pēdirect examination.

15 THE COURT: Objection overruled.

16 MR APPEL: We except.

17 A Mr Johnson said he had come from Mr Ford, and gave me
18 advice as to what I should do.

19 MR APPEL: I submit, your Honor, that is not an answer.

20 MR FORD: That may be stricken out.

21 THE COURT: That is not an answer. What was said?

22 Q By Mr Ford: Just state what was said? A I don't
23 remember just at this time.

24 Q Well, were both of these visits before the time you
25 had had your last conversation with Mr Darrow and Mr Davis
26 in the office of Jud Rush on the 14th of January?

1 MR APPEL: We object to that on the ground the witness has
2 already been asked and answered.

3 MR FORD: He stated they were before that with Mr Dingle,
4 but not that it was on the 14th, and I want to get at that.

5 THE COURT: Objection overruled.

6 A I think they must have been.

7 Q Your best recollection is to that effect ?

8 A They were, yes.

9 Q After leaving the office of Davis and Rush in the con-
10 ference of Mr Davis and Mr Darrow, you stated you had met
11 Mr Dingle at the corner of Third and Spring, I believe?

12 A Yes sir.

13 Q Your memorandum shows Third and Main.

14 A The memorandum is incorrect.

15 Q The memorandum is incorrect? A Yes sir.

16 Q Do you recall it was at Third and Spring? A Yes sir.

17 Q Did you have any conversation about the case on the
18 way to the Saddlerock Cafe, or was the conversation after
19 you arrived at the Saddlerock Cafe? A Both before and
20 after.

21 Q The Saddlerock Cafe is on Spring Street, or was at that
22 time on Spring Street between Second and Third? A Yes sir.

23 Q On the East side of the street? A Yes sir.

24 Q Was any other person present at that conversation?

25 A No sir.

26 Q Or any part of it? A No sir.

1 Q Except you and Mr Dingle? A No sir.

2 Q Just state what was said between you two at that time.

3 A Well, I cannot state only the substance of the conver-
4 sation, and that was that he was sorry that I was in this
5 trouble, and he said: "For God sake", to "get busy" and get
6 myself out of it the best I could. And I told him there
7 was a certain man that I wanted to find and if I could find
8 him I could probably clear the matter up, or words to that
9 effect.

10 Q Any other conversation had at that time? A And I think
11 I told him if I had the police department, or the sheriff's
12 office, or the district attorney's office behind me, I could
13 possibly find the man.

14 Q Referring now -- is that all that was said on that
15 occasion? A I don't think it was all, but that was the
16 substance of it.

17 Q When you made that statement was that statement true
18 or untrue, about your being able "to find a man"?

19 MR APPEL: Wait a moment. We object to that, your Honor,
20 as calling for a conclusion of the witness; incompetent,
21 irrelevant and immaterial, self-serving.

22 MR FORD: He knows whether it is true or untrue.

23 MR APPEL: He cannot introduce evidence of his declarations
24 and then undertake to show he was lying about it, or he was
25 falsifying about it. The jury are the judges of whether he
26 told the truth or not from the evidence in the case.

1 MR FORD: We will admit the statements were made and we
2 have a right to show they were untrue and why they were
3 said. We will show the motive in just a moment. Counsel
4 have brought these things out on cross-examination and we
5 did not bring them out on direct examination; they brought
6 them out on cross-examination; as long as they wanted to
7 go into it, we will go into it fully.

8 THE COURT: Objection overruled.

9 MR APPEL: We except.

10 A What is the question, please?

11 (Question read)

12 A Untrue.

13 Q Why did you make it?

14 MR APPEL: We object to that as incompetent, irrelevant and
15 immaterial, not redirect examination, self-serving.

16 THE COURT: Objection overruled.

17 MR APPEL: We except.

18 A It was in pursuance of a conversation that I had had
19 previous to that time with Mr Darrow and Mr Davis.

20 Q At what time had you had that conversation?

21 A A few moments before.

22 Q The same day? A Yes sir.

23 Q At what place? A Mr Rush's office, Bryson Block.

24 Q And were Mr Davis and Mr Darrow present at that time?

25 A Yes sir.

26 Q Just tell the jury all that occurred at that conversa-

1 tion.

