

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.

---o---

The People of the State of California,)

Plaintiff,)

vs.)

No. 7373.)

Clarence Darrow,)
")

Defendant.)

---o---

REPORTERS' TRANSCRIPT.

VOL. 17

I N D E X.

	Direct.	Cross.	Re-D.	Re-C.
--	---------	--------	-------	-------

Bert H. Franklin,

1243

1269

**LOS ANGELES COUNTY
LAW LIBRARY.**

B. N. Smith,
Official Reporter.

Vol 17 to 19

Bert H. Franklin	Vol. 17
Bert H. Franklin	Vol. 18
Bert H. Franklin	Vol. 19
P. J. Cooney	Vol. 19

1 AFTERNOON SESSION.

2 June 7, 1912. 2 o'clock P.M.

3 ---o---

4
5 THE COURT: The jurors are all present. Call in Mr Franklin.6
7
8 BERT H. FRANKLIN, on the
9 stand for further Redirect Examination:

10 THE COURT: Proceed with the Redirect Examination.

11 MR FORD: When you left the office of Clarence Darrow, on
12 the morning of November 28th, Mr Franklin, walking towards
13 the elevator, which way did you go on that diagram; can you
14 indicate? A Yes sir. You wish me to mark the direct-
15 ion of the elevator just where I went?16 Q Yes. A Indicating hallway. Indicating elevator.
17 I came from about the center of this room, out the door
18 leading into the hallway from the office of Clarence Darrow,
19 going north down the hallway, east on this hallway, turned
20 to the right in a southerly direction, and took one of these
21 elevators.22 Q As you went down the hallway did you meet anybody or
23 see anybody? A No sir.24 MR APPEL: Wait a moment. That is objected to upon the
25 ground it is not redirect; it is incompetent, irrelevant and
26 immaterial.

1 THE COURT: Overruled.

2 MR APPEL: We except. A Not to my recollection.

3 MR FORD: At the time you looked at the money, did you see
4 anybody in sight of you where you were looking at it?

5 MR APPEL: Same objection.

6 THE COURT: Overruled.

7 MR APPEL: Exception. A Not to my recollection.

8 MR FORD: I will ask you to look at this package and state
9 whether or not you ever -- I will ask you to state what the
10 size of the roll was compared to the one you have in your
11 hand, as to its physical dimensions?

12 MR APPEL: Wait a moment. We object to that upon the ground
13 it is incompetent, irrelevant and immaterial, and not redirect

14 MR FORD: They brought ^{out} on cross-examination he carried it
15 in his hand, the money.

16 MR APPEL: No, on direct examination.

17 THE COURT: I think that was direct examination.

18 MR FORD: No, we didn't make any attempt to introduce the
19 money on direct examination or attempt to identify the money
20 by this witness; but on cross-examination counsel brought
21 out the fact that this witness had walked down the hallway,
22 had looked at -- he stated on direct examination that he had
23 looked at the money, that is correct; but counsel brought
24 out on cross-examination that he didn't carry it in his
25 pocket but carried it in his hand.

26 THE COURT: I see the point.

1 MR FORD: I want him to indicate the size of the roll by
2 its physical dimensions only, as compared with the roll
3 which he holds in his hand.

4 THE COURT: You might have the right to have him describe
5 it and state the number of bills in it.

6 MR FORD: He has already done that, I think, by stating
7 there were a number of \$500 bills, and he thinks one \$1,000
8 bill, and counsel has laid a great deal of stress, apparently
9 only in the tone of voice, but upon the size of the package
10 of money that he carried in his hand, and we just want to
11 show what the size of that package was and whether or not
12 it could be concealed in the hand; in other words, counsel
13 have asked at various times if this witness didn't try to
14 procure corroboration of his act of bribery, and then argued
15 here with the witness that he had gone to a certain woman's
16 house and left his telephone number; that he carried the
17 chauffeur with him; that when he went out to Lockwood's
18 house did this, and did that, which would have attracted
19 attention to him, and they asked him the specific question
20 if he had not attempted to procure a witness to corroborate
21 his own movements. Of course, on the other hand we have our
22 argument on that matter which we will present at the proper
23 time. We don't wish to present it now, but we wish to show
24 the size of the roll he carried in his hand.

25 MR APPEL: It is page 537.

26 THE COURT: I think the objection that it is not redirect is

1 well taken. Objection sustained.

2 MR FORD: Will you kindly indicate to the jury the manner
3 in which you held this in your hand, or held the roll of
4 bills in your hand?

5 MR APPEL: The same objection as before, not redirect and
6 immaterial.

7 THE COURT: Objection overruled.

8 MR APPEL: Exception. Now, we assign the conduct of the
9 District Attorney in handing to the witness a roll of green-
10 backs, currency, for the purpose of illustrating to the jury
11 the possible size of that roll, this currency not being in
12 evidence, and he is exhibiting it to the jury, evidence
13 which -- purported evidence, unsworn evidence, which the
14 jury have no right to see except it were admitted in evidence;
15 no foundation laid.

16 THE COURT: Counsel's position, I think, is correct in that.
17 The question in its present form is improper in that it
18 presents a roll of bills. The witness can describe how he
19 carried that roll of bills without having the particular
20 roll in his hand, and if counsel wants an answer to that
21 question it will have to be in that way.

22

23

24

25

26

2s 1 MR. Ford. If the Court please, counsel have used the black
2 board and have used other objects to illustrate it. Will
3 you take some paper, Mr. Franklin, and make a package about
4 the size of the package you carried in your hand at that
5 time and illustrate to the jury just the manner in which--

6 MR APPEL. We object to that upon the ground it is suggest-
7 ing to the witness the manner in which he shall answer the
8 question. Your Honor, no illustrations are allowed in
9 Court unless they are so positively impossible of explana-
10 tion; the witness has been asked a question if he can explain
11 it by orally giving an answer he ought to be allowed to do it
12 without being told how to answer the question and through
13 what movements he shall go.

14 MR. FORD. I don't think I told the witness just what he
15 must do nor what the size of the package is that he must
16 make up.

17 MR. APPEL. You told him to take a piece of paper and do some-
18 thing.

19 THE COURT. Objection sustained. In regard to that
p 20 diagram that is on the blackboard, if that is to go into
21 the record you will have to photograph it.

22 MR. FORD. We are willing to let it rest on the same terms
23 as Mr. Rogers's illustrations.

24 THE COURT. If counsel for the defense want it in the
25 record it will have to be photographed.

26 MR. APPEL. We are here silent on the subject. We do not

1 know what counsel wants to do for illustration there.

2 MR. FORD. I offer the blackboard in evidence.

3 THE COURT. I do not see how it can be.

4 MR. FREDERICKS. There was no question of that kind raised
5 with regard to the figures Mr. Rogers made on the board and
6 we make none, we pass the subject, that is all.

7 BY MR. FORD. Q When you went down to visit the establish -
8 ment of Mr. Underwood, how big a place was that? A About
9 as wide as this court room is long and as long as from this
10 wall to the further side of the outer hallway, perhaps
11 longer than that.

12 Q That was the size of the entire works? A Yes, sir, that
13 is my recollection.

14 Q How many men were employed in there? A Just Mr. Under-
15 wood himself at the time I was there.

16 Q What time of day were you there? A I am not certain;
17 I think in the forenoon.

18 Q You have visited the works of the Llewellyn Iron Works
19 and the Baker Iron Works? A Yes, sir.

20 Q At various times. How did it compare in size with
21 those places?

22 MR. APPEL. We object to that as incompetent, irrelevant and
23 immaterial for any purpose, not redirect.

24 MR. FORD. They have dwelt with a great deal of emphasis
25 on the fact that Mr. Underwood was an employer of labor and
26 have tried to create an impression that he was a large

1 capitalist of some sort and his affiliations would be
2 naturally with that of the large capitalistic portion of
3 society, and we wish to show that that is not the fact.
4 Withdraw the question.

5 Q Did you make any investigation as to Mr. Underwood's
6 financial standing?

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

8 THE COURT. Objection overruled.

9 MR. APPEL. Exception.

10 A No, sir.

11 Q Did any of your operatives make any report to you so
12 that you had some information at that time as to his finan-
13 cial standing?

14 MR. APPEL. We make the same objection, calling for hearsay
15 evidence.

16 MR. FORD. It would be calling for a fact that was done
17 or not done at that time. This witness has testified that
18 he knew Mr. Underwood and that he went down there. Now, if
19 he believed him to be a wealthy man, allied with the other
20 side and was making a proposition to bribe him, counsel
21 would dwell with a great deal of emphasis on that act as
22 not being natural. Now, we wish to show that such was
23 not the case.

24 MR. APPEL. Your Honor, the gentleman seems to misapprehend
25 our position. Our position in this matter, in short words
26 stated here, that there is no more liability on the part of

1 a poor man to take a bribe than of a rich man . The ques-
2 tion as to whether a man would likely to take a bribe does
3 not rest particularly onthe fact whether or not he is
4 rich or poor, and we do not assume that a poor man would
5 be more liable to take a bribe than a rich man. I don't
6 know very much about rich men, I have associated mostly
7 all my life with poor men who were in my class, but I
8 found them generally very honest and the question whether
9 this man would think Mr. Underwood would be likely to take
10 a bribe because he had indicated to his mind he was a poor
11 man does not enter into the case at all.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

3P 1 Our question as to him, we are on a different line altogether;
2 there was nothing in our question to indicate any such posi-
3 tion as that kind on our part, absolutely none. Now, the
4 question of his standing in society, or his financial condi-
5 tion, does not enter into it in the least; it is only a
6 question as to whether or not the witness here would have
7 been likely to have gone to the man in good faith, meaning
8 and intending to commit a crime and leaving a man to commit
9 a crime, would he be likely to have gone to a man who is
10 interested in an indirect way, you might say, in the prose-
11 cution -- I am not saying he was or was not, I am talking as
12 to what was in his mind, your Honor, and that is the reason
13 we asked him whether or not he took those precautions to
14 find out from his acquaintance and from the position of the
15 man, and with reference to the interests which were involved
16 in that case of People against McNamara, whether it would be
17 likely he went there really intending in good faith to
18 bribe Mr Underwood, no more than he would have approached
19 any member of The Times. That is by way of illustration,
20 I simply speak of it.

21 MR FORD: Counsel misunderstands my position.

22 THE COURT: Read the question and then I will hear you.

23 (Question read)

24 MR FORD: Now, if the Court please, I do not want to be
25 quoted here as saying a poor man would be more likely to
26 receive a bribe than a rich man. The point I was endeavor-

1 .ing to reach, is whether or not there was anything in
2 either of the reports about Mr Underwood or about the
3 witness' own knowledge of Mr Underwood which would lead
4 this witness to believe he was allied with the Merchants
5 & Manufactu^rers Association, the Employers Associati on, or
6 whether he was an employer on a large scale, which would
7 render him adverse to the interests of union labor as rep-
8 resented in the McNamaras, and interested in the prosecution
9 of them, to show the information which this witness had with
10 regard to Mr Underwood was of such a character it would ren-
11 der unnatural his attempts to offer a bribe to Mr Underwood.
12 Now, it is not hearsay; we are not seeking to establish the
13 fact as to whether Mr Underwood was a rich man or a poor man;
14 we want to know whether ^{it is} the information upon which the def-
15 endant acted. If we were trying to prove Mr Underwood was a
16 rich man by testimony of this character, it would be hearsay
17 testimony for that purpose, but we are trying to prove no
18 such information was received; it would not be hearsay to
19 prove the fact that any information was received or was not
20 received.

21 THE COURT: You need not argue the question of hearsay at
22 all, but the other question I think Mr Appel is right about.

23 MR FORD: What is your Honor's ruling on this question?

24 THE COURT: Objection sustained.

25 Q By Mr Ford: At the time you approached Mr Underwood
26 to offer him, or requested him to act as a juror and offered

1 to pay him, if you did, what did you know about him at that
2 time --

3 MR APPEL: We object to that as incompetent, irrelevant and
4 immaterial. The witness on direct examination, your Honor,
5 has stated, if you will permit me to suggest --

6 THE COURT: The Court is with you, Mr Appel, at this time,
7 unless counsel should show some reason.

8 MR APPEL: Yes.

9 MR FREDERICKS: On the ground it is not redirect examination,
10 is that ^{the}ground?

11 THE COURT: On the ground it is incompetent, irrelevant and
12 immaterial.

13 Q By Mr Ford: Counsel asked you on cross-examination if
14 you knew that Mr Underwood ^{was} a member of the Employers Associa-
15 tion. Did you ever know anything of that sort?

16 MR APPEL: He has answered that, your Honor.

17 MR FORD: Redirect examination/

18 MR APPEL: Yes sir, he answered that, and answered that at
19 that time, on the redirect, he stated, your Honor, what
20 little information he had, he stated it in different ways,
21 your Honor, fully covered the subject.

22 MR FORD: On cross-examination.

23 THE COURT: Yes, I think he did, but he stated it in differ-
24 ent ways and counsel has a right to bring it out again now.

25 Objection overruled.

26 A Read the question, please? (Question read.)

A I did not.

4p 1 BY MR. FORD. Q Was there anything in the size of his
2 establishment, anything in its condition that you observed
3 or learned and knew of that led you to even suspect he
4 was a member of the Employers' Association?

5 MR. APPEL. That is calling for his conclusion and opinion,
6 your Honor.

7 MR. FORD. That is a conclusion at that time, yes.

8 MR. APPEL. For his conclusion and opinion based upon facts
9 not allowed by the witness here to be testified on redirect,
10 it is incompetent, irrelevant and immaterial. Your Honor
11 sustained an objection to anything about those matters, he
12 has not stated it on redirect, now they are asking him for
13 his conclusions from those facts which your Honor did not
14 allow.

15 THE COURT. Read the question again.

16 (Question read.)

17 THE COURT. Objection overruled.

18 MR. APPEL. Exception.

19 A No, sr.

20 MR. FORD. Q was there anything of any kind or nature
21 which caused you to believe or suspect that he was a member
22 of the Merchants & Manufacturers Association?

23 MR. APPEL. The same objection.

24 THE COURT. Overruled.

25 MR. APPEL. Exception.

26 A No, sir.

1 Mr. FORD. When you knew Mr. Underwood in the oil wells just
2 preceding his going into the iron business just state in
3 what capacity he worked.

4 MR. APPEL. The same objection.

5 THE COURT. Overruled.

6 MR. APPEL. Exception.

7 A Well, all I know about that is conversation I had at
8 different times with Mr. Underwood in which he told me he
9 was engaged in the drilling of oil wells. I don't know
10 where. I know what my impression was but I don't remember
11 what he said about that.

12 Q At the time you went to ask him to accept a bribe, what
13 was your impression as to his financial ability?

14 MR. APPEL. We object to that upon the ground it has been
15 gone over on cross-examination. The witness having already
16 stated his impression, it is incompetent, irrelevant and
17 immaterial. He has also stated what he told Mr. Darrow about
18 it.

19 MR. FORD. He acted upon his impressions, whatever they
20 were at that time. He is not allowed to give his present
21 impressions on any subject to the jury but if he acted on
22 the impression that is a fact--

23 THE COURT. The court has already sustained the objection
24 that the question of his financial ability or what this
25 witness thought was his financial ability was immaterial.
26 Objection sustained on that ground.

1 MR. FORD' In what capacity was Mr. Underwood working
2 in the oil fields?

3 MR. APPEL. Wait a moment--there is no foundation for
4 that. It is calling for hearsay; it is not redirect. The
5 witness does not say he saw him working there.

6 THE COURT. Objection sustained.

7 MR. FORD' At the time you went to see Mr. Underwood what
8 was your information as to the capacity in which he had
9 been working in the oil wells?

10 MR. APPEL. The same objection.

11 THE COURT. Objection sustained.

12 MR. FORD. Q At the time you talked to Mr. Underwood at
13 his place of business concerning the taking of a bribe, did
14 he say anything about his belonging to any association
15 opposed to union labor?

16 MR. APPEL. We object to that upon the ground it is incom-
17 petent, irrelevant and immaterial and not redirect; calling
18 for hearsay evidence, not binding upon the defendant.

19 THE COURT. Objection overruled.

20 MR. APPEL. Exception.

21 A No, sir.

22 BY MR. FORD. Q Was his establishment a small or a large
23 establishment?

24 MR. APPEL' Object upon the ground that has all been
25 covered by questions on redirect right here. He has des-
26 cribed the size of the establishment and the jury are to

1 determine from that; calling for his conclusion and
2 opinion and immaterial.

3 THE COURT. Well, he gave the description of the size of the
4 establishment but it means nothing in the record, however.

5 MR. FORD. A business of such a character might seem like
6 a large building for the ordinary business--

7 THE COURT. The question of large or small is too indefinite.
8 The jury will have to determine that size. Objection sus-
9 tained.

10 MR. FORD. Q Have you at any time heard or learned in
11 any manner that Mr. Underwood was a member of the Employers'
12 Association or the Merchants & Manufacturers Association?

13 MR. APPEL. We object upon the ground it is incompetent,
14 irrelevant and immaterial and not redirect, calling for
15 hearsay evidence.

16 THE COURT. Objection overruled.

17 MR. APPEL. We except.

18 A Not until I heard it in the court room here.

19 MR. FORD. Q From whom? A Mr. Rogers, I think.

20 MR. FORD. Now, your Honor, that illustrates the point that
21 Mr. Rogers was testifying in effect--well, I will withdraw
22 that remark.

23 MR. ROGERS. Before the remark is withdrawn or gets out, I
24 desire to enter an exception to its being stated or said
25 into the record and I was not testifying and did not
26 attempt to testify. However, if they desire me to do so

1 am quite able so to do, but I did not testify. I asked
2 him if he knew, and I didn't even say that I knew, although,
3 perchance, if called upon I might elucidate upon that point
4 whether I do know or not.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Sm

- 5 1 MR FORD: The question was asked at that time, didn't you
2 know that he was this and didn't you know that he was that.
- 3 THE COURT: Counsel had a perfect right to that question.
- 4 MR FORD: Counsel had a perfect right to that question and
5 I apologize for the remark I made, although I can see it
6 gave the witness a false impression. I hope it will be cor-
7 rected now. Aside from the conclusion that you may have
8 drawn from the form of Mr Rogers' question, have you ever
9 learned in any manner that Mr Underwood was a member of the
10 Merchants & Manufacturers Association or of the Employers
11 Association, or of any Association that was opposed to
12 Union Labor?
- 13 MR APPEL: Wait a moment. Objected to upon the ground it
14 is irrelevant and immaterial; what his present knowledge
15 may be is incompetent, and not redirect.
- 16 MR FORD: Just his feeling.
- 17 THE COURT: His present knowlege is not material.
- 18 MR FORD: Did you ever at any time up to the time you went
19 to see Mr Underwood learn in any manner, in any way, shape
20 or form, that Mr Underwood was a member of the Merchants &
21 Manufacturers Association, or of the Employers Association,
22 or of any other Association that was fighting Union Labor?
- 23 MR APPEL: We object to that. It has been asked already,
24 a little while ago, subject to our objection.
- 25 THE COURT: And he has answered the question. Objection
26 sustained.

1 MR FORD: Did you at that time believe that he was -- well,
2 that is enough on that subject. You testified that you
3 met George Hood on the 15th day of January, 1912?

4 A I testified that I thought that was the date; I am not
5 positive of it, but I am quite sure.

6 Q Was that before or after you had made a statement of
7 the facts to Ford?

8 MR APPEL: Well, your Honor, we object to that. Now he has
9 stated when he made the statement to Mr Ford and the jury
10 are to draw the conclusion as to whether it was before or
11 after from the facts , and this question is repeatedly
12 asked of the witness when the facts are here, if such be the
13 facts.

14 THE COURT: Let me get that last answer again.

15 (Last answer read by the reporter)

16 MR FORD: He testified on cross-examination to the conver-
17 sation had.

18 THE COURT: I think that justifies the question; objection
19 overruled.

20 MR FORD: Was that before or after you had told Ford what
21 actually occurred?

22 MR APPEL: He testified to the date when he met Hood. We
23 object to the question upon the ground that it assumes a
24 fact not in evidence; incompetent, irrelevant and immaterial,
25 and upon the ground that the testimony in this case shows
26 the respective dates of the two transactions; the witness

1 has already testified to the date.' He, himself, has testi-
2 fied when it occurred; he has stated when it was, and it
3 is in the record.

4 THE COURT: Where, Mr Appel? Perhaps I am wrong; where is
5 the place he testified he met Hood? Mr Reporter, read
6 the last question and answer.

7 MR FORD: The last question and answer --

8 THE COURT: Just a moment. Let the reporter read the
9 last question and answer.

10 (Last question and answer read by the reporter)

11 THE COURT: Objection overruled.

12 MR FREDERICKS: I think the question^{is}/already pending upon
13 which the Court has overruled the objection from the other
14 side. It doesn't need to be repeated.

15 (Last question read by the reporter)

16 A It was before.

17 MR FORD: What did you tell Hood on that occasion?

18 A Mr Hood asked me -- spoke to me in regard to my trouble.
19 Said he was sorry I was in trouble, and I told Mr Hood there
20 was a certain man that if I could find him I thought I could
21 square myself; and I told him that the man who gave me the
22 money was near me when I was arrested, words to that effect.

23 Q You stated at that time the man whom you were talking
24 about was not Clarence Darrow, by way of explanation here in
25 the court-room? A Yes sir.

26 Q Whom was it you had in mind when you made that statement?

1 MR APPEL: Wait a moment. We object to that upon the
2 ground that it is incompetent, irrelevant and immaterial,
3 and not redirect.

4 MR FORD: Counsel brought out that conversation on cross-
5 examination.

6 THE COURT: Overruled.

7 A A fictitious person.

8 MR FORD: Then your statement to Mr Hood was true or not
9 true?

10 MR ROGERS: Just a moment, if your Honor please. I took
11 occasion to look at the authorities upon that subject --

12 THE COURT: You object to this question?

13 MR ROGERS: Yes sir. I object to this question upon the
14 ground it is incompetent, irrelevant and immaterial, and
15 calling for a conclusion or opinion, a matter about which --

16 THE COURT: You want to be heard on that?

17 MR ROGERS: I simply say I looked up the authorities and I
18 found several of them to the effect such questions as that
19 are not admissible for the jury to judge them, and for the
20 witness to say what he did say, and under the circumstances
21 under which he did say it, and so forth, and he cannot give
22 his conclusions concerning it. I suggest to your Honor
23 that it might be possible in looking the matter over for
24 the jury to look at the circumstances, for instance, that he
25 said it at a lodge meeting to a brother lodgeman, etc., and
26 so on. All those matters are to be taken into consideration

1 by them, whether he would tell the truth on that occasion
2 or not, but he cannot give his own statement concerning it.
3 It is incompetent and no foundation laid.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

6s 1 MR. FORD. Like to have the authority cited. He cannot
2 cite a single authority to that effect.

3 MR. ROGERS. Very well, I shall have them.

4 THE COURT. Mr. Ford, it is highly improper for you to make
5 remarks of that kind. He undoubtedly has authorities,
6 that in his opinion were that way, and you undoubtedly
7 have authorities that in your opinion lean your way. I have
8 been on the bench a good many years and I have seldom found
9 a question yet that counsel could not find authorities
10 on both sides. If there is such an authority I would like
11 to investigate it.

12 MR. ROGERS. Mr. Governor Gage called my attention to the
13 authorities, told me to go and look for it, and I did and I
14 found his Late Excellency knew what he was talking about.

15 MR. FORD. I would like to have him state it to the court
16 at least, your Honor.

17 MR. ROGERS. I will cite them.

18 THE COURT. Objection overruled.

19 MR. ROGERS. Exception.

20 A What is the question?

21 (Last question read by the reporter.)

22 A It was untrue.

23 MR. APPEL. Will your Honor permit us to have the reporter
24 read two or three questions just before that?

25 THE COURT. Yes, read them.

26 (Testimony read as indicated.)

1 MR. FORD. Q Why did you tell that story to Mr. Hood?

2 MR. APPEL. We object upon the ground it is incompetent,
3 irrelevant and immaterial, and not binding upon the defend-
4 ant; upon the ground it is not redirect; the witness has
5 testified in reference to that very subject.

6 MR. FREDERICKS. On cross-examination though, your Honor.

7 THE COURT. Did you go into that on direct?

8 MR. FREDERICKS. No, that is an impeaching question.

9 MR. FORD. That is an impeaching question on cross-examina-
10 tion. We have got to go into it fully to show the circum-
11 stances of it.

12 MR. APPEL. He said, your Honor, in answer, that that was
13 pursuant to a conversation that he had had with someone
14 else.

15 MR. FREDERICKS. That was in regard to another conversation.

16 MR. FORD. Another impeaching conversation. This is the
17 first time we have asked him about the Hood conversation.

18 MR. Fredericks. This is the first time that we have asked
19 this witness about the Hood conversation, so it could not
20 have been gone into on direct examination.

21 MR. FORD. Just to refresh your Honor's recollection, I
22 did ask him yesterday about certain statements made by the
23 witness to Mr. Erwin and certain statements made by the
24 witness to Mr. Ford, and on each of those occasions I asked
25 him why did you say it and he then gave his reasons. Now,
26 I am trying to do the same thing in this case. This will

1 be the last one on that line.

2 THE COURT. Objection overruled.

p 3 A overruled?

4 THE COURT. Yes.

5 A My idea of making that statement to Mr. Hood was to
6 lead his thoughts as well as other people's thoughts
7 away from any implication of Mr. Darrow.

8 Q When and where did that intention originate in your
9 mind?

10 MR. APPEL. We object to that as incompetent, irrelevant
11 and immaterial, not binding upon the defendant.

12 MR. FORD. Withdraw it in that form.

13 Q Was your meeting of Mr. Hood before or after the conversa-
14 tion you had with Mr. Davis and Mr. Darrow at Jud Rush's
15 office on the 14th day of January, 1912?

16 MR. APPEL. We object to that on the ground the record
17 speaks as to whether it was before or after. The witness
18 has already testified with reference to the date of the con-
19 versations in question.

20 MR. FORD. He said about a certain--pardon me.

21 THE COURT. Mr. Appel.

22 MR. APPEL. It has been answered.

23 THE COURT. Objection overruled.

24 A To the best of my recollection it was the night imme-
25 diately following my conversation with Mr. Davis and Mr. Darrow
26 in Mr. Rush's office. I am not certain as to that; that is

1 my best recollection.

2 Q You testified the other day, even if you had turned
3 Mr. Lockwood over to an officer that you didn't think he
4 would be punished. What did you mean by that?

5 MR. APPEL: We object to that as incompetent, irrelevant and
6 immaterial, calling for a conclusion and opinion of the
7 witness, calling for his construction of evidence he has
8 given here upon the stand and not redirect, and not binding
9 upon the defend_ant.

10 THE COURT: Objection overruled.

11 MR. APPEL: We except.

12 A Now, what is the question?

13 (Question read.) A Well, I was satisfied they never
14 could have made a case against me and it would have
15 clouded the issue in the meantime and allowed me to pre-
16 pare for a defense.

17 MR. ROGERS. Let me have that answer.

18 (Answer read.)

19 MR. FREDERICKS. Did you say "clouded" or "crowded"?

20 A Clouded.

21 MR. FORD. Q Did you ever at any time receive any money
22 for services rendered in the McNamara case from any persons
23 other than Mr. Darrow, Mr. Davis and Mr. Harriman, as you
24 have testified to?

25 MR. APPEL: We object to that as immaterial, not redirect;
26 incompetent and irrelevant for any purposes whatsoever.

1 THE COURT. Objection overruled.

2 MR. APPEL. Exception.

3 A No, sir.

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

7P 1 Q Have you been made any promises of any money in the
2 future on the part of anybody by reason of any testimony
3 you have given here, or any work you have done in any place
4 connected with this case?

5 MR APPEL: We object to that on all the grounds stated in
6 our previous objections; not redirect, leading and suggestive.

7 THE COURT: Objection overruled.

8 A No sir.

9 MR FORD: That is all.

10

11

12

RE CROSS-EXAMINATION

13 BY MR APPEL:

14 Q Mr Franklin, on the day when you started to walk from
15 the vicinity of Third and Los Angeles, west on Third, around
16 Third and Main, north on the east side of Third, you were
17 conscious of the fact that somebody was following you at
18 that time, were you not?

19 MR FORD: We object to that as not recross-examination.

20 THE COURT: Objection overruled.

21 MR FREDERICKS: There is another objection to it, which I
22 think is inadvertent, in that counsel has not made a
23 correct description; "north on the east side of Third" would
24 be an impossibility, but I do not think that is what he meant.