2 MR APPEL: We object to that on the ground it is not redirect.

3 MR FORD: It is in response to cross-examination.

4 MR APPEL: He has told that indirect testimony, and we cross-
5 examined him in reference to that, all that conversation of
6 the 14th of January.

7 MR FORD: Perhaps I am wrong in that; he may have testified
8 to it on direct examination.

9 MR APPEL: He did, and the record so shows.

10 THE COURT: I think it was, and unless the contrary appears,
11 the objection is sustained.

12 Q By Mr Ford: Have you testified, Mr Franklin, to all
13 that occurred on the 14th day of January between yourself,
14 Mr Davis and Mr Darrow?

15 MR APPEL: Wait a moment. We object to that on the ground
16 it is incompetent, irrelevant and immaterial. The witness
17 was asked whether or not he met Mr Davis and Mr Darrow on
18 January 14th, and he said "Yes"; and he was asked to then
19 state all that was said, believing that he had stated all
20 that was said, we began to cross-examining him as to whether
21 that was all that was said, and he covered the ground fully,
22 according to the recollection of the witness at that time.
23 It is not redirect, it is nothing new.

24 MR FORD: We will withdraw that question, your Honor. We
25 are satisfied with the answer.

26 Q Now, at what time in the evening did you meet Mr Dingle

1 and Mr Ford at your residence? A Oh, about 8 o'clock
2 I should say, somewhere in that vicinity.

3 Q Just tell all that was said at that time between you,
4 Mr Dingle and Ford of the District Attorney's office?

5 A That would be impossible to tell all that was said,
6 Mr Ford.

7 Q Tell it in substance? A Mr Ford told me -- Mr
8 Dingle was not present. Mr Ford told me --

9 MR ROGERS: Pardon me just a moment. It appears Mr Dingle
10 was not present, if your Honor please, from the opening of
11 the answer of the witness, and consequently Mr Ford's
12 statements to Mr Franklin would not be material nor redirect.

13 MR FORD: I withdraw the question in that form.

14 Q Mr Dingle was at your house with Mr Ford that evening?

15 A Yes sir.

16 Q Did any conversation occur between you three, before
17 Mr Dingle left the room? A I don't know; I am not so
18 certain about that. I don't know, I don't remember.

19 Q Where was Mr Dingle during your conversation with Mr
20 Ford? A I don't know.

21 Q Was he in the house? A I don't know of my own
22 knowledge. I don't know.

23 Q Well, did you see him immediately before the conver-
24 sation and immediately after the conversation? A Yes sir.

25 Q He was somewhere in the vicinity, then? A I don't
26 know. He was there immediately before and immediately after.

1 I don't know where he was in the meantime.

2 Q When you and Ford were alone, what conversation oc-
3 curred?

4 MR APPEL: We object to that as not redirect examination;
5 incompetent, irrelevant, immaterial, hearsay, not binding
6 upon the defendant, self-serving.

7 MR FORD: The witness brought it out on cross-examination
8 that he had told the same story to Ford, and Ford had left.
9 At that time they didn't go into it fully, and I have a right
10 to go into it fully.

11 MR APPEL: He didn't say anything of the kind; we never
12 asked him about the conversation between Ford and him.

13 MR FORD: They have gone into the question of immunity, and
14 we are going into it fully.

15 THE COURT: Objection overruled.

16 MR APPEL: It is not cross-examination, if your Honor please.
17 Let me call your Honor's attention to it, with your Honor's
18 permission?