25 MR APPEL: I did not say that. I said "north on the east
26 side of Main Street", and I am correct about that. That is

1 what I said.

2 MR FREDERICKS: I do not think that is what he said, but if
3 that is what it meant, it is all right.

4 THE COURT: Objection overruled.

5 A You may say I thought I was being followed.

6 Q You told Mr Lockwood not to turn back? A What is
7 that? No sir.

8 Q You didn't tell him that? A No sir, I did not.

9 Q Now, during that short space of time that you were
10 following the route which I have indicated in my question,
11 you made up your mind then you would turn Lockwood over and
12 accuse him of receiving a bribe, or undertaking to extort
13 money from you, or some other crime, with the idea you would
14 you would temporarily accuse him of it and raise an issue
15 pending your concocting some story to make your defense;
16 is that what you meant by one of your last answers?

17 MR FREDERICKS: That is objected to upon the ground it is
18 not recross examination.

19 THE COURT: Objection overruled.

20 MR APPEL: It is. Read the question.

21 (Last question read)

22 A As I testified upon direct examination --

23 Q Answer the question. A I am going to, if you will
24 give me a chance. Don't be impatient.

25 THE COURT: Mr Witness, counsel --

26 A I have a right, your Honor, to protect myself from

1 remarks of counsel and am going to do it.

2 THE COURT: Mr Franklin, if you need any protection here the
3 Court, with the strong arm of the Sheriff back of it, will
4 protect you. If you need any protection at any time, call
5 upon the Court and you will get it. It is highly improper
6 for you to take that responsibility off of the shoulders
7 of the Court. Proceed with the answer.

8 A As I told you upon direct examination, I had made up
9 my mind immediately upon seeing that Mr Lockwood had be-
10 trayed me, his friend, that I would take him up to Main
11 Street, and up Main until I had found whether he had re-
12 ceived the \$500 or not, which I didn't know at that time,
13 and if I found he had, I would turn him over to the
14 crossing officer at the corner of Second and Main, and ac-
15 cuse him of taking a bribe. Yes sir.

16 Q And you thought all that at that moment for the pur-
17 pose, as you have indicated by your answer to the District
18 Attorney here, you knew he would not be convicted, he
19 would not suffer, because you expected to accuse him of it
20 pending making up a defense for yourself? A That is the
21 idea.

22 Q Yes. And you thought all of that at that moment?

23 A I was thinking very rapidly at that moment.

24 Q Then you made up your mind immediately upon your be-
25 coming suspicious, in effect, "now, I will take this man
26 over on Main Street, turn him over to the police, and in

1 the meantime he will be under this charge and I will
2 fix up a defense for myself"? You made up your mind
3 that way instantaneously, didn't you?

4 MR FREDERICKS: That is objected to on the ground it is
5 the identical question asked and answered of this witness
6 a moment ago.

7 THE COURT: Objection overruled.

8 A Yes sir.

9 Q By Mr Appel: Yes sir. Now, you say you didn't know
10 that White had given him the money? A No sir, I did not.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

8p

1 Q Did you testify on your direct examination and on your
2 cross-examination by Mr. Rogers that you intended to turn
3 him over to the police because you knew he had received
4 the \$500 Mr. White had told you he had given to him?

5 A No, sir, I did not. I testified Mr. White told me that
6 things were all right but that didn't say he had the
7 \$500. I wanted to know from him.

8 MR. FORD. This matter of turning Mr. Lockwood over has
9 been gone into fully.

10 THE COURT. What is the objection?

11 MR. FORD. I was going to state to the court--

12 THE COURT. Wait until there is a question, let us have
13 an issue.

14 BY MR. APPEL. Q Now, at some period of time you had Mr.
15 Davis and Mr. Gage appearing for you as your attorneys?

16 MR. FORD. We object to that as not recross-examination.

17 THE COURT. Well, strictly it is not, but it is proper
18 to allow it. Objection overruled.

19 BY MR. APPEL. Q Is that right, Mr. Franklin? A I would
20 answer that question by saying on diverse occasions Mr.

21 Gage and Mr. Davis did appear for me.

22 Q Were they your attorneys?)

23 MR. FORD. We object to that as irrelevant and imma-
24 terial and not recross-examination.

25 THE COURT. Objection overruled.

26 A That is a matter of record.)

1 Q I insist upon an answer, your Honor, a man knows who
2 his attorney is.

3 THE COURT. Answer the question, Mr. Franklin.

4 A Yes, sir.

5 Q You and Mr. Davis and Mr. Gage had a conference over at
6 Mr. Gage's office, you have testified to that here, didn't
7 you? A In regard to what?

8 Q You met at Mr. Gage's office, you and Davis and Mr. Gage.
9 MR. FREDERICKS. Now, may it please the court, that is
10 assuming a fact not in evidence. I didn't so understand
11 the witness.

12 MR. FORD. He testified, I believe--

13 MR. FREDERICKS. He testified to a meeting over there in
14 Gage's office with Mr. Davis.

15 MR. FORD. On cross-examination. It is not recross-
16 examination.

17 MR. APPEL. He has testified, your Honor, Mr. Gage was
18 present at the conversation.

19 THE COURT. Have you that testimony?

20 MR. APPEL. Yes, your Honor, I will give it to you. Here
21 is what he said, your Honor. Mr. Ford says the record
22 is not clear, there are two conversations that were in
23 Gage's office and one in another place, but whether the
24 conversation is in Mr. Gage's--I am making the objection,
25 and Mr. Rogers--state the conversation, I am asking him
26 to relate it. That is all there is to the question.

1 MR. FORD. That is all on cross-examination.

2 MR. APPEL. Now, on redirect examination he has mentioned
3 Mr. Gage in reference to having been present at the con-
4 versation over in Mr. Gage's office when Davis was there.

5 MR. FORD. Read the record.

6 MR. FREDERICKS. I do not understand so but if it will
7 save any time we have no objection to his asking whether
8 there was or not.

9 THE COURT. That would be the proper way.

10 MR. APPEL. We are going to ask exactly the way we do.

11 MR. FREDERICKS. We insist upon our objection.

12 MR. ROGERS. Your Honor, a few moments ago he mentioned
13 a conversation in Mr. Gage's office. Now, this is recross,
14 calling his attention to it.

15 MR. FORD. Mr. Rogers will recall when I found Mr. Darrow
16 was not present at that conversation I asked no questions
17 about it.

18 MR. ROGERS. The fact that the conversation was established,
19 we have a right to interrogate as to what was said.

20 MR. FORD. You did interrogate him upon cross-examination.

21 MR. FREDERICKS. I think there is a misunderstanding. As
22 I understand this question it is calling the witness's
23 attention to a fact he is supposed to have said, he had a
24 conversation at which Mr. Gage and Mr. Davis was present
25 The point is, we are making, he has never said he had a
26 conversation at any time in which Mr. Gage was present. Now,

1 that is the issue, I think that is before the court, that
2 is, at least the way I understand it.

3 MR. APPEL. I can easily appreciate it.

4 THE COURT. The shortest way, to save time, is to overrule
5 the objection and let him answer the question.

6 MR. FREDERICKS. We will withdraw the objection and it may
7 be cleared up in that way.

8 MR. APPEL. Here is what he says, at page 1211, by Mr.
9 Ford, this morning: "Q--Now, your next conversation was
10 at the office of Mr. Gage? A--To the best of my recollec-
11 tion--I don't testify on that for sure, but I think it is
12 in the office of Mr. Gage." The previous question was in
13 r eference to Mr. Davis and there following a conversation
14 of Mr. Davis and then a day or two following occurred the
15 conversation at your office between you and Mr. Davis?

16 "A Yes, sir." Then he states what occurred there. Then
17 the next conversation, he says was at the office of Mr.
18 Gage, "To the best of my recollection, I don't testify
19 to that for sure, I think it was in Mr. Gage's office."

20 MR. FREDERICKS. There is no question about that. The
21 only question is Mr. Gage was not present.

22 MR. APPEL. Why do you say that? I have a right to show
23 Mr. Gage was present at every conversation.

24 MR. FREDERICKS. We do not dispute that, but we claim
25 there is nothing in the record that shows Mr. Gage was
26 present, that is all. We do not dispute counsel's right.

1 MR. APPEL. I am leading up to that occasion.

2 THE COURT. Mr. Franklin, have you the question?

3 A No, I have not, your Honor.

4 THE COURT. Read the question. (Question read.)

5 MR. FREDERICKS. That is the question pending, there is
6 no objection, I have withdrawn it.

7 MR. FORD. I would like to renew the objection there on the
8 ground no foundation has been laid as to time and place.
9 Now, we will submit if counsel wants to ask if anybody
10 else was present at that particular conversation which was
11 referred to on cross-examination, all right, let them do so,
12 but we do object to any other conferences being dragged in,
13 except this particular one, otherwise this is going to be
14 cross-examination, recross-examination, redirect examination
15 and rebuttal, and so on that way about 17 different
16 cross-examinations.

17 MR. APPEL. I withdraw that question and put it now--

18 Q You heard me read here, Mr. Franklin, of your saying that
19 you had a conversation with Mr. Davis at your office and
20 then you heard--at your office or at his office? A Which
21 one do you mean, my office or his?

22 Q Either one. A I know, but I want to know which one
23 you mean.

24 Q Well, I will read it to you: "Q--Then a day or two
25 following the conversation at your office between you and
26 Mr. Davis? A--Yes, sir.

1 "Q--In which you discussed some arrangement to plead
 2 guilty and the possibility of your being fined and sent
 3 a year to the penitentiary, just give us the whole of
 4 that conversation?" Then after you have answered at
 5 page 1211, the next question is here: "Q--Now, your next
 6 conversation was at the office of Mr. Gage? A--To the best
 7 of my recollection," you answered, "I don't think that
 8 way for sure, but I think it was in the office of Mr. Gage."
 9 Now, I attract your attention to that conversation at the
 10 office of Mr. Gage, then was the next conversation with Mr.
 11 Davis. Now, bearing that in mind I will ask you what
 12 conversation you had with Mr. Davis there at the office of
 13 Mr. Gage?

14 MR. FREDERICKS. That is objected to upon the ground it is
 15 not recross-examination, not cross-examination on anything
 16 brought out on redirect.

17 THE COURT. Objection overruled.

18 A I don't remember at this time.

19 Q You don't remember at this time, but you had a conver-
 20 sation there with Mr. Davis at the office of Mr. Gage?

21 MR. FORD. We object to that upon the ground that it is not
 22 recross-examination. Now, counsel brought out the fact
 23 that this witness had a conversation with Mr. Davis in Mr.
 24 Gage's office. We did not bring out anything new, any new
 25 subject matter concerning that conversation, and it cer-
 26 tainly cannot be recross at the present time.

1 THE COURT. Objection overruled.

2 MR. FORD. I would like to finish just a moment.

3 THE COURT. I thought you had finished, Mr. Ford.

4 MR. FORD. We simply mentioned the number of visits
5 he had with Mr. Franklin in passing, without going into what
6 occurred there at all, and went on to the next time he had
7 a meeting and at the preliminary examination. Asked abso-
8 lutely no questions except to point out the fact that he
9 had one. Now, certainly that is not recross-examination
10 under any circumstances, and we object to it on that ground
11 and on the further ground it is incompetent, irrelevant and
12 immaterial and no foundation laid for impeachment or
13 otherwise.

14 THE COURT. Objection overruled.

15 MR. Appel. Read the question.

16 (Last question read by the reporter.)

17 A When?

18 Q At the time you testified here this morning on direct
19 examination when you said, "Q--Now, your next conversation
20 was at the office of Mr. Gage? A--To the best of my recol-
21 lection." A I think that is correct.

22 Q Now, you remember you had a conversation there with Mr.
23 Davis? A I think I did. I think I had a conversation
24 with him.

25 Q That is your best recollection now? A There with Mr.
26 Davis at the office of Mr. Gage?

Q Yes. Now, how many days was that before the preli-

1 minary examination? A I don't know .

2 MR. FORD. We object to that upon the ground it has been
3 fully gone into on cross-examination. It is a useless
4 expenditure of time to go over the same matter again on
5 an attempt to make it recross-examination, and on the
6 further ground it is incompetent, irrelevant and immaterial.

7 THE COURT. Objection overruled.

8 A I don,t remember .

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

10
Sm 1 MR APPEL: Well, your preliminary examination on the same
2 case came after that conversation with Mr Davis at Mr Gage's
3 office?

4 MR FORD: We object to that upon the ground no foundation
5 laid; it is not recross-examination; that the matter was
6 gone into fully on cross-examination; it is incompetent,
7 irrelevant and immaterial, and no foundation laid for re-
8 cross-examination at the present time on that subject.

9 THE COURT: Overruled.

10 A I don't remember.

11 MR APPEL: Don't remember? A I think it did.

12 Q Now, didn't you state in that conversation at Gage's
13 office, didn't you tell Mr Gage and Mr Davis the facts in
14 connection with your case to enable them to represent you
15 at the preliminary examination?

16 MR FORD: We object to that upon the ground that it is not
17 recross-examination; that it is incompetent, irrelevant
18 and immaterial; on the further ground that no foundation
19 is laid showing that Mr Gage was there; on the further
20 ground that the matter has been fully asked and answered
21 on cross-examination.

22 THE COURT: Objection overruled.

23 MR FORD: I would like to ask the Court to indicate to us
24 so that I will govern my objections on it, what recross-
25 examination -- if recross-examination is not confined to
26 the examination concerning those matters that were brought

1 out newly on redirect examination. If I am mistaken I want
2 to change my objection.

3 THE COURT: I think you are entirely correct. I think this
4 matter was brought out by conversations referred to on re-
5 direct examination, very slightly, it is true, but
6 referred to.

7 MR FORD: We referred to it, and we have a right to it if
8 it was brought out on cross-examination. If it has been
9 touched on cross-examination we have a right to go into it
10 on redirect, and that ends the matter. This is going to
11 keep on for ever.

12 THE COURT: Overruled.

13 A Read the question.

14 (Last question read by the reporter)

15 A I testified, Mr Appel --

16 MR APPEL: I am asking you, now, whether he did not, your
17 Honor. A And I am going to answer you the best I can.
18 I did not.