19 THE COURT: Go ahead.

20 MR APPEL: They put a witness on the stand, he testifies
21 against the defendant, we cross-examine, the other side has
22 a right to go into the question of whether or not and under
23 what circumstances he has testified; therefore, he asked
24 the witness whether any immunity was offered to him, and he
25 says "No". He says so in effect, and then we come and we
26 show circumstances of Meeting Mr Ford, and so and so, as

1 your Honor will understand, for the purpose of establish-
2 ing by circumstantial evidence whether or not in fact im-
3 munity was offered to him, or whether he thought that if
4 immunity would be offered to him, and to be sure what effect
5 it had upon his mind. That is ^{the} sole question. Now, the
6 prosecution are not allowed to give evidence in chief against
7 this defendant declarations of this man to the district
8 attorney, for any purpose in any way, shape or form.
9 MR FORD: On the proposition of immunity as affecting the
10 credibility of this witness -- we are going into it fully,
11 we are going into all the circumstances.

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17p1 THE COURT. I understand your purpose.

2 MR. FORD. They have opened it up on cross-examination.

3 MR. APPEL. We object to the question on the ground it is
4 incompetent irrelevant and immaterial for any purpose,
5 that it is hearsay, no foundation has been laid for the
6 introduction of this evidence, that it is not redirect,
7 not binding upon the defendant.

8 THE COURT. Overruled.

9 MR. APPEL. We take an exception.

10 A Mr. Ford told me that he wished to speak with me in
11 regard to my case. He told me that anything that I
12 said would be used against me, and upon that statement I
13 told him that I had nothing to say, only that there was
14 a certain man that if I were able to locate him that I
15 then perhaps would be in a position to talk and that if
16 I had the authority behind me that were necessary that
17 it might be possible in time that I would locate the man,
18 and Mr. Ford answered and said--asked me in substance, at
19 least, if I expected him to believe a story of that kind,
20 and I think I told him that I was not telling it to him
21 with the expectation of being believed or disbelieved.
22 I was telling him something that was a fact. That was
23 the substance of the conversation. Was there about
24 an hour and a half, though. I don't remember what was
25 said, but that was the substance.

26 Q Was the statement that you made to Mr. Ford at that
time true or untrue?

1 MR. APPEL. Wait a moment. We object to that upon the
2 ground it is incompetent, irrelevant and immaterial, self
3 serving, not binding upon the defendant, not being
4 declarations that are admissible under the rules of
5 evidence and no foundation laid.

6 MR. FORD. Submit it.

7 THE COURT. Overruled.

8 MR. APPEL. We take an exception.

9 A It was untrue?

10 MR. Ford. Q Why did you make it?

11 MR. APPEL. The same objection.

12 THE COURT. Overruled.

13 MR. APPEL. Exception.

14 A For the same reason as stated in my answer to Mr.
15 Dingle.

16 MR. FORD. Q Was anything said at that conversation about
17 your consulting any attorney other than Mr. Davis or Mr.
18 Darrow?

19 MR. APPEL. Wait a moment. We object to that on the ground
20 it is incompetent, irrelevant and immaterial, leading and
21 suggestive; not redirect, hearsay, no foundation laid;
22 not binding upon the defendant.

23 THE COURT. Overruled.

24 MR. APPEL. We take an exception.

25 A Yes, sir.

26 MR. FORD. Q What was said on that subject? A Mr. Ford

1 advised me to see some attorney other than Mr. Davis. I
2 don't think Mr. Darrow's name was mentioned, not to my
3 recollection at this time, and it would probably be an
4 advantage for me to follow the advice of some attorney friend.

5 Q Did he at that time suggest the name of any attorney?

6 MR. APPEL. The same objection upon all the grounds stated
7 in our previous objection.

8 THE COURT. Overruled.

9 MR. APPEL. We take an exception.

10 A No, sir, he did not.

11 MR. Ford. Was there anything said at that time about your
12 following your attorney's advice, if your attorney told
13 you to say nothing to Mr. Ford?

14 MR. APPEL. Wait a moment. We object to that, your Honor,
15 on each and all of the grounds stated and on the further
16 ground that he is putting just the very thing he wants
17 in the mouth of the witness.

18 MR. FORD. I don't think that suggests the answer.

19 THE COURT. I think the question is leading. Sustained
20 on the ground it is leading.

21 MR. FORD. Q What was said, if anything, in reference to
22 your following your attorney's advice in case your attorney
23 advised you to say nothing to Mr. Ford?