19 Q You did not? A No sir.

20 Q Now, you didn't tell them anything about it?

21 A I did not.

22 MR FORD: We object to that upon the ground the question
23 has been asked and answered, not recross-examination;
24 incompetent, irrelevant and immaterial, and no foundation
25 laid for its asking.

26 THE COURT: Objection overruled.

1 MR APPEL: Now when was it this go between, or this person
2 who was going between you and Mr Ford, commenced to act for
3 you or for Mr Ford, or either way?

4 MR FORD: Objected to upon the ground it is not recross-
5 examination; that is is indefinite, too uncertain as to what
6 "go between" -- what is meant by "go between", or who the
7 "go between" is; on the further ground that this matter has
8 been fully gone into on cross-examination, and this is not
9 a matter brought out for the first time on redirect examina-
10 tion.

11 MR APPEL: Here is what he asked him, your Honor: "Q Mr
12 Franklin, you stated on cross-examination this morning that
13 you met Mr Dingle on the 14th day of January, 1912. What
14 day of the week was that? A Sunday. Q And that you
15 saw Ford of the District Attorney^{'s office} that evening in company
16 with Mr Dingle at your home? A Yes sir. Q Did you ever
17 after that time carry on your communications with the
18 District Attorney's office through any intermediary
19 whatever -- I withdraw it -- whenever you had anything to
20 say to the District Attorney, or his assistant Ford, did you
21 do so personally, or did you do it through someone else?
22 A Well, there was one occasion following that somebody went
23 to see -- at least I requested -- no I didn't -- yes I did --
24 I requested that they go to see you." I want to know
25 who that person was.

26 MR FORD: It was mentioned, if the Court please, and if

1 Counsel reads the whole of the record, and we ask he do it;
2 we further submit that is not recross-examination.

3 THE COURT: What page are you reading from?

4 MR FORD: George P Adams -- the question follows right
5 there in the record. We ask it be read.

6 MR APPEL: He says right here, your Honor --

7 THE COURT: What page?

8 MR APPEL: Page 1156.

9 THE COURT: Read the question, Mr Reporter?

10 (Last question read by the reporter)

11 THE COURT: Objection overruled.

12 A Which one of the men that I testified in regard to do
13 you mean; Mr Dingle, or Mr Johnson --

14 MR APPEL: You testified here: "Well, there was one occasion
15 following that that somebody went to see -- at least I re-
16 quested -- no I didn't -- yes I did -- I requested that they
17 go to see you." Now I want to know who is that person
18 that you requested to go to see Mr Ford; that is all.

19 A I testified it was George P Adams, attorney at law.

20 Q George Adams? A Yes sir.

21 Q Now, you had seen Mr Ford with Mr Dingle over at your
22 home? A Yes sir.

23 Q Before you requested George Adams to go and see Mr
24 Ford? A That is entirely correct, yes sir.

25 Q All right. Now, you were not seeing immunity at that
26 time? A I was not.

1 Q Now, what did you send George Adams to Ford for?

2 A To see if he could arrange a meeting where I could tell
3 him the truth in regard to the case.

4 Q

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

1s 1 Q Oh, yes, you saw George Adams after Ford told you
2 over there at your house in a three-quarters of an hour
3 conversation that you should get some other lawyer to
4 advise with you? A Yes, sir. Now, wait now--I have
5 a right to make an explanation.

6 Q Yes.

7 THE COURT. Make your explanation.

8 A But not on account of anything Mr. Ford had suggested
9 to me, if you want to know why I did I will tell you.

10 MR. APPEL. You saw--

11 A I said if you wanted to know why I went to George
12 Adams I will tell you as I did on direct examination.

13 MR. APPEL. Well, you told it already. A I told it
14 on direct examination, yes, sir.

15 Q Now, the name Adams was not mentioned by Ford? A It
16 was not; no, sir.

17 Q No. You knew Mr. Adams had in some measure at some
18 period of time, upon some occasion, helped the district
19 attorney in some matters, didn't you? A I did not.

20 MR. FORD. That is not a fact.

21 MR. APPEL. Now, why raise an issue of that kind. We
22 cannot try that here, your Honor. If we could try it,
23 why, we would try to prove it, but we are not trying
24 that.

25 MR. FREDERICKS. Why, that is--

26 THE COURT. I will hear Mr. Ford.

1 MR. FORD. We object upon the ground it is not recross-
2 examination and I might suggest--

3 THE COURT. That is a very different matter to raise upon
4 your feet and say, "That is not a fact." You have no
5 right to do that.

6 MR. FORD. I was not allowed to finish. It is not any fact
7 that is in evidence at the present time and counsel have
8 just avowed their intention of never trying to prove it,
9 then why ask it? It is incompetent, irrelevant and imma-
10 terial, especially in view of what they said at the
11 present time.

12 THE COURT. Read the question, Mr. Reporter.

13 (Last question read by the reporter.)

14 THE COURT. Objection overruled.

15 MR. APPEL. He has answered, your Honor.

16 THE COURT. And the ruling may go between the question and
17 the answer.

18 MR. APPEL. Now, you had already--then on the night when Mr.
19 Ford spoke to you and when Dingle was in one room and Mr.
20 Ford and you had a conversation lasting about three quarters
21 of an hour in another room, he told you to see another
22 attorney and then you made up your mind that you would
23 tell the truth, did you? A No, sir, I did not.

24 Q Now, did you make up your mind to tell the truth the next
25 day? A I did not.

26 Q How many days after that did you make up your mind to

1 tell the truth?

2 MR. FORD. If the Court please, we object to that as not
3 being recross-examination. I want to call your Honor's
4 attention to this fact, that counsel brought out the ques-
5 tion as to whether or not this defendant was acting
6 under immunity, went into the circumstances as to how he
7 came to testify in this case as a witness; how he came to
8 go to the district attorney; went into that matter on
9 cross-examination. We didn't touch it at all on direct
10 examination, and on redirect examination we went into
11 some of the matters that were brought out by counsel on his
12 cross-examination. Now, he is going over exactly the same
13 ground that he went on cross-examination. A matter that he
14 could have gone into just as fully as he wanted to on
15 cross-examination.

16 THE COURT. Now, let's look at the record. If that is
17 true your objection is well taken.

18 MR. Ford. He is seeking to go into this matter on recross-
19 examination that is shot all through the cross-examination
20 on nearly every other page or two.

21 THE COURT. I agree with you, Mr. Ford. Your statement is
22 correct if the record bears that out.

23 MR. APPEL. Well, anyhow, I will put it in another way, I
24 don't care as to the time. You did, after you saw George
25 Adams, you did make up your mind to tell everything to the
26 district attorney, did you?

1 MR. FORD. We object to that upon the ground it has been
2 fully gone into on cross-examination and, therefore, is
3 not recross examination; incompetent, irrelevant and
4 immaterial.

5 THE COURT. Objection sustained.

6 MR. APPEL. We take an exception. Q What is the date
7 when you saw George Adams?

8 MR. FORD. Objected to upon the ground the question was
9 asked and answered on cross-examination and therefore not
10 recross-examination.

11 THE COURT. Objection sustained.

12 MR. APPEL. Exception. Q About what time was it when you
13 say you requested George Adams to go and see Mr. Ford?

14 MR. FORD. We object upon the ground it has been gone into
15 on cross-examination, therefore not recross-examination.

16 THE COURT. Objection sustained.

17 MR. APPEL. Exception. Q Did George Adams after you sent
18 him over to Ford, as you have stated, did he bring any message
19 back to you?

20 MR. FORD. Objected to as calling for a conclusion of the
21 witness and not being recross-examination.

22 THE COURT. Sustained on the ground it is not recross-
23 examination.

24 MR. APPEL. Exception. Q Did you see Dingle more than once
25 before you saw Mr. Ford?

26 MR. FORD. Objected to upon the ground that it has been

1 fully gone into on cross-examination and therefore not
2 recross-examination.

3 THE COURT. Read that question.

4 (Last question read by the reporter.)

5 THE COURT. Objection overruled.

6 A At what time do you mean?

7 MR. APPEL. At any time before you saw Mr. Ford did you see
8 Dingle more than once? A When I saw Mr. Ford at what
9 date?

10 Q At your house? A You mean the date of which you talked
11 a while ago, at the time he came?

12 Q Yes. A I never discussed--

13 Q I didn't ask you, did you see him that is all I want to
14 ask you.

15

16

17

18

19

20

21

22

23

24

25

26

12

Sm1 A I don't exactly understand that question. I am not
2 going to answer it until I do.

3 MR FORD: If the Court please, I think from what we all
4 know that this witness has testified on the stand he has
5 known this man for a good many years, and he testified to
6 the number of times he saw him in reference to this case.

7 THE COURT: The witness says he doesn't understand the
8 question; therefore, I agree with counsel --

9 A I think I understand the question now.

10 MR APPEL: I am trying to get at the times, your Honor.
11 You say that on a certain time somewhere on the street you
12 met Mr Dingle? A Yes sir, on Sunday, January 14th.

13 Q You had left the office of Mr Davis and walked down
14 the street when you met Mr Dingle and went over to the
15 Saddlerock to have dinner? A Yes.

16 Q There you had some conversation with him? A Yes sir.

17 Q Which you have stated here? A Yes sir.

18 Q And then that night, if I am correct, you and Dingle
19 went over to Ford? A No sir.

20 Q To Ford's home? A No sir.

21 Q Didn't you? A No sir.

22 Q Now, let me see -- A Nothing of that kind.

23 Q When was it that -- you saw Mr Dingle on the 14th day
24 of January; isn't that right? A That is correct, 1912.

25 Q When was it you went over to Mr Ford's with Dingle?

26 A We didn't go to Mr Ford's at all.

1 Q Didn't you go to Mr Ford's? A I didn't even know
2 where he lived.

3 Q Didn't Mr Ford go over to your home? A He did.

4 Q Well now, when was it that Mr Ford and Mr Dingle came
5 to your home? A January 14th, at about 8 o'clock.

6 Q What time was it that you met Mr Dingle the first time
7 on that day? A On the afternoon at about 4 or 5, somewhere
8 around there.

9 Q Did you expect Mr Dingle and Mr Ford at your home?

10 A I did not. I was much surprised.

11 Q And you were exceedingly surprised to see Dingle and
12 Ford over there to your house? A Very much so. I thought
13 Mr Dingle was butting into something that not any of his
14 business.

15 MR FORD: Just a moment. I would like --

16 THE COURT: Strike out the answer for the purpose of the
17 objection.

18 MR FORD: Object to that question, and all further examina-
19 tion along that line, on the ground that counsel went into
20 it fully on cross-examination, and therefore is not recross.

21 THE COURT: The objection is overruled and the answer is
22 restored in the record.

23 MR APPEL: He has answered, your Honor.

24 THE COURT: Yes, he has answered, and the answer is restored.

25 MR APPEL: Now you testified to a conversation^{on}/redirect, you
26 have testified to a conversation you had with Dingle on the

1 street and over at the restaurant. Now, what length of
2 time do you think you were with him from the time you met
3 him on the street to the time that you parted at the res-
4 taurant, or at any other place, upon the afternoon of the
5 14th day of January, more or less? A Oh, I should say
6 three-quarters of an hour, perhaps; maybe a little longer,
7 or a little less.

8 Q You had dinner together, or lunch? A We had dinner
9 together.

10 Q Over at the Saddlerock? A At the Saddlerock, yes
11 sir.

12 Q And did you part there at the Saddlerock, or go with
13 him anywhere? A No, we parted at the corner of Third
14 Street.

15 Q And he made not known to you that he was going to take
16 Ford over to your home that night? A He did not; if he
17 had I would have stopped him.

18 Q Yes, you would have told him not to do it? A Indeed I
19 would.

20 Q Then you have stated all the conversation you had with
21 Mr Dingle during this three-quarters of an hour, or so?

22 A All that relates to this --

23 MR FREDERICKS: Object to that upon the ground it is not
24 recross-examination.

25 THE COURT: Overruled.

26 A All that relates to this case that I remember; I stated

1 the substance of the conversation.

2 MR APPEL: Yes sir. Now, in that conversation, you told Mr
3 Dingle, as I understand, substantially, that you could clear
4 the matter if you could find the man that had given you the
5 money in question, if you had the assistance of the District
6 Attorney, or police, or some other assistance; is that right?

7 MR FORD: We object to that upon the ground it is not recross-
8 examination. Your Honor will remember that one of the first
9 questions asked this witness on cross-examination was con-
10 cerning a statement alleged to have been made to Mr Dingle.
11 They went into it fully on cross-examination, almost at the
12 beginning of the cross-examination. I think the beginning
13 of the second day of the cross-examination; they examined him
14 for about an hour the first day, and the morning of the second
15 day they began on that subject, and went into it quite fully
16 and asked him if he didn't tell Mr Dingle if there was an-
17 other man, etc.

18 MR APPEL: Well, it is admitted. --

19 MR ROGERS: ^{did the} I/cross-examining and I can say counsel is mis-
20 taken. I meant -- the only examination about Erwin Dingle
21 until yesterday was to ask him if he knew him. The only
22 question that I asked about Erwin Dingle until yesterday,
23 then when I brought Erwin Dingle in, it was on yesterday,
24 it was in reference to who acted as intermediary; that is
25 the way our record stands. Counsel will be unable to find
26 I interrogated him concerning any conversation between him-

1 self and Dingle until I asked him if he had ever had an
2 intermediary, or go between. Your Honor sustained the
3 objection upon the ground that it called for a conclusion
4 and opinion, and I thereupon put it without calling for his
5 conclusion and reached the fact that he had met Dingle.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

13p 1 MR. APPEL. On cross-examination, if you will permit me,
2 I understand I have a right to ask him on anything else he
3 has testified to on redirect strictly to the subject. On
4 page 1161 of his redirect examination this witness's state-
5 ment is: "Well, I cannot state only the substance". "Just
6 state what was said between you two? A--Well, I can state
7 only the substance of the conversation that was, he was
8 sorry I was in this trouble and he says, 'for God's
9 sake, get busy' and get myself out of it the best I could,
10 and I told him there was a certain man I wanted to find and
11 if I could find him I could probably clear the matter up,
12 or words to that effect. Q--BY MR. FORD. Any other con-
13 versation that was had at that time? A--I think I told
14 him if I had the police department or the sheriff's office
15 or the district attorney's office behind me I could possibly
16 find the man." Now, I am simply repeating the substance
17 of that conversation to lead onto something else.