24 MR. APPEL. Wait a moment. Objected to upon the ground
25 and each and all the grounds stated in my previous objec-
26 tion.

1 THE COURT. Objection sustained.

2 MR. FORD. Q What was said inreference to following the
3 advice of your attorney in anything?

4 MR APPEL. The same objection as before.

5 THE COURT. Overruled.

6 MR. APPEL. Exception.

7 A I don't remember, Mr. Ford.

8 MR. FORD. Did you see an attorney after that?

9 A Yes, sir; not on any suggestion of yours, though.

10 MR. APPEL. I object--

11 THE COURT. You want that answer stricken out?

12 MR. APPEL. Yes, it is voluntary.

13 THE COURT. Strike it out. Strike out all of the answer
14 except, "Yes".

15 MR. FORD. Read the last question and answer.

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

17 MR. FORD. Q Who selected that attorney for you?

18 MR. APPEL. Wait a moment. We object to that upon the
19 ground that it is not redirect; it is incompetent, irrele-
20 vant and immaterial for any purpose whatsoever, and the
21 question assumes a fact not testified to by the witness.

22 MR. FORD. If the Court please, counsel has endeavored to
23 show on cross-examination that an attorney was selected
24 for him by the National Erectors Association or by some-
25 body else.

26 MR. APPEL. No, we didn't state anything of the kind.

1 MR. FORD. Yes, you did.

2 MR. APPEL. We asked him for facts. We asked him for
3 his knowledge.

4 MR. FORD. Someone acted as a go-between, between the
5 witness and myself.

6 MR. APPEL. He said it was Mr. Adams.

7 THE COURT. Objection sustained on the ground it is assum-
8 ing a fact not in evidence.

9 MR. FORD. How did you come to go to Mr. Adams?

10 MR. APPEL. Wait a moment. We object to that upon the
11 ground it is incompetent, irrelevant and immaterial, and
12 not redirect, and upon the following grounds that the act
13 or acts of this witness and declarations after the alleged
14 commission of the crime are not admissible for anything
15 against this defendant.

16 THE COURT. Overruled.

17 MR. APPEL. We take an exception.

18 A Read the question. (Last question read by the reporter)

19 A After consultation between Mrs. Franklin and myself
20 and the family, my four children.

21 BY MR. Ford. Q When next did you see Mr. Ford in reference
22 to this subject or any other subject? A Wednesday night.

23 Q At what place? A Mr. Ford came to my house in the
24 machine and we went from there to the residence of Mr.
25 Adams.

26 Q Did you meet Mr. Adams that night? A We did not.

1 Q Did you have any conversation with Mr. Ford at that
2 time in reference to the subject matter?

3 MR. APPEL. We object to that as immaterial, not redirect.

4 THE COURT. Overruled.

5 MR. APPEL. We take an exception.

6 A I did not.

7 BY MR. FORD. Q When next did you go to see Mr. Adams?

8 A The following night.

9 Q Did you see him that night? A I did.

10 Q At what place? A At his residence.

11 Q Just state what was said and done at that time between
12 you and Mr. Ford--in the presence of Mr. Adams.

13 MR. APPEL. Object to that upon the ground it is incompetent
14 irrelevant and immaterial.

15 THE COURT. I didn't hear the question.

16 MR. FORD. I beg your pardon. I probably hadn't laid the
17 foundation. I will withdraw the question.

18 Q When you saw Mr. Adams who was there? A When we went
19 in there was Mrs. Adams and another lady and a couple of
20 children, and then Mr. Adams and Mr. Ford and myself went
21 into the den of Mr. Adams.

22 Q Did you at that time have a conversation in reference to
23 your connection with the matters here in issue in this
24 court? A Oh, very little.

25 Q Just state what was said at that time?

26 MR. Appel. Wait a moment--we object to that upon the ground

1 it is incompetent, irrelevant, immaterial, hearsay and
2 not binding upon the defendant, and not redirect.