18 MR. FORD. If the Court please, it makes no difference to us
19 if it was at the beginning of the cross-examination or
20 yesterday, and I distinctly remember Mr. Rogers examining
21 on that subject. That would be the only ground on which I
22 would be permitted to go into it on redirect.

23 THE COURT. Well, my recollection is that the redirect opened
24 up some new matters that had ^{not} been gone into either on direct
25 or cross-examination.

26 MR. FORD. If your Honor please, if the prosecution should

1 ask a question on direct examination and then the witness
2 on cross-examination gets in the whole of that conversa-
3 tion, it would still be the same conversation. It might be
4 a little more full, but it would not be new matter, it is
5 not a question of new matter, but fuller testimony upon the
6 same point. This is a question of no new matter and counsel
7 cannot open up a matter simply by failure to go into it fully
8 claiming it is new matter. I will state the importance
9 of this--

10 THE COURT' I think I quite see the importance of it.

11 MR. FORD. Your Honor knows, and every attorney knows a
12 person in repeating a story over and over again about trans-
13 actions will probably put it in different language than what
14 it was on different occasions, and the difference is perhaps
15 only simply a difference of expression at one time and
16 another expression at another time, and your Honor knows
17 how counsel would dwell on those things time after time,
18 making recross-examination an excuse for going into the
19 same matters that could have been gone into fully on cross-
20 examination, that could have been gone into fully.

21 THE COURT. The court will prevent that so far as possible.

22 MR. Ford. Now, they had the subject matter of his having
23 talked with Dingle about this matter before them on cross-
24 examination and went into it as fully as they desired. Now,
25 that they desire to go into it a second time and the mere
26 fact I may have asked him questions, asked for the whole of

1 of what occurred on any particular occasion, simply brought
2 out the whole of the subject matter, it was not new subject
3 matter; it might have been new testimony but not new
4 subject matter, and consequently they cannot, unless there
5 is some new subject matter injected into it, go into it on
6 the theory of recross-examination, otherwise, we will keep
7 on here day after day and forever and ever trying to get
8 the witness to say one thing as many ways as possible
9 merely so that they may argue some simple incidental varia-
10 tions on the question of fact.

11 THE COURT. I think your redirect brought out some new line.

12 MR. FORD. In the conversation with Mr. Dingle?

13 THE COURT. yes, sir.

14 MR. FREDERICKS. My notes show it was gone into on cross-
15 examination immediately following the taking up of the
16 cross-examination after Mr. Flather had testified, that Mr.
17 Rogers took it up after an adjournment of a day or two, and
18 the last.

19
20
21
22
23
24
25
26

14
P 1 THE COURT: Well, I have a pretty clear recollection of the
2 testimony, gentlemen, and I must be governed by the best
3 recollection I can bring forward. Objection overruled.

4 A Read the question, please.

5 THE COURT: Gentlemen of the jury, bear in mind the admoni-
6 tion heretofore given you. We will take a recess for ten
7 minutes.

8 (Here a recess was taken. After recess jury returned in
9 the court-room.)

10

11 B E R T H. F R A N K L I N on the stand,

12 Recross-Examination resumed:

13 MR FORD: I don't remember, if the Court please, whether
14 there is now a question before the Court.

15 THE COURT: There is.

16 MR FORD: And in order to show that I was right when I
17 made my objections that these matters had been gone into
18 on cross-examination, I want to direct your Honor's attention-

19 THE COURT: Let us have the question read.

20 (Last question read.)

21 MR FORD: I want to call your Honor's attention to the fact
22 that we have put in our objection, if not, I will do it now;
23 that it is not recross-examination. I want to call your
24 Honor's attention to page 1110 of the transcript, in which
25 matters concerning these conversations with Mr Adams and
26 Mr Dingle were gone into.

ete

3-1/21 on cross-examination; "Q By Mr Rogers: Did anyone carry
2 messages between you and Ford preliminarily to your statement
3 to the 25th of January? A Before the 25th day of January?
4 Q Precisely. A Well, it is difficult for me to answer
5 that question. I will answer it, though, by saying yes.
6 Q Who was it? A George P Adams. Q Anyone else? A No
7 sir. Q How about Erwin Dingle? A I testified that Erwin
8 Dingle came to me and represented himself from the district
9 attorney's office. I don't know whether he was or not. I
10 don't know anything about it. Q Don't know anything about
11 it? A No sir; I didn't send him. Q He came to you and
12 represented he was from the district attorney's office?
13 A Yes sir. Q And asked you to see Mr Ford, did he?
14 A No sir. Q Asked you to go to Mr Ford? A He did not.
15 Q Asked you to send a message to Mr Ford through him?
16 A He did not. Q What did Erwin Dingle tell you? Q At the
17 time he represented himself as coming from the district
18 attorney's office? A After the 25th of January? Q Before.
19 A I know the date which he came. I have no objection to
20 giving it. Q Go ahead and tell us. A the 14th day of
21 January. Q The 14th day of January, the day you commenced
22 keeping your diary? A Yes sir. Q Where did he see you? A
23 He saw me after I left the office of Mr Davis, in which I met
24 Mr Davis and Mr Darrow. Q Where did he see you? A Corner
25 of Third and Spring streets XQ Third and Spring? A Third
26 and Spring, the northwest corner. Q Did he stay with you any

1 length of time? A About an hour, hour and a half. Q Where
2 did you go? A Saddle Rock Care and had dinner. Q Did he
3 say anything to you about seeing the district attorney or
4 Mr Ford? A He did not. Q Did you say anything to him
5 about it? A I did not. Q He said to you that he came from
6 the district attorney? A Yes sir. Q What else did he say
7 to you? A He said he thought it was my duty and a duty that
8 I owed to the public and a duty that I owed to myself and fam-
9 ily to tell the truth. Q You knew, didn't you, that he was
10 from Oscar Lawler, and that he is a deputy United States
11 Marshall? A I did 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 occasions,
14 if you separate your questions I can answer them intelligently.
15 Q You knew, then, he was a deputy United States Marshall?
16 A Yes sir. Q Did he indicate to you where he had seen Mr
17 Ford or Mr Fredericks, when he said he came from the district
18 attorney's office? A I think he did, yes sir. Q Where?
19 A In the office of the United States Attorney in the Federal
20 Building in this city. Q That is where he had seen Mr
21 Fredericks and Mr Ford, was it? A I don't know; that is
22 what he said. Q That is what he said? A Yes sir.
23 Q Well, the officers of the United States District A_ttorney,
24 did he say that he had seen Mr Lawler there, the prosecutor in
25 the general dynamiting cases? A He did not. Q Did you ask
26 him? A I did not. Q Was that before or after you saw Davis

1 and Darrow? A That I had the conversation with Mr Dingle?
2 Q Yes. A After. Q By appointment? A No sir, by acci-
3 dent. Q You mean accident on your part, don't you? A Yes
4 sir. Q You don't know whether it was accident on his part?
5 A I do not, no sir. Q You don't know whether he had been
6 waiting down in front to see you as you came down? A I do
7 not. Q Did you meet him or did he catch up with you or how
8 did your meeting occur? A He was coming south and I was
9 going north on the west side of Spring street and I met
10 him right at the corner of Third and Spring street, the
11 northwest corner, as I was to take my car to go home.
12 Q And he told you he thought it was your duty to tell what
13 you say the truth is? A And what the truth is, Mr Rogers.
14 Q And about the matter, and that he came from the district
15 attorney, whom he had seen at the office of the United States
16 District Attorney so? A That is in effect, yes sir; you
17 have it about right. Q Well, you told him you would see
18 the United States District Attorney or Mr Ford, did you?
19 A I didn't say anything about the United States District
20 Attorney, and I told him I would not see Mr Ford, if Mr Ford
21 wanted to see me, the proper way for him to do was to come
22 and see me in person and not send anybody. Q Did Mr Ford
23 do that? A He did. Q Where? A He came to my house the
24 same night. Q The same night, after you had seen Mr Dingle,
25 who said he came from the office of the United States District
26 Attorney? A He didn't say that. Q Well, he said he came

1 from there where he had seen Mr Ford? A Mr Ford, yes sir.

2 Q Did he tell you how Ford and the United States District

3 A^torney happened to be in consultation there? A He didn't

4 say they were in consultation, and never mentioned the United

5 States Attorney to me at that time or any other time. Q Did

6 he just mention his office? A He just mentioned the fact he

7 had met Mr Ford at the office of the United States Attorney

8 and Mr Ford and had requested him to see me. He didn't say

9 he had met him that day there. Q Was that after or before

10 you saw Col. Tom Johnson? A Before, I think. Q You met

11 Davis and Darrow on the 14th? A Yes sir. Q And you saw

12 Dingle directly after you left the office on the 14th?

13 A Within five minutes after, yes sir. Q Didn't you tell

14 Davis and Darrow about meeting Col. Tom Johnson on the 14th?

15 A No sir, I do not think I did. Q Are you sure of that?

16 A I am quite sure of it, yes sir. Q You mean to say in

17 your conversation with Davis and Darrow on the 14th you

18 didn't tell them about what Col Tom Johnson had said? A I

19 don't think so. I couldn't possibly have done it. Q Couldn't

20 possibly have done it. So you are absolutely sure that that

21 conversation with Dingle, who told you he had come from the

22 District Attorney, whom he had met in the United States

23 District Attorney's office occurred after you had been at

24 Darrow's office and you know you saw Col Tom Johnson after

25 you had left Darrow's office -- or Davis' office -- pardon

26 me -- on January 14th? A It must have been that way, be-

1 cause I never told any such story as I told to Dingle and
2 Johnson until after that conversation on the 14th. Q Did you
3 see Dingle again? A That night; yes sir. Q At what time
4 that night? A At about 8 o'clock. Q Where? A At my
5 residence. Q By appointment? A No sir. Q Was anybody
6 with Dingle? A Joseph Ford, Deputy Disgrict Attorney.
7 Q So, after Dingle had seen you, talked with you in the
8 afternoon, the next time you saw him was in company with Ford
9 out at your house? A The same night, yes sir. Q Did you
10 tell Dingle to bring Ford out there? A I did not. Q Did
11 Dingle remain during your talk with Ford? A Not in the
12 room where we were talking, no sir. Q He remained in the
13 residence? A He did; yes sir. Q And left with Ford?
14 A He did. Q You had known for a long time, hadn't you, that
15 Erwin Dingle was Deputy United States Marshall? A I knew he
16 took my place when I resigned, yes sir. "

17 And then again at page 1119, or at the bottom of 1118,
18 the last line: "Q You didn't know what Mr Lawler, so far
19 as this matter was concerned, was making his office in the
20 same office that Mr Dingle came from? A No, Ho, I did not.
21 I had no way of knowing it. I have not been in the Federal
22 Building three times since I left there that I remember of.
23 Q On the 14th day that you say Dingle and you saw Ford was
24 the day you commenced keeping the socalled diary? A Yes
25 sir." And then a conversation with Darrow and Davis again.

26

1 That is all, I think, to that point at any rate, and on that
2 subject. It shows that Mr Rogers, yesterday, examined, but
3 it would not make any difference whether it was yesterday --
4 it was on June 6th -- or whether it was the beginning it was
5 on cross-examination, that is the point. Counsel is correct
6 in saying he did not examine him until yesterday. On yes-
7 terday he did examine him on cross-examination, therefore,
8 it cannot be recross-examination.

9 MR APPEL: Yes, your Honor; but your Honor will see, your
10 Honor has read, I suppose, what Mr Franklin testified on
11 cross-examination as to conversations between him and
12 Dingle. Now, they brought out something different than
13 what we testified at that time, and I have a right to
14 cross-examine him on the new matter he testifies to.

15 MR FORD: Just indicate the difference.

16 MR APPEL: Well now, --

17 MR FORD: We deny it --

18 MR APPEL: He says in substance, the jury and everybody
19 heard it, and you just read it, he said in substance Mr
20 Dingle said it was his duty he owed himself and the public
21 to come out and tell the truth, or words to that effect.
22 And that is yesterday morning or yesterday afternoon,
23 I don't know, he stated this --

24 MR FORD: On redirect?

25 MR APPEL: Yes, on redirect, which is something different.

26 MR FORD: What page, please?

1 MR APPEL: 1161, that is the reason I marked here, because
2 I saw the difference: "Well, I cannot state only the
3 substance of the conversation, and that was that he was
4 sorry that I was in this trouble, and said 'For God sake
5 get busy' and get myself out the best I could."

6 MR FORD: I do not see that that is any change.

7 MR APPEL: I know, but I have a right to ask him, your
8 Honor.

9 THE COURT: All right. Objection overruled.

10 (Last question read)

11 MR FORD: If you will bear with me just a moment, counsel
12 didn't read the whole of page 1161, and your Honor has been
13 deceived.

14 MR APPEL: I have heard it several times; that is not true,
15 your Honor -- I didn't mean any disrespect to counsel; I
16 read it all.

17 MR FORD: I am making the objection, now.

18 MR APPEL: I know, but I will see --

19 MR FORD: I propose to read it to the Court.

20 MR APPEL: I propose to read it all.

21 MR FORD: I asked for the privilege of stating my objection
22 to the Court.

23 THE COURT: Yes, I think Mr Ford has the right.

24 MR FORD: I wish to state that I didn't mean to insinuate
25 that counsel deliberately deceived the Court, but he didn't
26 see the whole of it.

1 THE COURT: I was about to say that counsel should be more
2 careful in the language they use in charging each other --

Sm 3 MR. APPEL: I don't ask your Honor to take me to task; I am
4 not trying to get him fined or get him admonished.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

15s 1 MR. FORD. He answered, "Well, I can't state only the sub-
2 stance of the conversation." That was that he was sorry
3 he was in this trouble and he said, "For God's sake to
4 get busy and get myself out of it the best I could, and I
5 told him there was a certain man I wanted to find and if I
6 could find him I could probably clear the matter up, words
7 to that effect. Q--Any other conversation at that time?
8 A--I think I told him that if I had the police department
9 or the sheriff's office or the district attorney's office
10 behind me I could possibly find the man." Now, if your
11 Honor will read that question you will see it is almost
12 identical with the last answer given by the witness and
13 there is no conflict and certainly if there was a conflict
14 it would be to the advantage of the defendant, it would not
15 be new matter brought out on redirect but a different state-
16 ment of the same matter, consequently it would be matter--
17 subject of recross-examination.

18 MR. APPEL I withdraw the question, your Honor, and I will
19 ask him another one with your Honor's permission.

20 THE COURT. All right, question withdrawn.

21 MR. Appel. Q Now, you testified here when questioned by the
22 district attorney that Mr. Dingle said to you, "I am sorry
23 you are in trouble," and that he further said, "For God's
24 sake get busy and get yourself out of it the best you can,"
25 did you not?

26 MR. FORD. We object upon the ground it is not recross-

1 examination. The record is the best evidence of what he
2 said. It isn't new subject matter brought out on redirect
3 examination, but merely an examination on the part of the
4 prosecution on redirect examination of some matters that
5 were brought out on cross-examination by the defendant's
6 counsel.

7 THE COURT. It is preliminary, I take it. Objection over-
8 ruled.

9 A The question whether I so testified or whether that is
10 a fact or not.

11 MR. APPEL. Q Whether you so testified here when examined.

12 A If it is in the record I so testified.

13 Q Well, why didn't you say that when you were examined by
14 Mr. Rogers?

15 MR. FORD. We object to that question as not being a pro-
16 per question under any circumstances whatever; incompetent
17 irrelevant and immaterial, and calling for a conclusion of
18 the witness. The witness is answering the questions when-
19 ever-- he is answer/^{ing} whenever the questions are propounded
20 to him and the reason why he did or/^{did} not do a certain/^{thing} is
21 irrelevant and immaterial, certainly not subject of recross-
22 examination.

23 THE COURT. Objection overruled.

24 A Impossible for me to tell you why I didn't. If I didn't
25 I didn't.

26 Q Now, you told him that there was a certain man that

1 you wanted to find and if you could find him that you
2 could probably clear the matter up, or words to that
3 effect, is that right?

4 MR. FORD. Object to that upon the ground the matter has
5 been fully gone into on cross-examination by counsel
6 beginning at page 1110 and continuing through to 1117 of the
7 transcript, and I will read it to the court again if you
8 desire me to.

9 THE COURT. It is not necessary.

10 MR. APPEL. It is preliminary.

11 THE COURT. Objection overruled.

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

13 A Words to that effect, perhaps, yes, sir.

14 Q Perhaps? Have you any doubt about it? A No doubt in
15 my mind about it, Mr. Appel.

16 Q It isn't perhaps. Now, you say that was not true. A The
17 I stated was not true, what I stated to him.

18 Q What you told him? A No, it was not.

19 Q You were willing to lie to him? A I lied to him, yes,
20 sir.

21 Q You were willing to do it? A yes, sir, at the sugges-
22 tion of Mr. Darrow.

23 Q Sp Mr. Darrow told you to tell Dingle that ? A No, he
24 did not.

25 Q Now, then, that night you met Mr. Ford and Mr. Dingle again
26 and you told Ford the same thing? A Yes, sir, I told him

1 something along the same line.

2 Q Well, did you tell him the same thing or not? A I don't
3 know, in substance.

4 Q Now, you stated that you spoke to Ford and you gave a
5 part of the conversation, didn't you, in your redirect
6 examination? A Read the record and You will know whether
7 I did or not.

8 Q Did you give all of the conversation that you had with
9 Mr. Ford here when you were examined by Mr. Ford?

10 MR. FORD. If the court please, I don't think that is a
11 fair question to put to the witness. We, ourselves don't
12 know and the court don't know, and if counsel will look at
13 the record and call the attention of the witness to the
14 record and then ask him if that was all that occurred on
15 that occasion, that would be the proper way, but to ask the
16 witness if he has told all concerning any particular matter
17 on direct examination or redirect examination, is asking
18 for something that even we, who are studying the record,
19 cannot be sure about, and frequently quarrel here and find
20 we are mistaken, one side or the other. Certainly not a
21 fair question to put to the witness and we object to it
22 upon the ground that it is incompetent, irrelevant and imma-
23 terial.

24 MR. ROGERS. May I inquire, if your Honor please, what we
25 would do in the old days when we didn't have a record, and
26 we had to ask just such questions as that. Been asked a

1 thousand times in courts where we had no record. Not con-
2 fined to the record. You can ask a man if he attempted
3 to tell or intended to say--

4 MR. FORD. I think the witness has answered all questions
5 put to him under the direction of the court.

6 THE COURT. Can you answer the question, Mr. Franklin?

7 Q What is the question, please?

8 THE COURT. Answer my question first, whether or not you
9 can answer it.

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

11 A Now, what is your Honor's question?

12 THE COURT. Can you answer that question? A Most certainly.

13 THE COURT. All right. Objection overruled.

14 A I don't think I did.

15 MR. APPEL. Q Did you--when Mr. Ford asked you concerning the
16 conversation that you and he had in your home outside of the
17 presence of Mr. Dingle, did you keep ~~it~~ back in answering
18 that question anything that you knew was a part of that con-
19 versation from the jury?

20 MR. Ford. Now, we object to that as not being a proper ques-
21 tion. Did you keep it from the jury. The witness has an-
22 swered that he don't think he gave all of it, and the
23 question has been answered in the proper form already and he
24 is putting the same question in an improper form and the
25 witness has answered he didn't give it all. Now, let him
26 answer what he didn't give and let him give it.

1 THE COURT. Objection sustained.

2 MR. APPEL' Exception. Q You talked with him for about
3 three quarters of an hour, Mr. Franklin? A About that time.

4 Q Did you give all the conversation that you had with Mr.
5 Ford during those three-quarters of an hour, what he said to
6 you and what you said to him? A Simply impossible. I can
7 give you the substance was that Mr. Ford- well, I can't give
8 you the conversation. What I was going to say would not be
9 proper. I cannot give you that conversation other than it
10 was along the same lines as indicated in my answer to Mr. Ford
11 on direct examination.

12 Q Well, we want you to state now what was said; what Ford
13 said to you first, now, for instance, and then we will ask
14 you what you said. A Mr. Ford said he came out to talk
15 to me about my case and anything I said to him would be
16 used against me.

17 Q What else did he say? A And I told him that I didn't have
18 anything to say to him about my case.

19 Q Then what did he say to you? A Now, if you want me to
20 give the conversation, let me give it without you asking
21 questions.

22 Q Go ahead. A I told Mr. Ford in substance that if it were
23 possible for me to locate a certain man that had come to my
24 office that I would then be in a position to talk to
25 him but until I did I wouldn't have anything to say to him
26 at all.

1 Q Then what did he say to you then, after that? A He
2 told me not to tell him such fairy tales as that.

3 Q Then what did you say? A I don't remember. I smiled,
4 I think.

5 Q Then what did he say? A I don't remember.

6 Q And that is all the conversation that occurred in three
7 quarters of an hour? A No, sir, I don't remember the rest
8 of it.

9 Q How much-- A Now, wait a moment until I get through.

10 Q All right. A Yes, sir, I will tell you the whole con-
11 versation was a reiteration.

12 Q Yes. A Of Mr. Ford again attempting to get me to state
13 something I would not state.

14 Q I know, but then let me see, it didn't take but about five
15 minutes to state that conversation you have related now,
16 did it? A Just about five minutes.

17 Q Then the same conversation or a reiteration of those
18 same questions afterwards were made six times more, were they?

19 A In the next forty minutes.

20 Q Six times more, about that? A I beg your pardon?

21 MR. Ford. I object to that--

22 A I think about eight times more.

23 MR. APPEL. Q About eight times. He repeated the same
24 question and you made him the same answer? A I couldn't say
25 that, I said in substance.

26 Q In substance? A yes, sir. You can rest assured he

1 didn,t get any statement.

2 Q Now, you say it was three quarters of an hour, wasn't it
3 he talked to you for an hour and a half? A I don't know.

4 Q Didn't you so testify upon your redirect examination?

5 MR. FORD. if the court please, we object upon the ground it
6 is not recross-examination. if the witness answered one
7 thing on cross-examination and gives a different answer
8 as to the same matter on redirect examination, that doesn't
9 make it matter for recross-examination, but is an inconsis-
10 tency of which the defendant has a perfect right to avail
11 himself upon argument to the jury.

12 MR. APPEL. Q Didn't you testify as follows on your redirect
13 examination--

14 THE COURT. The question has been withdrawn and counsel has
15 substituted another one.

16

17

18

19

20

21

22

23

24

25

26

17

S 1 MR APPEL: Yes sir. Commencing with line 10 at page 1167:

2 "A Mr Ford told me that he wished to speak to me in regard
3 to my case. He told me that anything that I said would be
4 used against me, and upon that statement I told him that I
5 had nothing to say, only that there was a certain man that
6 if I were able to locate him that I perhaps would be in a
7 position to talk, and if I had authority behind me that
8 were necessary that it might be possible that in time I
9 would locate the man, and Mr Ford asked me in substance,
10 at least, if I expected him to believe a story of that
11 kind, and I think I told him I was not telling it to him
12 with the expectation of being believed or disbelieved. I
13 was telling him something that was a fact. That was the
14 substance of the conversation. He was there about an hour
15 and a half, then I don't remember what was said, but that
16 was the substance." Didn't you so testify?

17 A I think I did, and Mr Ford was at my house longer that
18 time. The conversation we had was about three-quarters of
19 an hour, but when he first came in he talked with my wife
20 and the family, and after he got through talking privately
21 in the room he stayed there a short time. My answers are
22 both correct as near as I recollect.

23 Q That is the first time you said anything in all this
24 examination that Mr Ford talked to the wife and family.

25 MR FORD: We object to that as incompetent, irrelevant and
26 immaterial, and absolutely no bearing on the case; certainly

1 not recross examination.

2 MR APPEL: Where were you when he was talking to the wife
3 and family?

4 MR FREDERICKS: We object to it further, it is immaterial
5 and trivial. Now, ^{it} is a difference between three-quarters
6 of an hour and an hour and a half, all ~~the~~ ^{of a} conversation
7 that occurred months ago, and we object to it upon the ground
8 that the difference is trivial.

9 MR FORD: There is no inconsistency in any place. He said
10 I was there three-quarters of an hour talking privately,
11 and that I was there an hour and a half altogether. Purely
12 no inconsistency whatever; it is a matter that counsel
13 could have gone into fully on cross-examination to find out.
14 if I talked with somebody else there on that occasion, as
15 long as it was not matters connected with this case, I don't
16 see it has any bearing on the case. We are certainly
17 trying to confine our questions to things we consider mater-
18 ial, and if there is anything else counsel wanted to go into
19 they could have gone into it when they had opportunity on
20 cross-examination. I don't believe they have a right and
21 this is the first time I've ever seen counsel go into
22 matters that were thoroughly examined on cross-examination
23 and try to do the same thing on recross-examination. I
24 object to it as not recross-examination.

25 THE COURT: I don't understand counsel is doing that; if
26 he were it would not be permitted.

1 MR APPEL: The defendant here excepts to the argument of
2 counsel, the both of them, in telling the jury here and
3 arguing the evidence, that a matter is true. I have asked
4 a question and I insist upon it.

5 THE COURT: Read the question.

6 (Last question read by the reporter)

7 THE COURT: Objection overruled. Answer the question.

8 A The record will show just what I testified to at that
9 time.

10 MR APPEL: I insist upon an answer. It is very simply,
11 your Honor, we can get along very quickly, he can --

12 A I don't remember whether I testified to it or not.
13 I don't think that I did.

14 Q Now, in the conversation that Mr Ford had with you, did
15 he say to you to see some other attorney than Mr Davis?

16 A To which conversation do you allude?

17 Q Either at your home or the first thing you saw Mr Ford --
18 let me finish my question.

19 A Oh, I thought you had finished.

20 Q Did he say to you that to see some other attorney other
21 than Mr Davis, that it would probably be an advantage for you
22 to follow the advise of some other friend?

23 MR FORD: Objected to upon the ground it is not recross-
24 examination.

25 THE COURT: Objection overruled.

26 A He said something to that effect.

1 MR APPEL: Did he say that very thing? A I don't know.

2 Q Didn't you so testify on your direct examination?

3 A If I did I said so in substance.

4 Q I will read it, page 1169, commencing with line 26,
5 at page 1168: "Mr Ford: What was said on that subject?

6 A Mr Ford advised^{me}/to see some attorney other than Mr Davis.
7 I don't think Mr Darrow's name was mentioned, not to my rec-
8 ollection at this time, and it would probably be an advantage
9 for me to follow the advice of some attorney friend." Just
10 now didn't you make that answer on your redirect examination
11 in answer to the question I have read to you, propounded to
12 you by Mr Ford?

18
Sm

13 MR FREDERICKS: We object upon the ground that it doesn't
14 serve to impeach any answer that the witness makes now. He
15 said that he said that in substance now.

16 THE COURT: Objection sustained.

17 MR APPEL: Exception. Now, following this conversation
18 with Mr Ford, you saw Mr Adams, as I understood?

19 MR FORD: Objected to upon the ground that it was gone into
20 on cross-examination on page 1110 of the transcript.

21 MR APPEL: It is preliminary.

22 THE COURT: The statement of counsel that it is preliminary,
23 the objection will be overruled.

24 A State the date of the conversation you allude to?

25 MR APPEL: The conversation with Mr Ford was January 14th,
26 in the evening. A That was the conversation you are now

1 talking about?

2 Q With Mr Ford. Following that, you saw Mr Adams?

3 A Yes sir, after that time.

4 Q You engaged him as your attorney? A I did not.

5 Q But he acted simply as your friend? A Yes sir.

6 Q Now then, Mr Adams -- did you ever engage him as your
7 attorney? A I did.

8 Q When did you engage him as your attorney? A Later.

9 Q What time was that? A I don't remember,

10 Q Before or after you plead guilty? A Before I plead
11 guilty.

12 Q Now, whatever negotiations were carried between you
13 and Mr Ford were attended to by Mr Adams as your attorney
14 and part of the time as your friend? A Never was any
15 negotiations that I know of carried on with my consent
16 between Mr Ford and Mr Adams.

17 Q Not with your consent? A No, I don't think it was
18 ever carried on.

19 Q Didn't you testify here awhile ago that the person who
20 was intermediary between you and Mr Ford was Mr Adams?

21 A I did, yes sir; that is not "negotiations".

22 Q Then it was simply going to look at Mr Ford and then
23 come back and look at you, there was no negotiations between
24 you and Mr Ford and Mr Adams, was there?