3 THE COURT. Overruled.

4 MR. APPEL. We except.

5 A I told Mr. Adams, as I remember it, that Mr. Ford had come
6 there to talk over the matter of my future, and Mr. Ford
7 spoke up and said, "Yes, Mr. Franklin, anything that you may
8 say will be used against you--may be used against you,"
9 and at about that time Mr. Ford requested that I leave the
10 room while he talked privately with Mr. Adams, which I did,
11 returning to the room about three-quarters of an hour
12 later.

13 Q When you returned what conversation occurred? A I told
14 Mr. Ford that--

15 MR. APPEL. The same objection, of course.

16 THE COURT. Objection overruled.

17 A --at a future date I would make a statement to him of
18 the facts in the case and told him at that time some of
19 the facts but I have forgotten what they were at this
20 time.

21 MR. FORD. Q What you told him at that time, was it true
22 or not true?

23 MR. APPEL. We object to that upon the ground it is incom-
24 petent, irrelevant and hearsay and nothing to do with the
25 case and not redirect.

26 THE COURT. He has not told what was said so what is the

1 difference whether it was true or untrue, because he
2 don't remember what he did say?

3 MR. FORD. To show what his attitude was towards the case.

4 THE COURT. I don't see that it has any bearing. Objec-
5 tion sustained.

6 MR. FORD. Q At that time was any promise made to you
7 of remuneration for your testimony or as to what would be
8 done in any event with you?

9 MR. APPEL. We object to that upon the ground it is incom-
10 petent, irrelevant and immaterial and hearsay and not
11 redirect; calling for a conclusion or opinion of the
12 witness, and not for facts.

13 THE COURT. Overruled.

14 MR. APPEL. We except.

15 MR. FORD. Q When next did you see Ford? A I don't
16 remember. The next day that I remember of seeing him was
17 on the 25th day of January, 1912.

18 Q At what place? A At the office of Oscar Lawler.

19 Q Did he see you before you went to the office of Oscar
20 Lawler? A Yes, sir.

21 Q Where? A My house.

22 Q Well, what occurred at the office of Oscar Lawler?

23 A I made a statement of the facts, or part of them, in
24 regard to the bribing of prospective juror Lockwood and
25 juror Bain.

26 MR. APPEL. Of course, this is under the same objection.

1 THE COURT. The same objection and the same ruling and
2 the same exception.

3 MR. FORD. Q At that time were any promises made on the part
4 of Mr. Ford or any one else to you as to the condition of
5 your making such a statement?

6 MR. APPEL. The same objection.

7 THE COURT. Overruled.

8 A There was not.

9 MR. Ford. Up to that time, had you, to your knowledge or
10 to your belief or even a remote conclusion seen any one
11 connected with the Merchants & Manufacturers Association?

12 A No, sir.

13 Q Or anybody connected with the National Erectors Asso-
14 ciation? A No, sir.

15 Q Or anybody connected with the Burns Detective Agency?

16 A No, sir.

17 Q Or anybody connected with the United States Government
18 in any capacity in the prosecution of dynamiters, except Mr.
19 Dingle? A I saw Mr. Dingle, I don't know what he has been
20 doing.

21 Q With the exception of Mr. Dingle had you seen anybody so
22 far as you know either interested in the prosecution of
23 dynamiters or anything else on behalf of the United States
24 Government? A Yes, I think I did. Up until that time?

25 Q Yes. A Oh, no, nobody but Mr. Dingle.

26 Q At the time you made this statement at the office of Mr.

1 Lawler to Ford, was anything suggested to you by Ford,
2 Lawler or anybody else as to what story you should tell
3 them?

4 MR. APPEL. Wait a moment--we object to that upon the ground
5 it is incompetent, irrelevant and immaterial and not
6 redirect and not recross of anything brought out by us.
7 It is hearsay and immaterial.

8 THE COURT. Overruled.

9 MR. APPEL. We except.

10 A No, sir.

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n 1 MR FORD: Did you tell the truth on that occasion concern-
2 ing the matters you told about?