25 MR FORD: We object to the question upon the ground it is
26 trivial and immaterial.

1 THE COURT: Objection sustained.

2 MR APPEL: Exception. Well, in what respect did he act
3 as intermediary between you and Mr Ford? A I requested
4 him to go and see Mr Ford and make arrangements for a meeting
5 between us.

6 Q And you had -- And he did make arrangements?

7 A I met Mr Ford.

8 Q Did he make arrangements? A He is the best witness
9 as to that. I didn't hear what he said to him.

10 Q Did he report to you what Mr Ford said? A Yes sir.

11 Q Then following that report you met Mr Ford again on
12 Wednesday night after your first meeting with Mr Ford?

13 A I think you are correct. No, I didn't meet Mr Adams
14 on Wednesday; he was not at home.

15 Q I said Mr Ford. A I met Mr Ford on Wednesday night,
16 yes sir.

17 Q That is the Wednesday following the 14th day of January,
18 wasn't it? A Yes sir.

19 Q Now, what did Mr Ford say to you when he came to your
20 house on Wednesday night?

21 MR FORD: Objected to as having been gone into fully on
22 cross-examination, at least the subject matter was opened
23 by counsel on cross-examination, and they went into it to
24 a limited extent. Now, if they had opportunity then to
25 go into it fully, it is not new subject matter at this time,
26 and is therefore not recross-examination.

1 THE COURT: Overruled.

2 A Read the question.

3 (Last question read by the reporter)

4 A He didn't come to my house.

5 MR APPEL: He didn't come to your house? A About two
6 blocks west of there.

7 Q Well, he saw you anyhow? A That night, Wednesday
8 night, yes sir.

9 Q He didn't come to your house at all? A Well, he came
10 up there and met me two blocks down west of the house.

11 Q Now, didn't you testify as follows in your redirect
12 examination by Mr Ford: "Q When next did you see Mr Ford
13 in reference to ^{this} ~~the~~ subject, or any other subject?

14 A Wednesday night. Q At what place? A Mr Ford came
15 to my house in a machine and we went from there to the
16 residence of Mr Adams." A That is correct.

17 MR FORD: Objected to upon the ground it is not in any wise
18 impeaching or tending to impeach the witness.

19 A I met him two blocks west.

20 THE COURT: The witness has answered the question.

21 MR FORD: Very well.

22 MR APPEL: I will now as politely and mildly as possible
23 make an exception to the constant argument of the District
24 Attorney of the evidence in this case before the jury, and
25 now very mildly say that in the opinion of the attorneys for
26 the defense, that it is an outrageous conduct and we take an

1 exception to that manner of arguing to the jury the evidence.

2 MR FORD: We mildly express our intention of making object-
3 ion whenever it occurs to us.

4 MR APPEL: When you and Adams and Ford got to Mr Adams'
5 home, did you have any conversation there between Mr Ford
6 and Mr Adams and yourself about the facts in this case?

7 A You have misstated part of my evidence.

8 MR APPEL: Now, your Honor, I certainly object to that.
9 I asked him a question and I ask for an answer.

10 MR FORD: I think the witness is correct in his answer.

11 MR APPEL: I object again to the remarks of counsel. I am
12 trying to keep within bounds and I do not want to say any-
13 thing very hard against counsel, but I would certainly do
14 it, and I do it, if your Honor pleases, because I am driven
15 to it.

16 THE COURT: The question is in regard to the witness at this
17 time.

18 MR FORD: If the Court will pardon me just a moment, I think
19 if counsel will have his question read to him; I think he
20 will see he inadvertently put in something that is not a
21 fact; he asked the witness when Mr Adams and Mr Franklin and
22 Mr Ford --

23 THE COURT: Read the question, that will settle it.
24 (Last question read)

25 MR FORD: I think counsel inadvertently stated that Mr
26 Adams went to his own house.

1 MR APPEL: No, I asked you three were thre, I was very
2 technical about that.

3 THE COURT: Mr Franklin? A Yes, your Honor.

4 THE COURT: The Court realizes this is somewhat trying upon
5 you to be on the stand for the length of time, and makes
6 allowance for that; but you have to be a little patient in
7 matters of this kind. If you do not recollect the evidence
8 in the same way as counsel states it, it is proper for you
9 to say so. A Your Honor, that is what I tried to state.
10 I didn't intend any offense to the counsel or to the Court.

11 THE COURT: Your statement was couched in language that on
12 might take offense at. We must avoid that on all occasions
13 in Court. Now, will you answer the question? A Read the
14 question.

15 (Question read) A I will state Mr Adams and Mr Ford and
16 myself never went to Mr Adams' house. Mr Ford and I went
17 there to Mr Adams' house and while there I had some conver-
18 sation.

19 Q By Mr Appel: You three had a conversation, did you?

20 A Yes sir.

21 Q Mr Ford was present at that conversation? A Yes sir.

22 Q What did Mr Ford say to you? A When, at that con-
23 versation? Q Yes.

24 MR FREDERICKS: ~~Yes~~ That is objected to as not recross-
25 examination.

26 MR APPEL: We never asked him what Ford said on direct exam-

1 ination. Your Honor allowed it in spite of our objection.
2 MR FORD: They had an opportunity, they went into that subject
3 matter and the mere fact they neglected to do it would not be
4 any excuse any more than we could claim on redirect examina-
5 tion we had a right to ask a question merely because we
6 omitted to ask it on direct examination.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



20p 1 Your Honor will recall several questions which I pro-
2 pounded on/^{re}direct examination, objections were sustained
3 by the court merely because we should have done it on direct
4 examination. Counsel opened up the matter on recross-
5 examination and if they didn't go into it as fully as they
6 desired, that is their fault, not the court's. They had
7 an opportunity and that is the time to do it; on recross-
8 examination they are only entitled to go into new matter,
9 not to examine into something that they forgot to go into
10 on cross-examination. It is only new matter brought out on
11 redirect.

12 MR. APPEL. Your Honor, we never asked, if I remember right,
13 about any conversations between the witness and Mr. Ford at
14 any time at Mr. Adams's home. Mr. Ford brought that subject
15 out himself on redirect and we object/^{ed} to it as not being
16 redirect and your Honor overruled our objection and the wit-
17 ness was allowed to get the answer in.

18 THE COURT. I am just reading the record.

19 MR. APPEL. And it being entirely new matter, we have a right
20 to recross-examine.

21 MR. FREDERICKS. We withdraw the objection, if it is going
22 to take a long time to hunt for it, your Honor, it will be
23 shorter.

24 THE COURT. Objection is withdrawn.

25 A Read the question, please. (Question read.)

26 A Mr. Ford, Mr. Adams and myself being present, Mr. Ford--

1 do you want what Mr. Ford said? Mr. Ford said anything I said
2 would be used against me or might be used against me and
3 after carrying on a moment or two conversation Mr. Ford
4 requested I leave the room for a few minutes- I did and
5 stayed away for a considerable time and was then called back
6 in and Mr. Ford asked me if I wished to make a statement.

7 I told him some of the facts in relation to the bribery.

8 Q You had that conversation, did you, that is about the
9 substance of it? A That is about the substance, as I told
10 you before.

11 Q Yes, yes, sir. Mr. Adams was there then, was he, when
12 that occurred? A Yes, sir.

13 Q Now, didn't you testify on your direct examination as
14 follows:--

15 MR. FORD. On direct examination?

16 MR. APPEL. yes, redirect, page 1161: "Q--BY MR. FORD.

17 When next did you see Mr. Ford in reference to this sub-
18 ject or any other subject? A--Wednesday night. Q--At what

19 place? A--Mr. Ford came to my house in a machine and we

20 went from there to the residence of Mr. Adams. Q--Did you
21 meet Mr. Adams that night? A--We did not.

22 Q--Did you have any conversation with Mr. Ford at that
23 time in reference to that subject matter? A--I did not."

24 Q--Did you so testify here on your redirect examination?"

25 MR. FORD. We ask that the witness be permitted to see
26 that, and also the next page.

1 MR. APPEL. Yes.

2 A I understand what follows that, very well.

3 THE COURT. You can have my transcript, if you want it.

4 A I don't need it. My conversation before^{where} I stated I
5 had a conversation with Mr. Adams and Mr. Ford at his house
6 on Wednesday night is a mistake, I didn't see Mr. Adams
7 that night. I saw him the next night. Mr. Adams was not at
8 home and I didn't have any conversation with Mr. Ford on
9 Wednesday night, January 17th in regard to my case, at all.

10 Q Then, as I understand, Mr. Ford just came over to your
11 house, or passed there, as you have indicated, you got into
12 the machine with him and you rode over to Mr. Adams's house,
13 didn't find him there and then he brought you back to
14 your house or somewhere else, I suppose? A Brought me back
15 to a lodge meeting of mine I wished to go, he dropped me off
16 at the corner of Burlington and Washington.

17 Q Where was your home at that time? A 812 West 17th
18 street.

19 Q Where did Mr. Adams live? A A considerable distance
20 out on Pico, I think, between 10th and 11th.

21 Q In going with Mr Ford over to Mr. Adams's place, and in
22 coming from Mr. Adams's place, Mr. Ford never talked to you
23 on the subject of this case? A He did not; no, sir. He
24 knew it wouldn't do him any good.

25 Q Not a word? A He knew it wouldn't do him any good;
26 not a word.

1 Q I say, not a word? A Not a word that I remember of
2 now.

3 Q How did you and Mr. Adams and Mr. Ford meet the following
4 night after Wednesday at Mr. Adams's home, was it by agree-
5 ment? A No, Mr. Adams was not at home.

6 Q No, the Thursday night? A Thursday night I went to
7 Mr. Adams, I think during Thursday and asked him if he would
8 be at home and he informed me yes, he was sorry he couldn't
9 be there the night before but he couldn't get home from
10 San Bernardino.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

21p 1 Q Did you make an appointment then for Thursday night?

2 A With Mr. Adams?

3 Q yes. A I think so.

4 Q Now, when was it you made the appointment? A I think
5 during Thursday.

6 Q During the day, sir? During the day of Thursday?

7 A Yes, I think so.

8 Q For that night? A I think so; yes, sir.

9 Q And you notified Mr. Ford? A I don't remember that.
10 I wouldn't be surprised that I did; I don't remember,
11 though.

12 Q You don't remember that? A No.

13 Q Then you and Ford and Adams were together Thursday
14 night at the home, you have already stated here what happened
15 there, that you withdrew from the room, Mr. Ford and Mr. Adams
16 remained alone and then you were called in and what did Mr.
17 Adams say to you then about your saying anything? A He
18 didn't say anything at all.

19 Q What did Mr. Ford say then? A Mr. Ford asked me at the
20 time if I wished to make any statement and I then related
21 part of the facts, I don't remember just what part I related
22 not very much.

23 Q At first you refused to relate anything? A When do you
24 mean I refused?

25 Q That night, Thursday night? A No, sir, I never refused.

26 Q You never refused. Well, you refused Wednesday night?

1 A I didn't refuse Wednesday night because I was not asked.

2 Q You refused the night of the 14th? A Yes, sir.

3 Q Well, now, what happened between the night^t of the 14th
4 and Thursday night that made you change your mind? A I am
5 glad you asked that question, I have been anxious to answer
6 it.

7 Q Yes A On Sunday Mr. Davis, in the presence of Mr. Darrow,
8 said that he would see or think over what sentence I would
9 get in case I plead guilty on Tuesday, I think the day that--
10 It is the day, at least, when the demurrers were heard in
11 my case in the Superior Court in the next room. I was at the
12 office of Mr. Adams when I was called from my office telling
13 me that Mr. Davis wished to see me at this department of the
14 Superior Court--no, that was during the Connors trial, you
15 were there. I came from Mr. Adams's office to see Mr. Davis.
16 Mr. Davis met me at the door and told me he thought by plead-
17 ing guilty he could get me off for two years and asked me
18 if I would stand for it and I told him that I would, yes, sir.
19 That is absolutely right. I immediately went home and told
20 my wife that the time had now come when it was necessary
21 that I make up my mind exactly what I was going to do and
22 that I thought the proper thing for me to do in all the
23 premises was to bear the burden myself and protect that man
24 sitting aside of you, and that my family would be taken
25 care of. Pardon me, Mr. Darrow, I didn't mean that offensive-
26 ly. Mrs. Franklin then told me that she admired the stand

1 I had taken not wishing to implicate Mr. Darrow and that
2 the children would come out of school, she would take them
3 out and she would work her fingers off taking in washing
4 if necessary, but if I brought one dollar of dishonest
5 money into that house she would leave me in a minute. And
6 I then made up my mind to see Mr. Adams and have him make
7 arrangements to see Mr. Ford and state what I knew and tell
8 the truth. I went and saw Mr. Adams the following day.

9 Q You had seen Mr. Adams on the day that the demurrers
10 came up for hearing before you saw Davis? A I don't
11 remember--I told you afterwards I thought it was the Connors
12 case, and I think so yet.

13 Q Didn't you just state, Mr. Franklin, you were called up
14 from Mr. Adams's office? A Yes, sir, I was at Mr. Adams's
15 office at that time.

16 Q And when you came here Mr. Davis told you something?

17 A Yes, sir, I saw Mr. Adams Monday and Tuesday both.

18 Q And then after Mr. Davis told you what to say you made
19 up your mind to go and see Mr. Adams? A Yes, sir, I went
20 to talk to Mr. Adams as a friend.

21 Q After you saw your wife? A I saw him on Monday and I
22 saw him on Tuesday, Tuesday, yes, after I saw my wife,
23 yes, sir.

24 Q You saw him after you saw your wife? A Mr. Adams?

25 Q Yes, sir. A Yes, sir, I did.

26 Q And before? A yes, sir, and before.

1 Q About this case? A Yes, sir, about my case, not his
2 case.

3 Q And in view of the fact that yourwife didn't like the
4 arrangement that was proposed to you by Mr. Davis and which
5 you communicated to her you went and made up your mind to
6 go and see Mr. Adams? A Mrs. Franklin and I talked it
7 over with the family and agreed that the proper thing to do
8 was to leave the whole question to some man we knew to be an
9 absolutely honest one and our friend, and that is what I did.

10 Q Now, didn't youconsult Mr. Adams before youconsult^{ed}/your
11 wife about what Davis had told you? A I talked to Mr.
12 Adams and Mr. Adams said not a word to me inregard to what
13 I should do. I went to talk to him as I would talk to
14 a friend.