3 MR APPEL: We object to that upon the ground it is incompe-
4 tent, irrelevant and immaterial, and hearsay, and no founda-
5 tion; calling for a matter to be decided by the jury and
6 doesn't lie in the mouth of the witness to give any con-
7 struction on this testimony.

8 THE COURT: Overruled.

9 MR APPEL: We except.

10 A I did.

11 MR FORD: You stated, Mr Franklin, that about ten days
12 after your arrest you had met John Drain, ex-councilman
13 Nichols, Mr Rogers' Associate, Frank Dominguez, in front of
14 some place of refreshment on Spring Street, between Second
15 and Third Street, near the theater there in the middle of
16 the block -- the Lyceum Theater. Will you give us in sub-
17 stance just what was said by and between all of you at that
18 time and place?

19 A The only conversation that I remember was between Mr
20 Dominguez and myself at this time.

21 Q And in substance what was it? A Mr Dominguez
22 said he was sorry to see that I had gotten into trouble, but
23 that nobody could accuse me of ever having \$4,000; and he said,
24 "I don't know whether you are guilty of what you are charged,
25 but if you got that money", or words to that effect, "you got
26 it from Darrow."

1 Q What did you say? A I told him not to mix up Mr
2 Darrow in the matter, that what I would do I was personally
3 responsible for, and I didn't care to have Mr Darrow mixed
4 up in it, that Mr Darrow had always treated me splendidly,
5 and words to that effect.

6 Q What, if anything, did you say -- I will withdraw it.
7 Did you say anything about your own guilt or innocence on
8 that occasion? A I did not.

9 Q You were arrested on the 28th day of November, 1911?

10 A I was.

11 Q And this was within ten days after the 28th day of
12 November, 1911, or about that time?

13 MR APPEL: That is very leading.

14 MR FORD: He stated it was ten days after his arrest.

15 THE COURT: Yes, it was leading.

16 MR APPEL: Well, you were telling him.

17 THE COURT: Objection sustained on the ground it is leading.

18 MR FORD: You fixed that early in December -- I withdraw
19 that. It is a matter of mere calculation, and I will not
20 insist on it. Anybody can calculate it. MR APPEL--
21 it. ^ Let him calculate

22 MR FORD: Well, he stated it in the record, it is a matter
23 of calculation; I will withdraw the question. Did you ever
24 have any conversation with Mr Drain on that subject other
25 than in the presence of Mr Dominguez? A Yes sir.

26 Q When was that with reference to the one at which

1 Dominguez, Mr Nichols and Drain were present?

2 A Well that is -- I could fix that date by my memorandum.
3 That is the date I met Mr Dominguez at some time later than
4 that near the Hollenbeck Hotel. Went into the Hollenbeck --
5 no, I was in there, in the bar of the Hollembeck, and Mr
6 Dominguez came in.

7 MR ROGERS: Pardon me. I haven't got that, if your Honor
8 permits. I understood the question to be "Did you have a
9 conversation with Mr Drain".

10 A I was just fixing the date, Mr Rogers. It was after
11 that that I had the conversation with Mr Drain and I have
12 the time I met Mr Dominguez in my memorandum.

13 MR FORD: I may not be clear --

14 MR ROGERS: Let me hear that again, if you please.

15 (Last answer read by the reporter)

16 MR FORD: Was this conversation to which I am attracting your
17 attention with Mr Drain before or after the 25th day of
18 January, 1912, or at the time of your statement to Ford and
19 Lawler? A My impression at this time is it was after-
20 wards, but I am not certain of that.

21 Q Perhaps I am mistaken. Were you asked on cross-
22 examination concerning any conversation you had with John
23 Drain while you and he were alone?

24 MR APPEL: No sir.

25 A No sir, I was not.

26 MR FORD: You were not? A No sir.

1 Q Then I have no right to go into it and I will not do
2 so. Were you asked concerning any conversation you had
3 with Frank Dominguez after this one that you had with him,
4 Mr Nichols and Mr Drain? A I don't remember I was asked
5 the question or not.

Pete 6 Q When did you meet Frank Dominguez and have a conversa-
7 tion with him concerning Darrow or the Lockwood bribery, or
8 any bribery, after the conversation that you had on Spring
9 Street while you, Dominguez, Nichols and Drain were present?

10 A I don't remember the date.

11 Q At what place was it held? A Bar-room of the Hollen-
12 beck --

13 Q Who else was present? A -- either the Hollenbeck --
14 yes, the Hollenbeck Hotel.

15 Q Who else was present besides you and Mr -- A I don't
16 know. There was at least twenty people standing around, yes
17 forty people that could have heard what he said.

18 Q Was the conversation participated in by any persons
19 other than you and Mr Dominguez? A I do not think so.

20 Q Was it before or after Mr Rogers had been retained by
21 the defense in this case? A I don't know when Mr Rogers
22 was retained in the case.

23 Q Was it before or after the defendant in this case had
24 been indicted? A I don't know when he was indicted, and
25 I am not, I cannot testify.

26 Q You say you have a memorandum of that date you had that

1 conversation with him in the Hollenbeck? A Yes sir.

2 Q Will you get the memorandum, please? Will you get the
3 memorandum, please? A Yes sir. (Witness refers to book)

4 Q Is this your memorandum? A Yes sir.

5 Q Was that memorandum made by you or under your direction
6 within a short time of the occurrence there related?

7 A It was, yes sir.

8 Q Having refreshed your recollection from that memorandum,
9 just tell us when it was you met Mr Dominguez?

10 MR APPEL: Wait a moment. We ask that the memorandum be
11 first shown to counsel.

12 MR FORD: Counsel is entitled to look at the memorandum.
13 If you will remove it, Mr Franklin. (Witness removes memo-
14 randum from book and hands same to Mr Ford, whereupon Mr
15 Ford hands same to Mr Rogers)

16 MR ROGERS: No objection.

17 MR APPEL: No objection.

18 MR FORD: I cannot offer it in evidence.

19 MR APPEL: We will offer it in evidence.

20 MR FORD: No objection.

21 MR APPEL: Shall we read it now?

22 MR FORD: Yes.

23 MR APPEL: (Reading) -- "February 3, 1912. Went to office
24 9:30. Went to prize fight in afternoon and in the
25 evening went to show with wife and daughter. In after-
26 noon met Wheaton and Dominguez at Hollenbeck bar.

1 Met Detective from District Attorney's office at 7th and
2 Spring Street; went on car with him to fight; had seat
3 between him and Frank Dominguez. Returned home alone.
4 Saturday, February 23, 1912. "

5 THE CLERK: Defendant's Exhibit "D".

6 Q By Mr Ford: Who was the detective from the District
7 Attorney's office whom you met? A I cannot recall his
8 name, but he is a tall young man wearing a light suit of
9 clothes. I would know his name if I heard it.

10 Q Did you meet him by appointment? A No sir, accident-
11 ally entirely.

12 Q Did you at any time discuss the case with him in any
13 shape or form? A I did not.

14 MR ROGERS: By "him", you mean the detective -- if your
15 Honor please, may I inquire?

16 MR FORD: Yes, the detective .

17 Q Assuming that the indictment in this case was returned
18 on January 29th, then it was after that that you met Mr
19 Dominguez? A Yes sir.

20 THE COURT: I think it is a good time to take an adjournment
21 today, gentlemen. You have all observed that the atmos-
22 phere is pretty close here, and I will say for the benefit
23 of the jurors, who are especially interested in view of the
24 difficulty of ventilating this room, I hope by Monday to
25 use one of the larger rooms in the Court House and to make
26 that change, where you will be more comfortable in carrying

1 this work forward. I expect on and after Monday we
2 will use one of the larger rooms. It will be impossible
3 to get proper ventilation here with the large crowd.

4 (Jury admonished)... We will now adjourn until ten
5 o'clock tomorrow morning.

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7 (Here the Court took an adjournment until Friday, June 7,
8 1912, ten o'clock A.M.)

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