15 Q Yes. A yes, sir.

16 Q You didn't like that arrangement and then you saw Mr.
17 Adams and the result of it was you were fined? A I said
18 Mrs. Franklin didn't like that arrangement, I did like it.

19 Q You liked it but Mrs. Franklin didn't like it? A No,
20 sir, she didn't.

21 Q You made up your mind then to see what other arrangements
22 could be made? A I made up my mind at that time, Mrs.
23 Franklin and myself, we had better see what we should do
24 to Mr. Adams.

25 Q And that arrangement resulted in the withdrawal of your
26 plea and resulted in a fine? A What arrangement are you

1 talking about?

2 Q Whatever Mr. Adams arranged for you? A I went to Mr.
3 Adams and told him the truth.

4 Q I understand that. You said you made up your mind to leave
5 all of that matter, the arrangement to Mr. Adams, isn't that
6 right? A I never said any arrangement about Mr. Adams or
7 Mr. Adams was to make any arrangement.

8 Q You said you left it to Mr. Adams and whatever he should
9 do in the matter was satisfactory to you? A No, sir, I
10 didn't say that, and I didn't testify to that.

11 Q What did you leave to Mr. Adams? A What I should do, a
12 and what my duty to the public and to the people of the State
13 of California was, and to my family, also.

14 Q Anyhow, whatever occurred after that, it resulted in the
15 fact that you made a statement to Mr. Ford, is that right?

16 A Yes, sir.

17 Q And it resulted in the fact that you were fined in court
18 whatever sum has been indicated here before, is that right?

19 MR. FREDERICKS. We object to that as calling for a conclu-
20 sion of the witness. We have no objection to his stating
21 the fact, but that it resulted in that is a conclusion of
22 the witness which he has not been interrogated about, it is
23 a matter for argument to the jury.

24 THE COURT. Objection overruled.

25 MR. APPEL. Read the question.

26 (Question read.)

1 A I was fined \$4,000 in the Superior Court of this county
2 at a later date than that.

3 Q Exactly, but, whoever attended to your matters for you
4 after Mr. Davis proposed the two years sentence in the peni-
5 tentiary and you talked to your wife and you talked to Mr.
6 Adams, after that Mr. Adams attended to whatever matters you
7 had to attend to ⁱⁿ your case?

8 MR. FORD. We object to that--

9 A We attended to whatever matters I requested that he
10 attend to.

11 Q Yes. Now, did the fact that Mr. Davis stated to you
12 that you would get two years in the penitentiary, etc.,
13 did that induce you to go and see Mr. Adams.

14 MR. FORD. We object to that, just a moment--

15 A No, sir, I never was afraid to serve time in the peni-
16 tentiary and I am not afraid to now.

17 Q No. Did it have anything to do with your subsequent
18 conduct in this case?

19 MR. FORD. We object to that as idle, speculative, in
20 every way, not recross-examination, incompetent, irrelevant
21 and immaterial.

22 THE COURT. Objection overruled.

23 MR. APPEL. I object to the word "idle" again as an absolute
24 falsehood. It is not idle on my part, your Honor, it is
25 not speculative. I put a question to the witness in good
26 faith, it may be a bad question, but certainly I am not

1 doing it simply as an idle proposition.

2 MR. FORD. My objection to the question was it was idle
3 and speculative.

4 MR. APPEL. I deny that and I won't stand it.

5 MR. FREDERICKS. We have a right to make that objection.

6 MR. APPEL. Your Honor, it is not proper. There is no
7 language as that ought to be used in an objection, your
8 Honor.

9 THE COURT. Mr. Appel, the objection has been overruled.
10 You have stated in the record your assignment of error
11 on the part of the district attorney, which you have a
12 right to do. Now, let us have the answer to the question.

13 MR. APPEL. I will not stand any insults in the court room
14 or outside of the court room, your Honor. I consider that
15 an insult.

16 THE COURT. There will be no insults offered to you in this
17 court room, Mr. Appel, under any circumstances, but I
18 must be the sole judge of whether it is an insult or not.

19 MR. APPEL. I am the sole judge whether I feel it an insult.
20 It is addressed to me and I will take it upon myself to
21 deal with it as it is addressed to me, your Honor.

22 THE COURT. Not in the court room.

23 MR. APPEL. I will deal with it somewhere else, I will
24 tell you that now.

25 THE COURT. The question is before the court. Do you want
26 the question read, Mr. Franklin?

1 A If you please, yes, sir.

2 THE COURT. Read the question. (Question read.)

3 MR. APPEL. Tin soliders cannot scare me, your Honor.

4 (Last two questions read.)

5 A You mean the fact that Mr. Davis told me I should get
6 two years?

7 MR. APPEL. My question is perfectly plain.

8 MR. FORD. I submit the witness is entitled--

9 THE COURT. Do you understand the question?

10 A I do not.

11 MR. APPEL. Read it to him again.

12 MR. FORD. The witness was trying to ask a question in
13 order to have it explained.

14 THE COURT. Just a moment. Read that question.

15 (Last two questions read.)

16 A Well, that is a matter entirely of opinion.

17 Q Well, I know, but I want to know what your opinion was
18 or your condition of mind? A Well, if you mean by that
19 that the fact that the prospect was I serve two years in the
20 penitentiary caused me to go to Mr. Adams, I will say no,
21 but the fact I was notified I might get two years led to the
22 conversation with Mrs. Franklin which eventually caused me
23 to go to Mr. Adams.

24 Q That was taken into consideration, the fact that it was
25 proposed you should serve two years in the penitentiary?

26 A The fact whether I was to serve two or ten years didn't

1 make a particle of difference.

2 Q Didn't make any difference to you? A I am ready to
3 take whatever the court of this county or state may give
4 me and suffer the consequences.

5 Q You are ready to do that? A Yes, sir; I was ready to
6 do that, but the question of taking money into the house
7 that had not been honestly earned; Mrs. Franklin objected
8 to it and I would not leave her without sustenance to earn
9 her living, and acted accordingly.

10 Q For that reason you went to see Mr. Adams? A No, for
11 that reason Mrs. Franklin and I consulted what was best to
12 do with the family and we decided to see Mr. Adams and
13 so I did.

14 Q Did you know what the sentence would be when you plead
15 guilty?

16 MR. FORD. We object to that on the ground it has been fully
17 gone into on cross-examination.

18 MR. FREDERICKS. That was very fully covered, your Honor,
19 by Mr. Rogers on cross-examination.

20 THE COURT. I think it was. Objection sustained on that
21 ground.

22 MR. APPEL. We take an exception.

23 Q You answered, in answer to a question by Mr. Ford that
24 no promises on the part of Mr. Ford or any one else were
25 made to you as a condition to your pleading guilty? I want
26 to know whether or not, before you plead guilty you knew in

1 advance what the sentence would be upon your pleading
2 guilty?

3 MR. FREDERICKS. That is objected to on the same ground,
4 on the ground it was very fully covered on cross-examina-
5 tion by Mr. Rogers.

6 THE COURT. Counsel's question as now framed, unless my
7 attention is called to it, he is entitled to it. Objec-
8 tion overruled.

9 MR. FORD. We will call to your Honor's attention the
10 record.

11 THE COURT. Do you want to be heard upon that objection?

12 MR. FORD. Yes, your Honor, I want to read the record.
13 Beginning at page 599, your Honor, the very first questions.

14 MR. APPEL. In anticipation of counsel's reading the
15 record the defendant objects to his reading the record.

16 MR. FORD. We wont read it, we will ask the court to read
17 it.

18 MR. APPEL. On the ground it is another attempt on the part
19 of the district attorney to place the facts in the possession
20 of the witness in order to enable him to answer my ques-
21 tion, and the Court

22 Overruled the objection, and that is one of a
23 series of acts consistent with the statement of putting
24 the witness on.

25 THE COURT. The district attorney has offered to hand the
26 document to the court, and that is the proper way to pro-

1 ceed.

2 MR. FORD. This record, your Honor, is so voluminous, for
3 that reason I will not attempt to read it, but beginning
4 on page 608, "Now, let's see, you are getting something
5 for that testimony? A--I am not."

6 THE COURT. Let me see it.

7 MR. FORD. By reading page 608, beginning with those
8 words, going through all that page.

9 THE COURT. Let me have it, I can glance through it in a
10 minute or two.

11 MR. FORD. Page after page on that subject, your Honor.

12 THE COURT. All right. (Mr. Ford hands transcript to the
13 Court and the Court examines same.)

14 THE COURT. I think that the matter referred to is original
15 matter. Objection overruled.

16 A Read the question, please.

17 (Question read.)

18 A I did not.

19 Q Didn't you hear Mr. Ford make the request in court there
20 as to how much you should be fined and why that fine should
21 be imposed upon you before you plead guilty?

22 MR. FORD. We object to that question on the ground it is
23 not recross-examination. Your Honor will remember onrecross-
24 examination Mr. Rogers read large portions of what was said
25 there and directed the witness's attention to it.

26 THE COURT. That was gone into and in view of the witness's

1 last answer I think counsel is entitled to it. Objection
2 overruled.

3 A What is the question?

4 (Question read.)

5 A Whatever Mr. Ford said in court that day I heard.

6 BY MR. APPEL . Q Well, you heard that before you plead
7 guilty, didn't you?

8 MR. FORD. We object to that on the ground it has been fully
9 gone into.

10 THE COURT' Objection overruled.

11 A No, sir; I don't think I did.

12 Q Were you in there all the time Mr. Ford was talking?

13 MR. FORD. If the court please, counsel knows from the
14 record as we all certainly do, he plead guilty and it
15 was upon the plea of guilty, upon the plea of guilty I made
16 my request and my statement and the witness has said here
17 he didn't hear me say it before and counsel is trying to
18 lead the witness to believe something occurred that didn't
19 occur. Now, this matter has been gone into fully on
20 cross-examination, and perhaps on recross-examination and
21 counsel charges right back to it to see if he can get
22 him to make some variation of something he said before,
23 or something different of what he did before. That is the
24 purpose of recross-examination.

25

26

Als 1 THE COURT. You and I perfectly agree as to the object
2 of recross-examination.

3 MR. FORD. We certainly disagree as to the application of
4 it.

5 THECOURT- That is within the meaning of that rule of
6 new matter, I think it is.

7 MR. FORD. We object upon the ground that it is not
8 recross-examination.

9 THE COURT. Objection overruled. Read the question.
10 (Question read by the reporter.)

11 A I think so.

12 MR. APPEL. Yes, All right. Now, was Mr. Adams there
13 representing you as your counsel at that time? A He was
14 not. You are speaking now of the time of which I plead
15 guilty or the time I received my sentence?

16 Q The time you plead guilty. A George Adams, no, sir.

17 Q Was he there? A No, sir, he was not.

18 Q Well, who was representing you there at that time, Mr.
19 Ford? A No, sir, not Mr. Ford.

20 MR. FREDERICKS. We object upon the ground that the matter--

21 MR. APPEL. Were you representing your self?

22 MR. FREDERICKS. We object upon the ground the matter has
23 been fully covered. Now, I have tried to ascertain--
24 I know the court must have some idea in mind for permitting
25 this to be gone over again, that there is something that
26 was not brought out. The whole situation was covered

1 by Mr. Rogers, and you remember the witness argued the law
2 with him as to whether he could be punished if he testified,
3 and whether he was going to be punished and the witness's
4 ideas as to whether he thought he was going to be punished
5 on that plea of guilty, were all gone into and were all
6 brought out, and brought out at the expense of a day's
7 time almost, largely by question and answer what he thought
8 and what his ideas were, whether he thought he was going to
9 be punished or not. I think the jury fully understand the
10 condition of the witness, what he expected. I think it has
11 been gone into.

12 MR. FORD. I call your Honor's attention to Section 2050
13 of the Code of Civil Procedure, "A witness once examined
14 cannot be reexamined as to the same matter without leave
15 of court, but he may be reexamined as to any new matter
16 upon which he has been examined by the adverse party."
17 Now, this witness has been examined upon all of this
18 matter by the counsel on cross-examination. We reexamined
19 him on the same matter, being the adverse party, on redirect
20 They have once examined him on that matter and so have we.
21 Now, they cannot reexamine him on that same matter.

22 THE COURT. I quite agree with you.

23 MR. FORD. And yet as to what occurred in court as to the
24 preliminary examination, the immunity and so forth, they
25 have examined him thoroughly once. Now, they are seeking
26 to do it again.

1 THE COURT. I think there is one branch of the matter, how-
2 ever, that is new, as indicated by the question from which
3 the series of questions now being propounded was necessarily-

4 MR. FORD. If there is any new matter it must be something
5 that is testified to at this time that has entirely escaped
6 my attention. It must be here, and if it is some new
7 matter that is now being brought out by them it is certainly
8 improper. If there is something new coming out for the
9 first time now it is certainly improper and that can be the
10 only object of the examination, an act contrary to the
11 rules is to bring out some matter in order that they may
12 contradict some old matter with new matter. The rules
13 of evidence don't permit that to be done--a witness can
14 be examined and reexamined. That is the third degree.
15 That is the object of which so much is said of police offi-
16 cers to question and question and question a man until they
17 get him to say something, when he is tired, that he doesn't
18 exactly mean, something entirely different than what he
19 had been telling them.

20 THE COURT. They have no right, of course, to do that
21 but, I think, however, that your suggestion made at this
22 time, particularly in view of the fact it is five o'clock,
23 it is a very fair one that the witness is tired.

24 A I am not a bit tired, your Honor, I am ready to proceed.

25 THE COURT. All right.

26 MR. ROGERS. I move to strike out the announcement of Mr.

1 Ford before the jury and ask that they be instructed to dis-
2 regard it.

3 MR. FORD. I never said he was tired. I mentioned- I mean
4 I was comparing it to the third degree examination in the
5 police station where they examine them until they are tired
6 for the object of getting something different out of them
7 when really it is not true.

8 MR. FREDERICKS. I will plead guilty to being tired and it
9 is 5 o'clock--

10 MR. APPEL. I am tired of the several objections.

11 THE COURT. Let's have an answer to this question and
12 then we will adjourn.

13 A What is the question, please?

14 THE COURT. Read the question.

15 (Question read.)

16 A Yes, sir, and I was ably represented.

17 (Jury admonished. Recess until June 8th, 1912, 9:30 A.M.)

18 ----oOo----

19

20

21

22

23

24

25

26